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PART I
INTERPRETATION

Purpose

1. Recognizing the history of discrimination against persons with disabilities in Ontario, the purpose of this Act is to benefit all Ontarians by,

- (a) developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025; and
- (b) providing for the involvement of persons with disabilities, of the Government of Ontario and of representatives of industries and of various sectors of the economy in the development of the accessibility standards. 2005, c. 11, s. 1.

Definitions

2. In this Act,

“accessibility standard” means an accessibility standard made by regulation under section 6; (“norme d’accessibilité”)

“barrier” means anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice; (“obstacle”)

“director” means a director appointed under section 30; (“directeur”)

“disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

“Minister” means the Minister of Citizenship and Immigration or whatever other member of the Executive Council to whom the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“organization” means any organization in the public or private sector and includes,

- (a) the Government of Ontario and any board, commission, authority or other agency of the Government of Ontario,
- (b) any agency, board, commission, authority, corporation or other entity established under an Act,
- (c) a municipality, an association, a partnership and a trade union, or
- (d) any other prescribed type of entity; (“organisation”)

“prescribed” means prescribed by regulation; (“prescrit”)

“regulations” means the regulations made under this Act, unless the context indicates or requires otherwise; (“règlements”)

“Tribunal” means, with respect to an appeal of an order made by a director under this Act, the tribunal designated by the Lieutenant Governor in Council under section 26 for the purposes of hearing that appeal. (“Tribunal”) 2005, c. 11, s. 2; 2009, c. 33, Sched. 8, s. 1.

Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 8, s. 1 - 15/12/2009

Recognition of existing legal obligations

3. Nothing in this Act or in the regulations diminishes in any way the legal obligations of the Government of Ontario or of any person or organization with respect to persons with disabilities that are imposed under any other Act or otherwise imposed by law. 2005, c. 11, s. 3.

PART II APPLICATION

Application

4. This Act applies to every person or organization in the public and private sectors of the Province of Ontario, including the Legislative Assembly of Ontario. 2005, c. 11, s. 4.

Crown bound

5. This Act binds the Crown. 2005, c. 11, s. 5.

PART III ACCESSIBILITY STANDARDS

ESTABLISHMENT OF STANDARDS

Accessibility standards established by regulation

6. (1) The Lieutenant Governor in Council may make regulations establishing accessibility standards. 2005, c. 11, s. 6 (1).

Application of standards

(2) An accessibility standard shall name or describe the persons or organizations to which it applies. 2005, c. 11, s. 6 (2).

Same

(3) An accessibility standard may apply only to a person or organization that,

- (a) provides goods, services or facilities;
- (b) employs persons in Ontario;
- (c) offers accommodation;
- (d) owns or occupies a building, structure or premises; or
- (e) is engaged in a prescribed business, activity or undertaking or meets such other requirements as may be prescribed. 2005, c. 11, s. 6 (3).

Same, Legislative Assembly

(4) An accessibility standard that applies to the Legislative Assembly may impose obligations on the Speaker of the Assembly and may apply with respect to all or part of the Legislative Building or of such other offices that fall within the jurisdiction of the Legislative Assembly and are identified in the accessibility standard. 2005, c. 11, s. 6 (4).

Several applicable standards

(5) A person or organization may be subject to more than one accessibility standard. 2005, c. 11, s. 6 (5).

Content of standards

(6) An accessibility standard shall,

- (a) set out measures, policies, practices or other requirements for the identification and removal of barriers with respect to goods, services, facilities, accommodation, employment, buildings, structures, premises or such other things as may be prescribed, and for the prevention of the erection of such barriers; and
- (b) require the persons or organizations named or described in the standard to implement those measures, policies, practices or other requirements within the time periods specified in the standard. 2005, c. 11, s. 6 (6).

Classes

(7) An accessibility standard may create different classes of persons or organizations or of buildings, structures or premises and, without limiting the generality of this power, may create classes with respect to any attribute, quality or characteristic or any combination of those items, including,

- (a) the number of persons employed by persons or organizations or their annual revenue;
- (b) the type of industry in which persons or organizations are engaged or the sector of the economy of which persons or organizations are a part;
- (c) the size of buildings, structures or premises. 2005, c. 11, s. 6 (7).

Same

(8) An accessibility standard may define a class to consist of one person or organization or to include or exclude a person or organization having the same or different attributes, qualities or characteristics. 2005, c. 11, s. 6 (8).

Scope

(9) An accessibility standard may be general or specific in its application and may be limited as to time and place. 2005, c. 11, s. 6 (9).

STANDARDS DEVELOPMENT PROCESS

Process for development of standards

7. The Minister is responsible for establishing and overseeing a process to develop and implement all accessibility standards necessary to achieving the purposes of this Act. 2005, c. 11, s. 7.

Standards development committees

8. (1) As part of the process referred to in section 7, the Minister shall establish standards development committees to develop proposed accessibility standards which shall be considered for adoption by regulation under section 6. 2005, c. 11, s. 8 (1).

Responsibility for specified industries, etc.

- (2) Each standards development committee is responsible for,
 - (a) developing proposed accessibility standards for such industries, sectors of the economy or classes of persons or organizations as the Minister may specify; and
 - (b) further defining the persons or organizations that are part of the industry, sector of the economy or class specified by the Minister under clause (a). 2005, c. 11, s. 8 (2).

Consultation with ministries

(3) Before establishing a standards development committee for a particular industry, sector of the economy or class of persons or organizations, the Minister shall consult with other ministers having responsibilities relating to that industry, sector or class of persons or organizations. 2005, c. 11, s. 8 (3).

Composition of standards development committee

(4) The Minister shall invite the following persons or entities to participate as members of a standards development committee:

- 1. Persons with disabilities or their representatives.
- 2. Representatives of the industries, sectors of the economy or classes of persons or organizations to which the accessibility standard is intended to apply.
- 3. Representatives of ministries that have responsibilities relating to the industries, sectors of the economy or classes of persons or organizations to which the accessibility standard is intended to apply.
- 4. Such other persons or organizations as the Minister may consider advisable. 2005, c. 11, s. 8 (4).

Participation of Council members

(5) The Minister may invite members of the Accessibility Standards Advisory Council to participate as members of a standards development committee. 2005, c. 11, s. 8 (5).

Terms of reference

(6) The Minister shall fix terms of reference for each standards development committee and shall establish in the terms of reference the deadlines that each committee must meet throughout the various stages of the standards development process. 2005, c. 11, s. 8 (6).

Committee members' allowance

- (7) The terms of reference may,
 - (a) provide for the Minister to pay members of a standards development committee an allowance for attendance at committee meetings and a reimbursement for expenses incurred by members in an amount that the Minister determines; and
 - (b) specify the circumstances in which the allowance or reimbursement may be paid. 2005, c. 11, s. 8 (7).

Terms of reference made public

(8) After fixing the terms of reference under subsection (6), the Minister shall make the terms of reference available to the public by posting them on a government internet site and by such other means as the Minister considers advisable. 2005, c. 11, s. 8 (8).

Minutes of meetings

(9) A standards development committee shall keep minutes of every meeting it holds and shall make the minutes available to the public by posting them on a government internet site and by such other means as the terms of reference may provide. 2005, c. 11, s. 8 (9).

Development of proposed standards

9. (1) Each standards development committee shall develop proposed accessibility standards in accordance with the process set out in this section and with the terms of reference established by the Minister. 2005, c. 11, s. 9 (1).

Determination of long-term objectives

(2) Promptly after its establishment, each standards development committee shall determine the long-term accessibility objectives for the industry, sector of the economy or class of persons or organizations in relation to which the committee has responsibilities under subsection 8 (2), by identifying the measures, policies, practices and requirements that it believes should be implemented by the members of the industry, sector or class on or before January 1, 2025. 2005, c. 11, s. 9 (2).

Progressive implementation

(3) Each standards development committee shall determine an appropriate time-frame for the implementation of the measures, policies, practices and requirements identified under subsection (2) taking into account,

- (a) the range of disabilities that the measures, policies, practices and requirements are intended to address;
- (b) the nature of the barriers that the measures, policies, practices and requirements are intended to identify, remove and prevent;
- (c) any technical and economic considerations that may be associated with their implementation; and
- (d) any other consideration required under the committee's terms of reference. 2005, c. 11, s. 9 (3).

Time-frame

(4) The time-frame referred to in subsection (3) shall enable the measures, policies, practices and requirements identified under subsection (2) to be implemented in stages according to the following rules:

1. The standards development committee shall fix a target date for the implementation of the measures, policies, practices and requirements that the committee identifies for implementation at the first stage and the target date shall be no more than five years after the day the committee was established.
2. The standards development committee shall fix successive target dates for the implementation of the measures, policies, practices and requirements that the committee identifies for implementation at each of the following stages and each target date shall be no more than five years after the previous target date. 2005, c. 11, s. 9 (4).

Initial proposed standard

(5) Within the time period specified by the committee's terms of reference, each standards development committee shall prepare a proposed accessibility standard and submit it to the Minister for the purposes of making the proposed standard public and receiving comments in accordance with section 10. 2005, c. 11, s. 9 (5).

Finalizing initial proposed standard

(6) After considering the comments received under section 10, a standards development committee may make any changes it considers advisable to the proposed accessibility standard and provide the Minister with the proposed accessibility standard within the time period specified by the committee's terms of reference. 2005, c. 11, s. 9 (6).

Minister's response

(7) No later than 90 days after receiving a proposed accessibility standard under subsection (6), the Minister shall decide whether to recommend to the Lieutenant Governor in Council that the proposed standard be adopted by regulation under section 6 in whole, in part or with modifications. 2005, c. 11, s. 9 (7).

Same

(8) On making a decision under subsection (7), the Minister shall inform, in writing, the standards development committee that developed the proposed standard in question of his or her decision. 2005, c. 11, s. 9 (8).

Development of subsequent proposed standards

(9) Within five years after an accessibility standard is adopted by regulation or at such earlier time as the Minister may specify, the standards development committee responsible for the industry, sector of the economy or class of persons or organizations to which the standard applies shall,

- (a) re-examine the long-term accessibility objectives determined under subsection (2);
- (b) if required, revise the measures, policies, practices and requirements to be implemented on or before January 1, 2025 and the time-frame for their implementation;
- (c) develop another proposed accessibility standard containing such additions or modifications to the existing accessibility standard as the standards development committee deems advisable and submit it to the Minister for the purposes of making the proposed standard public and receiving comments in accordance with section 10; and
- (d) make such changes it considers advisable to the proposed accessibility standard developed under clause (c) based on the comments received under section 10 and provide the Minister with the subsequent proposed accessibility standard. 2005, c. 11, s. 9 (9).

Completion of process

(10) Subsection (9) applies with necessary modifications to the development of successive proposed accessibility standards until such time as all the measures, policies and practices and requirements identified under subsection (2) and by subsequent reviews under clause (9) (b) are adopted by regulation. 2005, c. 11, s. 9 (10).

Proposed standards made public

10. (1) Upon receiving a proposed accessibility standard from a standards development committee under subsection 9 (5) or clause 9 (9) (c), the Minister shall make it available to the public by posting it on a government internet site and by such other means as the Minister considers advisable. 2005, c. 11, s. 10 (1).

Comments

(2) Within 45 days after a proposed accessibility standard is made available to the public in accordance with subsection (1) or within such other period of time as may be specified by the Minister, any person may submit comments with respect to a proposed accessibility standard to the appropriate standards development committee. 2005, c. 11, s. 10 (2).

Extension of time for comments

(3) The Minister may extend the time period referred to in subsection (2) in order to accommodate a person with a disability or for any other reason that the Minister considers appropriate. 2016, c. 5, Sched. 1, s. 1.

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 1, s. 1 - 19/04/2016

Progress reports

11. (1) Each standards development committee shall provide the Minister with periodic reports on the progress of the preparation of the proposed standard as specified in the committee's terms of reference or as may be required by the Minister from time to time. 2005, c. 11, s. 11 (1).

Progress reports made public

(2) Upon receiving a report under subsection (1), the Minister shall make it available to the public by posting it on a government internet site and by such other means as the Minister considers advisable. 2005, c. 11, s. 11 (2).

Assistance for standards development committees

12. The Minister may retain, appoint or request experts to provide advice to a standards development committee. 2005, c. 11, s. 12.

COMPLIANCE WITH STANDARDS AND REVIEW OF REPORTS

Compliance with accessibility standard

13. A person or organization to whom an accessibility standard applies shall comply with the standard within the time period set out in the standard. 2005, c. 11, s. 13.

Accessibility report

14. (1) A person or organization to whom an accessibility standard applies shall file an accessibility report with a director annually or at such other times as the director may specify. 2005, c. 11, s. 14 (1).

Report available to public

(2) A person or organization shall make an accessibility report filed under subsection (1) available to the public. 2005, c. 11, s. 14 (2).

Form

(3) An accessibility report shall be in the form approved by the Minister and the Minister may require that the report or a part of the report be provided electronically in a format approved by the Minister. 2005, c. 11, s. 14 (3).

Content

(4) An accessibility report shall contain such information as may be prescribed. 2005, c. 11, s. 14 (4).

Certification of accessibility report

15. (1) An accessibility report shall include a statement certifying that all the information required to be provided in the report under this Act has been provided and that the information is accurate and the statement shall be signed,

- (a) if the person preparing the report is an individual, by the individual; and
- (b) in all other cases, by a director, a senior officer or other responsible person with authority to bind the organization. 2005, c. 11, s. 15 (1).

Electronic signature

(2) If an accessibility report is filed in an electronic format approved by the Minister, the requirement that a person sign the report under subsection (1) shall be met if he or she provides an electronic signature. 2005, c. 11, s. 15 (2).

Definition

(3) In subsection (2),
“electronic signature” means a personal identification number (PIN), password, biometric information or any other electronic information that a person creates or adopts to be used in the place of his or her signature to authenticate his or her identity and that is in, attached to or associated with an accessibility report. 2005, c. 11, s. 15 (3).

Review of director

16. A director may review an accessibility report filed under section 14 to determine whether it complies with the regulations and whether the person or organization who submitted the report has complied with all applicable accessibility standards. 2005, c. 11, s. 16.

Other reports and information

17. At the request of a director, a person or organization shall provide the director with reports or information relating to the compliance of the person or organization with the accessibility standards. 2005, c. 11, s. 17.

PART IV INSPECTIONS

Inspectors

18. (1) The Deputy Minister shall appoint one or more inspectors for the purposes of this Act and the regulations within a reasonable time after the first accessibility standard is established under section 6. 2005, c. 11, s. 18 (1).

Certificate of appointment

(2) The Deputy Minister shall issue to every inspector a certificate of appointment bearing his or her signature or a facsimile of his or her signature. 2005, c. 11, s. 18 (2).

Production of certificate

(3) An inspector carrying out an inspection under section 19 shall produce his or her certificate of appointment upon request. 2005, c. 11, s. 18 (3).

Inspections without warrant

19. (1) An inspector may carry out an inspection under this Act for the purpose of determining whether this Act and the regulations are being complied with. 2005, c. 11, s. 19 (1).

Entry

(2) In the course of carrying out an inspection, an inspector may, without warrant, enter any lands or any building, structure or premises where the inspector has reason to believe there may be documents or things relevant to the inspection. 2005, c. 11, s. 19 (2).

Time of entry

(3) The power to enter and inspect a place without a warrant may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2005, c. 11, s. 19 (3).

Dwellings

(4) An inspector shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2005, c. 11, s. 19 (4).

Powers

- (5) Upon entering a place under subsection (2), an inspector may,
- (a) require any person in the place to produce any document, record or thing that is relevant to the inspection;
 - (b) upon giving a receipt for it, remove any document, record or thing that is relevant to the inspection for the purposes of making copies or extracts;
 - (c) question any person present in the place on matters relevant to the inspection;
 - (d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document or record in readable form. 2005, c. 11, s. 19 (5).

Written demand

(6) A demand that a document, record or thing be produced for inspection must be in writing and must include a statement of the nature of the document, record or thing required. 2005, c. 11, s. 19 (6).

Assistance

(7) An inspector may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inspection. 2005, c. 11, s. 19 (7).

Use of force prohibited

- (8) An inspector shall not use force to enter and inspect premises under this section. 2005, c. 11, s. 19 (8).

Obligation to produce and assist

(9) A person who is required to produce a document, record or thing under clause (5) (a) shall produce it and shall, on request by the inspector, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document or record in readable form. 2005, c. 11, s. 19 (9).

Return of removed things

- (10) An inspector who removes any document, record or thing from a place under clause (5) (b) shall,
- (a) make it available to the person from whom it was removed, on request, at a time and place convenient for both the person and the inspector; and
 - (b) return it to the person being inspected within a reasonable time. 2005, c. 11, s. 19 (10).

Admissibility of copies

(11) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2005, c. 11, s. 19 (11).

Search warrant

20. (1) Upon application made without notice by an inspector appointed under this Act, a justice of the peace may issue a warrant, if he or she is satisfied on information under oath or affirmation that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Act or the regulations; and
- (b) there are in any building, dwelling, receptacle or place any documents, records or other things relating to a contravention of this Act or the regulations. 2005, c. 11, s. 20 (1).

Powers

(2) A warrant obtained under subsection (1) may authorize an inspector named in the warrant, upon producing his or her appointment,

- (a) to enter any place specified in the warrant, including a dwelling; and

(b) to do any of the things specified in the warrant. 2005, c. 11, s. 20 (2).

Conditions on search warrant

(3) A warrant obtained under subsection (1) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2005, c. 11, s. 20 (3).

Expert help

(4) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the inspector in respect of the execution of the warrant. 2005, c. 11, s. 20 (4).

Time of execution

(5) An entry under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2005, c. 11, s. 20 (5).

Expiry of warrant

(6) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by the inspector named in the warrant. 2005, c. 11, s. 20 (6).

Use of force

(7) The inspector named in the warrant may call upon police officers for assistance in executing the warrant and the inspector may use whatever force is reasonably necessary to execute the warrant. 2005, c. 11, s. 20 (7).

Obstruction prohibited

- (8) No person shall,
- (a) obstruct an inspector carrying out an inspection under a warrant issued under this section;
 - (b) refuse to answer questions on matters relevant to the inspection;
 - (c) provide the inspector with information on matters relevant to the inspection that the person knows to be false or misleading; or
 - (d) withhold from the inspector any information that is relevant to the inspection. 2005, c. 11, s. 20 (8).

Application

(9) Subsections 19 (9), (10) and (11) apply with necessary modifications to an inspection carried out pursuant to a warrant issued under this section. 2005, c. 11, s. 20 (9).

**PART V
DIRECTOR'S ORDERS AND ADMINISTRATIVE PENALTIES**

Orders

Determination of applicable standard

21. (1) For the purposes of determining whether an accessibility standard applies to a person or organization, a director may order that,

- (a) the person or organization be treated as being part of a particular industry, sector of the economy or class of persons or organizations; and
- (b) two or more persons or organizations be treated as one person or organization. 2005, c. 11, s. 21 (1).

Same

(2) One of the circumstances in which a director may make an order under subsection (1) is where a person or organization has organized his, her or its businesses, activities or undertakings in a particular manner and the intent or effect of doing so is to permit the person or organization not to comply with a particular accessibility standard or to otherwise defeat the purposes of this Act. 2005, c. 11, s. 21 (2).

Compliance order, reporting requirements

(3) If a director concludes that a person or organization has contravened section 14 or 17, the director may, by order, require the person or organization to do any or all of the following:

- 1. File an accessibility report that complies with the requirements under this Act within the time specified in the order, subject to subsection (4.1).
- 2. Provide the director with such reports or information as may be required under section 17 within the time specified in the order, subject to subsection (4.1).

3. Subject to subsection (6), pay an administrative penalty in accordance with the regulations. 2005, c. 11, s. 21 (3); 2016, c. 5, Sched. 1, s. 2 (1).

Same, standards and regulations

(4) If a director concludes that a person or organization has contravened a provision of an accessibility standard or of any other regulation, the director may, by order, require the person or organization to do either or both of the following:

1. Comply with the accessibility standard or other regulation within the time specified in the order, subject to subsection (4.1).
2. Subject to subsection (6), pay an administrative penalty in accordance with the regulations. 2005, c. 11, s. 21 (4); 2016, c. 5, Sched. 1, s. 2 (1).

Extension of time for compliance

(4.1) The director who made an order under subsection (3) or (4), as the case may be, may extend the time period referred to in paragraph 1 or 2 of subsection (3) or paragraph 1 of subsection (4) in order to accommodate a person with a disability or for any other reason that the director considers appropriate. 2016, c. 5, Sched. 1, s. 2 (2).

Failure to comply with previous order

(5) If a person or organization fails to comply with an order made under subsection (3) or (4) within the time specified in the order and no appeal of the order is made within the time specified in subsection 27 (1), a director may, subject to subsection (6), make an order requiring the person or organization to pay an administrative penalty in accordance with the regulations. 2005, c. 11, s. 21 (5).

Administrative penalties

(6) An administrative penalty may be ordered under this section for one or more of the following purposes:

1. To encourage compliance with this Act or with an order made under this Act.
2. To prevent a person or organization from deriving, directly or indirectly, any economic benefit as a result of a contravention of this Act or the regulations.
3. To recover the costs of enforcing this Act and the regulations against the person or organization that is required to pay the administrative penalty. 2005, c. 11, s. 21 (6).

Content of order

(7) An order under this section shall,

- (a) in the case of an order under subsection (1), inform the person or organization of the nature of the order and of the reasons for the order;
- (b) in the case of an order under subsections (3), (4) and (5),
 - (i) contain a description of the contravention to which the order relates and, in the case of an order under subsection (5), identify the previous order to which that order relates,
 - (ii) inform the person or organization of what must be done in order to comply with the order, and
 - (iii) specify the time within which the person or organization must comply with the order; and
- (c) inform the person or organization of the right to appeal the order to the Tribunal under section 27. 2005, c. 11, s. 21 (7); 2016, c. 5, Sched. 1, s. 2 (3).

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 1, s. 2 (1-3) - 19/04/2016

Notice of order

22. (1) A director shall not make an order under section 21 unless, before doing so, he or she gives notice of the order to the person or organization that is the subject of the proposed order and gives the person or organization an opportunity to make submissions with respect to the proposed order in accordance with this section. 2005, c. 11, s. 22 (1).

Content of notice

- (2) The notice shall inform the person or organization,
 - (a) of the nature of the order that the director proposes to make;
 - (b) of the steps that the person or organization must take in order to comply with the order;
 - (c) of the right of the person or organization to make written submissions to the director explaining the alleged failure to comply; and

(d) of the time within which the submissions must be made. 2005, c. 11, s. 22 (2).

Written submissions

(3) The person or organization that receives notice under this section may make written submissions to the director to explain any alleged contravention of section 14 or 17, of an accessibility standard or of any other regulation within 30 days of the day notice is received or within the further time that is specified in the notice or that the director specifies in order to accommodate a person with a disability or for any other reason that the director considers appropriate. 2005, c. 11, s. 22 (3); 2016, c. 5, Sched. 1, s. 3.

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 1, s. 3 - 19/04/2016

Enforcement of administrative penalties

23. (1) If a person or organization fails to comply with an order to pay an administrative penalty within the time specified in the order and no appeal of the order is made within the time specified in subsection 27 (1), the order may be filed with a local registrar of the Superior Court of Justice and may be enforced as if it were an order of the court. 2005, c. 11, s. 23 (1).

Same

(2) Section 129 of the *Courts of Justice Act* applies in respect of an order filed with the Superior Court of Justice under subsection (1) and, for the purpose, the date on which the order is filed shall be deemed to be the date of the order. 2005, c. 11, s. 23 (2).

Failure to pay after appeal

(3) Subsections (1) and (2) apply with necessary modifications to an order of the Tribunal requiring a person or organization to pay an administrative penalty. 2005, c. 11, s. 23 (3).

Stay where appeal

(4) If a person or organization gives notice of appeal of an order to pay an administrative penalty within the time specified in subsection 27 (1), the requirement to pay is stayed until the disposition of the appeal. 2005, c. 11, s. 23 (4).

No hearing required prior to order

24. A director is not required to hold a hearing or to afford a person or organization an opportunity for a hearing before making an order under section 21. 2005, c. 11, s. 24.

Order reviewed, etc.

25. (1) Within a reasonable time after making an order under section 21, a director may review the order and vary or rescind it. 2005, c. 11, s. 25.

Extension of time for review

(2) The director who made an order under section 21 may extend the time referred to in subsection (1) if the director is of the opinion that doing so is necessary in order to accommodate a person with a disability or advisable for any other reason that the director considers appropriate. 2016, c. 5, Sched. 1, s. 4.

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 1, s. 4 - 19/04/2016

PART VI APPEALS TO TRIBUNAL

Designation of tribunals

26. (1) The Lieutenant Governor in Council shall, by regulation, designate one or more tribunals for the purposes of this Act and of the regulations within a reasonable time after the first accessibility standard is established under section 6. 2005, c. 11, s. 26 (1).

Responsibility of tribunals

(2) Each tribunal designated under subsection (1) shall be responsible for hearing such matters arising under this Act as are specified in the designation. 2005, c. 11, s. 26 (2).

Powers and duties

(3) A tribunal designated under subsection (1) may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this Act. 2005, c. 11, s. 26 (3).

Appeals to Tribunal

27. (1) A person or organization that is the subject of an order made by a director under section 21, 25 or subsection 33 (8) may appeal the order by filing a notice of appeal with the Tribunal within 15 days after the day the order is made. 2005, c. 11, s. 27 (1).

Extension of time by Tribunal

(1.1) The Tribunal may extend the time period specified in subsection (1) for appealing an order made under section 21 or 25 or subsection 33 (8) in order to accommodate a person with a disability or for any other reason that the Tribunal considers appropriate. 2016, c. 5, Sched. 1, s. 5.

Notice of appeal

(2) A notice of appeal shall be in a form approved by the Tribunal and shall contain the information required by the Tribunal. 2005, c. 11, s. 27 (2).

Filing fee

(3) A person or organization that appeals an order to the Tribunal shall pay the prescribed filing fee. 2005, c. 11, s. 27 (3).

Hearing

(4) The Tribunal shall hold a written hearing with respect to an appeal under subsection (1) unless a party satisfies the Tribunal that there is good reason to hear oral submissions. 2005, c. 11, s. 27 (4).

Panels

(5) Despite the requirement of any other Act, the chair of the Tribunal may appoint a panel of one or more persons to hold hearings under this Act in the place of the full Tribunal and the panel has all the powers and duties of the Tribunal under this Act. 2005, c. 11, s. 27 (5).

Parties to appeal

- (6) The parties to an appeal to the Tribunal are,
- (a) the person or organization that made the appeal to the Tribunal;
 - (b) the director who made the order; and
 - (c) any other person or organization that the Tribunal considers necessary for the proper conduct of the hearing. 2005, c. 11, s. 27 (6).

Order of Tribunal

(7) After holding a hearing into the matter, the Tribunal may confirm, vary or rescind an order of the director. 2005, c. 11, s. 27 (7).

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 1, s. 5 - 19/04/2016

Mediation

28. The Tribunal may attempt to effect a settlement of all or part of the matters that are the subject of an appeal by mediation if,

- (a) the parties consent to the mediation; and
- (b) the Tribunal considers that it is in the public interest to do so. 2005, c. 11, s. 28.

PART VII MUNICIPAL ACCESSIBILITY ADVISORY COMMITTEES

Accessibility advisory committees

29. (1) The council of every municipality having a population of not less than 10,000 shall establish an accessibility advisory committee or continue any such committee that was established before the day this section comes into force. 2005, c. 11, s. 29 (1).

Small municipalities

(2) The council of every municipality having a population of less than 10,000 may establish an accessibility advisory committee or continue any such committee that was established before the day this section comes into force. 2005, c. 11, s. 29 (2).

Members

(3) A majority of the members of the committee shall be persons with disabilities. 2005, c. 11, s. 29 (3).

Duties of committee

- (4) The committee shall,
 - (a) advise the council about the requirements and implementation of accessibility standards and the preparation of accessibility reports and such other matters for which the council may seek its advice under subsection (5);
 - (b) review in a timely manner the site plans and drawings described in section 41 of the *Planning Act* that the committee selects; and
 - (c) perform all other functions that are specified in the regulations. 2005, c. 11, s. 29 (4).

Duty of council

- (5) The council shall seek advice from the committee on the accessibility for persons with disabilities to a building, structure or premises, or part of a building, structure or premises,
 - (a) that the council purchases, constructs or significantly renovates;
 - (b) for which the council enters into a new lease; or
 - (c) that a person provides as municipal capital facilities under an agreement entered into with the council in accordance with section 110 of the *Municipal Act, 2001* or section 252 of the *City of Toronto Act, 2006*. 2005, c. 11, s. 29 (5); 2006, c. 32, Sched. C, s. 1.

Supplying site plans

- (6) When the committee selects site plans and drawings described in section 41 of the *Planning Act* to review, the council shall supply them to the committee in a timely manner for the purpose of the review. 2005, c. 11, s. 29 (6).

Joint committees

- (7) Two or more municipalities may, instead of each establishing their own accessibility advisory committee, establish a joint accessibility advisory committee. 2005, c. 11, s. 29 (7).

Application

- (8) Subsections (3) to (6) apply with necessary modifications to a joint accessibility advisory committee. 2005, c. 11, s. 29 (8).

Section Amendments with date in force (d/m/y)

2006, c. 32, Sched. C, s. 1 - 01/01/2007

PART VIII ADMINISTRATION

Directors

- 30. (1) The Deputy Minister shall appoint one or more directors for the purposes of this Act and the regulations. 2005, c. 11, s. 30 (1).

Responsibility

- (2) A director is responsible for the application of all or any part of this Act and of the regulations with respect to any class of persons or organizations specified in the director's appointment. 2005, c. 11, s. 30 (2).

Powers and duties

- (3) A director shall perform such duties and exercise such powers as may be specified in this Act or the regulations, subject to such conditions and restrictions as may be set out in the appointment. 2005, c. 11, s. 30 (3).

Delegation

- (4) A director may, in writing, authorize any person to exercise any power or perform any duty of the director, subject to such conditions and restrictions as may be set out in the authorization. 2005, c. 11, s. 30 (4).

Same

- (5) An authorization under subsection (4) may authorize an inspector appointed under this Act and named in the authorization to make orders under subsections 21 (3), (4) and (5). 2005, c. 11, s. 30 (5).

No liability

- (6) No action or other proceeding for damages shall be instituted against a director or a person authorized to exercise a power of a director under subsection (4) for any act done in good faith in the execution or intended execution of the person's power or duty or for any alleged neglect or default in the execution in good faith of the person's power or duty. 2005, c. 11, s. 30 (6).

Accessibility Standards Advisory Council

31. (1) The Minister shall establish a council to be known in English as the Accessibility Standards Advisory Council and in French as Conseil consultatif des normes d'accessibilité. 2005, c. 11, s. 31 (1).

Members

(2) A majority of the members of the Council shall be persons with disabilities. 2005, c. 11, s. 31 (2).

Remuneration and expenses

(3) The Minister may pay the members of the Council the remuneration and the reimbursement for expenses that the Lieutenant Governor in Council determines. 2005, c. 11, s. 31 (3).

Duties

- (4) At the direction of the Minister, the Council shall advise the Minister on,
- (a) the process for the development of accessibility standards and the progress made by standards development committees in the development of proposed accessibility standards and in achieving the purposes of this Act;
 - (b) accessibility reports prepared under this Act;
 - (c) programs of public information related to this Act; and
 - (d) all other matters related to the subject-matter of this Act that the Minister directs. 2005, c. 11, s. 31 (4).

Public consultation

(5) At the direction of the Minister, the Council shall hold public consultations in relation to the matters referred to in subsection (4). 2005, c. 11, s. 31 (5).

Reports

(6) The Council shall give the Minister such reports as the Minister may request. 2005, c. 11, s. 31 (6).

Accessibility Directorate of Ontario

32. (1) The directorate known in English as the Accessibility Directorate of Ontario and in French as Direction générale de l'accessibilité pour l'Ontario is continued. 2005, c. 11, s. 32 (1).

Employees

(2) Such employees as are necessary for the proper conduct of the Directorate's work may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2005, c. 11, s. 32 (2); 2006, c. 35, Sched. C, s. 2.

Functions of Directorate

- (3) At the direction of the Minister, the Directorate shall,
- (a) advise the Minister with respect to the establishment and composition of standards development committees and with respect to the standards development process established under section 9;
 - (b) prepare training material for members of the standards development committees and guidelines and other reference material that may be used in preparing proposed accessibility standards;
 - (c) advise the Minister as to the form and content of accessibility reports and as to the method of reviewing the reports and enforcing the accessibility standards;
 - (d) consult with persons and organizations required to prepare accessibility reports under this Act on the preparation of their reports;
 - (e) conduct research and develop and conduct programs of public education on the purpose and implementation of this Act;
 - (f) consult with organizations, including schools, school boards, colleges, universities, trade or occupational associations and self-governing professions, on the provision of information and training respecting accessibility within such organizations;
 - (g) inform persons and organizations that may be subject to an accessibility standard at a future date of preliminary measures, policies or practices that they could implement before the accessibility standard comes into force in order to ensure that the goods, services, facilities, accommodation and employment they provide, and the buildings, structures and premises they own or occupy, are more accessible to persons with disabilities;
 - (h) examine and review accessibility standards and advise the Minister with respect to their implementation and effectiveness;
 - (i) support the Accessibility Standards Advisory Council and consult with it;

- (j) examine and review Acts and regulations and any programs or policies established by Acts or regulations and make recommendations to the Minister for amending them or adopting, making or establishing new Acts, regulations, programs or policies to improve opportunities for persons with disabilities; and
- (k) carry out all other duties related to the subject-matter of this Act that the Minister determines. 2005, c. 11, s. 32 (3).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 2 - 20/08/2007

**PART IX
INCENTIVE AGREEMENTS**

Agreements

33. (1) If the Minister believes it is in the public interest to do so, the Minister may enter into agreements under this section with any person or organization required under this Act to comply with an accessibility standard, in order to encourage and provide incentives for such persons or organizations to exceed one or more of the requirements of the accessibility standards. 2005, c. 11, s. 33 (1).

Content of agreements

(2) A person or organization who enters into an agreement with the Minister under this section shall undertake to exceed one or more of the requirements of an accessibility standard applicable to that person or organization and to meet such additional requirements as may be specified in the agreement, within the time period specified in the agreement, in relation to accessibility with respect to,

- (a) goods, services and facilities provided by the person or organization;
- (b) accommodation provided by the person or organization;
- (c) employment provided by the person or organization; and
- (d) buildings, structures or premises owned or occupied by the person or organization. 2005, c. 11, s. 33 (2).

Exemptions and other benefits

(3) In consideration for the undertaking referred to in subsection (2), the Minister may, in an agreement under this section, grant such benefits as may be specified in the agreement to the person or organization who gave the undertaking and may exempt the person or organization from,

- (a) the requirement of filing an accessibility report under section 14 or such part of the report as may be specified in the agreement; and
- (b) any obligation to file or submit information, documents or reports to a director or to the Minister that is required by regulation and referred to in the agreement. 2005, c. 11, s. 33 (3).

Same

(4) An exemption under subsection (3) may be granted for the period of time specified in the agreement. 2005, c. 11, s. 33 (4).

Other reporting requirements

(5) An agreement made under this section may specify such reporting requirements as may be agreed to by the parties instead of those required by this Act or the regulations. 2005, c. 11, s. 33 (5).

Enforcement of agreement

(6) The Minister may appoint an inspector for the purposes of determining whether the person or organization has failed to comply with the accessibility requirements of the agreement. 2005, c. 11, s. 33 (6).

Application

(7) Sections 18, 19 and 20 apply with necessary modifications to an inspection carried out for the purposes of determining whether a person or organization has failed to comply with the accessibility requirements of an agreement entered into under this section. 2005, c. 11, s. 33 (7).

Director's order

(8) A director who concludes that a person or organization has failed to comply with the accessibility requirements of an agreement entered into under this section may, by order, require a person or organization to do either or both of the following:

1. Comply with the requirements of the agreement within the time period specified in the order, subject to subsection (8.1).

2. Pay an administrative penalty in accordance with the regulations. 2005, c. 11, s. 33 (8); 2016, c. 5, Sched. 1, s. 6 (1).

Extension of time for compliance

(8.1) The director who made an order under subsection (8) may extend the time period referred to in paragraph 1 of that subsection in order to accommodate a person with a disability or for any other reason that the director considers appropriate. 2016, c. 5, Sched. 1, s. 6 (2).

Application

(9) Subsections 21 (5), (6) and (7) and sections 22, 23, 24 and 25 apply with necessary modifications to an order made under subsection (8). 2005, c. 11, s. 33 (9).

Alternative remedy

(10) Nothing in this section affects any remedy available at law to the Minister for breach of the agreement. 2005, c. 11, s. 33 (10).

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 1, s. 6 (1, 2) - 19/04/2016

**PART X
GENERAL**

Delegation of Minister's powers

34. The Minister may delegate any of his or her powers under this Act to a director, whether or not the director is an employee of the Ministry, or to such employees of the Ministry as may be named in the delegation. 2005, c. 11, s. 34.

Document formats

35. (1) Despite any requirement in this Act that a notice, order or other document given or made by the Minister, a director or the Tribunal be in writing, if a request is made by or on behalf of a person with disabilities that the notice, order or document be provided in a format that is accessible to that person, the notice, order or document shall be provided in such a format. 2005, c. 11, s. 35 (1).

Same

(2) A notice, order or other document provided to a person with disabilities under subsection (1) shall be provided within a reasonable time after the request is made. 2005, c. 11, s. 35 (2).

Acceptance of accessible documents

(3) A person with a disability who is required under this Act to provide a notice or other document is entitled to do so in a format that is accessible to the person. 2016, c. 5, Sched. 1, s. 7.

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 1, s. 7 - 19/04/2016

Service

36. (1) Any notice given under section 22 or 33 and any order made under section 21, 25, 27 or 33 shall be given or served only,

- (a) by personal delivery;
- (b) by a method of delivery by mail that permits the delivery to be verified; or
- (c) by telephonic transmission of a facsimile of the document or by electronic mail if the person is equipped to receive such transmissions or mail. 2005, c. 11, s. 36 (1).

Personal delivery to various entities

- (2) Service by personal delivery of a notice or order referred to in subsection (1) shall be delivered,
 - (a) in the case of service on a municipal corporation, to the mayor, warden, reeve or other chief officer of the municipality or to the clerk of the municipality;
 - (b) in the case of service on a corporation other than a municipal corporation, to a director or officer of the corporation or to a manager, secretary or other person apparently in charge of a branch office of the corporation;
 - (c) in the case of service on a partnership, to a partner or person apparently in charge of an office of the partnership; and
 - (d) in the case of service on any other organization, to a person apparently in charge of an office or of any place at which the organization carries on business. 2005, c. 11, s. 36 (2).

Deemed service

(3) If service is made by mail, the service shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date. 2005, c. 11, s. 36 (3).

Same

(4) A document that is served by a means described in clause (1) (c) on a Saturday, Sunday or a public holiday or on any other day after 5 p.m. shall be deemed to have been served on the next day that is not a Saturday, Sunday or public holiday. 2005, c. 11, s. 36 (4).

Exception

(5) Despite subsection (1), the Tribunal may order any other method of service it considers appropriate in the circumstances. 2005, c. 11, s. 36 (5).

Offences

37. (1) A person is guilty of an offence who,

- (a) furnishes false or misleading information in an accessibility report filed with a director under this Act or otherwise provides a director with false or misleading information;
- (b) fails to comply with any order made by a director or the Tribunal under this Act; or
- (c) contravenes subsection 20 (8) or subsection (2). 2005, c. 11, s. 37 (1).

Same, intimidation

(2) No person shall intimidate, coerce, penalize or discriminate against another person because that person,

- (a) has sought or is seeking the enforcement of this Act or of a director's order made under this Act;
- (b) has co-operated or may co-operate with inspectors; or
- (c) has provided, or may provide, information in the course of an inspection or proceeding under this Act. 2005, c. 11, s. 37 (2).

Penalties

(3) Every person who is guilty of an offence under this Act is liable on conviction,

- (a) to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues to occur; or
- (b) if the person is a corporation, to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues to occur. 2005, c. 11, s. 37 (3).

Duty of director or officer

(4) Every director or officer of a corporation has a duty to take all reasonable care to prevent the corporation from committing an offence under this section. 2005, c. 11, s. 37 (4).

Offence

(5) Every director or officer of a corporation who has a duty under subsection (4) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues to occur. 2005, c. 11, s. 37 (5).

Conflict

38. If a provision of this Act, of an accessibility standard or of any other regulation conflicts with a provision of any other Act or regulation, the provision that provides the highest level of accessibility for persons with disabilities with respect to goods, services, facilities, employment, accommodation, buildings, structures or premises shall prevail. 2005, c. 11, s. 38.

Regulations

39. (1) The Lieutenant Governor in Council may make regulations,

- (a) governing the time-frames for the development of proposed accessibility standards by standards development committees established under section 8, for the implementation of accessibility standards and for the review of those standards and providing different time-frames for different accessibility standards relating to different industries, sectors of the economy or classes of persons or organizations;
- (b) governing reports or information to be provided to a director for the purposes of this Act and requiring persons or organizations to provide such information;
- (c) governing accessibility reports, including the preparation of such reports;
- (d) respecting the manner in which accessibility reports shall be made available to the public and requiring persons and organizations to make the reports available in a prescribed manner;

- (e) prescribing the times at which accessibility reports shall be filed with a director, including prescribing different times for different classes of persons and organizations;
- (f) prescribing the information to be included in accessibility reports, including prescribing different information to be included in reports prepared by different classes of persons and organizations;
- (g) governing the appointment and qualifications of inspectors appointed under section 18;
- (h) governing director's orders made under Part V of this Act;
- (i) governing the administrative penalties that a director may require a person or organization to pay under this Act and all matters necessary and incidental to the administration of a system of administrative penalties under this Act;
- (j) designating one or more tribunals for the purposes of this Act and respecting the matters that may be heard by each designated tribunal;
- (k) prescribing the filing fee for filing an appeal to the Tribunal and respecting the payment of the fee including prescribing the person or entity to which the fee shall be paid;
- (l) governing mediations conducted by the Tribunal under section 28 including prescribing any fees relating to the mediation process and requiring persons to pay the fees;
- (m) specifying additional functions of municipal accessibility advisory committees for the purposes of clause 29 (4) (c);
- (n) respecting what constitutes a significant renovation for the purposes of clause 29 (5) (a) and what constitutes a new lease for the purposes of clause 29 (5) (b);
- (o) respecting the powers of a director;
- (p) governing agreements made under section 33;
- (q) defining the terms "accessibility", "accommodation" and "services" for the purposes of this Act and of the regulations;
- (r) exempting any person or organization or class thereof or any building, structure or premises or class thereof from the application of any provision of this Act or the regulations;
- (s) prescribing or respecting any matter that this Act refers to as a matter that the regulations may prescribe, specify, designate, set or otherwise deal with;
- (t) respecting any transitional matters necessary for the effective implementation of this Act and the regulations;
- (u) respecting any matter necessary to the enforcement and administration of this Act. 2005, c. 11, s. 39 (1).

Administrative penalties

- (2) A regulation under clause (1) (i) may,
 - (a) prescribe the amount of an administrative penalty or provide for the determination of the amount of the penalty by prescribing the method of calculating the amount and the criteria to be considered in determining the amount;
 - (b) provide for different amounts to be paid, or different calculations or criteria to be used, depending on the circumstances that gave rise to the administrative penalty or the time at which the penalty is paid;
 - (c) provide for the payment of lump sum amounts and of daily amounts, prescribe the circumstances in which either or both types of amounts may be required;
 - (d) prescribe the maximum amount that a person or organization may be required to pay, whether a lump-sum amount or a daily amount, and, in the case of a daily amount, prescribe the maximum number of days for which a daily amount may be payable;
 - (e) specify types of contraventions or circumstances in respect of which an administrative penalty may not be ordered;
 - (f) prescribe circumstances in which a person or organization is not required to pay an administrative penalty ordered under this Act;
 - (g) provide for the form and content of an order requiring payment of an administrative penalty and prescribe information to be included in the order;
 - (h) provide for the payment of administrative penalties, prescribe the person or entity to which the penalty is to be paid and provide for the investment of money received from administrative penalties, including the establishment of a special fund, and the use of such money and interest earned thereon;
 - (i) prescribe procedures relating to administrative penalties. 2005, c. 11, s. 39 (2).

Exemptions

(3) A regulation under clause (1) (r) shall state the reasons for exempting the persons, organizations, buildings, structures or premises or classes thereof, described in the regulation, from the application of the provisions specified in the regulation. 2005, c. 11, s. 39 (3).

Draft regulation made public

(4) The Lieutenant Governor in Council shall not make a regulation under subsection (1) unless a draft of the regulation is made available to the public for a period of at least 45 days by posting it on a government internet site and by such other means as the Minister considers advisable. 2005, c. 11, s. 39 (4).

Opportunity for comments

(5) Within 45 days after a draft regulation is made available to the public in accordance with subsection (1), any person may submit comments with respect to the draft regulation to the Minister. 2005, c. 11, s. 39 (5).

Extension of time for comments

(5.1) The Minister may extend the time period referred to in subsection (5) in order to accommodate a person with a disability or for any other reason that the Minister considers appropriate. 2016, c. 5, Sched. 1, s. 8.

Changes to draft regulation

(6) After the time for comments under subsection (5) has expired, the Lieutenant Governor in Council may, without further notice, make the regulation with such changes as the Lieutenant Governor in Council considers advisable. 2005, c. 11, s. 39 (6).

Classes

(7) A regulation under this section may create different classes of persons or organizations or of buildings, structures or premises and, without limiting the generality of this power, may create classes with respect to any attribute, quality or characteristic or any combination of those items, including,

- (a) the number of persons employed by persons or organizations or their annual revenue;
- (b) the type of industry in which persons or organizations are engaged or the sector of the economy of which persons or organizations are a part;
- (c) the size of buildings, structures or premises. 2005, c. 11, s. 39 (7).

Same

(8) A regulation under this section may define a class to consist of one person or organization or to include or exclude a person or organization having the same or different attributes, qualities or characteristics. 2005, c. 11, s. 39 (8).

Same

(9) A regulation under this section may impose different requirements, conditions or restrictions on or in respect of any class. 2005, c. 11, s. 39 (9).

Scope

(10) A regulation under this section may be general or specific in its application and may be limited as to time and place. 2005, c. 11, s. 39 (10).

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 1, s. 8 - 19/04/2016

Annual report

40. (1) The Minister shall prepare an annual report on the implementation and effectiveness of this Act. 2005, c. 11, s. 40 (1).

Content of report

(2) The report shall include an analysis of how effective the standards development committees, the accessibility standards and the enforcement mechanisms provided for under this Act are in furthering the purpose of this Act. 2005, c. 11, s. 40 (2).

Tabling of report

(3) The Minister shall submit the report to the Lieutenant Governor in Council and shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 2005, c. 11, s. 40 (3).

Review of Act

41. (1) Within four years after this section comes into force, the Lieutenant Governor in Council shall, after consultation with the Minister, appoint a person who shall undertake a comprehensive review of the effectiveness of this Act and the regulations and report on his or her findings to the Minister. 2005, c. 11, s. 41 (1).

Consultation

(2) A person undertaking a review under this section shall consult with the public and, in particular, with persons with disabilities. 2005, c. 11, s. 41 (2).

Contents of report

(3) Without limiting the generality of subsection (1), a report may include recommendations for improving the effectiveness of this Act and the regulations. 2005, c. 11, s. 41 (3).

Tabling of report

(4) The Minister shall submit the report to the Lieutenant Governor in Council and shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 2005, c. 11, s. 41 (4).

Further review

(5) Within three years after the laying of a report under subsection (4) and every three years thereafter, the Lieutenant Governor in Council shall, after consultation with the Minister, appoint a person who shall undertake a further comprehensive review of the effectiveness of this Act and the regulations. 2005, c. 11, s. 41 (5).

Same

(6) Subsections (2), (3) and (4) apply with necessary modifications to a review under subsection (5). 2005, c. 11, s. 41 (6).

42. OMITTED (AMENDS OR REPEALS OTHER ACTS). 2005, c. 11, s. 42.

43. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2005, c. 11, s. 43.

44. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2005, c. 11, s. 44.

Français

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Employment Standards Act, 2000

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Employment Standards Act, 2000

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PART I DEFINITIONS

Definitions

1 (1) In this Act,

“agent” includes a trade union that represents an employee in collective bargaining; (“mandataire”)

“alternative vacation entitlement year” means, with respect to an employee, a recurring 12-month period that begins on a date chosen by the employer, other than the first day of the employee’s employment; (“année de référence différente”)

“arbitrator” includes,

(a) a board of arbitration, and

(b) the Board, when it is acting under section 133 of the *Labour Relations Act, 1995*; (“arbitre”)

“assignment employee” means an employee employed by a temporary help agency for the purpose of being assigned to perform work on a temporary basis for clients of the agency; (“employé ponctuel”)

“benefit plan” means a benefit plan provided for an employee by or through his or her employer; (“régime d’avantages sociaux”)

“Board” means the Ontario Labour Relations Board; (“Commission”)

“building services” means services for a building with respect to food, security and cleaning and any prescribed services for a building; (“services de gestion d’immeubles”)

“building services provider” or “provider” means a person who provides building services for a premises and includes the owner or manager of a premises if the owner or manager provides building services for premises the person owns or manages; (“fournisseur de services de gestion d’immeubles”, “fournisseur”)

“business” includes an activity, trade or undertaking; (“entreprise”)

“client”, in relation to a temporary help agency, means a person or entity that enters into an arrangement with the agency under which the agency agrees to assign or attempt to assign one or more of its assignment employees to perform work for the person or entity on a temporary basis; (“client”)

“collector” means a person, other than an employment standards officer, who is authorized by the Director to collect an amount owing under this Act; (“agent de recouvrement”)

“continuous operation” means an operation or that part of an operation that normally continues 24 hours a day without cessation in each seven-day period until it is concluded for that period; (“exploitation à fonctionnement ininterrompu”)

“Director” means the Director of Employment Standards; (“directeur”)

“domestic or sexual violence leave pay” means pay for any paid days of leave taken under section 49.7; (“indemnité de congé en cas de violence familiale ou sexuelle”)

“employee” includes,

- (a) a person, including an officer of a corporation, who performs work for an employer for wages,
- (b) a person who supplies services to an employer for wages,
- (c) a person who receives training from a person who is an employer, if the skill in which the person is being trained is a skill used by the employer’s employees, or
- (d) a person who is a homemaker,

and includes a person who was an employee; (“employé”)

“employer” includes,

- (a) an owner, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it, and
- (b) any persons treated as one employer under section 4, and includes a person who was an employer; (“employeur”)

“employment contract” includes a collective agreement; (“contrat de travail”)

“employment standard” means a requirement or prohibition under this Act that applies to an employer for the benefit of an employee; (“norme d’emploi”)

“establishment”, with respect to an employer, means a location at which the employer carries on business but, if the employer carries on business at more than one location, separate locations constitute one establishment if,

- (a) the separate locations are located within the same municipality, or
- (b) one or more employees at a location have seniority rights that extend to the other location under a written employment contract whereby the employee or employees may displace another employee of the same employer; (“établissement”)

“homemaker” means an individual who performs work for compensation in premises occupied by the individual primarily as residential quarters but does not include an independent contractor; (“travailleur à domicile”)

“hospital” means a hospital as defined in the *Hospital Labour Disputes Arbitration Act*; (“hôpital”)

“infectious disease emergency leave pay” means pay for any paid days of leave taken under subsection 50.1 (1.2); (“indemnité de congé spécial en raison d’une maladie infectieuse”)

“labour relations officer” means a labour relations officer appointed under the *Labour Relations Act, 1995*; (“agent des relations de travail”)

“Minister” means the Minister of Labour; (“ministre”)

“Ministry” means the Ministry of Labour; (“ministère”)

“overtime hour”, with respect to an employee, means,

- (a) if one or more provisions in the employee’s employment contract or in another Act that applies to the employee’s employment provides a greater benefit for overtime than Part VIII (Overtime Pay), an hour of work in excess of the overtime threshold set out in that provision, and
- (b) otherwise, an hour of work in excess of the overtime threshold under this Act that applies to the employee’s employment; (“heure supplémentaire”)

“person” includes a trade union; (“personne”)

“premium pay” means an employee’s entitlement for working on a public holiday as described in subsection 24 (2); (“salaire majoré”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“public holiday” means any of the following:

1. New Year’s Day.

1.1 Family Day, being the third Monday in February.

2. Good Friday.
3. Victoria Day.
4. Canada Day.
5. Labour Day.
6. Thanksgiving Day.
7. Christmas Day.
8. December 26.

9. Any day prescribed as a public holiday; (“jour férié”)

“public holiday pay” means an employee’s entitlement with respect to a public holiday as determined under subsection 24 (1); (“salaire pour jour férié”)

“regular rate” means, subject to any regulation made under paragraph 10 of subsection 141 (1),

- (a) for an employee who is paid by the hour, the amount earned for an hour of work in the employee’s usual work week, not counting overtime hours,
- (b) otherwise, the amount earned in a given work week divided by the number of non-overtime hours actually worked in that week; (“taux horaire normal”)

“regular wages” means wages other than overtime pay, public holiday pay, premium pay, vacation pay, domestic or sexual violence leave pay, infectious disease emergency leave pay, termination pay, severance pay and termination of assignment pay and entitlements under a provision of an employee’s contract of employment that under subsection 5 (2) prevail over Part VIII, Part X, Part XI, section 49.7, subsection 50.1 (1.2), Part XV or section 74.10.1; (“salaire normal”)

“regular work day”, with respect to an employee who usually works the same number of hours each day, means a day of that many hours; (“journée normale de travail”)

“regular work week”, with respect to an employee who usually works the same number of hours each week, means a week of that many hours but not including overtime hours; (“semaine normale de travail”)

“regulations” means the regulations made under this Act; (“règlements”)

“reservist” means a member of the reserve force of the Canadian Forces referred to in subsection 15 (3) of the *National Defence Act* (Canada); (“réserviste”)

“standard vacation entitlement year” means, with respect to an employee, a recurring 12-month period that begins on the first day of the employee’s employment; (“année de référence normale”)

“statutory notice period” means,

- (a) the period of notice of termination required to be given by an employer under Part XV, or
- (b) where the employer provides a greater amount of notice than is required under Part XV, that part of the notice period ending with the termination date specified in the notice which equals the period of notice required under Part XV; (“délai de préavis prévu par la loi”)

“stub period” means, with respect to an employee for whom the employer establishes an alternative vacation entitlement year,

- (a) if the employee’s first alternative vacation entitlement year begins before the completion of his or her first 12 months of employment, the period that begins on the first day of employment and ends on the day before the start of the alternative vacation entitlement year,
- (b) if the employee’s first alternative vacation entitlement year begins after the completion of his or her first 12 months of employment, the period that begins on the day after the day on which his or her most recent standard vacation entitlement year ended and ends on the day before the start of the alternative vacation entitlement year; (“période tampon”)

“temporary help agency” means an employer that employs persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer; (“agence de placement temporaire”)

“termination of assignment pay” means pay provided to an assignment employee when the employee’s assignment is terminated before the end of its estimated term under section 74.10.1; (“indemnité de fin d’affectation”)

“tip or other gratuity” means,

- (a) a payment voluntarily made to or left for an employee by a customer of the employee’s employer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be kept by the employee or shared by the employee with other employees,
- (b) a payment voluntarily made to an employer by a customer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be redistributed to an employee or employees,
- (c) a payment of a service charge or similar charge imposed by an employer on a customer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be redistributed to an employee or employees, and
- (d) such other payments as may be prescribed,

but does not include,

- (e) such payments as may be prescribed, and
- (f) such charges as may be prescribed relating to the method of payment used, or a prescribed portion of those charges; (“pourboire ou autre gratification”)

“trade union” means an organization that represents employees in collective bargaining under any of the following:

- 1. The *Labour Relations Act, 1995*.
- 2. The *Crown Employees Collective Bargaining Act, 1993*.
- 3. The *School Boards Collective Bargaining Act, 2014*.
- 4. Part IX of the *Fire Protection and Prevention Act, 1997*.
- 5. The *Colleges Collective Bargaining Act, 2008*.
- 6. Any prescribed Acts or provisions of Acts; (“syndicat”)

“vacation entitlement year” means an alternative vacation entitlement year or a standard vacation entitlement year; (“année de référence”)

“wages” means,

- (a) monetary remuneration payable by an employer to an employee under the terms of an employment contract, oral or written, express or implied,
 - (b) any payment required to be made by an employer to an employee under this Act, and
 - (c) any allowances for room or board under an employment contract or prescribed allowances,
- but does not include,
- (d) tips or other gratuities,
 - (e) any sums paid as gifts or bonuses that are dependent on the discretion of the employer and that are not related to hours, production or efficiency,
 - (f) expenses and travelling allowances, or
 - (g) subject to subsections 60 (3) or 62 (2), employer contributions to a benefit plan and payments to which an employee is entitled from a benefit plan; (“salaire”)

“work week” means,

- (a) a recurring period of seven consecutive days selected by the employer for the purpose of scheduling work, or
- (b) if the employer has not selected such a period, a recurring period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine de travail”) 2000, c. 41, s. 1 (1); 2001, c. 9, Sched. I, s. 1 (1); 2002, c. 18, Sched. J, s. 3 (1, 2); 2007, c. 16, Sched. A, s. 1; 2008, c. 15, s. 85; 2014, c. 5, s. 48; 2017, c. 22, Sched. 1, s. 1 (1-10); 2018, c. 14, Sched. 1, s. 1; 2021, c. 9, s. 1; 2021, c. 25, Sched. 6, s. 1.

Assignment to perform work includes training

(2) For greater certainty, being assigned to perform work for a client of a temporary help agency includes being assigned to the client to receive training for the purpose of performing work for the client. 2017, c. 22, Sched. 1, s. 1 (11).

Agreements in writing

(3) Unless otherwise provided, a reference in this Act to an agreement between an employer and an employee or to an employer and an employee agreeing to something shall be deemed to be a reference to an agreement in writing or to their agreeing in writing to do something. 2000, c. 41, s. 1 (3).

Electronic form

(3.1) The requirement in subsection (3) for an agreement to be in writing is satisfied if the agreement is in electronic form. 2017, c. 22, Sched. 1, s. 1 (12).

Exception

(4) Nothing in subsection (3) requires an employment contract that is not a collective agreement to be in writing. 2000, c. 41, s. 1 (4).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (1) - 4/09/2001

2002, c. 18, Sched. J, s. 3 (1, 2) - 26/11/2002

2007, c. 16, Sched. A, s. 1 - 3/12/2007

2008, c. 15, s. 85 - 8/10/2008

2014, c. 5, s. 48 - 24/04/2014

2017, c. 22, Sched. 1, s. 1 (1, 3-12) - 01/01/2018; 2017, c. 22, Sched. 1, s. 1 (2) - 01/04/2018

2018, c. 14, Sched. 1, s. 1 (1-3) - 01/01/2019

2021, c. 9, s. 1 (1, 2) - 29/04/2021; 2021, c. 25, Sched. 6, s. 1 - 03/06/2021

PART II

INFORMATION CONCERNING RIGHTS AND OBLIGATIONS

Director to prepare poster

2 (1) The Director shall prepare and publish a poster providing such information about this Act and the regulations as the Director considers appropriate. 2004, c. 21, s. 1; 2019, c. 4, Sched. 9, s. 2 (1).

If poster not up to date

(2) If the Director believes that the poster prepared under subsection (1) has become out of date, he or she shall prepare and publish a new poster. 2004, c. 21, s. 1; 2019, c. 4, Sched. 9, s. 2 (1).

(3), (4) REPEALED: 2019, c. 4, Sched. 9, s. 2 (2).

Copy of poster to be provided

(5) Every employer shall provide each of his or her employees with a copy of the most recent poster published by the Director under this section. 2014, c. 10, Sched. 2, s. 1 (2); 2019, c. 4, Sched. 9, s. 2 (1).

Same – translation

(6) If an employee requests a translation of the poster into a language other than English, the employer shall make enquiries as to whether the Director has prepared a translation of the poster into that language, and if the Director has done so, the employer shall provide the employee with a copy of the translation. 2014, c. 10, Sched. 2, s. 1 (2); 2019, c. 4, Sched. 9, s. 2 (1).

When copy of poster to be provided

(7) An employer shall provide an employee with a copy of the poster within 30 days of the day the employee becomes an employee of the employer. 2014, c. 10, Sched. 2, s. 1 (2).

Transition

(8) The most recent poster prepared and published by the Minister under subsection (1) as it read immediately before the day the *Restoring Ontario's Competitiveness Act, 2019* received Royal Assent is deemed to have been prepared and published by the Director. 2019, c. 4, Sched. 9, s. 2 (3).

Same

(9) Any translation prepared by the Minister under subsection (6), as it read immediately before the day the *Restoring Ontario's Competitiveness Act, 2019* received Royal Assent, is deemed to have been prepared by the Director. 2019, c. 4, Sched. 9, s. 2 (3).

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 1 - 1/03/2005

2014, c. 10, Sched. 2, s. 1 (1) - 20/11/2014; 2014, c. 10, Sched. 2, s. 1 (2) - 20/05/2015

2019, c. 4, Sched. 9, s. 2 (1-3) - 03/04/2019

PART III HOW THIS ACT APPLIES

To whom Act applies

3 (1) Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if,

- (a) the employee's work is to be performed in Ontario; or
- (b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario. 2000, c. 41, s. 3 (1).

Exception, federal jurisdiction

(2) This Act does not apply with respect to an employee and his or her employer if their employment relationship is within the legislative jurisdiction of the Parliament of Canada. 2000, c. 41, s. 3 (2).

Exception, diplomatic personnel

(3) This Act does not apply with respect to an employee of an embassy or consulate of a foreign nation and his or her employer. 2000, c. 41, s. 3 (3).

(4) REPEALED: 2017, c. 22, Sched. 1, s. 2 (1).

Other exceptions

(5) This Act does not apply with respect to the following individuals and any person for whom such an individual performs work or from whom such an individual receives compensation:

1. A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled.
2. An individual who performs work under a program approved by a college of applied arts and technology or a university.
- 2.1 An individual who performs work under a program that is approved by a private career college registered under the *Private Career Colleges Act, 2005* and that meets such criteria as may be prescribed.
3. A participant in community participation under the *Ontario Works Act, 1997*.
4. An individual who is an inmate of a correctional institution within the meaning of the *Ministry of Correctional Services Act*, is an inmate of a penitentiary, is being held in a detention facility within the meaning of the *Police Services Act* or is being held in a place of temporary detention or youth custody facility under the *Youth Criminal Justice Act* (Canada), if the individual participates inside or outside the institution, penitentiary, place or facility in a work project or rehabilitation program.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 of subsection 3 (5) of the Act is repealed and the following substituted: (See: 2019, c. 1, Sched. 1, s. 17 (1))

4. An individual who is an inmate of a correctional institution within the meaning of the *Ministry of Correctional Services Act*, is an inmate of a penitentiary or is being held in a place of temporary detention or youth custody facility

under the *Youth Criminal Justice Act* (Canada), if the individual participates inside or outside the institution, penitentiary or place in a work project or rehabilitation program.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 of subsection 3 (5) of the Act is amended by striking out “*Ministry of Correctional Services Act*” and substituting “*Correctional Services and Reintegration Act, 2018*”. (See: 2018, c. 6, Sched. 3, s. 8)

5. An individual who performs work under an order or sentence of a court or as part of an extrajudicial measure under the *Youth Criminal Justice Act* (Canada).
6. An individual who performs work in a simulated job or working environment if the primary purpose in placing the individual in the job or environment is his or her rehabilitation.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 6 of subsection 3 (5) of the Act is repealed. (See: 2018, c. 14, Sched. 1, s. 2)

7. A holder of political, religious or judicial office.
8. A member of a quasi-judicial tribunal.
9. A holder of elected office in an organization, including a trade union.
10. A police officer, except as provided in Part XVI (Lie Detectors) or in a regulation made under clause 141 (2.1) (c).
11. A director of a corporation, except as provided in Part XX (Liability of Directors), Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions), Part XXVII (Regulations) and Part XXVIII (Transition, Amendment, Repeals, Commencement and Short Title).
12. Any prescribed individuals. 2000, c. 41, s. 3 (5); 2006, c. 19, Sched. D, s. 7; 2017, c. 22, Sched. 1, s. 2 (2); 2020, c. 3, s. 1.

Dual roles

(6) Where an individual who performs work or occupies a position described in subsection (5) also performs some other work or occupies some other position and does so as an employee, nothing in subsection (5) precludes the application of this Act to that individual and his or her employer insofar as that other work or position is concerned. 2000, c. 41, s. 3 (6).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 7 - 22/06/2006

2017, c. 22, Sched. 1, s. 2 (1, 2) - 01/01/2018; 2017, c. 22, Sched. 1, s. 2 (3) - no effect - see 2018, c. 14, Sched. 1, s. 27 (1) - 01/01/2019

2018, c. 3, Sched. 5, s. 19 (1) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019; 2018, c. 6, Sched. 3, s. 8 - not in force; 2018, c. 14, Sched. 1, s. 2 - not in force

2019, c. 1, Sched. 4, s. 17 (1) - not in force

2020, c. 3, s. 1 - 19/03/2020

Crown bound

3.1 This Act binds the Crown. 2017, c. 22, Sched. 1, s. 3.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 3 - 01/01/2018

Separate persons treated as one employer

4 (1) Subsection (2) applies if associated or related activities or businesses are or were carried on by or through an employer and one or more other persons. 2017, c. 22, Sched. 1, s. 4 (1).

Same

(2) The employer and the other person or persons described in subsection (1) shall all be treated as one employer for the purposes of this Act. 2000, c. 41, s. 4 (2).

Businesses need not be carried on at same time

(3) Subsection (2) applies even if the activities or businesses are not carried on at the same time. 2000, c. 41, s. 4 (3).

Exception, individuals

(4) Subsection (2) does not apply with respect to a corporation and an individual who is a shareholder of the corporation unless the individual is a member of a partnership and the shares are held for the purposes of the partnership. 2000, c. 41, s. 4 (4).

Exception, Crown

(4.1) Subsection (2) does not apply to the Crown, a Crown agency or an authority, board, commission or corporation all of whose members are appointed by the Crown. 2017, c. 22, Sched. 1, s. 4 (2).

Joint and several liability

(5) Persons who are treated as one employer under this section are jointly and severally liable for any contravention of this Act and the regulations under it and for any wages owing to an employee of any of them. 2000, c. 41, s. 4 (5).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 4 (1, 2) - 01/01/2018

No contracting out

5 (1) Subject to subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void. 2000, c. 41, s. 5 (1).

Greater contractual or statutory right

(2) If one or more provisions in an employment contract or in another Act that directly relate to the same subject matter as an employment standard provide a greater benefit to an employee than the employment standard, the provision or provisions in the contract or Act apply and the employment standard does not apply. 2000, c. 41, s. 5 (2).

No treating as if not employee

5.1 (1) An employer shall not treat, for the purposes of this Act, a person who is an employee of the employer as if the person were not an employee under this Act. 2017, c. 22, Sched. 1, s. 5.

(2) REPEALED: 2018, c. 14, Sched. 1, s. 3.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 5 - 27/11/2017

2018, c. 14, Sched. 1, s. 3 - 01/01/2019

Settlement by trade union binding

6 A settlement made on an employee's behalf by a trade union that represents the employee is binding on the employee. 2000, c. 41, s. 6.

Agents

7 An agreement or authorization that may lawfully be made or given by an employee under this Act may be made or given by his or her agent and is binding on the employee as if it had been made or given by the employee. 2000, c. 41, s. 7.

Civil proceedings not affected

8 (1) Subject to section 97, no civil remedy of an employee against his or her employer is affected by this Act. 2000, c. 41, s. 8 (1).

Notice

(2) Where an employee commences a civil proceeding against his or her employer under this Act, notice of the proceeding shall be served on the Director on a form approved by the Director on or before the date the civil proceeding is set down for trial. 2000, c. 41, s. 8 (2).

Service of notice

(3) The notice shall be served on the Director,

- (a) by being delivered to the Director's office on a day and at a time when it is open;
- (b) by being mailed to the Director's office using a method of mail delivery that allows delivery to be verified; or
- (c) by being sent to the Director's office by fax or email. 2009, c. 9, s. 1.

When service effective

- (4) Service under subsection (3) shall be deemed to be effected,
- (a) in the case of service under clause (3) (a), on the day shown on a receipt or acknowledgment provided to the employee by the Director or his or her representative;
 - (b) in the case of service under clause (3) (b), on the day shown in the verification;
 - (c) in the case of service under clause (3) (c), on the day on which the fax or email is sent, subject to subsection (5). 2009, c. 9, s. 1.

Same

- (5) Service shall be deemed to be effected on the next day on which the Director's office is not closed, if the fax or email is sent,
- (a) on a day on which the Director's office is closed; or
 - (b) after 5 p.m. on any day. 2009, c. 9, s. 1.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 1 - 6/11/2009

**PART IV
CONTINUITY OF EMPLOYMENT**

Sale, etc., of business

9 (1) If an employer sells a business or a part of a business and the purchaser employs an employee of the seller, the employment of the employee shall be deemed not to have been terminated or severed for the purposes of this Act and his or her employment with the seller shall be deemed to have been employment with the purchaser for the purpose of any subsequent calculation of the employee's length or period of employment. 2000, c. 41, s. 9 (1).

Exception

(2) Subsection (1) does not apply if the day on which the purchaser hires the employee is more than 13 weeks after the earlier of his or her last day of employment with the seller and the day of the sale. 2000, c. 41, s. 9 (2).

Definitions

(3) In this section,

"sells" includes leases, transfers or disposes of in any other manner, and "sale" has a corresponding meaning. 2000, c. 41, s. 9 (3).

Predecessor Acts

(4) For the purposes of subsection (1), employment with the seller includes any employment attributed to the seller under this section or a provision of a predecessor Act dealing with sales of businesses. 2000, c. 41, s. 9 (4).

New building services provider

10 (1) This section applies if the building services provider for a building is replaced by a new provider and an employee of the replaced provider is employed by the new provider. 2000, c. 41, s. 10 (1).

No termination or severance

(2) The employment of the employee shall be deemed not to have been terminated or severed for the purposes of this Act and his or her employment with the replaced provider shall be deemed to have been employment with the new provider for the purpose of any subsequent calculation of the employee's length or period of employment. 2000, c. 41, s. 10 (2).

Exception

(3) Subsection (2) does not apply if the day on which the new provider hires the employee is more than 13 weeks after the earlier of his or her last day of employment with the replaced provider and the day on which the new provider began servicing the premises. 2000, c. 41, s. 10 (3).

Predecessor Acts

(4) For the purposes of subsection (2), employment with the replaced provider includes any employment attributed to the replaced provider under this section or under a provision of a predecessor Act dealing with building services providers. 2000, c. 41, s. 10 (4).

**PART V
PAYMENT OF WAGES**

Payment of wages

11 (1) An employer shall establish a recurring pay period and a recurring pay day and shall pay all wages earned during each pay period, other than accruing vacation pay, no later than the pay day for that period. 2000, c. 41, s. 11 (1).

Method of payment

(2) An employer shall pay an employee's wages,

- (a) by cash;
- (b) by cheque payable only to the employee;
- (c) by direct deposit in accordance with subsection (4); or
- (d) by any other prescribed method of payment. 2017, c. 22, Sched. 1, s. 6.

Place of payment by cash or cheque

(3) If payment is made by cash or cheque, the employer shall ensure that the cash or cheque is given to the employee at his or her workplace or at some other place agreeable to the employee. 2000, c. 41, s. 11 (3).

Direct deposit

(4) An employer may pay an employee's wages by direct deposit into an account of a financial institution if,

- (a) the account is in the employee's name; and
- (b) no person other than the employee or a person authorized by the employee has access to the account.
- (c) REPEALED: 2021, c. 25, Sched. 6, s. 2.

2000, c. 41, s. 11 (4); 2021, c. 25, Sched. 6, s. 2.

If employment ends

(5) If an employee's employment ends, the employer shall pay any wages to which the employee is entitled to the employee not later than the later of,

- (a) seven days after the employment ends; and
- (b) the day that would have been the employee's next pay day. 2000, c. 41, s. 11 (5).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 6 - 01/01/2018

2021, c. 25, Sched. 6, s. 2 - 03/06/2021

Statement re wages

12 (1) On or before an employee's pay day, the employer shall give to the employee a written statement setting out,

- (a) the pay period for which the wages are being paid;
- (b) the wage rate, if there is one;
- (c) the gross amount of wages and, unless the information is provided to the employee in some other manner, how that amount was calculated;
- (d) REPEALED: 2002, c. 18, Sched. J, s. 3 (3).
- (e) the amount and purpose of each deduction from wages;
- (f) any amount with respect to room or board that is deemed to have been paid to the employee under subsection 23 (2); and
- (g) the net amount of wages being paid to the employee. 2001, c. 9, Sched. I, s. 1 (2); 2002, c. 18, Sched. J, s. 3 (3).

(2) REPEALED: 2002, c. 18, Sched. J, s. 3 (4).

Electronic copies

(3) The statement may be provided to the employee by electronic mail rather than in writing if the employee has access to a means of making a paper copy of the statement. 2000, c. 41, s. 12 (3).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (2) - 4/09/2001

2002, c. 18, Sched. J, s. 3 (3, 4) - 26/11/2002

Statement re wages on termination

12.1 On or before the day on which the employer is required to pay wages under subsection 11 (5), the employer shall provide the employee with a written statement setting out,

- (a) the gross amount of any termination pay or severance pay being paid to the employee;
- (b) the gross amount of any vacation pay being paid to the employee;
- (c) unless the information is provided to the employee in some other manner, how the amounts referred to in clauses (a) and (b) were calculated;
- (d) the pay period for which any wages other than wages described in clauses (a) or (b) are being paid;
- (e) the wage rate, if there is one;
- (f) the gross amount of any wages referred to in clause (d) and, unless the information is provided to the employee in some other manner, how that amount was calculated;
- (g) the amount and purpose of each deduction from wages;
- (h) any amount with respect to room or board that is deemed to have been paid to the employee under subsection 23 (2); and
- (i) the net amount of wages being paid to the employee. 2002, c. 18, Sched. J, s. 3 (5).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (5) - 26/11/2002

Deductions, etc.

13 (1) An employer shall not withhold wages payable to an employee, make a deduction from an employee's wages or cause the employee to return his or her wages to the employer unless authorized to do so under this section. 2000, c. 41, s. 13 (1).

Statute or court order

(2) An employer may withhold or make a deduction from an employee's wages or cause the employee to return them if a statute of Ontario or Canada or a court order authorizes it. 2000, c. 41, s. 13 (2).

Employee authorization

(3) An employer may withhold or make a deduction from an employee's wages or cause the employee to return them with the employee's written authorization. 2000, c. 41, s. 13 (3).

Exception

(4) Subsections (2) and (3) do not apply if the statute, order or written authorization from the employee requires the employer to remit the withheld or deducted wages to a third person and the employer fails to do so. 2000, c. 41, s. 13 (4).

Same

(5) Subsection (3) does not apply if,

- (a) the employee's authorization does not refer to a specific amount or provide a formula from which a specific amount may be calculated;
- (b) the employee's wages were withheld, deducted or required to be returned,
 - (i) because of faulty work,
 - (ii) because the employer had a cash shortage, lost property or had property stolen and a person other than the employee had access to the cash or property, or

(iii) under any prescribed conditions; or

(c) the employee's wages were required to be returned and those wages were the subject of an order under this Act. 2000, c. 41, s. 13 (5).

Priority of claims

14 (1) Despite any other Act, wages shall have priority over and be paid before the claims and rights of all other unsecured creditors of an employer, to the extent of \$10,000 per employee. 2000, c. 41, s. 14 (1).

Exception

(2) Subsection (1) does not apply with respect to a distribution made under the *Bankruptcy and Insolvency Act* (Canada) or other legislation enacted by the Parliament of Canada respecting bankruptcy or insolvency. 2001, c. 9, Sched. I, s. 1 (3).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (3) - 4/09/2001

PART V.1 EMPLOYEE TIPS AND OTHER GRATUITIES

14.1 REPEALED: 2017, c. 22, Sched. 1, s. 7.

Section Amendments with date in force (d/m/y)

2015, c. 32, s. 1 - 10/06/2016

2017, c. 22, Sched. 1, s. 7 - 01/01/2018

Prohibition re tips or other gratuities

14.2 (1) An employer shall not withhold tips or other gratuities from an employee, make a deduction from an employee's tips or other gratuities or cause the employee to return or give his or her tips or other gratuities to the employer unless authorized to do so under this Part. 2015, c. 32, s. 1.

Enforcement

(2) If an employer contravenes subsection (1), the amount withheld, deducted, returned or given is a debt owing to the employee and is enforceable under this Act as if it were wages owing to the employee. 2015, c. 32, s. 1.

Section Amendments with date in force (d/m/y)

2015, c. 32, s. 1 - 10/06/2016

Statute or court order

14.3 (1) An employer may withhold or make a deduction from an employee's tips or other gratuities or cause the employee to return or give them to the employer if a statute of Ontario or Canada or a court order authorizes it. 2015, c. 32, s. 1.

Exception

(2) Subsection (1) does not apply if the statute or order requires the employer to remit the withheld, deducted, returned or given tips or other gratuities to a third person and the employer fails to do so. 2015, c. 32, s. 1.

Section Amendments with date in force (d/m/y)

2015, c. 32, s. 1 - 10/06/2016

Pooling of tips or other gratuities

14.4 (1) An employer may withhold or make a deduction from an employee's tips or other gratuities or cause the employee to return or give them to the employer if the employer collects and redistributes tips or other gratuities among some or all of the employer's employees. 2015, c. 32, s. 1.

Exception

(2) An employer shall not redistribute tips or other gratuities under subsection (1) to such employees as may be prescribed. 2015, c. 32, s. 1.

Employer, etc. not to share in tips or other gratuities

(3) Subject to subsections (4) and (5), an employer or a director or shareholder of an employer may not share in tips or other gratuities redistributed under subsection (1). 2015, c. 32, s. 1.

Exception — sole proprietor, partner

(4) An employer who is a sole proprietor or a partner in a partnership may share in tips or other gratuities redistributed under subsection (1) if he or she regularly performs to a substantial degree the same work performed by,

- (a) some or all of the employees who share in the redistribution; or
- (b) employees of other employers in the same industry who commonly receive or share tips or other gratuities. 2015, c. 32, s. 1.

Exception — director, shareholder

(5) A director or shareholder of an employer may share in tips or other gratuities redistributed under subsection (1) if he or she regularly performs to a substantial degree the same work performed by,

- (a) some or all of the employees who share in the redistribution; or
- (b) employees of other employers in the same industry who commonly receive or share tips or other gratuities. 2015, c. 32, s. 1.

Section Amendments with date in force (d/m/y)

2015, c. 32, s. 1 - 10/06/2016

Transition — collective agreements

14.5 (1) If a collective agreement that is in effect on the day section 1 of the *Protecting Employees' Tips Act, 2015* comes into force contains a provision that addresses the treatment of employee tips or other gratuities and there is a conflict between the provision of the collective agreement and this Part, the provision of the collective agreement prevails. 2015, c. 32, s. 1.

Same — expiry of agreement

(2) Following the expiry of a collective agreement described in subsection (1), if the provision that addresses the treatment of employee tips or other gratuities remains in effect, subsection (1) continues to apply to that provision, with necessary modifications, until a new or renewal agreement comes into effect. 2015, c. 32, s. 1.

Same — renewed or new agreement

(3) Subsection (1) does not apply to a collective agreement that is made or renewed on or after the day section 1 of the *Protecting Employees' Tips Act, 2015* comes into force. 2015, c. 32, s. 1.

Section Amendments with date in force (d/m/y)

2015, c. 32, s. 1 - 10/06/2016

**PART VI
RECORDS****Records**

15 (1) An employer shall record the following information with respect to each employee, including an employee who is a homemaker:

- 1. The employee's name and address.
- 2. The employee's date of birth, if the employee is a student and under 18 years of age.
- 3. The date on which the employee began his or her employment.
- 3.1 The dates and times that the employee worked.
- 3.2 If the employee has two or more regular rates of pay for work performed for the employer and, in a work week, the employee performed work for the employer in excess of the overtime threshold, the dates and times that the employee worked in excess of the overtime threshold at each rate of pay.
- 4. The number of hours the employee worked in each day and each week.
- 5. The information contained in each written statement given to the employee under subsection 12 (1), section 12.1, subsections 27 (2.1), 28 (2.1), 29 (1.1) and 30 (2.1) and clause 36 (3) (b).
- 6. REPEALED: 2002, c. 18, Sched. J, s. 3 (7).

2000, c. 41, s. 15 (1); 2002, c. 18, Sched. J, s. 3 (6, 7); 2017, c. 22, Sched. 1, s. 8 (1, 3).

Homeworkers

(2) In addition to the record described in subsection (1), the employer shall maintain a register of any homeworkers the employer employs showing the following information:

1. The employee's name and address.
2. The information that is contained in all statements required to be provided to the employee described in clause 12 (1) (b).
3. Any prescribed information. 2000, c. 41, s. 15 (2).

Exception

(3) An employer is not required to record the information described in paragraph 3.1 or 4 of subsection (1) with respect to an employee who is paid a salary if,

- (a) the employer records the number of hours in excess of those in his or her regular work week and,
 - (i) the number of hours in excess of eight that the employee worked in each day, or
 - (ii) if the number of hours in the employee's regular work day is more than eight hours, the number in excess; or
- (b) sections 17 to 19 and Part VIII (Overtime Pay) do not apply with respect to the employee. 2000, c. 41, s. 15 (3); 2017, c. 22, Sched. 1, s. 8 (4).

Meaning of salary

(4) An employee is considered to be paid a salary for the purposes of subsection (3) if,

- (a) the employee is entitled to be paid a fixed amount for each pay period; and
- (b) the amount actually paid for each pay period does not vary according to the number of hours worked by the employee, unless he or she works more than 44 hours in a week. 2000, c. 41, s. 15 (4).

Retention of records

(5) The employer shall retain or arrange for some other person to retain the records of the information required under this section for the following periods:

1. For information referred to in paragraph 1 or 3 of subsection (1), three years after the employee ceased to be employed by the employer.
2. For information referred to in paragraph 2 of subsection (1), the earlier of,
 - i. three years after the employee's 18th birthday, or
 - ii. three years after the employee ceased to be employed by the employer.
3. For information referred to in paragraph 3.1, 3.2 or 4 of subsection (1) or in subsection (3), three years after the day or week to which the information relates.
4. For information referred to in paragraph 5 of subsection (1), three years after the information was given to the employee.
5. REPEALED: 2002, c. 18, Sched. J, s. 3 (8).

2000, c. 41, s. 15 (5); 2002, c. 18, Sched. J, s. 3 (8); 2017, c. 22, Sched. 1, s. 8 (5).

Register of homeworkers

(6) Information pertaining to a homemaker may be deleted from the register three years after the homemaker ceases to be employed by the employer. 2000, c. 41, s. 15 (6).

Retain documents re leave

(7) An employer shall retain or arrange for some other person to retain all notices, certificates, correspondence and other documents given to or produced by the employer that relate to an employee taking pregnancy leave, parental leave, family medical leave, organ donor leave, family caregiver leave, critical illness leave, child death leave, crime-related child disappearance leave, domestic or sexual violence leave, sick leave, family responsibility leave, bereavement leave, emergency leave during a declared emergency or an infectious disease emergency or reservist leave for three years after the day on which the leave expired. 2006, c. 13, s. 3 (1); 2007, c. 16, Sched. A, s. 2; 2009, c. 16, s. 1; 2014, c. 6, s. 1; 2017, c. 22, Sched. 1, s. 8 (7, 8); 2018, c. 14, Sched. 1, s. 4; 2020, c. 3, s. 2.

Retention of agreements re excess hours

(8) An employer shall retain or arrange for some other person to retain copies of every agreement that the employer has made with an employee permitting the employee to work hours in excess of the limits set out in subsection 17 (1) for three years after the last day on which work was performed under the agreement. 2004, c. 21, s. 2.

Retention of averaging agreements

(9) An employer shall retain or arrange for some other person to retain copies of every averaging agreement that the employer has made with an employee under clause 22 (2) (a) for three years after the last day on which work was performed under the agreement. 2004, c. 21, s. 2.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (6-8) - 26/11/2002

2004, c. 21, s. 2 - 1/03/2005

2006, c. 13, s. 3 (1) - 30/06/2006

2007, c. 16, Sched. A, s. 2 - 3/12/2007

2009, c. 16, s. 1 - 26/06/2009

2014, c. 6, s. 1 - 29/10/2014

2017, c. 22, Sched. 1, s. 8 (1, 3-5, 8) - 01/01/2018; 2017, c. 22, Sched. 1, s. 8 (2, 6) - no effect - see 2018, c. 14, Sched. 1, s. 27 (2, 3) - 01/01/2019; 2017, c. 22, Sched. 1, s. 8 (7) - 03/12/2017

2018, c. 14, Sched. 1, s. 4 - 01/01/2019

2020, c. 3, s. 2 - 19/03/2020

Record re vacation time and vacation pay

15.1 (1) An employer shall record information concerning an employee's entitlement to vacation time and vacation pay in accordance with this section. 2002, c. 18, Sched. J, s. 3 (9).

Content of record

(2) The employer shall record the following information:

1. The amount of vacation time, if any, that the employee had earned since the start of employment but had not taken before the start of the vacation entitlement year.
2. The amount of vacation time that the employee earned during the vacation entitlement year.
3. The amount of vacation time, if any, taken by the employee during the vacation entitlement year.
4. The amount of vacation time, if any, that the employee had earned since the start of employment but had not taken as of the end of the vacation entitlement year.
- 4.1 The amount of vacation pay that the employee earned during the vacation entitlement year and how that amount was calculated.
5. The amount of vacation pay paid to the employee during the vacation entitlement year.
6. The amount of wages on which the vacation pay referred to in paragraph 5 was calculated and the period of time to which those wages relate. 2002, c. 18, Sched. J, s. 3 (9); 2017, c. 22, Sched. 1, s. 9 (1).

Additional requirement, alternative vacation entitlement year

(3) If the employer establishes an alternative vacation entitlement year for an employee, the employer shall record the following information for the stub period:

1. The amount of vacation time that the employee earned during the stub period.
2. The amount of vacation time, if any, that the employee took during the stub period.
3. The amount of vacation time, if any, earned but not taken by the employee during the stub period.
- 3.1 The amount of vacation pay that the employee earned during the stub period and how that amount was calculated.
4. The amount of vacation pay paid to the employee during the stub period.

5. The amount of wages on which the vacation pay referred to in paragraph 4 was calculated and the period of time to which those wages relate. 2002, c. 18, Sched. J, s. 3 (9); 2017, c. 22, Sched. 1, s. 9 (2).

When information to be recorded

- (4) The employer shall record information under this section by a date that is not later than the later of,
- (a) seven days after the start of the next vacation entitlement year or the first vacation entitlement year, as the case may be; and
 - (b) the first pay day of the next vacation entitlement year or of the first vacation entitlement year, as the case may be. 2002, c. 18, Sched. J, s. 3 (9).

Retention of records

- (5) The employer shall retain or arrange for some other person to retain each record required under this section for five years after it was made. 2002, c. 18, Sched. J, s. 3 (9); 2017, c. 22, Sched. 1, s. 9 (3).

Exception

- (6) Paragraphs 5 and 6 of subsection (2) and paragraphs 4 and 5 of subsection (3) do not apply with respect to an employee whose employer pays vacation pay in accordance with subsection 36 (3). 2002, c. 18, Sched. J, s. 3 (9).

Transition

- (7) Subsections 15.1 (2) and (3), as they read immediately before the day section 9 of Schedule 1 to the *Fair Workplaces, Better Jobs Act, 2017* came into force, continue to apply with respect to vacation entitlement years and stub periods that began before that day. 2017, c. 22, Sched. 1, s. 9 (4).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (9) - 26/11/2002

2017, c. 22, Sched. 1, s. 9 (1-4) - 01/01/2018

Availability

- 16** An employer shall ensure that all of the records and documents required to be retained under sections 15 and 15.1 are readily available for inspection as required by an employment standards officer, even if the employer has arranged for another person to retain them. 2000, c. 41, s. 16; 2004, c. 21, s. 3.

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 3 - 1/03/2005

PART VII HOURS OF WORK AND EATING PERIODS

Limit on hours of work

- 17** (1) Subject to subsections (2) and (3), no employer shall require or permit an employee to work more than,
- (a) eight hours in a day or, if the employer establishes a regular work day of more than eight hours for the employee, the number of hours in his or her regular work day; and
 - (b) 48 hours in a work week. 2004, c. 21, s. 4.

Exception: hours in a day

- (2) An employee's hours of work may exceed the limit set out in clause (1) (a) if the employee has made an agreement with the employer that he or she will work up to a specified number of hours in a day in excess of the limit and his or her hours of work in a day do not exceed the number specified in the agreement. 2004, c. 21, s. 4.

Exception: hours in a work week

- (3) An employee's hours of work may exceed the limit set out in clause (1) (b) if the employee has made an agreement with the employer that he or she will work up to a specified number of hours in a work week in excess of the limit and his or her hours of work in a work week do not exceed the number of hours specified in the agreement. 2019, c. 4, Sched. 9, s. 3 (1).
- (4) REPEALED: 2019, c. 4, Sched. 9, s. 3 (1).

Document re employee rights

- (5) An agreement described in subsection (2) or (3) is not valid unless,

- (a) the employer has, before the agreement is made, provided the employee with a copy of the most recent document published by the Director under section 21.1; and
- (b) the agreement contains a statement in which the employee acknowledges that he or she has received a document that the employer has represented is the most recent document published by the Director under section 21.1. 2004, c. 21, s. 4; 2019, c. 4, Sched. 9, s. 3 (2).

Revocation by employee

(6) An employee may revoke an agreement described in subsection (2) or (3) two weeks after giving written notice to the employer. 2004, c. 21, s. 4; 2019, c. 4, Sched. 9, s. 3 (2).

Revocation by employer

(7) An employer may revoke an agreement described in subsection (2) or (3) after giving reasonable notice to the employee. 2004, c. 21, s. 4; 2019, c. 4, Sched. 9, s. 3 (2).

Transition: certain agreements

(8) For the purposes of this section,

- (a) an agreement to exceed the limit on hours of work in a day set out in clause (1) (a) of this section as it read on February 28, 2005 shall be treated as if it were an agreement described in subsection (2);
- (b) an agreement to exceed the limit on hours of work in a work week set out in clause (1) (b) of this section as it read on February 28, 2005 shall be treated as if it were an agreement described in subsection (3); and
- (c) an agreement to exceed the limit on hours of work in a work week set out in clause (2) (b) of this section as it read on February 28, 2005 shall be treated as if it were an agreement described in subsection (3). 2004, c. 21, s. 4; 2019, c. 4, Sched. 9, s. 3 (3).

Document re employee rights – exceptions

(9) Subsection (5) does not apply in respect of,

- (a) an agreement described in subsection (8); or
- (b) an agreement described in subsection (2) or (3) in respect of an employee who is represented by a trade union. 2004, c. 21, s. 4; 2019, c. 4, Sched. 9, s. 3 (2).

(10), (11) REPEALED: 2019, c. 4, Sched. 9, s. 3 (4).

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 4 - 1/03/2005

2019, c. 4, Sched. 9, s. 3 (1-4) - 03/04/2019

17.1 REPEALED: 2019, c. 4, Sched. 9, s. 4.

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 4 - 1/03/2005

2019, c. 4, Sched. 9, s. 4 - 03/04/2019

17.2 REPEALED: 2019, c. 4, Sched. 9, s. 5.

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 4 - 1/03/2005

2019, c. 4, Sched. 9, s. 5 - 03/04/2019

17.3 REPEALED: 2019, c. 4, Sched. 9, s. 6.

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 4 - 1/03/2005

2010, c. 16, Sched. 9, s. 1 (1) - 29/11/2010

2019, c. 4, Sched. 9, s. 6 - 03/04/2019

Hours free from work

18 (1) An employer shall give an employee a period of at least 11 consecutive hours free from performing work in each day. 2000, c. 41, s. 18 (1); 2002, c. 18, Sched. J, s. 3 (10).

Exception

(2) Subsection (1) does not apply to an employee who is on call and called in during a period in which the employee would not otherwise be expected to perform work for his or her employer. 2000, c. 41, s. 18 (2); 2017, c. 22, Sched. 1, s. 10.

Free from work between shifts

(3) An employer shall give an employee a period of at least eight hours free from the performance of work between shifts unless the total time worked on successive shifts does not exceed 13 hours or unless the employer and the employee agree otherwise. 2000, c. 41, s. 18 (3).

Weekly or biweekly free time requirements

(4) An employer shall give an employee a period free from the performance of work equal to,

- (a) at least 24 consecutive hours in every work week; or
- (b) at least 48 consecutive hours in every period of two consecutive work weeks. 2000, c. 41, s. 18 (4).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (10) - 26/11/2002

2017, c. 22, Sched. 1, s. 10 - 01/01/2018

Exceptional circumstances

19 An employer may require an employee to work more than the maximum number of hours permitted under section 17 or to work during a period that is required to be free from performing work under section 18 only as follows, but only so far as is necessary to avoid serious interference with the ordinary working of the employer's establishment or operations:

- 1. To deal with an emergency.
- 2. If something unforeseen occurs, to ensure the continued delivery of essential public services, regardless of who delivers those services.
- 3. If something unforeseen occurs, to ensure that continuous processes or seasonal operations are not interrupted.
- 4. To carry out urgent repair work to the employer's plant or equipment. 2000, c. 41, s. 19.

Eating periods

20 (1) An employer shall give an employee an eating period of at least 30 minutes at intervals that will result in the employee working no more than five consecutive hours without an eating period. 2000, c. 41, s. 20 (1).

Exception

(2) Subsection (1) does not apply if the employer and the employee agree, whether or not in writing, that the employee is to be given two eating periods that together total at least 30 minutes in each consecutive five-hour period. 2000, c. 41, s. 20 (2).

Payment not required

21 An employer is not required to pay an employee for an eating period in which work is not being performed unless his or her employment contract requires such payment. 2000, c. 41, s. 21.

Director to prepare document

21.1 (1) The Director shall prepare and publish a document that describes such rights of employees and obligations of employers under this Part and Part VIII as the Director believes an employee should be made aware of in connection with an agreement referred to in subsection 17 (2) or (3). 2004, c. 21, s. 5; 2019, c. 4, Sched. 9, s. 7.

If document not up to date

(2) If the Director believes that a document prepared under subsection (1) has become out of date, he or she shall prepare and publish a new document. 2004, c. 21, s. 5.

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 5 - 1/03/2005

PART VII.1 THREE HOUR RULE

Three hour rule

21.2 (1) If an employee who regularly works more than three hours a day is required to present himself or herself for work but works less than three hours, despite being available to work longer, the employer shall pay the employee wages for three hours, equal to the greater of the following:

1. The sum of,
 - i. the amount the employee earned for the time worked, and
 - ii. wages equal to the employee's regular rate for the remainder of the time.
2. Wages equal to the employee's regular rate for three hours of work. 2018, c. 14, Sched. 1, s. 5.

Exception

(2) Subsection (1) does not apply if the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work. 2018, c. 14, Sched. 1, s. 5.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 11 - no effect - see 2018, c. 14, Sched. 1, s. 27 (4) - 01/01/2019

2018, c. 14, Sched. 1, s. 5 - 01/01/2019

21.3-21.7

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 12 - no effect - see 2018, c. 14, Sched. 1, s. 27 (5) - 01/01/2019

PART VIII OVERTIME PAY

Overtime threshold

22 (1) Subject to subsection (1.1), an employer shall pay an employee overtime pay of at least one and one-half times his or her regular rate for each hour of work in excess of 44 hours in each work week or, if another threshold is prescribed, that prescribed threshold. 2000, c. 41, s. 22 (1); 2011, c. 1, Sched. 7, s. 1; 2017, c. 22, Sched. 1, s. 13 (1).

Same, two or more regular rates

- (1.1) If an employee has two or more regular rates for work performed for the same employer in a work week,
- (a) the employee is entitled to be paid overtime pay for each hour of work performed in the week after the total number of hours performed for the employer reaches the overtime threshold; and
 - (b) the overtime pay for each hour referred to in clause (a) is one and one-half times the regular rate that applies to the work performed in that hour. 2017, c. 22, Sched. 1, s. 13 (2).

Averaging

(2) An employee's hours of work may be averaged over separate, non-overlapping, contiguous periods of two or more consecutive weeks for the purpose of determining the employee's entitlement, if any, to overtime pay if,

- (a) the employee has made an agreement with the employer that his or her hours of work may be averaged over periods of a specified number of weeks; and
- (b) the averaging period does not exceed four weeks or the number of weeks specified in the agreement, whichever is lower. 2019, c. 4, Sched. 9, s. 8 (1).

(2.1) REPEALED: 2019, c. 4, Sched. 9, s. 8 (1).

Transition: certain agreements

(2.2) For the purposes of this section, each of the following agreements shall be treated as if it were an agreement described in clause (2) (a):

1. An agreement to average hours of work made under a predecessor to this Act.
2. An agreement to average hours of work made under this section as it read on February 28, 2005.
3. An agreement to average hours of work that complies with the conditions prescribed by the regulations made under paragraph 7 of subsection 141 (1) as it read on February 28, 2005. 2004, c. 21, s. 6 (1).

Term of agreement

(3) Subject to subsections (3.1) and (3.2), an averaging agreement is not valid unless it provides for a start date and an expiry date. 2019, c. 4, Sched. 9, s. 8 (2).

Limit on agreement, not represented by trade union

(3.1) If the employee is not represented by a trade union, the averaging agreement's expiry date shall not be more than two years after the start date. 2019, c. 4, Sched. 9, s. 8 (2).

Limit on agreement, collective agreement applies

(3.2) If the employee is represented by a trade union and a collective agreement applies to the employee, an averaging agreement shall expire no later than the day a subsequent collective agreement that applies to the employee comes into operation. 2019, c. 4, Sched. 9, s. 8 (2).

Agreement may be renewed or replaced

(4) For greater certainty, an averaging agreement may be renewed or replaced if the requirements set out in this section are met. 2019, c. 4, Sched. 9, s. 8 (3).

Existing agreement

(5) Any averaging agreement that was made before the day the *Restoring Ontario's Competitiveness Act, 2019* received Royal Assent in accordance with this section, as it read at the time, and that was approved by the Director under section 22.1, as it read at the time, is deemed to have met the requirements set out in subsections (2), (3), (3.1) and (3.2) and continues to be valid until the earlier of,

- (a) the day the agreement is revoked under subsection (6);
- (b) the day the Director's approval expires; or
- (c) the day the Director's approval is revoked. 2019, c. 4, Sched. 9, s. 8 (4).

(5.1) REPEALED: 2019, c. 4, Sched. 9, s. 8 (4).

Agreement irrevocable

(6) No averaging agreement referred to in this section may be revoked before it expires unless the employer and the employee agree to revoke it. 2000, c. 41, s. 22 (6).

Time off in lieu

(7) The employee may be compensated for overtime hours by receiving one and one-half hours of paid time off work for each hour of overtime worked instead of overtime pay if,

- (a) the employee and the employer agree to do so; and
- (b) the paid time off work is taken within three months of the work week in which the overtime was earned or, with the employee's agreement, within 12 months of that work week. 2000, c. 41, s. 22 (7).

Where employment ends

(8) If the employment of an employee ends before the paid time off is taken under subsection (7), the employer shall pay the employee overtime pay for the overtime hours that were worked in accordance with subsection 11 (5). 2000, c. 41, s. 22 (8).

Changing work

(9) If an employee who performs work of a particular kind or character is exempted from the application of this section by the regulations or the regulations prescribe an overtime threshold of other than 44 hours for an employee who performs such work, and the duties of an employee's position require him or her to perform both that work and work of another kind or character, this Part shall apply to the employee in respect of all work performed by him or her in a work week unless the time spent by the employee performing that other work constitutes less than half the time that the employee spent fulfilling the duties of his or her position in that work week. 2000, c. 41, s. 22 (9).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (4) - 4/09/2001
2002, c. 18, Sched. J, s. 3 (11) - 26/11/2002
2004, c. 21, s. 6 (1, 2) - 1/03/2005
2011, c. 1, Sched. 7, s. 1 - 30/03/2011
2017, c. 22, Sched. 1, s. 13 (1, 2) - 01/01/2018
2019, c. 4, Sched. 9, s. 8 (1-4) - 03/04/2019
22.1 REPEALED: 2019, c. 4, Sched. 9, s. 9.

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 7 - 1/03/2005
2019, c. 4, Sched. 9, s. 9 - 03/04/2019

22.2 REPEALED: 2019, c. 4, Sched. 9, s. 9.

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 7 - 1/03/2005
2010, c. 16, Sched. 9, s. 1 (2) - 29/11/2010
2019, c. 4, Sched. 9, s. 9 - 03/04/2019

**PART IX
MINIMUM WAGE**

Minimum wage

23 (1) An employer shall pay employees at least the minimum wage. 2000, c. 41, s. 23 (1); 2014, c. 10, Sched. 2, s. 2 (1).

Room or board

(2) If an employer provides room or board to an employee, the prescribed amount with respect to room or board shall be deemed to have been paid by the employer to the employee as wages. 2000, c. 41, s. 23 (2).

Determining compliance

(3) Compliance with this Part shall be determined on a pay period basis. 2000, c. 41, s. 23 (3).

Hourly rate

(4) Without restricting the generality of subsection (3), if the minimum wage applicable with respect to an employee is expressed as an hourly rate, the employer shall not be considered to have complied with this Part unless,

- (a) when the amount of regular wages paid to the employee in the pay period is divided by the number of hours he or she worked in the pay period, other than hours for which the employee was entitled to receive overtime pay or premium pay, the quotient is at least equal to the minimum wage; and
- (b) when the amount of overtime pay and premium pay paid to the employee in the pay period is divided by the number of hours worked in the pay period for which the employee was entitled to receive overtime pay or premium pay, the quotient is at least equal to one and one half times the minimum wage. 2000, c. 41, s. 23 (4); 2014, c. 10, Sched. 2, s. 2 (2-4).

Section Amendments with date in force (d/m/y)

2014, c. 10, Sched. 2, s. 2 (1-4) - 20/11/2014

Change to minimum wage during pay period

23.0.1 If the minimum wage rate applicable to an employee changes during a pay period, the calculations required by subsection 23 (4) shall be performed as if the pay period were two separate pay periods, the first consisting of the part falling before the day on which the change takes effect and the second consisting of the part falling on and after the day on which the change takes effect. 2017, c. 22, Sched. 1, s. 14.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 14 - 01/01/2018

Determination of minimum wage

23.1 (1) The minimum wage is the following:

1. On or after January 1, 2018 but before October 1, 2020, the amount set out below for the following classes of employees:
 - i. For employees who are students under 18 years of age, if the student's weekly hours do not exceed 28 hours or if the student is employed during a school holiday, \$13.15 per hour.
 - ii. For employees who, as a regular part of their employment, serve liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence and Control Act, 2019* and who regularly receive tips or other gratuities from their work, \$12.20 per hour.
 - iii. For the services of hunting and fishing guides, \$70.00 for less than five consecutive hours in a day and \$140 for five or more hours in a day, whether or not the hours are consecutive.
 - iv. For employees who are homeworkers, \$15.40 per hour.
 - v. For any other employees not listed in subparagraphs i to iv, \$14.00 per hour.
2. REPEALED: 2018, c. 14, Sched. 1, s. 6 (2).
3. From October 1, 2020 onwards, the amount determined under subsection (4). 2017, c. 22, Sched. 1, s. 15 (1); 2018, c. 14, Sched. 1, s. 6 (1-3); 2019, c. 15, Sched. 22, s. 92.

Student homeworker

(1.1) If an employee falls within both subparagraphs 1 i and iv of subsection (1), the employer shall pay the employee not less than the minimum wage for a homeworker. 2017, c. 22, Sched. 1, s. 15 (1); 2018, c. 14, Sched. 1, s. 6 (4).

Exception

(2) If a class of employees that would otherwise be in the class described in subparagraph 1 v of subsection (1) is prescribed and a minimum wage for the class is also prescribed,

- (a) subsection (1) does not apply; and
- (b) the minimum wage for the class is the minimum wage prescribed for it. 2014, c. 10, Sched. 2, s. 3; 2017, c. 22, Sched. 1, s. 15 (2); 2018, c. 14, Sched. 1, s. 6 (5).

Same

(3) If a class of employees and a minimum wage for the class are prescribed under subsection (2), subsections (4) to (6) apply as if the class and the minimum wage were a class and a minimum wage under subsection (1). 2014, c. 10, Sched. 2, s. 3.

Annual adjustment

(4) On October 1 of each year starting in 2020, the minimum wage that applied to a class of employees immediately before October 1 shall be adjusted as follows:

$$\text{Previous wage} \times (\text{Index A/Index B}) = \text{Adjusted wage}$$

in which,

“Previous wage” is the minimum wage that applied immediately before October 1 of the year,

“Index A” is the Consumer Price Index for the previous calendar year,

“Index B” is the Consumer Price Index for the calendar year immediately preceding the calendar year mentioned in the description of “Index A”, and

“Adjusted wage” is the new minimum wage.

2014, c. 10, Sched. 2, s. 3; 2017, c. 22, Sched. 1, s. 15 (3); 2018, c. 14, Sched. 1, s. 6 (6).

Rounding

(5) If the adjustment required by subsection (4) would result in an amount that is not a multiple of 5 cents, the amount shall be rounded up or down to the nearest amount that is a multiple of 5 cents. 2014, c. 10, Sched. 2, s. 3.

Exception where decrease

(6) If the adjustment otherwise required by subsection (4) would result in a decrease in the minimum wage, no adjustment shall be made. 2014, c. 10, Sched. 2, s. 3.

Publication of minimum wage

(7) The Minister shall, not later than April 1 of every year after 2019, publish on a website of the Government of Ontario the minimum wages that are to apply starting on October 1 of that year. 2014, c. 10, Sched. 2, s. 3; 2017, c. 22, Sched. 1, s. 15 (4); 2018, c. 14, Sched. 1, s. 6 (7).

(8) REPEALED: 2017, c. 22, Sched. 1, s. 15 (5).

Same

(9) If, after the Minister publishes the minimum wages that are to apply starting on October 1 of a year, a minimum wage is prescribed under subsection (2) for a prescribed class of employees, the Minister shall promptly publish the new wage that will apply to that class starting on October 1 of the applicable year as a result of the wage having been prescribed. 2014, c. 10, Sched. 2, s. 3.

(10), (11) REPEALED: 2018, c. 14, Sched. 1, s. 6 (8).

Definition

(12) In this section,

“Consumer Price Index” means the Consumer Price Index for Ontario (all items) published by Statistics Canada under the *Statistics Act* (Canada). 2014, c. 10, Sched. 2, s. 3.

Section Amendments with date in force (d/m/y)

2014, c. 10, Sched. 2, s. 3 - 20/11/2014

2017, c. 22, Sched. 1, s. 15 (1-6) - 01/01/2018

2018, c. 14, Sched. 1, s. 6 (1-8) - 01/01/2019

2019, c. 15, Sched. 22, s. 92 - 29/11/2021

PART X PUBLIC HOLIDAYS

Public holiday pay

24 (1) An employee’s public holiday pay for a given public holiday shall be equal to,

- (a) the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20; or
- (b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation. 2017, c. 22, Sched. 1, s. 16; 2018, c. 14, Sched. 1, s. 7 (1).

(1.1), (1.2) REPEALED: 2018, c. 14, Sched. 1, s. 7 (2).

Premium pay

(2) An employer who is required under this Part to pay premium pay to an employee shall pay the employee at least one and one half times his or her regular rate. 2000, c. 41, s. 24 (2).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (12) - 26/11/2002

2017, c. 22, Sched. 1, s. 16 - 01/01/2018

2018, c. 14, Sched. 1, s. 7 (1, 2) - 01/01/2019

Two kinds of work

25 (1) Subsection (2) applies with respect to an employee if,

- (a) an employee performs work of a particular kind or character in a work week in which a public holiday occurs;
- (b) the regulations exempt employees who perform work of that kind or character from the application of this Part; and

- (c) the duties of the employee's position also require him or her to perform work of another kind or character. 2000, c. 41, s. 25 (1).

Same

(2) This Part applies to the employee with respect to that public holiday unless the time spent by the employee performing the work referred to in clause (1) (b) constitutes more than half the time that the employee spent fulfilling the duties of his or her position in that work week. 2000, c. 41, s. 25 (2).

Public holiday ordinarily a working day

26 (1) If a public holiday falls on a day that would ordinarily be a working day for an employee and the employee is not on vacation that day, the employer shall give the employee the day off work and pay him or her public holiday pay for that day. 2000, c. 41, s. 26 (1).

Exception

(2) The employee has no entitlement under subsection (1) if he or she fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday. 2000, c. 41, s. 26 (2).

Agreement to work, ordinarily a working day

27 (1) An employee and employer may agree that the employee will work on a public holiday that would ordinarily be a working day for that employee, and if they do, section 26 does not apply to the employee. 2000, c. 41, s. 27 (1).

Employee's entitlement

- (2) Subject to subsections (3) and (4), if an employer and an employee make an agreement under subsection (1),
- (a) the employer shall pay to the employee wages at his or her regular rate for the hours worked on the public holiday and substitute another day that would ordinarily be a working day for the employee to take off work and for which he or she shall be paid public holiday pay as if the substitute day were a public holiday; or
 - (b) if the employee and the employer agree, the employer shall pay to the employee public holiday pay for the day plus premium pay for each hour worked on that day. 2000, c. 41, s. 27 (2).

Substitute day of holiday

(2.1) If a day is substituted for a public holiday under clause (2) (a), the employer shall provide the employee with a written statement, before the public holiday, that sets out,

- (a) the public holiday on which the employee will work;
- (b) the date of the day that is substituted for a public holiday under clause (2) (a); and
- (c) the date on which the statement is provided to the employee. 2017, c. 22, Sched. 1, s. 17.

Restriction

- (3) A day that is substituted for a public holiday under clause (2) (a) shall be,
- (a) a day that is no more than three months after the public holiday; or
 - (b) if the employee and the employer agree, a day that is no more than 12 months after the public holiday. 2000, c. 41, s. 27 (3).

Where certain work not performed

- (4) The employee's entitlement under subsection (2) is subject to the following rules:
- 1. If the employee, without reasonable cause, performs none of the work that he or she agreed to perform on the public holiday, the employee has no entitlement under subsection (2).
 - 2. If the employee, with reasonable cause, performs none of the work that he or she agreed to perform on the public holiday, the employer shall give the employee a substitute day off work in accordance with clause (2) (a) or, if an agreement was made under clause (2) (b), public holiday pay for the public holiday. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employee has no entitlement under subsection (2).

3. If the employee performs some of the work that he or she agreed to perform on the public holiday but fails, without reasonable cause, to perform all of it, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).
4. If the employee performs some of the work that he or she agreed to perform on the public holiday but fails, with reasonable cause, to perform all of it, the employer shall give the employee wages at his or her regular rate for the hours worked on the public holiday and a substitute day off work in accordance with clause (2) (a) or, if an agreement was made under clause (2) (b), public holiday pay for the public holiday plus premium pay for each hour worked on the public holiday. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).
5. If the employee performs all of the work that he or she agreed to perform on the public holiday but fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2). 2000, c. 41, s. 27 (4); 2002, c. 18, Sched. J, s. 3 (13).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (13) - 26/11/2002

2017, c. 22, Sched. 1, s. 17 - 01/01/2018

Requirement to work on a public holiday: certain operations

28 (1) If an employee is employed in a hospital, a continuous operation, or a hotel, motel, tourist resort, restaurant or tavern, the employer may require the employee to work on a public holiday that is ordinarily a working day for the employee and that is not a day on which the employee is on vacation, and if the employer does so, sections 26 and 27 do not apply to the employee. 2000, c. 41, s. 28 (1).

Employee's entitlement

(2) Subject to subsections (3) and (4), if an employer requires an employee to work on a public holiday under subsection (1), the employer shall,

- (a) pay to the employee wages at his or her regular rate for the hours worked on the public holiday and substitute another day that would ordinarily be a working day for the employee to take off work and for which he or she shall be paid public holiday pay as if the substitute day were a public holiday; or
- (b) pay to the employee public holiday pay for the day plus premium pay for each hour worked on that day. 2000, c. 41, s. 28 (2).

Substitute day of holiday

(2.1) If a day is substituted for a public holiday under clause (2) (a), the employer shall provide the employee with a written statement, before the public holiday, that sets out,

- (a) the public holiday on which the employee will work;
- (b) the date of the day that is substituted for a public holiday under clause (2) (a); and
- (c) the date on which the statement is provided to the employee. 2017, c. 22, Sched. 1, s. 18.

Restriction

(3) A day that is substituted for a public holiday under clause (2) (a) shall be,

- (a) a day that is no more than three months after the public holiday; or
- (b) if the employee and the employer agree, a day that is no more than 12 months after the public holiday. 2000, c. 41, s. 28 (3).

Where certain work not performed

(4) The employee's entitlement under subsection (2) is subject to the following rules:

1. If the employee, without reasonable cause, performs none of the work that he or she was required to perform on the public holiday, the employee has no entitlement under subsection (2).

2. If the employee, with reasonable cause, performs none of the work that he or she was required to perform on the public holiday, the employer shall give the employee a substitute day off work in accordance with clause (2) (a) or public holiday pay for the public holiday under clause (2) (b), as the employer chooses. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employee has no entitlement under subsection (2).
3. If the employee performs some of the work that he or she was required to perform on the public holiday but fails, without reasonable cause, to perform all of it, he or she is entitled to premium pay for each hour worked on the public holiday but has no other entitlement under subsection (2).
4. If the employee performs some of the work that he or she was required to perform on the public holiday but fails, with reasonable cause, to perform all of it, the employer shall give the employee wages at his or her regular rate for the hours worked on the public holiday and a substitute day off work in accordance with clause (2) (a) or public holiday pay for the public holiday plus premium pay for each hour worked on the public holiday under clause (2) (b), as the employer chooses. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).
5. If the employee performs all of the work that he or she was required to perform on the public holiday but fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2). 2000, c. 41, s. 28 (4); 2002, c. 18, Sched. J, s. 3 (14).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (14) - 26/11/2002

2017, c. 22, Sched. 1, s. 18 - 01/01/2018

Public holiday not ordinarily a working day

29 (1) If a public holiday falls on a day that would not ordinarily be a working day for an employee or a day on which the employee is on vacation, the employer shall substitute another day that would ordinarily be a working day for the employee to take off work and for which he or she shall be paid public holiday pay as if the substitute day were a public holiday. 2000, c. 41, s. 29 (1).

Substitute day of holiday

(1.1) If a day is substituted for a public holiday under subsection (1), the employer shall provide the employee with a written statement, before the public holiday, that sets out,

- (a) the public holiday that is being substituted;
- (b) the date of the day that is substituted for a public holiday under subsection (1); and
- (c) the date on which the statement is provided to the employee. 2017, c. 22, Sched. 1, s. 19.

Restriction

(2) A day that is substituted for a public holiday under subsection (1) shall be,

- (a) a day that is no more than three months after the public holiday; or
- (b) if the employee and the employer agree, a day that is no more than 12 months after the public holiday. 2000, c. 41, s. 29 (2).

Employee on leave or lay-off

(2.1) If a public holiday falls on a day that would not ordinarily be a working day for an employee and the employee is on a leave of absence under section 46 or 48 or on a layoff on that day, the employee is entitled to public holiday pay for the day but has no other entitlement under this Part with respect to the public holiday. 2002, c. 18, Sched. J, s. 3 (15).

Layoff resulting in termination

(2.2) Subsection (2.1) does not apply to an employee if his or her employment has been terminated under clause 56 (1) (c) and the public holiday falls on or after the day on which the lay-off first exceeded the period of a temporary lay-off. 2002, c. 18, Sched. J, s. 3 (15).

Agreement re: public holiday pay

(3) An employer and an employee may agree that, instead of complying with subsection (1), the employer shall pay the employee public holiday pay for the public holiday, and if they do subsection (1) does not apply to the employee. 2000, c. 41, s. 29 (3).

Exception

(4) The employee has no entitlement under subsection (1), (2.1) or (3) if he or she fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday. 2000, c. 41, s. 29 (4); 2002, c. 18, Sched. J, s. 3 (16).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (15, 16) - 26/11/2002

2017, c. 22, Sched. 1, s. 19 - 01/01/2018

Agreement to work where not ordinarily a working day

30 (1) An employee and employer may agree that the employee will work on a public holiday that falls on a day that would not ordinarily be a working day for that employee or on a day on which the employee is on vacation, and if they do, section 29 does not apply to the employee. 2000, c. 41, s. 30 (1).

Employee's entitlement

- (2) Subject to subsections (3) and (4), if an employer and an employee make an agreement under subsection (1),
- (a) the employer shall pay to the employee wages at his or her regular rate for the hours worked on the public holiday and substitute another day that would ordinarily be a working day for the employee to take off work and for which he or she shall be paid public holiday pay as if the substitute day were a public holiday; or
 - (b) if the employer and employee agree, the employer shall pay the employee public holiday pay for the day plus premium pay for each hour worked. 2000, c. 41, s. 30 (2).

Substitute day of holiday

(2.1) If a day is substituted for a public holiday under clause (2) (a), the employer shall provide the employee with a written statement, before the public holiday, that sets out,

- (a) the public holiday on which the employee will work;
- (b) the date of the day that is substituted for a public holiday under clause (2) (a); and
- (c) the date on which the statement is provided to the employee. 2017, c. 22, Sched. 1, s. 20.

Restriction

- (3) A day that is substituted for a public holiday under clause (2) (a) shall be,
- (a) a day that is no more than three months after the public holiday; or
 - (b) if the employee and the employer agree, a day that is no more than 12 months after the public holiday. 2000, c. 41, s. 30 (3).

Where certain work not performed

- (4) The employee's entitlement under subsection (2) is subject to the following rules:
1. If the employee, without reasonable cause, performs none of the work that he or she agreed to perform on the public holiday, the employee has no entitlement under subsection (2).
 2. If the employee, with reasonable cause, performs none of the work that he or she agreed to perform on the public holiday, the employer shall give the employee a substitute day off work in accordance with clause (2) (a) or, if an agreement was made under clause (2) (b), public holiday pay for the public holiday. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employee has no entitlement under subsection (2).
 3. If the employee performs some of the work that he or she agreed to perform on the public holiday but fails, without reasonable cause, to perform all of it, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).

4. If the employee performs some of the work that he or she agreed to perform on the public holiday but fails, with reasonable cause, to perform all of the work that he or she agreed to perform on the public holiday, the employer shall give the employee wages at his or her regular rate for the hours worked on the public holiday and a substitute day off work in accordance with clause (2) (a) or, if an agreement was made under clause (2) (b), public holiday pay for the public holiday plus premium pay for each hour worked on the public holiday. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).
5. If the employee performs all of the work that he or she agreed to perform on the public holiday but fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2). 2000, c. 41, s. 30 (4); 2002, c. 18, Sched. J, s. 3 (17).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (17) - 26/11/2002

2017, c. 22, Sched. 1, s. 20 - 01/01/2018

Premium pay hours not overtime hours

31 If an employee receives premium pay for working on a public holiday, the hours worked shall not be taken into consideration in calculating overtime pay to which the employee may be entitled. 2000, c. 41, s. 31.

If employment ends

32 If the employment of an employee ends before a day that has been substituted for a public holiday under this Part, the employer shall pay the employee public holiday pay for that day in accordance with subsection 11 (5). 2000, c. 41, s. 32.

**PART XI
VACATION WITH PAY**

Right to vacation

33 (1) An employer shall give an employee a vacation of,

- (a) at least two weeks after each vacation entitlement year that the employee completes, if the employee's period of employment is less than five years; or
- (b) at least three weeks after each vacation entitlement year that the employee completes, if the employee's period of employment is five years or more. 2017, c. 22, Sched. 1, s. 21.

Active and inactive employment

(2) Both active employment and inactive employment shall be included for the purposes of subsection (1). 2017, c. 22, Sched. 1, s. 21.

Where vacation not taken in complete weeks

(3) If an employee does not take vacation in complete weeks, the employer shall base the number of days of vacation that the employee is entitled to,

- (a) on the number of days in the employee's regular work week; or
- (b) if the employee does not have a regular work week, on the average number of days the employee worked per week during the most recently completed vacation entitlement year. 2017, c. 22, Sched. 1, s. 21.

Transition

(4) Clause (1) (b) requires employers to provide employees with a period of employment of at least five years or more with at least three weeks of vacation after each vacation entitlement year that ends on or after December 31, 2017 but does not require them to provide additional vacation days in respect of vacation entitlement years that ended before that time. 2017, c. 22, Sched. 1, s. 21.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (18) - 26/11/2002

2017, c. 22, Sched. 1, s. 21 - 01/01/2018

Alternative vacation entitlement year

Application

34 (1) This section applies if the employer establishes an alternative vacation entitlement year for an employee. 2017, c. 22, Sched. 1, s. 21.

Vacation for stub period, less than five years of employment

(2) If the employee's period of employment is less than five years, the employer shall do the following with respect to the stub period:

1. The employer shall calculate the ratio between the stub period and 12 months.
2. If the employee has a regular work week, the employer shall give the employee a vacation for the stub period that is equal to two weeks multiplied by the ratio calculated under paragraph 1.
3. If the employee does not have a regular work week, the employer shall give the employee a vacation for the stub period that is equal to,

$$2 \times A \times \text{the ratio calculated under paragraph 1}$$

where,

A = the average number of days the employee worked per work week in the stub period.

2017, c. 22, Sched. 1, s. 21.

Vacation for stub period, five years or more of employment

(3) If the employee's period of employment is five years or more, the employer shall do the following with respect to the stub period:

1. The employer shall calculate the ratio between the stub period and 12 months.
2. If the employee has a regular work week, the employer shall give the employee a vacation for the stub period that is equal to three weeks multiplied by the ratio calculated under paragraph 1.
3. If the employee does not have a regular work week, the employer shall give the employee a vacation for the stub period that is equal to,

$$3 \times A \times \text{the ratio calculated under paragraph 1}$$

where,

A = the average number of days the employee worked per work week in the stub period.

2017, c. 22, Sched. 1, s. 21.

Active and inactive employment

(4) Both active employment and inactive employment shall be included for the purposes of subsections (2) and (3). 2017, c. 22, Sched. 1, s. 21.

Transition

(5) Subsection (3) requires employers to provide employees with a period of employment of at least five years or more with vacation calculated in accordance with that subsection for any stub period that ends on or after December 31, 2017 but does not require them to provide additional vacation days in respect of a stub period that ended before that time. 2017, c. 22, Sched. 1, s. 21.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (18) - 26/11/2002

2017, c. 22, Sched. 1, s. 21 - 01/01/2018

Timing of vacation

35 The employer shall determine when an employee shall take vacation for a vacation entitlement year, subject to the following rules:

1. The vacation must be completed no later than 10 months after the end of the vacation entitlement year for which it is given.
2. If the employee's period of employment is less than five years, the vacation must be a two-week period or two periods of one week each, unless the employee requests in writing that the vacation be taken in shorter periods and the employer agrees to that request.
3. If the employee's period of employment is five years or more, the vacation must be a three-week period or a two-week period and a one-week period or three periods of one week each, unless the employee requests in writing that the vacation be taken in shorter periods and the employer agrees to that request. 2017, c. 22, Sched. 1, s. 21.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (18) - 26/11/2002

2017, c. 22, Sched. 1, s. 21 - 01/01/2018

Timing of vacation, alternative vacation entitlement year

35.1 (1) This section applies if an employer establishes an alternative vacation entitlement year for an employee. 2017, c. 22, Sched. 1, s. 22.

Same

(2) The employer shall determine when the employee shall take his or her vacation for the stub period, subject to the following rules:

1. The vacation shall be completed no later than 10 months after the start of the first alternative vacation entitlement year.
2. Subject to paragraphs 3 and 4, if the vacation entitlement is equal to two or more days, the vacation shall be taken in a period of consecutive days.
3. Subject to paragraph 4, if the vacation entitlement is equal to more than five days, at least five vacation days shall be taken in a period of consecutive days and the remaining vacation days may be taken in a separate period of consecutive days.
4. Paragraphs 2 and 3 do not apply if the employee requests in writing that the vacation be taken in shorter periods and the employer agrees to that request. 2002, c. 18, Sched. J, s. 3 (18).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (18) - 26/11/2002

2017, c. 22, Sched. 1, s. 22 - 01/01/2018

Vacation pay

35.2 An employer shall pay vacation pay to an employee who is entitled to vacation under section 33 or 34, equal to at least,

- (a) 4 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is less than five years; or
- (b) 6 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is five years or more. 2017, c. 22, Sched. 1, s. 23.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (18) - 26/11/2002

2017, c. 22, Sched. 1, s. 23 - 01/01/2018

When to pay vacation pay

36 (1) Subject to subsections (2) to (4), the employer shall pay vacation pay to the employee in a lump sum before the employee commences his or her vacation. 2000, c. 41, s. 36 (1); 2001, c. 9, Sched. I, s. 1 (5).

Same

(2) If the employer pays the employee his or her wages in accordance with subsection 11 (4) or the employee does not take his or her vacation in complete weeks, the employer may pay the employee his or her vacation pay on or before the pay day for the period in which the vacation falls. 2000, c. 41, s. 36 (2).

Same

(3) The employer may pay the employee vacation pay that accrues during a pay period on the pay day for that period if the employee agrees that it may be paid in that manner and,

- (a) the statement of wages provided for that period under subsection 12 (1) sets out, in addition to the information required by that subsection, the amount of vacation pay that is being paid separately from the amount of other wages that is being paid; or
- (b) a separate statement setting out the amount of vacation pay that is being paid is provided to the employee at the same time that the statement of wages is provided under subsection 12 (1). 2000, c. 41, s. 36 (3); 2001, c. 9, Sched. I, s. 1 (6); 2002, c. 18, Sched. J, s. 3 (19, 20).

Same

(4) The employer may pay the employee vacation pay at a time agreed to by the employee. 2001, c. 9, Sched. I, s. 1 (7).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (5-7) - 4/09/2001

2002, c. 18, Sched. J, s. 3 (19, 20) - 26/11/2002

Payment during labour dispute

37 (1) If the employer has scheduled vacation for an employee and subsequently the employee goes on strike or is locked out during a time for which the vacation had been scheduled, the employer shall pay to the employee the vacation pay that would have been paid to him or her with respect to that vacation. 2000, c. 41, s. 37 (1).

Cancellation

(2) Subsection (1) applies despite any purported cancellation of the vacation. 2000, c. 41, s. 37 (2).

If employment ends

38 If an employee's employment ends at a time when vacation pay has accrued with respect to the employee, the employer shall pay the vacation pay that has accrued to the employee in accordance with subsection 11 (5). 2000, c. 41, s. 38.

Multi-employer plans

39 Sections 36, 37 and 38 do not apply with respect to an employee and his or her employer if,

- (a) the employee is represented by a trade union; and
- (b) the employer makes contributions for vacation pay to the trustees of a multi-employer vacation benefit plan. 2000, c. 41, s. 39; 2001, c. 9, Sched. I, s. 1 (8).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (8) - 4/09/2001

Vacation pay in trust

40 (1) Every employer shall be deemed to hold vacation pay accruing due to an employee in trust for the employee whether or not the employer has kept the amount for it separate and apart. 2000, c. 41, s. 40 (1).

Same

(2) An amount equal to vacation pay becomes a lien and charge upon the assets of the employer that in the ordinary course of business would be entered in books of account, even if it is not entered in the books of account. 2000, c. 41, s. 40 (2).

Approval to forego vacation

41 (1) If the Director approves and an employee's employer agrees, an employee may be allowed to forego taking vacation to which he or she is entitled under this part. 2000, c. 41, s. 41 (1).

Vacation pay

(2) Nothing in subsection (1) allows the employer to forego paying vacation pay. 2000, c. 41, s. 41 (2).

Vacation statements

41.1 (1) An employee is entitled to receive the following statements on making a written request:

1. After the end of a vacation entitlement year, a statement in writing that sets out the information contained in the record the employer is required to keep under subsection 15.1 (2).
2. After the end of a stub period, a statement in writing that sets out the information contained in the record the employer is required to keep under subsection 15.1 (3). 2002, c. 18, Sched. J, s. 3 (21).

When statement to be provided

- (2) Subject to subsection (3), the statement shall be provided to the employee not later than the later of,
 - (a) seven days after the employee makes his or her request; and
 - (b) the first pay day after the employee makes his or her request. 2002, c. 18, Sched. J, s. 3 (21).

Same

- (3) If the request is made during the vacation entitlement year or stub period to which it relates, the statement shall be provided to the employee not later than the later of,
 - (a) seven days after the start of the next vacation entitlement year or the first vacation entitlement year, as the case may be; and
 - (b) the first pay day of the next vacation entitlement year or of the first vacation entitlement year, as the case may be. 2002, c. 18, Sched. J, s. 3 (21).

Restriction re frequency

- (4) The employer is not required to provide a statement to an employee more than once with respect to a vacation entitlement year or stub period. 2002, c. 18, Sched. J, s. 3 (21).

Exception

- (5) This section does not apply with respect to an employee whose employer pays vacation pay in accordance with subsection 36 (3). 2002, c. 18, Sched. J, s. 3 (21).
- (6) REPEALED: 2017, c. 22, Sched. 1, s. 24.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (21) - 26/11/2002
 2017, c. 22, Sched. 1, s. 24 - 01/01/2018

PART XII EQUAL PAY FOR EQUAL WORK

Interpretation

41.2 In this Part,

“substantially the same” means substantially the same but not necessarily identical. 2017, c. 22, Sched. 1, s. 25.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 25 - 01/04/2018

Equal pay for equal work

- 42** (1) No employer shall pay an employee of one sex at a rate of pay less than the rate paid to an employee of the other sex when,
- (a) they perform substantially the same kind of work in the same establishment;
 - (b) their performance requires substantially the same skill, effort and responsibility; and
 - (c) their work is performed under similar working conditions. 2000, c. 41, s. 42 (1).

Exception

- (2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of,
 - (a) a seniority system;
 - (b) a merit system;
 - (c) a system that measures earnings by quantity or quality of production; or

(d) any other factor other than sex. 2000, c. 41, s. 42 (2); 2017, c. 22, Sched. 1, s. 26 (1); 2018, c. 14, Sched. 1, s. 8 (1).

Reduction prohibited

(3) No employer shall reduce the rate of pay of an employee in order to comply with subsection (1). 2000, c. 41, s. 42 (3).

Organizations

(4) No trade union or other organization shall cause or attempt to cause an employer to contravene subsection (1). 2000, c. 41, s. 42 (4); 2017, c. 22, Sched. 1, s. 26 (2).

Deemed wages

(5) If an employment standards officer finds that an employer has contravened subsection (1), the officer may determine the amount owing to an employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that employee. 2000, c. 41, s. 42 (5).

(6) REPEALED: 2018, c. 14, Sched. 1, s. 8 (2).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 26 (1-3) - 01/04/2018

2018, c. 14, Sched. 1, s. 8 (1, 2) - 01/01/2019

42.1 REPEALED: 2018, c. 14, Sched. 1, s. 9.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 27 - 01/04/2018

2018, c. 14, Sched. 1, s. 9 - 01/01/2019

42.2 REPEALED: 2018, c. 14, Sched. 1, s. 10.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 28 - 01/04/2018

2018, c. 14, Sched. 1, s. 10 - 01/01/2019

42.3 REPEALED: 2018, c. 14, Sched. 1, s. 11.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 29 - 01/04/2018

2018, c. 14, Sched. 1, s. 11 - 01/01/2019

**PART XIII
BENEFIT PLANS**

Definition

43 In this Part,

“employer” means an employer as defined in subsection 1 (1), and includes a group or number of unaffiliated employers or an association of employers acting for an employer in relation to a pension plan, a life insurance plan, a disability insurance plan, a disability benefit plan, a health insurance plan or a health benefit plan. 2000, c. 41, s. 43.

Differentiation prohibited

44 (1) Except as prescribed, no employer or person acting directly on behalf of an employer shall provide, offer or arrange for a benefit plan that treats any of the following persons differently because of the age, sex or marital status of employees:

1. Employees.
2. Beneficiaries.
3. Survivors.
4. Dependants. 2000, c. 41, s. 44 (1); 2004, c. 15, s. 1.

Causing contravention prohibited

(2) No organization of employers or employees and no person acting directly on behalf of such an organization shall, directly or indirectly, cause or attempt to cause an employer to contravene subsection (1). 2000, c. 41, s. 44 (2).

Section Amendments with date in force (d/m/y)

2004, c. 15, s. 1 - 13/06/2005

PART XIV LEAVES OF ABSENCE

Definitions

45 In this Part,

“parent” includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own, and “child” has a corresponding meaning; (“père ou mère”)

“spouse” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage. (“conjoint”) 2000, c. 41, s. 45; 2001, c. 9, Sched. I, s. 1 (9); 2004, c. 15, s. 2; 2005, c. 5, s. 23; 2021, c. 4, Sched. 11, s. 9 (1, 2).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (9) - 4/09/2001

2004, c. 15, s. 2 - 29/06/2004

2005, c. 5, s. 23 - 9/03/2005

2021, c. 4, Sched. 11, s. 9 (1, 2) - 19/04/2021

PREGNANCY LEAVE

Pregnancy leave

46 (1) A pregnant employee is entitled to a leave of absence without pay unless her due date falls fewer than 13 weeks after she commenced employment. 2000, c. 41, s. 46 (1).

When leave may begin

- (2) An employee may begin her pregnancy leave no earlier than the earlier of,
- (a) the day that is 17 weeks before her due date; and
 - (b) the day on which she gives birth. 2000, c. 41, s. 46 (2).

Exception

(3) Clause (2) (b) does not apply with respect to a pregnancy that ends with a still-birth or miscarriage. 2000, c. 41, s. 46 (3).

Latest day for beginning pregnancy leave

- (3.1) An employee may begin her pregnancy leave no later than the earlier of,
- (a) her due date; and
 - (b) the day on which she gives birth. 2001, c. 9, Sched. I, s. 1 (10).

Notice

- (4) An employee wishing to take pregnancy leave shall give the employer,
- (a) written notice at least two weeks before the day the leave is to begin; and
 - (b) if the employer requests it, a certificate from a legally qualified medical practitioner stating the due date. 2000, c. 41, s. 46 (4).

Notice to change date

- (5) An employee who has given notice to begin pregnancy leave may begin the leave,

- (a) on an earlier day than was set out in the notice, if the employee gives the employer a new written notice at least two weeks before that earlier day; or
- (b) on a later day than was set out in the notice, if the employee gives the employer a new written notice at least two weeks before the day set out in the original notice. 2000, c. 41, s. 46 (5).

Same, complication, etc.

(6) If an employee stops working because of a complication caused by her pregnancy or because of a birth, still-birth or miscarriage that occurs earlier than the due date, subsection (4) does not apply and the employee shall, within two weeks after stopping work, give the employer,

- (a) written notice of the day the pregnancy leave began or is to begin; and
- (b) if the employer requests it, a certificate from a legally qualified medical practitioner stating,
 - (i) in the case of an employee who stops working because of a complication caused by her pregnancy, that she is unable to perform the duties of her position because of the complication and stating her due date,
 - (ii) in any other case, the due date and the actual date of the birth, still-birth or miscarriage. 2000, c. 41, s. 46 (6).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (10) - 4/09/2001

Definition

46.1 In section 46,

“legally qualified medical practitioner” means,

- (a) a person who is qualified to practice as a physician,
- (b) a person who is qualified to practice as a midwife,
- (c) a registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991*, or
- (d) in the prescribed circumstances, a member of a prescribed class of medical practitioners. (“médecin dûment qualifié”) 2017, c. 22, Sched. 1, s. 30.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 30 - 01/01/2018

End of pregnancy leave

47 (1) An employee’s pregnancy leave ends,

- (a) if she is entitled to parental leave, 17 weeks after the pregnancy leave began;
- (b) if she is not entitled to parental leave, on the day that is the later of,
 - (i) 17 weeks after the pregnancy leave began, and
 - (ii) 12 weeks after the birth, still-birth or miscarriage. 2000, c. 41, s. 47 (1); 2017, c. 22, Sched. 1, s. 31 (1).

Transition

(1.1) Despite clause (1) (b), if an employee who is not entitled to parental leave began her pregnancy leave before January 1, 2018, her pregnancy leave ends on the day that is the later of,

- (a) 17 weeks after the pregnancy leave began; and
- (b) six weeks after the birth, still-birth or miscarriage. 2017, c. 22, Sched. 1, s. 31 (2).

Ending leave early

(2) An employee may end her leave earlier than the day set out in subsection (1) by giving her employer written notice at least four weeks before the day she wishes to end her leave. 2000, c. 41, s. 47 (2).

Changing end date

(3) An employee who has given notice under subsection (2) to end her pregnancy leave may end the leave,

- (a) on an earlier day than was set out in the notice, if the employee gives the employer a new written notice at least four weeks before the earlier day; or

- (b) on a later day than was set out in the notice, if the employee gives the employer a new written notice at least four weeks before the day indicated in the original notice. 2000, c. 41, s. 47 (3).

Employee not returning

- (4) An employee who takes pregnancy leave shall not terminate her employment before the leave expires or when it expires without giving the employer at least four weeks' written notice of the termination. 2000, c. 41, s. 47 (4).

Exception

- (5) Subsection (4) does not apply if the employer constructively dismisses the employee. 2000, c. 41, s. 47 (5).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 31 (1, 2) - 01/01/2018

PARENTAL LEAVE

Parental leave

- 48** (1) An employee who has been employed by his or her employer for at least 13 weeks and who is the parent of a child is entitled to a leave of absence without pay following the birth of the child or the coming of the child into the employee's custody, care and control for the first time. 2000, c. 41, s. 48 (1); 2021, c. 4, Sched. 11, s. 9 (3).

When leave may begin

- (2) An employee may begin parental leave no later than 78 weeks after the day the child is born or comes into the employee's custody, care and control for the first time. 2000, c. 41, s. 48 (2); 2017, c. 22, Sched. 1, s. 32 (1).

Transition

- (2.1) Despite subsection (2), an employee may begin parental leave no later than 52 weeks after the day the child is born or comes into the employee's custody, care and control for the first time if that day was before the day subsection 32 (2) of Schedule 1 to the *Fair Workplaces, Better Jobs Act, 2017* came into force. 2017, c. 22, Sched. 1, s. 32 (2).

Restriction if pregnancy leave taken

- (3) An employee who has taken pregnancy leave must begin her parental leave when her pregnancy leave ends unless the child has not yet come into her custody, care and control for the first time. 2000, c. 41, s. 48 (3).

Notice

- (4) Subject to subsection (6), an employee wishing to take parental leave shall give the employer written notice at least two weeks before the day the leave is to begin. 2000, c. 41, s. 48 (4).

Notice to change date

- (5) An employee who has given notice to begin parental leave may begin the leave,
- (a) on an earlier day than was set out in the notice, if the employee gives the employer a new written notice at least two weeks before that earlier day; or
 - (b) on a later day than was set out in the notice, if the employee gives the employer a new written notice at least two weeks before the day set out in the original notice. 2000, c. 41, s. 48 (5).

If child earlier than expected

- (6) If an employee stops working because a child comes into the employee's custody, care and control for the first time earlier than expected,
- (a) the employee's parental leave begins on the day he or she stops working; and
 - (b) the employee must give the employer written notice that he or she is taking parental leave within two weeks after stopping work. 2000, c. 41, s. 48 (6).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 32 (1, 2) - 03/12/2017

2021, c. 4, Sched. 11, s. 9 (3) - 19/04/2021

End of parental leave

- 49** (1) An employee's parental leave ends 61 weeks after it began, if the employee also took pregnancy leave and 63 weeks after it began, otherwise. 2000, c. 41, s. 49 (1); 2017, c. 22, Sched. 1, s. 33 (1).

Transition

(1.1) Despite subsection (1), if the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time before the day subsection 33 (2) of Schedule 1 to the *Fair Workplaces, Better Jobs Act, 2017* came into force, the employee's parental leave ends,

- (a) 35 weeks after it began, if the employee also took pregnancy leave; and
- (b) 37 weeks after it began, otherwise. 2017, c. 22, Sched. 1, s. 33 (2).

Ending leave early

(2) An employee may end his or her parental leave earlier than the day set out in subsection (1) by giving the employer written notice at least four weeks before the day he or she wishes to end the leave. 2000, c. 41, s. 49 (2).

Changing end date

(3) An employee who has given notice to end his or her parental leave may end the leave,

- (a) on an earlier day than was set out in the notice, if the employee gives the employer a new written notice at least four weeks before the earlier day; or
- (b) on a later day than was set out in the notice, if the employee gives the employer a new written notice at least four weeks before the day indicated in the original notice. 2000, c. 41, s. 49 (3).

Employee not returning

(4) An employee who takes parental leave shall not terminate his or her employment before the leave expires or when it expires without giving the employer at least four weeks' written notice of the termination. 2000, c. 41, s. 49 (4).

Exception

(5) Subsection (4) does not apply if the employer constructively dismisses the employee. 2000, c. 41, s. 49 (5).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 33 (1, 2) - 03/12/2017

FAMILY MEDICAL LEAVE

Family medical leave

49.1 (1) In this section,

“qualified health practitioner” means,

- (a) a person who is qualified to practise as a physician under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (3),
- (b) a registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991* or an individual who has an equivalent qualification under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (3), or
- (c) in the prescribed circumstances, a member of a prescribed class of health practitioners; (“praticien de la santé qualifié”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”) 2004, c. 15, s. 3; 2017, c. 22, Sched. 1, s. 34 (1).

Entitlement to leave

(2) An employee is entitled to a leave of absence without pay of up to 28 weeks to provide care or support to an individual described in subsection (3) if a qualified health practitioner issues a certificate stating that the individual has a serious medical condition with a significant risk of death occurring within a period of 26 weeks or such shorter period as may be prescribed. 2017, c. 22, Sched. 1, s. 34 (2).

Application of subs. (2)

(3) Subsection (2) applies in respect of the following individuals:

- 1. The employee's spouse.
- 2. A parent, step-parent or foster parent of the employee or the employee's spouse.

3. A child, step-child or foster child of the employee or the employee's spouse.
4. A child who is under legal guardianship of the employee or the employee's spouse.
5. A brother, step-brother, sister or step-sister of the employee.
6. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
8. A son-in-law or daughter-in-law of the employee or the employee's spouse.
9. An uncle or aunt of the employee or the employee's spouse.
10. A nephew or niece of the employee or the employee's spouse.
11. The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
12. A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
13. Any individual prescribed as a family member for the purposes of this section. 2017, c. 22, Sched. 1, s. 34 (2); 2021, c. 4, Sched. 11, s. 9 (4).

Earliest date leave can begin

(4) The employee may begin a leave under this section no earlier than the first day of the week in which the period referred to in subsection (2) begins. 2004, c. 15, s. 3.

Latest date employee can remain on leave

(5) The employee may not remain on a leave under this section after the earlier of the following dates:

1. The last day of the week in which the individual described in subsection (3) dies.
2. The last day of the 52-week period starting on the first day of the week in which the period referred to in subsection (2) begins. 2017, c. 22, Sched. 1, s. 34 (3).

Same

(5.1) For greater certainty, but subject to subsection (5), if the amount of leave that has been taken is less than 28 weeks it is not necessary for a qualified health practitioner to issue an additional certificate under subsection (2) in order for leave to be taken under this section after the end of the period referred to in subsection (2). 2017, c. 22, Sched. 1, s. 34 (3).

Two or more employees

(6) If two or more employees take leaves under this section in respect of a particular individual, the total of the leaves taken by all the employees shall not exceed 28 weeks during the 52-week period referred to in paragraph 2 of subsection (5) that applies to the first certificate issued for the purpose of this section. 2017, c. 22, Sched. 1, s. 34 (3).

Full-week periods

(7) An employee may take a leave under this section only in periods of entire weeks. 2004, c. 15, s. 3; 2014, c. 6, s. 2 (1).

Advising employer

(8) An employee who wishes to take leave under this section shall advise his or her employer in writing that he or she will be doing so. 2004, c. 15, s. 3.

Same

(9) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it. 2004, c. 15, s. 3.

Copy of certificate

(10) If requested by the employer, the employee shall provide the employer with a copy of the certificate referred to in subsection (2) as soon as possible. 2004, c. 15, s. 3.

Further leave

(11) If an employee takes a leave under this section and the individual referred to in subsection (3) does not die within the 52-week period referred to in paragraph 2 of subsection (5), the employee may, in accordance with this section, take another leave and, for that purpose, the reference in subsection (6) to "the first certificate" shall be deemed to be a reference to the first certificate issued after the end of that period. 2017, c. 22, Sched. 1, s. 34 (4).

(12) REPEALED: 2018, c. 14, Sched. 1, s. 12.

Transition

(13) If a certificate described in subsection (2) was issued before January 1, 2018, then this section, as it read immediately before January 1, 2018, applies. 2017, c. 22, Sched. 1, s. 34 (4).

Section Amendments with date in force (d/m/y)

2004, c. 15, s. 3 - 29/06/2004

2014, c. 6, s. 2 (1, 2) - 29/10/2014

2017, c. 22, Sched. 1, s. 34 (1-4) - 01/01/2018

2018, c. 14, Sched. 1, s. 12 - 01/01/2019

2021, c. 4, Sched. 11, s. 9 (4) - 19/04/2021

ORGAN DONOR LEAVE

Organ donor leave

Definitions

49.2 (1) In this section,

“legally qualified medical practitioner” means,

- (a) in the case of surgery for the purpose of organ donation that takes place in Ontario, a member of the College of Physicians and Surgeons of Ontario, and
- (b) in the case of surgery for the purpose of organ donation that takes place outside Ontario, a person who is qualified to practise medicine under the laws of that jurisdiction; (“médecin dûment qualifié”)

“organ” means kidney, liver, lung, pancreas, small bowel or any other organ that is prescribed for the purpose of this section; (“organe”)

“organ donation” means the donation of all or part of an organ to a person; (“don d’organe”)

“prescribed” means prescribed by a regulation made under this section. (“prescrit”) 2009, c. 16, s. 2.

Application to prescribed tissue

(2) References to organs in this section also apply to tissue that is prescribed for the purpose of this section. 2009, c. 16, s. 2.

Entitlement to leave

(3) An employee who has been employed by his or her employer for at least 13 weeks and undergoes surgery for the purpose of organ donation is entitled to a leave of absence without pay. 2009, c. 16, s. 2.

Certificate

(4) The employer may require an employee who takes leave under this section to provide a certificate issued by a legally qualified medical practitioner confirming that the employee has undergone or will undergo surgery for the purpose of organ donation. 2009, c. 16, s. 2.

Length of leave

(5) The employee is entitled to take leave for the prescribed period or, if no period is prescribed, for up to 13 weeks. 2009, c. 16, s. 2.

Extended leave

(6) When the leave described in subsection (5) ends, if a legally qualified medical practitioner issues a certificate stating that the employee is not yet able to perform the duties of his or her position because of the organ donation and will not be able to do so for a specified time, the employee is entitled to extend the leave for the specified time, subject to subsection (7). 2009, c. 16, s. 2.

Same

(7) The leave may be extended more than once, but the total extension period shall not exceed 13 weeks. 2009, c. 16, s. 2.

When leave begins

(8) The employee may begin a leave described in subsection (5) on the day that he or she undergoes surgery for the purpose of organ donation, or on the earlier day specified in a certificate issued by a legally qualified medical practitioner. 2009, c. 16, s. 2.

When leave ends

(9) Subject to subsections (10) and (11), a leave under this section ends when the prescribed period has expired or, if no period is prescribed, 13 weeks after the leave began. 2009, c. 16, s. 2.

Same

- (10) If the employee extends the leave in accordance with subsection (6), the leave ends on the earlier of,
- (a) the day specified in the most recent certificate under subsection (6); or
 - (b) the day that is,
 - (i) if no period is prescribed for the purposes of subsection (5), 26 weeks after the leave began, or
 - (ii) if a period is prescribed for the purposes of subsection (5), 13 weeks after the end of the prescribed period. 2009, c. 16, s. 2.

Ending leave early

(11) The employee may end the leave earlier than provided in subsection (9) or (10) by giving the employer written notice at least two weeks before the day the employee wishes to end the leave. 2009, c. 16, s. 2.

Advising employer

(12) An employee who wishes to take leave under this section or to extend a leave under this section shall give the employer written notice, at least two weeks before beginning or extending the leave, if possible. 2009, c. 16, s. 2.

Same

(13) If the employee must begin or extend the leave before advising the employer, the employee shall advise the employer of the matter in writing as soon as possible after beginning or extending the leave. 2009, c. 16, s. 2.

Duty to provide certificate

(14) When the employer requires a certificate under subsection (4), (6) or (8), the employee shall provide it as soon as possible. 2009, c. 16, s. 2.

(15) REPEALED: 2018, c. 14, Sched. 1, s. 13.

Section Amendments with date in force (d/m/y)

2009, c. 16, s. 2 - 26/06/2009

2018, c. 14, Sched. 1, s. 13 - 01/01/2019

FAMILY CAREGIVER LEAVE**Family caregiver leave****Definitions**

49.3 (1) In this section,

“qualified health practitioner” means,

- (a) a person who is qualified to practise as a physician, a registered nurse or a psychologist under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (5), or
- (b) in the prescribed circumstances, a member of a prescribed class of health practitioners; (“praticien de la santé qualifié”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”) 2014, c. 6, s. 3.

Entitlement to leave

(2) An employee is entitled to a leave of absence without pay to provide care or support to an individual described in subsection (5) if a qualified health practitioner issues a certificate stating that the individual has a serious medical condition. 2014, c. 6, s. 3.

Serious medical condition

(3) For greater certainty, a serious medical condition referred to in subsection (2) may include a condition that is chronic or episodic. 2014, c. 6, s. 3.

Same

(4) An employee is entitled to take up to eight weeks leave under this section for each individual described in subsection (5) in each calendar year. 2014, c. 6, s. 3.

Application of subs. (2)

(5) Subsection (2) applies in respect of the following individuals:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child or foster child of the employee or the employee's spouse.
4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
5. The spouse of a child of the employee.
6. The employee's brother or sister.
7. A relative of the employee who is dependent on the employee for care or assistance.
8. Any individual prescribed as a family member for the purpose of this section. 2014, c. 6, s. 3; 2016, c. 23, s. 46; 2021, c. 4, Sched. 11, s. 9 (5).

Advising employer

(6) An employee who wishes to take a leave under this section shall advise his or her employer in writing that he or she will be doing so. 2014, c. 6, s. 3.

Same

(7) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it. 2014, c. 6, s. 3.

Leave deemed to be taken in entire weeks

(7.1) For the purposes of an employee's entitlement under subsection (4), if an employee takes any part of a week as leave, the employer may deem the employee to have taken one week of leave. 2017, c. 22, Sched. 1, s. 35 (1).

Copy of certificate

(8) If requested by the employer, the employee shall provide the employer with a copy of the certificate referred to in subsection (2) as soon as possible. 2014, c. 6, s. 3.

(9) REPEALED: 2018, c. 14, Sched. 1, s. 14.

Section Amendments with date in force (d/m/y)

2014, c. 6, s. 3 - 29/10/2014

2016, c. 23, s. 46 - 05/12/2016

2017, c. 22, Sched. 1, s. 35 (1, 2) - 01/01/2018

2018, c. 14, Sched. 1, s. 14 - 01/01/2019

2021, c. 4, Sched. 11, s. 9 (5) - 19/04/2021

CRITICAL ILLNESS LEAVE**Critical illness leave****Definitions**

49.4 (1) In this section,

“adult” means an individual who is 18 years or older; (“adulte”)

“critically ill”, with respect to a minor child or adult, means a minor child or adult whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury; (“gravement malade”)

“family member”, with respect to an employee, means the following:

1. The employee’s spouse.
2. A parent, step-parent or foster parent of the employee or the employee’s spouse.
3. A child, step-child or foster child of the employee or the employee’s spouse.
4. A child who is under legal guardianship of the employee or the employee’s spouse.
5. A brother, step-brother, sister or step-sister of the employee.
6. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee’s spouse.
7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
8. A son-in-law or daughter-in-law of the employee or the employee’s spouse.
9. An uncle or aunt of the employee or the employee’s spouse.
10. A nephew or niece of the employee or the employee’s spouse.
11. The spouse of the employee’s grandchild, uncle, aunt, nephew or niece.
12. A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
13. Any individual prescribed as a family member for the purpose of this definition; (“membre de la famille”)

“minor child” means an individual who is under 18 years of age; (“enfant mineur”)

“qualified health practitioner” means,

- (a) a person who is qualified to practise as a physician, a registered nurse or a psychologist under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (2) or (5), or
- (b) in the prescribed circumstances, a member of a prescribed class of health practitioners; (“praticien de la santé qualifié”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”) 2017, c. 22, Sched. 1, s. 36; 2021, c. 4, Sched. 11, s. 9 (4).

Entitlement to leave — critically ill minor child

(2) An employee who has been employed by his or her employer for at least six consecutive months is entitled to a leave of absence without pay to provide care or support to a critically ill minor child who is a family member of the employee if a qualified health practitioner issues a certificate that,

- (a) states that the minor child is a critically ill minor child who requires the care or support of one or more family members; and
- (b) sets out the period during which the minor child requires the care or support. 2017, c. 22, Sched. 1, s. 36.

Same

(3) Subject to subsection (4), an employee is entitled to take up to 37 weeks of leave under this section to provide care or support to a critically ill minor child. 2017, c. 22, Sched. 1, s. 36.

Same — period less than 37 weeks

(4) If the certificate described in subsection (2) sets out a period of less than 37 weeks, the employee is entitled to take a leave only for the number of weeks in the period specified in the certificate. 2017, c. 22, Sched. 1, s. 36.

Entitlement to leave — critically ill adult

(5) An employee who has been employed by his or her employer for at least six consecutive months is entitled to a leave of absence without pay to provide care or support to a critically ill adult who is a family member of the employee if a qualified health practitioner issues a certificate that,

- (a) states that the adult is a critically ill adult who requires the care or support of one or more family members; and
- (b) sets out the period during which the adult requires the care or support. 2017, c. 22, Sched. 1, s. 36.

Same

(6) Subject to subsection (7), an employee is entitled to take up to 17 weeks of leave under this section to provide care or support to a critically ill adult. 2017, c. 22, Sched. 1, s. 36.

Same — period less than 17 weeks

(7) If the certificate described in subsection (5) sets out a period of less than 17 weeks, the employee is entitled to take a leave only for the number of weeks in the period specified in the certificate. 2017, c. 22, Sched. 1, s. 36.

When leave must end

(8) Subject to subsection (9), a leave under this section ends no later than the last day of the period specified in the certificate described in subsection (2) or (5). 2017, c. 22, Sched. 1, s. 36.

Limitation period

(9) If the period specified in the certificate described in subsection (2) or (5) is 52 weeks or longer, the leave ends no later than the last day of the 52-week period that begins on the earlier of,

- (a) the first day of the week in which the certificate is issued; and
- (b) the first day of the week in which the minor child or adult in respect of whom the certificate was issued became critically ill. 2017, c. 22, Sched. 1, s. 36.

Death of minor child or adult

(10) If a critically ill minor child or adult dies while an employee is on a leave under this section, the employee's entitlement to be on leave under this section ends on the last day of the week in which the minor child or adult dies. 2017, c. 22, Sched. 1, s. 36.

Total amount of leave — critically ill minor child

(11) The total amount of leave that may be taken by one or more employees under this section in respect of the same critically ill minor child is 37 weeks. 2017, c. 22, Sched. 1, s. 36.

Total amount of leave — critically ill adult

(12) The total amount of leave that may be taken by one or more employees under this section in respect of the same critically ill adult is 17 weeks. 2017, c. 22, Sched. 1, s. 36.

Limitation where child turns 18

(13) If an employee takes leave in respect of a critically ill minor child under subsection (2), the employee may not take leave in respect of the same individual under subsection (5) before the 52-week period described in subsection (9) expires. 2017, c. 22, Sched. 1, s. 36.

Further leave — critically ill minor child

(14) If a minor child in respect of whom an employee has taken a leave under this section remains critically ill while the employee is on leave or after the employee returns to work, but before the 52-week period described in subsection (9) expires, the employee is entitled to take an extension of the leave or a new leave if,

- (a) a qualified health practitioner issues an additional certificate described in subsection (2) for the minor child that sets out a different period during which the minor child requires care or support;
- (b) the amount of leave that has been taken and the amount of leave the employee takes under this subsection does not exceed 37 weeks in total; and
- (c) the leave ends no later than the last day of the 52-week period described in subsection (9). 2017, c. 22, Sched. 1, s. 36.

Further leave — critically ill adult

(15) If an adult in respect of whom an employee has taken a leave under this section remains critically ill while the employee is on leave or after the employee returns to work, but before the 52-week period described in subsection (9) expires, the employee is entitled to take an extension of the leave or a new leave if,

- (a) a qualified health practitioner issues an additional certificate described in subsection (5) for the adult that sets out a different period during which the adult requires care or support;
- (b) the amount of leave that has been taken and the amount of leave the employee takes under this subsection does not exceed 17 weeks in total; and

(c) the leave ends no later than the last day of the 52-week period described in subsection (9). 2017, c. 22, Sched. 1, s. 36.

Additional leaves

(16) If a minor child or adult in respect of whom an employee has taken a leave under this section remains critically ill after the 52-week period described in subsection (9) expires, the employee is entitled to take another leave and the requirements of this section apply to the new leave. 2017, c. 22, Sched. 1, s. 36.

Advising employer

(17) An employee who wishes to take a leave under this section shall advise his or her employer in writing that he or she will be doing so and shall provide the employer with a written plan that indicates the weeks in which he or she will take the leave. 2017, c. 22, Sched. 1, s. 36.

Same

(18) If an employee must begin a leave under this section before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it and shall provide the employer with a written plan that indicates the weeks in which he or she will take the leave. 2017, c. 22, Sched. 1, s. 36.

Same — change in employees plan

(19) An employee may take a leave at a time other than that indicated in the plan provided under subsection (17) or (18) if the change to the time of the leave meets the requirements of this section and,

- (a) the employee requests permission from the employer to do so in writing and the employer grants permission in writing; or
- (b) the employee provides the employer with such written notice of the change as is reasonable in the circumstances. 2017, c. 22, Sched. 1, s. 36.

Copy of certificate

(20) If requested by the employer, the employee shall provide the employer with a copy of the certificate referred to in subsection (2) or (5) or clause (14) (a) or (15) (a) as soon as possible. 2017, c. 22, Sched. 1, s. 36.

(21) REPEALED: 2018, c. 14, Sched. 1, s. 15.

Transition

(22) If a certificate mentioned in subsection (2) or (12), as those subsections read immediately before the day section 36 of Schedule 1 to the *Fair Workplaces, Better Jobs Act, 2017* came into force, was issued before that day, then this section, as it read immediately before that day, applies. 2017, c. 22, Sched. 1, s. 36.

Section Amendments with date in force (d/m/y)

2014, c. 6, s. 3 - 29/10/2014

2017, c. 22, Sched. 1, s. 36 - 03/12/2017

2018, c. 14, Sched. 1, s. 15 - 01/01/2019

2021, c. 4, Sched. 11, s. 9 (4) - 19/04/2021

CHILD DEATH LEAVE

Child death leave

Definitions

49.5 (1) In this section,

“child” means a child, step-child, foster child or child who is under legal guardianship, and who is under 18 years of age; (“enfant”)

“crime” means an offence under the *Criminal Code* (Canada), other than an offence prescribed by the regulations made under paragraph 209.4 (f) of the *Canada Labour Code* (Canada); (“acte criminel”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”) 2017, c. 22, Sched. 1, s. 38.

Entitlement to leave

(2) An employee who has been employed by an employer for at least six consecutive months is entitled to a leave of absence without pay of up to 104 weeks if a child of the employee dies. 2017, c. 22, Sched. 1, s. 38.

Exception

(3) An employee is not entitled to a leave of absence under this section if the employee is charged with a crime in relation to the death of the child or if it is probable, considering the circumstances, that the child was a party to a crime in relation to his or her death. 2017, c. 22, Sched. 1, s. 38.

Single period

(4) An employee may take a leave under this section only in a single period. 2017, c. 22, Sched. 1, s. 38.

Limitation period

(5) An employee may take a leave under this section only during the 105-week period that begins in the week the child dies. 2017, c. 22, Sched. 1, s. 38.

Total amount of leave

(6) The total amount of leave that may be taken by one or more employees under this section in respect of a death, or deaths that are the result of the same event, is 104 weeks. 2017, c. 22, Sched. 1, s. 38.

Advising employer

(7) An employee who wishes to take a leave under this section shall advise the employer in writing and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave. 2017, c. 22, Sched. 1, s. 38.

Same

(8) If an employee must begin a leave under this section before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave. 2017, c. 22, Sched. 1, s. 38.

Same — change in employee's plan

(9) An employee may take a leave at a time other than that indicated in the plan provided under subsection (7) or (8) if the change to the time of the leave meets the requirements of this section and,

- (a) the employee requests permission from the employer to do so in writing and the employer grants permission in writing; or
- (b) the employee provides the employer with four weeks written notice before the change is to take place. 2017, c. 22, Sched. 1, s. 38.

Evidence

(10) An employer may require an employee who takes a leave under this section to provide evidence reasonable in the circumstances of the employee's entitlement to the leave. 2017, c. 22, Sched. 1, s. 38.

(11) REPEALED: 2018, c. 14, Sched. 1, s. 16.

Transition

(12) If, on December 31, 2017, an employee was on a crime-related child death or disappearance leave under this section, as it read on that date, then the employee's entitlement to the leave continues in accordance with this section as it read on that date. 2017, c. 22, Sched. 1, s. 38.

Section Amendments with date in force (d/m/y)

2014, c. 6, s. 3 - 29/10/2014

2017, c. 22, Sched. 1, s. 38 - 01/01/2018

2018, c. 14, Sched. 1, s. 16 - 01/01/2019

CRIME-RELATED CHILD DISAPPEARANCE LEAVE**Crime-related child disappearance leave****Definitions**

49.6 (1) In this section,

“child” means a child, step-child, foster child or child who is under legal guardianship, and who is under 18 years of age; (“enfant”)

“crime” means an offence under the *Criminal Code* (Canada), other than an offence prescribed by the regulations made under paragraph 209.4 (f) of the *Canada Labour Code* (Canada); (“acte criminel”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”) 2017, c. 22, Sched. 1, s. 38.

Entitlement to leave

(2) An employee who has been employed by an employer for at least six consecutive months is entitled to a leave of absence without pay of up to 104 weeks if a child of the employee disappears and it is probable, considering the circumstances, that the child disappeared as a result of a crime. 2017, c. 22, Sched. 1, s. 38.

Transition

(3) Despite subsection (2), if the disappearance occurred before January 1, 2018, the employee is entitled to a leave of absence without pay in accordance with section 49.5 as it read on December 31, 2017. 2017, c. 22, Sched. 1, s. 38.

Exception

(4) An employee is not entitled to a leave of absence under this section if the employee is charged with the crime or if it is probable, considering the circumstances, that the child was a party to the crime. 2017, c. 22, Sched. 1, s. 38.

Change in circumstance

(5) If an employee takes a leave of absence under this section and the circumstances that made it probable that the child of the employee disappeared as a result of a crime change and it no longer seems probable that the child disappeared as a result of a crime, the employee’s entitlement to leave ends on the day on which it no longer seems probable. 2017, c. 22, Sched. 1, s. 38.

Child found

(6) The following rules apply if an employee takes a leave of absence under this section and the child is found within the 104-week period that begins in the week the child disappears:

1. If the child is found alive, the employee is entitled to remain on leave under this section for 14 days after the child is found.
2. If the child is found dead, the employee’s entitlement to be on leave under this section ends at the end of the week in which the child is found. 2017, c. 22, Sched. 1, s. 38.

Same

(7) For greater certainty, nothing in paragraph 2 of subsection (6) affects the employee’s eligibility for child death leave under section 49.5. 2017, c. 22, Sched. 1, s. 38.

Single period

(8) An employee may take a leave under this section only in a single period. 2017, c. 22, Sched. 1, s. 38.

Limitation period

(9) Except as otherwise provided for in subsection (8), an employee may take a leave under this section only during the 105-week period that begins in the week the child disappears. 2017, c. 22, Sched. 1, s. 38.

Total amount of leave

(10) The total amount of leave that may be taken by one or more employees under this section in respect of a disappearance, or disappearances that are the result of the same event, is 104 weeks. 2017, c. 22, Sched. 1, s. 38.

Advising employer

(11) An employee who wishes to take a leave under this section shall advise the employer in writing and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave. 2017, c. 22, Sched. 1, s. 38.

Same

(12) If an employee must begin a leave under this section before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave. 2017, c. 22, Sched. 1, s. 38.

Same — change in employee's plan

(13) An employee may take a leave at a time other than that indicated in the plan provided under subsection (11) or (12) if the change to the time of the leave meets the requirements of this section and,

- (a) the employee requests permission from the employer to do so in writing and the employer grants permission in writing; or
- (b) the employee provides the employer with four weeks written notice before the change is to take place. 2017, c. 22, Sched. 1, s. 38.

Evidence

(14) An employer may require an employee who takes a leave under this section to provide evidence reasonable in the circumstances of the employee's entitlement to the leave. 2017, c. 22, Sched. 1, s. 38.

(15) REPEALED: 2018, c. 14, Sched. 1, s. 17.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 38 - 01/01/2018

2018, c. 14, Sched. 1, s. 17 - 01/01/2019

DOMESTIC OR SEXUAL VIOLENCE LEAVE**Domestic or sexual violence leave****Definitions**

49.7 (1) In this section,

“child” means a child, step-child, foster child or child who is under legal guardianship, and who is under 18 years of age; (“enfant”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”) 2017, c. 22, Sched. 1, s. 38.

Entitlement to leave

(2) An employee who has been employed by an employer for at least 13 consecutive weeks is entitled to a leave of absence if the employee or a child of the employee experiences domestic or sexual violence, or the threat of domestic or sexual violence, and the leave of absence is taken for any of the following purposes:

1. To seek medical attention for the employee or the child of the employee in respect of a physical or psychological injury or disability caused by the domestic or sexual violence.
2. To obtain services from a victim services organization for the employee or the child of the employee.
3. To obtain psychological or other professional counselling for the employee or the child of the employee.
4. To relocate temporarily or permanently.
5. To seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence.
6. Such other purposes as may be prescribed. 2017, c. 22, Sched. 1, s. 38.

Exception

(3) Subsection (2) does not apply if the domestic or sexual violence is committed by the employee. 2017, c. 22, Sched. 1, s. 38.

Length of leave

(4) An employee is entitled to take, in each calendar year,

- (a) up to 10 days of leave under this section; and
- (b) up to 15 weeks of leave under this section. 2017, c. 22, Sched. 1, s. 38.

Entitlement to paid leave

(5) If an employee takes a leave under this section, the employee is entitled to take the first five such days as paid days of leave in each calendar year and the balance of his or her entitlement under this section as unpaid leave. 2017, c. 22, Sched. 1, s. 38.

Domestic or sexual violence leave pay

(6) Subject to subsections (7) and (8), if an employee takes a paid day of leave under this section, the employer shall pay the employee,

- (a) either,
 - (i) the wages the employee would have earned had they not taken the leave, or
 - (ii) if the employee receives performance-related wages, including commissions or a piece work rate, the greater of the employee's hourly rate, if any, and the minimum wage that would have applied to the employee for the number of hours the employee would have worked had they not taken the leave; or
- (b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation. 2017, c. 22, Sched. 1, s. 38.

Domestic or sexual violence leave where higher rate of wages

(7) If a paid day of leave under this section falls on a day or at a time of day when overtime pay, a shift premium, or both would be payable by the employer,

- (a) the employee is not entitled to more than his or her regular rate for any leave taken under this section; and
- (b) the employee is not entitled to the shift premium for any leave taken under this section. 2017, c. 22, Sched. 1, s. 38.

Domestic or sexual violence leave on public holiday

(8) If a paid day of leave under this section falls on a public holiday, the employee is not entitled to premium pay for any leave taken under this section. 2017, c. 22, Sched. 1, s. 38.

Leave deemed to be taken in entire days

(9) For the purposes of an employee's entitlement under clause (4) (a), if an employee takes any part of a day as leave, the employer may deem the employee to have taken one day of leave on that day. 2017, c. 22, Sched. 1, s. 38.

Advising employer

(10) An employee who wishes to take leave under clause (4) (a) shall advise the employer that the employee will be doing so. 2017, c. 22, Sched. 1, s. 38.

Same

(11) If an employee must begin a leave under clause (4) (a) before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it. 2017, c. 22, Sched. 1, s. 38.

Leave deemed to be taken in entire weeks

(12) For the purposes of an employee's entitlement under clause (4) (b), if an employee takes any part of a week as leave, the employer may deem the employee to have taken one week of leave. 2017, c. 22, Sched. 1, s. 38.

Advising employer

(13) An employee who wishes to take a leave under clause (4) (b) shall advise the employer in writing that the employee will be doing so. 2017, c. 22, Sched. 1, s. 38.

Same

(14) If an employee must begin a leave under clause (4) (b) before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it. 2017, c. 22, Sched. 1, s. 38.

Evidence

(15) An employer may require an employee who takes a leave under this section to provide evidence reasonable in the circumstances of the employee's entitlement to the leave. 2017, c. 22, Sched. 1, s. 38.

(16) REPEALED: 2018, c. 14, Sched. 1, s. 18.

Confidentiality

(17) An employer shall ensure that mechanisms are in place to protect the confidentiality of records given to or produced by the employer that relate to an employee taking a leave under this section. 2017, c. 22, Sched. 1, s. 38.

Disclosure permitted

(18) Nothing in subsection (17) prevents an employer from disclosing a record where,

- (a) the employee has consented to the disclosure of the record;
- (b) disclosure is made to an officer, employee, consultant or agent of the employer who needs the record in the performance of their duties;
- (c) the disclosure is authorized or required by law; or
- (d) the disclosure is prescribed as a permitted disclosure. 2017, c. 22, Sched. 1, s. 38.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 38 - 01/01/2018

2018, c. 14, Sched. 1, s. 18 - 01/01/2019

SICK LEAVE**Sick leave**

50 (1) An employee who has been employed by an employer for at least two consecutive weeks is entitled to a leave of absence without pay because of a personal illness, injury or medical emergency. 2018, c. 14, Sched. 1, s. 19.

Same, limit

(2) An employee's entitlement to leave under this section is limited to a total of three days in each calendar year. 2018, c. 14, Sched. 1, s. 19.

Advising employer

(3) An employee who wishes to take a leave under this section shall advise his or her employer that he or she will be doing so. 2018, c. 14, Sched. 1, s. 19.

Same

(4) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it. 2018, c. 14, Sched. 1, s. 19.

Leave deemed to be taken in entire days

(5) For the purposes of an employee's entitlement under subsection (1), if an employee takes any part of a day as leave under this section, the employer may deem the employee to have taken one day of leave on that day. 2018, c. 14, Sched. 1, s. 19.

Evidence

(6) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave. 2018, c. 14, Sched. 1, s. 19.

Sick leave taken under employment contract

(7) If an employee takes a paid or unpaid leave of absence under an employment contract in circumstances for which he or she would also be entitled to take a leave under this section, the employee is deemed to have taken the leave under this section. 2018, c. 14, Sched. 1, s. 19.

Same, application of Act to deemed leave

(8) All applicable requirements and prohibitions under this Act apply to a leave deemed to have been taken under subsection (7). 2018, c. 14, Sched. 1, s. 19.

Same, application of subs. (5) to deemed leave

(9) Subsection (5) applies with necessary modifications to a leave deemed to have been taken under subsection (7). 2018, c. 14, Sched. 1, s. 19.

Section Amendments with date in force (d/m/y)

2004, c. 15, s. 4 - 29/06/2004; 2004, c. 21, s. 8 - 1/03/2005

2006, c. 13, s. 3 (2) - 30/06/2006

2016, c. 23, s. 46 - 05/12/2016

2017, c. 22, Sched. 1, s. 39 (1-3) - 01/01/2018

2018, c. 14, Sched. 1, s. 19 - 01/01/2019

FAMILY RESPONSIBILITY LEAVE

Family responsibility leave

50.0.1 (1) An employee who has been employed by an employer for at least two consecutive weeks is entitled to a leave of absence without pay because of any of the following:

1. The illness, injury or medical emergency of an individual described in subsection (3).
2. An urgent matter that concerns an individual described in subsection (3). 2018, c. 14, Sched. 1, s. 19.

Same, limit

(2) An employee's entitlement to leave under this section is limited to a total of three days in each calendar year. 2018, c. 14, Sched. 1, s. 19.

Family members

(3) Subsection (1) applies with respect to the following individuals:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child or foster child of the employee or the employee's spouse.
4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse.
5. The spouse of a child of the employee.
6. The employee's brother or sister.
7. A relative of the employee who is dependent on the employee for care or assistance. 2018, c. 14, Sched. 1, s. 19; 2021, c. 4, Sched. 11, s. 9 (5).

Advising employer

(4) An employee who wishes to take a leave under this section shall advise his or her employer that he or she will be doing so. 2018, c. 14, Sched. 1, s. 19.

Same

(5) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it. 2018, c. 14, Sched. 1, s. 19.

Leave deemed to be taken in entire days

(6) For the purposes of an employee's entitlement under subsection (1), if an employee takes any part of a day as leave under this section, the employer may deem the employee to have taken one day of leave on that day. 2018, c. 14, Sched. 1, s. 19.

Evidence

(7) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave. 2018, c. 14, Sched. 1, s. 19.

Family responsibility leave taken under employment contract

(8) If an employee takes a paid or unpaid leave of absence under an employment contract in circumstances for which he or she would also be entitled to take a leave under this section, the employee is deemed to have taken the leave under this section. 2018, c. 14, Sched. 1, s. 19.

Same, application of Act to deemed leave

(9) All applicable requirements and prohibitions under this Act apply to a leave deemed to have been taken under subsection (8). 2018, c. 14, Sched. 1, s. 19.

Same, application of subs. (6) to deemed leave

(10) Subsection (6) applies with necessary modifications to a leave deemed to have been taken under subsection (8). 2018, c. 14, Sched. 1, s. 19.

Section Amendments with date in force (d/m/y)

2018, c. 14, Sched. 1, s. 19 - 01/01/2019

2021, c. 4, Sched. 11, s. 9 (5) - 19/04/2021

BEREAVEMENT LEAVE**Bereavement leave**

50.0.2 (1) An employee who has been employed by an employer for at least two consecutive weeks is entitled to a leave of absence without pay because of the death of an individual described in subsection (3). 2018, c. 14, Sched. 1, s. 19.

Same, limit

(2) An employee's entitlement to leave under this section is limited to a total of two days in each calendar year. 2018, c. 14, Sched. 1, s. 19.

Family members

(3) Subsection (1) applies with respect to the following individuals:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child or foster child of the employee or the employee's spouse.
4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse.
5. The spouse of a child of the employee.
6. The employee's brother or sister.
7. A relative of the employee who is dependent on the employee for care or assistance. 2018, c. 14, Sched. 1, s. 19; 2021, c. 4, Sched. 11, s. 9 (5).

Advising employer

(4) An employee who wishes to take a leave under this section shall advise his or her employer that he or she will be doing so. 2018, c. 14, Sched. 1, s. 19.

Same

(5) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it. 2018, c. 14, Sched. 1, s. 19.

Leave deemed to be taken in entire days

(6) For the purposes of an employee's entitlement under subsection (1), if an employee takes any part of a day as leave under this section, the employer may deem the employee to have taken one day of leave on that day. 2018, c. 14, Sched. 1, s. 19.

Evidence

(7) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave. 2018, c. 14, Sched. 1, s. 19.

Bereavement leave taken under employment contract

(8) If an employee takes a paid or unpaid leave of absence under an employment contract in circumstances for which he or she would also be entitled to take a leave under this section, the employee is deemed to have taken the leave under this section. 2018, c. 14, Sched. 1, s. 19.

Same, application of Act to deemed leave

(9) All applicable requirements and prohibitions under this Act apply to a leave deemed to have been taken under subsection (8). 2018, c. 14, Sched. 1, s. 19.

Same, application of subs. (6) to deemed leave

(10) Subsection (6) applies with necessary modifications to a leave deemed to have been taken under subsection (8). 2018, c. 14, Sched. 1, s. 19.

Section Amendments with date in force (d/m/y)

2018, c. 14, Sched. 1, s. 19 - 01/01/2019

2021, c. 4, Sched. 11, s. 9 (5) - 19/04/2021

EMERGENCY LEAVE: DECLARED EMERGENCIES AND INFECTIOUS DISEASE EMERGENCIES

Emergency leave: declared emergencies and infectious disease emergencies

50.1 (1) In this section,

“board of health” has the same meaning as in the *Health Protection and Promotion Act*; (“conseil de santé”)

“designated infectious disease” means an infectious disease designated by the regulations for the purposes of this section; (“maladie infectieuse désignée”)

“public health official” means,

- (a) within the meaning of the *Health Protection and Promotion Act*,
 - (i) the Chief Medical Officer of Health or Associate Chief Medical Officer of Health,
 - (ii) a medical officer of health or an associate medical officer of health, or
 - (iii) an employee of a board of health, or
- (b) a public health official of the Government of Canada; (“fonctionnaire de la santé publique”)

“qualified health practitioner” means,

- (a) a person who is qualified to practise as a physician or nurse under the laws of the jurisdiction in which care or treatment is provided to the employee or an individual described in subsection (8), or
- (b) in the prescribed circumstances, a member of a prescribed class of health practitioners. (“praticien de la santé qualifié”) 2020, c. 3, s. 4 (1).

Interpretation, treatment

(1.0.1) For greater certainty, in this section, a reference to treatment related to a designated infectious disease includes receiving a vaccine for the designated infectious disease and recovery from associated side effects. 2021, c. 9, s. 2 (1).

Leave of absence without pay

(1.1) An employee is entitled to a leave of absence without pay if the employee will not be performing the duties of his or her position,

- (a) because of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* and,
 - (i) because of an order that applies to him or her made under section 7.0.2 of the *Emergency Management and Civil Protection Act*,
 - (ii) because of an order that applies to him or her made under the *Health Protection and Promotion Act*,
 - (iii) because he or she is needed to provide care or assistance to an individual referred to in subsection (8), or
 - (iv) because of such other reasons as may be prescribed; or
- (b) because of one or more of the following reasons related to a designated infectious disease:
 - (i) The employee is under individual medical investigation, supervision or treatment related to the designated infectious disease.
 - (ii) The employee is acting in accordance with an order under section 22 or 35 of the *Health Protection and Promotion Act* that relates to the designated infectious disease.
 - (iii) The employee is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to

one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.

- (iv) The employee is under a direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease.
- (v) The employee is providing care or support to an individual referred to in subsection (8) because of a matter related to the designated infectious disease that concerns that individual, including, but not limited to, school or day care closures.
- (vi) The employee is directly affected by travel restrictions related to the designated infectious disease and, under the circumstances, cannot reasonably be expected to travel back to Ontario.
- (vii) Such other reasons as may be prescribed. 2020, c. 3, s. 4 (1).

Leave of absence with pay

(1.2) In addition to any entitlement under subsection (1.1), an employee is entitled to a paid leave of absence if the employee will not be performing the duties of the employee's position because of one or more of the following reasons related to a designated infectious disease:

1. The employee is under individual medical investigation, supervision or treatment related to the designated infectious disease.
2. The employee is acting in accordance with an order under section 22 or 35 of the *Health Protection and Promotion Act* that relates to the designated infectious disease.
3. The employee is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.
4. The employee is under a direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease.
5. The employee is providing care or support to an individual referred to in subsection (8) because,
 - i. the individual is under individual medical investigation, supervision or treatment related to the designated infectious disease, or
 - ii. the individual is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means. 2021, c. 9, s. 2 (2).

Limit, number of days

(1.3) Subject to subsection (1.4), an employee is entitled to take a total of three paid days of leave under subsection (1.2). 2021, c. 9, s. 2 (2).

Paid leave taken under employment contract

(1.4) If, on April 19, 2021, an employee is entitled to take paid leave under an employment contract in any of the circumstances for which the employee would also be entitled to take a leave under subsection (1.2), the employee's entitlement under subsection (1.3) is reduced by the employee's entitlement under the contract. 2021, c. 9, s. 2 (2).

Same

(1.5) Subsection (1.4) applies only if the employer is required under the employment contract to pay the employee for the paid leave an amount that is equal to or greater than what the employee would be entitled to under subsection (1.11). 2021, c. 9, s. 2 (2).

Leave deemed to be taken in entire days

(1.6) If an employee takes any part of a day as paid leave under subsection (1.2), the employer may deem the employee to have taken one paid day of leave on that day for the purposes of subsection (1.3). 2021, c. 9, s. 2 (2).

Paid days first

(1.7) Subject to subsections (1.8) and (1.9), an employee is entitled to take the three paid days of leave before any of the unpaid days of leave. 2021, c. 9, s. 2 (2).

Same, election re unpaid days

(1.8) If an employee is entitled to both paid leave and unpaid leave under this section, the employee may elect to take one or more days or parts of a day of leave as unpaid leave only if the employee advises the employer in writing, before the end of the pay period in which the leave occurs, that the employee has elected to take that time as unpaid leave. 2021, c. 9, s. 2 (2).

Same

(1.9) If, between April 19, 2021 and the day the *COVID-19 Putting Workers First Act, 2021* receives Royal Assent, an employee takes unpaid leave under subsection (1.1) in circumstances for which the employee would also be entitled to take a leave under subsection (1.2), the employee may elect to be paid for that leave only if the employee advises the employer in writing before the day that is 14 days after the *COVID-19 Putting Workers First Act, 2021* receives Royal Assent, that the employee has elected to take the leave as paid leave, and the employee is deemed to have taken the leave under subsection (1.2). 2021, c. 9, s. 2 (2).

Same

(1.10) Despite subsection 11 (1), if an employee elects to take paid leave under subsection (1.9), the employer shall pay the employee the amount to which the employee is entitled no later than the pay day for the pay period in which the employee made the election. 2021, c. 9, s. 2 (2).

Paid leave

(1.11) Subject to subsections (1.12) and (1.13), if an employee takes paid leave under subsection (1.2), the employer shall pay the employee the lesser of \$200 per day and,

- (a) either,
 - (i) the wages the employee would have earned had they not taken the leave, or
 - (ii) if the employee receives performance-related wages, including commissions or a piece work rate, the greater of the employee's hourly rate, if any, and the minimum wage that would have applied to the employee for the number of hours the employee would have worked had they not taken the leave; or
- (b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation. 2021, c. 9, s. 2 (2).

Paid leave where higher rate of wages

(1.12) If a paid day of leave under subsection (1.2) falls on a day or at a time of day when overtime pay, a shift premium or both would be payable by the employer,

- (a) the employee is not entitled to more than the employee's regular rate for any leave taken under subsection (1.2); and
- (b) the employee is not entitled to the shift premium for any leave taken under subsection (1.2). 2021, c. 9, s. 2 (2).

Paid leave on public holiday

(1.13) If a paid day of leave under subsection (1.2) falls on a public holiday, the employee is not entitled to premium pay for any leave taken under subsection (1.2). 2021, c. 9, s. 2 (2).

Advising employer

(2) An employee who takes leave under this section shall advise his or her employer that he or she will be doing so. 2006, c. 13, s. 3 (3).

Same

(3) If the employee begins the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it. 2006, c. 13, s. 3 (3).

Evidence of entitlement, declared emergency

(4) An employer may require an employee who takes leave under clause (1.1) (a) to provide evidence reasonable in the circumstances, at a time that is reasonable in the circumstances, that the employee is entitled to the leave. 2020, c. 3, s. 4 (2).

Evidence of entitlement, infectious disease emergency

(4.1) An employer may require an employee who takes leave under clause (1.1) (b) or subsection (1.2) to provide evidence reasonable in the circumstances, at a time that is reasonable in the circumstances, that the employee is entitled to the leave, but shall not require an employee to provide a certificate from a qualified health practitioner as evidence. 2020, c. 3, s. 4 (2); 2021, c. 9, s. 2 (3).

Limit, declared emergency

(5) An employee is entitled to take a leave under clause (1.1) (a) for as long as he or she is not performing the duties of his or her position because of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* and a reason referred to in subclauses (1.1) (a) (i) to (iv), but, subject to subsection (6), the entitlement ends on the day the emergency is terminated or disallowed. 2020, c. 3, s. 4 (2).

Limit, infectious disease emergency

(5.1) An employee is entitled to take a leave under clause (1.1) (b) starting on the prescribed date and for as long as,

- (a) he or she is not performing the duties of his or her position because of a reason referred to in subclauses (1.1) (b) (i) to (vii); and
- (b) the infectious disease is designated by the regulations for the purposes of this section. 2020, c. 3, s. 4 (2).

Same, paid leave

(5.2) An employee's entitlement to paid leave under subsection (1.2) is deemed to have started on April 19, 2021 and ends on September 25, 2021 or such later date as may be prescribed. 2021, c. 9, s. 2 (4).

Same

(5.3) If the regulations so provide, an employee is entitled to paid leave under subsection (1.2) for such additional periods as may be prescribed. 2021, c. 9, s. 2 (4).

Limit

(6) If an employee took leave because he or she was not performing the duties of his or her position because of an emergency that has been terminated or disallowed and because of an order made under subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act* and the order is extended under subsection 7.0.8 (4) of that Act, the employee's entitlement to leave continues during the period of the extension if he or she is not performing the duties of his or her position because of the order. 2006, c. 13, s. 3 (3).

Protecting a Sustainable Public Sector for Future Generations Act, 2019

(7) This section applies despite the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, and payments made in accordance with subsection (1.11) are not an increase to existing compensation entitlements or new compensation entitlements for the purposes of that Act. 2021, c. 9, s. 2 (5).

Care, assistance, support — specified individuals

(8) Subclauses (1.1) (a) (iii) and (1.1) (b) (v) apply with respect to the following individuals:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child or foster child of the employee or the employee's spouse.
4. A child who is under legal guardianship of the employee or the employee's spouse.
5. A brother, step-brother, sister or step-sister of the employee.
6. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
8. A son-in-law or daughter-in-law of the employee or the employee's spouse.
9. An uncle or aunt of the employee or the employee's spouse.

10. A nephew or niece of the employee or the employee's spouse.
11. The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
12. A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
13. Any individual prescribed as a family member for the purposes of this section. 2020, c. 3, s. 4 (3); 2021, c. 4, Sched. 11, s. 9 (5).

(9) REPEALED: 2020, c. 3, s. 4 (4).

Retroactive order

(10) If an order made under section 7.0.2 of the *Emergency Management and Civil Protection Act* is made retroactive pursuant to subsection 7.2 (1) of that Act,

- (a) an employee who does not perform the duties of his or her position because of the declared emergency and the order is deemed to have been on leave beginning on the first day the employee did not perform the duties of his or her position on or after the date to which the order was made retroactive; and
- (b) clauses 74 (1) (a) and 74.12 (1) (a) apply with necessary modifications in relation to the deemed leave described in clause (a). 2006, c. 13, s. 3 (3); 2020, c. 3, s. 4 (5).

Section Amendments with date in force (d/m/y)

2006, c. 13, s. 3 (3) - 30/06/2006

2016, c. 23, s. 46 - 05/12/2016

2018, c. 14, Sched. 1, s. 20 - 01/01/2019

2020, c. 3, s. 4 (1-5) - 19/03/2020

2021, c. 4, Sched. 11, s. 9 (5) - 19/04/2021; 2021, c. 9, s. 2 (1-5) - 29/04/2021

Reimbursement of certain payments made under s. 50.1

Definition

50.1.1 (1) In this section,

“Board” means the Workplace Safety and Insurance Board, continued under subsection 159 (1) of the *Workplace Safety and Insurance Act, 1997*, despite the definition of “Board” in subsection 1 (1) of this Act. 2021, c. 9, s. 3.

Reimbursement for paid leave

(2) An employer may apply to the Board, in accordance with this section, to be reimbursed for payments made to an employee for paid leave taken under subsection 50.1 (1.2). 2021, c. 9, s. 3.

Same, maximum

(3) An employer is entitled to be reimbursed for payments made to an employee for paid leave taken under subsection 50.1 (1.2) up to a maximum of \$200 per day, per employee. 2021, c. 9, s. 3.

Same, exclusion

(4) Despite subsection 50.1 (1.9), an employer is not entitled to be reimbursed for payments made to an employee on or after the day the *COVID-19 Putting Workers First Act, 2021* receives Royal Assent for a paid leave of absence under an employment contract in circumstances for which the employee would also be entitled to take a leave under subsection 50.1 (1.2). 2021, c. 9, s. 3.

Same, exclusion re change to employment contract

(5) If, under an employment contract that was in effect on April 19, 2021, an employee was entitled to a paid leave of absence in circumstances for which the employee would also be entitled to take a leave under subsection 50.1 (1.2), but due to a change to the employment contract on or after April 19, 2021, the employee is no longer entitled to some or all of the paid leave of absence that the employee was entitled to before the change, the employer is not entitled to be reimbursed for payments made to that employee for a paid leave of absence, whether the leave is taken under subsection 50.1 (1.2) or under the employment contract, to the extent that the employee was entitled to the leave of absence under the employment contract before the change. 2021, c. 9, s. 3.

Same, exclusion re payments made under the *Workplace Safety and Insurance Act, 1997*

(6) An employer is not entitled to be reimbursed for payments made to an employee for paid leave taken under subsection 50.1 (1.2) if the employee received benefits under the *Workplace Safety and Insurance Act, 1997* for the days of leave. 2021, c. 9, s. 3.

Application for reimbursement

(7) An application under this section shall be made by filing the following with the Board:

1. A completed application in the form approved by the Board.
2. An attestation, to be completed by the employer in the form approved by the Board that,
 - i. confirms that the employer made a payment to the employee for paid leave taken under subsection 50.1 (1.2),
 - ii. specifies the dates on which the leave was taken by the employee,
 - iii. specifies the date on which the payment was made and the amount of the payment made, and
 - iv. confirms that, on or after April 19, 2021, the employer was not otherwise required under an employment contract to make the payment to the employee.
3. A record of the payment made to the employee in the form approved by the Board.
4. Information about claims filed with the Board under the *Workplace Safety and Insurance Act, 1997* in respect of the employee.
5. Any other information required by the Board. 2021, c. 9, s. 3.

Time limit

(8) An application under this section shall be made within 120 days of the payment in respect of which the application is made. 2021, c. 9, s. 3.

Same, final date for application

(9) Despite subsection (8), no application under this section shall be made by an employer or accepted by the Board,

- (a) after January 25, 2022;
- (b) if a later date is prescribed for the purposes of subsection 50.1 (5.2), 120 days after that later date; or
- (c) if an additional period is prescribed for the purposes of subsection 50.1 (5.3), 120 days after the last day of that period. 2021, c. 9, s. 3.

No determination if application incomplete

(10) The Board shall not make a determination regarding an employer's entitlement to reimbursement under this section if the employer's application does not meet the requirements of subsection (7) or is not filed within the time limits set out in subsections (8) and (9). 2021, c. 9, s. 3.

Determination of entitlement

(11) The Board shall make a determination regarding an employer's entitlement to reimbursement under this section after receiving the employer's application and shall advise the employer of its determination in writing after making its determination. 2021, c. 9, s. 3.

Same, payment

(12) If the Board determines that an employer is entitled to be reimbursed under this section, the Board shall pay the employer the amount to which the employer is entitled. 2021, c. 9, s. 3.

No right of reconsideration or appeal

(13) A determination made by the Board regarding an employer's entitlement to reimbursement under this section is not a final decision of the Board for the purposes of the *Workplace Safety and Insurance Act, 1997* and an employer has no right of reconsideration by, or appeal to, the Board or the Workplace Safety and Insurance Appeals Tribunal in respect of a determination made by the Board under this section. 2021, c. 9, s. 3.

Hearing not required

(14) The Board is not required to hold a hearing when making a determination or exercising a power under this section. 2021, c. 9, s. 3.

No complaint

(15) Section 96 does not apply to a determination made by the Board under this section. 2021, c. 9, s. 3.

Overpayments

(16) If the Board pays an employer an amount in excess of the amount to which the employer is entitled under this section, the amount of the excess is an overpayment and is an amount owing under this Act. 2021, c. 9, s. 3.

Same

(17) If the Board pays an employer an amount under this section and the employee in respect of whom the employer was paid subsequently receives benefits under the *Workplace Safety and Insurance Act, 1997* for the days of leave for which the employer was paid, the amount of the payment to the employer is an overpayment and is an amount owing under this Act. 2021, c. 9, s. 3.

Same

(18) An overpayment made by the Board under this section may be recovered from the employer by the Board or the Ministry in accordance with the prescribed process. 2021, c. 9, s. 3.

Ministry to make payments to Board

(19) The Ministry shall make payments to the Board to defray the costs of administering this section, including the cost of payments made to employers and the administration costs of the Board. 2021, c. 9, s. 3.

Same, appropriation

(20) Money required to defray the costs of administering this section shall be paid out of the money appropriated by the Ministry from the Consolidated Revenue Fund for that purpose by the Legislature. 2021, c. 9, s. 3.

Repayment by Board

(21) On or before the prescribed date, the Board shall pay the Ministry any amounts paid to the Board under subsection (19) that are no longer required for the purpose of administering this section. 2021, c. 9, s. 3.

Same, payments not part of insurance fund

(22) Payments made to the Board under subsection (19) shall not form a part of the insurance fund that is administered by the Board under the *Workplace Safety and Insurance Act, 1997* and the Board shall not make any payments from the insurance fund for any purpose under this section. 2021, c. 9, s. 3.

Contract for services

(23) The Board may enter into a contract or agreement with any person for the purpose of administering this section. 2021, c. 9, s. 3.

Recordkeeping

(24) The Board shall maintain such records relating to the administration of this section as are required by the Ministry, including records that are necessary to verify applications and payments made under this section, and shall provide those records to the Ministry. 2021, c. 9, s. 3.

Collection and use of information

(25) The Board may collect and use personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* for the purpose of administering this section. 2021, c. 9, s. 3.

Same

(26) The Board may use information collected under the authority of this section for the purpose of administering and enforcing the *Workplace Safety and Insurance Act, 1997*. 2021, c. 9, s. 3.

Same

(27) The Board may use information collected under the authority of the *Workplace Safety and Insurance Act, 1997* for the purpose of administering this section. 2021, c. 9, s. 3.

Disclosure of information

(28) Except as otherwise provided for in this section, the Board shall not disclose any information collected under the authority of this section unless authorized or required by law to do so. 2021, c. 9, s. 3.

False or misleading information

(29) No person shall provide false or misleading information under this section. 2021, c. 9, s. 3.

Same, disclosure to Director

(30) If the Board is of the opinion that false or misleading information has been provided by an employer in an application under this section, the Board shall disclose that information to the Director. 2021, c. 9, s. 3.

Investigation

(31) An employment standards officer or other prescribed person may investigate a possible contravention of this section. 2021, c. 9, s. 3.

Immunity

(32) No action or other proceeding for damages may be commenced against a member of the board of directors, or an officer or employee of the Board, for an act or omission done or omitted by the person in good faith in the execution or intended execution of any power or duty under this section. 2021, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2021, c. 9, s. 3 - 29/04/2021

RESERVIST LEAVE**Reservist leave**

50.2 (1) An employee is entitled to a leave of absence without pay if the employee is a reservist and will not be performing the duties of his or her position because,

- (a) the employee is deployed to a Canadian Forces operation outside Canada;
- (b) the employee is deployed to a Canadian Forces operation inside Canada that is or will be providing assistance in dealing with an emergency or with its aftermath; or
- (c) the prescribed circumstances apply. 2007, c. 16, Sched. A, s. 3.

Activities included in deployment outside Canada

(2) Participation, whether inside or outside Canada, in pre-deployment or post-deployment activities that are required by the Canadian Forces in connection with an operation described in clause (1) (a) is considered deployment to the operation for the purposes of that clause. 2007, c. 16, Sched. A, s. 3.

Restriction

(3) An employee is not entitled to begin a leave under this section unless he or she has been employed by the employer for at least the prescribed period or, if no period is prescribed, for at least six consecutive months. 2007, c. 16, Sched. A, s. 3.

Length of leave

(4) An employee is entitled to take leave under this section for the prescribed period or, if no period is prescribed, for as long as clause (1) (a) or (b) or the circumstances set out in a regulation made under clause (1) (c) apply to him or her. 2007, c. 16, Sched. A, s. 3.

Advising employer re start of leave

(5) An employee who intends to take a leave under this section shall give his or her employer the prescribed period of notice of the day on which he or she will begin the leave or, if no notice period is prescribed, reasonable notice. 2007, c. 16, Sched. A, s. 3.

Same

(6) Despite subsection (5), if the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it. 2007, c. 16, Sched. A, s. 3.

Evidence of entitlement

(7) An employer may require an employee who takes a leave under this section to provide evidence that the employee is entitled to the leave. 2007, c. 16, Sched. A, s. 3.

Same

(8) When evidence is required under subsection (7), the employee shall,

- (a) provide the prescribed evidence, or evidence reasonable in the circumstances if no evidence is prescribed; and
- (b) provide the evidence at the prescribed time, or at a time reasonable in the circumstances if no time is prescribed. 2007, c. 16, Sched. A, s. 3.

Advising employer re end of leave

(9) An employee who intends to end a leave taken under this section shall give his or her employer the prescribed period of notice of the day on which he or she intends to end the leave or, if no notice period is prescribed, reasonable notice. 2007, c. 16, Sched. A, s. 3.

Written notice

(10) Notice under subsection (5), (6) or (9) shall be given in writing. 2007, c. 16, Sched. A, s. 3.

Definition, emergency

(11) In clause (1) (b),

“emergency” means,

- (a) a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise, or
- (b) a situation in which a search and rescue operation takes place. 2007, c. 16, Sched. A, s. 3.

Transition

(12) This section applies only if,

- (a) the deployment described in subsection (1) begins on or after the day the *Fairness for Military Families Act (Employment Standards and Health Insurance)*, 2007 receives Royal Assent; and
- (b) notice under subsection (5) or (6) is given on or after the day described in clause (a). 2007, c. 16, Sched. A, s. 3.

Section Amendments with date in force (d/m/y)

2007, c. 16, Sched. A, s. 3 - 3/12/2007

GENERAL PROVISIONS CONCERNING LEAVES

Rights during leave

51 (1) During any leave under this Part, an employee continues to participate in each type of benefit plan described in subsection (2) that is related to his or her employment unless he or she elects in writing not to do so. 2000, c. 41, s. 51 (1).

Benefit plans

(2) Subsection (1) applies with respect to pension plans, life insurance plans, accidental death plans, extended health plans, dental plans and any prescribed type of benefit plan. 2000, c. 41, s. 51 (2).

Employer contributions

(3) During an employee’s leave under this Part, the employer shall continue to make the employer’s contributions for any plan described in subsection (2) unless the employee gives the employer a written notice that the employee does not intend to pay the employee’s contributions, if any. 2000, c. 41, s. 51 (3).

Reservist leave

(4) Subsections (1), (2) and (3) do not apply in respect of an employee during a leave under section 50.2, unless otherwise prescribed. 2007, c. 16, Sched. A, s. 4.

Exception

(5) Despite subsection (4), subsections (1), (2) and (3) apply in respect of an employee during a period of postponement under subsection 53 (1.1), unless otherwise prescribed. 2007, c. 16, Sched. A, s. 4.

Section Amendments with date in force (d/m/y)

2007, c. 16, Sched. A, s. 4 - 3/12/2007

Leave and vacation conflict

51.1 (1) An employee who is on leave under this Part may defer taking vacation until the leave expires or, if the employer and employee agree to a later date, until that later date if,

- (a) under the terms of the employee's employment contract, the employee may not defer taking vacation that would otherwise be forfeited or the employee's ability to do so is restricted; and
- (b) as a result, in order to exercise his or her right to leave under this Part, the employee would have to,
 - (i) forfeit vacation or vacation pay, or
 - (ii) take less than his or her full leave entitlement. 2001, c. 9, Sched. I, s. 1 (11).

Leave and completion of vacation conflict

(2) If an employee is on leave under this Part on the day by which his or her vacation must be completed under paragraph 1 of section 35 or paragraph 1 of subsection 35.1 (2), the uncompleted part of the vacation shall be completed immediately after the leave expires or, if the employer and employee agree to a later date, beginning on that later date. 2001, c. 9, Sched. I, s. 1 (11); 2002, c. 18, Sched. J, s. 3 (22).

Alternative right, vacation pay

(3) An employee to whom this section applies may forego vacation and receive vacation pay in accordance with section 41 rather than completing his or her vacation under this section. 2001, c. 9, Sched. I, s. 1 (11).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (11) - 4/09/2001

2002, c. 18, Sched. J, s. 3 (22) - 26/11/2002

Length of employment

52 (1) The period of an employee's leave under this Part shall be included in calculating any of the following for the purpose of determining his or her rights under an employment contract:

- 1. The length of his or her employment, whether or not it is active employment.
- 2. The length of the employee's service whether or not that service is active.
- 3. The employee's seniority. 2000, c. 41, s. 52 (1).

Exception

(2) The period of an employee's leave shall not be included in determining whether he or she has completed a probationary period under an employment contract. 2000, c. 41, s. 52 (2).

Leave taken in entire weeks

52.1 (1) If a provision in this Part requires that an employee who takes a leave to provide care or support to a person take the leave in periods of entire weeks and, during a week of leave, an employee ceases to provide care or support,

- (a) the employee's entitlement to leave continues until the end of the week; and
- (b) the employee may return to work during the week only if the employer agrees, whether in writing or not. 2014, c. 6, s. 4.

Same

(2) If an employee returns to work under clause (1) (b), the week counts as an entire week for the purposes of any provision in this Part that limits the employee's entitlement to leave to a certain number of weeks. 2014, c. 6, s. 4.

Section Amendments with date in force (d/m/y)

2014, c. 6, s. 4 - 29/10/2014

Reinstatement

53 (1) Upon the conclusion of an employee's leave under this Part, the employer shall reinstate the employee to the position the employee most recently held with the employer, if it still exists, or to a comparable position, if it does not. 2000, c. 41, s. 53 (1).

Reservist leave

(1.1) Despite subsection (1), the employer of an employee who has been on leave under section 50.2 may postpone the employee's reinstatement until,

- (a) a prescribed day; or
- (b) if no day is prescribed, the later of,
 - (i) the day that is two weeks after the day on which the leave ends, and
 - (ii) the first pay day that falls after the day on which the leave ends. 2007, c. 16, Sched. A, s. 5.

Same

(1.2) During the period of postponement, the employee is deemed to continue to be on leave under section 50.2 for the purposes of sections 51.1 and 52. 2007, c. 16, Sched. A, s. 5.

Exception

(2) Subsection (1) does not apply if the employment of the employee is ended solely for reasons unrelated to the leave. 2000, c. 41, s. 53 (2).

Wage rate

- (3) The employer shall pay a reinstated employee at a rate that is equal to the greater of,
- (a) the rate that the employee most recently earned with the employer; and
 - (b) the rate that the employee would be earning had he or she worked throughout the leave. 2000, c. 41, s. 53 (3).

Section Amendments with date in force (d/m/y)

2007, c. 16, Sched. A, s. 5 - 3/12/2007

Leaves apply separately

53.1 For greater certainty, every entitlement to leave under this Part applies separately from, and in addition to, every other entitlement to leave under this Part. 2018, c. 14, Sched. 1, s. 21.

Section Amendments with date in force (d/m/y)

2018, c. 14, Sched. 1, s. 21 - 01/01/2019

PART XV TERMINATION AND SEVERANCE OF EMPLOYMENT

TERMINATION OF EMPLOYMENT

No termination without notice

54 No employer shall terminate the employment of an employee who has been continuously employed for three months or more unless the employer,

- (a) has given to the employee written notice of termination in accordance with section 57 or 58 and the notice has expired; or
- (b) has complied with section 61. 2000, c. 41, s. 54.

Prescribed employees not entitled

55 Prescribed employees are not entitled to notice of termination or termination pay under this Part. 2000, c. 41, s. 55.

What constitutes termination

56 (1) An employer terminates the employment of an employee for purposes of section 54 if,

- (a) the employer dismisses the employee or otherwise refuses or is unable to continue employing him or her;
- (b) the employer constructively dismisses the employee and the employee resigns from his or her employment in response to that within a reasonable period; or
- (c) the employer lays the employee off for a period longer than the period of a temporary lay-off. 2000, c. 41, s. 56 (1).

Temporary lay-off

- (2) For the purpose of clause (1) (c), a temporary layoff is,
- (a) a lay-off of not more than 13 weeks in any period of 20 consecutive weeks;
 - (b) a lay-off of more than 13 weeks in any period of 20 consecutive weeks, if the lay-off is less than 35 weeks in any period of 52 consecutive weeks and,
 - (i) the employee continues to receive substantial payments from the employer,
 - (ii) the employer continues to make payments for the benefit of the employee under a legitimate retirement or pension plan or a legitimate group or employee insurance plan,
 - (iii) the employee receives supplementary unemployment benefits,
 - (iv) the employee is employed elsewhere during the lay-off and would be entitled to receive supplementary unemployment benefits if that were not so,
 - (v) the employer recalls the employee within the time approved by the Director, or
 - (vi) in the case of an employee who is not represented by a trade union, the employer recalls the employee within the time set out in an agreement between the employer and the employee; or
 - (c) in the case of an employee represented by a trade union, a lay-off longer than a lay-off described in clause (b) where the employer recalls the employee within the time set out in an agreement between the employer and the trade union. 2000, c. 41, s. 56 (2); 2001, c. 9, Sched. I, s. 1 (12).

Definition

- (3) In subsections (3.1) to (3.6),

“excluded week” means a week during which, for one or more days, the employee is not able to work, is not available for work, is subject to a disciplinary suspension or is not provided with work because of a strike or lock-out occurring at his or her place of employment or elsewhere. 2002, c. 18, Sched. J, s. 3 (23).

Lay-off, regular work week

- (3.1) For the purpose of subsection (2), an employee who has a regular work week is laid off for a week if,
- (a) in that week, the employee earns less than one-half the amount he or she would earn at his or her regular rate in a regular work week; and
 - (b) the week is not an excluded week. 2002, c. 18, Sched. J, s. 3 (23).

Effect of excluded week

- (3.2) For the purpose of clauses (2) (a) and (b), an excluded week shall be counted as part of the periods of 20 and 52 weeks. 2002, c. 18, Sched. J, s. 3 (23).

Lay-off, no regular work week

- (3.3) For the purposes of clauses (1) (c) and (2) (a), an employee who does not have a regular work week is laid off for a period longer than the period of a temporary lay-off if for more than 13 weeks in any period of 20 consecutive weeks he or she earns less than one-half the average amount he or she earned per week in the period of 12 consecutive weeks that preceded the 20-week period. 2002, c. 18, Sched. J, s. 3 (23).

Effect of excluded week

- (3.4) For the purposes of subsection (3.3),
- (a) an excluded week shall not be counted as part of the 13 or more weeks but shall be counted as part of the 20-week period; and
 - (b) if the 12-week period contains an excluded week, the average amount earned shall be calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded. 2002, c. 18, Sched. J, s. 3 (23).

Lay-off, no regular work week

- (3.5) For the purposes of clauses (1) (c) and (2) (b), an employee who does not have a regular work week is laid off for a period longer than the period of a temporary lay-off if for 35 or more weeks in any period of 52 consecutive weeks he or she

earns less than one-half the average amount he or she earned per week in the period of 12 consecutive weeks that preceded the 52-week period. 2002, c. 18, Sched. J, s. 3 (23).

Effect of excluded week

(3.6) For the purposes of subsection (3.5),

- (a) an excluded week shall not be counted as part of the 35 or more weeks but shall be counted as part of the 52-week period; and
- (b) if the 12-week period contains an excluded week, the average amount earned shall be calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded. 2002, c. 18, Sched. J, s. 3 (23).

Temporary lay-off not termination

(4) An employer who lays an employee off without specifying a recall date shall not be considered to terminate the employment of the employee, unless the period of the lay-off exceeds that of a temporary lay-off. 2000, c. 41, s. 56 (4).

Deemed termination date

(5) If an employer terminates the employment of an employee under clause (1) (c), the employment shall be deemed to be terminated on the first day of the lay-off. 2000, c. 41, s. 56 (5).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (12) - 4/09/2001

2002, c. 18, Sched. J, s. 3 (23) - 26/11/2002

Employer notice period

57 The notice of termination under section 54 shall be given,

- (a) at least one week before the termination, if the employee's period of employment is less than one year;
- (b) at least two weeks before the termination, if the employee's period of employment is one year or more and fewer than three years;
- (c) at least three weeks before the termination, if the employee's period of employment is three years or more and fewer than four years;
- (d) at least four weeks before the termination, if the employee's period of employment is four years or more and fewer than five years;
- (e) at least five weeks before the termination, if the employee's period of employment is five years or more and fewer than six years;
- (f) at least six weeks before the termination, if the employee's period of employment is six years or more and fewer than seven years;
- (g) at least seven weeks before the termination, if the employee's period of employment is seven years or more and fewer than eight years; or
- (h) at least eight weeks before the termination, if the employee's period of employment is eight years or more. 2000, c. 41, s. 57.

Notice, 50 or more employees

58 (1) Despite section 57, the employer shall give notice of termination in the prescribed manner and for the prescribed period if the employer terminates the employment of 50 or more employees at the employer's establishment in the same four-week period. 2000, c. 41, s. 58 (1).

Information

(2) An employer who is required to give notice under this section,

- (a) shall provide to the Director the prescribed information in a form approved by the Director; and
- (b) shall, on the first day of the notice period, post in the employer's establishment the prescribed information in a form approved by the Director. 2000, c. 41, s. 58 (2).

Content

- (3) The information required under subsection (2) may include,
- (a) the economic circumstances surrounding the terminations;
 - (b) any consultations that have been or are proposed to take place with communities in which the terminations will take place or with the affected employees or their agent in connection with the terminations;
 - (c) any proposed adjustment measures and the number of employees expected to benefit from each; and
 - (d) a statistical profile of the affected employees. 2000, c. 41, s. 58 (3).

When notice effective

- (4) The notice required under subsection (1) shall be deemed not to have been given until the Director receives the information required under clause (2) (a). 2000, c. 41, s. 58 (4).

Posting

- (5) The employer shall post the information required under clause (2) (b) in at least one conspicuous place in the employer's establishment where it is likely to come to the attention of the affected employees and the employer shall keep that information posted throughout the notice period required under this section. 2000, c. 41, s. 58 (5).

Employee notice

- (6) An employee to whom notice has been given under this section shall not terminate his or her employment without first giving the employer written notice,
- (a) at least one week before doing so, if his or her period of employment is less than two years; or
 - (b) at least two weeks before doing so, if his or her period of employment is two years or more. 2000, c. 41, s. 58 (6).

Exception

- (7) Subsection (6) does not apply if the employer constructively dismisses the employee or breaches a term of the employment contract, whether or not such a breach would constitute a constructive dismissal. 2000, c. 41, s. 58 (7).

Period of employment: included, excluded time

- 59** (1) Time spent by an employee on leave or other inactive employment is included in determining his or her period of employment. 2000, c. 41, s. 59 (1).

Exception

- (2) Despite subsection (1), if an employee's employment was terminated as a result of a lay-off, no part of the lay-off period after the deemed termination date shall be included in determining his or her period of employment. 2000, c. 41, s. 59 (2).

Requirements during notice period

- 60** (1) During a notice period under section 57 or 58, the employer,
- (a) shall not reduce the employee's wage rate or alter any other term or condition of employment;
 - (b) shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week; and
 - (c) shall continue to make whatever benefit plan contributions would be required to be made in order to maintain the employee's benefits under the plan until the end of the notice period. 2000, c. 41, s. 60 (1).

No regular work week

- (2) For the purposes of clause (1) (b), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employer shall pay the employee an amount equal to the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks immediately preceding the day on which notice was given. 2001, c. 9, Sched. I, s. 1 (13).

Benefit plan contributions

- (3) If an employer fails to contribute to a benefit plan contrary to clause (1) (c), an amount equal to the amount the employer should have contributed shall be deemed to be unpaid wages for the purpose of section 103. 2000, c. 41, s. 60 (3).

Same

(4) Nothing in subsection (3) precludes the employee from an entitlement that he or she may have under a benefit plan. 2000, c. 41, s. 60 (4).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (13) - 4/09/2001

Pay instead of notice

61 (1) An employer may terminate the employment of an employee without notice or with less notice than is required under section 57 or 58 if the employer,

- (a) pays to the employee termination pay in a lump sum equal to the amount the employee would have been entitled to receive under section 60 had notice been given in accordance with that section; and
- (b) continues to make whatever benefit plan contributions would be required to be made in order to maintain the benefits to which the employee would have been entitled had he or she continued to be employed during the period of notice that he or she would otherwise have been entitled to receive. 2000, c. 41, s. 61 (1); 2001, c. 9, Sched. I, s. 1 (14).

No regular work week

(1.1) For the purposes of clause (1) (a), if the employee does not have a regular work week or is paid on a basis other than time, the amount the employee would have been entitled to receive under section 60 shall be calculated as if the period of 12 weeks referred to in subsection 60 (2) were the 12-week period immediately preceding the day of termination. 2001, c. 9, Sched. I, s. 1 (15).

Information to Director

(2) An employer who terminates the employment of employees under this section and would otherwise be required to provide notices of termination under section 58 shall comply with clause 58 (2) (a). 2000, c. 41, s. 61 (2).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (14, 15) - 4/09/2001

Deemed active employment

62 (1) If an employer terminates the employment of employees without giving them part or all of the period of notice required under this Part, the employees shall be deemed to have been actively employed during the period for which there should have been notice for the purposes of any benefit plan under which entitlement to benefits might be lost or affected if the employees cease to be actively employed. 2000, c. 41, s. 62 (1).

Benefit plan contributions

(2) If an employer fails to contribute to a benefit plan contrary to clause 61 (1) (b), an amount equal to the amount the employer should have contributed shall be deemed to be unpaid wages for the purpose of section 103. 2000, c. 41, s. 62 (2).

Same

(3) Nothing in subsection (2) precludes the employee from an entitlement he or she may have under a benefit plan. 2000, c. 41, s. 62 (3).

SEVERANCE OF EMPLOYMENT**What constitutes severance**

63 (1) An employer severs the employment of an employee if,

- (a) the employer dismisses the employee or otherwise refuses or is unable to continue employing the employee;
- (b) the employer constructively dismisses the employee and the employee resigns from his or her employment in response within a reasonable period;
- (c) the employer lays the employee off for 35 weeks or more in any period of 52 consecutive weeks;
- (d) the employer lays the employee off because of a permanent discontinuance of all of the employer's business at an establishment; or
- (e) the employer gives the employee notice of termination in accordance with section 57 or 58, the employee gives the employer written notice at least two weeks before resigning and the employee's notice of resignation is to take effect during the statutory notice period. 2000, c. 41, s. 63 (1); 2002, c. 18, Sched. J, s. 3 (24).

Definition

(2) In subsections (2.1) to (2.4),

“excluded week” means a week during which, for one or more days, the employee is not able to work, is not available for work, is subject to a disciplinary suspension or is not provided with work because of a strike or lock-out occurring at his or her place of employment or elsewhere. 2002, c. 18, Sched. J, s. 3 (25).

Lay-off, regular work week

(2.1) For the purpose of clause (1) (c), an employee who has a regular work week is laid off for a week if,

- (a) in that week, the employee earns less than one-quarter the amount he or she would earn at his or her regular rate in a regular work week; and
- (b) the week is not an excluded week. 2002, c. 18, Sched. J, s. 3 (25).

Effect of excluded week

(2.2) For the purposes of clause (1) (c), an excluded week shall be counted as part of the period of 52 weeks. 2002, c. 18, Sched. J, s. 3 (25).

Lay-off, no regular work week

(2.3) For the purpose of clause (1) (c), an employee who does not have a regular work week is laid off for 35 or more weeks in any period of 52 consecutive weeks if for 35 or more weeks in any period of 52 consecutive weeks he or she earns less than one-quarter the average amount he or she earned per week in the period of 12 consecutive weeks that preceded the 52-week period. 2002, c. 18, Sched. J, s. 3 (25).

Effect of excluded week

(2.4) For the purposes of subsection (2.3),

- (a) an excluded week shall not be counted as part of the 35 or more weeks, but shall be counted as part of the 52-week period; and
- (b) if the 12-week period contains an excluded week, the average amount earned shall be calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded. 2002, c. 18, Sched. J, s. 3 (25).

Resignation

(3) An employee’s employment that is severed under clause (1) (e) shall be deemed to have been severed on the day the employer’s notice of termination would have taken effect if the employee had not resigned. 2000, c. 41, s. 63 (3).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (24, 25) - 26/11/2002

Entitlement to severance pay

64 (1) An employer who severs an employment relationship with an employee shall pay severance pay to the employee if the employee was employed by the employer for five years or more and,

- (a) the severance occurred because of a permanent discontinuance of all or part of the employer’s business at an establishment and the employee is one of 50 or more employees who have their employment relationship severed within a six-month period as a result; or
- (b) the employer has a payroll of \$2.5 million or more. 2000, c. 41, s. 64 (1).

Payroll

(2) For the purposes of subsection (1), an employer shall be considered to have a payroll of \$2.5 million or more if,

- (a) the total wages earned by all of the employer’s employees in the four weeks that ended with the last day of the last pay period completed prior to the severance of an employee’s employment, when multiplied by 13, was \$2.5 million or more; or
- (b) the total wages earned by all of the employer’s employees in the last or second-last fiscal year of the employer prior to the severance of an employee’s employment was \$2.5 million or more. 2000, c. 41, s. 64 (2); 2001, c. 9, Sched. I, s. 1 (16).

Exceptions

(3) Prescribed employees are not entitled to severance pay under this section. 2000, c. 41, s. 64 (3).

Location deemed an establishment

- (4) A location shall be deemed to be an establishment under subsection (1) if,
- (a) there is a permanent discontinuance of all or part of an employer's business at the location;
 - (b) the location is part of an establishment consisting of two or more locations; and
 - (c) the employer severs the employment relationship of 50 or more employees within a six-month period as a result. 2000, c. 41, s. 64 (4).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (16) - 4/09/2001

Calculating severance pay

65 (1) Severance pay under this section shall be calculated by multiplying the employee's regular wages for a regular work week by the sum of,

- (a) the number of years of employment the employee has completed; and
- (b) the number of months of employment not included in clause (a) that the employee has completed, divided by 12. 2000, c. 41, s. 65 (1).

Non-continuous employment

(2) All time spent by the employee in the employer's employ, whether or not continuous and whether or not active, shall be included in determining whether he or she is eligible for severance pay under subsection 64 (1) and in calculating his or her severance pay under subsection (1). 2000, c. 41, s. 65 (2).

Exception

(2.1) Despite subsection (2), when an employee in receipt of an actuarially unreduced pension benefit has his or her employment severed by an employer on or after November 6, 2009, time spent in the employer's employ for which the employee received service credits in the calculation of that benefit shall not be included in determining whether he or she is eligible for severance pay under subsection 64 (1) and in calculating his or her severance pay under subsection (1). 2009, c. 33, Sched. 20, s. 1 (1).

Where employee resigns

(3) If an employee's employment is severed under clause 63 (1) (e), the period between the day the employee's notice of resignation took effect and the day the employer's notice of termination would have taken effect shall not be considered in calculating the amount of severance pay to which the employee is entitled. 2000, c. 41, s. 65 (3).

Termination without notice

(4) If an employer terminates the employment of an employee without providing the notice, if any, required under section 57 or 58, the amount of severance pay to which the employee is entitled shall be calculated as if the employee continued to be employed for a period equal to the period of notice that should have been given and was not. 2000, c. 41, s. 65 (4).

Limit

(5) An employee's severance pay entitlement under this section shall not exceed an amount equal to the employee's regular wages for a regular work week for 26 weeks. 2000, c. 41, s. 65 (5).

Where no regular work week

(6) For the purposes of subsections (1) and (5), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employee's regular wages for a regular work week shall be deemed to be the average amount of regular wages earned by the employee for the weeks in which the employee worked in the period of 12 weeks preceding the date on which,

- (a) the employee's employment was severed; or
- (b) if the employee's employment was severed under clause 63 (1) (c) or (d), the date on which the lay-off began. 2000, c. 41, s. 65 (6); 2002, c. 18, Sched. J, s. 3 (26).

In addition to other amounts

(7) Subject to subsection (8), severance pay under this section is in addition to any other amount to which an employee is entitled under this Act or his or her employment contract. 2000, c. 41, s. 65 (7).

Set-off, deduction

(8) Only the following set-offs and deductions may be made in calculating severance pay under this section:

1. Supplementary unemployment benefits the employee receives after his or her employment is severed and before the severance pay becomes payable to the employee.
2. An amount paid to an employee for loss of employment under a provision of the employment contract if it is based upon length of employment, length of service or seniority.
3. Severance pay that was previously paid to the employee under this Act, a predecessor of this Act or a contractual provision described in paragraph 2. 2000, c. 41, s. 65 (8).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (26) - 26/11/2002

2009, c. 33, Sched. 20, s. 1 (1) - 15/12/2009

Instalments

66 (1) An employer may pay severance pay to an employee who is entitled to it in instalments with the agreement of the employee or the approval of the Director. 2001, c. 9, Sched. I, s. 1 (17).

Restriction

(2) The period over which instalments can be paid must not exceed three years. 2000, c. 41, s. 66 (2).

Default

(3) If the employer fails to make an instalment payment, all severance pay not previously paid shall become payable immediately. 2000, c. 41, s. 66 (3).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (17) - 4/09/2001

ELECTION RE RECALL RIGHTS**Where election may be made**

67 (1) This section applies if an employee who has a right to be recalled for employment under his or her employment contract is entitled to,

- (a) termination pay under section 61 because of a lay-off of 35 weeks or more; or
- (b) severance pay. 2000, c. 41, s. 67 (1).

Exception

(2) Clause (1) (b) does not apply if the employer and employee have agreed that the severance pay shall be paid in instalments under section 66. 2000, c. 41, s. 67 (2).

Nature of election

(3) The employee may elect to be paid the termination pay or severance pay forthwith or to retain the right to be recalled. 2000, c. 41, s. 67 (3).

Consistency

(4) An employee who is entitled to both termination pay and severance pay shall make the same election in respect of each. 2000, c. 41, s. 67 (4).

Deemed abandonment

(5) An employee who elects to be paid shall be deemed to have abandoned the right to be recalled. 2000, c. 41, s. 67 (5).

Employee not represented by trade union

(6) If an employee who is not represented by a trade union elects to retain the right to be recalled or fails to make an election, the employer shall pay the termination pay and severance pay to which the employee is entitled to the Director in trust. 2000, c. 41, s. 67 (6).

Employee represented by trade union

- (7) If an employee who is represented by a trade union elects to retain the right to be recalled or fails to make an election,
- (a) the employer and the trade union shall attempt to negotiate an arrangement for holding the money in trust, and, if the negotiations are successful, the money shall be held in trust in accordance with the arrangement agreed upon; and
 - (b) if the trade union advises the Director and the employer in writing that efforts to negotiate such an arrangement have been unsuccessful, the employer shall pay the termination pay and severance pay to which the employee is entitled to the Director in trust. 2000, c. 41, s. 67 (7).

Where employee accepts recall

(8) If the employee accepts employment made available under the right of recall, the amount held in trust shall be paid out of trust to the employer and the employee shall be deemed to have abandoned the right to termination pay and severance pay paid into trust. 2000, c. 41, s. 67 (8).

Recall rights expired or renounced

(9) If the employee renounces the right to be recalled or the right expires, the amount held in trust shall be paid to the employee and, if the right to be recalled had not expired, the employee shall be deemed to have abandoned the right. 2000, c. 41, s. 67 (9).

PART XVI LIE DETECTORS

Definitions

68 In this Part, and for purposes of Part XVIII (Reprisal), section 74.12, Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions), Part XXVII (Regulations) and Part XXVIII (Transition, Amendment, Repeals, Commencement and Short Title), insofar as matters concerning this Part are concerned,

“employee” means an employee as defined in subsection 1 (1) and includes an applicant for employment, a police officer and a person who is an applicant to be a police officer; (“employé”)

“employer” means an employer as defined in subsection 1 (1) and includes a prospective employer and a police governing body; (“employeur”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of the definition of “employer” in section 68 of the Act is amended. (See: 2019, c. 1, Sched. 4, s. 17 (2))

“lie detector test” means an analysis, examination, interrogation or test that is taken or performed,

- (a) by means of or in conjunction with a device, instrument or machine, and
- (b) for the purpose of assessing or purporting to assess the credibility of a person. (“test du détecteur de mensonges”) 2000, c. 41, s. 68; 2009, c. 9, s. 2.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 2 - 6/11/2009

2018, c. 3, Sched. 5, s. 19 (2) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 17 (2) - not in force

Right to refuse test

69 Subject to section 71, an employee has a right not to,

- (a) take a lie detector test;
- (b) be asked to take a lie detector test; or
- (c) be required to take a lie detector test. 2000, c. 41, s. 69.

Prohibition: testing

70 (1) Subject to section 71, no person shall, directly or indirectly, require, request, enable or influence an employee to take a lie detector test. 2000, c. 41, s. 70 (1).

Prohibition: disclosure

(2) No person shall disclose to an employer that an employee has taken a lie detector test or disclose to an employer the results of a lie detector test taken by an employee. 2000, c. 41, s. 70 (2).

Consent to test by police

71 This Part shall not be interpreted to prevent a person from being asked by a police officer to take, consenting to take and taking a lie detector test administered on behalf of a police force in Ontario or by a member of a police force in Ontario in the course of the investigation of an offence. 2000, c. 41, s. 71.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 71 of the Act is amended by striking out “police force” wherever it appears and substituting in each case “police service”. (See: 2019, c. 1, Sched. 4, s. 17 (3))

Section Amendments with date in force (d/m/y)

2018, c. 3, Sched. 5, s. 19 (3) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 17 (3) - not in force

PART XVII RETAIL BUSINESS ESTABLISHMENTS

Application of Part

72 (1) This Part applies with respect to,

- (a) retail business establishments as defined in subsection 1 (1) of the *Retail Business Holidays Act*;
- (b) employees employed to work in those establishments; and
- (c) employers of those employees. 2000, c. 41, s. 72 (1).

Exception

(2) This Part does not apply with respect to retail business establishments in which the primary retail business is one that,

- (a) sells prepared meals;
- (b) rents living accommodations;
- (c) is open to the public for educational, recreational or amusement purposes; or
- (d) sells goods or services incidental to a business described in clause (a), (b) or (c) and is located in the same premises as that business. 2000, c. 41, s. 72 (2).

Right to refuse work

73 (1) An employee may refuse to work on a public holiday or a day declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of the *Retail Business Holidays Act*. 2000, c. 41, s. 73 (1).

Same

(2) An employee may refuse to work on a Sunday. 2000, c. 41, s. 73 (2).

Notice of refusal

(3) An employee who agrees to work on a day referred to in subsection (1) or (2) may then decline to work on that day, but only if he or she gives the employer notice that he or she declines at least 48 hours before he or she was to commence work on that day. 2000, c. 41, s. 73 (3); 2017, c. 22, Sched. 1, s. 40.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 40 - 01/01/2018

PART XVIII REPRISAL

Reprisal prohibited

74 (1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,

- (a) because the employee,
 - (i) asks the employer to comply with this Act and the regulations,
 - (ii) makes inquiries about his or her rights under this Act,
 - (iii) files a complaint with the Ministry under this Act,
 - (iv) exercises or attempts to exercise a right under this Act,
 - (v) gives information to an employment standards officer,
 - (v.1) makes inquiries about the rate paid to another employee for the purpose of determining or assisting another person in determining whether an employer is complying with Part XII (Equal Pay for Equal Work),
 - (v.2) discloses the employee's rate of pay to another employee for the purpose of determining or assisting another person in determining whether an employer is complying with Part XII (Equal Pay for Equal Work),
 - (vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,
 - (vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*,
 - (viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or
- (b) because the employer is or may be required, because of a court order or garnishment, to pay to a third party an amount owing by the employer to the employee. 2000, c. 41, s. 74 (1); 2017, c. 22, Sched. 1, s. 41.

Onus of proof

(2) Subject to subsection 122 (4), in any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this section lies upon the employer. 2000, c. 41, s. 74 (2).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 41 - 01/04/2018

PART XVIII.1 TEMPORARY HELP AGENCIES

INTERPRETATION AND APPLICATION

74.1 REPEALED: 2017, c. 22, Sched. 1, s. 42.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 06/11/2009

2017, c. 22, Sched. 1, s. 42 - 01/01/2018

74.2 REPEALED: 2016, c. 30, s. 36 (2).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 06/11/2009

2016, c. 30, s. 36 (1) - 08/12/2016; 2016, c. 30, s. 36 (2) - 01/11/2017

Assignment employees

74.2.1 This Part does not apply in relation to an individual who is an assignment employee assigned to provide professional services, personal support services or homemaking services as defined in the *Home Care and Community Services Act, 1994* if the assignment is made under a contract between,

- (a) the individual and a local health integration network within the meaning of the *Local Health System Integration Act, 2006*; or

- (b) an employer of the individual and a local health integration network within the meaning of the *Local Health System Integration Act, 2006*. 2016, c. 30, s. 36 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 74.2.1 of the Act is repealed. (See: 2019, c. 5, Sched. 3, s. 6)

Section Amendments with date in force (d/m/y)

2016, c. 30, s. 36 (3) - 08/12/2016

2019, c. 5, Sched. 3, s. 6 - not in force

Employment relationship

74.3 Where a temporary help agency and a person agree, whether or not in writing, that the agency will assign or attempt to assign the person to perform work on a temporary basis for clients or potential clients of the agency,

- (a) the temporary help agency is the person's employer;
- (b) the person is an employee of the temporary help agency. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 06/11/2009

Work assignment

74.4 (1) An assignment employee of a temporary help agency is assigned to perform work for a client if the agency arranges for the employee to perform work for a client on a temporary basis and the employee performs such work for the client. 2009, c. 9, s. 3.

Same

(2) Where an assignment employee is assigned by a temporary help agency to perform work for a client of the agency, the assignment begins on the first day on which the assignment employee performs work under the assignment and ends at the end of the term of the assignment or when the assignment is ended by the agency, the employee or the client. 2009, c. 9, s. 3.

Same

- (3) An assignment employee of a temporary help agency does not cease to be the agency's assignment employee because,
- (a) he or she is assigned by the agency to perform work for a client on a temporary basis; or
 - (b) he or she is not assigned by the agency to perform work for a client on a temporary basis. 2009, c. 9, s. 3.

Same

- (4) An assignment employee of a temporary help agency is not assigned to perform work for a client because the agency has,
- (a) provided the client with the employee's resume;
 - (b) arranged for the client to interview the employee; or
 - (c) otherwise introduced the employee to the client. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

OBLIGATIONS AND PROHIBITIONS

Agency to keep records re: work for client, termination

- 74.4.1** (1) In addition to the information that an employer is required to record under Part VI, a temporary help agency shall,
- (a) record the number of hours worked by each assignment employee for each client of the agency in each day and each week; and
 - (b) retain a copy of any written notice provided to an assignment employee under subsection 74.10.1 (1). 2017, c. 22, Sched. 1, s. 43.

Retention of records

- (2) The temporary help agency shall retain or arrange for some other person to retain the records required under subsection (1) for three years after the day or week to which the information relates. 2014, c. 10, Sched. 2, s. 4.

Availability

(3) The temporary help agency shall ensure that the records required to be retained under this section are readily available for inspection as required by an employment standards officer, even if the agency has arranged for another person to retain them. 2014, c. 10, Sched. 2, s. 4.

Section Amendments with date in force (d/m/y)

2014, c. 10, Sched. 2, s. 4 - 20/11/2015

2017, c. 22, Sched. 1, s. 43 - 01/01/2018

Client to keep records re: work for client

74.4.2 (1) A client of a temporary help agency shall record the number of hours worked by each assignment employee assigned to perform work for the client in each day and each week. 2014, c. 10, Sched. 2, s. 4.

Retention of records

(2) The client shall retain or arrange for some other person to retain the records required under subsection (1) for three years after the day or week to which the information relates. 2014, c. 10, Sched. 2, s. 4.

Availability

(3) The client shall ensure that the records required to be retained under this section are readily available for inspection as required by an employment standards officer, even if the client has arranged for another person to retain them. 2014, c. 10, Sched. 2, s. 4.

Section Amendments with date in force (d/m/y)

2014, c. 10, Sched. 2, s. 4 - 20/11/2015

Information re agency

74.5 (1) As soon as possible after a person becomes an assignment employee of a temporary help agency, the agency shall provide the following information, in writing, to the employee:

1. The legal name of the agency, as well as any operating or business name of the agency if different from the legal name.
2. Contact information for the agency, including address, telephone number and one or more contact names. 2009, c. 9, s. 3.

Transition

(2) Where a person is an assignment employee of a temporary help agency on the day this section comes into force, the agency shall, as soon as possible after that day, provide the information required by subsection (1), in writing, to the employee. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

Information re assignment

74.6 (1) A temporary help agency shall provide the following information when offering a work assignment with a client to an assignment employee:

1. The legal name of the client, as well as any operating or business name of the client if different from the legal name.
2. Contact information for the client, including address, telephone number and one or more contact names.
3. The hourly or other wage rate or commission, as applicable, and benefits associated with the assignment.
4. The hours of work associated with the assignment.
5. A general description of the work to be performed on the assignment.
6. The pay period and pay day established by the agency in accordance with subsection 11 (1).
7. The estimated term of the assignment, if the information is available at the time of the offer. 2009, c. 9, s. 3.

Same

(2) If information required by subsection (1) is provided orally to the assignment employee, the temporary help agency shall also provide the information to the assignment employee in writing, as soon as possible after offering the work assignment. 2009, c. 9, s. 3.

Transition

(3) Where an assignment employee is on a work assignment with a client of a temporary help agency or has been offered such an assignment on the day this section comes into force, the agency shall, as soon as possible after that day, provide the information required by subsection (1), in writing, to the employee. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

Information, rights under this Act

74.7 (1) The Director shall prepare and publish a document providing such information about the rights and obligations of assignment employees, temporary help agencies and clients under this Part as the Director considers appropriate. 2009, c. 9, s. 3.

Same

(2) If the Director believes that a document prepared under subsection (1) has become out of date, the Director shall prepare and publish a new document. 2009, c. 9, s. 3.

Same

(3) As soon as possible after a person becomes an assignment employee of a temporary help agency, the agency shall provide a copy of the most recent document published by the Director under this section to the employee. 2009, c. 9, s. 3.

Same

(4) If the language of an assignment employee is a language other than English, the temporary help agency shall make enquiries as to whether the Director has prepared a translation of the document into that language and, if the Director has done so, the agency shall also provide a copy of the translation to the employee. 2009, c. 9, s. 3.

Transition

(5) Where a person is an assignment employee of a temporary help agency on the day this section comes into force, the agency shall, as soon as possible after that day, provide the document required by subsection (3) and, where applicable, by subsection (4), to the employee. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

Prohibitions

74.8 (1) A temporary help agency is prohibited from doing any of the following:

1. Charging a fee to an assignment employee in connection with him or her becoming an assignment employee of the agency.
2. Charging a fee to an assignment employee in connection with the agency assigning or attempting to assign him or her to perform work on a temporary basis for clients or potential clients of the agency.
3. Charging a fee to an assignment employee of the agency in connection with assisting or instructing him or her on preparing resumes or preparing for job interviews.
4. Restricting an assignment employee of the agency from entering into an employment relationship with a client.
5. Charging a fee to an assignment employee of the agency in connection with a client of the agency entering into an employment relationship with him or her.
6. Restricting a client from providing references in respect of an assignment employee of the agency.
7. Restricting a client from entering into an employment relationship with an assignment employee.
8. Charging a fee to a client in connection with the client entering into an employment relationship with an assignment employee, except as permitted by subsection (2).
9. Charging a fee that is prescribed as prohibited.

10. Imposing a restriction that is prescribed as prohibited. 2009, c. 9, s. 3.

Exception, par. 8 of subs. (1)

(2) Where an assignment employee has been assigned by a temporary help agency to perform work on a temporary basis for a client and the employee has begun to perform the work, the agency may charge a fee to the client in the event that the client enters into an employment relationship with the employee, but only during the six-month period beginning on the day on which the employee first began to perform work for the client of the agency. 2009, c. 9, s. 3.

Same

(3) For the purposes of subsection (2), the six-month period runs regardless of the duration of the assignment or assignments by the agency of the assignment employee to work for the client and regardless of the amount or timing of work performed by the assignment employee. 2009, c. 9, s. 3.

Interpretation

(4) In this section, “assignment employee” includes a prospective assignment employee. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

Void provisions

74.9 (1) A provision in an agreement between a temporary help agency and an assignment employee of the agency that is inconsistent with section 74.8 is void. 2009, c. 9, s. 3.

Same

(2) A provision in an agreement between a temporary help agency and a client that is inconsistent with section 74.8 is void. 2009, c. 9, s. 3.

Transition

(3) Subsections (1) and (2) apply to provisions regardless of whether the agreement was entered into before or after the date on which section 74.8 comes into force. 2009, c. 9, s. 3.

Interpretation

(4) In this section, “assignment employee” includes a prospective assignment employee. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

Public holiday pay

74.10 (1) For the purposes of determining entitlement to public holiday pay under subsection 29 (2.1), an assignment employee of a temporary help agency is on a layoff on a public holiday if the public holiday falls on a day on which the employee is not assigned by the agency to perform work for a client of the agency. 2009, c. 9, s. 3.

Same

(2) For the purposes of subsection 29 (2.2), the period of a temporary lay-off of an assignment employee by a temporary help agency shall be determined in accordance with section 56 as modified by section 74.11 for the purposes of Part XV. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

Termination of assignment

74.10.1 (1) A temporary help agency shall provide an assignment employee with one week’s written notice or pay in lieu of notice if,

- (a) the assignment employee is assigned to perform work for a client;
- (b) the assignment had an estimated term of three months or more at the time it was offered to the employee; and
- (c) the assignment is terminated before the end of its estimated term. 2017, c. 22, Sched. 1, s. 44.

Amount of pay in lieu

(2) For the purposes of subsection (1), the amount of the pay in lieu of notice shall be equal to the wages the assignment employee would have been entitled to receive had one week's notice been given in accordance with that subsection. 2017, c. 22, Sched. 1, s. 44.

Exception

(3) Subsection (1) does not apply if the temporary help agency offers the assignment employee a work assignment with a client during the notice period that is reasonable in the circumstances and that has an estimated term of one week or more. 2017, c. 22, Sched. 1, s. 44.

Same

(4) Subsection (1) does not apply if,

- (a) the assignment employee has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the temporary help agency or the client;
- (b) the assignment has become impossible to perform or has been frustrated by a fortuitous or unforeseeable event or circumstance; or
- (c) the assignment is terminated during or as a result of a strike or lock-out at the location of the assignment. 2017, c. 22, Sched. 1, s. 44.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 44 - 01/01/2018

Termination and severance

74.11 For the purposes of the application of Part XV to temporary help agencies and their assignment employees, the following modifications apply:

- 1. A temporary help agency lays off an assignment employee for a week if the employee is not assigned by the agency to perform work for a client of the agency during the week.
- 2. For the purposes of paragraphs 3 and 10, "excluded week" means a week during which, for one or more days, the assignment employee is not able to work, is not available for work, refuses an offer by the agency that would not constitute constructive dismissal of the employee by the agency, is subject to a disciplinary suspension or is not assigned to perform work for a client of the agency because of a strike or lock-out occurring at the agency.
- 3. An excluded week shall not be counted as part of the 13 or 35 weeks referred to in subsection 56 (2) but shall be counted as part of the 20 or 52 consecutive week periods referred to in subsection 56 (2).
- 4. Subsections 56 (3) to (3.6) do not apply to temporary help agencies and their assignment employees.
- 4.1 On and after November 6, 2009, subsection 58 (1) does not apply to a temporary help agency in respect of its assignment employees.
- 4.2 On and after November 6, 2009, a temporary help agency shall give notice of termination to its assignment employees in accordance with paragraph 4.3 rather than in accordance with section 57 if,
 - i. 50 or more assignment employees of the agency who were assigned to perform work for the same client of the agency at the same establishment of that client were terminated in the same four-week period, and
 - ii. the terminations resulted from the term of assignments ending or from the assignments being ended by the agency or by the client.
- 4.3 In the circumstances described in paragraph 4.2, notice of termination shall be given for the prescribed period or, if no applicable periods are prescribed,
 - i. at least eight weeks before termination, if the number of assignment employees whose employment is terminated is 50 or more but fewer than 200,
 - ii. at least 12 weeks before termination, if the number of assignment employees whose employment is terminated is 200 or more but fewer than 500, or
 - iii. at least 16 weeks before termination, if the number of assignment employees whose employment is terminated is 500 or more.

5. A temporary help agency shall, in addition to meeting the posting requirements set out in clause 58 (2) (b) and subsection 58 (5), provide the information required to be provided to the Director under clause 58 (2) (a) to each employee to whom it is required to give notice in accordance with paragraph 4.3 on the first day of the notice period or as soon after that as is reasonably possible.
6. Clauses 60 (1) (a) and (b) and subsection 60 (2) do not apply to temporary help agencies and their assignment employees.
7. A temporary help agency that gives notice of termination to an assignment employee in accordance with section 57 or paragraph 4.3 of this section shall, during each week of the notice period, pay the assignment employee the wages he or she is entitled to receive, which in no case shall be less than,
 - i. in the case of any termination other than under clause 56 (1) (c), the total amount of the wages earned by the assignment employee for work performed for clients of the agency during the 12-week period ending on the last day on which the employee performed work for a client of the agency, divided by 12, or
 - ii. in the case of a termination under clause 56 (1) (c), the total amount of wages earned by the assignment employee for work performed for clients of the agency during the 12-week period immediately preceding the deemed termination date, divided by 12.
8. The lump sum that an assignment employee is entitled to be paid under clause 61 (1) (a) is a lump sum equal to the amount the employee would have been entitled to receive under paragraph 7 had notice been given in accordance with section 57 or paragraph 4.3 of this section.
9. Subsection 61 (1.1) does not apply to temporary help agencies and their assignment employees.
- 9.1 For purposes of the application of clause 63 (1) (e) to an assignment employee, the reference to section 58 in that clause shall be read as a reference to paragraph 4.3 of this section.
10. An excluded week shall not be counted as part of the 35 weeks referred to in clause 63 (1) (c) but shall be counted as part of the 52 consecutive week period referred to in clause 63 (1) (c).
11. Subsections 63 (2) to (2.4) do not apply to temporary help agencies and their assignment employees.
12. Subsections 65 (1), (5) and (6) do not apply to temporary help agencies and their assignment employees.
- 12.1 For purposes of the application of subsection 65 (4) to an assignment employee, the reference to section 58 in that subsection shall be read as a reference to paragraph 4.3 of this section.
13. If a temporary help agency severs the employment of an assignment employee under clause 63 (1) (a), (b), (d) or (e), severance pay shall be calculated by,
 - i. dividing the total amount of wages earned by the assignment employee for work performed for clients of the agency during the 12-week period ending on the last day on which the employee performed work for a client of the agency by 12, and
 - ii. multiplying the result obtained under subparagraph i by the lesser of 26 and the sum of,
 - A. the number of years of employment the employee has completed, and
 - B. the number of months of employment not included in sub-subparagraph A that the employee has completed, divided by 12.
14. If a temporary help agency severs the employment of an assignment employee under clause 63 (1) (c), severance pay shall be calculated by,
 - i. dividing the total amount of wages earned by the assignment employee for work performed for clients of the agency during the 12-week period immediately preceding the first day of the lay-off by 12, and
 - ii. multiplying the result obtained under subparagraph i by the lesser of 26 and the sum of,
 - A. the number of years of employment the employee has completed, and
 - B. the number of months of employment not included in sub-subparagraph A that the employee has completed, divided by 12. 2009, c. 9, s. 3; 2009, c. 33, Sched. 20, s. 1 (2-6).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009; 2009, c. 33, Sched. 20, s. 1 (2-6) - 15/12/2009

Transition

74.11.1 A temporary help agency that fails to meet the notice requirements of paragraph 4.3 of section 74.11 during the period beginning on November 6, 2009 and ending on the day before the *Good Government Act, 2009* receives Royal Assent has the obligations that the agency would have had if the failure had occurred on or after the day the *Good Government Act, 2009* receives Royal Assent. 2009, c. 33, Sched. 20, s. 1 (7).

Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 20, s. 1 (7) - 15/12/2009

REPRISAL BY CLIENT

Reprisal by client prohibited

74.12 (1) No client of a temporary help agency or person acting on behalf of a client of a temporary help agency shall intimidate an assignment employee, refuse to have an assignment employee perform work for the client, terminate the assignment of an assignment employee, or otherwise penalize an assignment employee or threaten to do so,

- (a) because the assignment employee,
 - (i) asks the client or the temporary help agency to comply with their respective obligations under this Act and the regulations,
 - (ii) makes inquiries about his or her rights under this Act,
 - (iii) files a complaint with the Ministry under this Act,
 - (iv) exercises or attempts to exercise a right under this Act,
 - (v) gives information to an employment standards officer,
 - (v.1) makes inquiries about the rate paid to an employee of the client for the purpose of determining or assisting another person in determining whether a temporary help agency complied with section 42.2, as it read immediately before the day section 10 of Schedule 1 to the *Making Ontario Open for Business Act, 2018* came into force,
 - (v.2) discloses the assignment employee's rate of pay to an employee of the client for the purpose of determining or assisting another person in determining whether a temporary help agency complied with section 42.2, as it read immediately before the day section 10 of Schedule 1 to the *Making Ontario Open for Business Act, 2018* came into force,
 - (v.3) discloses the rate paid to an employee of the client to the assignment employee's temporary help agency for the purposes of determining or assisting another person in determining whether a temporary help agency complied with section 42.2, as it read immediately before the day section 10 of Schedule 1 to the *Making Ontario Open for Business Act, 2018* came into force,
 - (vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,
 - (vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*,
 - (viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or
- (b) because the client or temporary help agency is or may be required, because of a court order or garnishment, to pay to a third party an amount owing to the assignment employee. 2009, c. 9, s. 3; 2017, c. 22, Sched. 1, s. 45; 2018, c. 14, Sched. 1, s. 22.

Onus of proof

(2) Subject to subsection 122 (4), in any proceeding under this Act, the burden of proof that a client did not contravene a provision set out in this section lies upon the client. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

2017, c. 22, Sched. 1, s. 45 - 01/04/2018

2018, c. 14, Sched. 1, s. 22 - 01/01/2019

ENFORCEMENT

74.12.1 REPEALED: 2017, c. 22, Sched. 1, s. 46.

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 9, s. 1 (3) - 29/11/2010

2017, c. 22, Sched. 1, s. 46 - 01/01/2018

Meeting under s. 102

74.13 (1) For the purposes of the application of section 102 in respect of this Part, the following modifications apply:

1. In addition to the circumstances set out in subsection 102 (1), the following are circumstances in which an employment standards officer may require persons to attend a meeting under that subsection:
 - i. The officer is investigating a complaint against a client.
 - ii. The officer, while inspecting a place under section 91 or 92, comes to have reasonable grounds to believe that a client has contravened this Act or the regulations with respect to an assignment employee.
 - iii. The officer acquires information that suggests to him or her the possibility that a client may have contravened this Act or the regulations with respect to an assignment employee or prospective assignment employee.
 - iv. The officer wishes to determine whether a client, in whose residence an assignment employee or prospective assignment employee resides, is complying with this Act.
2. In addition to the persons referred to in subsection 102 (2), the following persons may be required to attend the meeting:
 - i. The client.
 - ii. If the client is a corporation, a director or employee of the corporation.
 - iii. An assignment employee or prospective assignment employee.
3. If a person who was served with a notice under section 102 and who failed to comply with the notice is a client, a reference to an employer in paragraphs 1 and 2 of subsection 102 (10) is a reference to the client.
4. If a person who was served with a notice under section 102 and who failed to comply with the notice is an assignment employee or prospective assignment employee, a reference to an employee in paragraphs 1 and 2 of subsection 102 (10) is a reference to an assignment employee or prospective assignment employee, as the case requires. 2009, c. 9, s. 3; 2010, c. 16, Sched. 9, s. 1 (4, 5).

Interpretation, corporation

(2) For the purposes of paragraph 3 of subsection (1), if a client is a corporation, a reference to the client includes a director or employee who was served with a notice requiring him or her to attend the meeting or to bring or make available any records or other documents. 2010, c. 16, Sched. 9, s. 1 (6).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

2010, c. 16, Sched. 9, s. 1 (4-6) - 29/11/2010

Time for response

74.13.1 (1) For the purposes of the application of section 102.1 in respect of this Part, the following modifications apply:

1. In addition to the circumstances set out in subsection 102.1 (1), the following are circumstances in which an employment standards officer may, after giving written notice, require persons to provide evidence or submissions to the officer within the period of time that he or she specifies in the notice:
 - i. The officer is investigating a complaint against a client.
 - ii. The officer, while inspecting a place under section 91 or 92, comes to have reasonable grounds to believe that a client has contravened this Act or the regulations with respect to an assignment employee or prospective assignment employee.
 - iii. The officer acquires information that suggests to him or her the possibility that a client may have contravened this Act or the regulations with respect to an assignment employee or prospective assignment employee.

- iv. The officer wishes to determine whether a client in whose residence an assignment employee or prospective assignment employee resides is complying with this Act.
- 2. If a person who was served with a notice under section 102.1 and who failed to comply with the notice is a client, a reference to an employer in paragraphs 1 and 2 of subsection 102.1 (1) is a reference to a client.
- 3. If a person who was served with a notice under section 102.1 and who failed to comply with the notice is an assignment employee or prospective assignment employee, a reference to an employee in paragraphs 1 and 2 of subsection 102.1 (3) is a reference to an assignment employee or prospective assignment employee as the case requires. 2010, c. 16, Sched. 9, s. 1 (7).

Interpretation, corporations

(2) For the purposes of subsection (1), if a client is a corporation, a reference to the client or person includes a director or employee who was served with a notice requiring him or her to attend the meeting or to bring or make available any records or other documents. 2010, c. 16, Sched. 9, s. 1 (7).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 9, s. 1 (7) - 29/11/2010

Order to recover fees

74.14 (1) If an employment standards officer finds that a temporary help agency charged a fee to an assignment employee or prospective assignment employee in contravention of paragraph 1, 2, 3, 5 or 9 of subsection 74.8 (1), the officer may,

- (a) arrange with the agency that it repay the amount of the fee directly to the assignment employee or prospective assignment employee;
- (a.1) order the agency to repay the amount of the fee to the assignment employee or prospective assignment employee; or
- (b) order the agency to pay the amount of the fee to the Director in trust. 2009, c. 9, s. 3; 2017, c. 22, Sched. 1, s. 47.

Administrative costs

(2) An order issued under clause (1) (b) shall also require the temporary help agency to pay to the Director in trust an amount for administrative costs equal to the greater of \$100 and 10 per cent of the amount owing. 2009, c. 9, s. 3.

Contents of order

(3) The order shall state the paragraph of subsection 74.8 (1) that was contravened and the amount to be paid. 2009, c. 9, s. 3.

Application of s. 103 (3) and (6) to (9)

(4) Subsections 103 (3) and (6) to (9) apply with respect to an order issued under this section with necessary modifications and for the purpose, without limiting the generality of the foregoing, a reference to an employee is a reference to an assignment employee or prospective assignment employee. 2009, c. 9, s. 3.

Application of s. 105

(5) Section 105 applies with respect to repayment of fees by a temporary help agency to an assignment employee or prospective assignment employee with necessary modifications, including but not limited to the following:

- 1. The reference to clause 103 (1) (a) in subsection 105 (1) is a reference to clause (1) (a) of this section.
- 2. A reference to an employee is a reference to an assignment employee or prospective assignment employee to whom a fee is to be paid. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

2017, c. 22, Sched. 1, s. 47 - 01/01/2018

Recovery of prohibited fees by client

74.15 If a temporary help agency charges a fee to a client in contravention of paragraph 8 or 9 of subsection 74.8 (1), the client may recover the amount of the fee in a court of competent jurisdiction. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

Order for compensation, temporary help agency

74.16 (1) If an employment standards officer finds that a temporary help agency has contravened paragraph 4, 6, 7 or 10 of subsection 74.8 (1), the officer may order that the assignment employee or prospective assignment employee be compensated for any loss he or she incurred as a result of the contravention. 2009, c. 9, s. 3.

Terms of orders

(2) If an order issued under this section requires a temporary help agency to compensate an assignment employee or prospective assignment employee, it shall also require the agency to,

- (a) pay to the Director in trust,
 - (i) the amount of the compensation, and
 - (ii) an amount for administration costs equal to the greater of \$100 and 10 per cent of the amount of compensation; or
- (b) pay the amount of the compensation to the assignment employee or prospective assignment employee. 2017, c. 22, Sched. 1, s. 48.

Contents of order

(3) The order shall state the paragraph of subsection 74.8 (1) that was contravened and the amount to be paid. 2009, c. 9, s. 3.

Application of s. 103 (3) and (6) to (9)

(4) Subsections 103 (3) and (6) to (9) apply with respect to orders issued under this section with necessary modifications and for the purpose, without limiting the generality of the foregoing, a reference to an employee is a reference to an assignment employee or prospective assignment employee. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

2017, c. 22, Sched. 1, s. 48 - 01/01/2018

Order re client reprisal

74.17 (1) If an employment standards officer finds that section 74.12 has been contravened with respect to an assignment employee, the officer may order that the employee be compensated for any loss he or she incurred as a result of the contravention or that he or she be reinstated in the assignment or that he or she be both compensated and reinstated. 2009, c. 9, s. 3.

Terms of orders

(2) If an order issued under this section requires the client to compensate an assignment employee, it shall also require the client to,

- (a) pay to the Director in trust,
 - (i) the amount of the compensation, and
 - (ii) an amount for administration costs equal to the greater of \$100 and 10 per cent of the amount of compensation; or
- (b) pay the amount of the compensation to the assignment employee. 2017, c. 22, Sched. 1, s. 49.

Application of s. 103 (3) and (5) to (9)

(3) Subsections 103 (3) and (5) to (9) apply with respect to orders issued under this section with necessary modifications, including but not limited to the following:

1. A reference to an employer is a reference to a client.
2. A reference to an employee is a reference to an assignment employee. 2009, c. 9, s. 3.

Agency obligation

(4) If an order is issued under this section requiring a client to reinstate an assignment employee in the assignment, the temporary help agency shall do whatever it can reasonably do in order to enable compliance by the client with the order. 2009, c. 9, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 3 - 6/11/2009

Agency and client jointly and severally liable

74.18 (1) Subject to subsection (2), if an assignment employee was assigned to perform work for a client of a temporary help agency during a pay period, and the agency fails to pay the employee some or all of the wages described in subsection (3) that are owing to the employee for that pay period, the agency and the client are jointly and severally liable for the wages. 2014, c. 10, Sched. 2, s. 5.

Same, more than one client

(2) If an assignment employee was assigned to perform work for more than one client of a temporary help agency during a pay period, and the agency fails to pay the employee some or all of the wages described in subsection (3) that are owing to the employee for that pay period, each client is jointly and severally liable with the agency for a share of the total wages owed to the employee that is in proportion to the number of hours the employee worked for that client during the pay period relative to the total number of hours the employee worked for all clients during the pay period. 2014, c. 10, Sched. 2, s. 5.

Wages for which client may be liable

(3) A client of a temporary help agency may be jointly and severally liable under this section for the following wages:

1. Regular wages that were earned during the relevant pay period.
2. Overtime pay that was earned during the relevant pay period.
3. Public holiday pay that was earned during the relevant pay period.
4. Premium pay that was earned during the relevant pay period. 2014, c. 10, Sched. 2, s. 5.

Agency primarily responsible

(4) Despite subsections (1) and (2), the temporary help agency is primarily responsible for an assignment employee's wages, but proceedings against the agency under this Act do not have to be exhausted before proceedings may be commenced to collect wages from the client of the agency. 2014, c. 10, Sched. 2, s. 5.

Enforcement – client deemed to be employer

(5) For the purposes of enforcing the liability of a client of a temporary help agency under this section, the client is deemed to be an employer of the assignment employee. 2014, c. 10, Sched. 2, s. 5.

Same – orders

(6) Without restricting the generality of subsection (5), an order issued by an employment standards officer against a client of a temporary help agency to enforce a liability under this section shall be treated as if it were an order against an employer for the purposes of this Act. 2014, c. 10, Sched. 2, s. 5.

Section Amendments with date in force (d/m/y)

2014, c. 10, Sched. 2, s. 5 - 20/11/2015

**PART XIX
BUILDING SERVICES PROVIDERS**

New provider

75 (1) This Part applies if a building services provider for a building is replaced by a new provider. 2000, c. 41, s. 75 (1).

Termination and severance pay

(2) The new provider shall comply with Part XV (Termination and Severance of Employment) with respect to every employee of the replaced provider who is engaged in providing services at the premises and whom the new provider does not employ as if the new provider had terminated and severed the employee's employment. 2000, c. 41, s. 75 (2).

Same

(3) The new provider shall be deemed to have been the employee's employer for the purpose of subsection (2). 2000, c. 41, s. 75 (3).

Exception

(4) The new provider is not required to comply with subsection (2) with respect to,

- (a) an employee who is retained by the replaced provider; or

(b) any prescribed employees. 2000, c. 41, s. 75 (4).

Vacation pay

76 (1) A provider who ceases to provide services at a premises and who ceases to employ an employee shall pay to the employee the amount of any accrued vacation pay. 2000, c. 41, s. 76 (1).

Same

(2) A payment under subsection (1) shall be made within the later of,

(a) seven days after the day the employee's employment with the provider ceases; or

(b) the day that would have been the employee's next regular pay day. 2000, c. 41, s. 76 (2).

Information request, possible new provider

77 (1) Where a person is seeking to become the new provider at a premises, the owner or manager of the premises shall upon request give to that person the prescribed information about the employees who on the date of the request are engaged in providing services at the premises. 2000, c. 41, s. 77 (1).

Same, new provider

(2) Where a person becomes the new provider at a premises, the owner or manager of the premises shall upon request give to that person the prescribed information about the employees who on the date of the request are engaged in providing services for the premises. 2000, c. 41, s. 77 (2).

Request by owner or manager

(3) If an owner or manager requests a provider or former provider to provide information to the owner or manager so that the owner or manager can fulfil a request made under subsection (1) or (2), the provider or former provider shall provide the information. 2000, c. 41, s. 77 (3).

Use of information

78 (1) A person who receives information under this Part shall use that information only for the purpose of complying with this Part or determining the person's obligations or potential obligations under this Part. 2000, c. 41, s. 78 (1).

Confidentiality

(2) A person who receives information under section 77 shall not disclose it, except as authorized under this Part. 2000, c. 41, s. 78 (2).

PART XX LIABILITY OF DIRECTORS

Definition

79 In this Part,

“director” means a director of a corporation and includes a shareholder who is a party to a unanimous shareholder agreement. 2000, c. 41, s. 79.

Application of Part

80 (1) This Part applies with respect to shareholders described in section 79 only to the extent that the directors are relieved, under subsection 108 (5) of the *Business Corporations Act* or subsection 146 (5) of the *Canada Business Corporations Act*, of their liability to pay wages to the employees of the corporation. 2000, c. 41, s. 80 (1).

Non-application

(2) This Part does not apply with respect to directors of corporations to which the *Not-for-Profit Corporations Act, 2010* applies or to which the *Co-operative Corporations Act* applies. 2000, c. 41, s. 80 (2); 2010, c. 15, s. 224.

Same

(3) This Part does not apply with respect to directors, or persons who perform functions similar to those of a director, of a college of a health profession or a group of health professions that is established or continued under an Act of the Legislature. 2000, c. 41, s. 80 (3).

Same

(4) This Part does not apply with respect to directors of corporations,

- (a) that have been incorporated in another jurisdiction;
- (b) that have objects that are similar to the objects of corporations to which the *Not-for-Profit Corporations Act, 2010* applies or to which the *Co-operative Corporations Act* applies; and
- (c) that are carried on without the purpose of gain. 2000, c. 41, s. 80 (4); 2010, c. 15, s. 224.

Section Amendments with date in force (d/m/y)

2010, c. 15, s. 224 - 19/10/2021

Directors' liability for wages

- 81** (1) The directors of an employer are jointly and severally liable for wages as provided in this Part if,
- (a) the employer is insolvent, the employee has caused a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer's trustee in bankruptcy and the claim has not been paid;
 - (b) an employment standards officer has made an order that the employer is liable for wages, unless the amount set out in the order has been paid or the employer has applied to have it reviewed;
 - (c) an employment standards officer has made an order that a director is liable for wages, unless the amount set out in the order has been paid or the employer or the director has applied to have it reviewed; or
 - (d) the Board has issued, amended or affirmed an order under section 119, the order, as issued, amended or affirmed, requires the employer or the directors to pay wages and the amount set out in the order has not been paid. 2000, c. 41, s. 81 (1).

Employer primarily responsible

(2) Despite subsection (1), the employer is primarily responsible for an employee's wages but proceedings against the employer under this Act do not have to be exhausted before proceedings may be commenced to collect wages from directors under this Part. 2000, c. 41, s. 81 (2).

Wages

(3) The wages that directors are liable for under this Part are wages, not including termination pay and severance pay as they are provided for under this Act or an employment contract and not including amounts that are deemed to be wages under this Act. 2000, c. 41, s. 81 (3).

Vacation pay

(4) The vacation pay that directors are liable for is the greater of the minimum vacation pay provided in Part XI (Vacation With Pay) and the amount contractually agreed to by the employer and the employee. 2000, c. 41, s. 81 (4).

Holiday pay

(5) The amount of holiday pay that directors are liable for is the greater of the amount payable for holidays at the rate as determined under this Act and the regulations and the amount for the holidays at the rate as contractually agreed to by the employer and the employee. 2000, c. 41, s. 81 (5).

Overtime wages

(6) The overtime wages that directors are liable for are the greater of the amount of overtime pay provided in Part VIII (Overtime Pay) and the amount contractually agreed to by the employer and the employee. 2000, c. 41, s. 81 (6).

Directors' maximum liability

(7) The directors of an employer corporation are jointly and severally liable to the employees of the corporation for all debts not exceeding six months' wages, as described in subsection (3), that become payable while they are directors for services performed for the corporation and for the vacation pay accrued while they are directors for not more than 12 months under this Act and the regulations made under it or under any collective agreement made by the corporation. 2000, c. 41, s. 81 (7).

(8) REPEALED: 2017, c. 22, Sched. 1, s. 50.

Contribution from other directors

(9) A director who has satisfied a claim for wages is entitled to contribution in relation to the wages from other directors who are liable for the claim. 2000, c. 41, s. 81 (9).

Limitation periods

(10) A limitation period set out in section 114 prevails over a limitation period in any other Act, unless the other Act states that it is to prevail over this Act. 2000, c. 41, s. 81 (10).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 50 - 01/01/2018

No relief by contract, etc.

82 (1) No provision in a contract, in the articles of incorporation or the by-laws of a corporation or in a resolution of a corporation relieves a director from the duty to act according to this Act or relieves him or her from liability for breach of it. 2000, c. 41, s. 82 (1).

Indemnification of directors

(2) An employer may indemnify a director, a former director and the heirs or legal representatives of a director or former director against all costs, charges and expenses, including an amount paid to satisfy an order under this Act, including an order which is the subject of a filing under section 126, reasonably incurred by the director with respect to any civil or administrative action or proceeding to which he or she is a party by reason of being or having been a director of the employer if,

- (a) he or she has acted honestly and in good faith with a view to the best interests of the employer; and
- (b) in the case of a proceeding or action that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful. 2000, c. 41, s. 82 (2).

Civil remedies protected

83 No civil remedy that a person may have against a director or that a director may have against a person is suspended or affected by this Part. 2000, c. 41, s. 83.

PART XXI
WHO ENFORCES THIS ACT AND WHAT THEY CAN DO

Minister responsible

84 The Minister is responsible for the administration of this Act. 2000, c. 41, s. 84.

Director

85 (1) The Minister shall appoint a person to be the Director of Employment Standards to administer this Act and the regulations. 2000, c. 41, s. 85 (1).

Acting Director

(2) The Director's powers may be exercised and the Director's duties may be performed by an employee of the Ministry appointed as Acting Director if,

- (a) the Director is absent or unable to act; or
- (b) an individual who was appointed Director has ceased to be the Director and no new Director has been appointed. 2000, c. 41, s. 85 (2).

Same

(3) An Acting Director shall be appointed by the Director or, in the Director's absence, the Deputy Minister of Labour. 2000, c. 41, s. 85 (3).

Employment standards officers

86 (1) Such persons as are considered necessary to enforce this Act and the regulations may be appointed under Part III of the *Public Service of Ontario Act, 2006* as employment standards officers. 2006, c. 35, Sched. C, s. 33.

Certificate of appointment

(2) The Deputy Minister of Labour shall issue a certificate of appointment bearing his or her signature or a facsimile of it to every employment standards officer. 2000, c. 41, s. 86 (2).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 33 - 20/08/2007

Delegation

87 (1) The Minister may, in writing, delegate to any person any of the Minister's powers or duties under this Act, subject to the limitations or conditions set out in the delegation. 2000, c. 41, s. 87 (1).

Same: residual powers

(2) The Minister may exercise a power or perform a duty under this Act even if he or she has delegated it to a person under this section. 2000, c. 41, s. 87 (2).

Powers and duties of Director

88 (1) The Director may exercise the powers conferred upon the Director under this Act and shall perform the duties imposed upon the Director under this Act. 2000, c. 41, s. 88 (1).

Policies

(2) The Director may establish policies respecting the interpretation, administration and enforcement of this Act. 2000, c. 41, s. 88 (2).

Authorization

(3) The Director may authorize an employment standards officer to exercise a power or to perform a duty conferred upon the Director under this Act, either orally or in writing. 2000, c. 41, s. 88 (3).

Same: residual powers

(4) The Director may exercise a power conferred upon the Director under this Act even if he or she has delegated it to a person under subsection (3). 2000, c. 41, s. 88 (4).

Interest

(5) The Director may, with the approval of the Minister, determine the rates of interest and the manner of calculating interest for,

- (a) amounts owing under different provisions of this Act or the regulations, and
- (b) money held by the Director in trust. 2017, c. 22, Sched. 1, s. 51.

Determinations not regulations

(6) A determination under subsection (5) is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 2000, c. 41, s. 88 (6); 2006, c. 21, Sched. F, s. 136 (1).

Other circumstances

(7) Where money has been paid to the Director in trust and no provision is made for paying it out elsewhere in this Act, it shall be paid out to the person entitled to receive it together with interest at the rate and calculated in the manner determined by the Director under subsection (5). 2000, c. 41, s. 88 (7).

Surplus interest

(8) If the interest earned on money held by the Director in trust exceeds the interest paid to the person entitled to receive the money, the Director may use the difference to pay any service charges for the management of the money levied by the financial institution with which the money was deposited. 2000, c. 41, s. 88 (8).

Hearing not required

(9) The Director is not required to hold a hearing in exercising any power or making any decision under this Act. 2000, c. 41, s. 88 (9).

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

2017, c. 22, Sched. 1, s. 51 - 01/01/2018

Director may reassign an investigation

88.1 (1) The Director may terminate the assignment of an employment standards officer to the investigation of a complaint and may assign the investigation to another employment standards officer. 2006, c. 19, Sched. M, s. 1 (1).

Same

(2) If the Director terminates the assignment of an employment standards officer to the investigation of a complaint,

- (a) the officer whose assignment is terminated shall no longer have any powers or duties with respect to the investigation of the complaint or the discovery during the investigation of any similar potential entitlement of another employee of the employer related to the complaint; and
- (b) the new employment standards officer assigned to the investigation may rely on evidence collected by the first officer and any findings of fact made by that officer. 2006, c. 19, Sched. M, s. 1 (1).

Inspections

- (3) This section applies with necessary modifications to inspections of employers by employment standards officers. 2006, c. 19, Sched. M, s. 1 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. M, s. 1 (1) - 22/06/2006

Recognition of employers

- 88.2** (1) The Director may give recognition to an employer, upon the employer's application, if the employer satisfies the Director that it meets the prescribed criteria. 2017, c. 22, Sched. 1, s. 52.

Classes of employers

- (2) For greater certainty, the criteria under subsection (1) may be prescribed for different classes of employers. 2017, c. 22, Sched. 1, s. 52.

Information re recognitions

- (3) The Director may require any employer who is seeking recognition under subsection (1), or who is the subject of a recognition, to provide the Director with whatever information, records or accounts he or she may require pertaining to the recognition and the Director may make such inquiries and examinations as he or she considers necessary. 2017, c. 22, Sched. 1, s. 52.

Publication

- (4) The Director may publish or otherwise make available to the public information relating to employers given recognition under subsection (1), including the names of employers. 2017, c. 22, Sched. 1, s. 52.

Validity of recognitions

- (5) A recognition given under subsection (1) is valid for the period that the Director specifies in the recognition. 2017, c. 22, Sched. 1, s. 52.

Revocation, etc., of recognitions

- (6) The Director may revoke or amend a recognition. 2017, c. 22, Sched. 1, s. 52.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 52 - 01/01/2018

Delegation of powers under s. 88.2

- 88.3** (1) The Director may authorize an individual employed in the Ministry to exercise a power conferred on the Director under section 88.2, either orally or in writing. 2017, c. 22, Sched. 1, s. 52.

Residual powers

- (2) The Director may exercise a power conferred on the Director under section 88.2 even if he or she has delegated it to an individual under subsection (1). 2017, c. 22, Sched. 1, s. 52.

Duty re policies

- (3) An individual authorized by the Director under subsection (1) shall follow any policies established by the Director under subsection 88 (2). 2017, c. 22, Sched. 1, s. 52.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 52 - 01/01/2018

Powers and duties of officers

- 89** (1) An employment standards officer may exercise the powers conferred upon employment standards officers under this Act and shall perform the duties imposed upon employment standards officers under this Act. 2000, c. 41, s. 89 (1).

Officers to follow policies

(2) An employment standards officer shall follow any policies established by the Director under subsection 88 (2). 2000, c. 41, s. 89 (2).

Hearing not required

(3) An employment standards officer is not required to hold a hearing in exercising any power or making any decision under this Act. 2000, c. 41, s. 89 (3).

Officers not compellable

90 (1) An employment standards officer is not a competent or compellable witness in a civil proceeding respecting any information given or obtained, statements made or received, or records or other things produced or received under this Act except for the purpose of carrying out his or her duties under it. 2000, c. 41, s. 90 (1).

Records

(2) An employment standards officer shall not be compelled in a civil proceeding to produce any record or other thing he or she has made or received under this Act except for the purpose of carrying out his or her duties under this Act. 2000, c. 41, s. 90 (2).

Investigation and inspection powers

91 (1) An employment standards officer may, without a warrant, enter and inspect any place in order to investigate a possible contravention of this Act or to perform an inspection to ensure that this Act is being complied with. 2000, c. 41, s. 91 (1).

Time of entry

(2) The power to enter and inspect a place without a warrant may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2000, c. 41, s. 91 (2).

Dwellings

(3) The power to enter and inspect a place without a warrant shall not be exercised to enter and inspect a part of the place that is used as a dwelling unless the occupier of the dwelling consents or a warrant has been issued under section 92. 2000, c. 41, s. 91 (3).

Use of force

(4) An employment standards officer is not entitled to use force to enter and inspect a place. 2000, c. 41, s. 91 (4).

Identification

(5) An employment standards officer shall produce, on request, evidence of his or her appointment. 2000, c. 41, s. 91 (5).

Powers of officer

- (6) An employment standards officer conducting an investigation or inspection may,
- (a) examine a record or other thing that the officer thinks may be relevant to the investigation or inspection;
 - (b) require the production of a record or other thing that the officer thinks may be relevant to the investigation or inspection;
 - (c) remove for review and copying a record or other thing that the officer thinks may be relevant to the investigation or inspection;
 - (d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place; and
 - (e) question any person on matters the officer thinks may be relevant to the investigation or inspection. 2000, c. 41, s. 91 (6); 2006, c. 19, Sched. M, s. 1 (2).

Written demand

(7) A demand that a record or other thing be produced must be in writing and must include a statement of the nature of the record or thing required. 2000, c. 41, s. 91 (7).

Obligation to produce and assist

(8) If an employment standards officer demands that a record or other thing be produced, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form. 2000, c. 41, s. 91 (8).

Records and things removed from place

(9) An employment standards officer who removes a record or other thing under clause (6) (c) shall provide a receipt and return the record or thing to the person within a reasonable time. 2000, c. 41, s. 91 (9).

Copy admissible in evidence

(10) A copy of a record that purports to be certified by an employment standards officer as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value. 2000, c. 41, s. 91 (10).

Self-audit

(10.1) In addition to the powers set out in subsection (6), an employment standards officer conducting an inspection may, by giving written notice, require an employer to conduct an examination of the employer's records, practices or both in relation to one or more provisions of this Act or the regulations. 2021, c. 25, Sched. 6, s. 3.

Examination and report

(10.2) If an employer is required to conduct an examination under subsection (10.1), the employer shall conduct the examination and report the results of the examination to the employment standards officer in accordance with the notice. 2021, c. 25, Sched. 6, s. 3.

Notice

(10.3) A notice given under subsection (10.1) shall specify,

- (a) the period to be covered by the examination;
- (b) the provision or provisions of this Act or the regulations to be covered by the examination; and
- (c) the date by which the employer must provide a report of the results of the examination to the employment standards officer. 2021, c. 25, Sched. 6, s. 3.

Same

(10.4) A notice given under subsection (10.1) may specify,

- (a) the method to be used in carrying out the examination;
- (b) the format of the report; and
- (c) such information to be included in the employer's report as the employment standards officer considers appropriate. 2021, c. 25, Sched. 6, s. 3.

Same

(10.5) Without restricting the generality of clause (10.4) (c), a notice given under subsection (10.1) may require the employer to include in the report to the employment standards officer,

- (a) an assessment of whether the employer has complied with this Act or the regulations;
- (b) if, pursuant to clause (a), the employer has included an assessment that the employer has not complied with this Act or the regulations;
 - (i) an assessment of whether one or more employees are owed wages, and
 - (ii) a description of the measures that the employer has taken or will take to ensure that this Act or the regulations will be complied with; and
- (c) if, pursuant to subclause (b) (i), the employer has included an assessment that one or more employees are owed wages, the name of every employee who is owed wages, the amount of wages owed to each employee and an explanation of how the amount of wages owed to each employee was determined. 2021, c. 25, Sched. 6, s. 3.

Obstruction

(11) No person shall hinder, obstruct or interfere with or attempt to hinder, obstruct or interfere with an employment standards officer conducting an investigation or inspection. 2000, c. 41, s. 91 (11).

Same

(12) No person shall,

- (a) refuse to answer questions on matters that an employment standards officer thinks may be relevant to an investigation or inspection; or
- (b) provide an employment standards officer with information on matters the officer thinks may be relevant to an investigation or inspection that the person knows to be false or misleading. 2000, c. 41, s. 91 (12).

Separate inquiries

(13) No person shall prevent or attempt to prevent an employment standards officer from making inquiries of any person separate and apart from another person under clause (6) (e). 2000, c. 41, s. 91 (13).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. M, s. 1 (2) - 22/06/2006

2021, c. 25, Sched. 6, s. 3 - 03/06/2021

91.1 REVOKED: 2021, c. 25, Sched. 6, s. 4.

Section Amendments with date in force (d/m/y)

2014, c. 10, Sched. 2, s. 6 - 20/05/2015

2021, c. 25, Sched. 6, s. 4 - 03/06/2021

Warrant

92 (1) A justice of the peace may issue a warrant authorizing an employment standards officer named in the warrant to enter premises specified in the warrant and to exercise any of the powers mentioned in subsection 91 (6), if the justice of the peace is satisfied on information under oath that,

- (a) the officer has been prevented from exercising a right of entry to the premises under subsection 91 (1) or has been prevented from exercising a power under subsection 91 (6);
- (b) there are reasonable grounds to believe that the officer will be prevented from exercising a right of entry to the premises under subsection 91 (1) or will be prevented from exercising a power under subsection 91 (6); or
- (c) there are reasonable grounds to believe that an offence under this Act or the regulations has been or is being committed and that information or other evidence will be obtained through the exercise of a power mentioned in subsection 91 (6). 2000, c. 41, s. 92 (1); 2009, c. 32, s. 51 (1).

Expiry of warrant

(2) A warrant issued under this section shall name a date on which it expires, which date shall not be later than 30 days after the warrant is issued. 2000, c. 41, s. 92 (2).

Extension of time

(3) Upon application without notice by the employment standards officer named in a warrant issued under this section, a justice of the peace may extend the date on which the warrant expires for an additional period of no more than 30 days. 2000, c. 41, s. 92 (3).

Use of force

(4) An employment standards officer named in a warrant issued under this section may call upon a police officer for assistance in executing the warrant. 2000, c. 41, s. 92 (4).

Time of execution

(5) A warrant issued under this section may be executed only between 8 a.m. and 8 p.m., unless the warrant specifies otherwise. 2000, c. 41, s. 92 (5).

Other matters

(6) Subsections 91 (4) to (13) apply with necessary modifications to an officer executing a warrant issued under this section. 2000, c. 41, s. 92 (6); 2002, c. 18, Sched. J, s. 3 (27).

Same

(7) Without restricting the generality of subsection (6), if a warrant is issued under this section, the matters on which an officer executing the warrant may question a person under clause 91 (6) (e) are not limited to those that aid in the effective execution of the warrant but extend to any matters that the officer thinks may be relevant to the investigation or inspection. 2009, c. 32, s. 51 (2).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 3 (27) - 26/11/2002

2009, c. 32, s. 51 (1, 2) - 22/03/2010

Posting of notices

93 An employment standards officer may require an employer to post and to keep posted in or upon the employer's premises in a conspicuous place or places where it is likely to come to the attention of the employer's employees,

- (a) any notice relating to the administration or enforcement of this Act or the regulations that the officer considers appropriate; or
- (b) a copy of a report or part of a report made by the officer concerning the results of an investigation or inspection. 2000, c. 41, s. 93.

Powers under the *Canada Labour Code*

94 If a regulation is made under the *Canada Labour Code* incorporating by reference all or part of this Act or a regulation under it, the Board and any person having powers under this Act may exercise the powers conferred under the *Canada Labour Code* regulation. 2000, c. 41, s. 94.

Service of documents

95 (1) Except as otherwise provided in section 8, where service of a document on a person is required or permitted under this Act, it may be served,

- (a) in the case of service on an individual, personally, by leaving a copy of the document with the individual;
- (b) in the case of service on a corporation, personally, by leaving a copy of the document with an officer, director or agent of the corporation, or with an individual at any place of business of the corporation who appears to be in control or management of the place of business;
- (c) by mail addressed to the person's last known business or residential address using any method of mail delivery that permits the delivery to be verified;
- (d) by fax or email if the person is equipped to receive the fax or email;
- (e) by a courier service;
- (f) by leaving the document, in a sealed envelope addressed to the person, with an individual who appears to be at least 16 years of age at the person's last known business or residential address; or
- (g) in a manner ordered by the Board under subsection (8). 2009, c. 9, s. 4; 2019, c. 4, Sched. 9, s. 10.

Same

(2) Service of a document by means described in clause (1) (a), (b) or (f) is effective when it is left with the individual. 2009, c. 9, s. 4.

Same

(3) Subject to subsection (6), service of a document by mail is effective five days after the document is mailed. 2009, c. 9, s. 4.

Same

(4) Subject to subsection (6), service of a document by a fax or email sent on a Saturday, Sunday or a public holiday or on any other day after 5 p.m. is effective on the next day that is not a Saturday, Sunday or public holiday. 2009, c. 9, s. 4.

Same

(5) Subject to subsection (6), service of a document by courier is effective two days after the courier takes the document. 2009, c. 9, s. 4.

Same

(6) Subsections (3), (4) and (5) do not apply if the person establishes that the service was not effective at the time specified in those subsections because of an absence, accident, illness or cause beyond the person's control. 2009, c. 9, s. 4.

Same

(7) If the Director considers that a manner of service other than one described in clauses (1) (a) to (f) is appropriate in the circumstances, the Director may direct the Board to consider the manner of service. 2009, c. 9, s. 4.

Same

(8) If the Board is directed to consider the manner of service, it may order that service be effected in the manner that the Board considers appropriate in the circumstances. 2009, c. 9, s. 4.

Same

(9) In an order for service, the Board shall specify when service in accordance with the order is effective. 2009, c. 9, s. 4.

Proof of issuance and service

(10) A certificate of service made by the employment standards officer who issued an order or notice under this Act is evidence of the issuance of the order or notice, the service of the order or notice on the person and its receipt by the person if, in the certificate, the officer,

- (a) certifies that the copy of the order or notice is a true copy of it;
- (b) certifies that the order or notice was served on the person; and
- (c) sets out in it the method of service used. 2009, c. 9, s. 4.

Proof of service

(11) A certificate of service made by the person who served a document under this Act is evidence of the service of the document on the person served and its receipt by that person if, in the certificate, the person who served the document,

- (a) certifies that the copy of the document is a true copy of it;
- (b) certifies that the document was served on the person; and
- (c) sets out in it the method of service used. 2009, c. 9, s. 4.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 4 - 6/11/2009

2019, c. 4, Sched. 9, s. 10 - 03/04/2019

**PART XXII
COMPLAINTS AND ENFORCEMENT**

COMPLAINTS

Complaints

96 (1) A person alleging that this Act has been or is being contravened may file a complaint with the Ministry in a written or electronic form approved by the Director. 2000, c. 41, s. 96 (1).

Effect of failure to use form

(2) A complaint that is not filed in a form approved by the Director shall be deemed not to have been filed. 2000, c. 41, s. 96 (2).

Limitation

(3) A complaint regarding a contravention that occurred more than two years before the day on which the complaint was filed shall be deemed not to have been filed. 2001, c. 9, Sched. I, s. 1 (18).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (18) - 4/09/2001

96.1 REPEALED: 2017, c. 22, Sched. 1, s. 53.

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 9, s. 1 (8) - 29/11/2010

2017, c. 22, Sched. 1, s. 53 - 01/01/2018

When civil proceeding not permitted

97 (1) An employee who files a complaint under this Act with respect to an alleged failure to pay wages or comply with Part XIII (Benefit Plans) may not commence a civil proceeding with respect to the same matter. 2000, c. 41, s. 97 (1).

Same, wrongful dismissal

(2) An employee who files a complaint under this Act alleging an entitlement to termination pay or severance pay may not commence a civil proceeding for wrongful dismissal if the complaint and the proceeding would relate to the same termination or severance of employment. 2000, c. 41, s. 97 (2).

Amount in excess of order

(3) Subsections (1) and (2) apply even if,

- (a) the amount alleged to be owing to the employee is greater than the amount for which an order can be issued under this Act; or
- (b) in the civil proceeding, the employee is claiming only that part of the amount alleged to be owing that is in excess of the amount for which an order can be issued under this Act. 2000, c. 41, s. 97 (3).

Withdrawal of complaint

(4) Despite subsections (1) and (2), an employee who has filed a complaint may commence a civil proceeding with respect to a matter described in those subsections if he or she withdraws the complaint within two weeks after it is filed. 2000, c. 41, s. 97 (4).

When complaint not permitted

98 (1) An employee who commences a civil proceeding with respect to an alleged failure to pay wages or to comply with Part XIII (Benefit Plans) may not file a complaint with respect to the same matter or have such a complaint investigated. 2000, c. 41, s. 98 (1).

Same, wrongful dismissal

(2) An employee who commences a civil proceeding for wrongful dismissal may not file a complaint alleging an entitlement to termination pay or severance pay or have such a complaint investigated if the proceeding and the complaint relate to the same termination or severance of employment. 2000, c. 41, s. 98 (2).

ENFORCEMENT UNDER COLLECTIVE AGREEMENT

When collective agreement applies

99 (1) If an employer is or has been bound by a collective agreement, this Act is enforceable against the employer as if it were part of the collective agreement with respect to an alleged contravention of this Act that occurs,

- (a) when the collective agreement is or was in force;
- (b) when its operation is or was continued under subsection 58 (2) of the *Labour Relations Act, 1995*; or
- (c) during the period that the parties to the collective agreement are or were prohibited by subsection 86 (1) of the *Labour Relations Act, 1995* from unilaterally changing the terms and conditions of employment. 2000, c. 41, s. 99 (1).

Complaint not permitted

(2) An employee who is represented by a trade union that is or was a party to a collective agreement may not file a complaint alleging a contravention of this Act that is enforceable under subsection (1) or have such a complaint investigated. 2000, c. 41, s. 99 (2).

Employee bound

(3) An employee who is represented by a trade union that is or was a party to a collective agreement is bound by any decision of the trade union with respect to the enforcement of this Act under the collective agreement, including a decision not to seek that enforcement. 2000, c. 41, s. 99 (3).

Membership status irrelevant

(4) Subsections (2) and (3) apply even if the employee is not a member of the trade union. 2000, c. 41, s. 99 (4).

Unfair representation

(5) Nothing in subsection (3) or (4) prevents an employee from filing a complaint with the Board alleging that a decision of the trade union with respect to the enforcement of this Act contravenes section 74 of the *Labour Relations Act, 1995*. 2000, c. 41, s. 99 (5).

Exception

(6) Despite subsection (2), the Director may permit an employee to file a complaint and may direct an employment standards officer to investigate it if the Director considers it appropriate in the circumstances. 2000, c. 41, s. 99 (6).

If arbitrator finds contravention

100 (1) If an arbitrator finds that an employer has contravened this Act, the arbitrator may make any order against the employer that an employment standards officer could have made with respect to that contravention but the arbitrator may not issue a notice of contravention. 2000, c. 41, s. 100 (1).

Same: Part XIII

(2) If an arbitrator finds that an employer has contravened Part XIII (Benefit Plans), the arbitrator may make any order that the Board could make under section 121. 2000, c. 41, s. 100 (2).

Directors and collective agreement

(3) An arbitrator shall not require a director to pay an amount, take an action or refrain from taking an action under a collective agreement that the director could not be ordered to pay, take or refrain from taking in the absence of the collective agreement. 2000, c. 41, s. 100 (3).

Conditions respecting orders under this section

(4) The following conditions apply with respect to an arbitrator's order under this section:

1. In an order requiring the payment of wages or compensation, the arbitrator may require that the amount of the wages or compensation be paid,
 - i. to the trade union that represents the employee or employees concerned, or
 - ii. directly to the employee or employees.
2. If the order requires the payment of wages, the order may be made for an amount greater than is permitted under subsection 103 (4).
3. The order is not subject to review under section 116. 2000, c. 41, s. 100 (4).

Copy of decision to Director

(5) When an arbitrator makes a decision with respect to an alleged contravention of this Act, the arbitrator shall provide a copy of it to the Director. 2000, c. 41, s. 100 (5).

Arbitration and s. 4

101 (1) This section applies if, during a proceeding before an arbitrator, other than the Board, concerning an alleged contravention of this Act, an issue is raised concerning whether the employer to whom the collective agreement applies or applied and another person are to be treated as one employer under section 4. 2000, c. 41, s. 101 (1).

Restriction

(2) The arbitrator shall not decide the question of whether the employer and the other person are to be treated as one employer under section 4. 2000, c. 41, s. 101 (2).

Reference to Board

(3) If the arbitrator finds it is necessary to make a finding concerning the application of section 4, the arbitrator shall refer that question to the Board by giving written notice to the Board. 2000, c. 41, s. 101 (3).

Content of notice

(4) The notice to the Board shall,

- (a) state that an issue has arisen in an arbitration proceeding with respect to whether the employer and another person are to be treated as one employer under section 4; and
- (b) set out the decisions made by the arbitrator on the other matters in dispute. 2000, c. 41, s. 101 (4).

Decision by Board

(5) The Board shall decide whether the employer and the other person are one employer under section 4, but shall not vary any decision of the arbitrator concerning the other matters in dispute. 2000, c. 41, s. 101 (5).

Order

(6) Subject to subsection (7), the Board may make an order against the employer and, if it finds that the employer and the other person are one employer under section 4, it may make an order against the other person. 2000, c. 41, s. 101 (6).

Exception

(7) The Board shall not require the other person to pay an amount or take or refrain from taking an action under a collective agreement that the other person could not be ordered to pay, take or refrain from taking in the absence of the collective agreement. 2000, c. 41, s. 101 (7).

Application

(8) Section 100 applies, with necessary modifications, with respect to an order under this section. 2000, c. 41, s. 101 (8).

ENFORCEMENT BY EMPLOYMENT STANDARDS OFFICER

Settlement by employment standards officer

101.1 (1) An employment standards officer assigned to investigate a complaint may attempt to effect a settlement. 2010, c. 16, Sched. 9, s. 1 (9).

Effect of settlement

- (2) If the employer and employee agree to a settlement under this section and do what they agreed to do under it,
- (a) the settlement is binding on them;
 - (b) the complaint is deemed to have been withdrawn;
 - (c) the investigation is terminated; and
 - (d) any proceeding respecting the contravention alleged in the complaint, other than a prosecution, is terminated. 2010, c. 16, Sched. 9, s. 1 (9).

Application of s. 112 (4), (5), (7) and (9)

(3) Subsections 112 (4), (5), (7) and (9) apply, with necessary modifications, in respect of a settlement under this section. 2010, c. 16, Sched. 9, s. 1 (9).

Application to void settlement

- (4) If, upon application to the Board, the employee or employer demonstrates that he, she or it entered into a settlement under this section as a result of fraud or coercion,
- (a) the settlement is void;
 - (b) the complaint is deemed never to have been withdrawn;
 - (c) the investigation of the complaint is resumed; and
 - (d) any proceeding respecting the contravention alleged in the complaint that was terminated is resumed. 2010, c. 16, Sched. 9, s. 1 (9).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 9, s. 1 (9) - 29/11/2010

101.2 REPEALED: 2000, c. 41, s. 101.2 (7).

Section Amendments with date in force (d/m/y)

2000, c. 41, s. 101.2 (7) - 29/11/2012

2010, c. 16, Sched. 9, s. 1 (9) - 29/11/2010

Meeting may be required

102 (1) An employment standards officer may, after giving at least 15 days written notice, require any of the persons referred to in subsection (2) to attend a meeting with the officer in the following circumstances:

1. The officer is investigating a complaint against an employer.
2. The officer, while inspecting a place under section 91 or 92, comes to have reasonable grounds to believe that an employer has contravened this Act or the regulations with respect to an employee.
3. The officer acquires information that suggests to him or her the possibility that an employer may have contravened this Act or the regulations with respect to an employee.
4. The officer wishes to determine whether the employer of an employee who resides in the employer's residence is complying with this Act. 2000, c. 41, s. 102 (1); 2009, c. 32, s. 51 (3).

Attendees

(2) Any of the following persons may be required to attend the meeting:

1. The employee.
2. The employer.
3. If the employer is a corporation, a director or employee of the corporation. 2000, c. 41, s. 102 (2).

Notice

(3) The notice referred to in subsection (1) shall specify the time and place at which the person is to attend and shall be served on the person in accordance with section 95. 2009, c. 9, s. 5 (1).

Documents

(4) The employment standards officer may require the person to bring to the meeting or make available for the meeting any records or other documents specified in the notice. 2009, c. 9, s. 5 (1).

Same

(5) The employment standards officer may give directions on how to make records or other documents available for the meeting. 2009, c. 9, s. 5 (1).

Compliance

(6) A person who receives a notice under this section shall comply with it. 2000, c. 41, s. 102 (6).

Use of technology

(7) The employment standards officer may direct that a meeting under this section be held using technology, including but not limited to teleconference and videoconference technology, that allows the persons participating in the meeting to participate concurrently. 2009, c. 9, s. 5 (2).

Same

(8) Where an employment standards officer gives directions under subsection (7) respecting a meeting, he or she shall include in the notice referred to in subsection (1) such information additional to that required by subsection (3) as the officer considers appropriate. 2009, c. 9, s. 5 (2).

Same

(9) Participation in a meeting by means described in subsection (7) is attendance at the meeting for the purposes of this section. 2009, c. 9, s. 5 (2).

Determination if person fails to attend, etc.

(10) If a person served with a notice under this section fails to attend the meeting or fails to bring or make available any records or other documents as required by the notice, the officer may determine whether an employer has contravened or is contravening this Act on the basis of the following factors:

1. If the employer failed to comply with the notice,
 - i. any evidence or submissions provided by or on behalf of the employer before the meeting, and
 - ii. any evidence or submissions provided by or on behalf of the employee before or during the meeting.
2. If the employee failed to comply with the notice,
 - i. any evidence or submissions provided by or on behalf of the employee before the meeting, and
 - ii. any evidence or submissions provided by or on behalf of the employer before or during the meeting.

3. Any other factors that the officer considers relevant. 2010, c. 16, Sched. 9, s. 1 (10).

Employer includes representative

(11) For the purposes of subsection (10), if the employer is a corporation, a reference to an employer includes a director or employee who was served with a notice requiring him or her to attend the meeting or to bring or make available any records or other documents. 2010, c. 16, Sched. 9, s. 1 (10).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 5 (1, 2) - 6/11/2009; 2009, c. 32, s. 51 (3) - 22/03/2010

2010, c. 16, Sched. 9, s. 1 (10) - 29/11/2010

Time for response

102.1 (1) An employment standards officer may, in any of the following circumstances and after giving notice, require an employee or an employer to provide evidence or submissions to the officer within the time that he or she specifies in the notice:

1. The officer is investigating a complaint against an employer.
2. The officer, while inspecting a place under section 91 or 92, comes to have reasonable grounds to believe that an employer has contravened this Act or the regulations with respect to an employee.
3. The officer acquires information that suggests to him or her the possibility that an employer may have contravened this Act or the regulations with respect to an employee.
4. The officer wishes to determine whether the employer of an employee who resides in the employer's residence is complying with this Act. 2010, c. 16, Sched. 9, s. 1 (11).

Service of notice

(2) The notice shall be served on the employer or employee in accordance with section 95. 2010, c. 16, Sched. 9, s. 1 (11).

Determination if person fails to respond

(3) If a person served with a notice under this section fails to provide evidence or submissions as required by the notice, the officer may determine whether the employer has contravened or is contravening this Act on the basis of the following factors:

1. Any evidence or submissions provided by or on behalf of the employer or the employee before the notice was served.
2. Any evidence or submissions provided by or on behalf of the employer or the employee in response to and within the time specified in the notice.
3. Any other factors that the officer considers relevant. 2010, c. 16, Sched. 9, s. 1 (11).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 9, s. 1 (11) - 29/11/2010

Order to pay wages

103 (1) If an employment standards officer finds that an employer owes wages to an employee, the officer may,

- (a) arrange with the employer that the employer pay the wages directly to the employee;
- (a.1) order the employer to pay wages to the employee; or
- (b) order the employer to pay the amount of wages to the Director in trust. 2000, c. 41, s. 103 (1); 2017, c. 22, Sched. 1, s. 54.

Administrative costs

(2) An order issued under clause (1) (b) shall also require the employer to pay to the Director in trust an amount for administrative costs equal to the greater of \$100 and 10 per cent of the wages owing. 2000, c. 41, s. 103 (2).

If more than one employee

- (3) A single order may be issued with respect to wages owing to more than one employee. 2000, c. 41, s. 103 (3).
- (4), (4.1) REPEALED: 2014, c. 10, Sched. 2, s. 7 (2).

Contents of order

(5) The order shall contain information setting out the nature of the amount found to be owing to the employee or be accompanied by that information. 2000, c. 41, s. 103 (5).

Service of order

(6) The order shall be served on the employer in accordance with section 95. 2009, c. 9, s. 6.

Notice to employee

(7) An employment standards officer who issues an order with respect to an employee under this section shall advise the employee of its issuance by serving a letter, in accordance with section 95, on the employee. 2009, c. 9, s. 6.

(7.1)-(7.2) REPEALED: 2009, c. 9, s. 6.

Compliance

(8) Every employer against whom an order is issued under this section shall comply with it according to its terms. 2009, c. 9, s. 6.

Effect of order

(9) If an employer fails to apply under section 116 for a review of an order issued under this section within the time allowed for applying for that review, the order becomes final and binding against the employer. 2000, c. 41, s. 103 (9).

Same

(10) Subsection (9) applies even if a review hearing is held under this Act to determine another person's liability for the wages that are the subject of the order. 2000, c. 41, s. 103 (10).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (19, 20) - 4/09/2001

2009, c. 9, s. 6 - 6/11/2009

2014, c. 10, Sched. 2, s. 7 (1) - 20/02/2015; 2014, c. 10, Sched. 2, s. 7 (2) - 20/02/2017

2017, c. 22, Sched. 1, s. 54 - 01/01/2018

Orders for compensation or reinstatement

104 (1) If an employment standards officer finds a contravention of any of the following Parts with respect to an employee, the officer may order that the employee be compensated for any loss he or she incurred as a result of the contravention or that he or she be reinstated or that he or she be both compensated and reinstated:

1. Part XIV (Leaves of Absence).
2. Part XVI (Lie Detectors).
3. Part XVII (Retail Business Establishments).
4. Part XVIII (Reprisal). 2000, c. 41, s. 104 (1); 2009, c. 9, s. 7.

Order to hire

(2) An employment standards officer who finds a contravention of Part XVI may order that an applicant for employment or an applicant to be a police officer be hired by an employer as defined in that Part or may order that he or she be compensated by an employer as defined in that Part or that he or she be both hired and compensated. 2000, c. 41, s. 104 (2).

Terms of orders

- (3) If an order made under this section requires a person to compensate an employee, it shall also require the person to,
- (a) pay to the Director in trust,
 - (i) the amount of the compensation, and
 - (ii) an amount for administration costs equal to the greater of \$100 and 10 per cent of the amount of compensation; or
 - (b) pay the amount of the compensation to the employee. 2017, c. 22, Sched. 1, s. 55.

How orders apply

(4) Subsections 103 (3) and (5) to (9) apply, with necessary modifications, with respect to orders issued under this section. 2000, c. 41, s. 104 (4).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 7 - 6/11/2009

2017, c. 22, Sched. 1, s. 55 - 01/01/2018

Employee cannot be found

105 (1) If an employment standards officer has arranged with an employer or ordered an employer to pay wages under clause 103 (1) (a) or (a.1) to the employee and the employer is unable to locate the employee despite having made reasonable efforts to do so, the employer shall pay the wages to the Director in trust. 2017, c. 22, Sched. 1, s. 56.

Settlements

(2) If an employment standards officer has received money for an employee under a settlement but the employee cannot be located, the money shall be paid to the Director in trust. 2000, c. 41, s. 105 (2).

When money vests in Crown

(3) Money paid to or held by the Director in trust under this section vests in the Crown but may, without interest, be paid out to the employee, the employee's estate or such other person as the Director considers is entitled to it. 2000, c. 41, s. 105 (3).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 56 - 01/01/2018

Order against director, Part XX

106 (1) If an employment standards officer makes an order against an employer that wages be paid, he or she may make an order to pay wages for which directors are liable under Part XX against some or all of the directors of the employer and may serve a copy of the order in accordance with section 95 on them together with a copy of the order to pay against the employer. 2000, c. 41, s. 106 (1); 2009, c. 9, s. 8 (1).

Effect of order

(2) If the directors do not comply with the order or do not apply to have it reviewed, the order becomes final and binding against those directors even though a review hearing is held to determine another person's liability under this Act. 2000, c. 41, s. 106 (2).

Orders, insolvent employer

(3) If an employer is insolvent and the employee has caused a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer's trustee in bankruptcy, and the claim has not been paid, the employment standards officer may issue an order to pay wages for which directors are liable under Part XX against some or all of the directors and shall serve it on them in accordance with section 95. 2000, c. 41, s. 106 (3); 2009, c. 9, s. 8 (2).

Procedure

(4) Subsection (2) applies with necessary modifications to an order made under subsection (3). 2000, c. 41, s. 106 (4).

Maximum liability

(5) Nothing in this section increases the maximum liability of a director beyond the amounts set out in section 81. 2000, c. 41, s. 106 (5).

Payment to Director

(6) At the discretion of the Director, a director who is subject to an order under this section may be ordered to pay the wages in trust to the Director. 2000, c. 41, s. 106 (6).

(7)-(9) REPEALED: 2009, c. 9, s. 8 (3).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (21) - 4/09/2001

2009, c. 9, s. 8 (1-3) - 6/11/2009

Further order, Part XX

107 (1) An employment standards officer may make an order to pay wages for which directors are liable under Part XX against some or all of the directors of an employer who were not the subject of an order under section 106, and may serve it on them in accordance with section 95,

- (a) after an employment standards officer has made an order against the employer under section 103 that wages be paid and they have not been paid and the employer has not applied to have the order reviewed;
- (b) after an employment standards officer has made an order against directors under subsection 106 (1) or (3) and the amount has not been paid and the employer or the directors have not applied to have it reviewed;
- (c) after the Board has issued, amended or affirmed an order under section 119 if the order, as issued, amended or affirmed, requires the employer or the directors to pay wages and the amount set out in the order has not been paid. 2000, c. 41, s. 107 (1); 2009, c. 9, s. 9 (1).

Payment to Director

(2) At the discretion of the Director, a director who is subject to an order under this section may be ordered to pay the wages in trust to the Director. 2000, c. 41, s. 107 (2).

(3) REPEALED: 2009, c. 9, s. 9 (2).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 9 (1, 2) - 6/11/2009

Compliance order

108 (1) If an employment standards officer finds that a person has contravened a provision of this Act or the regulations, the officer may,

- (a) order that the person cease contravening the provision;
- (b) order what action the person shall take or refrain from taking in order to comply with the provision; and
- (c) specify a date by which the person must do so. 2000, c. 41, s. 108 (1).

Payment may not be required

(2) No order under this section shall require the payment of wages, fees or compensation. 2009, c. 9, s. 10.

Other means not a bar

(3) Nothing in subsection (2) precludes an employment standards officer from issuing an order under section 74.14, 74.16, 74.17, 103, 104, 106 or 107 and an order under this section in respect of the same contravention. 2009, c. 9, s. 10.

Application of s. 103 (6) to (9)

(4) Subsections 103 (6) to (9) apply with respect to orders issued under this section with necessary modifications, including but not limited to the following:

- 1. A reference to an employer includes a reference to a client of a temporary help agency.
- 2. A reference to an employee includes a reference to an assignment employee or prospective assignment employee. 2009, c. 9, s. 10; 2017, c. 22, Sched. 1, s. 57.

Injunction proceeding

(5) At the instance of the Director, the contravention of an order made under subsection (1) may be restrained upon an application, made without notice, to a judge of the Superior Court of Justice. 2000, c. 41, s. 108 (5).

Same

(6) Subsection (5) applies with respect to a contravention of an order in addition to any other remedy or penalty for its contravention. 2000, c. 41, s. 108 (6).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 10 - 6/11/2009

2017, c. 22, Sched. 1, s. 57 - 01/01/2018

Money paid when no review

109 (1) Money paid to the Director under an order under section 74.14, 74.16, 74.17, 103, 104, 106 or 107 shall be paid to the person with respect to whom the order was issued unless an application for review is made under section 116 within the period required under that section. 2009, c. 9, s. 11.

Money distributed rateably

(2) If the money paid to the Director under one of those orders is not enough to pay all of the persons entitled to it under the order the full amount to which they are entitled, the Director shall distribute that money, including money received with respect to administrative costs, to the persons in proportion to their entitlement. 2009, c. 9, s. 11.

No proceeding against Director

(3) No proceeding shall be instituted against the Director for acting in compliance with this section. 2000, c. 41, s. 109 (3).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 11 - 6/11/2009

Refusal to issue order

110 (1) If, after a person files a complaint alleging a contravention of this Act in respect of which an order could be issued under section 74.14, 74.16, 74.17, 103, 104 or 108, an employment standards officer assigned to investigate the complaint refuses to issue such an order, the officer shall, in accordance with section 95, serve a letter on the person advising the person of the refusal. 2009, c. 9, s. 12.

Deemed refusal

(2) If no order is issued with respect to a complaint described in subsection (1) within two years after it was filed, an employment standards officer shall be deemed to have refused to issue an order and to have served a letter on the person advising the person of the refusal on the last day of the second year. 2009, c. 9, s. 12.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 12 - 6/11/2009

Time limit on recovery, employee's complaint

111 (1) If an employee files a complaint alleging a contravention of this Act or the regulations, the employment standards officer investigating the complaint may not issue an order for wages that became due to the employee under the provision that was the subject of the complaint or any other provision of this Act or the regulations if the wages became due more than two years before the complaint was filed. 2001, c. 9, Sched. I, s. 1 (22); 2014, c. 10, Sched. 2, s. 8 (1).

Same, another employee's complaint

(2) If, in the course of investigating a complaint, an employment standards officer finds that an employer has contravened this Act or the regulations with respect to an employee who did not file a complaint, the officer may not issue an order for wages that became due to that employee as a result of that contravention if the wages became due more than two years before the complaint was filed. 2001, c. 9, Sched. I, s. 1 (22); 2014, c. 10, Sched. 2, s. 8 (2).

Same, inspection

(3) If an employment standards officer finds during an inspection that an employer has contravened this Act or the regulations with respect to an employee, the officer may not issue an order for wages that became due to the employee more than two years before the officer commenced the inspection. 2001, c. 9, Sched. I, s. 1 (22); 2014, c. 10, Sched. 2, s. 8 (3).

(3.1)-(8) REPEALED: 2014, c. 10, Sched. 2, s. 8 (6).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (22) - 4/09/2001

2002, c. 18, Sched. J, s. 3 (28) - 26/11/2002

2014, c. 10, Sched. 2, s. 8 (1-5) - 20/02/2015; 2014, c. 10, Sched. 2, s. 8 (6) - 20/02/2017

SETTLEMENTS

Settlement

112 (1) Subject to subsection (8), if an employee and an employer who have agreed to a settlement respecting a contravention or alleged contravention of this Act inform an employment standards officer in writing of the terms of the settlement and do what they agreed to do under it,

- (a) the settlement is binding on the parties;
- (b) any complaint filed by the employee respecting the contravention or alleged contravention is deemed to have been withdrawn;
- (c) any order made in respect of the contravention or alleged contravention is void; and
- (d) any proceeding, other than a prosecution, respecting the contravention or alleged contravention is terminated. 2000, c. 41, s. 112 (1).

Compliance orders

(2) Clause (1) (c) does not apply with respect to an order issued under section 108. 2000, c. 41, s. 112 (2).

Notices of contravention

(3) This section does not apply with respect to a notice of contravention. 2000, c. 41, s. 112 (3).

Payment by officer

(4) If an employment standards officer receives money for an employee under this section, the officer may pay it directly to the employee or to the Director in trust. 2000, c. 41, s. 112 (4).

Same

(5) If money is paid in trust to the Director under subsection (4), the Director shall pay it to the employee. 2000, c. 41, s. 112 (5).

Administrative costs and collector fees

- (6) If the settlement concerns an order to pay, the Director is, despite clause (1) (c), entitled to be paid,
- (a) that proportion of the administrative costs that were ordered to be paid that is the same as the proportion of the amount of wages, fees or compensation ordered to be paid that the employee is entitled to receive under the settlement; and
 - (b) that proportion of the collector's fees and disbursements that were added to the amount of the order under subsection 128 (2) that is the same as the proportion of the amount of wages, fees or compensation ordered to be paid that the employee is entitled to receive under the settlement. 2017, c. 22, Sched. 1, s. 58 (1).

Restrictions on settlements

(7) No person shall enter into a settlement which would permit or require that person or any other person to engage in future contraventions of this Act. 2000, c. 41, s. 112 (7).

Application to void settlement

(8) If, upon application to the Board, the employee demonstrates that he or she entered into the settlement as a result of fraud or coercion,

- (a) the settlement is void;
- (b) the complaint is deemed never to have been withdrawn;
- (c) any order made in respect of the contravention or alleged contravention is reinstated;
- (d) any proceedings respecting the contravention or alleged contravention that were terminated shall be resumed. 2000, c. 41, s. 112 (8).

Application to Part XVIII.1

(9) For the purposes of the application of this section in respect of Part XVIII.1, the following modifications apply:

- 1. A reference to an employer includes a reference to a client of a temporary help agency.
- 2. A reference to an employee includes a reference to an assignment employee or prospective assignment employee. 2009, c. 9, s. 13 (2); 2017, c. 22, Sched. 1, s. 58 (2).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 13 (1, 2) - 6/11/2009

2017, c. 22, Sched. 1, s. 58 (1, 2) - 01/01/2018

NOTICES OF CONTRAVENTION**Notice of contravention**

113 (1) If an employment standards officer believes that a person has contravened a provision of this Act, the officer may issue a notice to the person setting out the officer's belief and specifying the amount of the penalty for the contravention. 2017, c. 22, Sched. 1, s. 59 (1).

Amount of penalty

(1.1) The amount of the penalty shall be determined in accordance with the regulations. 2017, c. 22, Sched. 1, s. 59 (1).

Penalty within range

(1.2) If a range has been prescribed as the penalty for a contravention, the employment standards officer shall determine the amount of the penalty in accordance with the prescribed criteria, if any. 2017, c. 22, Sched. 1, s. 59 (1).

Information

(2) The notice shall contain or be accompanied by information setting out the nature of the contravention. 2000, c. 41, s. 113 (2).

Service

(3) A notice issued under this section shall be served on the person in accordance with section 95. 2009, c. 9, s. 14 (1).

(4) REPEALED: 2009, c. 9, s. 14 (1).

Deemed contravention

(5) The person shall be deemed to have contravened the provision set out in the notice if,

- (a) the person fails to apply to the Board for a review of the notice within the period set out in subsection 122 (1); or
- (b) the person applies to the Board for a review of the notice and the Board finds that the person contravened the provision set out in the notice. 2001, c. 9, Sched. I, s. 1 (23).

Penalty

(6) A person who is deemed to have contravened this Act shall pay to the Minister of Finance the penalty for the deemed contravention and the amount of any collector's fees and disbursements added to the amount under subsection 128 (2). 2001, c. 9, Sched. I, s. 1 (23).

Same

(6.1) The payment under subsection (6) shall be made within 30 days after the day the notice of contravention was served or, if the notice of contravention is appealed, within 30 days after the Board finds that there was a contravention. 2001, c. 9, Sched. I, s. 1 (23); 2002, c. 18, Sched. J, s. 3 (29).

Publication re notice of contraventions

(6.2) If a person, including an individual, is deemed under subsection (5) to have contravened this Act after being issued a notice of contravention, the Director may publish or otherwise make available to the general public the name of the person, a description of the deemed contravention, the date of the deemed contravention and the penalty for the deemed contravention. 2017, c. 22, Sched. 1, s. 59 (2).

Internet publication

(6.3) Authority to publish under subsection (6.2) includes authority to publish on the Internet. 2017, c. 22, Sched. 1, s. 59 (2).

Disclosure

(6.4) Any disclosure made under subsection (6.2) shall be deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*. 2017, c. 22, Sched. 1, s. 59 (2).

Other means not a bar

(7) An employment standards officer may issue a notice to a person under this section even though an order has been or may be issued against the person under section 74.14, 74.16, 74.17, 103, 104 or 108 or the person has been or may be prosecuted for or convicted of an offence with respect to the same contravention. 2000, c. 41, s. 113 (7); 2009, c. 9, s. 14 (2).

Trade union

(8) This section does not apply with respect to a contravention of this Act with respect to an employee who is represented by a trade union. 2000, c. 41, s. 113 (8).

Director

(9) This section does not apply with respect to a contravention of this Act by a director or officer of an employer that is a corporation. 2000, c. 41, s. 113 (9).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (23) - 4/09/2001

2002, c. 18, Sched. J, s. 3 (29) - 26/11/2002

2009, c. 9, s. 14 (1, 2) - 6/11/2009

2017, c. 22, Sched. 1, s. 59 (1, 2) - 01/01/2018

LIMITATION PERIOD**Limitation period re orders and notices**

114 (1) An employment standards officer shall not issue an order to pay wages, fees or compensation or a notice of contravention with respect to a contravention of this Act concerning an employee,

- (a) if the employee filed a complaint about the contravention, more than two years after the complaint was filed;
- (b) if the employee did not file a complaint but another employee of the same employer did file a complaint, more than two years after the other employee filed his or her complaint if the officer discovered the contravention with respect to the employee while investigating the complaint; or
- (c) if the employee did not file a complaint and clause (b) does not apply, more than two years after an employment standards officer commenced an inspection with respect to the employee's employer for the purpose of determining whether a contravention occurred. 2000, c. 41, s. 114 (1); 2009, c. 9, s. 15 (1).

Complaints from different employees

(2) If an employee files a complaint about a contravention of this Act by his or her employer and another employee of the same employer has previously filed a complaint about substantially the same contravention, subsection (1) shall be applied as if the employee who filed the subsequent complaint did not file a complaint. 2000, c. 41, s. 114 (2).

Exception

(3) Subsection (2) does not apply if, prior to the day on which the subsequent complaint was filed, an employment standards officer had, with respect to the earlier complaint, already issued an order or advised the complainant that he or she was refusing to issue an order. 2000, c. 41, s. 114 (3).

Restriction on rescission or amendment

(4) An employment standards officer shall not amend or rescind an order to pay wages, fees or compensation after the last day on which he or she could have issued that order under subsection (1) unless the employer against whom the order was issued and the employee with respect to whom it was issued consent to the rescission or amendment. 2001, c. 9, Sched. I, s. 1 (24); 2009, c. 9, s. 15 (2).

Same

(5) An employment standards officer shall not amend or rescind a notice of contravention after the last day on which he or she could have issued that notice under subsection (1) unless the employer against whom the notice was issued consents to the rescission or amendment. 2001, c. 9, Sched. I, s. 1 (24).

Application to Part XVIII.1

(6) For the purposes of the application of this section in respect of Part XVIII.1, the following modifications apply:

- 1. A reference to an employer includes a reference to a client of a temporary help agency.

2. A reference to an employee includes a reference to an assignment employee or prospective assignment employee. 2009, c. 9, s. 15 (3); 2017, c. 22, Sched. 1, s. 60.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (24) - 4/09/2001

2009, c. 9, s. 15 (1-3) - 6/11/2009

2017, c. 22, Sched. 1, s. 60 - 01/01/2018

Meaning of “substantially the same”

115 (1) For the purposes of section 114, contraventions with respect to two employees are substantially the same if both employees became entitled to recover money under this Act as a result of the employer’s failure to comply with the same provision of this Act or the regulations or with identical or virtually identical provisions of their employment contracts. 2000, c. 41, s. 115 (1).

Application to Part XVIII.1

(1.1) For the purposes of the application of subsection (1) in respect of Part XVIII.1, the following modifications apply:

1. A reference to an employer includes a reference to a client of a temporary help agency.
2. A reference to an employee includes a reference to an assignment employee or prospective assignment employee. 2009, c. 9, s. 16; 2017, c. 22, Sched. 1, s. 61.

Exception, payment of wages, deductions

(2) Despite subsection (1), contraventions with respect to two employees are not substantially the same merely because both employees became entitled to recover money under this Act as a result of a contravention of section 11 or 13 if the contravention of the section was with respect to wages due under different provisions of this Act or the regulations or under provisions of their employment contracts which are not identical or virtually identical. 2000, c. 41, s. 115 (2).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 16 - 6/11/2009

2017, c. 22, Sched. 1, s. 61 - 01/01/2018

**PART XXIII
REVIEWS BY THE BOARD**

REVIEWS OF ORDERS

Interpretation

115.1 In this Part, a reference to an employee includes a reference to an assignment employee or a prospective assignment employee. 2009, c. 9, s. 17; 2017, c. 22, Sched. 1, s. 62.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 17 - 6/11/2009

2017, c. 22, Sched. 1, s. 62 - 01/01/2018

Review

116 (1) A person against whom an order has been issued under section 74.14, 74.16, 74.17, 103, 104, 106, 107 or 108 is entitled to a review of the order by the Board if, within the period set out in subsection (4), the person,

- (a) applies to the Board in writing for a review;
- (b) in the case of an order under section 74.14 or 103, pays the amount owing under the order to the Director in trust or provides the Director with an irrevocable letter of credit acceptable to the Director in that amount; and
- (c) in the case of an order under section 74.16, 74.17 or 104, pays the lesser of the amount owing under the order and \$10,000 to the Director in trust or provides the Director with an irrevocable letter of credit acceptable to the Director in that amount. 2009, c. 9, s. 18.

Employee seeks review of order

(2) If an order has been issued under section 74.14, 74.16, 74.17, 103 or 104 with respect to an employee, the employee is entitled to a review of the order by the Board if, within the period set out in subsection (4), the employee applies to the Board in writing for a review. 2009, c. 9, s. 18.

Employee seeks review of refusal

(3) If an employee has filed a complaint alleging a contravention of this Act or the regulations and an order could be issued under section 74.14, 74.16, 74.17, 103, 104 or 108 with respect to such a contravention, the employee is entitled to a review of an employment standards officer's refusal to issue such an order if, within the period set out in subsection (4), the employee applies to the Board in writing for such a review. 2009, c. 9, s. 18.

Period for applying for review

(4) An application for a review under subsection (1), (2) or (3) shall be made within 30 days after the day on which the order, letter advising of the order or letter advising of the refusal to issue an order, as the case may be, is served. 2009, c. 9, s. 18.

Extension of time

(5) The Board may extend the time for applying for a review under this section if it considers it appropriate in the circumstances to do so and, in the case of an application under subsection (1),

- (a) the Board has enquired of the Director whether the Director has paid to the employee the wages, fees or compensation that were the subject of the order and is satisfied that the Director has not done so; and
- (b) the Board has enquired of the Director whether a collector's fees or disbursements have been added to the amount of the order under subsection 128 (2) and, if so, the Board is satisfied that fees and disbursements were paid by the person against whom the order was issued. 2009, c. 9, s. 18.

Hearing

(6) Subject to subsection 118 (2), the Board shall hold a hearing for the purposes of the review. 2009, c. 9, s. 18.

Parties

(7) The following are parties to the review:

1. The applicant for the review of an order.
2. If the person against whom an order was issued applies for the review, the employee with respect to whom the order was issued.
3. If the employee applies for the review of an order, the person against whom the order was issued.
4. If the employee applies for a review of a refusal to issue an order under section 74.14, 74.16, 74.17, 103, 104 or 108, the person against whom such an order could be issued.
5. If a director of a corporation applies for the review, the applicant and each director, other than the applicant, on whom the order was served.
6. The Director.
7. Any other persons specified by the Board. 2009, c. 9, s. 18.

Parties given full opportunity

(8) The Board shall give the parties full opportunity to present their evidence and make their submissions. 2009, c. 9, s. 18.

Practice and procedure for review

(9) The Board shall determine its own practice and procedure with respect to a review under this section. 2009, c. 9, s. 18.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (25, 26) - 4/09/2001

2009, c. 9, s. 18 - 6/11/2009

Money held in trust pending review

117 (1) This section applies if money with respect to an order to pay wages, fees or compensation is paid to the Director in trust and the person against whom the order was issued applies to the Board for a review of the order. 2009, c. 9, s. 19.

Interest-bearing account

(2) The money held in trust shall be held in an interest-bearing account while the application for review is pending. 2000, c. 41, s. 117 (2).

If settlement

(3) If the matter is settled under section 112 or 120, the amount held in trust shall, subject to subsection 112 (6) or 120 (6), be paid out in accordance with the settlement, with interest, calculated at the rate and in the manner determined by the Director under subsection 88 (5). 2000, c. 41, s. 117 (3).

If no settlement

(4) If the matter is not settled under section 112 or 120, the amount paid into trust shall be paid out in accordance with the Board's decision together with interest calculated at the rate and in the manner determined by the Director under subsection 88 (5). 2000, c. 41, s. 117 (4).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 19 - 6/11/2009

Rules of practice

118 (1) The chair of the Board may make rules,

- (a) governing the Board's practice and procedure and the exercise of its powers; and
- (b) providing for forms and their use. 2000, c. 41, s. 118 (1); 2001, c. 9, Sched. I, s. 1 (27).

Expedited decisions

(2) The chair of the Board may make rules to expedite decisions about the Board's jurisdiction, and those rules,

- (a) may provide that the Board is not required to hold a hearing; and
- (b) despite subsection 116 (8), may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions. 2000, c. 41, s. 118 (2).

(3) REPEALED: 2018, c. 14, Sched. 1, s. 23.

Conflict with *Statutory Powers Procedure Act*

(4) If there is a conflict between the rules made under this section and the *Statutory Powers Procedure Act*, the rules under this section prevail. 2000, c. 41, s. 118 (4).

Rules not regulations

(5) Rules made under this section are not regulations within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 2000, c. 41, s. 118 (5); 2006, c. 21, Sched. F, s. 136 (1).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (27) - 4/09/2001

2006, c. 19, Sched. M, s. 1 (3) - 22/06/2006; 2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

2018, c. 14, Sched. 1, s. 23 - 01/01/2019

Powers of Board

119 (1) This section sets out the Board's powers in a review under section 116. 2000, c. 41, s. 119 (1).

Persons to represent groups

(2) If a group of parties have the same interest or substantially the same interest, the Board may designate one or more of the parties in the group to represent the group. 2000, c. 41, s. 119 (2).

Quorum

(3) The chair or a vice-chair of the Board constitutes a quorum for the purposes of this section and is sufficient for the exercise of the jurisdiction and powers of the Board under it. 2000, c. 41, s. 119 (3).

Posting of notices

(4) The Board may require a person to post and to keep posted any notices that the Board considers appropriate even if the person is not a party to the review. 2000, c. 41, s. 119 (4).

Same

(5) If the Board requires a person to post and keep posted notices, the person shall post the notices and keep them posted in a conspicuous place or places in or upon the person's premises where it is likely to come to the attention of other persons having an interest in the review. 2000, c. 41, s. 119 (5).

Powers of Board

(6) The Board may, with necessary modifications, exercise the powers conferred on an employment standards officer under this Act and may substitute its findings for those of the officer who issued the order or refused to issue the order. 2000, c. 41, s. 119 (6).

Dealing with order

(7) Without restricting the generality of subsection (6),

- (a) on a review of an order, the Board may amend, rescind or affirm the order or issue a new order; and
- (b) on a review of a refusal to issue an order, the Board may issue an order or affirm the refusal. 2000, c. 41, s. 119 (7).

Labour relations officers

(8) Any time after an application for review is made, the Board may direct a labour relations officer to examine any records or other documents and make any inquiries it considers appropriate, but it shall not direct an employment standards officer to do so. 2000, c. 41, s. 119 (8).

Powers of labour relations officers

(9) Sections 91 and 92 apply with necessary modifications with respect to a labour relations officer acting under subsection (8). 2000, c. 41, s. 119 (9).

Wages or compensation owing

(10) Subsection (11) applies if, during a review of an order requiring the payment of wages, fees or compensation or a review of a refusal to issue such an order,

- (a) the Board finds that a specified amount of wages, fees or compensation is owing; or
- (b) there is no dispute that a specified amount of wages, fees or compensation is owing. 2000, c. 41, s. 119 (10); 2009, c. 9, s. 20 (1).

Interim order

(11) The Board shall affirm the order to the extent of the specified amount or issue an order to the extent of that amount, even though the review is not yet completed. 2000, c. 41, s. 119 (11).

Interest

(12) If the Board issues, amends or affirms an order or issues a new order requiring the payment of wages, fees or compensation, the Board may order the person against whom the order was issued to pay interest at the rate and calculated in the manner determined by the Director under subsection 88 (5). 2009, c. 9, s. 20 (2).

Decision final

(13) A decision of the Board is final and binding upon the parties to the review and any other parties as the Board may specify. 2000, c. 41, s. 119 (13).

Judicial review

(14) Nothing in subsection (13) prevents a court from reviewing a decision of the Board under this section, but a decision of the Board concerning the interpretation of this Act shall not be overturned unless the decision is unreasonable. 2000, c. 41, s. 119 (14).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 20 (1, 2) - 6/11/2009

Settlement through labour relations officer

120 (1) The Board may authorize a labour relations officer to attempt to effect a settlement of the matters raised in an application for review under section 116. 2000, c. 41, s. 120 (1).

Certain matters not bar to settlement

(2) A settlement may be effected under this section even if,

- (a) the employment standards officer who issued the order or refused to issue the order does not participate in the settlement discussions or is not advised of the discussions or settlement; or
- (b) the review under section 116 has started. 2000, c. 41, s. 120 (2).

Compliance orders

(3) A settlement respecting a compliance order shall not be made if the Director has not approved the terms of the settlement. 2000, c. 41, s. 120 (3).

Effect of settlement

- (4) If the parties to a settlement under this section do what they agreed to do under the settlement,
 - (a) the settlement is binding on the parties;
 - (b) if the review concerns an order, the order is void; and
 - (c) the review is terminated. 2000, c. 41, s. 120 (4).

Application to void settlement

(5) If, upon application to the Board, the employee demonstrates that he or she entered into the settlement as a result of fraud or coercion,

- (a) the settlement is void;
- (b) if the review concerned an order, the order is reinstated; and
- (c) the review shall be resumed. 2000, c. 41, s. 120 (5).

Distribution

- (6) If the order that was the subject of the application required the payment of money to the Director in trust, the Director,
 - (a) shall distribute the amount held in trust with respect to wages, fees or compensation in accordance with the settlement; and
 - (b) despite clause (4) (b), is entitled to be paid,
 - (i) that proportion of the administrative costs that were ordered to be paid that is the same as the proportion of the amount of wages, fees or compensation ordered to be paid that the employee is entitled to receive under the settlement, and
 - (ii) that proportion of the collector's fees and disbursements that were added to the amount of the order under subsection 128 (2) that is the same as the proportion of the amount of wages, fees or compensation ordered to be paid that the employee is entitled to receive under the settlement. 2000, c. 41, s. 120 (6); 2009, c. 9, s. 21; 2017, c. 22, Sched. 1, s. 63.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 21 - 6/11/2009

2017, c. 22, Sched. 1, s. 63 - 01/01/2018

REFERRAL OF MATTER UNDER PART XIII

Referral

121 (1) If, as a result of a complaint or otherwise, the Director comes to believe that an employer, an organization of employers, an organization of employees or a person acting directly on behalf of any of them may have contravened Part XIII (Benefit Plans), the Director may refer the matter to the Board. 2000, c. 41, s. 121 (1).

Hearing

(2) If a matter is referred to the Board under subsection (1), the Board shall hold a hearing and determine whether the employer, organization or person contravened Part XIII. 2000, c. 41, s. 121 (2).

Powers of Board

(3) If the Board determines that the employer, organization or person acting directly on behalf of an employer or organization contravened Part XIII, the Board may order the employer, organization or person,

- (a) to cease contravening that Part and to take whatever action the Board considers necessary to that end; and

- (b) to compensate any person or persons who may have suffered loss or been disadvantaged as a result of the contravention. 2000, c. 41, s. 121 (3).

Certain review provisions applicable

(4) Subsections 116 (8) and (9), 118 (1), (4) and (5), 119 (1) to (5), (8), (9), (13) and (14) and 120 (1), (4) and (5) apply, with necessary modifications, with respect to a proceeding under this section. 2000, c. 41, s. 121 (4); 2018, c. 14, Sched. 1, s. 24.

Section Amendments with date in force (d/m/y)

2018, c. 14, Sched. 1, s. 24 - 01/01/2019

REVIEW OF NOTICE OF CONTRAVENTION

Review of notice of contravention

122 (1) A person against whom a notice of contravention has been issued under section 113 may dispute the notice if the person makes a written application to the Board for a review,

- (a) within 30 days after the date of service of the notice; or
- (b) if the Board considers it appropriate in the circumstances to extend the time for applying, within the period specified by the Board. 2000, c. 41, s. 122 (1).

Hearing

(2) The Board shall hold a hearing for the purposes of the review. 2000, c. 41, s. 122 (2).

Parties

(3) The parties to the review are the person against whom the notice was issued and the Director. 2000, c. 41, s. 122 (3).

Onus

(4) On a review under this section, the onus is on the Director to establish, on a balance of probabilities, that the person against whom the notice of contravention was issued contravened the provision of this Act indicated in the notice. 2000, c. 41, s. 122 (4).

Decision

(5) The Board may,

- (a) find that the person did not contravene the provision and rescind the notice;
- (b) find that the person did contravene the provision and affirm the notice; or
- (c) find that the person did contravene the provision but amend the notice by reducing the penalty. 2001, c. 9, Sched. I, s. 1 (28).

Collector's fees and disbursements

(6) If the Board finds that the person contravened the provision and if it extended the time for applying for a review under clause (1) (b),

- (a) before issuing its decision, it shall enquire of the Director whether a collector's fees and disbursements have been added to the amount set out in the notice under subsection 128 (2); and
- (b) if they have been added to that amount, the Board shall advise the person of that fact and of the total amount, including the collector's fees and disbursements, when it issues its decision. 2001, c. 9, Sched. I, s. 1 (28).

Certain provisions applicable

(7) Subsections 116 (8) and (9), 118 (1), (4) and (5) and 119 (3), (4), (5), (13) and (14) apply, with necessary modifications, to a review under this section. 2001, c. 9, Sched. I, s. 1 (28); 2018, c. 14, Sched. 1, s. 25.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (28) - 4/09/2001

2018, c. 14, Sched. 1, s. 25 - 01/01/2019

GENERAL PROVISIONS RESPECTING THE BOARD

Persons from Board not compellable

123 (1) Except with the consent of the Board, none of the following persons may be compelled to give evidence in a civil proceeding or in a proceeding before the Board or another board or tribunal with respect to information obtained while exercising his or her powers or performing his or her duties under this Act:

1. A Board member.
2. The registrar of the Board.
3. An employee of the Board. 2000, c. 41, s. 123 (1).

Non-disclosure

(2) A labour relations officer who receives information or material under this Act shall not disclose it to any person or body other than the Board unless the Board authorizes the disclosure. 2000, c. 41, s. 123 (2).

When no decision after six months

124 (1) This section applies if the Board has commenced a hearing to review an order, refusal to issue an order or notice of contravention, six months or more have passed since the last day of hearing and a decision has not been made. 2000, c. 41, s. 124 (1).

Termination of proceeding

(2) On the application of a party in the proceeding, the chair may terminate the proceeding. 2000, c. 41, s. 124 (2).

Re-institution of proceeding

(3) If a proceeding is terminated according to subsection (2), the chair shall re-institute the proceeding upon such terms and conditions as the chair considers appropriate. 2000, c. 41, s. 124 (3).

PART XXIV COLLECTION

Third party demand

125 (1) If an employer, director or other person is liable to make a payment under this Act and the Director believes or suspects that a person owes money to or is holding money for, or will within 365 days owe money to or hold money for the employer, director or other person, the Director may demand that the person pay all or part of the money that would otherwise be payable to the employer, director or other person to the Director in trust on account of the liability under this Act. 2015, c. 27, Sched. 4, s. 1.

Same, duration

(1.1) A demand made under subsection (1) remains in force for 365 days from the date the notice of the demand is served. 2015, c. 27, Sched. 4, s. 1.

Client of temporary help agency

(2) Without limiting the generality of subsection (1), that subsection applies where a client of a temporary help agency owes money to or is holding money for a temporary help agency. 2009, c. 9, s. 22; 2017, c. 22, Sched. 1, s. 64.

Service

(3) The Director shall, in accordance with section 95, serve notice of the demand on the person to whom the demand is made. 2009, c. 9, s. 22.

Discharge

(4) A person who pays money to the Director in accordance with a demand under this section is relieved from liability for the amount owed to or held for the employer, director or other person who is liable to make a payment under this Act, to the extent of the payment. 2009, c. 9, s. 22.

Liability

(5) If a person who receives a demand under this section makes a payment to the employer, director or other person with respect to whom the demand was made without complying with the demand, the person shall pay to the Director an amount equal to the lesser of,

- (a) the amount paid to the employer, director or other person; and

(b) the amount of the demand. 2009, c. 9, s. 22.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 22 - 6/11/2009

2015, c. 27, Sched. 4, s. 1 - 3/12/2015

2017, c. 22, Sched. 1, s. 64 - 01/01/2018

Security for amounts owing

125.1 If the Director considers it advisable to do so, the Director may accept security for the payment of any amounts owing under this Act in any form that the Director considers satisfactory. 2017, c. 22, Sched. 1, s. 65.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 65 - 01/01/2018

Warrant

125.2 If an order to pay money has been made under this Act, the Director may issue a warrant, directed to the sheriff for an area in which any property of the employer, director or other person liable to make a payment under this Act is located, to enforce payment of the following amounts, and the warrant has the same force and effect as a writ of execution issued out of the Superior Court of Justice:

1. The amount the order requires the person to pay, including any applicable interest.
2. The costs and expenses of the sheriff. 2017, c. 22, Sched. 1, s. 65.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 65 - 01/01/2018

Lien on real property

125.3 (1) If an order to pay money has been made under this Act, the amount the order requires the person to pay, including any applicable interest is, upon registration by the Director in the proper land registry office of a notice claiming a lien and charge conferred by this section, a lien and charge on any interest the employer, director or other person has in the real property described in the notice. 2017, c. 22, Sched. 1, s. 65.

Lien on personal property

(2) If an order to pay money has been made under this Act, the amount the order requires the person to pay, including any applicable interest is, upon registration by the Director with the registrar under the *Personal Property Security Act* of a notice claiming a lien and charge under this section, a lien and charge on any interest in personal property in Ontario owned or held at the time of registration or acquired afterwards by the employer, director or other person liable to make a payment. 2017, c. 22, Sched. 1, s. 65.

Amounts included and priority

(3) The lien and charge conferred by subsection (1) or (2) is in respect of all amounts the order requires the person to pay, including any applicable interest at the time of registration of the notice or any renewal of it and all amounts for which the person afterwards becomes liable while the notice remains registered and, upon registration of a notice of lien and charge, the lien and charge has priority over,

- (a) any perfected security interest registered after the notice is registered;
- (b) any security interest perfected by possession after the notice is registered; and
- (c) any encumbrance or other claim that is registered against or that otherwise arises and affects the employer, director or other person's property after the notice is registered. 2017, c. 22, Sched. 1, s. 65.

Exception

(4) For the purposes of subsection (3), a notice of lien and charge under subsection (2) does not have priority over a perfected purchase money security interest in collateral or its proceeds and is deemed to be a security interest perfected by registration for the purpose of the priority rules under section 30 of the *Personal Property Security Act*. 2017, c. 22, Sched. 1, s. 65.

Lien effective

(5) A notice of lien and charge under subsection (2) is effective from the time assigned to its registration by the registrar and expires on the fifth anniversary of its registration unless a renewal notice of lien and charge is registered under this section before the end of the five-year period, in which case the lien and charge remains in effect for a further five-year period from the date the renewal notice is registered. 2017, c. 22, Sched. 1, s. 65.

Same

(6) If an amount payable under this Act remains outstanding and unpaid at the end of the period, or its renewal, referred to in subsection (5), the Director may register a renewal notice of lien and charge; the lien and charge remains in effect for a five-year period from the date the renewal notice is registered until the amount is fully paid, and is deemed to be continuously registered since the initial notice of lien and charge was registered under subsection (2). 2017, c. 22, Sched. 1, s. 65.

Where person not registered owner

(7) Where an employer, director or other person liable to make a payment has an interest in real property but is not shown as its registered owner in the proper land registry office,

- (a) the notice to be registered under subsection (1) shall recite the interest of the employer, director or other person liable to make a payment in the real property; and
- (b) a copy of the notice shall be sent to the registered owner at the owner's address to which the latest notice of assessment under the *Assessment Act* has been sent. 2017, c. 22, Sched. 1, s. 65.

Secured party

(8) In addition to any other rights and remedies, if amounts owed by an employer, director or other person liable to make a payment remain outstanding and unpaid, the Director has, in respect of a lien and charge under subsection (2),

- (a) all the rights, remedies and duties of a secured party under sections 17, 59, 61, 62, 63 and 64, subsections 65 (4), (5), (6), (6.1) and (7) and section 66 of the *Personal Property Security Act*;
- (b) a security interest in the collateral for the purpose of clause 63 (4) (c) of that Act; and
- (c) a security interest in the personal property for the purposes of sections 15 and 16 of the *Repair and Storage Liens Act*, if it is an article as defined in that Act. 2017, c. 22, Sched. 1, s. 65.

Registration of documents

(9) A notice of lien and charge under subsection (2) or any renewal of it shall be in the form of a financing statement or a financing change statement as prescribed under the *Personal Property Security Act* and may be tendered for registration under Part IV of that Act, or by mail addressed to an address prescribed under that Act. 2017, c. 22, Sched. 1, s. 65.

Errors in documents

(10) A notice of lien and charge or any renewal thereof is not invalidated nor is its effect impaired by reason only of an error or omission in the notice or in its execution or registration, unless a reasonable person is likely to be materially misled by the error or omission. 2017, c. 22, Sched. 1, s. 65.

***Bankruptcy and Insolvency Act (Canada)* unaffected**

(11) Subject to Crown rights provided under section 87 of that Act, nothing in this section affects or purports to affect the rights and obligations of any person under the *Bankruptcy and Insolvency Act (Canada)*. 2017, c. 22, Sched. 1, s. 65.

Definitions

(12) In this section,

“real property” includes fixtures and any interest of a person as lessee of real property. 2017, c. 22, Sched. 1, s. 65.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 1, s. 65 - 01/01/2018

Filing of order

126 (1) If an order to pay money has been made under this Act, the Director may cause a copy of the order, certified by the Director to be a true copy, to be filed in a court of competent jurisdiction. 2000, c. 41, s. 126 (1).

Advice to person against whom order was made

(2) If the Director files a copy of the order, he or she shall serve a letter in accordance with section 95 upon the person against whom the order was issued advising the person of the filing. 2000, c. 41, s. 126 (2).

Certificate enforceable

(3) The Director may enforce an order filed under subsection (1) in the same manner as a judgment or order of the court. 2000, c. 41, s. 126 (3).

Notices of contravention

(4) Subsections (1), (2) and (3) apply, with necessary modifications, to a notice of contravention. 2000, c. 41, s. 126 (4).

COLLECTORS**Director may authorize collector**

127 (1) The Director may authorize a collector to exercise those powers that the Director specifies in the authorization to collect amounts owing under this Act or under an order made by a reciprocating state to which section 130 applies. 2000, c. 41, s. 127 (1).

Same

(2) The Director may specify his or her powers under sections 125, 125.1, 125.2, 125.3, 126, 130 and subsection 135 (3) and the Board's powers under section 19 of the *Statutory Powers Procedure Act* in an authorization under subsection (1). 2000, c. 41, s. 127 (2); 2017, c. 22, Sched. 1, s. 66 (1).

Costs of collection

(3) Despite clause 22 (a) of the *Collection and Debt Settlement Services Act*, the Director may also authorize the collector to collect a reasonable fee or reasonable disbursements or both from each person from whom the collector seeks to collect amounts owing under this Act. 2000, c. 41, s. 127 (3); 2013, c. 13, Sched. 1, s. 12.

Same

(4) The Director may impose conditions on an authorization under subsection (3) and may determine what constitutes a reasonable fee or reasonable disbursements for the purposes of that subsection. 2000, c. 41, s. 127 (4).

Exception re disbursements

(5) The Director shall not authorize a collector who is required to be registered under the *Collection and Debt Settlement Services Act* to collect disbursements. 2000, c. 41, s. 127 (5); 2013, c. 13, Sched. 1, s. 12.

Disclosure

(6) The Director may disclose, or allow to be disclosed, information collected under the authority of this Act or the regulations to a collector for the purpose of collecting an amount payable under this Act. 2017, c. 22, Sched. 1, s. 66 (2).

Same

(7) Any disclosure of personal information made under subsection (6) shall be deemed to be in compliance with clause 42 (1) (d) of the *Freedom of Information and Protection of Privacy Act*. 2017, c. 22, Sched. 1, s. 66 (2).

Section Amendments with date in force (d/m/y)

2013, c. 13, Sched. 1, s. 12 - 1/01/2015

2017, c. 22, Sched. 1, s. 66 (1, 2) - 01/01/2018

Collector's powers

128 (1) A collector may exercise any of the powers specified in an authorization of the Director under section 127. 2000, c. 41, s. 128 (1).

Fees and disbursements part of order

(2) If a collector is seeking to collect an amount owing under an order or notice of contravention, any fees and disbursements authorized under subsection 127 (3) shall be deemed to be owing under and shall be deemed to be added to the amount of the order or notice of contravention. 2000, c. 41, s. 128 (2).

Distribution of money collected re wages or compensation

(3) Subject to subsection (4), a collector,

- (a) shall pay any amount collected with respect to wages, fees or compensation,
 - (i) to the Director in trust, or
 - (ii) with the written consent of the Director, to the person entitled to the wages, fees or compensation;
- (b) shall pay any amount collected with respect to administrative costs to the Director;
- (c) shall pay any amount collected with respect to a notice of contravention to the Minister of Finance; and
- (d) may retain any amount collected with respect to the fees and disbursements. 2000, c. 41, s. 128 (3); 2009, c. 9, s. 23.

Apportionment

(4) If the money collected is less than the full amount owing to all persons, including the Director and the collector, the money shall be apportioned among those to whom it is owing in the proportion each is owed and paid to them. 2000, c. 41, s. 128 (4).

Disclosure by collector

(5) A collector may disclose to the Director or allow to be disclosed to the Director any information that was collected under the authority of this Act or the regulations for the purpose of collecting an amount payable under this Act. 2017, c. 22, Sched. 1, s. 67.

Same

(6) Any disclosure of personal information made under subsection (5) shall be deemed to be in compliance with clause 42 (1) (d) of the *Freedom of Information and Protection of Privacy Act*. 2017, c. 22, Sched. 1, s. 67.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 23 - 6/11/2009

2017, c. 22, Sched. 1, s. 67 - 01/01/2018

Settlement by collector

129 (1) A collector may agree to a settlement with the person from whom he or she seeks to collect money, but only with the written agreement of,

- (a) the person to whom the money is owed; or
- (b) in the case of a notice of contravention, the Director. 2000, c. 41, s. 129 (1).

Restriction

(2) A collector shall not agree to a settlement under clause (1) (a) without the Director's written approval if the person to whom the money is owed would receive less than,

- (a) 75 per cent of the money to which he or she was entitled; or
- (b) if another percentage is prescribed, the prescribed percentage of the money to which he or she was entitled. 2000, c. 41, s. 129 (2).

Orders void where settlement

(3) If an order to pay has been made under section 74.14, 74.16, 74.17, 103, 104, 106 or 107 and a settlement respecting the money that was found to be owing is made under this section, the order is void and the settlement is binding if the person against whom the order was issued does what the person agreed to do under the settlement unless, on application to the Board, the individual to whom the money was ordered to be paid demonstrates that the settlement was entered into as a result of fraud or coercion. 2009, c. 9, s. 24 (1).

Notice of contravention

(4) If a settlement respecting money that is owing under a notice of contravention is made under this section, the notice is void if the person against whom the notice was issued does what the person agreed to do under the settlement. 2000, c. 41, s. 129 (4); 2009, c. 9, s. 24 (2).

Payment

(5) The person who owes money under a settlement shall pay the amount agreed upon to the collector, who shall pay it out in accordance with section 128. 2000, c. 41, s. 129 (5).

Section Amendments with date in force (d/m/y)

RECIPROCAL ENFORCEMENT OF ORDERS

Definitions

130 (1) In this section,

“order” includes a judgment and, in the case of a state whose employment standards legislation contains a provision substantially similar to subsection 126 (1), includes a certificate of an order for the payment of money owing under that legislation; (“ordonnance”)

“state” includes another province or territory of Canada, a foreign state and a political subdivision of a state. (“État”) 2000, c. 41, s. 130 (1).

Reciprocating states

(2) The prescribed states are reciprocating states for the purposes of this section and the prescribed authorities with respect to those states are the authorities who may make applications under this section. 2000, c. 41, s. 130 (2).

Application for enforcement

(3) The designated authority of a reciprocating state may apply to the Director for enforcement of an order for the payment of money issued under the employment standards legislation of that state. 2000, c. 41, s. 130 (3).

Copy of order

(4) The application shall be accompanied by a copy of the order, certified as a true copy,

- (a) by the court in which the order was filed, if the employment standards legislation of the reciprocating state provides for the filing of the order in a court; or
- (b) by the designated authority, if the employment standards legislation of the reciprocating state does not provide for the filing of the order in a court. 2000, c. 41, s. 130 (4).

Enforcement

(5) The Director may file a copy of the order in a court of competent jurisdiction and, upon its filing, the order is enforceable as a judgment or order of the court,

- (a) at the instance and in favour of the Director; or
- (b) at the instance and in favour of the designated authority. 2000, c. 41, s. 130 (5).

Costs

(6) The Director or the designated authority, as the case may be,

- (a) is entitled to the costs of enforcing the order as if it were an order of the court in which the copy of it was filed; and
- (b) may recover those costs in the same manner as sums payable under such an order may be recovered. 2000, c. 41, s. 130 (6).

PART XXV OFFENCES AND PROSECUTIONS

OFFENCES

Offence to keep false records

131 (1) No person shall make, keep or produce false records or other documents that are required to be kept under this Act or participate or acquiesce in the making, keeping or production of false records or other documents that are required to be kept under this Act. 2000, c. 41, s. 131 (1).

False or misleading information

(2) No person shall provide false or misleading information under this Act. 2000, c. 41, s. 131 (2).

General offence

132 A person who contravenes this Act or the regulations or fails to comply with an order, direction or other requirement under this Act or the regulations is guilty of an offence and on conviction is liable,

- (a) if the person is an individual, to a fine of not more than \$50,000 or to imprisonment for a term of not more than 12 months or to both;
- (b) subject to clause (c), if the person is a corporation, to a fine of not more than \$100,000; and
- (c) if the person is a corporation that has previously been convicted of an offence under this Act or a predecessor to it,
 - (i) if the person has one previous conviction, to a fine of not more than \$250,000, and
 - (ii) if the person has more than one previous conviction, to a fine of not more than \$500,000. 2000, c. 41, s. 132.

Additional orders

133 (1) If an employer is convicted under section 132 of contravening section 74 or paragraph 4, 6, 7 or 10 of subsection 74.8 (1) or if a client is convicted under section 132 of contravening section 74.12, the court shall, in addition to any fine or term of imprisonment that is imposed, order that the employer or client, as the case may be, take specific action or refrain from taking specific action to remedy the contravention. 2009, c. 9, s. 25; 2017, c. 22, Sched. 1, s. 68.

Same

(2) Without restricting the generality of subsection (1), the order made by the court may require one or more of the following:

1. A person be paid any wages that are owing to him or her.
2. In the case of a conviction under section 132 of contravening section 74 or 74.12, a person be reinstated.
3. A person be compensated for any loss incurred by him or her as a result of the contravention. 2009, c. 9, s. 25.

Part XVI

(3) If the contravention of section 74 was in relation to Part XVI (Lie Detectors) and the contravention affected an applicant for employment or an applicant to be a police officer, the court may require that the employer hire the applicant or compensate him or her or both hire and compensate him or her. 2000, c. 41, s. 133 (3).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 25 - 6/11/2009

2017, c. 22, Sched. 1, s. 68 - 01/01/2018

Offence re order for reinstatement

134 A person who fails to comply with an order issued under section 133 is guilty of an offence and on conviction is liable,

- (a) if the person is an individual, to a fine of not more than \$2,000 for each day during which the failure to comply continues or to imprisonment for a term of not more than six months or to both; and
- (b) if the person is a corporation, to a fine of not more than \$4,000 for each day during which the failure to comply continues. 2000, c. 41, s. 134; 2009, c. 9, s. 26.

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 26 - 6/11/2009

Additional orders re other contraventions

135 (1) If an employer is convicted under section 132 of contravening a provision of this Act other than section 74 or paragraph 4, 6, 7 or 10 of subsection 74.8 (1), the court shall, in addition to any fine or term of imprisonment that is imposed, assess any amount owing to an employee affected by the contravention and order the employer to pay the amount assessed to the Director. 2000, c. 41, s. 135 (1); 2009, c. 9, s. 27.

Collection by Director

(2) The Director shall attempt to collect the amount ordered to be paid under subsection (1) and if he or she is successful shall distribute it to the employee. 2000, c. 41, s. 135 (2).

Enforcement of order

(3) An order under subsection (1) may be filed by the Director in a court of competent jurisdiction and upon filing shall be deemed to be an order of that court for the purposes of enforcement. 2000, c. 41, s. 135 (3).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 27 - 6/11/2009

Offence re directors' liability

136 (1) A director of a corporation is guilty of an offence if the director,

- (a) fails to comply with an order of an employment standards officer under section 106 or 107 and has not applied for a review of that order; or
- (b) fails to comply with an order issued under section 106 or 107 that has been amended or affirmed by the Board on a review of the order under section 116 or with a new order issued by the Board on such a review. 2000, c. 41, s. 136 (1).

Penalty

(2) A director convicted of an offence under subsection (1) is liable to a fine of not more than \$50,000. 2000, c. 41, s. 136 (2).

Offence re permitting offence by corporation

137 (1) If a corporation contravenes this Act or the regulations, an officer, director or agent of the corporation or a person acting or claiming to act in that capacity who authorizes or permits the contravention or acquiesces in it is a party to and guilty of the offence and is liable on conviction to the fine or imprisonment provided for the offence. 2000, c. 41, s. 137 (1).

Same

(2) Subsection (1) applies whether or not the corporation has been prosecuted or convicted of the offence. 2000, c. 41, s. 137 (2).

Onus of proof

(3) In a trial of an individual who is prosecuted under subsection (1), the onus is on the individual to prove that he or she did not authorize, permit or acquiesce in the contravention. 2000, c. 41, s. 137 (3).

Additional penalty

(4) If an individual is convicted under this section, the court may, in addition to any other fine or term of imprisonment that is imposed, assess any amount owing to an employee affected by the contravention and order the individual to pay the amount assessed to the Director. 2000, c. 41, s. 137 (4).

Collection by Director

(5) The Director shall attempt to collect the amount ordered to be paid under subsection (4) and if he or she is successful shall distribute it to the employee. 2000, c. 41, s. 137 (5).

No prosecution without consent

(6) No prosecution shall be commenced under this section without the consent of the Director. 2000, c. 41, s. 137 (6).

Proof of consent

(7) The production of a document that appears to show that the Director has consented to a prosecution under this section is admissible as evidence of the Director's consent. 2000, c. 41, s. 137 (7).

Prosecution of employment standards officer

137.1 (1) No prosecution of an employment standards officer shall be commenced with respect to an alleged contravention of subsection 89 (2) without the consent of the Deputy Attorney General. 2001, c. 9, Sched. I, s. 1 (29).

Proof of consent

(2) The production of a document that appears to show that the Deputy Attorney General has consented to a prosecution of an employment standards officer is admissible as evidence of his or her consent. 2001, c. 9, Sched. I, s. 1 (29).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (29) - 4/09/2001

Where prosecution may be heard

138 (1) Despite section 29 of the *Provincial Offences Act*, the prosecution of an offence under this Act may be heard and determined by the Ontario Court of Justice sitting in the area where the accused is resident or carries on business, if the prosecutor so elects. 2000, c. 41, s. 138 (1).

Election to have judge preside

(2) The Attorney General or an agent for the Attorney General may by notice to the clerk of the court require that a judge of the court hear and determine the prosecution. 2000, c. 41, s. 138 (2).

Publication re convictions

138.1 (1) If a person, including an individual, is convicted of an offence under this Act, the Director may publish or otherwise make available to the general public the name of the person, a description of the offence, the date of the conviction and the person's sentence. 2004, c. 21, s. 9.

Internet publication

(2) Authority to publish under subsection (1) includes authority to publish on the Internet. 2004, c. 21, s. 9.

Disclosure

(3) Any disclosure made under subsection (1) shall be deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*. 2004, c. 21, s. 9; 2006, c. 34, Sched. C, s. 23.

Section Amendments with date in force (d/m/y)

2004, c. 21, s. 9 - 1/03/2005

2006, c. 34, Sched. C, s. 23 - 1/04/2007

Limitation period

139 No prosecution shall be commenced under this Act more than two years after the date on which the offence was committed or alleged to have been committed. 2000, c. 41, s. 139.

PART XXVI MISCELLANEOUS EVIDENTIARY PROVISIONS

Copy constitutes evidence

140 (1) In a prosecution or other proceeding under this Act, a copy of an order or notice of contravention that appears to be made under this Act or the regulations and signed by an employment standards officer or the Board is evidence of the order or notice and of the facts appearing in it without proof of the signature or office of the person appearing to have signed the order or notice. 2000, c. 41, s. 140 (1).

Same

(2) In a prosecution or other proceeding under this Act, a copy of a record or other document or an extract from a record or other document that appears to be certified as a true copy or accurate extract by an employment standards officer is evidence of the record or document or the extracted part of the record or document and of the facts appearing in the record, document or extract without proof of the signature or office of the person appearing to have certified the copy or extract or any other proof. 2000, c. 41, s. 140 (2).

Same

(2.1) In a prosecution or other proceeding under this Act, a copy of a record or other document or an extract from a record or other document that appears to be certified as a true copy or accurate extract by the Workplace Safety and Insurance Board is evidence of the record or document or the extracted part of the record or document and of the facts appearing in the record, document or extract without proof of the signature or office of the person appearing to have certified the copy or extract or any other proof. 2021, c. 9, s. 4.

Certificate of Director constitutes evidence

(3) In a prosecution or other proceeding under this Act, a certificate that appears to be signed by the Director setting out that the records of the ministry indicate that a person has failed to make the payment required by an order or a notice of contravention issued under this Act is evidence of the failure to make that payment without further proof. 2000, c. 41, s. 140 (3); 2009, c. 9, s. 28.

Same, collector

(4) In a prosecution or other proceeding under this Act, a certificate shown by a collector that appears to be signed by the Director setting out any of the following facts is evidence of the fact without further proof:

1. The Director has authorized the collector to collect amounts owing under this Act.
2. The Director has authorized the collector to collect a reasonable fee or reasonable disbursements or both.

3. The Director has, or has not, imposed conditions on an authorization described in paragraph 2 and has, or has not, determined what constitutes a reasonable fee or reasonable disbursements.
4. Any conditions imposed by the Director on an authorization described in paragraph 2.
5. The Director has approved a settlement under subsection 129 (2). 2000, c. 41, s. 140 (4).

Same, date of complaint

(5) In a prosecution or other proceeding under this Act, a certificate that appears to be signed by the Director setting out the date on which the records of the ministry indicate that a complaint was filed is evidence of that date without further proof. 2000, c. 41, s. 140 (5).

Section Amendments with date in force (d/m/y)

2009, c. 9, s. 28 - 6/11/2009

2021, c. 9, s. 4 - 29/04/2021

PART XXVII REGULATIONS

Regulations

141 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes of this Act and, without restricting the generality of the foregoing, may make the following regulations:

1. Prescribing anything for the purposes of any provision of this Act that makes reference to a thing that is prescribed.
 - 1.1 Prescribing a method of payment for the purposes of clause 11 (2) (d) and establishing any terms, conditions or limitations on its use.
2. Establishing rules respecting the application of the minimum wage provisions of this Act and the regulations.
 - 2.0.1 Prescribing a class of employees that would otherwise be in the class described in subparagraph 1 v of subsection 23.1 (1) and prescribing the minimum wage that applies to the class for the purposes of subsection 23.1 (2).
 - 2.0.2 REPEALED: 2017, c. 22, Sched. 1, s. 69 (3).
- 2.1 Establishing a maximum pay period, a maximum period within which payments made to an employee shall be reconciled with wages earned by the employee or both.
3. Exempting any class of employees or employers from the application of this Act or any Part, section or other provision of it.
4. Prescribing what constitutes the performance of work.
5. Prescribing what information concerning the terms of an employment contract should be provided to an employee in writing.
6. Defining an industry and prescribing for that industry one or more terms or conditions of employment that apply to employers and employees in the industry or one or more requirements or prohibitions that apply to employers and employees in the industry.
7. Providing that any term, condition, requirement or prohibition prescribed under paragraph 6 applies in place of or in addition to one or more provisions of this Act or the regulations.
8. Providing that a regulation made under paragraph 6 or 7 applies only in respect of workplaces in the defined industry that have characteristics specified in the regulation, including but not limited to characteristics related to location.
9. Providing that an agreement under subsection 17 (2) to work hours in excess of those referred to in clause 17 (1) (a) that was made at the time of the employee's hiring and that has been approved by the Director is, despite subsection 17 (6), irrevocable unless both the employer and the employee agree to its revocation.
10. Providing a formula for the determination of an employee's regular rate that applies instead of the formula that would otherwise be applicable under the definition of "regular rate" in section 1 in such circumstances as are set out in the regulation.
11. Providing for the establishment of committees to advise the Minister on any matters relating to the application or administration of this Act.

- 11.1 Providing, for the purposes of subsection 51 (4), that subsections 51 (1), (2) and (3) apply in respect of an employee during a leave under section 50.2.
- 11.2 Providing, for the purposes of subsection 51 (5), that subsections 51 (1), (2) and (3) do not apply in respect of an employee during a period of postponement under subsection 53 (1.1).
- 12. Prescribing the manner and form in which notice of termination must or may be given and the content of such notice.
- 13. Prescribing what constitutes a constructive dismissal.
- 14. Providing that the common law doctrine of frustration does not apply to an employment contract and that an employer is not relieved of any obligation under Part XV because of the occurrence of an event that would frustrate an employment contract at common law except as prescribed.
- 14.1 Providing that payments to an employee by way of pension benefits, insurance benefits, workplace safety and insurance benefits, bonus, employment insurance benefits, supplementary employment insurance benefits or similar arrangements shall or shall not be taken into account in determining the amount that an employer is required to pay to an employee under clause 60 (1) (b), section 61 or section 64.
- 15. Providing for and governing the consolidation of hearings under this Act.
- 16. Prescribing the minimum number of hours in a day or week for which an employee is entitled to be paid the minimum wage or a contractual wage rate and imposing conditions in respect of that entitlement.
- 16.1 Governing penalties for contraventions for the purposes of subsection 113 (1).
- 17. Defining any word or expression used in this Act that is not defined in it.
- 18. Prescribing the manner in which the information required by subsection 58 (2) shall be given to the Director.
- 19. Respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 2000, c. 41, s. 141 (1); 2001, c. 9, Sched. I, s. 1 (30); 2002, c. 18, Sched. J, s. 3 (30); 2004, c. 21, s. 10 (1, 2); 2007, c. 16, Sched. A, s. 6 (1); 2014, c. 10, Sched. 2, s. 9; 2017, c. 22, Sched. 1, s. 69 (1-4); 2018, c. 14, Sched. 1, s. 26 (1).

Restricted application

(1.1) A regulation made under paragraph 11.1 or 11.2 of subsection (1) may be restricted in its application to one or more of the following:

- 1. Specified benefit plans.
- 2. Employees who are members of prescribed classes.
- 3. Employers who are members of prescribed classes.
- 4. Part of a leave under section 50.2. 2007, c. 16, Sched. A, s. 6 (2).

Regulations re Part XIII

(2) The Lieutenant Governor in Council may make regulations respecting any matter or thing necessary or advisable to carry out the intent and purpose of Part XIII (Benefit Plans), and without restricting the generality of the foregoing, may make regulations,

- (a) exempting a benefit plan, part of a benefit plan or the benefits under such a plan or part from the application of Part XIII;
- (b) permitting a differentiation in a benefit plan between employees or their beneficiaries, survivors or dependants because of the age, sex or marital status of the employees;
- (c) suspending the application of Part XIII to a benefit plan, part of a benefit plan or benefits under such a plan or part for the periods of time specified in the regulation;
- (d) prohibiting a reduction in benefits to an employee in order to comply with Part XIII;
- (e) providing the terms under which an employee may be entitled or disentitled to benefits under a benefit plan. 2000, c. 41, s. 141 (2); 2004, c. 15, s. 5.

Regulations re organ donor leave

(2.0.1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing other organs for the purpose of section 49.2;

- (b) prescribing tissue for the purpose of section 49.2;
- (c) prescribing one or more periods for the purpose of subsection 49.2 (5). 2009, c. 16, s. 3.

Same

(2.0.2) A regulation made under clause (2.0.1) (c) may prescribe different periods with respect to the donation of different organs and prescribed tissue. 2009, c. 16, s. 3.

Transitional regulations

(2.0.3) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Fair Workplaces, Better Jobs Act, 2017*. 2017, c. 22, Sched. 1, s. 69 (5).

Same

(2.0.3.1) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Making Ontario Open for Business Act, 2018*. 2018, c. 14, Sched. 1, s. 26 (2).

Transitional regulations

(2.0.3.2) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Restoring Ontario's Competitiveness Act, 2019*. 2019, c. 4, Sched. 9, s. 11 (1).

Transitional regulations

(2.0.3.3) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020*. 2020, c. 3, s. 5 (1).

Transitional regulations

(2.0.3.4) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *COVID-19 Putting Workers First Act, 2021*. 2021, c. 9, s. 5 (1).

Conflict with transitional regulations

(2.0.4) In the event of a conflict between this Act or the regulations and a regulation made under subsection (2.0.3), (2.0.3.1), (2.0.3.2), (2.0.3.3) or (2.0.3.4), the regulation made under subsection (2.0.3), (2.0.3.1), (2.0.3.2), (2.0.3.3) or (2.0.3.4) prevails. 2017, c. 22, Sched. 1, s. 69 (5); 2018, c. 14, Sched. 1, s. 26 (3); 2019, c. 4, Sched. 9, s. 11 (2); 2020, c. 3, s. 5 (2); 2021, c. 9, s. 5 (2).

Regulations re infectious disease emergencies

(2.1) The Lieutenant Governor in Council may make regulations,

- (a) designating an infectious disease for the purposes of section 50.1;
- (b) prescribing, for the purposes of subsection 50.1 (5.1), the date on which the entitlement to emergency leave under clause 50.1 (1.1) (b) starts or is deemed to have started;
- (b.1) prescribing, for the purposes of subsection 50.1 (5.2), a later date on which the entitlement to paid leave under subsection 50.1 (1.2) ends;
- (b.2) prescribing, for the purposes of subsection 50.1 (5.3), additional periods during which employees are entitled to paid leave under subsection 50.1 (1.2);
- (c) providing that section 50.1 or any provision of it applies to police officers and prescribing one or more terms or conditions of employment or one or more requirements or prohibitions respecting emergency leave for infectious disease emergencies that shall apply to police officers and their employers;
- (d) exempting a class of employees from the application of section 50.1 or any provision of it, and prescribing one or more terms or conditions of employment or one or more requirements or prohibitions respecting emergency leave for infectious disease emergencies that shall apply to employees in the class and their employers;
- (d.1) exempting the Crown, a Crown agency, or an authority, board, commission or corporation, all of whose members are appointed by the Crown, from the application of section 50.1 or any provision of it;

- (e) providing that a term, condition, requirement or prohibition prescribed under clause (c) or (d) applies in place of, or in addition to, a provision of section 50.1. 2020, c. 3, s. 5 (3); 2021, c. 9, s. 5 (3).

Same, police officers

(2.1.1) A regulation made under clause (2.1) (c) may also provide that subsection 15 (7), sections 51, 51.1, 52 and 53, Part XVIII (Reprisal), section 74.12, Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions) and Part XXVII (Regulations) apply to police officers and their employers for the purposes of section 50.1. 2020, c. 3, s. 5 (3).

Regulations re emergency leaves, declared emergencies, infectious disease emergencies

(2.2) A regulation made under subsection (2.0.3.3), (2.0.3.4) or (2.1), or a regulation prescribing a reason for the purposes of subclause 50.1 (1.1) (a) (iv) or (b) (vii) may,

- (a) provide that it has effect as of the date specified in the regulation;
- (b) provide that an employee who does not perform the duties of his or her position because of the declared emergency and the prescribed reason, or because of the prescribed reason related to a designated infectious disease, as defined in section 50.1, is deemed to have taken leave beginning on the first day the employee does not perform the duties of his or her position on or after the date specified in the regulation; or
- (c) provide that clauses 74 (1) (a) and 74.12 (1) (a) apply, with necessary modifications, in relation to the deemed leave described in clause (b). 2020, c. 3, s. 5 (3); 2021, c. 9, s. 5 (4).

Retroactive regulation

(2.2.1) A regulation referred to in subsection (2.2) that specifies a date may specify a date that is earlier than the day on which the regulation is made. 2020, c. 3, s. 5 (3).

Regulation extending leave

(2.3) The Lieutenant Governor in Council may make a regulation providing that the entitlement of an employee to take leave under clause 50.1 (1.1) (a) is extended beyond the day on which the entitlement would otherwise end under subsection 50.1 (5) or (6), if the employee is still not performing the duties of his or her position because of the effects of the declared emergency and because of a reason referred to in subclause 50.1 (1.1) (a) (i), (ii), (iii) or (iv). 2020, c. 3, s. 5 (3).

Same

(2.4) A regulation made under subsection (2.3) may limit the duration of the extended leave and may set conditions that must be met in order for the employee to be entitled to the extended leave. 2006, c. 13, s. 3 (4).

Regulations re s. 50.1.1

(2.5) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the process for overpayment recovery under subsection 50.1.1 (18);
- (b) prescribing the date by which the Board is required to repay the Ministry under subsection 50.1.1 (21);
- (c) prescribing, for the purposes of subsection 50.1.1 (31), persons who may investigate possible contraventions of section 50.1.1;
- (d) prescribing the powers under this Act that a person prescribed under clause (c) may exercise;
- (e) specifying the parts of this Act that apply, with necessary modifications, if a person prescribed under clause (c) investigates a possible contravention of section 50.1.1;
- (f) exempting the Crown, a Crown agency, or an authority, board, commission or corporation, all of whose members are appointed by the Crown, from the application of section 50.1.1 or any provision of it. 2021, c. 9, s. 5 (5).

Regulations re Part XIX

(3) The Lieutenant Governor in Council may make regulations prescribing information for the purposes of section 77. 2000, c. 41, s. 141 (3).

Regulations re Part XXII

(3.1) A regulation made under paragraph 16.1 of subsection (1) may,

- (a) establish different penalties or ranges of penalties for different types of contraventions or the method of determining those penalties or ranges;

- (b) specify that different penalties, ranges or methods of determining a penalty or range apply to contraveners who are individuals and to contraveners that are corporations; or
- (c) prescribe criteria an employment standards officer is required or permitted to consider when imposing a penalty. 2017, c. 22, Sched. 1, s. 69 (6).

Regulations re Part XXV

(4) If the Lieutenant Governor in Council is satisfied that laws are or will be in effect in the state for the enforcement of orders made under this Act on a basis substantially similar to that set out in section 126, the Lieutenant Governor in Council may by regulation,

- (a) declare a state to be a reciprocating state for the purposes of section 130; and
- (b) designate an authority of that state as the authority who may make applications under section 130. 2000, c. 41, s. 141 (4).

Classes

(5) A regulation made under this section may be restricted in its application to any class of employee or employer and may treat different classes of employee or employer in different ways. 2000, c. 41, s. 141 (5).

Regulations may be conditional

(5.1) A regulation made under this section may provide that it applies only if one or more conditions specified in it are met. 2004, c. 21, s. 10 (3).

Terms and conditions of employment for an industry

(6) Without restricting the generality of paragraphs 6 and 7 of subsection (1), a regulation made under paragraph 6 or 7 may establish requirements for the industry respecting such matters as a minimum wage, the scheduling of work, maximum hours of work, eating periods and other breaks from work, posting of work schedules, conditions under which the maximum hours of work set out in the regulation may be exceeded, overtime thresholds and overtime pay, vacations, vacation pay, working on public holidays and public holiday pay and treating some public holidays differently than others for those purposes. 2000, c. 41, s. 141 (6); 2004, c. 21, s. 10 (4).

(7) REPEALED: 2004, c. 21, s. 10 (5).

Conditions, revocability of approval

(8) A regulation made under paragraph 9 of subsection (1) may authorize the Director to impose conditions in granting an approval and may authorize the Director to rescind an approval. 2000, c. 41, s. 141 (8).

Restriction where excess hours agreements approved

(9) An employer may not require an employee who has made an agreement approved by the Director under a regulation made under paragraph 9 of subsection (1) to work more than 10 hours in a day, except in the circumstances described in section 19. 2000, c. 41, s. 141 (9).

Revocability of part of approved excess hours agreement

(10) If an employee has agreed to work hours in excess of those referred to in clause 17 (1) (a) and hours in excess of those referred to in clause 17 (1) (b), the fact that the Director has approved the agreement in accordance with a regulation made under paragraph 9 of subsection (1) does not prevent the employee from revoking, in accordance with subsection 17 (6), that part of the agreement dealing with the hours in excess of those referred to in clause 17 (1) (b). 2000, c. 41, s. 141 (10); 2004, c. 21, s. 10 (6).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (30, 31) - 4/09/2001

2002, c. 18, Sched. J, s. 3 (30) - 26/11/2002

2004, c. 15, s. 5 - 13/06/2005; 2004, c. 21, s. 10 (1-6) - 1/03/2005

2006, c. 13, s. 3 (4) - 30/06/2006

2007, c. 16, Sched. A, s. 6 (1, 2) - 3/12/2007

2009, c. 16, s. 3 - 26/06/2009

2014, c. 6, s. 5 - 29/10/2014; 2014, c. 10, Sched. 2, s. 9 - 1/10/2015

2017, c. 22, Sched. 1, s. 69 (1, 2, 4-6) - 01/01/2018; 2017, c. 22, Sched. 1, s. 69 (3) - 01/01/2019

2018, c. 14, Sched. 1, s. 26 (1-3) - 01/01/2019

2019, c. 4, Sched. 9, s. 11 (1, 2) - 03/04/2019

2020, c. 3, s. 5 (1-3) - 19/03/2020

2021, c. 9, s. 5 (1-5) - 29/04/2021

PART XXVIII TRANSITION

Transition

142 (1) Part XIV.1 of the *Employment Standards Act*, as it read immediately before its repeal by this Act, continues to apply only with respect to wages that became due and owing before the Employee Wage Protection Program was discontinued and only if the employee to whom the wages were owed provided a certificate of claim, on a form prepared by the Ministry, to the Program Administrator before the day on which this section comes into force. 2000, c. 41, s. 142 (1).

(2) REPEALED: 2009, c. 9, s. 29.

(3)-(5) REPEALED: 2001, c. 9, Sched. I, s. 1 (32).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 1 (32) - 4/09/2001

2009, c. 9, s. 29 - 6/11/2009

PART XXIX INCORPORATION OF THE PROTECTING A SUSTAINABLE PUBLIC SECTOR FOR FUTURE GENERATIONS ACT, 2019

Incorporation of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*

143 (1) The provisions of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* shall be deemed to form part of this Act and apply to,

- (a) Ontario Power Generation Inc. and each of its subsidiaries; and
- (b) the employees of any the employers referred to in clause (a). 2019, c. 12, s. 42 (1).

Conflict

(2) If there is a conflict between the provisions incorporated into this Act under subsection (1) and sections 1 to 142 of this Act, the provisions incorporated under subsection (1) prevail only for the purposes of those incorporated provisions. 2019, c. 12, s. 42 (1).

Same

(2.1) For greater certainty, subsection 50.1 (7) of this Act prevails over the provisions incorporated into this Act under subsection (1). 2021, c. 9, s. 6.

No complaints

(3) No complaint may be made under this Act, and no employment standards officer may inspect or investigate any matter or take any enforcement action, in respect of the provisions incorporated into this Act under subsection (1). 2019, c. 12, s. 42 (1).

Non-application of section 132

(4) Section 132 of this Act does not apply in respect of the provisions incorporated into this Act under subsection (1). 2019, c. 12, s. 42 (1).

Minister responsible

(5) For greater certainty, for the purposes of the provisions incorporated into this Act under subsection (1), Minister means the President of the Treasury Board or such other member of the Executive Council to whom the administration of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* is assigned or transferred under the *Executive Council Act*. 2019, c. 12, s. 42 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 143 of the Act is repealed. (See: 2019, c. 12, s. 42 (2))

Section Amendments with date in force (d/m/y)

2000, c. 41, s. 144 (1) - 04/09/2001

2019, c. 12, s. 42 (1) - 08/11/2019; 2019, c. 12, s. 42 (2) - not in force

2021, c. 9, s. 6 - 29/04/2021

144 OMITTED (AMENDS OR REPEALS OTHER ACTS). 2000, c. 41, s. 144.

145 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2000, c. 41, s. 145.

146 OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2000, c. 41, s. 146.

Français

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Human Rights Code, 1990

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R.S.O. 1990, CHAPTER H.19

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Preamble

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I FREEDOM FROM DISCRIMINATION

Services

1 Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 1; 1999, c. 6, s. 28 (1); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (1); 2012, c. 7, s. 1.

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 28 (1) - 01/03/2000

2001, c. 32, s. 27 (1) - 07/02/2002

2005, c. 5, s. 32 (1) - 09/03/2005

2012, c. 7, s. 1 - 19/06/2012

Accommodation

2 (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (1); 1999, c. 6, s. 28 (2); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (2); 2012, c. 7, s. 2 (1).

Harassment in accommodation

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (2); 1999, c. 6, s. 28 (3); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (3); 2012, c. 7, s. 2 (2).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 28 (2, 3) - 01/03/2000

2001, c. 32, s. 27 (1) - 07/02/2002

2005, c. 5, s. 32 (2, 3) - 09/03/2005

2012, c. 7, s. 2 (1, 2) - 19/06/2012

Contracts

3 Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 3; 1999, c. 6, s. 28 (4); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (4); 2012, c. 7, s. 3.

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 28 (4) - 01/03/2000

2001, c. 32, s. 27 (1) - 07/02/2002

2005, c. 5, s. 32 (4) - 09/03/2005

2012, c. 7, s. 3 - 19/06/2012

Accommodation of person under eighteen

4 (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old. R.S.O. 1990, c. H.19, s. 4 (1).

Idem

(2) A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old. R.S.O. 1990, c. H.19, s. 4 (2).

Employment

5 (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (5); 2012, c. 7, s. 4 (1).

Harassment in employment

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (2); 1999, c. 6, s. 28 (6); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (6); 2012, c. 7, s. 4 (2).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 28 (5, 6) - 01/03/2000

2001, c. 32, s. 27 (1) - 07/02/2002

2005, c. 5, s. 32 (5, 6) - 09/03/2005

2012, c. 7, s. 4 (1, 2) - 19/06/2012

Vocational associations

6 Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 6; 1999, c. 6, s. 28 (7); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (7); 2012, c. 7, s. 5.

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 28 (7) - 01/03/2000

2001, c. 32, s. 27 (1) - 07/02/2002

2005, c. 5, s. 32 (7) - 09/03/2005

2012, c. 7, s. 5 - 19/06/2012

Sexual harassment**Harassment because of sex in accommodation**

7 (1) Every person who occupies accommodation has a right to freedom from harassment because of sex, sexual orientation, gender identity or gender expression by the landlord or agent of the landlord or by an occupant of the same building. R.S.O. 1990, c. H.19, s. 7 (1); 2012, c. 7, s. 6 (1).

Harassment because of sex in workplaces

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (2); 2012, c. 7, s. 6 (2).

Sexual solicitation by a person in position to confer benefit, etc.

(3) Every person has a right to be free from,

- (a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- (b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c. H.19, s. 7 (3).

Section Amendments with date in force (d/m/y)

2012, c. 7, s. 6 (1, 2) - 19/06/2012

Reprisals

8 Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

Infringement prohibited

9 No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c. H.19, s. 9.

PART II INTERPRETATION AND APPLICATION

Definitions re: Parts I and II

10 (1) In Part I and in this Part,

“age” means an age that is 18 years or more; (“âge”)

“disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

“equal” means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; (“égal”)

“family status” means the status of being in a parent and child relationship; (“état familial”)

“group insurance” means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person; (“assurance-groupe”)

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; (“harcèlement”)

“marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage; (“état matrimonial”)

“record of offences” means a conviction for,

- (a) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or
- (b) an offence in respect of any provincial enactment; (“casier judiciaire”)

“services” does not include a levy, fee, tax or periodic payment imposed by law; (“services”)

“spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. H.19, s. 10 (1); 1993, c. 27, Sched.; 1997, c. 16, s. 8; 1999, c. 6, s. 28 (8); 2001, c. 13, s. 19; 2001, c. 32, s. 27 (2, 3); 2005, c. 5, s. 32 (8-10); 2005, c. 29, s. 1 (1).

Pregnancy

(2) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. R.S.O. 1990, c. H.19, s. 10 (2).

Past and presumed disabilities

(3) The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability. 2001, c. 32, s. 27 (4).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991; 1997, c. 16, s. 8 - 10/10/1997; 1999, c. 6, s. 28 (8) - 01/03/2000

2001, c. 13, s. 19 - 29/06/2001; 2001, c. 32, s. 27 (2-4) - 07/02/2002

2005, c. 5, s. 32 (8-10) - 09/03/2005; 2005, c. 29, s. 1 (1) - 12/12/2006

Constructive discrimination

11 (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
- (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right. R.S.O. 1990, c. H.19, s. 11 (1).

Idem

(2) The Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 11 (2); 1994, c. 27, s. 65 (1); 2002, c. 18, Sched. C, s. 2 (1); 2009, c. 33, Sched. 2, s. 35 (1).

Idem

(3) The Tribunal or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship. R.S.O. 1990, c. H.19, s. 11 (3); 1994, c. 27, s. 65 (2); 2002, c. 18, Sched. C, s. 2 (2); 2009, c. 33, Sched. 2, s. 35 (2).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (1, 2) - 17/04/1995

2002, c. 18, Sched. C, s. 2 (1, 2) - 26/11/2002

2009, c. 33, Sched. 2, s. 35 (1, 2) - 15/12/2009

Discrimination because of association

12 A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 12.

Announced intention to discriminate

13 (1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I. R.S.O. 1990, c. H.19, s. 13 (1).

Opinion

(2) Subsection (1) shall not interfere with freedom of expression of opinion. R.S.O. 1990, c. H.19, s. 13 (2).

Special programs

14 (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I. R.S.O. 1990, c. H.19, s. 14 (1).

Application to Commission

(2) A person may apply to the Commission for a designation of a program as a special program for the purposes of subsection (1). 2006, c. 30, s. 1.

Designation by Commission

(3) Upon receipt of an application, the Commission may,

- (a) designate the program as a special program if, in its opinion, the program meets the requirements of subsection (1); or
- (b) designate the program as a special program on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1). 2006, c. 30, s. 1.

Inquiries initiated by Commission

(4) The Commission may, on its own initiative, inquire into one or more programs to determine whether the programs are special programs for the purposes of subsection (1). 2006, c. 30, s. 1.

End of inquiry

(5) At the conclusion of an inquiry under subsection (4), the Commission may designate as a special program any of the programs under inquiry if, in its opinion, the programs meet the requirements of subsection (1). 2006, c. 30, s. 1.

Expiry of designation

(6) A designation under subsection (3) or (5) expires five years after the day it is issued or at such earlier time as may be specified by the Commission. 2006, c. 30, s. 1.

Renewal of designation

(7) If an application for renewal of a designation of a program as a special program is made to the Commission before its expiry under subsection (6), the Commission may,

- (a) renew the designation if, in its opinion, the program continues to meet the requirements of subsection (1); or
- (b) renew the designation on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1). 2006, c. 30, s. 1.

Effect of designation, etc.

(8) In a proceeding,

- (a) evidence that a program has been designated as a special program under this section is proof, in the absence of evidence to the contrary, that the program is a special program for the purposes of subsection (1); and
- (b) evidence that the Commission has considered and refused to designate a program as a special program under this section is proof, in the absence of evidence to the contrary, that the program is not a special program for the purposes of subsection (1). 2006, c. 30, s. 1.

Crown programs

(9) Subsections (2) to (8) do not apply to a program implemented by the Crown or an agency of the Crown. 2006, c. 30, s. 1.

Tribunal finding

(10) For the purposes of a proceeding before the Tribunal, the Tribunal may make a finding that a program meets the requirements of a special program under subsection (1), even though the program has not been designated as a special program by the Commission under this section, subject to clause (8) (b). 2006, c. 30, s. 1.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 1 - 30/06/2008

14.1 REPEALED: 1995, c. 4, s. 3 (1).

Section Amendments with date in force (d/m/y)

1993, c. 35, s. 56 - 01/09/1994; 1995, c. 4, s. 3 (1) - 14/12/1995

Age sixty-five or over

15 A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over is a requirement, qualification or consideration for preferential treatment. R.S.O. 1990, c. H.19, s. 15.

Canadian Citizenship

16 (1) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law. R.S.O. 1990, c. H.19, s. 16 (1).

Idem

(2) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or lawful admission to Canada for permanent residence is a requirement, qualification or consideration adopted for the purpose of fostering and developing participation in cultural, educational, trade union or athletic activities by Canadian citizens or persons lawfully admitted to Canada for permanent residence. R.S.O. 1990, c. H.19, s. 16 (2).

Idem

(3) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or domicile in Canada with the intention to obtain Canadian citizenship is a requirement, qualification or consideration adopted by an organization or enterprise for the holder of chief or senior executive positions. R.S.O. 1990, c. H.19, s. 16 (3).

Disability

17 (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability. R.S.O. 1990, c. H.19, s. 17 (1); 2001, c. 32, s. 27 (5).

Accommodation

(2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 17 (2); 1994, c. 27, s. 65 (2); 2002, c. 18, Sched. C, s. 3 (1); 2006, c. 30, s. 2 (1).

Determining if undue hardship

(3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations. 2006, c. 30, s. 2 (2).

(4) REPEALED: 2006, c. 30, s. 2 (3).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (2, 3) - 17/04/1995

2001, c. 32, s. 27 (5) - 07/02/2002

2002, c. 18, Sched. C, s. 1, 3 (1, 2) - 26/11/2002

2006, c. 30, s. 2 (1-3) - 30/06/2008

Special interest organizations

18 The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or

organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified. R.S.O. 1990, c. H.19, s. 18; 2006, c. 19, Sched. B, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. B, s. 10 - 22/06/2006

Solemnization of marriage by religious officials

18.1 (1) The rights under Part I to equal treatment with respect to services and facilities are not infringed where a person registered under section 20.1 or section 20.3 of the *Marriage Act* refuses to solemnize a marriage, to allow a sacred place to be used for solemnizing a marriage or for an event related to the solemnization of a marriage, or to otherwise assist in the solemnization of a marriage, if to solemnize the marriage, allow the sacred place to be used or otherwise assist would be contrary to,

- (a) the person's religious beliefs; or
- (b) the doctrines, rites, usages or customs of the religious body to which the person belongs. 2005, c. 5, s. 32 (11); 2020, c. 11, Sched. 17, s. 6.

Same

(2) Nothing in subsection (1) limits the application of section 18. 2005, c. 5, s. 32 (11).

Definition

(3) In this section,

“sacred place” includes a place of worship and any ancillary or accessory facilities. 2005, c. 5, s. 32 (11).

Section Amendments with date in force (d/m/y)

2005, c. 5, s. 32 (11) - 09/03/2005

2020, c. 11, Sched. 17, s. 6 - 08/10/2020

Separate school rights preserved

19 (1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act, 1867* and the *Education Act*. R.S.O. 1990, c. H.19, s. 19 (1).

Duties of teachers

(2) This Act does not apply to affect the application of the *Education Act* with respect to the duties of teachers. R.S.O. 1990, c. H.19, s. 19 (2).

Restriction of facilities by sex

20 (1) The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency. R.S.O. 1990, c. H.19, s. 20 (1).

Minimum drinking age

(2) The right under section 1 to equal treatment with respect to services, goods and facilities without discrimination because of age is not infringed by the provisions of the *Liquor Licence and Control Act, 2019* and the regulations under it relating to providing for and enforcing a minimum drinking age of nineteen years. R.S.O. 1990, c. H.19, s. 20 (2); 2019, c. 15, Sched. 22, s. 95.

Recreational clubs

(3) The right under section 1 to equal treatment with respect to services and facilities is not infringed where a recreational club restricts or qualifies access to its services or facilities or gives preferences with respect to membership dues and other fees because of age, sex, marital status or family status. R.S.O. 1990, c. H.19, s. 20 (3); 1999, c. 6, s. 28 (9); 2005, c. 5, s. 32 (12).

Young persons and certain products

(4) The right under section 1 to equal treatment with respect to goods without discrimination because of age is not infringed by the provisions of the *Smoke-Free Ontario Act, 2017* and the regulations under it relating to selling or supplying anything to which that Act applies to persons who are, or who appear to be, under the age of 19 years or 25 years, as the case may be. 2017, c. 26, Sched. 3, s. 26.

(5) REPEALED: 2017, c. 26, Sched. 3, s. 26.

Section Amendments with date in force (d/m/y)

1994, c. 10, s. 22 - 30/11/1994; 1999, c. 6, s. 28 (9) - 01/03/2000

2005, c. 5, s. 32 (12) - 09/03/2005; 2005, c. 18, s. 17 - 31/05/2006

2015, c. 7, Sched. 3, s. 17 - 28/05/2015

2017, c. 26, Sched. 3, s. 26 - 17/10/2018

2019, c. 15, Sched. 22, s. 95 - 29/11/2021

Residential accommodation

Shared accommodation

21 (1) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner or his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner. R.S.O. 1990, c. H.19, s. 21 (1).

Restrictions on accommodation, sex

(2) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of sex is not infringed by discrimination on that ground where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex. R.S.O. 1990, c. H.19, s. 21 (2).

Prescribing business practices

(3) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed if a landlord uses in the manner prescribed under this Act income information, credit checks, credit references, rental history, guarantees or other similar business practices which are prescribed in the regulations made under this Act in selecting prospective tenants. 1997, c. 24, s. 212 (1).

Section Amendments with date in force (d/m/y)

1997, c. 24, s. 212 (1) - 17/06/1998

Restrictions for insurance contracts, etc.

22 The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or disability, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and *bona fide* grounds because of age, sex, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 22; 1999, c. 6, s. 28 (10); 2001, c. 32, s. 27 (5); 2005, c. 5, s. 32 (13).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 28 (10) - 01/03/2000

2001, c. 32, s. 27 (5) - 07/02/2002

2005, c. 5, s. 32 (13) - 09/03/2005

Employment

23 (1) The right under section 5 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 23 (1).

Application for employment

(2) The right under section 5 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 23 (2).

Questions at interview

(3) Nothing in subsection (2) precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such ground is permitted under this Act. R.S.O. 1990, c. H.19, s. 23 (3).

Employment agencies

(4) The right under section 5 to equal treatment with respect to employment is infringed where an employment agency discriminates against a person because of a prohibited ground of discrimination in receiving, classifying, disposing of or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or agent of an employer. R.S.O. 1990, c. H.19, s. 23 (4).

Special employment

24 (1) The right under section 5 to equal treatment with respect to employment is not infringed where,

- (a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and *bona fide* qualification because of the nature of the employment;
- (b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and *bona fide* qualification because of the nature of the employment;
- (c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 5, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person;
- (d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee;
- (e) a judge is required to retire or cease to continue in office on reaching a specified age under the *Courts of Justice Act*;
- (f) an associate judge is required to retire on reaching a specified age under the *Courts of Justice Act*;
- (g) the term of reappointment of an associate judge expires on the associate judge reaching a specified age under the *Courts of Justice Act*; or
- (h) a justice of the peace is required to retire on reaching a specified age under the *Justices of the Peace Act*. R.S.O. 1990, c. H.19, s. 24 (1); 1999, c. 6, s. 28 (11); 2001, c. 32, s. 27 (5); 2005, c. 5, s. 32 (14); 2005, c. 29, s. 1 (2); 2016, c. 23, s. 54; 2020, c. 11, Sched. 5, s. 16 (1); 2021, c. 4, Sched. 11, s. 16; 2021, c. 4, Sched. 3, s. 23 (1, 2).

Reasonable accommodation

(2) No tribunal or court shall find that a qualification under clause (1) (b) is reasonable and *bona fide* unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 24 (2); 1994, c. 27, s. 65 (4); 2002, c. 18, Sched. C, s. 4 (1); 2006, c. 30, s. 3 (1).

Determining if undue hardship

(3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations. 2006, c. 30, s. 3 (2).

Same

(4) Clauses 24 (1) (e), (f), (g) and (h) shall not be interpreted to suggest that a judge, associate judge or justice of the peace is an employee for the purposes of this Act or any other Act or law. 2005, c. 29, s. 1 (3); 2020, c. 11, Sched. 5, s. 16 (2); 2021, c. 4, Sched. 3, s. 23 (3).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (4) - 17/04/1995; 1999, c. 6, s. 28 (11) - 01/03/2000

2001, c. 32, s. 27 (5) - 07/02/2002

2002, c. 18, Sched. C, s. 4 (1, 2) - 26/11/2002

2005, c. 5, s. 32 (14) - 09/03/2005; 2005, c. 29, s. 1 (2, 3) - 12/12/2006

2006, c. 30, s. 3 (1, 2) - 30/06/2008

2016, c. 23, s. 54 - 05/12/2016

2020, c. 11, Sched. 5, s. 16 (1, 2) - 08/01/2021

2021, c. 4, Sched. 3, s. 23 (1-3) - 01/09/2021; 2021, c. 4, Sched. 11, s. 16 - 19/04/2021

24.1 REPEALED: 1995, c. 4, s. 3 (2).

Section Amendments with date in force (d/m/y)

1993, c. 35, s. 56 - 01/09/1994; 1994, c. 27, s. 65 (5) - 17/04/1995; 1995, c. 4, s. 3 (2) - 14/12/1995

Employee benefit and pension plans

25 (1) The right under section 5 to equal treatment with respect to employment is infringed where employment is denied or made conditional because a term or condition of employment requires enrolment in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer, that makes a distinction, preference or exclusion on a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 25 (1).

Same

(2) The right under section 5 to equal treatment with respect to employment without discrimination because of sex, marital status or family status is not infringed by an employee superannuation or pension plan or fund or a contract of group insurance between an insurer and an employer that complies with the *Employment Standards Act, 2000* and the regulations thereunder. R.S.O. 1990, c. H.19, s. 25 (2); 1999, c. 6, s. 28 (12); 2005, c. 5, s. 32 (15); 2005, c. 29, s. 1 (4).

Same

(2.1) The right under section 5 to equal treatment with respect to employment without discrimination because of age is not infringed by an employee benefit, pension, superannuation or group insurance plan or fund that complies with the *Employment Standards Act, 2000* and the regulations thereunder. 2005, c. 29, s. 1 (5).

Same

(2.2) Subsection (2.1) applies whether or not a plan or fund is the subject of a contract of insurance between an insurer and an employer. 2005, c. 29, s. 1 (5).

Same

(2.3) For greater certainty, subsections (2) and (2.1) apply whether or not “age”, “sex” or “marital status” in the *Employment Standards Act, 2000* or the regulations under it have the same meaning as those terms have in this Act. 2005, c. 29, s. 1 (5).

Same

(3) The right under section 5 to equal treatment with respect to employment without discrimination because of disability is not infringed,

- (a) where a reasonable and *bona fide* distinction, exclusion or preference is made in an employee disability or life insurance plan or benefit because of a pre-existing disability that substantially increases the risk;
- (b) where a reasonable and *bona fide* distinction, exclusion or preference is made on the ground of a pre-existing disability in respect of an employee-pay-all or participant-pay-all benefit in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer or in respect of a plan, fund or policy that is offered by an employer to employees if they are fewer than twenty-five in number. R.S.O. 1990, c. H.19, s. 25 (3); 2001, c. 32, s. 27 (5).

Compensation

(4) An employer shall pay to an employee who is excluded because of a disability from an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and the employer compensation equivalent to the contribution that the employer would make thereto on behalf of an employee who does not have a disability. R.S.O. 1990, c. H.19, s. 25 (4); 2001, c. 32, s. 27 (5).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 28 (12) - 01/03/2000

2001, c. 32, s. 27 (5) - 07/02/2002

2005, c. 5, s. 32 (15) - 09/03/2005; 2005, c. 29, s. 1 (4, 5) - 12/12/2006

Discrimination in employment under government contracts

26 (1) It shall be deemed to be a condition of every contract entered into by or on behalf of the Crown or any agency thereof and of every subcontract entered into in the performance thereof that no right under section 5 will be infringed in the course of performing the contract. R.S.O. 1990, c. H.19, s. 26 (1).

Idem: government grants and loans

(2) It shall be deemed to be a condition of every grant, contribution, loan or guarantee made by or on behalf of the Crown or any agency thereof that no right under section 5 will be infringed in the course of carrying out the purposes for which the grant, contribution, loan or guarantee was made. R.S.O. 1990, c. H.19, s. 26 (2).

Sanction

(3) Where an infringement of a right under section 5 is found by the Tribunal upon a complaint and constitutes a breach of a condition under this section, the breach of condition is sufficient grounds for cancellation of the contract, grant, contribution, loan or guarantee and refusal to enter into any further contract with or make any further grant, contribution, loan or guarantee to the same person. R.S.O. 1990, c. H.19, s. 26 (3); 2002, c. 18, Sched. C, s. 5.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. C, s. 5 - 26/11/2002

PART III THE ONTARIO HUMAN RIGHTS COMMISSION

The Commission

27 (1) The Ontario Human Rights Commission is continued under the name Ontario Human Rights Commission in English and Commission ontarienne des droits de la personne in French. 2006, c. 30, s. 4.

Composition

(2) The Commission shall be composed of such persons as are appointed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Appointment

(3) Every person appointed to the Commission shall have knowledge, experience or training with respect to human rights law and issues. 2006, c. 30, s. 4.

Criteria

(4) In the appointment of persons to the Commission under subsection (2), the importance of reflecting, in the composition of the Commission as a whole, the diversity of Ontario's population shall be recognized. 2006, c. 30, s. 4.

Chief Commissioner

(5) The Lieutenant Governor in Council shall designate a member of the Commission as Chief Commissioner. 2006, c. 30, s. 4.

Powers and duties of Chief Commissioner

(6) The Chief Commissioner shall direct the Commission and exercise the powers and perform the duties assigned to the Chief Commissioner by or under this Act. 2006, c. 30, s. 4.

Term of office

(7) The Chief Commissioner and other members of the Commission shall hold office for such term as may be specified by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Remuneration

(8) The Chief Commissioner and other members of the Commission shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Employees

(9) The Commission may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 30, s. 4; 2006, c. 35, Sched. C, s. 132 (5).

Evidence obtained in performance of duties

(10) A member of the Commission shall not be required to give testimony in a civil suit or any proceeding as to information obtained in the performance of duties under this Act. 2006, c. 30, s. 4.

Same, employees

(11) An employee of the Commission shall not be required to give testimony in a civil suit or any proceeding other than a proceeding under this Act as to information obtained in the performance of duties under this Act. 2006, c. 30, s. 4.

Delegation

(12) The Chief Commissioner may in writing delegate any of his or her powers, duties or functions under this Act to any member of the Anti-Racism Secretariat, the Disability Rights Secretariat or an advisory group or to any other member of the Commission, subject to such conditions as the Chief Commissioner may set out in the delegation. 2006, c. 30, s. 4.

Divisions

(13) The Commission may authorize any function of the Commission to be performed by a division of the Commission composed of at least three members of the Commission. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008; 2006, c. 35, Sched. C, s. 54 (1) - 20/08/2007; 2006, c. 35, Sched. C, s. 132 (5) - 30/06/2008

Acting Chief Commissioner

28 (1) If the Chief Commissioner dies, resigns or is unable or neglects to perform his or her duties, the Lieutenant Governor in Council may appoint an Acting Chief Commissioner to hold office for such period as may be specified in the appointment. 2006, c. 30, s. 4.

Same

(2) An Acting Chief Commissioner shall perform the duties and have the powers of the Chief Commissioner and shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

Functions of Commission

29 The functions of the Commission are to promote and advance respect for human rights in Ontario, to protect human rights in Ontario and, recognizing that it is in the public interest to do so and that it is the Commission's duty to protect the public interest, to identify and promote the elimination of discriminatory practices and, more specifically,

- (a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;
- (b) to develop and conduct programs of public information and education to,
 - (i) promote awareness and understanding of, respect for and compliance with this Act, and
 - (ii) prevent and eliminate discriminatory practices that infringe rights under Part I;
- (c) to undertake, direct and encourage research into discriminatory practices and to make recommendations designed to prevent and eliminate such discriminatory practices;
- (d) to examine and review any statute or regulation, and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this Act;
- (e) to initiate reviews and inquiries into incidents of tension or conflict, or conditions that lead or may lead to incidents of tension or conflict, in a community, institution, industry or sector of the economy, and to make recommendations, and encourage and co-ordinate plans, programs and activities, to reduce or prevent such incidents or sources of tension or conflict;
- (f) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;
- (g) to designate programs as special programs in accordance with section 14;
- (h) to approve policies under section 30;

- (i) to make applications to the Tribunal under section 35;
- (j) to report to the people of Ontario on the state of human rights in Ontario and on its affairs;
- (k) to perform the functions assigned to the Commission under this or any other Act. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (6) - 17/04/1995

2002, c. 18, Sched. C, s. 1 - 26/11/2002

2006, c. 30, s. 4 - 30/06/2008

Commission policies

30 The Commission may approve policies prepared and published by the Commission to provide guidance in the application of Parts I and II. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

Inquiries

31 (1) The Commission may conduct an inquiry under this section for the purpose of carrying out its functions under this Act if the Commission believes it is in the public interest to do so. 2006, c. 30, s. 4.

Conduct of inquiry

(2) An inquiry may be conducted under this section by any person who is appointed by the Commission to carry out inquiries under this section. 2006, c. 30, s. 4.

Production of certificate

(3) A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 4.

Entry

(4) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be documents, things or information relevant to the inquiry. 2006, c. 30, s. 4.

Time of entry

(5) The power to enter a place under subsection (4) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 4.

Dwellings

(6) A person conducting an inquiry under this section shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2006, c. 30, s. 4.

Powers on inquiry

- (7) A person conducting an inquiry may,
- (a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;
 - (b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;
 - (c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;
 - (d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;
 - (e) take measurements or record by any means the physical dimensions of a place;
 - (f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and

- (g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 4.

Written demand

- (8) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, c. 30, s. 4.

Assistance

- (9) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 4.

Use of force prohibited

- (10) A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 4.

Obligation to produce and assist

- (11) A person who is requested to produce a document or thing under clause (7) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 4.

Return of removed things

- (12) A person conducting an inquiry who removes any document or thing from a place under clause (7) (b) shall,
- (a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and
 - (b) return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 4.

Admissibility of copies

- (13) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 4.

Obstruction

- (14) No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

Search warrant

31.1 (1) The Commission may authorize a person to apply to a justice of the peace for a warrant to enter a place and conduct a search of the place if,

- (a) a person conducting an inquiry under section 31 has been denied entry to any place or asked to leave a place before concluding a search;
- (b) a person conducting an inquiry under section 31 made a request for documents or things and the request was refused; or
- (c) an inquiry under section 31 is otherwise obstructed or prevented. 2006, c. 30, s. 4.

Same

- (2) Upon application by a person authorized under subsection (1) to do so, a justice of the peace may issue a warrant under this section if he or she is satisfied on information under oath or affirmation that the warrant is necessary for the purposes of carrying out the inquiry under section 31. 2006, c. 30, s. 4.

Powers

- (3) A warrant obtained under subsection (2) may authorize a person named in the warrant, upon producing proof of his or her appointment,
- (a) to enter any place specified in the warrant, including a dwelling; and
 - (b) to do any of the things specified in the warrant. 2006, c. 30, s. 4.

Conditions on search warrant

(4) A warrant obtained under subsection (2) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2006, c. 30, s. 4.

Time of execution

(5) An entry under a warrant issued under this section shall be made at such reasonable times as may be specified in the warrant. 2006, c. 30, s. 4.

Expiry of warrant

(6) A warrant issued under this section shall name a date of expiry, which shall be no later than 15 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 15 days, upon application without notice by the person named in the warrant. 2006, c. 30, s. 4.

Use of force

(7) The person authorized to execute the warrant may call upon police officers for assistance in executing the warrant and the person may use whatever force is reasonably necessary to execute the warrant. 2006, c. 30, s. 4.

Obstruction prohibited

(8) No person shall obstruct or hinder a person in the execution of a warrant issued under this section. 2006, c. 30, s. 4.

Application

(9) Subsections 31 (11), (12) and (13) apply with necessary modifications to an inquiry carried out pursuant to a warrant issued under this section. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

Evidence used in Tribunal proceedings

31.2 Despite any other Act, evidence obtained on an inquiry under section 31 or 31.1 may be received into evidence in a proceeding before the Tribunal. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

Anti-Racism Secretariat

31.3 (1) The Chief Commissioner directs the Anti-Racism Secretariat which shall be established in accordance with subsection (2). 2006, c. 30, s. 4.

Composition

(2) The Anti-Racism Secretariat shall be composed of not more than six persons appointed by the Lieutenant Governor in Council on the advice of the Chief Commissioner. 2006, c. 30, s. 4.

Remuneration

(3) The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the members of the Anti-Racism Secretariat. 2006, c. 30, s. 4.

Functions of the Secretariat

(4) At the direction of the Chief Commissioner, the Anti-Racism Secretariat shall,

- (a) undertake, direct and encourage research into discriminatory practices that infringe rights under Part I on the basis of racism or a related ground and make recommendations to the Commission designed to prevent and eliminate such discriminatory practices;
- (b) facilitate the development and provision of programs of public information and education relating to the elimination of racism; and
- (c) undertake such tasks and responsibilities as may be assigned by the Chief Commissioner. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

Disability Rights Secretariat

31.4 (1) The Chief Commissioner directs the Disability Rights Secretariat which shall be established in accordance with subsection (2). 2006, c. 30, s. 4.

Composition

(2) The Disability Rights Secretariat shall be composed of not more than six persons appointed by the Lieutenant Governor in Council on the advice of the Chief Commissioner. 2006, c. 30, s. 4.

Remuneration

(3) The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the members of the Disability Rights Secretariat. 2006, c. 30, s. 4.

Functions of the Secretariat

(4) At the direction of the Chief Commissioner, the Disability Rights Secretariat shall,

- (a) undertake, direct and encourage research into discriminatory practices that infringe rights under Part I on the basis of disability and make recommendations to the Commission designed to prevent and eliminate such discriminatory practices;
- (b) facilitate the development and provision of programs of public information and education intended to promote the elimination of discriminatory practices that infringe rights under Part I on the basis of disability; and
- (c) undertake such tasks and responsibilities as may be assigned by the Chief Commissioner. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

Advisory groups

31.5 The Chief Commissioner may establish such advisory groups as he or she considers appropriate to advise the Commission about the elimination of discriminatory practices that infringe rights under this Act. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

Annual report

31.6 (1) Every year, the Commission shall prepare an annual report on the affairs of the Commission that occurred during the 12-month period ending on March 31 of each year. 2006, c. 30, s. 4.

Report to Speaker

(2) The Commission shall submit the report to the Speaker of the Assembly no later than on June 30 in each year who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 2006, c. 30, s. 4.

Copy to Minister

(3) The Commission shall give a copy of the report to the Minister at least 30 days before it is submitted to the Speaker under subsection (2). 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

Other reports

31.7 In addition to the annual report, the Commission may make any other reports respecting the state of human rights in Ontario and the affairs of the Commission as it considers appropriate, and may present such reports to the public or any other person it considers appropriate. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 4 - 30/06/2008

**PART IV
HUMAN RIGHTS TRIBUNAL OF ONTARIO**

Tribunal

32 (1) The Tribunal known as the Human Rights Tribunal of Ontario in English and Tribunal des droits de la personne de l'Ontario in French is continued. 2006, c. 30, s. 5.

Composition

(2) The Tribunal shall be composed of such members as are appointed by the Lieutenant Governor in Council in accordance with the selection process described in subsection (3). 2006, c. 30, s. 5.

Selection process

(3) The selection process for the appointment of members of the Tribunal shall be a competitive process and the criteria to be applied in assessing candidates shall include the following:

1. Experience, knowledge or training with respect to human rights law and issues.
2. Aptitude for impartial adjudication.
3. Aptitude for applying the alternative adjudicative practices and procedures that may be set out in the Tribunal rules. 2006, c. 30, s. 5.

Remuneration

(4) The members of the Tribunal shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 5.

Term of office

(5) A member of the Tribunal shall be appointed for such term as may be specified by the Lieutenant Governor in Council. 2006, c. 30, s. 5.

Chair, vice-chair

(6) The Lieutenant Governor in Council shall appoint a chair and may appoint one or more vice-chairs of the Tribunal from among the members of the Tribunal. 2006, c. 30, s. 5.

Alternate chair

(7) The Lieutenant Governor in Council shall designate one of the vice-chairs to be the alternate chair. 2006, c. 30, s. 5.

Same

(8) If the chair is unable to act, the alternate chair shall perform the duties of the chair and, for this purpose, has all the powers of the chair. 2006, c. 30, s. 5.

Employees

(9) The Tribunal may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 30, s. 5; 2006, c. 35, Sched. C, s. 132 (6).

Evidence obtained in course of proceeding

(10) A member or employee of the Tribunal shall not be required to give testimony in a civil suit or any proceeding as to information obtained in the course of a proceeding before the Tribunal. 2006, c. 30, s. 5.

Same

(11) Despite subsection (10), an employee of the Tribunal may be required to give testimony in a proceeding before the Tribunal in the circumstances prescribed by the Tribunal rules. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008; 2006, c. 35, Sched. C, s. 132 (6) - 30/06/2008

Panels

33 (1) The chair of the Tribunal may appoint panels composed of one or more members of the Tribunal to exercise and perform the powers and duties of the Tribunal. 2006, c. 30, s. 5.

Person designated to preside over panel

(2) If a panel of the Tribunal holds a hearing, the chair of the Tribunal shall designate one member of the panel to preside over the hearing. 2006, c. 30, s. 5.

Reassignment of panel

(3) If a panel of the Tribunal is unable for any reason to exercise or perform the powers or duties of the Tribunal, the chair of the Tribunal may assign another panel in its place. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (7) - no effect - see 2006, c. 30, s. 5 - 30/06/2008; 1994, c. 27, s. 65 (8, 9) - 17/04/1995

2002, c. 18, Sched. C, s. 1 - 26/11/2002

2006, c. 30, s. 5 - 30/06/2008

Application by person

34 (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

- (a) within one year after the incident to which the application relates; or
- (b) if there was a series of incidents, within one year after the last incident in the series. 2006, c. 30, s. 5.

Late applications

(2) A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.

Form

(3) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Two or more persons

(4) Two or more persons who are each entitled to make an application under subsection (1) may file the applications jointly, subject to any provision in the Tribunal rules that authorizes the Tribunal to direct that one or more of the applications be considered in a separate proceeding. 2006, c. 30, s. 5.

Application on behalf of another

(5) A person or organization, other than the Commission, may apply on behalf of another person to the Tribunal for an order under section 45.2 if the other person,

- (a) would have been entitled to bring an application under subsection (1); and
- (b) consents to the application. 2006, c. 30, s. 5.

Participation in proceedings

(6) If a person or organization makes an application on behalf of another person, the person or organization may participate in the proceeding in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Consent form

(7) A consent under clause (5) (b) shall be in a form specified in the Tribunal rules. 2006, c. 30, s. 5.

Time of application

(8) An application under subsection (5) shall be made within the time period required for making an application under subsection (1). 2006, c. 30, s. 5.

Application

(9) Subsections (2) and (3) apply to an application made under subsection (5). 2006, c. 30, s. 5.

Withdrawal of application

(10) An application under subsection (5) may be withdrawn by the person on behalf of whom the application is made in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Where application barred

(11) A person who believes that one of his or her rights under Part I has been infringed may not make an application under subsection (1) with respect to that right if,

- (a) a civil proceeding has been commenced in a court in which the person is seeking an order under section 46.1 with respect to the alleged infringement and the proceeding has not been finally determined or withdrawn; or
- (b) a court has finally determined the issue of whether the right has been infringed or the matter has been settled. 2006, c. 30, s. 5.

Final determination

(12) For the purpose of subsection (11), a proceeding or issue has not been finally determined if a right of appeal exists and the time for appealing has not expired. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

Application by Commission

35 (1) The Commission may apply to the Tribunal for an order under section 45.3 if the Commission is of the opinion that,

- (a) it is in the public interest to make an application; and
- (b) an order under section 45.3 could provide an appropriate remedy. 2006, c. 30, s. 5.

Form

(2) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Effect of application

(3) An application made by the Commission does not affect the right of a person to make an application under section 34 in respect of the same matter. 2006, c. 30, s. 5.

Applications dealt with together

(4) If a person or organization makes an application under section 34 and the Commission makes an application under this section in respect of the same matter, the two applications shall be dealt with together in the same proceeding unless the Tribunal determines otherwise. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (10, 11) - 17/04/1995

2002, c. 18, Sched. C, s. 1, 6 - 26/11/2002

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007; 2006, c. 30, s. 5 - 30/06/2008; 2006, c. 35, Sched. C, s. 54 (2) - 20/08/2007

Parties

36 The parties to an application under section 34 or 35 are the following:

- 1. In the case of an application under subsection 34 (1), the person who made the application.
- 2. In the case of an application under subsection 34 (5), the person on behalf of whom the application is made.
- 3. In the case of an application under section 35, the Commission.
- 4. Any person against whom an order is sought in the application.
- 5. Any other person or the Commission, if they are added as a party by the Tribunal. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (12, 13) - 17/04/1995

2002, c. 18, Sched. C, s. 1 - 26/11/2002

2006, c. 30, s. 5 - 30/06/2008

Intervention by Commission

37 (1) The Commission may intervene in an application under section 34 on such terms as the Tribunal may determine having regard to the role and mandate of the Commission under this Act. 2006, c. 30, s. 5.

Intervention as a party

(2) The Commission may intervene as a party to an application under section 34 if the person or organization who made the application consents to the intervention as a party. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

Disclosure of information to Commission

38 Despite anything in the *Freedom of Information and Protection of Privacy Act*, at the request of the Commission, the Tribunal shall disclose to the Commission copies of applications and responses filed with the Tribunal and may disclose to the Commission other documents in its custody or in its control. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (14) - 17/04/1995

2006, c. 30, s. 5 - 30/06/2008

Powers of Tribunal

39 The Tribunal has the jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any application before it. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (15-18) - 17/04/1995

2002, c. 18, Sched. C, s. 1 - 26/11/2002

2006, c. 30, s. 5 - 30/06/2008

Disposition of applications

40 The Tribunal shall dispose of applications made under this Part by adopting the procedures and practices provided for in its rules or otherwise available to the Tribunal which, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the applications. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (19) - 17/04/1995

2006, c. 30, s. 5 - 30/06/2008

Interpretation of Part and rules

41 This Part and the Tribunal rules shall be liberally construed to permit the Tribunal to adopt practices and procedures, including alternatives to traditional adjudicative or adversarial procedures that, in the opinion of the Tribunal, will facilitate fair, just and expeditious resolutions of the merits of the matters before it. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (20, 21) - 17/04/1995

2002, c. 18, Sched. C, s. 1 - 26/11/2002

2006, c. 30, s. 5 - 30/06/2008

41.1 REPEALED: 1995, c. 4, s. 3 (3).

Section Amendments with date in force (d/m/y)

1993, c. 35, s. 56 - 01/09/1994; 1994, c. 27, s. 65 (22) - 17/04/1995; 1995, c. 4, s. 3 (3) - 14/12/1995

Statutory Powers Procedure Act

42 (1) The provisions of the *Statutory Powers Procedure Act* apply to a proceeding before the Tribunal unless they conflict with a provision of this Act, the regulations or the Tribunal rules. 2006, c. 30, s. 5.

Conflict

(2) Despite section 32 of the *Statutory Powers Procedure Act*, this Act, the regulations and the Tribunal rules prevail over the provisions of that Act with which they conflict. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (23) - 17/04/1995

2002, c. 18, Sched. C, s. 1 - 26/11/2002

2006, c. 30, s. 5 - 30/06/2008

Tribunal rules

43 (1) The Tribunal may make rules governing the practice and procedure before it. 2006, c. 30, s. 5.

Required practices and procedures

(2) The rules shall ensure that the following requirements are met with respect to any proceeding before the Tribunal:

1. An application that is within the jurisdiction of the Tribunal shall not be finally disposed of without affording the parties an opportunity to make oral submissions in accordance with the rules.
2. An application may not be finally disposed of without written reasons. 2006, c. 30, s. 5.

Same

(3) Without limiting the generality of subsection (1), the Tribunal rules may,

- (a) provide for and require the use of hearings or of practices and procedures that are provided for under the *Statutory Powers Procedure Act* or that are alternatives to traditional adjudicative or adversarial procedures;
- (b) authorize the Tribunal to,
 - (i) define or narrow the issues required to dispose of an application and limit the evidence and submissions of the parties on such issues, and
 - (ii) determine the order in which the issues and evidence in a proceeding will be presented;
- (c) authorize the Tribunal to conduct examinations in chief or cross-examinations of a witness;
- (d) prescribe the stages of its processes at which preliminary, procedural or interlocutory matters will be determined;
- (e) authorize the Tribunal to make or cause to be made such examinations of records and such other inquiries as it considers necessary in the circumstances;
- (f) authorize the Tribunal to require a party to a proceeding or another person to,
 - (i) produce any document, information or thing and provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form,
 - (ii) provide a statement or oral or affidavit evidence, or
 - (iii) in the case of a party to the proceeding, adduce evidence or produce witnesses who are reasonably within the party's control; and
- (g) govern any matter prescribed by the regulations. 2006, c. 30, s. 5.

General or particular

(4) The rules may be of general or particular application. 2006, c. 30, s. 5.

Consistency

(5) The rules shall be consistent with this Part. 2006, c. 30, s. 5.

Not a regulation

(6) The rules made under this section are not regulations for the purposes of Part III of the *Legislation Act, 2006*. 2006, c. 30, ss. 5, 11.

Public consultations

(7) The Tribunal shall hold public consultations before making a rule under this section. 2006, c. 30, s. 5.

Failure to comply with rules

(8) Failure on the part of the Tribunal to comply with the practices and procedures required by the rules or the exercise of a discretion under the rules by the Tribunal in a particular manner is not a ground for setting aside a decision of the Tribunal on an application for judicial review or any other form of relief, unless the failure or the exercise of a discretion caused a substantial wrong which affected the final disposition of the matter. 2006, c. 30, s. 5.

Adverse inference

(9) The Tribunal may draw an adverse inference from the failure of a party to comply, in whole or in part, with an order of the Tribunal for the party to do anything under a rule made under clause (3) (f). 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5, 11 - 30/06/2008

Tribunal inquiry

44 (1) At the request of a party to an application under this Part, the Tribunal may appoint a person to conduct an inquiry under this section if the Tribunal is satisfied that,

- (a) an inquiry is required in order to obtain evidence;
- (b) the evidence obtained may assist in achieving a fair, just and expeditious resolution of the merits of the application; and
- (c) it is appropriate to do so in the circumstances. 2006, c. 30, s. 5.

Production of certificate

(2) A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 5.

Entry

(3) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be evidence relevant to the application. 2006, c. 30, s. 5.

Time of entry

(4) The power to enter a place under subsection (3) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 5.

Dwellings

(5) A person conducting an inquiry shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2006, c. 30, s. 5.

Powers on inquiry

- (6) A person conducting an inquiry may,
- (a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;
 - (b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;
 - (c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;
 - (d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;
 - (e) take measurements or record by any means the physical dimensions of a place;
 - (f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and
 - (g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 5.

Written demand

(7) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, c. 30, s. 5.

Assistance

(8) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 5.

Use of force prohibited

(9) A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 5.

Obligation to produce and assist

(10) A person who is requested to produce a document or thing under clause (6) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 5.

Return of removed things

(11) A person conducting an inquiry who removes any document or thing from a place under clause (6) (b) shall,

- (a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and
- (b) return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 5.

Admissibility of copies

(12) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 5.

Obstruction

(13) No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 5.

Inquiry report

(14) A person conducting an inquiry shall prepare a report and submit it to the Tribunal and the parties to the application that gave rise to the inquiry in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Transfer of inquiry to Commission

(15) The Commission may, at the request of the Tribunal, appoint a person to conduct an inquiry under this section and the person so appointed has all of the powers of a person appointed by the Tribunal under this section and shall report to the Tribunal in accordance with subsection (14). 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (23) - 17/04/1995

2002, c. 18, Sched. C, s. 1 - 26/11/2002

2006, c. 30, s. 5 - 30/06/2008

Deferral of application

45 The Tribunal may defer an application in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (23) - 17/04/1995

2002, c. 18, Sched. C, s. 1 - 26/11/2002

2006, c. 30, s. 5 - 30/06/2008

Dismissal in accordance with rules

45.1 The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

Orders of Tribunal: applications under s. 34

45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Orders under par. 3 of subs. (1)

(2) For greater certainty, an order under paragraph 3 of subsection (1),

- (a) may direct a person to do anything with respect to future practices; and
- (b) may be made even if no order under that paragraph was requested. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

Orders of Tribunal: applications under s. 35

45.3 (1) If, on an application under section 35, the Tribunal determines that any one or more of the parties to the application have infringed a right under Part I, the Tribunal may make an order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Same

(2) For greater certainty, an order under subsection (1) may direct a person to do anything with respect to future practices. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

Matters referred to Commission

45.4 (1) The Tribunal may refer any matters arising out of a proceeding before it to the Commission if, in the Tribunal's opinion, they are matters of public interest or are otherwise of interest to the Commission. 2006, c. 30, s. 5.

Same

(2) The Commission may, in its discretion, decide whether to deal with a matter referred to it by the Tribunal. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

Documents published by Commission

45.5 (1) In a proceeding under this Part, the Tribunal may consider policies approved by the Commission under section 30. 2006, c. 30, s. 5.

Same

(2) Despite subsection (1), the Tribunal shall consider a policy approved by the Commission under section 30 in a proceeding under this Part if a party to the proceeding or an intervenor requests that it do so. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

Stated case to Divisional court

45.6 (1) If the Tribunal makes a final decision or order in a proceeding in which the Commission was a party or an intervenor, and the Commission believes that the decision or order is not consistent with a policy that has been approved by the Commission under section 30, the Commission may apply to the Tribunal to have the Tribunal state a case to the Divisional Court. 2006, c. 30, s. 5.

Same

(2) If the Tribunal determines that the application of the Commission relates to a question of law and that it is appropriate to do so, it may state the case in writing for the opinion of the Divisional Court upon the question of law. 2006, c. 30, s. 5.

Parties

(3) The parties to a stated case under this section are the parties to the proceeding referred to in subsection (1) and, if the Commission was an intervenor in that proceeding, the Commission. 2006, c. 30, s. 5.

Submissions by Tribunal

(4) The Divisional Court may hear submissions from the Tribunal. 2006, c. 30, s. 5.

Powers of Divisional Court

(5) The Divisional Court shall hear and determine the stated case. 2006, c. 30, s. 5.

No stay

(6) Unless otherwise ordered by the Tribunal or the Divisional Court, an application by the Commission under subsection (1) or the stating of a case to the Divisional Court under subsection (2) does not operate as a stay of the final decision or order of the Tribunal. 2006, c. 30, s. 5.

Reconsideration of Tribunal decision

(7) Within 30 days of receipt of the decision of the Divisional Court, any party to the stated case proceeding may apply to the Tribunal for a reconsideration of its original decision or order in accordance with section 45.7. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

Reconsideration of Tribunal decision

45.7 (1) Any party to a proceeding before the Tribunal may request that the Tribunal reconsider its decision in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Same

(2) Upon request under subsection (1) or on its own motion, the Tribunal may reconsider its decision in accordance with its rules. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

Decisions final

45.8 Subject to section 45.7 of this Act, section 21.1 of the *Statutory Powers Procedure Act* and the Tribunal rules, a decision of the Tribunal is final and not subject to appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable. 2006, c. 30, s. 5; 2009, c. 33, Sched. 2, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

2009, c. 33, Sched. 2, s. 35 (3) - 15/12/2009

Settlements

45.9 (1) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the settlement is binding on the parties. 2006, c. 30, s. 5.

Consent order

(2) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the Tribunal may, on the joint motion of the parties, make an order requiring compliance with the settlement or any part of the settlement. 2006, c. 30, s. 5.

Application where contravention

(3) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, a party who believes that another party has contravened the settlement may make an application to the Tribunal for an order under subsection (8),

(a) within six months after the contravention to which the application relates; or

(b) if there was a series of contraventions, within six months after the last contravention in the series. 2006, c. 30, s. 5.

Late applications

(4) A person may apply under subsection (3) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.

Form of application

(5) An application under subsection (3) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Parties

(6) Subject to the Tribunal rules, the parties to an application under subsection (3) are the following:

1. The parties to the settlement.

2. Any other person or the Commission, if they are added as a party by the Tribunal. 2006, c. 30, s. 5.

Intervention by Commission

(7) Section 37 applies with necessary modifications to an application under subsection (3). 2006, c. 30, s. 5.

Order

(8) If, on an application under subsection (3), the Tribunal determines that a party has contravened the settlement, the Tribunal may make any order that it considers appropriate to remedy the contravention. 2006, c. 30, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

45.10 REPEALED: 2017, c. 34, Sched. 46, s. 20 (1).

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 5 - 30/06/2008

2017, c. 34, Sched. 46, s. 20 (1) - 01/01/2018

PART IV.1 HUMAN RIGHTS LEGAL SUPPORT CENTRE

Centre established

45.11 (1) A corporation without share capital is established under the name Human Rights Legal Support Centre in English and Centre d'assistance juridique en matière de droits de la personne in French. 2006, c. 30, s. 6.

Membership

(2) The members of the Centre shall consist of its board of directors. 2006, c. 30, s. 6.

Not a Crown agency

(3) The Centre is not an agent of Her Majesty nor a Crown agent for the purposes of the *Crown Agency Act*. 2006, c. 30, s. 6.

Powers of natural person

(4) The Centre has the capacity and the rights, powers and privileges of a natural person, subject to the limitations set out in this Act or the regulations. 2006, c. 30, s. 6.

Independent from but accountable to Ontario

(5) The Centre shall be independent from, but accountable to, the Government of Ontario as set out in this Act. 2006, c. 30, s. 6.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 6 - 20/12/2006

Objects

45.12 The objects of the Centre are,

- (a) to establish and administer a cost-effective and efficient system for providing support services, including legal services, respecting applications to the Tribunal under Part IV;
- (b) to establish policies and priorities for the provision of support services based on its financial resources. 2006, c. 30, s. 6.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 6 - 20/12/2006

Provision of support services

45.13 (1) The Centre shall provide the following support services:

1. Advice and assistance, legal and otherwise, respecting the infringement of rights under Part I.
2. Legal services in relation to,
 - i. the making of applications to the Tribunal under Part IV,
 - ii. proceedings before the Tribunal under Part IV,
 - iii. applications for judicial review arising from Tribunal proceedings,
 - iv. stated case proceedings,
 - v. the enforcement of Tribunal orders.
3. Such other services as may be prescribed by regulation. 2006, c. 30, s. 6.

Availability of services

(2) The Centre shall ensure that the support services are available throughout the Province, using such methods of delivering the services as the Centre believes are appropriate. 2006, c. 30, s. 6.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 6 - 20/12/2006

Board of directors

45.14 (1) The affairs of the Centre shall be governed and managed by its board of directors. 2006, c. 30, s. 6.

Composition and appointment

(2) The board of directors of the Centre shall consist of no fewer than five and no more than nine members appointed by the Lieutenant Governor in Council in accordance with the regulations. 2006, c. 30, s. 6.

Appointment of Chair

(3) A Chair designated by the Lieutenant Governor in Council will preside at meetings. 2006, c. 30, s. 6.

Remuneration

(4) The board of directors may be remunerated as determined by the Lieutenant Governor in Council. 2006, c. 30, s. 6.

Duties

(5) The board of directors of the Centre shall be responsible for furthering the objects of the Centre. 2006, c. 30, s. 6.

Delegation

(6) The board of directors may delegate any power or duty to any committee, to any member of a committee or to any officer or employee of the Centre. 2006, c. 30, s. 6.

Same

(7) A delegation shall be in writing and shall be on the terms and subject to the limitations, conditions or requirements specified in it. 2006, c. 30, s. 6.

Board to act responsibly

(8) The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties. 2006, c. 30, s. 6.

Standard of care

(9) Members of the board of directors shall act in good faith with a view to the objects of the Centre and shall exercise the care, diligence and skill of a reasonably prudent person. 2006, c. 30, s. 6.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 6 - 20/12/2006

Government funding

45.15 (1) The Centre shall submit its annual budget to the Minister for approval every year in a manner and form, and at a time, specified in the regulations. 2006, c. 30, s. 6.

Approved budget included in estimates

(2) If approved by the Minister, the annual budget shall be submitted to Cabinet to be reviewed for inclusion in the estimates of the Ministry. 2006, c. 30, s. 6.

Appropriation by Legislature

(3) The money required for the purposes of this Act shall be paid out of such money as is appropriated therefor by the Legislature. 2006, c. 30, s. 6.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 6 - 20/12/2006

Centre's money not part of Consolidated Revenue Fund

45.16 The Centre's money and investments do not form part of the Consolidated Revenue Fund and shall be used by the Centre in carrying out its objects. 2006, c. 30, s. 6.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 6 - 20/12/2006

Fiscal year

45.17 The fiscal year of the Centre shall be from April 1 to March 31 of the following year. 2017, c. 34, Sched. 46, s. 20 (2).

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 6 - 20/12/2006

2017, c. 34, Sched. 46, s. 20 (2) - 01/01/2018

Annual report

45.17.1 (1) The Centre shall prepare an annual report, provide it to the Minister no later than 120 days after the end of the Centre's fiscal year and make it available to the public. 2017, c. 34, Sched. 46, s. 20 (2).

Same

(2) The Centre shall comply with such directives as may be issued by the Management Board of Cabinet with respect to,

(a) the form and content of the annual report; and

(b) when and how to make it available to the public. 2017, c. 34, Sched. 46, s. 20 (2).

Same

(3) The Centre shall include such additional content in the annual report as the Minister may require. 2017, c. 34, Sched. 46, s. 20 (2).

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 46, s. 20 (2) - 01/01/2018

Audit

45.18 (1) The Centre must ensure that its books of financial account are audited annually in accordance with generally accepted accounting principles and a copy of the audit is given to the Minister. 2006, c. 30, s. 6.

Audit by Minister

(2) The Minister has the right to audit the Centre at any time that the Minister chooses. 2006, c. 30, s. 6.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 6 - 20/12/2006

PART V GENERAL

Definitions, general

46 In this Act,

“Commission” means the Ontario Human Rights Commission; (“Commission”)

“Minister” means the member of the Executive Council to whom the powers and duties of the Minister under this Act are assigned by the Lieutenant Governor in Council; (“ministre”)

“person” in addition to the extended meaning given it by Part VI (Interpretation) of the *Legislation Act, 2006*, includes an employment agency, an employers’ organization, an unincorporated association, a trade or occupational association, a trade union, a partnership, a municipality, a board of police commissioners established under the *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, and a police services board established under the *Police Services Act*; (“personne”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “person” in section 46 of the Act is amended by striking out “police services board established under the *Police Services Act*” and substituting “police service board established under the *Community Safety and Policing Act, 2019*”. (See: 2019, c. 1, Sched. 4, s. 25)

“regulations” means the regulations made under this Act; (“règlements”)

“Tribunal” means the Human Rights Tribunal of Ontario continued under section 32; (“Tribunal”)

“Tribunal rules” means the rules governing practice and procedure that are made by the Tribunal under section 43. (“règles du Tribunal”) R.S.O. 1990, c. H.19, s. 46; 1994, c. 27, s. 65 (24); 2002, c. 18, Sched. C, s. 7; 2006, c. 21, Sched. F, s. 136 (2); 2006, c. 30, s. 7.

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (24) - 17/04/1995

2002, c. 18, Sched. C, s. 7 - 26/11/2002

2006, c. 21, Sched. F, s. 136 (2) - 25/07/2007; 2006, c. 30, s. 7 - 30/06/2008

2018, c. 3, Sched. 5, s. 27 - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 25 - not in force

Civil remedy

46.1 (1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect. 2006, c. 30, s. 8.

Same

(2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I. 2006, c. 30, s. 8.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 8 - 30/06/2008

Penalty

46.2 (1) Every person who contravenes section 9 or subsection 31 (14), 31.1 (8) or 44 (13) or an order of the Tribunal is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. 2006, c. 30, s. 8.

Consent to prosecution

(2) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Attorney General. 2006, c. 30, s. 8.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 8 - 30/06/2008

Acts of officers, etc.

46.3 (1) For the purposes of this Act, except subsection 2 (2), subsection 5 (2), section 7 and subsection 46.2 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization. 2006, c. 30, s. 8.

Opinion re authority or acquiescence

(2) At the request of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization, the Tribunal in its decision shall make known whether or not, in its opinion, an act or thing done or omitted to be done by an officer, official, employee or agent was done or omitted to be done with or without the authority or acquiescence of the corporation, trade union, trade or occupational association, unincorporated association or employers' organization, and the opinion does not affect the application of subsection (1). 2006, c. 30, s. 8.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 8 - 30/06/2008

Act binds Crown

47 (1) This Act binds the Crown and every agency of the Crown. R.S.O. 1990, c. H.19, s. 47 (1).

Act has primacy over other Acts

(2) Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act. R.S.O. 1990, c. H.19, s. 47 (2).

Regulations

48 (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing standards for assessing what is undue hardship for the purposes of section 11, 17 or 24;
- (a.1) prescribing the manner in which income information, credit checks, credit references, rental history, guarantees or other similar business practices may be used by a landlord in selecting prospective tenants without infringing section 2, and prescribing other similar business practices and the manner of their use, for the purposes of subsection 21 (3);
- (b) prescribing matters for the purposes of clause 43 (3) (g);
- (c) respecting the Human Rights Legal Support Centre;
- (d) governing any matter that is necessary or advisable for the effective enforcement and administration of this Act.
- (e) REPEALED: 2006, c. 30, s. 9 (1).

R.S.O. 1990, c. H.19, s. 48; 1994, c. 27, s. 65 (25); 1997, c. 24, s. 212 (2); 2006, c. 30, s. 9 (1).

Human Rights Legal Support Centre

(2) A regulation made under clause (1) (c) may,

- (a) further define the Centre's constitution, management and structure as set out in Part IV.1;
- (b) prescribe powers and duties of the Centre and its members;
- (c) provide for limitations on the Centre's powers under subsection 45.11 (4);
- (d) prescribe services for the purposes of paragraph 3 of subsection 45.13 (1);
- (e) further define the nature and scope of support services referred to in subsection 45.13 (1);
- (f) provide for factors to be considered in appointing members and specify the circumstances and manner in which they are to be considered;
- (g) provide for the term of appointment and reappointment of the Centre's members;
- (h) REPEALED: 2017, c. 34, Sched. 46, s. 20 (3).
- (i) provide for reporting requirements in addition to the annual report;
- (j) provide for personal information to be collected by or on behalf of the Centre other than directly from the individual to whom the information relates, and for the manner in which the information is collected;
- (k) provide for the transfer from specified persons or entities of information, including personal information, that is relevant to carrying out the functions of the Centre;
- (l) provide for rules governing the confidentiality and security of information, including personal information, the collection, use and disclosure of such information, the retention and disposal of such information, and access to and correction of such information, including restrictions on any of these things, for the purposes of the carrying out of the functions of the Centre;
- (m) specify requirements and conditions for the funding of the Centre and for the Centre's budget;
- (n) provide for audits of the statements and records of the Centre;
- (o) determine whether or not the *Business Corporations Act*, the *Corporations Information Act* or the *Not-for-Profit Corporations Act, 2010* or any provisions of those Acts apply to the Centre;
- (p) provide for anything necessary or advisable for the purposes of Part IV.1. 2006, c. 30, s. 9 (2); 2017, c. 20, Sched. 8, s. 89; 2017, c. 34, Sched. 46, s. 20 (3).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 65 (25) - 09/12/1994; 1997, c. 24, s. 212 (2) - 17/06/1998

2006, c. 30, s. 9 (1, 2) - 30/06/2008

2017, c. 20, Sched. 8, s. 89 - 19/10/2021; 2017, c. 34, Sched. 46, s. 20 (3) - 01/01/2018

PART VI TRANSITIONAL PROVISIONS

Definitions

49 In this Part,

“effective date” means the day sections 4 and 5 of the *Human Rights Code Amendment Act, 2006* come into force; (“date d’effet”)

“new Part IV” means Part IV as it reads on and after the effective date; (“nouvelle partie IV”)

“old Part IV” means Part IV as it reads before the effective date. (“ancienne partie IV”) 2006, c. 30, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 10 - 20/12/2006

Orders respecting special programs

50 On the fifth anniversary of the effective date, all orders that were made by the Commission under subsection 14 (2) before the effective date shall be null and void. 2006, c. 30, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 10 - 20/12/2006

Application of s. 32 (3)

51 Subsection 32 (3) applies to the selection and appointment of persons to the Tribunal on or after the day section 10 of the *Human Rights Code Amendment Act, 2006* comes into force. 2006, c. 30, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 10 - 20/12/2006

Tribunal powers before effective date

52 (1) Despite anything to the contrary in the old Part IV, the Tribunal may, before the effective date,

- (a) make rules in accordance with the new Part IV, including rules with respect to the reconsideration of Tribunal decisions; and
- (b) when dealing with complaints that are referred to it under section 36 of the old Part IV,
 - (i) deal with the complaint in accordance with the practices and procedures set out in the rules made under clause (a),
 - (ii) exercise the powers described in section 39 of the new Part IV, and
 - (iii) dispose of the complaint in accordance with section 40 of the new Part IV. 2006, c. 30, s. 10.

Application

(2) Sections 41 and 42 of the new Part IV apply to rules made under clause (1) (a). 2006, c. 30, s. 10.

Tribunal decisions made before effective date

(3) Despite anything in the old Part IV, the following applies before the effective date with respect to a complaint that is referred to the Tribunal by the Commission under section 36 of the old Part IV on or after the day section 10 of the *Human Rights Code Amendment Act, 2006* comes into force:

- 1. Section 42 of the old Part IV does not apply to a decision of the Tribunal made with respect to the complaint.
- 2. Sections 45.7 and 45.8 of the new Part IV apply to a decision of the Tribunal made with respect to the complaint. 2006, c. 30, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 10 - 20/12/2006

Complaints before Commission on effective date

53 (1) This section applies to a complaint filed with the Commission under subsection 32 (1) of the old Part IV or initiated by the Commission under subsection 32 (2) of the old Part IV before the effective date. 2006, c. 30, s. 10.

Commission powers continued for six months

(2) Subject to subsection (3) and despite the repeal of the old Part IV, during the six-month period that begins on the effective date, the Commission shall continue to deal with complaints referred to in subsection (1) in accordance with subsection 32 (3) and sections 33, 34, 36, 37 and 43 of the old Part IV and, for that purpose,

- (a) the Commission has all the powers described in subsection 32 (3) and sections 33, 34, 36, 37 and 43 of the old Part IV; and
- (b) the provisions referred to in clause (a) continue to apply with respect to the complaints, with necessary modifications. 2006, c. 30, s. 10.

Applications to Tribunal during six-month period

(3) Subject to subsection (4), at any time during the six-month period referred to in subsection (2), the person who made a complaint that is continued under that subsection may, in accordance with the Tribunal rules, elect to abandon the complaint and make an application to the Tribunal with respect to the subject-matter of the complaint. 2006, c. 30, s. 10.

Expedited process

(4) The Tribunal shall make rules with respect to the practices and procedures that apply to an application under subsection (3) in order to ensure that the applications are dealt with in an expeditious manner. 2006, c. 30, s. 10.

Applications to Tribunal after six-month period

(5) If, after the end of the six-month period referred to in subsection (2), the Commission has failed to deal with the merits of a complaint continued under that subsection and the complaint has not been withdrawn or settled, the complainant may make an application to the Tribunal with respect to the subject-matter of the complaint within a further six-month period after the end of the earlier six-month period. 2006, c. 30, s. 10.

New Part IV applies

(6) The new Part IV applies to an application made under subsections (3) and (5). 2006, c. 30, s. 10.

Disclosure of information

(7) Despite anything in the *Freedom of Information and Protection of Privacy Act*, at the request of a party to an application under subsection (3) or (5), the Commission may disclose to the party any information obtained by the Commission in the course of an investigation. 2006, c. 30, s. 10.

Application barred

(8) No application, other than an application under subsection (3) or (5), may be made to the Tribunal if the subject-matter of the application is the same or substantially the same as the subject-matter of a complaint that was filed with the Commission under the old Part IV. 2006, c. 30, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 10 - 20/12/2006

Settlements effected by Commission

54 Section 45.9 of the new Part IV applies to the enforcement of a settlement that,

- (a) was effected by the Commission under the old Part IV before the effective date or during the six-month period referred to in subsection 53 (2); and
- (b) was agreed to in writing, signed by the parties and approved by the Commission. 2006, c. 30, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 10 - 20/12/2006

Where complaints referred to Tribunal

55 (1) This section applies to complaints that are referred to the Tribunal by the Commission under section 36 of the old Part IV before the effective date or during the six-month period referred to in subsection 53 (2). 2006, c. 30, s. 10.

New Part IV applies

(2) On and after the effective date, the new Part IV applies to a complaint described in subsection (1) as though it were an application made to the Tribunal under that Part and the Tribunal shall deal with the complaint in accordance with the new Part IV. 2006, c. 30, s. 10.

Parties

(3) The Commission,

- (a) shall continue to be a party to a complaint that was referred to the Tribunal before the effective date; and
- (b) subject to subsection (4), shall not be a party to a complaint referred to the Tribunal during the six-month period referred to in subsection 53 (2). 2006, c. 30, s. 10.

Same, exceptions

(4) The Commission shall continue as a party to a complaint that was referred to the Tribunal during the six-month period referred to in subsection 53 (2) if,

- (a) the complaint was initiated by the Commission under subsection 32 (2) of the old Part IV; or
- (b) the Tribunal sets a date for the parties to appear before the Tribunal before the end of the six-month period. 2006, c. 30, s. 10.

Same

(5) Nothing in subsection (3) shall prevent,

- (a) the Tribunal from adding the Commission as a party to a proceeding under section 36 of the new Part IV; or
- (b) the Commission from intervening in a proceeding with respect to a complaint described in subsection (1). 2006, c. 30, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 10 - 20/12/2006

Regulations, transitional matters

56 (1) The Lieutenant Governor in Council may make regulations providing for transitional matters which, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of the *Human Rights Code Amendment Act, 2006*. 2006, c. 30, s. 10.

Same

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

- (a) providing for transitional matters relating to the changes to the administration and functions of the Commission;
- (b) dealing with any problems or issues arising as a result of the repeal or enactment of a provision of this Act by the *Human Rights Code Amendment Act, 2006*. 2006, c. 30, s. 10.

Same

(3) A regulation under this section may be general or specific in its application. 2006, c. 30, s. 10.

Conflicts

(4) If there is a conflict between a provision in a regulation under this section and any provision of this Act or of any other regulation made under this Act, the regulation under this section prevails. 2006, c. 30, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 10 - 20/12/2006

Review

57 (1) Three years after the effective date, the Minister shall appoint a person who shall undertake a review of the implementation and effectiveness of the changes resulting from the enactment of that Act. 2006, c. 30, s. 10.

Public consultations

(2) In conducting a review under this section, the person appointed under subsection (1) shall hold public consultations. 2006, c. 30, s. 10.

Report to Minister

(3) The person appointed under subsection (1) shall prepare a report on his or her findings and submit the report to the Minister within one year of his or her appointment. 2006, c. 30, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 30, s. 10 - 20/12/2006

Français

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Labour Relations Act, 1995

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Definitions

1 (1) In this Act,

“accredited employers’ organization” means an organization of employers that is accredited under this Act as the bargaining agent for a unit of employers; (“association patronale accréditée”)

“agriculture” includes farming in all its branches, including dairying, beekeeping, aquaculture, the raising of livestock including non-traditional livestock, furbearing animals and poultry, the production, cultivation, growing and harvesting of agricultural commodities, including eggs, maple products, mushrooms and tobacco, and any practices performed as an integral part of an agricultural operation, but does not include anything that was not or would not have been determined to be agriculture under section 2 of the predecessor to this Act as it read on June 22, 1994; (“agriculture”)

“bargaining unit” means a unit of employees appropriate for collective bargaining, whether it is an employer unit or a plant unit or a subdivision of either of them; (“unité de négociation”)

“Board” means the Ontario Labour Relations Board; (“Commission”)

“certified council of trade unions” means a council of trade unions that is certified under this Act as the bargaining agent for a bargaining unit of employees of an employer; (“conseil de syndicats accrédité”)

“collective agreement” means an agreement in writing between an employer or an employers’ organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers’ organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union or the employees, and includes a provincial agreement and does not include a project agreement under section 163.1; (“convention collective”)

“construction industry” means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site; (“industrie de la construction”)

“council of trade unions” includes an allied council, a trades council, a joint board and any other association of trade unions; (“conseil de syndicats”)

“dependent contractor” means a person, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, material, or any other thing owned by the dependent contractor, who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor; (“entrepreneur dépendant”)

“Director of Dispute Resolution Services” means the Director of Dispute Resolution Services in the Ministry of Labour or, if there ceases to be a public servant with that title, the public servant or servants who are assigned the duties formerly carried out by the Director of Dispute Resolution Services; (“directeur des Services de règlement des différends”)

“employee” includes a dependent contractor; (“employé”)

“employers’ organization” means an organization of employers formed for purposes that include the regulation of relations between employers and employees and includes an accredited employers’ organization and a designated or accredited employer bargaining agency; (“association patronale”)

“lock-out” includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of employees, with a view to compel or induce the employees, or to aid another employer to compel or induce that employer’s employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers’ organization, the trade union, or the employees; (“lock-out”)

“member”, when used with reference to a trade union, includes a person who has applied for membership in the trade union; (“membre”)

“Minister” means the Minister of Labour; (“ministre”)

“professional engineer” means an employee who is a member of the engineering profession entitled to practise in Ontario and employed in a professional capacity; (“ingénieur”)

“strike” includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output; (“grève”)

“trade union” means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency. (“syndicat”) 1995, c. 1, Sched. A, s. 1 (1); 1998, c. 8, s. 1; 2000, c. 38, s. 1; 2006, c. 35, Sched. C, s. 57 (1); 2009, c. 33, Sched. 20, s. 2 (1).

Same

(2) For the purposes of this Act, no person shall be deemed to have ceased to be an employee by reason only of the person’s ceasing to work for the person’s employer as the result of a lock-out or strike or by reason only of being dismissed by the person’s employer contrary to this Act or to a collective agreement. 1995, c. 1, Sched. A, s. 1 (2).

Same

(3) Subject to section 97, for the purposes of this Act, no person shall be deemed to be an employee,

- (a) who is a member of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; or
- (b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations. 1995, c. 1, Sched. A, s. 1 (3).

Same

(4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate. 1995, c. 1, Sched. A, s. 1 (4).

Duty of respondents

(5) Where, in an application made pursuant to subsection (4), it is alleged that more than one corporation, individual, firm, syndicate or association or any combination thereof are or were under common control or direction, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation. 1995, c. 1, Sched. A, s. 1 (5).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 1 (1, 2) - 29/06/1998

2000, c. 38, s. 1 - 30/12/2000

2006, c. 35, Sched. C, s. 57 (1) - 20/08/2007

2009, c. 33, Sched. 20, s. 2 (1) - 15/12/2009

PURPOSES AND APPLICATION OF ACT

Purposes

2 The following are the purposes of the Act:

1. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees.
2. To recognize the importance of workplace parties adapting to change.
3. To promote flexibility, productivity and employee involvement in the workplace.
4. To encourage communication between employers and employees in the workplace.
5. To recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees and trade unions.
6. To encourage co-operative participation of employers and trade unions in resolving workplace issues.
7. To promote the expeditious resolution of workplace disputes. 1995, c. 1, Sched. A, s. 2.

Non-application

3 This Act does not apply,

- (a) to a domestic employed in a private home;
- (b) to a person employed in hunting or trapping;
- (b.1) to an employee within the meaning of the *Agricultural Employees Protection Act, 2002*;
- (c) to a person, other than an employee of a municipality or a person employed in silviculture, who is employed in horticulture by an employer whose primary business is agriculture or horticulture;
- (d) to a member of a police force within the meaning of the *Police Services Act*;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 3 (d) of the Act is amended by striking out “police force within the meaning of the *Police Services Act*” at the end and substituting “police service within the meaning of the *Community Safety and Policing Act, 2019*”. (See: 2019, c. 1, Sched. 4, s. 27)

- (e) except as provided in Part IX of the *Fire Protection and Prevention Act, 1997*, to a person who is a firefighter within the meaning of subsection 41 (1) of that Act;
- (f) to a member of a teachers’ bargaining unit within the meaning of the *School Boards Collective Bargaining Act, 2014*, except as provided by that Act and by the *Protecting the School Year Act, 2015*, or to a supervisory officer, a principal or a vice-principal within the meaning of the *Education Act*;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 3 (f) of the Act is repealed and the following substituted: (See: 2015, c. 11, s. 20 (2))

- (f) to a member of a teachers’ bargaining unit within the meaning of the *School Boards Collective Bargaining Act, 2014*, except as provided by that Act, or to a supervisory officer, a principal or a vice-principal within the meaning of the *Education Act*;

- (g) REPEALED: 2006, c. 35, Sched. C, s. 57 (2).

- (h) to an employee of a college of applied arts and technology;

- (i) to a provincial judge; or

- (j) to a person employed as a labour mediator or labour conciliator. 1995, c. 1, Sched. A, s. 3; 1997, c. 4, s. 83; 1997, c. 31, s. 151; 2002, c. 16, s. 20; 2006, c. 35, Sched. C, s. 57 (2); 2014, c. 5, s. 50; 2015, c. 11, s. 20 (1).

Section Amendments with date in force (d/m/y)

1997, c. 4, s. 83 - 29/10/1997; 1997, c. 31, s. 151 - 01/01/1998

2002, c. 16, s. 20 - 17/06/2003

2006, c. 35, Sched. C, s. 57 (2) - 20/08/2007

2014, c. 5, s. 50 - 24/04/2014

2015, c. 11, s. 20 (1) - 28/05/2015; 2015, c. 11, s. 20 (2) - not in force

2018, c. 3, Sched. 5, s. 30 - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 27 - not in force

Certain Crown agencies bound

4 (1) This Act binds agencies of the Crown other than,

- (a) agencies in which are employed Crown employees as defined in the *Crown Employees Collective Bargaining Act, 1993*; and
- (b) colleges of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*. 2006, c. 35, Sched. C, s. 57 (3).

Crown not bound

(2) Except as provided in subsection (1), this Act does not bind the Crown. 1995, c. 1, Sched. A, s. 4 (2).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 57 (3) - 20/08/2007

FREEDOMS

Membership in trade union

5 Every person is free to join a trade union of the person's own choice and to participate in its lawful activities. 1995, c. 1, Sched. A, s. 5.

Membership in employers' organization

6 Every person is free to join an employers' organization of the person's own choice and to participate in its lawful activities. 1995, c. 1, Sched. A, s. 6.

ESTABLISHMENT OF BARGAINING RIGHTS BY CERTIFICATION

Transition re employee lists

6.1 (1) Any application made under this section, as it read immediately before the day section 1 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, that, on that day, is before the Board but has not been determined by it, shall be terminated on that day. 2018, c. 14, Sched. 2, s. 1.

Same

(2) If a trade union obtained a list of employees in accordance with a direction of the Board under this section, as it read immediately before the day section 1 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, the trade union shall, on or immediately after that day, destroy the list in such a way that it cannot be reconstructed or retrieved. 2018, c. 14, Sched. 2, s. 1.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 1 - 01/01/2018

2018, c. 14, Sched. 2, s. 1 - 21/11/2018

Application for certification

7 (1) Where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees in the unit are not bound by a collective agreement, a trade union may apply at any time to the Board for certification as bargaining agent of the employees in the unit. 1995, c. 1, Sched. A, s. 7 (1).

Same

(2) Where a trade union has been certified as bargaining agent of the employees of an employer in a bargaining unit and has not entered into a collective agreement with the employer and no declaration has been made by the Board that the trade union no longer represents the employees in the bargaining unit, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit determined in the certificate only after the expiration of one year from the date of the certificate. 1995, c. 1, Sched. A, s. 7 (2).

Same

(3) Where an employer and a trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties and the parties have not entered into a collective agreement and the Board has not made a declaration under section 66, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the recognition agreement only after the expiration of one year from the date that the recognition agreement was entered into. 1995, c. 1, Sched. A, s. 7 (3).

Same

(4) Where a collective agreement is for a term of not more than three years, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the last three months of its operation. 1995, c. 1, Sched. A, s. 7 (4); 2000, c. 38, s. 2 (1).

Same

(5) Where a collective agreement is for a term of more than three years, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the 34th month of its operation and before the commencement of the 37th month of its operation and during the three-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last three months of its operation, as the case may be. 2000, c. 38, s. 2 (2).

Same

(6) Where a collective agreement referred to in subsection (4) or (5) provides that it will continue to operate for a further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement during the further term or successive terms only during the last three months of each year that it so continues to operate, or after the commencement of the last three months of its operation, as the case may be. 1995, c. 1, Sched. A, s. 7 (6); 2000, c. 38, s. 2 (3).

Restriction

(7) The right of a trade union to apply for certification under this section is subject to subsections 10 (3) and 11.1 (4), section 67, subsections 128.1 (10), (15), (21), (22) and (23) and subsection 160 (3). 2005, c. 15, s. 1.

Withdrawal of application

(8) An application for certification may be withdrawn by the applicant upon such conditions as the Board may determine. 1995, c. 1, Sched. A, s. 7 (8).

Bar to reapplying

(9) Subject to subsection (9.1), if the trade union withdraws the application before a representation vote is taken, the Board may refuse to consider another application for certification by the trade union as the bargaining agent of the employees in the proposed bargaining unit until one year or such shorter period as the Board considers appropriate has elapsed after the application is withdrawn. 1995, c. 1, Sched. A, s. 7 (9); 2000, c. 38, s. 2 (4).

Mandatory bar

(9.1) If the trade union withdraws the application before a representation vote is taken, and that trade union had withdrawn a previous application under this section not more than six months earlier, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year has elapsed after the second application was withdrawn. 2000, c. 38, s. 2 (5).

Exception

(9.2) Subsection (9.1) does not apply if the trade union that withdrew the application is a trade union that the Board is prohibited from certifying under section 15. 2000, c. 38, s. 2 (5).

Same

(9.3) Despite subsection (9.1), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and

- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2000, c. 38, s. 2 (5).

Same

(10) If the trade union withdraws the application after the representation vote is taken, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the original application is withdrawn. 2000, c. 38, s. 2 (6).

Same

(10.1) Despite subsection (10), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2000, c. 38, s. 2 (6).

Exception

(10.2) Subsection (10) does not apply if the trade union that withdrew the application is a trade union that the Board is prohibited from certifying under section 15. 2000, c. 38, s. 2 (6).

Notice to employer

(11) The trade union shall deliver a copy of the application for certification to the employer by such time as is required under the rules made by the Board and, if there is no rule, not later than the day on which the application is filed with the Board. 1995, c. 1, Sched. A, s. 7 (11).

Proposed bargaining unit

(12) The application for certification shall include a written description of the proposed bargaining unit including an estimate of the number of individuals in the unit. 1995, c. 1, Sched. A, s. 7 (12).

Evidence

(13) The application for certification shall be accompanied by a list of the names of the union members in the proposed bargaining unit and evidence of their status as union members, but the trade union shall not give this information to the employer. 1995, c. 1, Sched. A, s. 7 (13).

Same

(14) If the employer disagrees with the description of the proposed bargaining unit, the employer may give the Board a written description of the bargaining unit that the employer proposes and shall do so within two days (excluding Saturdays, Sundays and holidays) after the day on which the employer receives the application for certification. 1995, c. 1, Sched. A, s. 7. 1995, c. 1, Sched. A, s. 7 (14).

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 2 - 30/12/2000

2005, c. 15, s. 1 - 13/06/2005

Voting constituency

8 (1) Upon receiving an application for certification, the Board may determine the voting constituency to be used for a representation vote and in doing so shall take into account,

- (a) the description of the proposed bargaining unit included in the application for certification; and
- (b) the description, if any, of the bargaining unit that the employer proposes.

Direction re representation vote

(2) If the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the union at the time the application was filed, the Board shall direct that a representation vote be taken among the individuals in the voting constituency. 1995, c. 1, Sched. A, s. 8 (1, 2).

Membership in trade union

(3) The determination under subsection (2) shall be based only upon the information provided in the application for certification and the accompanying information provided under subsection 7 (13). 1998, c. 8, s. 2.

No hearing

(4) The Board shall not hold a hearing when making a decision under subsection (1) or (2).

Timing of vote

(5) Unless the Board directs otherwise, the representation vote shall be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the application for certification is filed with the Board.

Conduct of vote

(6) The representation vote shall be by ballots cast in such a manner that individuals expressing their choice cannot be identified with the choice made.

Sealing of ballot box, etc.

(7) The Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs.

Subsequent hearing

(8) After the representation vote has been taken, the Board may hold a hearing if the Board considers it necessary in order to dispose of the application for certification.

Exception

(9) When disposing of an application for certification, the Board shall not consider any challenge to the information provided under subsection 7 (13). 1995, c. 1, Sched. A, s. 8 (4-9).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 2 - 29/06/1998

Disagreement by employer with union's estimate

8.1 (1) If the employer disagrees with the trade union's estimate, included in the application for certification, of the number of individuals in the unit, the employer may give the Board a notice that it disagrees with that estimate. 1998, c. 8, s. 3.

Content of notice

(2) A notice under subsection (1) must include,

- (a) the description of the bargaining unit that the employer proposes or a statement that the employer agrees with the description of the bargaining unit included in the application for certification;
- (b) the employer's estimate of the number of individuals in the bargaining unit described in the application for certification; and
- (c) if the employer proposes a different bargaining unit from that described in the application for certification, the employer's estimate of the number of individuals in the bargaining unit the employer proposes. 1998, c. 8, s. 3.

Deadline for notice

(3) A notice under subsection (1) must be given within two days (excluding Saturdays, Sundays and holidays) after the day on which the employer receives the application for certification. 1998, c. 8, s. 3.

Sealing of ballot boxes

(4) If the Board receives a notice under subsection (1), the Board shall direct that the ballot boxes from the representation vote be sealed unless the trade union and the employer agree otherwise. 1998, c. 8, s. 3.

Board determinations, etc.

(5) The following apply if the Board receives a notice under subsection (1):

1. The Board shall not certify the trade union as the bargaining agent or dismiss the application for certification except as allowed under paragraph 2 or as required under paragraph 8.
2. If the Board did not direct that the ballot boxes be sealed, the Board may dismiss the application for certification.

3. Unless the Board dismisses the application as allowed under paragraph 2, the Board shall determine whether the description of the bargaining unit included in the application for certification could be appropriate for collective bargaining. The determination shall be based only upon that description.
4. If the Board determines that the description of the bargaining unit included in the application for certification could be appropriate for collective bargaining, the Board shall determine the number of individuals in the unit as described in the application.
5. If the Board determines that the description of the bargaining unit included in the application for certification could not be appropriate for collective bargaining,
 - i. the Board shall determine, under section 9, the unit of employees that is appropriate for collective bargaining, and
 - ii. the Board shall determine the number of individuals in that unit.
6. After the Board's determination of the number of individuals in the unit under paragraph 4 or 5, the Board shall determine the percentage of the individuals in the bargaining unit who appear to be members of the union at the time the application for certification was filed, based upon the Board's determination under paragraph 4 or 5 and the information provided under subsection 7 (13).
7. If the percentage determined under paragraph 6 is less than 40 per cent, the Board shall dismiss the application for certification and, if the ballot boxes were sealed, the Board shall direct that the ballots be destroyed without being counted.
8. If the percentage determined under paragraph 6 is 40 per cent or more,
 - i. if the ballot boxes were sealed, the Board shall direct that the ballot boxes be opened and the ballots counted, subject to any direction the Board has made under subsection 8 (7), and
 - ii. the Board shall either certify the trade union or dismiss the application for certification. 1998, c. 8, s. 3; 2000, c. 38, s. 3.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 3 - 24/08/1998

2000, c. 38, s. 3 - 30/12/2000

Board to determine appropriateness of units

9 (1) Subject to subsection (2), upon an application for certification, the Board shall determine the unit of employees that is appropriate for collective bargaining, but in every case the unit shall consist of more than one employee and the Board may, before determining the unit, conduct a vote of any of the employees of the employer for the purpose of ascertaining the wishes of the employees as to the appropriateness of the unit.

Certification pending resolution of composition of bargaining unit

(2) Where, upon an application for certification, the Board is satisfied that any dispute as to the composition of the bargaining unit cannot affect the trade union's right to certification, the Board may certify the trade union as the bargaining agent pending the final resolution of the composition of the bargaining unit.

Crafts units

(3) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to the skills or craft, and the Board may include in the unit persons who according to established trade union practice are commonly associated in their work and bargaining with the group, but the Board shall not be required to apply this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

Units of professional engineers

(4) A bargaining unit consisting solely of professional engineers shall be deemed by the Board to be a unit of employees appropriate for collective bargaining, but the Board may include professional engineers in a bargaining unit with other employees if the Board is satisfied that a majority of the professional engineers wish to be included in the bargaining unit.

Dependent contractors

(5) A bargaining unit consisting solely of dependent contractors shall be deemed by the Board to be a unit of employees appropriate for collective bargaining but the Board may include dependent contractors in a bargaining unit with other employees if the Board is satisfied that a majority of the dependent contractors wish to be included in the bargaining unit. 1995, c. 1, Sched. A, s. 9.

Certification after representation vote

10 (1) The Board shall certify a trade union as the bargaining agent of the employees in a bargaining unit that is determined by the Board to be appropriate for collective bargaining if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union. 1995, c. 1, Sched. A, s. 10 (1).

No certification

(2) The Board shall not certify the trade union as bargaining agent and shall dismiss the application for certification if 50 per cent or less of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union. 1995, c. 1, Sched. A, s. 10 (2).

Bar to reapplying

(3) If the Board dismisses an application for certification under this section, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the original application is dismissed. 2000, c. 38, s. 4.

Same

(3.1) Despite subsection (3), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2000, c. 38, s. 4.

Exception

(3.2) Subsection (3) does not apply if the trade union whose application was dismissed is a trade union that the Board is prohibited from certifying under section 15. 2000, c. 38, s. 4.

Same

(4) For greater certainty, subsection (3) does not apply with respect to a dismissal under paragraph 7 of subsection 8.1 (5). 1998, c. 8, s. 4.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 4 - 29/06/1998

2000, c. 38, s. 4 - 30/12/2000

Remedy if contravention by employer, etc.

11 (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,

- (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or
- (b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed. 2005, c. 15, s. 2.

Same

(2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,

- (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
- (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or

- (c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention. 2018, c. 14, Sched. 2, s. 2.

Same

- (3) An order under subsection (2) may be made despite section 8.1 or subsection 10 (2). 2018, c. 14, Sched. 2, s. 2.

Considerations

- (4) On an application made under this section, the Board may consider,
 - (a) the results of a previous representation vote; and
 - (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining. 2018, c. 14, Sched. 2, s. 2.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 5 - 29/06/1998

2005, c. 15, s. 2 - 13/06/2005

2017, c. 22, Sched. 2, s. 2 - 01/01/2018

2018, c. 14, Sched. 2, s. 2 - 21/11/2018

Remedy of contravention by trade union, etc.

11.1 (1) Subsection (2) applies where a trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions contravenes this Act and, as a result, the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote. 2005, c. 15, s. 2.

Same

- (2) In the circumstances described in subsection (1), on the application of an interested person, the Board may, despite subsection 10 (1),
 - (a) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or
 - (b) dismiss the application for certification if no other remedy would be sufficient to counter the effects of the contravention. 2005, c. 15, s. 2.

Considerations

- (3) On an application made under this section, the Board may consider,
 - (a) the results of a previous representation vote; and
 - (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining. 2005, c. 15, s. 2.

Bar to reapplying

(4) If the Board dismisses an application for certification under clause (2) (b), the Board shall not consider another application for certification by the trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the application is dismissed. 2005, c. 15, s. 2.

Same

- (5) Despite subsection (4), the Board may consider an application for certification by the trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,
 - (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
 - (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2005, c. 15, s. 2.

Industrial, commercial and institutional sector

(6) If the Board dismisses under clause (2) (b) an application for certification that relates to the industrial, commercial and institutional sector of the construction industry, the references to “trade union” in subsections (4) and (5) shall be read as references to the trade unions on whose behalf the application for certification was brought. 2005, c. 15, s. 2.

Section Amendments with date in force (d/m/y)

2005, c. 15, s. 2 - 13/06/2005

Transition

11.2 (1) Sections 11 and 11.1 apply only in respect of contraventions described in subsection 11 (1) or subsection 11.1 (1) that occurred on or after the day section 2 of the *Labour Relations Statute Law Amendment Act, 2005* comes into force. 2005, c. 15, s. 2.

Same

(2) Section 11, as it read immediately before the day section 2 of the *Labour Relations Statute Law Amendment Act, 2005* came into force, continues to apply in respect of contraventions that occurred before that date. 2005, c. 15, s. 2.

Transition

(3) Any application made under section 11, as it read immediately before the day section 3 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, that, on that day, is before the Board but has not been determined by it, shall be determined in accordance with section 11, as amended by that Act. 2018, c. 14, Sched. 2, s. 3.

Section Amendments with date in force (d/m/y)

2005, c. 15, s. 2 - 13/06/2005

2018, c. 14, Sched. 2, s. 3 - 21/11/2018

Certification of councils of trade unions

12 (1) Sections 7 to 15, 126, 128 and 128.1 apply with necessary modifications to an application for certification by a council of trade unions, but, before the Board certifies such a council as bargaining agent for the employees of an employer in a bargaining unit, the Board shall satisfy itself that each of the trade unions that is a constituent union of the council has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent. 1995, c. 1, Sched. A, s. 12 (1); 2005, c. 15, s. 3 (1).

Postponement of disposition

(2) Where the Board is of opinion that appropriate authority has not been vested in the applicant, the Board may postpone disposition of the application to enable the constituent unions to vest such additional or other authority as the Board considers necessary. 1995, c. 1, Sched. A, s. 12 (2).

Membership

(3) For the purposes of sections 7, 8 and 128.1, a person who is a member of any constituent trade union of a council shall be deemed by the Board to be a member of the council. 1995, c. 1, Sched. A, s. 12 (3); 2005, c. 15, s. 3 (2).

Section Amendments with date in force (d/m/y)

2005, c. 15, s. 3 - 13/06/2005

No discharge or discipline following certification

12.1 If a trade union is certified as the bargaining agent of employees in a bargaining unit, the employer shall not discharge or discipline an employee in that bargaining unit without just cause during the period that begins on the date of certification and ends on the earlier of the date on which a first collective agreement is entered into and the date on which the trade union no longer represents the employees in the bargaining unit. 2017, c. 22, Sched. 2, s. 3.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 3 - 01/01/2018

Right of access

13 Where employees of an employer reside on the property of the employer, or on property to which the employer has the right to control access, the employer shall, upon a direction from the Board, allow the representative of a trade union access to the property on which the employees reside for the purpose of attempting to persuade the employees to join a trade union. 1995, c. 1, Sched. A, s. 13.

Security guards

14 (1) This section applies with respect to guards who monitor other employees or who protect the property of an employer.

Trade union with members other than guards, etc.

(2) Unless the employer notifies the Board that it objects, a trade union that admits to membership persons who are not guards or that is chartered by or affiliated with an organization that does so may be certified as the bargaining agent for a bargaining unit composed solely of guards.

Mixed bargaining unit

(3) Unless the employer notifies the Board that it objects, a bargaining unit may include guards and persons who are not guards.

If objection

(4) If the employer objects, the trade union must satisfy the Board that no conflict of interest would result from the trade union becoming the bargaining agent or from including persons other than guards in the bargaining unit.

Conflict of interest

(5) The Board shall consider the following factors in determining whether a conflict of interest would result:

1. The extent of the guards' duties monitoring other employees of their employer or protecting their employer's property.
2. Any other duties or responsibilities of the guards that might give rise to a conflict of interest.
3. Such other factors as the Board considers relevant.

Certification

(6) If the Board is satisfied that no conflict of interest would result, the Board may certify the trade union to represent the bargaining unit. 1995, c. 1, Sched. A, s. 14.

What unions not to be certified

15 The Board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*. 1995, c. 1, Sched. A, s. 15.

15.1 REPEALED: 2018, c. 14, Sched. 2, s. 4.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 4 - 01/01/2018

2018, c. 14, Sched. 2, s. 4 - 21/11/2018

Transition

15.2 If a trade union elected to have an application for certification dealt with under this section, as it read immediately before the day section 5 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, and, on that day, the application is before the Board but has not been determined by it, the application will be dealt with as follows:

1. If the application was filed before the day the *Making Ontario Open for Business Act, 2018* received first reading, the application shall be determined in accordance with this section, as it read immediately before that day.
2. If the application was filed on or after the day the *Making Ontario Open for Business Act, 2018* received first reading, the application shall be determined in accordance with section 8. 2018, c. 14, Sched. 2, s. 5.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 4 - 01/01/2018

2018, c. 14, Sched. 2, s. 5 - 21/11/2018

NEGOTIATION OF COLLECTIVE AGREEMENTS

Notice of desire to bargain

16 Following certification or the voluntary recognition by the employer of the trade union as bargaining agent for the employees in the bargaining unit, the trade union shall give the employer written notice of its desire to bargain with a view to making a collective agreement. 1995, c. 1, Sched. A, s. 16.

16.1 REPEALED: 2018, c. 14, Sched. 2, s. 6.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 5 - 01/01/2018

2018, c. 14, Sched. 2, s. 6 - 21/11/2018

Obligation to bargain

17 The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement. 1995, c. 1, Sched. A, s. 17.

Appointment of conciliation officer

18 (1) Where notice has been given under section 16 or 59, the Minister, upon the request of either party, shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement. 1995, c. 1, Sched. A, s. 18 (1).

Same, where no notice given

(2) Despite the failure of a trade union to give written notice under section 16 or the failure of either party to give written notice under sections 59 and 131, where the parties have met and bargained, the Minister, upon the request of either party, may appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement. 1995, c. 1, Sched. A, s. 18 (2).

Material to be filed

(2.1) Any party who requests the appointment of a conciliation officer under subsection (1) or (2) shall file with that request a copy of the most recent collective agreement, if any, in the form specified by the Minister, together with any other prescribed information. 2018, c. 14, Sched. 2, s. 7.

Appointment of conciliation officer, voluntary recognition

(3) Where an employer and a trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties, the Minister may, upon the request of either party, appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement. 1995, c. 1, Sched. A, s. 18 (3).

Second conciliation

(4) Despite anything in this Act, where the Minister has appointed a conciliation officer or a mediator and the parties have failed to enter into a collective agreement within 15 months from the date of such appointment, the Minister may, upon the joint request of the parties, again appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement, and, upon the appointment being made, sections 19 to 36 and 79 to 86 apply, but the appointment is not a bar to an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 18 (4).

Section Amendments with date in force (d/m/y)

2018, c. 14, Sched. 2, s. 7 - 21/11/2018

Appointment of mediator

19 (1) Where the Minister is required or authorized to appoint a conciliation officer, the Minister may, on the request in writing of the parties, appoint a mediator selected by them jointly before he or she has appointed a conciliation board or has informed the parties that he or she does not consider it advisable to appoint a conciliation board.

Same

(2) Where the Minister has appointed a mediator after a conciliation officer has been appointed, the appointment of the conciliation officer is thereby terminated. 1995, c. 1, Sched. A, s. 19.

Duties and report of conciliation officer

20 (1) Where a conciliation officer is appointed, he or she shall confer with the parties and endeavour to effect a collective agreement and he or she shall, within 14 days from his or her appointment, report the result of his or her endeavour to the Minister.

Extension of 14-day period

(2) The period mentioned in subsection (1) may be extended by agreement of the parties or by the Minister upon the advice of the conciliation officer that a collective agreement may be made within a reasonable time if the period is extended.

Report of settlement

(3) Where the conciliation officer reports to the Minister that the differences between the parties concerning the terms of a collective agreement have been settled, the Minister shall forthwith by notice in writing inform the parties of the report. 1995, c. 1, Sched. A, s. 20.

Conciliation board, appointment of members

21 If the conciliation officer is unable to effect a collective agreement within the time allowed under section 20,

- (a) the Minister shall forthwith by notice in writing request each of the parties, within five days of the receipt of the notice, to recommend one person to be a member of a conciliation board, and upon the receipt of the recommendations or upon the expiration of the five-day period he or she shall appoint two members who in his or her opinion represent the points of view of the respective parties, and the two members so appointed may, within three days after they are appointed, jointly recommend a third person to be a member and chair of the board, and upon the receipt of the recommendation or upon the expiration of the three-day period, he or she shall appoint a third person to be a member and chair of the board; or
- (b) the Minister shall forthwith by notice in writing inform each of the parties that he or she does not consider it advisable to appoint a conciliation board. 1995, c. 1, Sched. A, s. 21.

Certain persons prohibited as members

22 No person shall act as a member of a conciliation board who has any pecuniary interest in the matters coming before it or who is acting, or has, within a period of six months preceding the date of his or her appointment, acted as solicitor, counsel or agent of either of the parties. 1995, c. 1, Sched. A, s. 22.

Notice to parties of appointment

23 (1) When the members of the conciliation board have been appointed, the Minister shall forthwith give notice of their names to the parties and thereupon the board shall be deemed to have been established.

Presumption of establishment

(2) When notice under subsection (1) has been given, it shall be presumed conclusively that the conciliation board has been established in accordance with this Act, and no order shall be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question the establishment of the conciliation board or the appointment of any of its members, or to review, prohibit or restrain any of its proceedings. 1995, c. 1, Sched. A, s. 23.

Vacancies

24 (1) If a person ceases to be a member of a conciliation board by reason of his or her resignation or death before it has completed its work, the Minister shall appoint a member in his or her place after consulting the party whose point of view was represented by the person.

Appointment of new member in place of member

(2) If in the opinion of the Minister a member of a conciliation board has failed to enter on his or her duties so as to enable it to report to the Minister within a reasonable time after its appointment, the Minister may appoint a member in his or her place after consulting the party whose point of view was represented by the person.

Appointment of new chair

(3) If the chair of a conciliation board is unable to enter on his or her duties so as to enable it to report to the Minister within a reasonable time after its appointment, he or she shall advise the Minister of his or her inability and the Minister may appoint a person to act as chair in his or her place. 1995, c. 1, Sched. A, s. 24.

Terms of reference

25 As soon as a conciliation board has been established, the Minister shall deliver to its chair a statement of the matters referred to it and the Minister may, either before or after its report is made, amend or add to the statement. 1995, c. 1, Sched. A, s. 25.

Oath of Office

26 Each member of a conciliation board shall, before entering upon his or her duties, take and subscribe before a person authorized to administer oaths or before another member of the board, and file with the Minister, an oath in the following form, in English or in French:

I do solemnly swear (or solemnly affirm) that I am not disqualified under section 22 of the *Labour Relations Act, 1995* from acting as a member of a conciliation board and that I will faithfully, truly and impartially, to the best of my knowledge, skill and ability, execute and perform the office of member (*or chair*) of the conciliation board established to and that I will not, except as I am legally authorized, disclose to any person any of the evidence or other matter brought before the board. So help me God. (omit this phrase in an affirmation)

1995, c. 1, Sched. A, s. 26.

Duties

27 As soon as a conciliation board is established, it shall endeavour to effect agreement between the parties on the matters referred to it. 1995, c. 1, Sched. A, s. 27.

Procedure

28 (1) Subject to this Act, a conciliation board shall determine its own procedure.

Presentation of evidence

(2) A conciliation board shall give full opportunity to the parties to present their evidence and make their submissions. 1995, c. 1, Sched. A, s. 28.

Sittings

29 The chair of a conciliation board shall, after consultation with the other members of the board, fix the time and place of its sittings, and he or she shall notify the parties and the other members of the board of the time and place so fixed. 1995, c. 1, Sched. A, s. 29.

Minister to be informed of first sitting

30 The chair of a conciliation board shall in writing, immediately upon the conclusion of its first sitting, inform the Minister of the date on which the sitting was held. 1995, c. 1, Sched. A, s. 30.

Quorum

31 The chair and one other member of a conciliation board or, in the absence of the chair and with his or her written consent, the other two members constitute a quorum, but, in the absence of one of the members other than the chair, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting. 1995, c. 1, Sched. A, s. 31.

Casting vote

32 If the members of a conciliation board are unable to agree among themselves on matters of procedure or as to the admissibility of evidence, the decision of the chair governs. 1995, c. 1, Sched. A, s. 32.

Power

33 A conciliation board has power,

- (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the board considers requisite to the full investigation and consideration of the matters referred to it in the same manner as a court of record in civil cases;
- (b) to administer oaths and affirmations;
- (c) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;
- (d) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the matters referred to the board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such matters;
- (e) to authorize any person to do anything that the board may do under clause (d) and to report to the board thereon. 1995, c. 1, Sched. A, s. 33.

Report of conciliation board

34 (1) A conciliation board shall report its findings and recommendations to the Minister within 30 days after its first sitting.

Extension of period

- (2) The period mentioned in subsection (1) may be extended,
- (a) for a further period not exceeding 30 days,
 - (i) by the Minister at the request of the chair of the conciliation board, or
 - (ii) by agreement of the parties; or
 - (b) for a further period beyond the period fixed in clause (a) that the parties may agree upon and as the Minister may approve.

Report

(3) The report of the majority constitutes the report of the conciliation board, but, where there is no majority agreement or where the board is unable to report within the time allowed under subsection (1) or (2), the chair shall notify the Minister in writing that there has been no agreement or that the board is unable to report, as the case may be, and in either case the notification constitutes the report of the board.

Clarification, etc., of report

(4) After a conciliation board has made its report, the Minister may direct it to clarify or amplify any part of its report, and the report shall not be deemed to have been received by the Minister until it has been so clarified or amplified.

Copies of reports to parties

(5) On receipt of the report of the conciliation board or the mediator, the Minister shall forthwith release a copy to each of the parties. 1995, c. 1, Sched. A, s. 34.

Mediator

35 (1) Where a mediator is appointed, he or she shall confer with the parties and endeavour to effect a collective agreement.

Powers

(2) A mediator has all the powers of a conciliation board under section 33.

Sections 30 and 34 apply

(3) Sections 30 and 34 apply with necessary modifications to a mediator.

Report

(4) The report of a mediator has the same effect as the report of a conciliation board. 1995, c. 1, Sched. A, s. 35.

Failure to report

36 Failure of a conciliation officer to report to the Minister within the time provided in this Act does not invalidate the proceedings of the conciliation officer. 1995, c. 1, Sched. A, s. 36.

Industrial inquiry commission

37 (1) The Minister may establish an industrial inquiry commission to inquire into and report to the Minister on any industrial matter or dispute that the Minister considers advisable.

Composition and powers

(2) The industrial inquiry commission shall consist of one or more members appointed by the Minister and the commission shall have all the powers of a conciliation board under section 33.

Remuneration and expenses

(3) The chair and members of the commission shall be paid remuneration and expenses at the same rate as is payable to a chair and members of a conciliation board under this Act. 1995, c. 1, Sched. A, s. 37.

Appointment of special officer

38 (1) Where, at any time during the operation of a collective agreement, the Minister considers that it will promote more harmonious industrial relations between the parties, the Minister may appoint a special officer to confer with the parties and assist them in an examination and discussion of their current relationship or the resolution of anticipated bargaining problems.

Duties of special officer

(2) A special officer appointed under subsection (1) shall confer with the parties and shall report to the Minister within 30 days of his or her appointment and upon the filing of his or her report his or her appointment shall terminate unless it is extended by the Minister.

Qualifications of special officer

(3) Any person knowledgeable in industrial relations may be appointed a special officer, whether or not he or she is an employee of the Crown. 1995, c. 1, Sched. A, s. 38.

Disputes Advisory Committee

39 (1) The Minister may appoint a Disputes Advisory Committee composed of one or more representatives of employers and one or more representatives of employees.

Purpose of Committee

(2) At any time during the course of bargaining, either before or after the commencement of a strike or lock-out, where it appears to the Minister that the normal conciliation and mediation procedures have been exhausted, the Minister may request that the Disputes Advisory Committee be convened to confer with, advise and assist the bargaining parties. 1995, c. 1, Sched. A, s. 39.

Voluntary arbitration

40 (1) Despite any other provision of this Act, the parties may at any time following the giving of notice of desire to bargain under section 16 or 59, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

Powers of arbitrator or board of arbitration

(2) The agreement to arbitrate shall supersede all other dispute settlement provisions of this Act, including those provisions relating to conciliation, mediation, strike and lock-out, and the provisions of subsections 48 (7), (8), (11), (12) and (18) to (20) apply with necessary modifications to the proceedings before the arbitrator or board of arbitration and to its decision under this section.

Effect of agreement

(3) For the purposes of section 67 and section 132, an irrevocable agreement in writing referred to in subsection (1) shall have the same effect as a collective agreement. 1995, c. 1, Sched. A, s. 40.

Where Minister may require ratification vote

41 Where, at any time after the commencement of a strike or lock-out, the Minister is of the opinion that it is in the public interest that the employees in the affected bargaining unit be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the Minister may, on such terms as he or she considers necessary, direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith. 1995, c. 1, Sched. A, s. 41.

Vote on employer's offer

42 (1) Before or after the commencement of a strike or lock-out, the employer of the employees in the affected bargaining unit may request that a vote of the employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties and the Minister shall, and in the construction industry the Minister may, on the terms that he or she considers necessary direct that a vote of the employees to accept or reject the offer be held and thereafter no further such request shall be made.

Time limits and periods not affected

(2) A request for the taking of a vote, or the holding of a vote, under subsection (1) does not abridge or extend any time limits or periods provided for in this Act. 1995, c. 1, Sched. A, s. 42.

First agreement arbitration

43 (1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration. 2018, c. 14, Sched. 2, s. 8.

Duty of Board

(2) The Board shall consider and make its decision on an application under subsection (1) within 30 days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether

section 17 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of,

- (a) the refusal of the employer to recognize the bargaining authority of the trade union;
- (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- (c) the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or
- (d) any other reason the Board considers relevant. 2018, c. 14, Sched. 2, s. 8.

Choice of arbitrator

(3) Where a direction is given under subsection (2), the first collective agreement between the parties shall be settled by a board of arbitration unless, within seven days of the giving of the direction, the parties notify the Board that they have agreed that the Board arbitrate the settlement. 2018, c. 14, Sched. 2, s. 8.

Arbitration by Board

(4) Where the parties give notice to the Board of their agreement that the Board arbitrate the settlement of the first collective agreement, the Board,

- (a) shall appoint a date for and commence a hearing within 21 days of the giving of the notice to the Board; and
- (b) shall determine all matters in dispute and release its decision within 45 days of the commencement of the hearing. 2018, c. 14, Sched. 2, s. 8.

Same

(5) The parties to an arbitration by the Board shall jointly pay to the Board for payment into the Consolidated Revenue Fund the amount determined under the regulations for the expense of the arbitration. 2018, c. 14, Sched. 2, s. 8.

Private arbitration

(6) Where the parties do not agree that the Board arbitrate the settlement of the first collective agreement, each party, within 10 days of the giving of the direction under subsection (2), shall inform the other party of the name of its appointee to the board of arbitration referred to in subsection (3) and the appointees so selected, within five days of the appointment of the second of them, shall appoint a third person who shall be the chair. 2018, c. 14, Sched. 2, s. 8.

Same

(7) If a party fails to make appointment as required by subsection (6) or if the appointees fail to agree upon a chair within the time limit, the appointment shall be made by the Minister upon the request of either party. 2018, c. 14, Sched. 2, s. 8.

Same

(8) A board of arbitration appointed under this section shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions and section 116 applies to the board of arbitration, its decision and proceedings as if it were the Board. 2018, c. 14, Sched. 2, s. 8.

Same

(9) The remuneration and expenses of the members of a board of arbitration appointed under this section shall be paid as follows:

- 1. A party shall pay the remuneration and expenses of the member appointed by or on behalf of the party.
- 2. Each party shall pay one-half of the remuneration and expenses of the chair. 2018, c. 14, Sched. 2, s. 8.

Same

(10) Subsections 6 (8), (9), (10), (12), (13), (14), (17) and (18) of the *Hospital Labour Disputes Arbitration Act* and subsections 48 (12) and (18) of this Act apply with necessary modifications to a board of arbitration established under this section. 2018, c. 14, Sched. 2, s. 8.

Same

(11) The date of the first hearing of a board of arbitration appointed under this section shall not be later than 21 days after the appointment of the chair. 2018, c. 14, Sched. 2, s. 8.

Same

(12) A board of arbitration appointed under this section shall determine all matters in dispute and release its decision within 45 days of the commencement of its hearing of the matter. 2018, c. 14, Sched. 2, s. 8.

Mediation

(13) The Minister may appoint a mediator to confer with the parties and endeavour to effect a settlement. 2018, c. 14, Sched. 2, s. 8.

Effect of direction on strike or lock-out

(14) The employees in the bargaining unit shall not strike and the employer shall not lock out the employees where a direction has been given under subsection (2) and, where the direction is made during a strike by, or a lock-out of, employees in the bargaining unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lock-out and the employer shall forthwith reinstate the employees in the bargaining unit in the employment they had at the time the strike or lock-out commenced,

- (a) in accordance with any agreement between the employer and the trade union respecting reinstatement of the employees in the bargaining unit; or
- (b) where there is no agreement respecting reinstatement of the employees in the bargaining unit, on the basis of the length of service of each employee in relation to that of the other employees in the bargaining unit employed at the time the strike or lock-out commenced, except as may be directed by an order of the Board made for the purpose of allowing the employer to resume normal operations. 2018, c. 14, Sched. 2, s. 8.

Non-application

(15) The requirement to reinstate employees set out in subsection (14) applies despite the fact that replacement employees may be performing the work of employees in the bargaining unit, but subsection (14) does not apply so as to require reinstatement of an employee where, because of the permanent discontinuance of all or part of the business of the employer, the employer no longer has persons engaged in performing work of the same or a similar nature to work which the employee performed before the strike or lock-out. 2018, c. 14, Sched. 2, s. 8.

Working conditions not to be altered

(16) Where a direction has been given under subsection (2), the rates of wages and all other terms and conditions of employment and all rights, privileges and duties of the employer, the employees and the trade union in effect at the time notice was given under section 16 shall continue in effect, or, if altered before the giving of the direction, be restored and continued in effect until the first collective agreement is settled. 2018, c. 14, Sched. 2, s. 8.

Non-application

(17) Subsection (16) does not apply so as to effect any alteration in rates of wages or in any other term or condition of employment agreed to by the employer and the trade union. 2018, c. 14, Sched. 2, s. 8.

Matters to be accepted or considered

(18) In arbitrating the settlement of a first collective agreement under this section, matters agreed to by the parties, in writing, shall be accepted without amendment. 2018, c. 14, Sched. 2, s. 8.

Effect of settlement

(19) A first collective agreement settled under this section is effective for a period of two years from the date on which it is settled and it may provide that any of the terms of the agreement, except its term of operation, shall be retroactive to the day that the Board may fix, but not earlier than the day on which notice was given under section 16. 2018, c. 14, Sched. 2, s. 8.

Extension of time

(20) The parties, by agreement in writing, or the Minister may extend any time limit set out in this section, despite the expiration of the time. 2018, c. 14, Sched. 2, s. 8.

Non-application

(21) This section does not apply to the negotiation of a first collective agreement,

- (a) where one of the parties is an employers' organization accredited under section 136 as a bargaining agent for employers; or
- (b) where the agreement is a provincial agreement within the meaning of section 151. 2018, c. 14, Sched. 2, s. 8.

Application

(22) This section applies to an employer and a trade union where the trade union has acquired or acquires bargaining rights for employees of the employer before or after May 26, 1986, and the bargaining rights have been acquired since January 1, 1984 and continue to exist at the time of an application under subsection (1). 2018, c. 14, Sched. 2, s. 8.

Definitions

(23) In subsections (24) to (29),

“decertification application” means an application for a declaration that a trade union no longer represents the employees in a bargaining unit; (“requête en révocation de l’accréditation”)

“displacement application” means an application for certification by a trade union, other than the trade union that represents the employees in a bargaining unit, as bargaining agent for those employees. (“requête en substitution”) 2018, c. 14, Sched. 2, s. 8.

Application of subs. (25)

(24) Subsection (25) applies if,

- (a) a decertification application or displacement application has been filed with the Board and before a final decision is made on it an application under subsection (1) is filed with the Board; or
- (b) an application under subsection (1) has been filed with the Board and before a final decision is made on it a decertification application or displacement application is filed with the Board. 2018, c. 14, Sched. 2, s. 8.

Procedure in dealing with multiple applications

(25) The Board shall proceed to deal with an application under subsection (1) before dealing with or continuing to deal with the decertification application or displacement application. 2018, c. 14, Sched. 2, s. 8.

Same

(26) If the Board gives a direction under subsection (2), it shall dismiss the decertification application or displacement application. 2018, c. 14, Sched. 2, s. 8.

Same

(27) If the Board dismisses the application under subsection (1), it shall proceed to deal with the decertification application or displacement application. 2018, c. 14, Sched. 2, s. 8.

Same

(28) A decertification application filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsection 63 (2). 2018, c. 14, Sched. 2, s. 8.

Same

(29) A displacement application filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsections 7 (4), (5) and (6). 2018, c. 14, Sched. 2, s. 8.

Procedure

(30) The *Arbitration Act, 1991* does not apply to an arbitration under this section. 2018, c. 14, Sched. 2, s. 8.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 5 - 30/12/2000

2017, c. 22, Sched. 2, s. 6 - 01/01/2018

2018, c. 8, Sched. 14, s. 1 (1, 2) - 08/05/2018; 2018, c. 14, Sched. 2, s. 8 - 21/11/2018

Transition

43.1 (1) Unless otherwise provided, a reference in this section to section 43.1 or a provision of it is a reference to the section or provision as it read immediately before the day section 8 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force. 2018, c. 14, Sched. 2, s. 8.

Same

(2) If, on the day section 8 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force,

- (a) the Board has directed the settlement of a first collective agreement by mediation-arbitration under clause 43.1 (2) (c), section 43.1 shall continue to apply until the parties have entered into a first collective agreement;

- (b) any parties are in first collective agreement mediation under section 43, as it read immediately before the day section 8 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, the mediation shall cease on or immediately after that day; and
- (c) an application for first collective agreement mediation-arbitration has been made under section 43.1 but the Board has not directed the settlement of a first collective agreement by mediation-arbitration under clause 43.1 (2) (c), the application shall proceed under section 43, as amended by section 8 of Schedule 2 to the *Making Ontario Open for Business Act, 2018*. 2018, c. 14, Sched. 2, s. 8.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 6 - 01/01/2018

2018, c. 14, Sched. 2, s. 8 - 21/11/2018

Mandatory ratification vote

44 (1) A proposed collective agreement that is entered into or memorandum of settlement that is concluded on or after the day on which this section comes into force has no effect until it is ratified as described in subsection (3). 1995, c. 1, Sched. A, s. 44 (1).

Exceptions

(2) Subsection (1) does not apply with respect to a collective agreement,

- (a) imposed by order of the Board or settled by arbitration;
- (b) that reflects an offer accepted by a vote held under section 41 or subsection 42 (1);
- (c) that applies to employees in the construction industry; or
- (d) that applies to employees performing maintenance who are represented by a trade union that, according to trade union practice, pertains to the construction industry if any of the employees were referred to their employment by the trade union. 1995, c. 1, Sched. A, s. 44 (2); 1998, c. 8, s. 6.

Vote

(3) Subject to section 79.1, a proposed collective agreement or memorandum of settlement is ratified if a vote is taken in accordance with subsections 79 (7) to (9) and more than 50 per cent of those voting vote in favour of ratifying the agreement or memorandum. 2000, c. 38, s. 6.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 6 - 29/06/1998

2000, c. 38, s. 6 - 30/12/2000

CONTENTS OF COLLECTIVE AGREEMENTS

Recognition provisions

45 (1) Every collective agreement shall be deemed to provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein.

Recognition of accredited employers' organization

(2) Every collective agreement to which an accredited employers' organization is a party shall be deemed to provide that the accredited employers' organization is recognized as the exclusive bargaining agent of the employers in the unit of employers for whom the employers' organization has been accredited. 1995, c. 1, Sched. A, s. 45.

Provision against strikes and lock-outs

46 Every collective agreement shall be deemed to provide that there will be no strikes or lock-outs so long as the agreement continues to operate. 1995, c. 1, Sched. A, s. 46.

Deduction and remittance of union dues

47 (1) Except in the construction industry and subject to section 52, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union, forthwith.

Definition

(2) In subsection (1),

“regular union dues” means,

- (a) in the case of an employee who is a member of the trade union, the dues uniformly and regularly paid by a member of the trade union in accordance with the constitution and by-laws of the trade union, and
- (b) in the case of an employee who is not a member of the trade union, the dues referred to in clause (a), excluding any amount in respect of pension, superannuation, sickness insurance or any other benefit available only to members of the trade union. 1995, c. 1, Sched. A, s. 47.

Arbitration

48 (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable. 1995, c. 1, Sched. A, s. 48 (1).

Same

(2) If a collective agreement does not contain a provision that is mentioned in subsection (1), it shall be deemed to contain a provision to the following effect:

Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party's appointee to an arbitration board. The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chair. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chair within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chair governs.

1995, c. 1, Sched. A, s. 48 (2).

Where arbitration provision inadequate

(3) If, in the opinion of the Board, any part of the arbitration provision, including the method of appointment of the arbitrator or arbitration board, is inadequate, or if the provision set out in subsection (2) is alleged by either party to be unsuitable, the Board may, on the request of either party, modify the provision so long as it conforms with subsection (1), but, until so modified, the arbitration provision in the collective agreement or in subsection (2), as the case may be, applies. 1995, c. 1, Sched. A, s. 48 (3).

Appointment of arbitrator by Minister

(4) Despite subsection (3), if there is failure to appoint an arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator or make the appointments that are necessary to constitute the board of arbitration, as the case may be, and any person so appointed by the Minister shall be deemed to have been appointed in accordance with the collective agreement. 1995, c. 1, Sched. A, s. 48 (4).

Appointment of settlement officer

(5) On the request of either party, the Minister may appoint a settlement officer to endeavour to effect a settlement before the arbitrator or arbitration board appointed under subsection (4) begins to hear the arbitration. However, no appointment shall be made if the other party objects. 1995, c. 1, Sched. A, s. 48 (5); 1998, c. 8, s. 7.

Payment of arbitrators

(6) Where the Minister has appointed an arbitrator or the chair of a board of arbitration under subsection (4), each of the parties shall pay one-half the remuneration and expenses of the person appointed, and, where the Minister has appointed a member of a board of arbitration under subsection (4) on failure of one of the parties to make the appointment, that party shall pay the remuneration and expenses of the person appointed. 1995, c. 1, Sched. A, s. 48 (6).

Time for decision

(7) An arbitrator shall give a decision within 30 days after hearings on the matter submitted to arbitration are concluded. 1995, c. 1, Sched. A, s. 48 (7).

Same, arbitration board

(8) An arbitration board shall give a decision within 60 days after hearings on the matter submitted to arbitration are concluded. 1995, c. 1, Sched. A, s. 48 (8).

Same

(9) The time described in subsection (7) or (8) for giving a decision may be extended,

- (a) with the consent of the parties to the arbitration; or
- (b) in the discretion of the arbitrator or arbitration board so long as he, she or it states in the decision the reasons for extending the time. 1995, c. 1, Sched. A, s. 48 (9).

Oral decision

(10) An arbitrator or arbitration board may give an oral decision and, if he, she or it does so, subsection (7) or (8) does not apply and the arbitrator or arbitration board,

- (a) shall give the decision promptly after hearings on the matter are concluded;
- (b) shall give a written decision, without reasons, promptly upon the request of either party; and
- (c) shall give written reasons for the decision within a reasonable period of time upon the request of either party. 1995, c. 1, Sched. A, s. 48 (10).

Orders re decisions

(11) If the arbitrator or arbitration board does not give a decision within the time described in subsection (7) or (8) or does not provide written reasons within the time described in subsection (10), the Minister may,

- (a) make such orders as he or she considers necessary to ensure that the decision or reasons will be given without undue delay; and
- (b) make such orders as he or she considers appropriate respecting the remuneration and expenses of the arbitrator or arbitration board. 1995, c. 1, Sched. A, s. 48 (11).

Powers of arbitrators, chair of arbitration boards, and arbitration boards

(12) An arbitrator or the chair of an arbitration board, as the case may be, has power,

- (a) to require any party to furnish particulars before or during a hearing;
- (b) to require any party to produce documents or things that may be relevant to the matter and to do so before or during the hearing;
- (c) to fix dates for the commencement and continuation of hearings;
- (d) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath in the same manner as a court of record in civil cases; and
- (e) to administer oaths and affirmations,

and an arbitrator or an arbitration board, as the case may be, has power,

- (f) to accept the oral or written evidence as the arbitrator or the arbitration board, as the case may be, in its discretion considers proper, whether admissible in a court of law or not;
- (g) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted to the arbitrator or the arbitration board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such differences;
- (h) to authorize any person to do anything that the arbitrator or arbitration board may do under clause (g) and to report to the arbitrator or the arbitration board thereon;
- (i) to make interim orders concerning procedural matters;

- (j) to interpret and apply human rights and other employment-related statutes, despite any conflict between those statutes and the terms of the collective agreement. 1995, c. 1, Sched. A, s. 48 (12).

Restriction re interim orders

(13) An arbitrator or the chair of an arbitration board shall not make an interim order under clause (12) (i) requiring an employer to reinstate an employee in employment. 1995, c. 1, Sched. A, s. 48 (13).

Power re mediation

(14) An arbitrator or the chair of an arbitration board, as the case may be, may mediate the differences between the parties at any stage in the proceedings with the consent of the parties. If mediation is not successful, the arbitrator or arbitration board retains the power to determine the difference by arbitration. 1995, c. 1, Sched. A, s. 48 (14).

Enforcement power

(15) An arbitrator or the chair of an arbitration board, as the case may be, may enforce the written settlement of a grievance. 1995, c. 1, Sched. A, s. 48 (15).

Extension of time

(16) Except where a collective agreement states that this subsection does not apply, an arbitrator or arbitration board may extend the time for the taking of any step in the grievance procedure under a collective agreement, despite the expiration of the time, where the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the opposite party will not be substantially prejudiced by the extension. 1995, c. 1, Sched. A, s. 48 (16).

Substitution of penalty

(17) Where an arbitrator or arbitration board determines that an employee has been discharged or otherwise disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject-matter of the arbitration, the arbitrator or arbitration board may substitute such other penalty for the discharge or discipline as to the arbitrator or arbitration board seems just and reasonable in all the circumstances. 1995, c. 1, Sched. A, s. 48 (17).

Effect of arbitrator's decision

(18) The decision of an arbitrator or of an arbitration board is binding,

- (a) upon the parties;
- (b) in the case of a collective agreement between a trade union and an employers' organization, upon the employers covered by the agreement who are affected by the decision;
- (c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, upon the members or affiliates of the council and the employer or the employers covered by the agreement, as the case may be, who are affected by the decision; and
- (d) upon the employees covered by the agreement who are affected by the decision,

and the parties, employers, trade unions and employees shall do or abstain from doing anything required of them by the decision. 1995, c. 1, Sched. A, s. 48 (18).

Enforcement of arbitration decisions

(19) Where a party, employer, trade union or employee has failed to comply with any of the terms of the decision of an arbitrator or arbitration board, any party, employer, trade union or employee affected by the decision may file in the Superior Court of Justice a copy of the decision, exclusive of the reasons therefor, in the prescribed form, whereupon the decision shall be entered in the same way as a judgment or order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 48 (19); 2000, c. 38, s. 7.

Procedure

(20) The *Arbitration Act, 1991* does not apply to arbitrations under collective agreements. 1995, c. 1, Sched. A, s. 48 (20).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 7 - 29/06/1998

2000, c. 38, s. 7 - 30/12/2000

Referral of grievances to a single arbitrator

49 (1) Despite the arbitration provision in a collective agreement or deemed to be included in a collective agreement under section 48, a party to a collective agreement may request the Minister to refer to a single arbitrator, to be appointed by the

Minister, any difference between the parties to the collective agreement arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

Request for references

(2) Subject to subsection (3), a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after 30 days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration.

Same

(3) Despite subsection (2), where a difference between the parties to a collective agreement is a difference respecting discharge from or other termination of employment, a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after 14 days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration.

Minister to appoint arbitrator

(4) Where a request is received under subsection (1), the Minister shall appoint a single arbitrator who shall have exclusive jurisdiction to hear and determine the matter referred to him or her, including any question as to whether a matter is arbitrable and any question as to whether the request was timely.

Same

(5) Where a request or more than one request concerns several differences arising under the collective agreement, the Minister may in his or her discretion appoint an arbitrator under subsection (4) to deal with all the differences raised in the request or requests.

Settlement officer

(6) The Minister may appoint a settlement officer to confer with the parties and endeavour to effect a settlement prior to the hearing by an arbitrator appointed under subsection (4).

Powers and duties of arbitrator

(7) An arbitrator appointed under subsection (4) shall commence to hear the matter referred to him or her within 21 days after the receipt of the request by the Minister and the provisions of subsections 48 (7) and (9) to (20) apply with all necessary modifications to the arbitrator, the parties and the decision of the arbitrator.

Oral decisions

(8) Upon the agreement of the parties, the arbitrator shall deliver an oral decision forthwith or as soon as practicable without giving his or her reasons in writing therefor.

Payment of arbitrator

(9) Where the Minister has appointed an arbitrator under subsection (4), each of the parties shall pay one-half of the remuneration and expenses of the person appointed.

Approval of arbitrators, etc.

(10) The Minister may establish a list of approved arbitrators and, for the purpose of advising him or her with respect to persons qualified to act as arbitrators and matters relating to arbitration, the Minister may constitute a labour-management advisory committee composed of a chair to be designated by the Minister and six members, three of whom shall represent employers and three of whom shall represent trade unions, and their remuneration and expenses shall be as the Lieutenant Governor in Council determines. 1995, c. 1, Sched. A, s. 49.

Consensual mediation-arbitration

50 (1) Despite any grievance or arbitration provision in a collective agreement or deemed to be included in the collective agreement under section 48, the parties to the collective agreement may, at any time, agree to refer one or more grievances under the collective agreement to a single mediator-arbitrator for the purpose of resolving the grievances in an expeditious and informal manner.

Prerequisite

(2) The parties shall not refer a grievance to a mediator-arbitrator unless they have agreed upon the nature of any issues in dispute.

Appointment by Minister

(3) The parties may jointly request the Minister to appoint a mediator-arbitrator if they are unable to agree upon one and the Minister shall make the appointment.

Proceedings to begin

(4) Subject to subsection (5), a mediator-arbitrator appointed by the Minister shall begin proceedings within 30 days after being appointed.

Same

(5) The Minister may direct a mediator-arbitrator appointed by him or her to begin proceedings on such date as the parties jointly request.

Mediation

(6) The mediator-arbitrator shall endeavour to assist the parties to settle the grievance by mediation.

Arbitration

(7) If the parties are unable to settle the grievance by mediation, the mediator-arbitrator shall endeavour to assist the parties to agree upon the material facts in dispute and then shall determine the grievance by arbitration.

Same

(8) When determining the grievance by arbitration, the mediator-arbitrator may limit the nature and extent of evidence and submissions and may impose such conditions as he or she considers appropriate.

Time for decision

(9) The mediator-arbitrator shall give a succinct decision within five days after completing proceedings on the grievance submitted to arbitration.

Application

(10) Subsections 48 (12) to (19) apply with respect to a mediator-arbitrator and a settlement, determination or decision under this section. 1995, c. 1, Sched. A, s. 50.

Permissive provisions

51 (1) Despite anything in this Act, but subject to subsection (4), the parties to a collective agreement may include in it provisions,

- (a) for requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement or granting a preference of employment to members of the trade union, or requiring the payment of dues or contributions to the trade union;
- (b) for permitting an employee who represents the trade union that is a party to or is bound by the agreement to attend to the business of the trade union during working hours without deduction of the time so occupied in the computation of the time worked for the employer and without deduction of wages in respect of the time so occupied;
- (c) for permitting the trade union that is a party to or is bound by the agreement the use of the employer's premises for the purposes of the trade union without payment therefor.

Where non-member employee cannot be required to be discharged

(2) No trade union that is a party to a collective agreement containing a provision mentioned in clause (1) (a) shall require the employer to discharge an employee because,

- (a) the employee has been expelled or suspended from membership in the trade union; or
- (b) membership in the trade union has been denied to or withheld from the employee,

for the reason that the employee,

- (c) was or is a member of another trade union;
- (d) has engaged in activity against the trade union or on behalf of another trade union;
- (e) has engaged in reasonable dissent within the trade union;
- (f) has been discriminated against by the trade union in the application of its membership rules; or
- (g) has refused to pay initiation fees, dues or other assessments to the trade union which are unreasonable.

Where subs. (2) does not apply

(3) Subsection (2) does not apply to an employee who has engaged in unlawful activity against the trade union mentioned in clause (1) (a) or an officer, official or agent thereof or whose activity against the trade union or on behalf of another trade union has been instigated or procured by the employee's employer or any person acting on the employer's behalf or whose employer or a person acting on the employer's behalf has participated in such activity or contributed financial or other support to the employee in respect of the activity.

Union security provision in first agreement

(4) A trade union and the employer of the employees concerned shall not enter into a collective agreement that includes provisions requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement unless the trade union has established at the time it entered into the agreement that not less than 55 per cent of the employees in the bargaining unit were members of the trade union, but this subsection does not apply,

- (a) where the trade union has been certified as the bargaining agent of the employees of the employer in the bargaining unit;
- (b) where the trade union has been a party to or bound by a collective agreement with the employer for at least one year;
- (c) where the employer becomes a member of an employer's organization that has entered into a collective agreement with the trade union or council of trade unions containing such a provision and agrees with the trade union or council of trade unions to be bound by such agreement; or
- (d) where the employer and the employer's employees in the bargaining unit are engaged in the construction, alteration, decoration, repair or demolition of a building, structure, road, sewer, water or gas main, pipe line, tunnel, bridge, canal, or other work at the site.

Continuation of permissive provisions

(5) Despite anything in this Act, where the parties to a collective agreement have included in it any of the provisions permitted by subsection (1), any of such provisions may be continued in effect during the period when the parties are bargaining with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement.

Same

(6) Despite anything in this Act, where the parties to a collective agreement have included in it any of the provisions permitted by subsection (1) and the employer who was a party to or was bound by the agreement sells the employer's business within the meaning of section 69, any of the provisions that were included in the collective agreement may be continued in effect during the period when the person to whom the business was sold and the trade union that is the bargaining agent for the person's employees in the appropriate bargaining unit by reason of the sale bargain with a view to the making of a new agreement. 1995, c. 1, Sched. A, s. 51.

Religious objections

52 (1) Where the Board is satisfied that an employee because of his or her religious conviction or belief,

- (a) objects to joining a trade union; or
- (b) objects to the paying of dues or other assessments to a trade union,

the Board may order that the provisions of a collective agreement of the type mentioned in clause 51 (1) (a) do not apply to the employee and that the employee is not required to join the trade union, to be or continue to be a member of the trade union, or to pay any dues, fees or assessments to the trade union, provided that amounts equal to any initiation fees, dues or other assessments are paid by the employee to or are remitted by the employer to a charitable organization mutually agreed upon by the employee and the trade union, but if the employee and the trade union fail to so agree then to a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada) that may be designated by the Board. 1995, c. 1, Sched. A, s. 52 (1); 2004, c. 16, Sched. D, Table.

Application of subs. (1)

(2) Subsection (1) applies to employees in the employ of an employer at the time a collective agreement containing a provision of the kind mentioned in subsection (1) is first entered into with that employer and only during the life of such collective agreement, and does not apply to employees whose employment commences after the entering into of the collective agreement. 1995, c. 1, Sched. A, s. 52 (2).

Section Amendments with date in force (d/m/y)

2004, c. 16, Sched. D, Table - 01/01/2004

OPERATION OF COLLECTIVE AGREEMENTS

Certain agreements not to be treated as collective agreements

53 An agreement between an employer or an employers' organization and a trade union shall be deemed not to be a collective agreement for the purposes of this Act if an employer or employers' organization participated in the formation or administration of the trade union or contributed financial or other support to the trade union. 1995, c. 1, Sched. A, s. 53.

Discrimination prohibited

54 A collective agreement must not discriminate against any person if the discrimination is contrary to the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*. 1995, c. 1, Sched. A, s. 54.

More than one collective agreement prohibited

55 There shall be only one collective agreement at a time between a trade union or council of trade unions and an employer or employers' organization with respect to the employees in the bargaining unit defined in the collective agreement. 1995, c. 1, Sched. A, s. 55.

Binding effect of collective agreements on employers, trade unions and employees

56 A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement. 1995, c. 1, Sched. A, s. 56.

Binding effect of collective agreements: other

57 (1) A collective agreement between an employers' organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon the employers' organization and each person who was a member of the employers' organization at the time the agreement was entered into and on whose behalf the employers' organization bargained with the trade union or council of trade unions as if it was made between each of such persons and the trade union or council of trade unions and upon the employees in the bargaining unit defined in the agreement, and, if any such person ceases to be a member of the employers' organization during the term of operation of the agreement, the person shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.

Duty to disclose

(2) When an employers' organization commences to bargain with a trade union or council of trade unions, it shall deliver to the trade union, or council of trade unions a list of the names of the employers on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members of the employers' organization for whose employees the trade union or council of trade unions is entitled to bargain and to make a collective agreement at that time, except an employer who, either alone or through the employers' organization, has notified the trade union or council of trade unions in writing before the agreement was entered into that the employer will not be bound by a collective agreement between the employers' organization and the trade union or council of trade unions.

Binding effect of collective agreements on members of certified councils

(3) A collective agreement between a certified council of trade unions and an employer is, subject to and for the purposes of this Act, binding upon each trade union that is a constituent union of such a council as if it had been made between each of such trade unions and the employer.

Binding effect of collective agreements on members or affiliates of councils of trade unions

(4) A collective agreement between a council of trade unions, other than a certified council of trade unions, and an employer or an employers' organization is, subject to and for the purposes of this Act, binding upon the council of trade unions and each trade union that was a member of or affiliated with the council of trade unions at the time the agreement was entered into and on whose behalf the council of trade unions bargained with the employer or employers' organization as if it was made between each of such trade unions and the employer or employers' organization, and upon the employees in the bargaining unit defined in the agreement and, if any such trade union ceases to be a member of or affiliated with the council of trade unions during the term of operation of the agreement, it shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the employer or employers' organization, as the case may be.

Duty to disclose

(5) Where a council of trade unions, other than a certified council of trade unions, commences to bargain with an employer or an employers' organization, it shall deliver to the employer or employers' organization a list of the names of the trade unions on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members or affiliates of the council of trade unions for whose employees the respective trade unions are entitled to bargain and to make a collective

agreement at that time with the employer or the employers' organization, except a trade union that, either by itself or through the council of trade unions, has notified the employer or employer's organization in writing before the agreement is entered into that it will not be bound by a collective agreement between the council of trade unions and the employer or employers' organization. 1995, c. 1, Sched. A, s. 57.

Minimum term of collective agreements

58 (1) If a collective agreement does not provide for its term of operation or provides for its operation for an unspecified term or for a term of less than one year, it shall be deemed to provide for its operation for a term of one year from the date that it commenced to operate.

Extension of term of collective agreement

(2) Despite subsection (1), the parties may, in a collective agreement or otherwise and before or after the collective agreement has ceased to operate, agree to continue the operation of the collective agreement or any of its provisions for a period of less than one year while they are bargaining for its renewal with or without modifications or for a new agreement, but such continued operation does not bar an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit and the continuation of the collective agreement may be terminated by either party upon 30 days notice to the other party.

Early termination of collective agreements

(3) A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions or this Act without the consent of the Board on the joint application of the parties.

Same

(4) Despite anything in this section, where an employer joins an employers' organization that is a party to a collective agreement with a trade union or council of trade unions and the employer agrees with the trade union or council of trade unions to be bound by the collective agreement between the trade union or council of trade unions and the employers' organization, the agreement ceases to be binding upon the employer and the trade union or council of trade unions at the same time as the agreement between the employers' organization and the trade union or council of trade unions ceases to be binding.

Revision by mutual consent

(5) Nothing in this section prevents the revision by mutual consent of the parties at any time of any provision of a collective agreement other than a provision relating to its term of operation. 1995, c. 1, Sched. A, s. 58.

Notice of desire to bargain for new collective agreement

59 (1) Either party to a collective agreement may, within the period of 90 days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.

Same

(2) A notice given by a party to a collective agreement in accordance with provisions in the agreement relating to its termination or renewal shall be deemed to comply with subsection (1).

Notice of desire for new collective agreement for employers' organization

(3) Where notice is given by or to an employers' organization that has a collective agreement with a trade union or council of trade unions, it shall be deemed to be a notice given by or to each member of the employers' organization who is bound by the agreement or who has ceased to be a member of the employers' organization but has not notified the trade union or council of trade unions in writing that he, she or it has ceased to be a member.

Same

(4) Where notice is given by or to a council of trade unions, other than a certified council of trade unions, that has a collective agreement with an employer or employers' organization, it shall be deemed to be a notice given by or to each member or affiliate of the council of trade unions that is bound by the agreement or that has ceased to be a member or affiliate of the council of trade unions but has not notified the employer or employers' organization in writing that it has ceased to be a member or affiliate. 1995, c. 1, Sched. A, s. 59.

Application of ss. 17 to 36

60 Sections 17 to 36 apply to the bargaining that follows the giving of a notice under section 59. 1995, c. 1, Sched. A, s. 60.

Dissolution of councils of certified trade unions

61 (1) Where a certified council of trade unions is a party to or is bound by a collective agreement, no resolution, by-law or other action by the constituent unions of a certified council of trade unions to dissolve the council or by a constituent union of such a council to withdraw from the council, as the case may be, has effect,

- (a) unless a copy of the resolution, by-law or other action is delivered to the employer or the employers' organization and, in the case of a withdrawal, to the other constituent members and to the council at least 90 days before the collective agreement ceases to operate; and
- (b) until the collective agreement ceases to operate.

Same

(2) Where a certified council of trade unions is not a party to or is not bound by a collective agreement, no resolution, by-law or other action by the constituent unions of a certified council of trade unions to dissolve the council or by a constituent union of such a council to withdraw from the council, as the case may be, has effect until the 90th day after the day on which a copy of such resolution, by-law or other action is delivered to the employer or the employers' organization and, in the case of a withdrawal, to the other constituent members and to the council. 1995, c. 1, Sched. A, s. 61.

TERMINATION OF BARGAINING RIGHTS

Effect of certification

62 (1) If the trade union that applies for certification under subsection 7 (4), (5) or (6) is certified as bargaining agent for any of the employees in the bargaining unit defined in the collective agreement, the trade union that was or is a party to the agreement, as the case may be, forthwith ceases to represent the employees in the bargaining unit determined in the certificate and the agreement ceases to operate in so far as it affects such employees.

Same

(2) If the trade union that applies for certification under subsection 7 (2) is certified as bargaining agent for any of the employees in the bargaining unit defined in the certificate issued to the trade union that was previously certified, the latter trade union forthwith ceases to represent the employees in the bargaining unit defined in the certificate issued to the former trade union. 1995, c. 1, Sched. A, s. 62.

Application for termination

63 (1) If a trade union does not make a collective agreement with the employer within one year after its certification, any of the employees in the bargaining unit determined in the certificate may, subject to section 67, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (1).

Same, agreement

(2) Any of the employees in the bargaining unit defined in a collective agreement may, subject to section 67, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit,

- (a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last three months of its operation;
- (b) in the case of a collective agreement for a term of more than three years, only after the commencement of the 34th month of its operation and before the commencement of the 37th month of its operation and during the three-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last three months of its operation, as the case may be;
- (c) in the case of a collective agreement referred to in clause (a) or (b) that provides that it will continue to operate for any further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, only during the last three months of each year that it so continues to operate or after the commencement of the last three months of its operation, as the case may be. 2000, c. 38, s. 8 (1).

Notice to employer, trade union

(3) The applicant shall deliver a copy of the application to the employer and the trade union by such time as is required under the rules made by the Board and, if there is no rule, not later than the day on which the application is filed with the Board. 1995, c. 1, Sched. A, s. 63 (3).

Evidence

(4) The application filed with the Board shall be accompanied by a list of the names of the employees in the bargaining unit who have expressed a wish not to be represented by the trade union and evidence of the wishes of those employees, but the applicant shall not give this information to the employer or trade union. 1995, c. 1, Sched. A, s. 63 (4).

Direction re representation vote

(5) If the Board determines that 40 per cent or more of the employees in the bargaining unit appear to have expressed a wish not to be represented by the trade union at the time the application was filed, the Board shall direct that a representation vote be taken among the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (5).

Same

(6) The number of employees in the bargaining unit who appear to have expressed a wish not to be represented by the trade union shall be determined with reference only to the information provided in the application and the accompanying information provided under subsection (4). 1995, c. 1, Sched. A, s. 63 (6).

Same

(7) The Board may consider such information as it considers appropriate to determine the number of employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (7).

No hearing

(8) The Board shall not hold a hearing when making a decision under subsection (5). 1995, c. 1, Sched. A, s. 63 (8).

Timing of vote

(9) Unless the Board directs otherwise, the representation vote shall be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the application is filed with the Board. 1995, c. 1, Sched. A, s. 63 (9).

Conduct of vote

(10) The representation vote shall be by ballots cast in such a manner that individuals expressing their choice cannot be identified with the choice made. 1995, c. 1, Sched. A, s. 63 (10).

Sealing of ballot box, etc.

(11) The Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs. 1995, c. 1, Sched. A, s. 63 (11).

Subsequent hearing

(12) After the representation vote has been taken, the Board may hold a hearing if the Board considers it necessary in order to dispose of the application. 1995, c. 1, Sched. A, s. 63 (12).

Exception

(13) When disposing of an application, the Board shall not consider any challenge to the information provided under subsection (4). 1995, c. 1, Sched. A, s. 63 (13).

Declaration of termination following vote

(14) If on the taking of the representation vote more than 50 per cent of the ballots cast are cast in opposition to the trade union, the Board shall declare that the trade union that was certified or that was or is a party to the collective agreement, as the case may be, no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (14).

Dismissal of application

(15) The Board shall dismiss the application unless more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in opposition to the trade union. 1995, c. 1, Sched. A, s. 63 (15).

Same, employer misconduct

(16) Despite subsections (5) and (14), the Board may dismiss the application if the Board is satisfied that the employer or a person acting on behalf of the employer initiated the application or engaged in threats, coercion or intimidation in connection with the application. 1995, c. 1, Sched. A, s. 63 (16).

(16.1) REPEALED: 2005, c. 15, s. 4.

Declaration of termination of abandonment

(17) Upon an application under subsection (1) or (2), where the trade union concerned informs the Board that it does not desire to continue to represent the employees in the bargaining unit, the Board may declare that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (17).

Declaration to terminate agreement

(18) Upon the Board making a declaration under subsection (14) or (17), any collective agreement in operation between the trade union and the employer that is binding upon the employees in the bargaining unit ceases to operate forthwith. 1995, c. 1, Sched. A, s. 63 (18).

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 8 - 30/12/2000

2005, c. 15, s. 4 - 13/06/2005

Transition

63.1 An employer or person acting on behalf of an employer shall not be found to have initiated an application under section 63 or to have contravened this Act if, during the 30-day period following the coming into force of section 5 of the *Labour Relations Statute Law Amendment Act, 2005*, the employer continues to do anything that was required by subsection (4) of this section, as it read immediately before the coming into force of section 5 of the *Labour Relations Statute Law Amendment Act, 2005*. 2005, c. 15, s. 5.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 9 - 30/12/2000

2005, c. 15, s. 5 - 13/06/2005

Fraud

64 (1) If a trade union has obtained a certificate by fraud, the Board may at any time declare that the trade union no longer represents the employees in the bargaining unit and, upon the making of such a declaration, the trade union is not entitled to claim any rights or privileges flowing from certification and, if it has made a collective agreement binding upon the employees in the bargaining unit, the collective agreement is void.

Non-application

(2) Subsection 8 (9) does not apply with respect to an application for a declaration under subsection (1).

Decertification obtained by fraud

(3) If an applicant has obtained a declaration under section 63 by fraud, the Board may at any time rescind the declaration. If the declaration is rescinded, the trade union is restored as the bargaining agent for the employees in the bargaining unit and any collective agreement that, but for the declaration, would have applied with respect to the employees becomes binding as if the declaration had not been made.

Non-application

(4) Subsection 63 (13) does not apply with respect to an application for the rescission under subsection (3) of a declaration. 1995, c. 1, Sched. A, s. 64.

Termination

65 (1) If a trade union fails to give the employer notice under section 16 within 60 days following certification or if it fails to give notice under section 59 and no such notice is given by the employer, the Board may, upon the application of the employer or of any of the employees in the bargaining unit, and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit.

Same, for failure to bargain

(2) Where a trade union that has given notice under section 16 or section 59 or that has received notice under section 59 fails to commence to bargain within 60 days from the giving of the notice or, after having commenced to bargain but before the Minister has appointed a conciliation officer or mediator, allows a period of 60 days to elapse during which it has not sought to bargain, the Board may, upon the application of the employer or of any of the employees in the bargaining unit and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 65.

Termination of bargaining rights after voluntary recognition

66 (1) Where an employer and a trade union that has not been certified as the bargaining agent for a bargaining unit of employees of the employer enter into a collective agreement, or a recognition agreement as provided for in subsection 18 (3), the Board may, upon the application of any employee in the bargaining unit or of a trade union representing any employee in the bargaining unit, during the first year of the period of time that the first collective agreement between them is in operation or, if no collective agreement has been entered into, within one year from the signing of such recognition agreement, declare that the trade union was not, at the time the agreement was entered into, entitled to represent the employees in the bargaining unit.

Powers of Board before disposing of application

(2) Before disposing of an application under subsection (1), the Board may make such inquiry, require the production of such evidence and the doing of such things, or hold such representation votes, as it considers appropriate.

Onus

(3) On an application under subsection (1), the onus of establishing that the trade union was entitled to represent the employees in the bargaining unit at the time the agreement was entered into rests on the parties to the agreement.

Declaration to terminate agreement

(4) Upon the Board making a declaration under subsection (1), the trade union forthwith ceases to represent the employees in the defined bargaining unit in the recognition agreement or collective agreement and any collective agreement in operation between the trade union and the employer ceases to operate forthwith in respect of the employees affected by the application. 1995, c. 1, Sched. A, s. 66.

TIMELINESS OF REPRESENTATION APPLICATIONS

Application for certification or termination

67 (1) Subject to subsection (3), where a trade union has not made a collective agreement within one year after its certification and the Minister has appointed a conciliation officer or a mediator under this Act, no application for certification of a bargaining agent of, or for a declaration that a trade union no longer represents, the employees in the bargaining unit determined in the certificate shall be made until,

- (a) 30 days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator;
- (b) 30 days have elapsed after the Minister has released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board; or
- (c) six months have elapsed after the Minister has released to the parties a notice of a report of the conciliation officer that the differences between the parties concerning the terms of a collective agreement have been settled,

as the case may be.

Same

(2) Where notice has been given under section 59 and the Minister has appointed a conciliation officer or a mediator, no application for certification of a bargaining agent of any of the employees in the bargaining units as defined in the collective agreement and no application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit as defined in the agreement shall be made after the date when the agreement ceased to operate or the date when the Minister appointed a conciliation officer or a mediator, whichever is later, unless following the appointment of a conciliation officer or a mediator, if no collective agreement has been made,

- (a) at least 12 months have elapsed from the date of the appointment of the conciliation officer or a mediator;
- (b) a conciliation board or a mediator has been appointed and 30 days have elapsed after the report of the conciliation board or the mediator has been released by the Minister to the parties; or
- (c) 30 days have elapsed after the Minister has informed the parties that he or she does not consider it desirable to appoint a conciliation board,

whichever is later.

Application for certification or termination during lawful strike

(3) Where a trade union has given notice under section 16 and the employees in the bargaining unit on whose behalf the trade union was certified as bargaining agent thereafter engage in a lawful strike or the employer lawfully locks out the employees, no application for certification of a bargaining agent of, or for a declaration that the trade union no longer represents, the employees in the bargaining unit determined in the certificate shall be made,

- (a) until six months have elapsed after the strike or lock-out commenced; or
- (b) until seven months have elapsed after the Minister has released to the parties the report of the conciliation board or mediator or a notice that the Minister does not consider it advisable to appoint a conciliation board,

whichever occurs first.

Application of subss. (1, 3)

(4) Subsections (1) and (3) apply with necessary modifications to an application made under subsection 7 (3). 1995, c. 1, Sched. A, s. 67.

SUCCESSOR RIGHTS

Declaration of successor union

68 (1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its rights to act as the successor, the Board, in any proceeding before it or on the application of any person or trade union concerned, may declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Act of its predecessor, or the Board may dismiss the application.

Same

(2) Before issuing a declaration under subsection (1), the Board may make such inquiry, require the production of such evidence or hold such representation votes as it considers appropriate.

Same

(3) Where the Board makes an affirmative declaration under subsection (1), the successor shall for the purposes of this Act be conclusively presumed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise, and the employer, the successor and the employees concerned shall recognize such status in all respects. 1995, c. 1, Sched. A, s. 68.

Sale of business

69 (1) In this section,

“business” includes a part or parts thereof; (“entreprise”)

“sells” includes leases, transfers and any other manner of disposition, and “sold” and “sale” have corresponding meanings. (“vend”, “vendu”, “vente”)

Successor employer

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his, her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if the person had been a party thereto and, where an employer sells his, her or its business while an application for certification or termination of bargaining rights to which the employer is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if the person were named as the employer in the application.

Same

(3) Where an employer on behalf of whose employees a trade union or council of trade unions, as the case may be, has been certified as bargaining agent or has given or is entitled to give notice under section 16 or 59, sells his, her or its business, the trade union, or council of trade unions continues, until the Board otherwise declares, to be the bargaining agent for the employees of the person to whom the business was sold in the like bargaining unit in that business, and the trade union or council of trade unions is entitled to give to the person to whom the business was sold a written notice of its desire to bargain with a view to making a collective agreement or the renewal, with or without modifications, of the agreement then in operation and such notice has the same effect as a notice under section 16 or 59, as the case requires.

Powers of Board

(4) Where a business was sold to a person and a trade union or council of trade unions was the bargaining agent of any of the employees in such business or a trade union or council of trade unions is the bargaining agent of the employees in any business carried on by the person to whom the business was sold, and,

- (a) any question arises as to what constitutes the like bargaining unit referred to in subsection (3); or

- (b) any person, trade union or council of trade unions claims that, by virtue of the operation of subsection (2) or (3), a conflict exists between the bargaining rights of the trade union or council of trade unions that represented the employees of the predecessor employer and the trade union or council of trade unions that represents the employees of the person to whom the business was sold,

the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (c) define the composition of the like bargaining unit referred to in subsection (3) with such modification, if any, as the Board considers necessary; and
- (d) amend, to such extent as the Board considers necessary, any bargaining unit in any certificate issued to any trade union or any bargaining unit defined in any collective agreement.

Same

(5) The Board may, upon the application of any person, trade union or council of trade unions concerned, made within 60 days after the successor employer referred to in subsection (2) becomes bound by the collective agreement, or within 60 days after the trade union or council of trade unions has given a notice under subsection (3), terminate the bargaining rights of the trade union or council of trade unions bound by the collective agreement or that has given notice, as the case may be, if, in the opinion of the Board, the person to whom the business was sold has changed its character so that it is substantially different from the business of the predecessor employer.

Same

(6) Despite subsections (2) and (3), where a business was sold to a person who carries on one or more other businesses and a trade union or council of trade unions is the bargaining agent of the employees in any of the businesses and the person intermingles the employees of one of the businesses with those of another of the businesses, the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (a) declare that the person to whom the business was sold is no longer bound by the collective agreement referred to in subsection (2);
- (b) determine whether the employees concerned constitute one or more appropriate bargaining units;
- (c) declare which trade union, trade unions or council of trade unions, if any, shall be the bargaining agent or agents for the employees in the unit or units; and
- (d) amend, to such extent as the Board considers necessary, any certificate issued to any trade union or council of trade unions or any bargaining unit defined in any collective agreement.

Notice to bargain

(7) Where a trade union or council of trade unions is declared to be the bargaining agent under subsection (6) and it is not already bound by a collective agreement with the successor employer with respect to the employees for whom it is declared to be the bargaining agent, it is entitled to give to the employer a written notice of its desire to bargain with a view to making a collective agreement, and the notice has the same effect as a notice under section 16.

Powers of Board before disposing of application

(8) Before disposing of any application under this section, the Board may make such inquiry, may require the production of such evidence and the doing of such things, or may hold such representation votes, as it considers appropriate.

Where employer not required to bargain

(9) Where an application is made under this section, an employer is not required, despite the fact that a notice has been given by a trade union or council of trade unions, to bargain with that trade union or council of trade unions concerning the employees to whom the application relates until the Board has disposed of the application and has declared which trade union or council of trade unions, if any, has the right to bargain with the employer on behalf of the employees concerned in the application.

Effect of notice of declaration

(10) For the purposes of sections 7, 63, 65, 67 and 132, a notice given by a trade union or council of trade unions under subsection (3) or a declaration made by the Board under subsection (6) has the same effect as a certification under section 10.

Successor municipalities

(11) Where one or more municipalities as defined in the *Municipal Affairs Act* are erected into another municipality, or two or more such municipalities are amalgamated, united or otherwise joined together, or all or part of one such municipality is

annexed, attached or added to another such municipality, the employees of the municipalities concerned shall be deemed to have been intermingled, and,

- (a) the Board may exercise the like powers as it may exercise under subsections (6) and (8) with respect to the sale of a business under this section;
- (b) the new or enlarged municipality has the like rights and obligations as a person to whom a business is sold under this section and who intermingles the employees of two of the person's businesses; and
- (c) any trade union or council of trade unions concerned has the like rights and obligations as it would have in the case of the intermingling of employees in two or more businesses under this section.

Power of Board to determine whether sale

(12) Where, on any application under this section or in any other proceeding before the Board, a question arises as to whether a business has been sold by one employer to another, the Board shall determine the question and its decision is final and conclusive for the purposes of this Act.

Duty of respondents

(13) Where, on an application under this section, a trade union alleges that the sale of a business has occurred, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation. 1995, c. 1, Sched. A, s. 69.

Section Amendments with date in force (d/m/y)

CTS 25 AU 10-1 - 25/08/2010

Successor rights, building services

69.1 (1) This section applies with respect to services provided directly or indirectly by or to a building owner or manager that are related to servicing the premises, including building cleaning services, food services and security services. 2017, c. 22, Sched. 2, s. 7.

Exclusions

(2) This section does not apply with respect to the following services:

- 1. Construction.
- 2. Maintenance other than maintenance activities related to cleaning the premises.
- 3. The production of goods other than goods related to the provision of food services at the premises for consumption on the premises. 2017, c. 22, Sched. 2, s. 7.

Services under contract

(3) For the purposes of section 69, the sale of a business is deemed to have occurred,

- (a) if employees perform services at premises that are their principal place of work;
- (b) if their employer ceases, in whole or in part, to provide the services at those premises; and
- (c) if substantially similar services are subsequently provided at the premises under the direction of another employer. 2017, c. 22, Sched. 2, s. 7.

Interpretation

(4) For the purposes of section 69, the employer referred to in clause (3) (b) of this section is considered to be the employer who sells the business and the employer referred to in clause (3) (c) of this section is considered to be the person to whom the business is sold. 2017, c. 22, Sched. 2, s. 7.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 7 - 01/01/2018

69.2 REPEALED: 2018, c. 14, Sched. 2, s. 9.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 7 - 01/01/2018

2018, c. 14, Sched. 2, s. 9 - 21/11/2018

UNFAIR PRACTICES

Employers, etc., not to interfere with unions

70 No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence. 1995, c. 1, Sched. A, s. 70.

Unions not to interfere with employers' organizations

71 No trade union and no person acting on behalf of a trade union shall participate in or interfere with the formation or administration of an employers' organization or contribute financial or other support to an employers' organization. 1995, c. 1, Sched. A, s. 71.

Employers not to interfere with employees' rights

72 No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act. 1995, c. 1, Sched. A, s. 72.

No interference with bargaining rights

73 (1) No employer, employers' organization or person acting on behalf of an employer or an employers' organization shall, so long as a trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with any person or another trade union or a council of trade unions on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them.

Same

(2) No trade union council of trade unions or person acting on behalf of a trade union or council of trade unions shall, so long as another trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with an employer or an employers' organization on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them. 1995, c. 1, Sched. A, s. 73.

Duty of fair representation by trade union, etc.

74 A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be. 1995, c. 1, Sched. A, s. 74.

Duty of fair referral, etc., by trade unions

75 Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, it shall not act in a manner that is arbitrary, discriminatory or in bad faith. 1995, c. 1, Sched. A, s. 75.

Intimidation and coercion

76 No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act. 1995, c. 1, Sched. A, s. 76.

Persuasion during working hours

77 Nothing in this Act authorizes any person to attempt at the place at which an employee works to persuade the employee during the employee's working hours to become or refrain from becoming or continuing to be a member of a trade union. 1995, c. 1, Sched. A, s. 77.

Strike-breaking misconduct, etc., prohibited

78 (1) No person, employer, employers' organization or person acting on behalf of an employer or employers' organization shall engage in strike-related misconduct or retain the services of a professional strike breaker and no person shall act as a professional strike breaker.

Definitions

(2) For the purposes of subsection (1),

"professional strike breaker" means a person who is not involved in a dispute whose primary object, in the Board's opinion, is to interfere with, obstruct, prevent, restrain or disrupt the exercise of any right under this Act in anticipation of, or during, a lawful strike or lock-out; ("briseur de grève professionnel")

"strike-related misconduct" means a course of conduct of incitement, intimidation, coercion, undue influence, provocation, infiltration, surveillance or any other like course of conduct intended to interfere with, obstruct, prevent, restrain or disrupt the exercise of any right under this Act in anticipation of, or during, a lawful strike or lock-out. ("inconduite liée à une grève")

Other rights not affected

(3) Nothing in this section shall be deemed to restrict or limit any right or prohibition contained in any other provision of this Act. 1995, c. 1, Sched. A, s. 78.

Strike or lock-out

79 (1) Where a collective agreement is in operation, no employee bound by the agreement shall strike and no employer bound by the agreement shall lock out such an employee. 1995, c. 1, Sched. A, s. 79 (1).

No agreement

(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and,

- (a) nine days have elapsed after the day the Minister is deemed pursuant to subsection 122 (2) to have released to the parties the report of a conciliation board or mediator; or
- (b) 16 days have elapsed after the day the Minister is deemed pursuant to subsection 122 (2) to have released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board. 2018, c. 14, Sched. 2, s. 10.

Mandatory strike vote

(3) If a collective agreement is or has been in operation, no employee shall strike unless a strike vote is taken 30 days or less before the collective agreement expires or at any time after the agreement expires and more than 50 per cent of those voting vote in favour of a strike. 1995, c. 1, Sched. A, s. 79 (3).

Same

(4) Subject to section 79.1, if no collective agreement has been in operation, no employee shall strike unless a strike vote is taken on or after the day on which a conciliation officer is appointed and more than 50 per cent of those voting vote in favour of a strike. 1995, c. 1, Sched. A, s. 79 (4); 2000, c. 38, s. 10.

Exceptions

(5) Subsections (3) and (4) do not apply,

- (a) to an employee in the construction industry; or
- (b) to an employee performing maintenance who is represented by a trade union that, according to trade union practice, pertains to the construction industry if the employee or any of the other employees in the bargaining unit the employee is in were referred to their employment by the trade union. 1998, c. 8, s. 8.

Threatening strike or lock-out

(6) No employee shall threaten an unlawful strike and no employer shall threaten an unlawful lock-out of an employee. 1995, c. 1, Sched. A, s. 79 (6).

Strike or ratification vote to be secret

(7) A strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement taken by a trade union shall be by ballots cast in such a manner that persons expressing their choice cannot be identified with the choice expressed. 1995, c. 1, Sched. A, s. 79 (7).

Right to vote

(8) All employees in a bargaining unit, whether or not the employees are members of the trade union or of any constituent union of a council of trade unions, shall be entitled to participate in a strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement. 1995, c. 1, Sched. A, s. 79 (8).

Opportunity to vote

(9) Any vote mentioned in subsection (7) shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots. If the vote taken is otherwise than by mail, the time and place for voting must be reasonably convenient. 1995, c. 1, Sched. A, s. 79 (9).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 8 - 29/06/1998

2000, c. 38, s. 10 - 30/12/2000

2018, c. 14, Sched. 2, s. 10 - 21/11/2018

First collective agreement ballot questions

79.1 (1) Subsections (2) and (3) apply where no collective agreement has previously been in operation. 2000, c. 38, s. 11.

Ratification vote

(2) A question on a ballot used in a vote to ratify a proposed collective agreement or memorandum of settlement shall be limited to giving the persons entitled to vote a choice between ratifying the proposed collective agreement or memorandum of settlement and not ratifying the proposed collective agreement or memorandum of settlement and shall make no direct or indirect reference to the calling of a strike. 2000, c. 38, s. 11.

Strike vote

(3) A question on a ballot used in a strike vote shall be limited to giving the persons entitled to vote a choice between authorizing the calling of a strike and not authorizing the calling of a strike and shall make no direct or indirect reference to ratification of a proposed collective agreement or memorandum of settlement. 2000, c. 38, s. 11.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 11 - 30/12/2000

Reinstatement of employee

80 (1) Where an employee engaging in a lawful strike makes an unconditional application in writing to the employee's employer within six months from the commencement of the lawful strike to return to work, the employer shall, subject to subsection (2), reinstate the employee in the employee's former employment, on such terms as the employer and employee may agree upon, and the employer in offering terms of employment shall not discriminate against the employee for exercising or have exercised any rights under this Act. 1995, c. 1, Sched. A, s. 80 (1); 2017, c. 22, Sched. 2, s. 8 (1); 2018, c. 14, Sched. 2, s. 11 (1).

Exceptions

(2) An employer is not required to reinstate an employee who has made an application to return to work in accordance with subsection (1),

- (a) where the employer no longer has persons engaged in performing work of the same or similar nature to work which the employee performed prior to the employee's cessation of work; or
- (b) where there has been a suspension or discontinuance for cause of an employer's operations, or any part thereof, but, if the employer resumes such operations, the employer shall first reinstate those employees who have made an application under subsection (1). 1995, c. 1, Sched. A, s. 80 (2).

Transition

(3) Subsection (1), as it read immediately before the day section 11 of Schedule 2 to the *Making Ontario Open for Business Act*, 2018 came into force, continues to apply to applications made before that date. 2018, c. 14, Sched. 2, s. 11 (2).

(4)-(7) REPEALED: 2018, c. 14, Sched. 2, s. 11 (2).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 8 (1, 2) - 01/01/2018

2018, c. 14, Sched. 2, s. 11 (1, 2) - 21/11/2018

No discharge or discipline following strike or lock-out

80.1 (1) An employer shall not discharge or discipline an employee in a bargaining unit without just cause during the period that begins on the date on which a strike or lock-out in respect of that bargaining unit became lawful and that ends on the earlier of the date on which a new collective agreement is entered into and the date on which the trade union no longer represents the employees in the bargaining unit. 2017, c. 22, Sched. 2, s. 9.

Same, enforcement

(2) The requirement in subsection (1) may be enforced through the grievance procedure and arbitration procedure established in the new collective agreement or deemed to be included in the collective agreement under section 48. 2017, c. 22, Sched. 2, s. 9.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 9 - 01/01/2018

Unlawful strike

81 No trade union or council of trade unions shall call or authorize or threaten to call or authorize an unlawful strike and no officer, official or agent of a trade union or council of trade unions shall counsel, procure, support or encourage an unlawful strike or threaten an unlawful strike. 1995, c. 1, Sched. A, s. 81.

Unlawful lock-out

82 No employer or employers' organization shall call or authorize or threaten to call or authorize an unlawful lock-out and no officer, official or agent of an employer or employers' organization shall counsel, procure, support or encourage an unlawful lock-out or threaten an unlawful lock-out. 1995, c. 1, Sched. A, s. 82.

Causing unlawful strikes, lock-outs

83 (1) No person shall do any act if the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike or an unlawful lock-out.

Application of subs. (1)

(2) Subsection (1) does not apply to any act done in connection with a lawful strike or lawful lock-out. 1995, c. 1, Sched. A, s. 83.

Saving

84 Nothing in this Act prohibits any suspension or discontinuance for cause of an employer's operations or the quitting of employment for cause if the suspension, discontinuance or quitting does not constitute a lock-out or strike. 1995, c. 1, Sched. A, s. 84.

Refusal to engage in unlawful strike

85 No trade union shall suspend, expel or penalize in any way a member because the member has refused to engage in or to continue to engage in a strike that is unlawful under this Act. 1995, c. 1, Sched. A, s. 85.

Working conditions may not be altered

86 (1) Where notice has been given under section 16 or section 59 and no collective agreement is in operation, no employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty, of the employer, the trade union or the employees, and no trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees,

(a) until the Minister has appointed a conciliation officer or a mediator under this Act, and,

(i) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator, or

(ii) 14 days have elapsed after the Minister has released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board,

as the case may be; or

(b) until the right of the trade union to represent the employees has been terminated, whichever occurs first.

Same

(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer or the employees until,

- (a) the trade union has given notice under section 16, in which case subsection (1) applies; or
- (b) the application for certification by the trade union is dismissed or terminated by the Board or withdrawn by the trade union.

Differences may be arbitrated

(3) Where notice has been given under section 59 and no collective agreement is in operation, any difference between the parties as to whether or not subsection (1) of this section was complied with may be referred to arbitration by either of the parties as if the collective agreement was still in operation and section 48 applies with necessary modifications thereto. 1995, c. 1, Sched. A, s. 86.

Protection of witnesses rights

87 (1) No employer, employers' organization or person acting on behalf of an employer or employers' organization shall,

- (a) refuse to employ or continue to employ a person;
- (b) threaten dismissal or otherwise threaten a person;
- (c) discriminate against a person in regard to employment or a term or condition of employment; or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act.

Same

(2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall,

- (a) discriminate against a person in regard to employment or a term or condition of employment; or
- (b) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act. 1995, c. 1, Sched. A, s. 87.

Removal, etc., of posted notices

88 No person shall wilfully destroy, mutilate, obliterate, alter, deface or remove or cause to be destroyed, mutilated, obliterated, altered, defaced or removed any notice that the Board has required to be posted during the period that the notice is required to be posted. 1995, c. 1, Sched. A, s. 88.

LOCALS UNDER TRUSTEESHIP

Trusteeship over local unions

89 (1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of such subordinate trade union, under the constitution or by-laws of the provincial, national or international trade union is suspended, shall, within 60 days after it has assumed supervision or control over the subordinate trade union, file with the Board a statement in the prescribed form, verified by the affidavit of its principal officers, setting out the terms under which supervision or control is to be exercised and it shall, upon the direction of the Board, file such additional information concerning such supervision and control as the Minister may from time to time require.

Duration of trusteeship

(2) Where a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, such supervision or control shall not continue for more than 12 months from the date of such assumption, but such supervision or control may be continued for a further period of 12 months with the consent of the Board. 1995, c. 1, Sched. A, s. 89.

INTERFERENCE WITH THE LOCAL TRADE UNION

Interference with local trade union

Definitions

89.1 (1) In this section,

“constitution” means an organizational document governing the establishment or operation of a trade union and includes a charter and by-laws and rules made under a constitution; (“acte constitutif”)

“local trade union” means, in relation to a parent trade union, a trade union in Ontario that is affiliated with or subordinate or directly related to the parent trade union and includes a council of trade unions; (“syndicat local”)

“parent trade union” means a provincial, national or international trade union which has at least one affiliated local trade union in Ontario that is subordinate or directly related to it. (“syndicat parent”) 2018, c. 8, Sched. 14, s. 2.

Interference

(2) A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control of or otherwise interfere with a local trade union directly or indirectly in such a way that the autonomy of the local trade union is affected. 2018, c. 8, Sched. 14, s. 2.

Same, officials and members

(3) A parent trade union or a council of trade unions shall not, without just cause, remove from office, change the duties of an elected or appointed official of a local trade union or impose a penalty on such an official or on a member of a local trade union. 2018, c. 8, Sched. 14, s. 2.

Board powers

(4) On an application relating to this section, when deciding whether there is just cause, the Board shall consider the trade union constitution but is not bound by it and shall consider such other factors as it considers appropriate. 2018, c. 8, Sched. 14, s. 2.

Orders when just cause

(5) If the Board determines that an action described in subsection (2) was taken with just cause, the Board may make such orders and give such directions as it considers appropriate, including orders respecting the continuation of supervision or control of the local trade union. 2018, c. 8, Sched. 14, s. 2.

Section Amendments with date in force (d/m/y)

2018, c. 8, Sched. 14, s. 2 - 08/05/2018

INFORMATION

Collective agreements to be filed

90 (1) Each party to a collective agreement shall, forthwith after it is made, file one copy with the Minister in the form specified by the Minister. 2018, c. 14, Sched. 2, s. 12.

Collective agreements to be made public

(2) The Minister shall publish the copies of collective agreements filed under subsection (1) or otherwise make them available to the public. 2018, c. 14, Sched. 2, s. 12.

Same

(3) For greater certainty, the Minister may satisfy the obligation set out in subsection (2) by publishing the copies on a Government of Ontario website. 2018, c. 14, Sched. 2, s. 12.

Section Amendments with date in force (d/m/y)

2018, c. 14, Sched. 2, s. 12 - 21/11/2018

Officers, constitution, etc.

91 The Board may direct a trade union, council of trade unions or employers' organization to file with the Board within the time prescribed in the direction a copy of its constitution and by-laws and a statutory declaration of its president or secretary setting forth the names and addresses of its officers. 1995, c. 1, Sched. A, s. 91.

Duty of union to furnish financial statement to members

92 (1) Every trade union shall upon the request of any member furnish the member, without charge, with a copy of the audited financial statement of its affairs to the end of its last fiscal year certified by its treasurer or other officer responsible for the handling and administration of its funds to be a true copy, and, upon the complaint of any member that the trade union has failed to furnish such a statement, the Board may direct the trade union to file with the Registrar of the Board, within such time as the Board may determine, a copy of the audited financial statement of its affairs to the end of its last fiscal year verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds and to furnish a copy of the statement to the members of the trade union that the Board in its discretion may direct, and the trade union shall comply with the direction according to its terms. 1995, c. 1, Sched. A, s. 92 (1).

Complaint that financial statement inadequate

(2) Where a member of a trade union complains that an audited financial statement is inadequate, the Board may inquire into the complaint and the Board may order the trade union to prepare another audited financial statement in a form and containing the particulars that the Board considers appropriate and the Board may further order that the audited financial statement, as rectified, be certified by a person licensed under the *Public Accounting Act, 2004* or a firm whose partners are licensed under that Act. 1995, c. 1, Sched. A, s. 92 (2); 2004, c. 8, s. 46.

Section Amendments with date in force (d/m/y)

2004, c. 8, s. 46, Table - 01/11/2005

92.1 REPEALED: 2005, c. 15, s. 6.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 12 - 30/12/2000

2002, c. 18, Sched. J, s. 4 (1) - 26/11/2002

2004, c. 8, s. 46, Table, 47 (1) - Obsolete

2005, c. 15, s. 6 - 13/06/2005

Administrator of various trade union funds

93 (1) In this section,

“administrator” means any trade union, trustee or person responsible for the control, management or disposition of money received or contributed to a vacation pay fund or a welfare benefit or pension plan or fund for the members of a trade union or their survivors or beneficiaries. 1995, c. 1, Sched. A, s. 93 (1).

Annual filing of statement

(2) Every administrator shall file annually with the Minister not later than June 1 in each year or at such other time or times as the Minister may direct, a copy of the audited financial statement certified by a person licensed under the *Public Accounting Act, 2004* or a firm whose partners are licensed under that Act of a vacation pay fund, or a welfare benefit or pension plan or fund setting out its financial condition for the preceding fiscal year and disclosing,

- (a) a description of the coverage provided by the fund or plan;
- (b) the amount contributed by each employer;
- (c) the amounts contributed by the members and the trade union, if any;
- (d) a statement of the assets, specifying the total amount of each type of asset;
- (e) a statement of liabilities, receipts and disbursements;
- (f) a statement of salaries, fees and commissions charged to the fund or plan, to whom paid, in what amount and for what purposes; and
- (g) such further information as the Minister may require. 1995, c. 1, Sched. A, s. 93 (2); 2004, c. 8, s. 46.

Furnishing of copy to member of trade union

(3) The administrator, upon the request in writing of any member of the trade union whose employer has made payments or contributions into the fund or plan, shall furnish to the member without charge a copy of the audited financial statement required to be filed by subsection (2). 1995, c. 1, Sched. A, s. 93 (3).

Where Board may direct compliance

(4) Where an administrator has failed to comply with subsection (2) or (3), upon a certificate of failure so to comply signed by the Minister or upon complaint by the member, the Board may direct the administrator to comply within the time that the Board may determine. 1995, c. 1, Sched. A, s. 93 (4).

Section Amendments with date in force (d/m/y)

2004, c. 8, s. 46, Table - 01/11/2005

Representative for service of process

94 (1) Every trade union and unincorporated employers' organization in Ontario that has members in Ontario shall, within 15 days after it has enrolled its first member, file with the Board a notice in the prescribed form giving the name and address of a person resident in Ontario who is authorized by the trade union or unincorporated employers' organization to accept on its behalf service of process and notices under this Act.

Change in representative

(2) Whenever a trade union or unincorporated employers' organization changes the authorization referred to in subsection (1), it shall file with the Board notice thereof in the prescribed form within 15 days after making such change.

Service of notice

(3) Service on the person named in a notice or the latest notice, as the case may be, filed under subsection (1) is good and sufficient service for the purposes of this Act on the trade union or unincorporated employers' organization that filed the notice. 1995, c. 1, Sched. A, s. 94.

Publications

95 Every publication that deals with the relations between employers or employers' organizations and trade unions or employees shall bear the names and addresses of its printer and its publisher. 1995, c. 1, Sched. A, s. 95.

Indirect collection of personal information

95.1 If the Minister is authorized to collect personal information indirectly under this Act in a request, application, notification or filing given or made to the Minister, without limiting the Minister's ability to give notice in other ways, the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* may be given by a public notice posted on a Government of Ontario website. 2018, c. 14, Sched. 2, s. 13.

Section Amendments with date in force (d/m/y)

2018, c. 14, Sched. 2, s. 13 - 21/11/2018

ENFORCEMENT

Inquiry, alleged contravention

96 (1) The Board may authorize a labour relations officer to inquire into any complaint alleging a contravention of this Act. 1995, c. 1, Sched. A, s. 96 (1).

Duties

(2) The labour relations officer shall forthwith inquire into the complaint and endeavour to effect a settlement of the matter complained of. 1995, c. 1, Sched. A, s. 96 (2).

Report

(3) The labour relations officer shall report the results of his or her inquiry and endeavours to the Board. 1995, c. 1, Sched. A, s. 96 (3).

Remedy for discrimination

(4) Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint of a contravention of this Act and where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the

employer, employers' organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such determination, without limiting the generality of the foregoing may include, despite the provisions of any collective agreement, any one or more of,

- (a) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;
- (b) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to rectify the act or acts complained of; or
- (c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employers' organization, trade union, council of trade unions, employee or other person jointly or severally. 1995, c. 1, Sched. A, s. 96 (4).

Burden of proof

(5) On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization. 1995, c. 1, Sched. A, s. 96 (5).

Filing in court

(6) A trade union, council of trade unions, employer, employers' organization or person affected by the determination may file the determination, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 96 (6); 2000, c. 38, s. 13.

Effect of settlement

(7) Where a proceeding under this Act has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed by the parties or their representatives, the settlement is binding upon the parties, the trade union, council of trade unions, employer, employers' organization, person or employee who have agreed to the settlement and shall be complied with according to its terms, and a complaint that the trade union, council of trade unions, employer, employers' organization, person or employee who has agreed to the settlement has not complied with the terms of the settlement shall be deemed to be a complaint under subsection (1). 1995, c. 1, Sched. A, s. 96 (7).

No certification

(8) The Board shall not, under this section, certify a trade union as the bargaining agent of employees in a bargaining unit. 1998, c. 8, s. 9.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 9 - 29/06/1998

2000, c. 38, s. 13 - 30/12/2000

"person" defined for purposes of ss. 87, 96

97 For the purposes of section 87 and any complaint made under section 96,

"person" includes any person otherwise excluded by subsection 1 (3). 1995, c. 1, Sched. A, s. 97.

Board power re interim orders

98 (1) The Board may make interim decisions and orders in any proceeding. 2017, c. 22, Sched. 2, s. 10.

Conditions

(2) The Board may impose conditions on an interim decision or order. 2017, c. 22, Sched. 2, s. 10.

Reasons

(3) An interim decision or order need not be accompanied by reasons. 2017, c. 22, Sched. 2, s. 10.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 10 - 29/06/1998

2005, c. 15, s. 7 - 13/06/2005

Jurisdictional, etc., disputes

99 (1) This section applies when the Board receives a complaint,

- (a) that a trade union or council of trade unions, or an agent of either was or is requiring an employer or employers' organization to assign particular work to persons in a particular trade union or in a particular trade, craft or class rather than to persons in another;
- (b) that an employer was or is assigning work to persons in a particular trade union rather than to persons in another; or
- (c) that a trade union has failed to comply with its duties under section 74 or 75. 1995, c. 1, Sched. A, s. 99 (1).

Withdrawal of complaint

(2) A complaint described in subsection (1) may be withdrawn by the complainant upon such conditions as the Board may determine. 1995, c. 1, Sched. A, s. 99 (2).

No hearing

(3) The Board is not required to hold a hearing to determine a complaint under this section. 1995, c. 1, Sched. A, s. 99 (3).

Meeting of representatives

(4) Representatives of the trade union or council of trade unions and of the employer or employers' organization or their substitutes shall promptly meet and attempt to settle the matters raised by a complaint under clause (1) (a) or (b) and shall report the outcome to the Board. 1995, c. 1, Sched. A, s. 99 (4).

Orders

(5) The Board may make any interim or final order it considers appropriate after consulting with the parties. 1995, c. 1, Sched. A, s. 99 (5).

Cease and desist orders

(6) In an interim order or after making an interim order, the Board may order any person, employers' organization, trade union or council of trade unions to cease and desist from doing anything intended or likely to interfere with the terms of an interim order respecting the assignment of work. 1995, c. 1, Sched. A, s. 99 (6).

Alteration of bargaining unit

(7) When making an order or at any time after doing so, the Board may alter a bargaining unit determined in a certificate or defined in a collective agreement. 1995, c. 1, Sched. A, s. 99 (7).

Same

(8) If a collective agreement requires the reference of any difference between the parties arising out of work assignment to a tribunal mutually selected by them, the Board may alter the bargaining unit determined in a certificate or defined in a collective agreement as it considers proper to enable the parties to conform to the decision of the tribunal. 1995, c. 1, Sched. A, s. 99 (8).

Same, conflicting agreements

(9) Where an employer is a party to or is bound by two or more collective agreements and it appears that the description of the bargaining unit in one of the agreements conflicts with the description of the bargaining unit in the other or another of the agreements, the Board may, upon the application of the employer or any of the trade unions concerned, alter the description of the bargaining units in any such agreement as it considers proper, and the agreement or agreements shall be deemed to have been altered accordingly. 1995, c. 1, Sched. A, s. 99 (9).

Filing in court

(10) A party to an interim or final order may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 99 (10); 2000, c. 38, s. 14.

Enforcement

(11) An order that has been filed with the court is enforceable by a person, employers' organization, trade union or council of trade unions affected by it and is enforceable on the day after the date fixed in the order for compliance. 1995, c. 1, Sched. A, s. 99 (11).

Interim orders prevail

(12) A person, employers' organization, trade union or council of trade unions affected by an interim order made by the Board under this section shall comply with it despite any provision of this Act or of any collective agreement relating to the assignment of the work to which the order relates. 1995, c. 1, Sched. A, s. 99 (12).

Same

(13) A person, employers' organization, trade union or council of trade unions who is complying with an interim order made by the Board under this section is deemed not to have violated any provision of this Act or of any collective agreement. 1995, c. 1, Sched. A, s. 99 (13).

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 14 - 30/12/2000

Declaration and direction by Board re unlawful strike

100 Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike or that employees engaged in or threatened to engage in an unlawful strike or any person has done or is threatening to do an act that the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike, the Board may so declare and it may direct what action, if any, a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike. 1995, c. 1, Sched. A, s. 100.

Declaration and direction by Board in respect of unlawful lock-out

101 Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that an employer or employers organization called or authorized or threatened to call or authorize an unlawful lock-out or locked out or threatened to lock out employees or that an officer, official or agent of an employer or employers' organization counselled or procured or supported or encouraged an unlawful lock-out or threatened an unlawful lock-out, the Board may so declare and, in addition, in its discretion, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful lock-out or the threat of an unlawful lock-out. 1995, c. 1, Sched. A, s. 101.

Filing in court

102 A party to a direction made under section 100 or 101 may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 102; 2000, c. 38, s. 15; 2021, c. 25, Sched. 11, s. 1.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 15 - 30/12/2000

2021, c. 25, Sched. 11, s. 1 - 03/06/2021

Claim for damages after unlawful strike or lock-out where no collective agreement

103 (1) Where the Board declares that a trade union or council of trade unions has called or authorized an unlawful strike or that an employer or employers' organization has called or authorized an unlawful lock-out and no collective agreement is in operation between the trade union or council of trade unions and the employer or employers' organization, as the case may be, the trade union or council of trade unions or employer or employers' organization may, within 15 days of the release of the Board's declaration, but not thereafter, notify the employer or employers' organization or trade union or council of trade unions, as the case may be, in writing of its intention to claim damages for the unlawful strike or lock-out, and the notice shall contain the name of its appointee to an arbitration board.

Appointment of arbitration board

(2) The recipient of the notice shall within five days inform the sender of the notice of the name of its appointee to the arbitration board.

Same

(3) The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chair.

Same

(4) If the recipient of the notice fails to name an appointee, or if the two appointees fail to agree upon a chair within the time limited, the appointment shall be made by the Minister upon the request of either party.

Decision of arbitration board

(5) The arbitration board shall hear and determine the claim for damages including any question as to whether the claim is arbitrable and shall issue a decision and the decision is final and binding upon the parties to the arbitration, and,

- (a) in the case of a council of trade unions, upon the members of affiliates of the council who are affected by the decision; and
- (b) in the case of an employers' organization, upon the employers in the organization who are affected by the decision.

Same

(6) The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chair governs.

Remuneration of members of board

(7) The chair and members of the arbitration board under this section shall be paid remuneration and expenses at the same rate as is payable to a chair and members of a conciliation board under this Act, and the parties to the arbitration are jointly and severally liable for the payment of the fees and expenses.

Procedure of board

(8) In an arbitration under this section, subsections 48 (6), (8), (9), (11) to (13), (19) and (20) apply with necessary modifications. 1995, c. 1, Sched. A, s. 103.

Offences

104 (1) Every person, trade union, council of trade unions or employers' organization that contravenes any provision of this Act or of any decision, determination, interim order, order, direction, declaration or ruling made under this Act is guilty of an offence and on conviction is liable,

- (a) if an individual, to a fine of not more than \$2,000; or
 - (b) if a corporation, trade union, council of trade unions or employers' organization, to a fine of not more than \$25,000.
- 1995, c. 1, Sched. A, s. 104 (1); 2017, c. 22, Sched. 2, s. 11; 2018, c. 14, Sched. 2, s. 14.

Continued offences

(2) Each day that a person, trade union, council of trade unions or employers' organization contravenes any provision of this Act or of any decision, determination, interim order, order, direction, declaration or ruling made under this Act constitutes a separate offence. 1995, c. 1, Sched. A, s. 104 (2).

Disposition of fines

(3) Every fine recovered for an offence under this Act shall be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund. 1995, c. 1, Sched. A, s. 104 (3).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 11 (1, 2) - 01/01/2018

2018, c. 14, Sched. 2, s. 14 (1, 2) - 21/11/2018

Information may be in respect of one or more offences

105 An information in respect of a contravention of this Act may be for one or more offences and no information, warrant, conviction or other step or procedure in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. 1995, c. 1, Sched. A, s. 105.

Parties

106 If a corporation, trade union, council of trade unions or employers' organization is guilty of an offence under this Act, every officer, official or agent thereof who assented to the commission of the offence shall be deemed to be a party to and guilty of the offence. 1995, c. 1, Sched. A, s. 106.

Style of prosecution

107 (1) A prosecution for an offence under this Act may be instituted against a trade union or council of trade unions or employers' organization in the name of the union, council or organization.

Vicarious responsibility

(2) Any act or thing done or omitted by an officer, official or agent of a trade union or council of trade unions or employers' organization within the scope of the officer, official or agent's authority to act on behalf of the union, council or organization shall be deemed to be an act or thing done or omitted by the union, council or organization. 1995, c. 1, Sched. A, s. 107.

Proceedings in Superior Court of Justice

108 Where a trade union, a council of trade unions or an unincorporated employers' organization is affected by a determination of the Board under section 96, an interim order of the Board under section 99 or a direction of the Board under section 100, 101 or 144 or a decision of an arbitrator or arbitration board including a decision under section 103, proceedings to enforce the determination, interim order, direction or decision may be instituted in the Superior Court of Justice by or against the union, council or organization in the name of the union, council or organization, as the case may be. 1995, c. 1, Sched. A, s. 108; 2000, c. 38, s. 16.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 16 - 30/12/2000

Consent

109 (1) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board.

Information

(2) An application for consent to institute a prosecution for an offence under this Act may be made by a trade union, a council of trade unions, a corporation or an employers' organization among others, and, if the consent is given by the Board, the information may be laid by any officer, official or member of the trade union, council of trade unions, corporation or employers' organization among others. 1995, c. 1, Sched. A, s. 109.

ADMINISTRATION

Board

110 (1) The board known as the Ontario Labour Relations Board is continued under the name Ontario Labour Relations Board in English and Commission des relations de travail de l'Ontario in French. 1995, c. 1, Sched. A, s. 110 (1).

Composition and appointment

(2) The Board shall be composed of a chair, one or more vice-chairs and as many members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council. 1995, c. 1, Sched. A, s. 110 (2).

Alternate chair

(3) The Lieutenant Governor in Council shall designate one of the vice-chairs to be the alternate chair. 1995, c. 1, Sched. A, s. 110 (3).

Divisions

(4) The chair or, in the case of his or her absence from the office of the Board or his or her inability to act, the alternate chair shall from time to time assign the members of the Board to its various divisions and may change any such assignment at any time. 1995, c. 1, Sched. A, s. 110 (4).

Construction industry division

(5) One of the divisions of the Board shall be designated by the chair as the construction industry division, and it shall exercise the powers of the Board under this Act in proceedings to which sections 126 to 168 apply, but nothing in this subsection impairs the authority of any other division to exercise such powers. 1995, c. 1, Sched. A, s. 110 (5).

Vacancies

(6) Vacancies in the membership of the Board from any cause may be filled by the Lieutenant Governor in Council. 1995, c. 1, Sched. A, s. 110 (6).

Powers following resignation, etc.

(7) If a member of the Board resigns or his or her appointment expires, the chair of the Board may authorize the member to complete the duties or responsibilities and exercise the powers of a member in connection with any matter in respect of which there was a proceeding in which he or she participated as a member. 1995, c. 1, Sched. A, s. 110 (7).

Oath of office

(8) Each member of the Board shall, before entering upon his or her duties, take and subscribe before the Clerk of the Executive Council and file in his or her office an oath of office in the following form in English or French:

I do solemnly swear (or solemnly affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of chair, (*or* vice-chair, *or* member) of the Ontario Labour Relations Board and I will not, except in the discharge of my duties, disclose to any person any of the evidence or any other matter brought before the Board. So help me God. (omit this phrase in an affirmation)

1995, c. 1, Sched. A, s. 110 (8).

Quorum

(9) The chair or a vice-chair, one member representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board. 1995, c. 1, Sched. A, s. 110 (9).

May sit in divisions

(10) The Board may sit in two or more divisions simultaneously so long as a quorum of the Board is present in each division. 1995, c. 1, Sched. A, s. 110 (10).

Decisions

(11) The decision of the majority of the members of the Board present and constituting a quorum is the decision of the Board, but, if there is no majority, the decision of the chair or vice-chair governs. 1995, c. 1, Sched. A, s. 110 (11).

Death or incapacity

(12) Despite subsections (9), (10) and (11), if a member representative of either employers or employees dies or, in the opinion of the chair, is unable or unwilling to continue to hear and determine an application, request, complaint, matter or thing, the chair or vice-chair, as the case may be, who was also hearing it may sit alone to hear and determine it and may exercise all of the jurisdiction and powers of the Board when doing so. 1998, c. 8, s. 11 (1).

Same

(13) The chair or vice-chair shall decide whether to sit alone in the circumstances described in subsection (12). 1995, c. 1, Sched. A, s. 110 (13).

When chair or vice-chair may sit alone

(14) Despite subsections (9), (10) and (11), the chair may sit alone or may authorize a vice-chair to sit alone to hear and determine a matter and to exercise all the powers of the Board when doing so,

- (a) if the chair considers it advisable to do so; or
- (b) if the parties consent. 1995, c. 1, Sched. A, s. 110 (14).

Same

(14.1) Despite subsections (9), (10), (11) and (14), the chair shall sit alone or shall authorize a vice-chair to sit alone to hear and determine a matter under section 74 and to exercise all of the powers of the Board when doing so, except when the chair considers it inadvisable for the chair or a vice-chair to sit alone. 2000, c. 38, s. 17 (1).

Same

(15) For the purposes of subsections (14) and (14.1), if the chair is absent or not able to act, the alternate chair may act in his or her stead. 2000, c. 38, s. 17 (2).

Practice and procedure

(16) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions. 1995, c. 1, Sched. A, s. 110 (16).

Rules of practice

(17) The chair may make rules governing the Board's practice and procedure and the exercise of its powers and prescribing such forms as the chair considers advisable. 1998, c. 8, s. 11 (2).

Same

(18) The chair may make rules to expedite proceedings to which the following provisions apply:

0.1 Section 8.1 (Disagreement by employer with union's estimate).

1. Section 13 (right of access) or 98 (interim orders).

1.1 Section 89.1 (interference with local trade union).

2. Section 99 (jurisdictional, etc., disputes).

3. Subsection 114 (2) (status as employee or guard).

4. Sections 126 to 168 (construction industry).

5. Such other provisions as the Lieutenant Governor in Council may by regulation designate. 1995, c. 1, Sched. A, s. 110 (18); 1998, c. 8, s. 11 (3, 4); 2018, c. 8, Sched. 14, s. 3.

(19) REPEALED: 2018, c. 14, Sched. 2, s. 15.

Special provisions

(20) Rules made under subsection (18),

(a) may provide that the Board is not required to hold a hearing;

(b) may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions; and

(c) may authorize the Board to make or cause to be made such examination of records and such other inquiries as it considers necessary in the circumstances. 1995, c. 1, Sched. A, s. 110 (20).

Conflict with *Statutory Powers Procedure Act*

(21) Rules made under subsection (18) apply despite anything in the *Statutory Powers Procedure Act*. 1995, c. 1, Sched. A, s. 110 (21).

Rules not regulations

(22) Rules made under subsection (17) or (18) are not regulations within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1995, c. 1, Sched. A, s. 110 (22); 2006, c. 21, Sched. F, s. 136 (1).

Board, registrar, etc.

(23) The Lieutenant Governor in Council may appoint a registrar, such other officers and such clerks and servants as are required for the purposes of the Board and they shall exercise the powers and perform the duties as are conferred or imposed upon them by the Board. 1995, c. 1, Sched. A, s. 110 (23).

Remuneration

(24) The members, the other officers and the clerks and servants of the Board shall be paid such remuneration as the Lieutenant Governor in Council may determine. 1995, c. 1, Sched. A, s. 110 (24).

Seal

(25) The Board shall have an official seal. 1995, c. 1, Sched. A, s. 110 (25).

Office, sittings

(26) The office of the Board shall be in Toronto, but the Board may sit at other places that it considers expedient. 1995, c. 1, Sched. A, s. 110 (26).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 11 (1-4) - 29/06/1998

2000, c. 38, s. 17 - 30/12/2000

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

Powers and duties of Board, general

111 (1) The Board shall exercise the powers and perform the duties that are conferred or imposed upon it by or under this Act. 1995, c. 1, Sched. A, s. 111 (1).

Specific

(2) Without limiting the generality of subsection (1), the Board has power,

- (a) to require any party to furnish particulars before or during a hearing;
- (b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing;
- (c) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce the documents and things that the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases;
- (d) to administer oaths and affirmations;
- (e) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;
- (f) to require persons or trade unions, whether or not they are parties to proceedings before the Board, to post and to keep posted upon their premises in a conspicuous place or places, where they are most likely to come to the attention of all persons concerned, any notices that the Board considers necessary to bring to the attention of such persons in connection with any proceedings before the Board;
- (g) to enter any premises where work is being or has been done by the employees or in which the employer carries on business, whether or not the premises are those of the employer, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any matter and post therein any notice referred to in clause (f);
- (h) to enter upon the premises of employers and conduct representation votes, strike votes and ratification votes during working hours and give such directions in connection with the vote as it considers necessary;
- (h.1) to conduct votes at a location or in a manner that, in the opinion of the Board, is appropriate in the circumstances, including to conduct votes outside the workplace and to conduct votes electronically or by telephone;
- (h.2) to issue direction relating to the voting process or voting arrangements;
 - (i) to authorize any person to do anything that the Board may do under clauses (a) to (h.2) and to report to the Board thereon;
 - (j) to authorize the chair, a vice-chair or a labour relations officer to inquire into any application, request, complaint, matter or thing within the jurisdiction of the Board, or any part of any of them, and to report to the Board thereon;
 - (k) to bar an unsuccessful applicant for any period not exceeding one year from the date of the dismissal of the unsuccessful application, or to refuse to entertain a new application by an unsuccessful applicant or by any of the employees affected by an unsuccessful application or by any person or trade union representing the employees within any period not exceeding one year from the date of the dismissal of the unsuccessful application;
 - (l) to determine the form in which evidence of membership in a trade union or of signification by employees that they no longer wish to be represented by a trade union shall be presented to the Board on an application for certification or for a declaration terminating bargaining rights, and to refuse to accept any evidence of membership or signification that is not presented in the form so determined;
 - (m) to determine the form in which and the time as of which evidence of representation by an employers' organization or of objection by employers to accreditation of an employers' organization or of signification by employers that they no longer wish to be represented by an employers' organization shall be presented to the Board in an application for accreditation or for a declaration terminating bargaining rights of an employers' organization and to refuse to accept any evidence of representation or objection or signification that is not presented in the form and as of the time so determined;
 - (n) to determine the form in which and the time as of which any party to a proceeding before the Board must file or present any thing, document or information and to refuse to accept any thing, document or information that is not filed or presented in that form or by that time. 1995, c. 1, Sched. A, s. 111 (2); 2017, c. 22, Sched. 2, s. 12.

Subsequent applications for certification, etc.

(3) Despite sections 7 and 63, where an application has been made for certification of a trade union as bargaining agent for employees in a bargaining unit or for a declaration that the trade union no longer represents the employees in a bargaining unit and a final decision of the application has not been issued by the Board at the time a subsequent application for the certification or for the declaration is made with respect to any of the employees affected by the original application, the Board may,

- (a) treat the subsequent application as having been made on the date of the making of the original application;
- (b) postpone consideration of the subsequent application until a final decision has been issued on the original application and thereafter consider the subsequent application but subject to any final decision issued by the Board on the original application; or
- (c) refuse to entertain the subsequent application. 1995, c. 1, Sched. A, s. 111 (3).

Determination of union membership

(4) Where the Board is satisfied that a trade union has an established practice of admitting persons to membership without regard to the eligibility requirements of its charter, constitution or by-laws, the Board, in determining whether a person is a member of a trade union, need not have regard for the eligibility requirements. 1995, c. 1, Sched. A, s. 111 (4).

Additional votes

(5) Where the Board determines that a representation vote is to be taken amongst the employees in a bargaining unit or voting constituency, the Board may hold the additional representation votes as it considers necessary to determine the true wishes of the employees. 1995, c. 1, Sched. A, s. 111 (5).

Same

(6) Where, in the taking of a representation vote, the Board determines that the employees are to be given a choice between two or more trade unions,

- (a) the Board may include on a ballot a choice indicating that an employee does not wish to be represented by a trade union; and
- (b) the Board, when it decides to hold the additional representation votes that may be necessary, may eliminate from the choice on the ballot the choice from the previous ballot that has obtained the lowest number of votes cast. 1995, c. 1, Sched. A, s. 111 (6).

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 2, s. 12 (1, 2) - 01/01/2018

Mistakes in names of parties

112 Where in any proceeding before the Board the Board is satisfied that a mistake has been made in good faith with the result that the proper person or trade union has not been named as a party or has been incorrectly named, the Board may order the proper person or trade union to be substituted or added as a party to the proceedings or to be correctly named upon such terms as appear to the Board to be just. 1995, c. 1, Sched. A, s. 112.

Proof of status of trade union

113 Where in any proceeding under this Act the Board has found or finds that an organization of employees is a trade union within the meaning of subsection 1 (1), such finding is proof, in the absence of evidence to the contrary, in any subsequent proceeding under this Act that the organization of employees is a trade union for the purposes of this Act. 1995, c. 1, Sched. A, s. 113.

Jurisdiction

114 (1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

Same

(2) If, in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, a question arises as to whether a person is an employee or as to whether a person is a guard, the question may be referred to the Board and the decision of the Board thereon is final and conclusive for all purposes.

Findings of hearing-officer conclusive

(3) Where the Board has authorized the chair or a vice-chair to make an inquiry under clause 111 (2) (j), his or her findings and conclusions on facts are final and conclusive for all purposes, but nevertheless he or she may, if he or she considers it advisable to do so, reconsider his or her findings and conclusions on facts and vary or revoke any such finding or conclusion. 1995, c. 1, Sched. A, s. 114.

Reference of questions

115 (1) The Minister may refer to the Board any question which in his or her opinion relates to the exercise of his or her powers under this Act and the Board shall report its decision on the question.

Same

(2) If the Minister refers to the Board a question involving the applicability of section 68 (declaration of successor union) or 69 (sale of a business), the Board has the powers it would have if an interested party had applied to the Board for such a determination and may give such directions as to the conduct of its proceedings as it considers advisable. 1995, c. 1, Sched. A, s. 115.

When no decision, etc., after six months

115.1 (1) This section applies if the Board has commenced a hearing in a proceeding, six months or more have passed since the last day of hearing and a decision, order, direction, declaration or ruling of the Board has not been made. 2000, c. 38, s. 18.

Termination of proceeding

(2) On the application of a party in the proceeding, the chair may terminate the proceeding. 2000, c. 38, s. 18.

Re-institution of proceeding

(3) If a proceeding is terminated according to subsection (2), the chair shall re-institute the proceeding upon such terms and conditions as the chair considers appropriate, subject to subsection (4). 2000, c. 38, s. 18.

Heard by different Board members

(4) Despite subsections 110 (9), (14) and (14.1), the re-instituted proceeding shall be heard by a member or members of the Board, as the case may be, who are different than those who heard the proceeding before its re-institution. 2000, c. 38, s. 18.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 18 - 30/12/2000

Board's orders not subject to review

116 No decision, order, direction, declaration or ruling of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question, review, prohibit or restrain the Board or any of its proceedings. 1995, c. 1, Sched. A, s. 116.

Testimony in civil proceedings, etc.

117 Except with the consent of the Board, no member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil proceeding or in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this Act. 1995, c. 1, Sched. A, s. 117.

Documentary evidence

118 The production in a court of a document purporting to be or to contain a copy of a decision, determination, report, interim order, order, direction, declaration or ruling of the Board, a conciliation board, a mediator, an arbitrator or an arbitration board and purporting to be signed by a member of the Board or its registrar, the chair of the conciliation board, the mediator, the arbitrator or the chair of the arbitration board, as the case may be, is proof, in the absence of evidence to the contrary, of the document without proof of the appointment, authority or signature of the person who signed the document. 1995, c. 1, Sched. A, s. 118.

Powers under the *Canada Labour Code*

118.1 If a regulation under the *Canada Labour Code* incorporates by reference all or part of this Act or a regulation under this Act, the Board and any person having powers under this Act may exercise any powers conferred under the regulation under the *Canada Labour Code*. 1998, c. 8, s. 12.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 12 - 29/06/1998

GENERAL

Secrecy

119 (1) The records of a trade union relating to membership or any records that may disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in a proceeding before the Board is for the exclusive use of the Board and its officers and shall not, except with the consent of the Board, be disclosed, and no person shall, except with the consent of the Board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union. 1995, c. 1, Sched. A, s. 119 (1).

Non-disclosure

(2) No information or material furnished to or received by a conciliation officer or a mediator,

(a) under this Act; or

(b) in the course of any endeavour that a conciliation officer may make under the direction of the Minister to effect a collective agreement after the Minister,

(i) has released the report of a conciliation board or a mediator, or

(ii) has informed the parties that he or she does not consider it advisable to appoint a conciliation board,

shall be disclosed except to the Minister, the Deputy Minister of Labour, an Assistant Deputy Minister of Labour or the Director of Dispute Resolution Services. 1995, c. 1, Sched. A, s. 119 (2); 2006, c. 19, Sched. M, s. 3 (1); 2009, c. 33, Sched. 20, s. 2 (2).

Same

(3) No report of a conciliation officer shall be disclosed except to the Minister, the Deputy Minister of Labour, an Assistant Deputy Minister of Labour or the Director of Dispute Resolution Services. 1995, c. 1, Sched. A, s. 119 (3); 2006, c. 19, Sched. M, s. 3 (2); 2009, c. 33, Sched. 20, s. 2 (3).

Same, labour relations officers, etc.

(4) Subject to subsection (6), no information or material furnished to or received by a labour relations officer, grievance mediator or other person appointed under this Act to effect the settlement of a dispute or the mediation of a matter shall be disclosed except to the Board or to the Director of Dispute Resolution Services. 1995, c. 1, Sched. A, s. 119 (4); 1998, c. 8, s. 13 (1); 2009, c. 33, Sched. 20, s. 2 (4).

Same

(5) Subject to subsection (6), no report of a labour relations officer, grievance mediator or other person appointed under this Act to effect the settlement of a dispute or the mediation of a matter shall be disclosed except to the Board or to the Director of Dispute Resolution Services. 1995, c. 1, Sched. A, s. 119 (5); 1998, c. 8, s. 13 (2); 2009, c. 33, Sched. 20, s. 2 (5).

Authorization to disclose

(6) The Board or the Director of Dispute Resolution Services, as the case may be, may authorize the disclosure of information, material or reports. 1995, c. 1, Sched. A, s. 119 (6); 1998, c. 8, s. 13 (3); 2009, c. 33, Sched. 20, s. 2 (6).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 13 - 29/06/1998

2006, c. 19, Sched. M, s. 3 (1, 2) - 22/06/2006

2009, c. 33, Sched. 20, s. 2 (2-6) - 15/12/2009

Competency as a witness

120 (1) The following persons are not competent or compellable witnesses before a court or tribunal respecting any information or material furnished to or received by them while being involved in an endeavour to effect a collective agreement:

1. The Minister.

2. A deputy minister in the Ministry of Labour.

3. An assistant deputy minister of Labour.
4. The Director of Dispute Resolution Services.
5. The chair or a member of a conciliation board.
6. Any other person appointed by the Minister under this Act or authorized in writing by the Director of Dispute Resolution Services. 2000, c. 38, s. 19; 2009, c. 33, Sched. 20, s. 2 (7, 8).

Same

(2) The following persons are not competent or compellable witnesses before a court or tribunal respecting any information or material furnished to or received by them while acting within the scope of their employment under this Act:

1. The Director of Dispute Resolution Services.
2. A person appointed by the Minister under this Act or under a collective agreement to effect the settlement of a dispute or the mediation of a matter. 1995, c. 1, Sched. A, s. 120 (2); 1998, c. 8, s. 14 (2); 2009, c. 33, Sched. 20, s. 2 (9).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 14 (2) - 29/06/1998

2000, c. 38, s. 19 - 30/12/2000

2009, c. 33, Sched. 20, s. 2 (7-9) - 15/12/2009

Delegation

121 (1) The Minister may delegate in writing to any person the Minister's power to make an appointment, order or direction under this Act.

Proof of appointment, etc.

(2) An appointment, an order or a direction made under this Act that purports to be signed by or on behalf of the Minister shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it without proof of the signature or the position of the person appearing to have signed it. 1995, c. 1, Sched. A, s. 121.

Application

122 (1) The provisions of this section apply, subject to any rules made under subsection 110 (17) or (18). 2018, c. 14, Sched. 2, s. 16 (1).

Notice

(1.1) For the purposes of this Act, and any proceedings taken under it, any notice or communication may be sent,

- (a) by mail;
- (b) by courier;
- (c) by fax;
- (d) by email; or
- (e) by any other method that may be prescribed. 2018, c. 14, Sched. 2, s. 16 (1).

Presumed receipt of mail

(1.2) For the purposes of this Act and of any proceedings taken under it, any notice or communication sent by mail shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail. 2018, c. 14, Sched. 2, s. 16 (1).

Same

(1.3) For the purposes of this Act and of any proceedings taken under it, any notice or communication sent by the Minister, the Board or the Director of Dispute Resolution Services by a method mentioned in subsection (1.1) shall be presumed, unless the contrary is proved, to have been received by the addressee. 2018, c. 14, Sched. 2, s. 16 (1).

Time of release

(2) A decision, determination, report, interim order, order, direction, declaration or ruling of the Board, a notice that the Minister does not consider it advisable to appoint a conciliation board, a notice from the Minister of a report of a conciliation

board or of a mediator, or a decision of an arbitrator or of an arbitration board, shall be deemed to be released on the day it is sent. 2018, c. 14, Sched. 2, s. 16 (1).

Failure to receive documents a defence

(3) Proof by a person, employers' organization, trade union or council of trade unions of failure to receive a determination under section 96 or an interim order or direction under section 99 or a direction of the Board under section 100, 101 or 144, or a decision of an arbitrator or of an arbitration board including a decision under section 103 sent to the person, employers' organization, trade union or council of trade unions at his, her or its last-known address is a defence by the person, employers' organization, trade union or council of trade unions to an application for consent to institute a prosecution or to enforce as an order of the Superior Court of Justice the determination, interim order, direction or decision. 1995, c. 1, Sched. A, s. 122 (3); 2000, c. 38, s. 20; 2018, c. 14, Sched. 2, s. 16 (2).

Second notice of desire to bargain

(4) Where a notice has been given under section 59 and the addressee claims that he, she or it has not received the notice, the person, employers' organization, trade union or council of trade unions that gave the notice may give a second notice to the addressee forthwith after he, she or it ascertains that the first notice had not been received, but in no case may the second notice be given more than three months after the day on which the first notice was sent, and the second notice has the same force and effect for the purposes of this Act as the first notice would have had if it had been received by the addressee. 1995, c. 1, Sched. A, s. 122 (4); 2018, c. 14, Sched. 2, s. 16 (3).

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 20 - 30/12/2000

2018, c. 14, Sched. 2, s. 16 (1-3) - 21/11/2018

Requests, applications etc. to Minister

122.1 (1) Any request, application, notification, report or filing that is given or made to the Minister under this Act shall be given or made by,

- (a) delivering it to the Minister's office on a day and at a time when it is open;
- (b) mailing it to the Minister's office using a method of mail delivery that allows delivery to be verified;
- (c) sending it to the Minister's office by fax or email;
- (d) electronically filing it with the Minister's office; or
- (e) sending it to the Minister's office by any other method that may be prescribed. 2018, c. 14, Sched. 2, s. 17.

Deemed receipt

(2) A request, application, notification, report or filing that is given or made as described in subsection (1) shall be deemed to be received by the Minister,

- (a) in the case of clause (1) (a), on the day shown on a receipt or acknowledgment provided by the Minister or his or her representative;
- (b) in the case of clause (1) (b), on the day shown in the verification;
- (c) in the case of clause (1) (c), on the day on which the fax or email is sent, subject to subsection (3);
- (d) in the case of clause (1) (d), on the day on which the electronic filing was made, subject to subsection (3); and
- (e) in the case of clause (1) (e), on the prescribed day. 2018, c. 14, Sched. 2, s. 17.

Same

(3) If a fax, email or electronic filing is sent on a day on which the Minister's office is closed, or after 5 p.m. eastern standard or daylight saving time on any day, it shall be deemed to have been received on the next day on which the Minister's office is not closed. 2018, c. 14, Sched. 2, s. 17.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 122.1 (3) of the Act is amended by striking out "eastern standard or daylight saving time" and substituting "eastern standard time". (See: 2020, c. 28, s. 3)

Same

(4) If the Minister's power that corresponds to the request, application, notification, report or filing has been delegated, the reference to the Minister in subsections (1) to (3) shall be read as a reference to the Minister's delegate. 2018, c. 14, Sched. 2, s. 17.

Section Amendments with date in force (d/m/y)

2018, c. 14, Sched. 2, s. 17 - 21/11/2018

2020, c. 28, s. 3 - not in force

Defects in form; technical irregularities

123 No proceeding under this Act is invalid by reason of any defect of form or any technical irregularity and no proceeding shall be quashed or set aside if no substantial wrong or miscarriage of justice has occurred. 1995, c. 1, Sched. A, s. 123.

Administration cost

124 The expenses incurred in the administration of this Act shall be paid out of the money that is appropriated by the Legislature for the purpose. 1995, c. 1, Sched. A, s. 124.

Remuneration and expenses of conciliation boards, etc.

124.1 (1) The Minister may issue orders providing for and fixing the remuneration and expenses of chairs of conciliation boards, members of conciliation boards, mediators, special officers appointed under section 38 and members of a Disputes Advisory Committee. 2006, c. 19, Sched. M, s. 3 (3).

Same

(2) An order of the Minister under subsection (1) shall not provide for or fix any remuneration or expenses of any person referred to in that subsection who is a public servant employed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 57 (4).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. M, s. 3 (3) - 22/06/2006; 2006, c. 35, Sched. C, s. 57 (4) - 20/08/2007

Regulations

125 (1) The Lieutenant Governor in Council may make regulations,

- (a) providing for and regulating the engagement of experts, investigators and other assistants by conciliation boards;
- (b) governing the assignment of arbitrators to conduct arbitrations and the carrying out and completion of the assignments;
- (c) providing for and prescribing a scale of fees and expenses allowable to arbitrators in respect of arbitrations and limiting or restricting the application of such a regulation;
- (d) providing a procedure for the review and determination of disputes concerning the fees and expenses charged or claimed by an arbitrator;
- (e) governing the filing of schedules of fees and expenses by arbitrators, requiring arbitrators to provide parties with a copy of the schedules upon being appointed and requiring arbitrators to charge fees and expenses in accordance with the filed schedules;
- (f) respecting training programs for arbitrators;
- (g) REPEALED: 2006, c. 19, Sched. M, s. 3 (4).
- (h) governing the conduct of arbitration hearings and prescribing procedures therefor;
- (i) requiring the filing with the Ministry of Labour of awards of arbitrators and arbitration boards and providing for the publication of such awards by the Minister;
- (i.1) prescribing information for the purposes of subsection 18 (2.1);
- (i.2)-(i.4) REPEALED: 2018, c. 14, Sched. 2, s. 18 (2).
- (j) prescribing amounts or a method of determining amounts payable under subsection 43 (5) for the expense of a mediation-arbitration by the Board;
- (j.1) prescribing other methods of sending a notice or communication for the purposes of clause 122 (1.1) (e);
- (j.2) prescribing other methods of sending a request, application, notification, report or filing for the purposes of clause 122.1 (1) (e) and the date on which such a document is deemed to be received for the purposes of clause 122.1 (2) (e);
- (k) prescribing amounts for the expense of proceedings under section 133 and providing for the adjustment of the amounts in exceptional circumstances;

- (l) prescribing forms and providing for their use, including the form in which the documents mentioned in sections 48, 96, 99, 102, 103 and 144 shall be filed in the Superior Court of Justice;

(1.0.0.1), (1.0.0.2) REPEALED: 2019, c. 9, Sched. 8, s. 1 (1).

(1.0.1) designating regional employers' organizations for the purposes of section 151;

(1.0.2) REPEALED: 2019, c. 9, Sched. 8, s. 1 (1).

- (1.1) prescribing the parties to an application under subsection 163.1 (3) or governing the specifying of such parties by the Board;
- (1.2) designating projects in the construction industry that are not industrial projects as projects that may be the subject of a project agreement under section 163.1 or 163.1.1 and providing for section 163.1 or 163.1.1, as the case may be, to apply with respect to those projects, and prescribing modifications to those provisions for the purpose;
- (1.3) prescribing, for the purposes of paragraph 6 of subsection 163.1 (9), circumstances in which the Board may declare that a proposed project agreement shall not come into force;
- (m) respecting any matter necessary or advisable to carry out the intent and purpose of this Act. 1995, c. 1, Sched. A, s. 125; 1998, c. 8, s. 15; 2000, c. 24, s. 1; 2000, c. 38, s. 21; 2006, c. 19, Sched. M, s. 3 (4); 2017, c. 22, Sched. 2, s. 13 (1-3); 2018, c. 8, Sched. 14, s. 4; 2018, c. 14, Sched. 2, s. 18 (1-4); 2019, c. 9, Sched. 8, s. 1 (1).

Transitional regulations

(2) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Fair Workplaces, Better Jobs Act, 2017*. 2017, c. 22, Sched. 2, s. 13 (4).

Same

(2.1) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by Schedule 2 to the *Making Ontario Open for Business Act, 2018*. 2018, c. 14, Sched. 2, s. 18 (5).

Same

(2.2) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Restoring Ontario's Competitiveness Act, 2019*. 2019, c. 4, Sched. 9, s. 12 (1).

Conflict with transitional regulations

(3) In the event of a conflict between this Act and a regulation made under subsection (2), (2.1) or (2.2), the regulation prevails. 2017, c. 22, Sched. 2, s. 13 (4); 2018, c. 14, Sched. 2, s. 18 (6); 2019, c. 4, Sched. 9, s. 12 (2).

Transitional regulations

(4) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by Schedule 8 to the *More Homes, More Choice Act, 2019*. 2019, c. 9, Sched. 8, s. 1 (2).

Conflict with transitional regulations

(5) In the event of a conflict between this Act and a regulation made under subsection (4), the regulation prevails. 2019, c. 9, Sched. 8, s. 1 (2).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 15 - 29/06/1998

2000, c. 24, s. 1 - 16/12/2000; 2000, c. 38, s. 21 - 30/12/2000

2006, c. 19, Sched. M, s. 3 (4) - 30/09/2016

2017, c. 22, Sched. 2, s. 13 (1-4) - 01/01/2018

2018, c. 8, Sched. 14, s. 4 - 08/05/2018; 2018, c. 14, Sched. 2, s. 18 (1-6) - 21/11/2018

2019, c. 4, Sched. 9, s. 12 (1, 2) - 04/07/2019; 2019, c. 9, Sched. 8, s. 1 (1, 2) - 06/06/2019

CONSTRUCTION INDUSTRY

Interpretation

126 (1) In this section and in sections 126.1 to 168,

“council of trade unions” means a council that is formed for the purpose of representing or that according to established bargaining practice represents trade unions as defined in this section; (“conseil de syndicats”)

“employee” includes an employee engaged in whole or in part in off-site work but who is commonly associated in work or bargaining with on-site employees; (“employé”)

“employer” means a person other than a non-construction employer who operates a business in the construction industry, and for purposes of an application for accreditation means an employer other than a non-construction employer for whose employees a trade union or council of trade unions affected by the application has bargaining rights in a particular geographic area and sector or areas or sectors or parts thereof; (“employeur”)

“employers’ organization” means an organization that is formed for the purpose of representing or represents employers as defined in this section; (“association patronale”)

“non-construction employer” means,

- (a) an employer who does no work in the construction industry for which the employer expects compensation from an unrelated person, or
- (b) an employer who is deemed to be a non-construction employer under subsection 127 (1); (“employeur extérieur à l’industrie de la construction”)

“sector” means a division of the construction industry as determined by work characteristics and includes the industrial, commercial and institutional sector, the residential sector, the sewers and watermains sector, the roads sector, the heavy engineering sector, the pipeline sector and the electrical power systems sector; (“secteur”)

“trade union” means a trade union that according to established trade union practice pertains to the construction industry. (“syndicat”) 1995, c. 1, Sched. A, s. 126; 1998, c. 8, s. 16; 2000, c. 38, s. 22; 2019, c. 4, Sched. 9, s. 13.

Application of subss. (3, 5)

(2) Subsections (3) and (5) apply with respect to an employer or a non-construction employer where a trade union, council of trade unions or affiliated bargaining agent or employee bargaining agency, as defined in section 151, has bargaining rights in relation to construction work performed by or on behalf of that employer or non-construction employer. 2000, c. 24, s. 2.

Single employer declarations

(3) The following apply if an application is made under subsection 1 (4) for a declaration that two or more entities should be treated as constituting one employer and any of the entities is an employer or a non-construction employer:

1. The Board shall not consider any relationship by way of blood, marriage or adoption between an individual having a direct or indirect involvement with one of the entities and an individual having a direct or indirect involvement with any of the other entities.
2. If the applicant proposes that the entities should be treated as constituting one employer because an individual was a key individual with respect to two or more of them and if the time at which the individual was alleged to have been a key individual with respect to one of the entities is a different time than that at which he or she is alleged to have been a key individual with respect to the others, the Board shall consider,
 - i. the length of any hiatus between when the individual was a key individual with the one entity and when the individual was a key individual with the other entity or entities,
 - ii. whether the first entity with respect to which the individual is alleged to have been a key individual was one with which he or she occupied a formal management role, and
 - iii. whether the first entity with respect to which the individual is alleged to have been a key individual was able to carry on business without substantial disruption or loss when he or she ceased to be involved with that entity. 2000, c. 24, s. 2.

Definition

(4) In subsection (3),

“entity” means a corporation, individual, firm, syndicate or association or any combination of any of them. 2000, c. 24, s. 2.

Sale of a business

(5) In determining whether an employer or a non-construction employer has sold a business, the following apply:

1. The Board shall not consider any relationship by way of blood, marriage or adoption between an individual having a direct or indirect involvement with the employer or non-construction employer that sold the business and an individual having a direct or indirect involvement with the person to whom the business was allegedly sold.
2. If it is alleged that the employer or non-construction employer sold a business because an individual was a key individual in relation both to the alleged seller and to the person to whom the business was allegedly sold and if the time at which the individual was alleged to have been a key individual in relation to the alleged seller is a different time than that at which he or she was alleged to have been a key individual in relation to the person to whom the business was sold, the Board shall consider,
 - i. the length of any hiatus between when the individual was a key individual in relation to the alleged seller and when the individual was a key individual in relation to the person to whom the business was allegedly sold,
 - ii. whether the individual occupied a formal management role with the alleged seller, and
 - iii. whether the alleged seller was able to carry on business without substantial disruption or loss when the individual ceased to be involved with the alleged seller. 2000, c. 24, s. 2.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 16 (1) - 24/08/1998

2000, c. 24, s. 2 - 16/12/2000; 2000, c. 38, s. 22 (1, 2) - 30/12/2000

2019, c. 4, Sched. 9, s. 13 - 04/07/2019

Construction industry, application

126.1 (1) Sections 126 to 168 set out special rules with respect to the construction industry. 2000, c. 38, s. 23.

Same

(2) Sections 1 to 125 also apply with respect to the construction industry. 2000, c. 38, s. 23.

Resolving conflict

(3) If there is a conflict with respect to the application of provisions of this Act with respect to the construction industry, it shall be resolved as follows:

1. A provision in sections 126 to 144 prevails over a provision in sections 7 to 63 and 68 to 125.
2. A provision in sections 146 to 150 prevails over any other provision of this Act.
3. A provision in sections 150.1 to 167 prevails over a provision in sections 7 to 63 and 68 to 144. 2000, c. 38, s. 23.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 23 - 21/12/2000

Deemed non-construction employer

127 (1) The following entities are deemed to be non-construction employers:

1. A municipality.
2. A local board as defined in subsection 1 (1) of the *Municipal Act, 2001* or in subsection 3 (1) of the *City of Toronto Act, 2006*.
3. A local housing corporation as defined in section 24 of the *Housing Services Act, 2011*.
4. A corporation established under section 203 of the *Municipal Act, 2001* or under section 148 of the *City of Toronto Act, 2006*.
5. A district social services administration board established under the *District Social Services Administration Boards Act*.
6. A school board within the meaning of the *School Boards Collective Bargaining Act, 2014*.
7. A hospital within the meaning of the *Public Hospitals Act*.
8. A college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*.

9. A university in Ontario that receives regular direct operating funding from the Government and the university's affiliates and federates.
10. A public body within the meaning of the *Public Service of Ontario Act, 2006*. 2019, c. 4, Sched. 9, s. 14 (1).

Effect on bargaining rights and collective agreements

(2) Paragraphs 1 and 2 apply with respect to a trade union that represents employees of a non-construction employer referred to in subsection (1) employed, or who may be employed, in the construction industry:

1. On the day this subsection comes into force, the trade union no longer represents those employees of the non-construction employer who are employed in the construction industry.
2. On the day this subsection comes into force, any collective agreement binding the non-construction employer and the trade union ceases to apply with respect to the non-construction employer in so far as the collective agreement applies to the construction industry. 2019, c. 4, Sched. 9, s. 14 (1).

Amendment of unit

(3) A non-construction employer referred to in subsection (1) or a trade union affected by the application of subsection (2) may apply to the Board to redefine the composition of a bargaining unit affected by the application of subsection (2) if the bargaining unit also includes employees who are not employed in the construction industry. 2019, c. 4, Sched. 9, s. 14 (1).

Non-application of ss. 127.1, 127.2

(4) Sections 127.1 and 127.2 do not apply with respect to a non-construction employer referred to in subsection (1). 2019, c. 4, Sched. 9, s. 14 (1).

Opt-out election

(5) An entity referred to in subsection (1) may elect to opt out of the application of subsections (1) to (4) if, on the day the *Restoring Ontario's Competitiveness Act, 2019* receives Royal Assent, a trade union represents employees of the entity who are employed, or who may be employed, in the construction industry. 2019, c. 4, Sched. 9, s. 14 (2).

Same, required content

(6) An election made under subsection (5) must be made by a person or body with authority to bind the entity, must be prepared in writing and must set out the day on which it was made. 2019, c. 4, Sched. 9, s. 14 (2).

Same, timing

(7) An election made under subsection (5) must be filed with the Minister within three months after the day the *Restoring Ontario's Competitiveness Act, 2019* receives Royal Assent. 2019, c. 4, Sched. 9, s. 14 (2).

Election irrevocable

(8) Once filed with the Minister, an election made under subsection (5) is irrevocable. 2019, c. 4, Sched. 9, s. 14 (2).

Minister may publish

(9) The Minister may publish an election made under subsection (5), including by publishing it on a Government of Ontario website. 2019, c. 4, Sched. 9, s. 14 (2).

Effect of election

(10) If an entity made an election under subsection (5) and filed it with the Minister in accordance with subsection (7), subsections (1) to (4) do not apply in respect of that entity. 2019, c. 4, Sched. 9, s. 14 (2).

Application under s. 127.2 permitted

(11) For greater certainty, an entity who made an election under subsection (5) and filed it with the Minister in accordance with subsection (7) is not precluded from subsequently making an application under section 127.2. 2019, c. 4, Sched. 9, s. 14 (2).

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 24 - 30/12/2000

2019, c. 4, Sched. 9, s. 14 (1) - 04/07/2019; 2019, c. 4, Sched. 9, s. 14 (2) - 03/04/2019

Grandparented non-construction employers

127.1 (1) This section applies with respect to a non-construction employer if, on the day this section comes into force, a trade union represents employees of the non-construction employer employed, or who may be employed, in the construction industry.

Continued application of certain sections

(2) Sections 127 to 168 continue to apply, subject to subsection (3), with respect to the non-construction employer and the employees the trade union represents as if the definition of employer in section 126 included the non-construction employer.

Exception if declaration

(3) If a declaration is made under subsection 127.2 (2) that a trade union no longer represents employees employed, or who may be employed, in the construction industry, subsection (2) of this section ceases to apply with respect to the non-construction employer and those employees. 1998, c. 8, s. 17.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 17 - 24/08/1998

Non-construction employers, application for termination

127.2 (1) This section applies with respect to a trade union that represents employees of a non-construction employer employed, or who may be employed, in the construction industry. 1998, c. 8, s. 17.

Declaration

(2) On the application of a non-construction employer, the Board shall declare that a trade union no longer represents those employees of the non-construction employer employed in the construction industry. 2000, c. 38, s. 25.

Collective agreement ceases to apply

(3) Upon the Board making a declaration under subsection (2), any collective agreement binding the non-construction employer and the trade union ceases to apply with respect to the non-construction employer in so far as the collective agreement applies to the construction industry. 1998, c. 8, s. 17.

Amendment of unit

(4) The Board may re-define the composition of a bargaining unit affected by a declaration under subsection (2) if the bargaining unit also includes employees who are not employed in the construction industry. 1998, c. 8, s. 17.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 17 - 24/08/1998

2000, c. 38, s. 25 - 30/12/2000

Application of section

127.3 (1) This section applies if a trade union and an employer have entered into a collective agreement. 2014, c. 10, Sched. 3, s. 1.

Application for certification

(2) Where the collective agreement is for a term of not more than three years, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the last two months of its operation. 2014, c. 10, Sched. 3, s. 1.

Same

(3) Where the collective agreement is for a term of more than three years, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the 35th month of its operation and before the commencement of the 37th month of its operation and during the two-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last two months of its operation, as the case may be. 2014, c. 10, Sched. 3, s. 1.

Same

(4) Where a collective agreement referred to in subsection (2) or (3) provides that it will continue to operate for any further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to renewal, with or without modifications, of the agreement or to the making of a new agreement, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the

agreement during the further term or successive terms only during the last two months of each year that it so continues to operate, or after the commencement of the last two months of its operation, as the case may be. 2014, c. 10, Sched. 3, s. 1.

Section Amendments with date in force (d/m/y)

2014, c. 10, Sched. 3, s. 1 - 20/05/2015

Bargaining units in the construction industry

128 (1) Where a trade union applies for certification as bargaining agent of the employees of an employer, the Board shall determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it shall not confine the unit to a particular project.

Determination of number of members in bargaining unit

(2) In determining whether a trade union to which subsection (1) applies has met the requirements of subsection 8 (2), the Board need not have regard to any increase in the number of employees in the bargaining unit after the application was made. 1995, c. 1, Sched. A, s. 128.

Application for certification without a vote Election

128.1 (1) A trade union applying for certification as bargaining agent of the employees of an employer may elect to have its application dealt with under this section rather than under section 8. 2005, c. 15, s. 8.

Notice to Board and employer

- (2) The trade union shall give written notice of the election,
- (a) to the Board, on the date the trade union files the application; and
 - (b) to the employer, on the date the trade union delivers a copy of the application to the employer. 2005, c. 15, s. 8.

Employer to provide information

- (3) Within two days (excluding Saturdays, Sundays and holidays) after receiving notice under subsection (2), the employer shall provide the Board with,
- (a) the names of the employees in the bargaining unit proposed in the application, as of the date the application is filed; and
 - (b) if the employer gives the Board a written description of the bargaining unit that the employer proposes, in accordance with subsection 7 (14), the names of the employees in that proposed bargaining unit, as of the date the application is filed. 2005, c. 15, s. 8.

Matters to be determined

- (4) On receiving an application for certification from a trade union that has elected to have its application dealt with under this section, the Board shall determine, as of the date the application is filed and on the basis of the information provided in or with the application and under subsection (3),
- (a) the bargaining unit; and
 - (b) the percentage of employees in the bargaining unit who are members of the trade union. 2005, c. 15, s. 8.

Exception: allegation of contravention, etc.

(5) Nothing in subsection (4) prevents the Board from considering evidence and submissions relating to any allegation that section 70, 72 or 76 has been contravened or that there has been fraud or misrepresentation, if the Board considers it appropriate to consider the evidence and submissions in making a decision under this section. 2005, c. 15, s. 8.

Hearing

(6) The Board may hold a hearing if it considers it necessary in order to make a decision under this section. 2005, c. 15, s. 8.

Dismissal: insufficient membership

(7) The Board shall not certify the trade union as bargaining agent of the employees in the bargaining unit and shall dismiss the application if it is satisfied that fewer than 40 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed. 2005, c. 15, s. 8.

Remedial dismissal

(8) Subsection (9) applies where the trade union or person acting on behalf of the trade union contravenes this Act and, as a result, the membership evidence provided in or with the trade union's application for certification does not likely reflect the true wishes of the employees in the bargaining unit. 2005, c. 15, s. 8.

Same

(9) In the circumstances described in subsection (8), on the application of an interested person, the Board may dismiss the application for certification if no other remedy, including a representation vote directed under clause (13) (b), would be sufficient to counter the effects of the contravention. 2005, c. 15, s. 8.

Bar to reapplying

(10) If the Board dismisses an application for certification under subsection (9), the Board shall not consider another application for certification by the trade union as the bargaining agent for any employee that was in the bargaining unit proposed in the original application until one year after the application is dismissed. 2005, c. 15, s. 8.

Same

(11) Despite subsection (10), the Board may consider an application for certification by the trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2005, c. 15, s. 8.

Board shall direct representation vote

(12) If the Board is satisfied that at least 40 per cent but not more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it shall direct that a representation vote be taken. 2005, c. 15, s. 8.

Board may certify or may direct representation vote

(13) If the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it may,

- (a) certify the trade union as the bargaining agent of the employees in the bargaining unit; or
- (b) direct that a representation vote be taken. 2005, c. 15, s. 8.

Representation votes

(14) If the Board directs that a representation vote be taken,

- (a) the vote shall, unless the Board directs otherwise, be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the direction for a representation vote is made;
- (b) the vote shall be by ballots cast in such a manner that individuals expressing their choice cannot be identified with the choice made;
- (c) the Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs;
- (d) subject to section 11.1, the Board shall certify the trade union as bargaining agent of the employees in the bargaining unit if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union; and
- (e) subject to section 11, the Board shall not certify the trade union as bargaining agent of the employees in the bargaining unit and shall dismiss the application for certification if 50 per cent or fewer of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union. 2005, c. 15, s. 8.

Bar to reapplication

(15) If the Board dismisses an application for certification under clause (14) (e), the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee who was in the bargaining unit proposed in the original application until one year after the original application is dismissed. 2005, c. 15, s. 8.

Exception

(16) Despite subsection (15), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2005, c. 15, s. 8.

Same

(17) Subsection (15) does not apply if the trade union whose application was dismissed is a trade union that the Board is prohibited from certifying under section 15. 2005, c. 15, s. 8.

Meaning of “trade union”

(18) For the purposes of subsections (15) and (16),

“trade union” includes any trade union as defined in section 1, whether or not the trade union is a trade union as defined in section 126. 2005, c. 15, s. 8.

Non-application of certain provisions

(19) Sections 8, 8.1 and 10 do not apply in respect of a certification application that the trade union has elected to have dealt with under this section. 2005, c. 15, s. 8.

Determining bargaining unit and number of members

(20) Section 128 applies with necessary modifications to determinations made under this section. 2005, c. 15, s. 8.

Withdrawal of application: discretionary bar

(21) Subsection 7 (9) applies, with necessary modifications, if the trade union withdraws the application for certification,

- (a) before the Board takes any action under subsection (7), (12) or (13); or
- (b) after the Board directs a representation vote under subsection (12) or clause (13) (b), but before the vote is taken. 2005, c. 15, s. 8.

Second withdrawal: mandatory bar

(22) Subsections 7 (9.1), (9.2) and (9.3) apply, with necessary modifications, if the trade union withdraws an application for certification in the circumstances described in subsection (21) and had withdrawn a previous application for certification not more than six months earlier. 2005, c. 15, s. 8.

Withdrawal of application after vote taken: mandatory bar

(23) Subsections 7 (10), (10.1) and (10.2) apply, with necessary modifications, if the trade union withdraws the application for certification after a representation vote is taken in accordance with the Board’s direction under subsection (12) or clause (13) (b). 2005, c. 15, s. 8.

Industrial, commercial and institutional sector

(24) If an election under this section is made in relation to an application for certification that relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126,

- (a) the references to “trade union” in subsections (1), (2), (4), (7), (8), (10) to (14), (17) and (19) to (23) shall be read as references to the trade unions on whose behalf the application for certification was brought;
- (b) if the Board certifies the trade unions on whose behalf the application for certification was brought as the bargaining agent of the employees in the bargaining unit under clause (13) (a), it shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas;
- (c) if the Board directs that a representation vote be taken and more than 50 per cent of the ballots cast in the representation vote are cast in favour of the trade unions on whose behalf the application was brought, the Board shall certify the trade unions as the bargaining agent of the employees in the bargaining unit and shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas; and

- (d) if the Board dismisses the application for certification under clause (14) (e), the Board shall not consider another application for certification by the employee bargaining agency or the affiliated bargaining agent or agents to certify the trade unions as bargaining agent for the employees in the bargaining unit until one year after the dismissal. 2005, c. 15, s. 8.

Same

(25) For the purposes of subsection (24), the terms “affiliated bargaining agent” and “employee bargaining agency” have the same meanings as in subsection 151 (1). 2005, c. 15, s. 8.

Transition

(26) This section applies in respect of applications made on or after the day section 8 of the *Labour Relations Statute Law Amendment Act, 2005* comes into force. 2005, c. 15, s. 8.

Section Amendments with date in force (d/m/y)

2005, c. 15, s. 8 - 13/06/2005

Notice of desire to bargain

129 (1) Where notice has been given by a trade union to an employer under section 16 or by a trade union or a council of trade unions or an employer or employers’ organization under section 59, the parties shall meet within five days from the giving of such notice or within such further period as the parties agree upon.

Extension of 14-day period for conciliation officer’s report

(2) Where the Minister appoints a conciliation officer or a mediator at the request of a trade union, council of trade unions or an employer or employers’ organization to confer with the parties and endeavour to effect a collective agreement binding upon employees of the employer or upon employees of members of the employers’ organization, the period mentioned in subsection 20 (1) may be extended only by agreement of the parties.

Appointment of conciliation board

(3) Where the Minister has appointed a conciliation officer under subsection (2) and the conciliation officer is unable to effect a collective agreement within the time allowed, the Minister shall, unless the parties inform him or her in writing that they desire him or her to appoint a conciliation board, forthwith by notice in writing inform each of the parties that he or she does not consider it advisable to appoint a conciliation board.

When report to be made

(4) Where a conciliation board has been appointed under subsection (3), it shall report its findings and recommendations to the Minister within 14 days after its first sitting, but such period may be extended,

- (a) for a further period not exceeding 30 days by agreement of the parties; or
- (b) for a further period beyond the period fixed in clause (a) as the parties may agree upon and as the Minister may approve. 1995, c. 1, Sched. A, s. 129.

What deemed to be a collective agreement

130 An agreement in writing between an employer or employers’ organization, on the one hand, and a trade union that has been certified as bargaining agent for a unit of employees of the employer, or a trade union or a council of trade unions that is entitled to require the employer or the employers’ organization to bargain with it for the renewal, with or without modifications, of the agreement then in operation or for the making of a new agreement, on the other hand, shall be deemed to be a collective agreement despite the fact that there were no employees in the bargaining unit or units affected at the time the agreement was entered into. 1995, c. 1, Sched. A, s. 130.

Notice of desire to bargain for new collective agreement

131 Each party to a collective agreement between an employer or employers’ organization and a trade union or council of trade unions may, within the period of 90 days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement, and the notice has for all purposes the same effect as a notice under section 59. 1995, c. 1, Sched. A, s. 131.

Application for termination

132 (1) If a trade union does not make a collective agreement with the employer within six months after its certification, any of the employees in the bargaining unit determined in the certificate may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 132 (1).

Same, agreement

(2) Any of the employees in the bargaining unit defined in a first agreement between an employer and a trade union, where the trade union has not been certified as the bargaining agent of the employees of the employer in the bargaining unit, may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit after the 305th day of its operation and before the 365th day of its operation. 2000, c. 38, s. 26; 2014, c. 10, Sched. 3, s. 2 (1).

Same, agreement

(3) Any of the employees in the bargaining unit defined in a collective agreement other than a first agreement referred to in subsection (2) may, subject to section 67, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit,

- (a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last two months of its operation;
- (b) in the case of a collective agreement for a term of more than three years, only after the commencement of the 35th month of its operation and before the commencement of the 37th month of its operation and during the two-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last two months of its operation, as the case may be; and
- (c) in the case of a collective agreement referred to in clause (a) or (b) that provides that it will continue to operate for any further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, only during the last two months of each year that it so continues to operate or after the commencement of the last two months of its operation, as the case may be. 2014, c. 10, Sched. 3, s. 2 (2).

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 26 - 30/12/2000

2014, c. 10, Sched. 3, s. 2 (1, 2) - 20/05/2015

Referral of grievance to Board

133 (1) Despite the grievance and arbitration provisions in a collective agreement or deemed to be included in a collective agreement under section 48, a party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may refer a grievance concerning the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable, to the Board for final and binding determination. 1995, c. 1, Sched. A, s. 133 (1).

Requirements for referral

(2) A referral under subsection (1) shall be in writing in the prescribed form and may be made at any time after the written grievance has been delivered to the other party. 1998, c. 8, s. 18.

Copy of referral to other party

(3) A party that refers a grievance under subsection (1) shall, at the same time, give a copy of the referral to the other party. 1998, c. 8, s. 18.

Board may refuse

(4) The Board may refuse to accept a referral. 1998, c. 8, s. 18.

Decision to accept or not

(5) In deciding whether or not to accept a referral, the Board is not required to hold a hearing and may appoint a labour relations officer to inquire into the referral and report to the Board. 1998, c. 8, s. 18.

Hearing, etc.

(6) If the Board accepts the referral, the Board shall appoint a date for and hold a hearing within 14 days after receipt of the referral and may appoint a labour relations officer to confer with the parties and endeavour to effect a settlement before the hearing. 1998, c. 8, s. 18.

When hearing not required

(7) The Board is not required to hold a hearing if the responding party does not file any material. 1998, c. 8, s. 18.

If no hearing

(8) If the Board does not hold a hearing in the circumstances described in subsection (7), the Board may determine the matter with reference only to the material filed by the party referring the grievance. 1998, c. 8, s. 18.

Jurisdiction of Board

(9) If the Board accepts the referral, the Board has exclusive jurisdiction to hear and determine the difference or allegation raised in the grievance referred to it, including any question as to whether the matter is arbitrable, and subsections 48 (10) and (12) to (20) apply with necessary modifications to the Board and to the enforcement of the decision of the Board. 1998, c. 8, s. 18.

Schedule of fees

(10) The Lieutenant Governor in Council may establish a schedule of fees to be charged to parties in proceedings under this section and, without limiting the generality of what can be included in the schedule, the schedule may provide for the following:

1. Fees payable for referring grievances or participating in proceedings.
2. Fees payable for each hearing day, including hearing days scheduled by the Board but not used.
3. Different fees for the referring party and for the responding parties.
4. A single fee for all the responding parties with the amount to be paid by each responding party to be determined by the Board. 1998, c. 8, s. 18.

Same

(11) The schedule of fees may also provide for when the fees are due, to whom the fees shall be paid and what the form of payment must be. 1998, c. 8, s. 18.

No participation if fees unpaid

(12) A party may participate in a proceeding only if the fees payable by the party are paid in accordance with the schedule of fees. 1998, c. 8, s. 18.

Fees ordered, non-participating party

(13) If an award is made against a party who was given notice of but did not participate in proceedings under this section, the Board may order the party to pay the party in whose favour the award is made, an amount not exceeding the fees paid by the party in whose favour the order is made. 1998, c. 8, s. 18.

Same, party not in a position to participate

(14) The Board may order a party who participated in proceedings under this section but who was not in a position to participate on a day on which proceedings were scheduled to pay each of the other parties an amount not exceeding the fees paid by that party. 1998, c. 8, s. 18.

Exception, unreasonable refusal of adjournment

(15) The Board shall not make an order under subsection (14) ordering a party who was not in a position to participate to pay an amount to another party if the other party refused, unreasonably, to consent to an adjournment requested by the party who was not in a position to participate. 1998, c. 8, s. 18.

Fees to Consolidated Revenue Fund

(16) Fees payable by a party to the Board shall be paid to the Board for payment into the Consolidated Revenue Fund. 1998, c. 8, s. 18.

Schedule not a regulation

(17) The schedule of fees is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1998, c. 8, s. 18; 2006, c. 21, Sched. F, s. 136 (1).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 18 - 29/06/1998

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

Accreditation of employers' organization

134 Where a trade union or council of trade unions has been certified or has been granted voluntary recognition under section 18 as the bargaining agent for a unit of employees of more than one employer in the construction industry or where a trade union or council of trade unions has entered into collective agreements with more than one employer covering a unit of employees in the construction industry, an employers' organization may apply to the Board to be accredited as the bargaining agent for all employers in a particular sector of the industry and in the geographic area described in the said certificates, voluntary recognition documents or collective agreements, as the case may be. 1995, c. 1, Sched. A, s. 134.

Board to determine appropriateness of unit

135 (1) Upon an application for accreditation, the Board shall determine the unit of employers that is appropriate for collective bargaining in a particular geographic area and sector, but the Board need not confine the unit to one geographic area or sector but may, if it considers it advisable, combine areas or sectors or both or parts thereof.

Same

(2) The unit of employers shall comprise all employers as defined in section 126 in the geographic area and sector determined by the Board to be appropriate. 1995, c. 1, Sched. A, s. 135.

Determinations by Board

136 (1) Upon an application for accreditation, the Board shall ascertain,

- (a) the number of employers in the unit of employers on the date of the making of the application who have within one year prior to such date had employees in their employ for whom the trade union or council of trade unions has bargaining rights in the geographic area and sector determined by the Board to be appropriate;
- (b) the number of employers in clause (a) represented by the employers' organization on the date of the making of the application; and
- (c) the number of employees of employers in clause (a) on the payroll of each such employer for the weekly payroll period immediately preceding the date of the application or if, in the opinion of the Board, the payroll period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.

Accreditation

(2) If the Board is satisfied,

- (a) that a majority of the employers in clause (1) (a) is represented by the employers' organization; and
- (b) that such majority of employers employed a majority of the employees in clause (1) (c),

the Board, subject to subsection (3), shall accredit the employers' organization as the bargaining agent of the employers in the unit of employers and for the other employers for whose employees the trade union or council of trade unions may, after the date of the making of the application, obtain bargaining rights through certification or voluntary recognition in the appropriate geographic area and sector.

Authority of employers' organization

(3) Before accrediting an employers' organization under subsection (2), the Board shall satisfy itself that the employers' organization is a properly constituted organization and that each of the employers whom it represents has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.

Same

(4) Where the Board is of the opinion that appropriate authority has not been vested in the employers' organization, the Board may postpone disposition of the application to enable employers represented by the organization to vest the additional or other authority in the organization that the Board considers necessary.

What employers' organization not to be accredited

(5) The Board shall not accredit any employers' organization if any trade union or council of trade unions has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the *Human Rights Code*, or the *Canadian Charter of Rights and Freedoms*. 1995, c. 1, Sched. A, s. 136.

Effect of accreditation

137 (1) Upon accreditation, all rights, duties and obligations under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent apply with necessary modifications to the accredited employers' organization. 1995, c. 1, Sched. A, s. 137 (1).

Effect of accreditation on collective agreements

(2) Upon accreditation, any collective agreement in operation between the trade union or council of trade unions and any employer in clause 136 (1) (a) is binding on the parties thereto only for the remainder of the term of operation of the agreement, regardless of any provision therein respecting its renewal. 1995, c. 1, Sched. A, s. 137 (2).

Same

(3) When any collective agreement mentioned in subsection (2) ceases to operate, the employer shall thereupon be bound by any collective agreement then in existence between the trade union or council of trade unions and the accredited employers' organization or subsequently entered into by the said parties. 1995, c. 1, Sched. A, s. 137 (3).

Same

(4) Where, after the date of the making of an application for accreditation, the trade union or council of trade unions obtains bargaining rights for the employees of an employer through certification or voluntary recognition, that employer is bound by any collective agreement in existence at the time of the certification or voluntary recognition between the trade union or council of trade unions and the applicant employers' organization or subsequently entered into by the said parties. 1995, c. 1, Sched. A, s. 137 (4).

Same

(5) A collective agreement between a trade union or council of trade unions and an employer who, but for the one-year requirement, would have been included in clause 136 (1) (a) is binding on the parties thereto only for the remainder of the term of operation of the agreement regardless of any provisions therein respecting its renewal. 1995, c. 1, Sched. A, s. 137 (5).

Same

(6) Where any collective agreement mentioned in subsection (5) ceases to operate, the employer shall thereupon be bound by any collective agreement then in existence between the trade union or council of trade unions and the accredited employers' organization or subsequently entered into by the said parties. 1995, c. 1, Sched. A, s. 137 (6).

Application of s. 58 (1)

(7) Where, under this section, an employer becomes bound by a collective agreement between a trade union or council of trade unions and an accredited employers' organization after the said agreement has commenced to operate, the agreement ceases to be binding on the employer in accordance with the terms thereof. 1995, c. 1, Sched. A, s. 137 (7); 2000, c. 38, s. 27.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 27 - 30/12/2000

Accredited employers' organization

138 (1) Subsections 57 (1) and (2) do not apply to an accredited employers' organization.

Binding effect of collective agreement on employer

(2) A collective agreement between an accredited employers' organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon the accredited employers' organization and the trade union or council of trade unions, as the case may be, and upon each employer in the unit of employers represented by the accredited employers' organization at the time the agreement was entered into and upon the other employers that may subsequently be bound by the said agreement, as if it was made between each of the employers and the trade union or council of trade unions and, if any such employer ceases to be represented by the accredited employers' organization during the term of operation of the agreement, the employer shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.

Binding effect of collective agreement on employees

(3) A collective agreement between an accredited employers' organization and a trade union or council of trade unions is binding on the employees in the bargaining unit defined in the agreement of any employer bound by the collective agreement. 1995, c. 1, Sched. A, s. 138.

Termination of accreditation

139 (1) If an accredited employers' organization does not make a collective agreement with the trade union or council of trade unions, as the case may be, within one year after its accreditation, any of the employers in the unit of employers determined in the accreditation certificate may apply to the Board only during the two months following the said one year for a declaration that the accredited employers' organization no longer represents the employers in the unit of employers.

Same

(2) Any of the employers in the unit of employers defined in a collective agreement between an accredited employers' organization and a trade union or council of trade unions, as the case may be, may apply to the Board only during the last two months of its operation for a declaration that the accredited employers' organization no longer represents the employers in the unit of employers.

Determination by Board

(3) Upon an application under subsection (1) or (2), the Board shall ascertain,

- (a) the number of employers in the unit of employers on the date of the making of the application;
- (b) the number of employers in the unit of employers who, within the two-month period immediately preceding the date of the making of the application, have voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and
- (c) the number of employees affected by the application of employers in the unit of employers on the payroll of each employer for the weekly payroll period immediately preceding the date of the making of the application or if, in the opinion of the Board, the payroll period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.

Declaration by Board

(4) If the Board is satisfied,

- (a) that a majority of the employers in clause (3) (a) has voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and
- (b) that such majority of employers employed a majority of the employees in clause (3) (c),

the Board shall declare that the employers' organization that was accredited or that was or is a party to the collective agreement, as the case may be, no longer represents the employers in the unit of employers.

Declaration of termination on abandonment

(5) Upon an application under subsection (1) or (2), when the employers' organization informs the Board that it does not desire to continue to represent the employers in the unit of employers, the Board may declare that the employers' organization no longer represents the employers in the unit.

Effect of declaration

(6) Upon the Board making a declaration under subsection (4) or (5),

- (a) any collective agreement in operation between the trade union or council of trade unions and the employers' organization that is binding upon the employers in the unit of employers ceases to operate forthwith;
- (b) all rights, duties and obligations under this Act of the employers' organization revert with necessary modifications to the individual employers represented by the employers' organization; and
- (c) the trade union or council of trade unions, as the case may be, is entitled to give to any employer in the unit of employers a written notice of its desire to bargain with a view to making a collective agreement, and the notice has the same effect as a notice under section 14. 1995, c. 1, Sched. A, s. 139.

Individual bargaining prohibited

140 (1) No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and no such employer or person acting on behalf of such employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, bargain with each other with respect to such employees or enter into a collective agreement designed or intended to be binding upon such employees and if any such agreement is entered into it is void.

Agreements to provide employees during lawful strike or lock-out prohibited

(2) No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and no such employer or person acting on behalf of the employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, enter into any agreement or understanding, oral or written, that provides for the supply of employees during a legal strike or lock-out, and if any such agreement or understanding is entered into it is void and no such trade union or council of trade unions or person shall supply such employees to the employer.

Saving

(3) Nothing in this Act prohibits an employer, represented by an accredited employers' organization, from continuing or attempting to continue the employer's operations during a strike or lock-out involving employees of employers represented by the accredited employers' organization. 1995, c. 1, Sched. A, s. 140.

Duty of fair representation by employers' organization

141 An accredited employers' organization, so long as it continues to be entitled to represent employers in a unit of employers, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employers in the unit, whether members of the accredited employers' organization or not. 1995, c. 1, Sched. A, s. 141.

Membership in employers' organization

142 Membership in an accredited employers' organization shall not be denied or terminated except for cause which, in the opinion of the Board, is fair and reasonable. 1995, c. 1, Sched. A, s. 142.

Fees

143 An accredited employers' organization shall not charge, levy or prescribe initiation fees, dues or assessments that, in the opinion of the Board, are unreasonable or discriminatory. 1995, c. 1, Sched. A, s. 143.

Direction by Board re unlawful activities

Direction by Board re unlawful strike

144 (1) Where, on the complaint of an interested person, trade union, council of trade unions or employers' organization, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike, or that employees engaged in or threatened to engage in an unlawful strike or any person has done or is threatening to do any act that the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike, it may direct what action, if any, a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike. 1995, c. 1, Sched. A, s. 144 (1).

Direction by Board re unlawful lock-out

(2) Where, on the complaint of an interested person, trade union, council of trade unions or employers' organization, the Board is satisfied that an employer or employers' organization called or authorized or threatened to call or authorize an unlawful lock-out or locked out or threatened to lock out employees or that an officer, official or agent of an employer or employers' organization counselled or procured or supported or encouraged an unlawful lock-out or threatened an unlawful lock-out, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful lock-out or the threat of an unlawful lock-out. 1995, c. 1, Sched. A, s. 144 (2).

Direction by Board re unlawful agreements

(3) Where, on the complaint of an interested person, trade union, council of trade unions, employers' organization, employee bargaining agency or employer bargaining agency, the Board is satisfied that a person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations or employer bargaining agency, bargained for, attempted to bargain for, or concluded any collective agreement or other arrangement affecting employees represented by affiliated bargaining agents other than a provincial agreement as contemplated by subsection 162 (1) or a project agreement under section 163.1, it may direct what action, if any, a person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations, or employer bargaining agency, shall do or refrain from doing with respect to the bargaining for, the attempting to bargain for, or the concluding of a collective agreement or other arrangement other than a provincial agreement as contemplated by subsection 162 (1) or a project agreement under section 163.1. 1995, c. 1, Sched. A, s. 144 (3); 1998, c. 8, s. 19; 2000, c. 38, s. 28 (1).

Filing in court

(4) A party to a direction made under this section may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 144 (4); 2000, c. 38, s. 28 (2).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 19 - 29/06/1998

2000, c. 38, s. 28 (1, 2) - 30/12/2000

Sections 146 to 150

145 (1) In sections 146 to 150,

“constitution” means an organizational document governing the establishment or operation of a trade union and includes a charter and by-laws and rules made under a constitution; (“acte constitutif”)

“jurisdiction” includes geographic, sectoral and work jurisdiction; (“juridiction”)

“local trade union” means, in relation to a parent trade union, a trade union in Ontario that is affiliated with or subordinate or directly related to the parent trade union and includes a council of trade unions; (“syndicat local”)

“parent trade union” means a provincial, national or international trade union which has at least one affiliated local trade union in Ontario that is subordinate or directly related to it. (“syndicat parent”) 1995, c. 1, Sched. A, s. 145 (1).

(2) REPEALED: 2000, c. 38, s. 29.

Same, trade union constitution

(3) In the event of a conflict between any provision in sections 146 to 150 and any provision in the constitution of a trade union, the provisions in sections 146 to 150 prevail. 1995, c. 1, Sched. A, s. 145 (3).

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 29 - 30/12/2000

Employees not in industrial, commercial, institutional sector

146 (1) This section applies with respect to employees in a bargaining unit in the construction industry other than in the industrial, commercial and institutional sector referred to in the definition of “sector” in section 126.

Bargaining rights

(2) If a parent trade union is the bargaining agent for employees described in subsection (1), each of its local trade unions is deemed to be bargaining agent, together with the parent trade union, for employees in the bargaining unit within the jurisdiction of the local trade union.

Party to the collective agreement

(3) If a parent trade union is a party to a collective agreement that applies to employees described in subsection (1), the local trade union is deemed to be a party, together with the parent trade union, to the collective agreement with respect to the jurisdiction of the local trade union.

Council

(4) The Minister may, upon such conditions as the Minister considers appropriate, require a parent trade union and its local trade unions to form a council of trade unions for the purpose of conducting bargaining and concluding a collective agreement,

- (a) if an affected local trade union, parent trade union or employer requests the Minister to do so; and
- (b) if the Minister considers that doing so is necessary to resolve a disagreement between a parent trade union and a local trade union concerning conducting bargaining or concluding a collective agreement.

Rules of operation, etc.

(5) The Minister may make rules governing the formation or operation of the council of trade unions, including the ratification of collective agreements, if the parent trade union and the local trade unions do not make their own rules within 60 days after the Minister’s decision under subsection (4).

Compliance

(6) The parent trade union and the local trade unions shall comply with rules made by the Minister. 1995, c. 1, Sched. A, s. 146.

Jurisdiction of the local trade union

147 (1) A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise.

Notice

(2) The parent trade union shall give the local trade union written notice of an alteration at least 15 days before it comes into effect.

Determination of just cause

(3) On an application relating to this section, the Board shall consider the following when deciding whether there is just cause for an alteration:

1. The trade union constitution.
2. The ability of the local trade union to carry out its duties under this Act.
3. The wishes of the members of the local trade union.
4. Whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems.

Same

(4) The Board is not bound by the trade union constitution when deciding whether there is just cause for an alteration.

Complaint

(5) If a local trade union makes a complaint to the Board concerning the alteration of its jurisdiction by a parent trade union, the alteration shall be deemed not to have been effective until the Board disposes of the matter. 1995, c. 1, Sched. A, s. 147.

Province-wide agreements

148 (1) This section applies if, on May 1, 1992,

- (a) a parent trade union was party to a collective agreement whose geographic scope included the province and which applied to employees described in subsection 146 (1); or
- (b) a parent trade union had given notice to bargain for the renewal of such a collective agreement.

Sections 146 and 147

(2) Sections 146 and 147 do not operate to authorize a local trade union to enter into a separate collective agreement or a separate renewal collective agreement or to alter the geographic scope of the collective agreement. 1995, c. 1, Sched. A, s. 148.

149 REPEALED: 2018, c. 8, Sched. 14, s. 5.

Section Amendments with date in force (d/m/y)

2018, c. 8, Sched. 14, s. 5 - 08/05/2018

Administration of benefit plans

150 (1) If benefits are provided under an employment benefit plan primarily to members of one local trade union or to their dependants or beneficiaries, the local trade union is entitled to appoint at least a majority of the trustees who administer the plan, excluding the trustees who are appointed by employers.

Same, more than one local trade union

(2) If benefits are provided under such a plan primarily to members of more than one local trade union or to their dependants or beneficiaries, those local trade unions are entitled together to appoint at least a majority of the trustees who administer the plan, excluding the trustees who are appointed by employers.

Same, members outside Ontario

(3) If, in the circumstances described in subsection (2), benefits are provided to members outside of Ontario or to their dependants or beneficiaries, the local trade unions are entitled together to appoint that proportion of the trustees (excluding

trustees appointed by employers) that corresponds to the proportion that the members in Ontario of the local trade unions bear to the total number of members participating in the plan.

Effect of agreement

(4) Subsections (1), (2) and (3) apply despite any provision to the contrary in any agreement or other document.

Appointment process

(5) Unless otherwise agreed by the interested local trade unions, the appointment of trustees under subsection (2) or (3) shall be determined by a majority vote of those local trade unions voting, with each local trade union being entitled to cast a single ballot.

Definition

(6) In this section,

“employment benefit plan” means a plan that provides any type of benefit to an individual or his or her dependants or beneficiaries because of the individual’s employment or his or her membership in a trade union and includes a pension plan or another arrangement whereby money is contributed by or on behalf of the individual for retirement purposes. 1995, c. 1, Sched. A, s. 150.

RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY

Interpretation

Geographic area of application of ss. 150.2 to 150.4

150.1 (1) Sections 150.2, 150.3 and 150.4 apply only with respect to the geographic areas of jurisdiction of the following municipalities:

1. The City of Toronto.
2. The Regional Municipality of Halton.
3. The Regional Municipality of Peel.
4. The Regional Municipality of York.
5. The Regional Municipality of Durham.
6. The Corporation of the County of Simcoe. 2005, c. 15, s. 9.

Definition

(2) In sections 150.2, 150.3 and 150.4,

“residential work” means work performed in the residential sector of the construction industry. 2005, c. 15, s. 9.

Section Amendments with date in force (d/m/y)

2000, c. 24, s. 9 - 16/12/2000

2002, c. 18, Sched. J, s. 4 (4) - 26/11/2002

2005, c. 15, s. 9 - 01/05/2005

Deemed expiry of collective agreements

Collective agreements in existence before April 30, 2007

150.2 (1) A collective agreement between an employer or employers’ organization and a trade union or council of trade unions that applies with respect to residential work shall be deemed to expire with respect to residential work on April 30, 2007 if,

- (a) it is in effect on May 1, 2005, or it comes into effect after May 1, 2005 but before April 30, 2007; and
- (b) it is to expire on a date other than April 30, 2007. 2005, c. 15, s. 9.

First contracts in existence on or after April 30, 2007

(2) A first collective agreement that applies with respect to residential work and comes into effect on or after April 30, 2007 shall be deemed to expire with respect to residential work on the next April 30, calculated triennially from April 30, 2007. 2005, c. 15, s. 9.

Renewal and replacement agreements

(3) Every collective agreement that is a renewal or replacement of a collective agreement to which subsection (1) or (2) applies, or of a collective agreement to which this subsection applies, shall be deemed to expire with respect to residential work on the next April 30, calculated triennially from April 30, 2010. 2005, c. 15, s. 9.

No extension permitted

(4) The parties to a collective agreement described in subsection (1), (2) or (3) may not agree to continue the operation of that agreement with respect to residential work beyond the relevant expiry date and any renewal provision in a collective agreement that purports to do so shall be deemed to be void. 2005, c. 15, s. 9.

Notice of desire to bargain

(5) A notice of desire to bargain for the renewal or replacement of a collective agreement to which subsection (1), (2) or (3) applies may be given on or after January 1 in the year of expiry. 2005, c. 15, s. 9.

Application of subss. (1) to (3)

(6) Subsections (1), (2) and (3) apply even if the collective agreement would have a term of less than one year as a result. 2005, c. 15, s. 9.

Collective agreements not affected re other work

(7) Nothing in this section shall be interpreted to affect the validity of a collective agreement to which this section applies with respect to work other than residential work performed in the geographic areas described in subsection 150.1 (1). 2005, c. 15, s. 9.

Section Amendments with date in force (d/m/y)

1995, c. 1, Sched. A, s. 150.2 (18) - 30/04/2005

2000, c. 24, s. 9 - 16/12/2000

2002, c. 18, Sched. J, s. 4 (4) - 26/11/2002

2005, c. 15, s. 9 - 01/05/2005

150.2.1 REPEALED: 2005, c. 15, s. 9.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 4 (4) - 26/11/2002

2005, c. 15, s. 9 - 01/05/2005

Prohibition, strikes and lockouts

Strike

150.3 (1) No individual represented by a trade union or council of trade unions that is seeking to renew or replace a collective agreement that expires on April 30 in a given year according to section 150.2 shall commence or continue a strike after June 15 of that year with respect to residential work. 2005, c. 15, s. 9.

Calling strike

(2) No trade union or council of trade unions that is seeking to renew or replace a collective agreement that expires on April 30 in a given year according to section 150.2 shall call or authorize a strike or the continuation of a strike after June 15 of that year with respect to residential work. 2005, c. 15, s. 9.

Lock-out

(3) No employer or employers' organization that is seeking to renew or replace a collective agreement that expires on April 30 in a given year according to section 150.2 shall commence or continue a lock-out after June 15 of that year with respect to residential work. 2005, c. 15, s. 9.

Calling lock-out

(4) No employer or employers' organization that is seeking to renew or replace a collective agreement that expires on April 30 in a given year according to section 150.2 shall call or authorize a lock-out or the continuation of a lock-out after June 15 of that year with respect to residential work. 2005, c. 15, s. 9.

Section Amendments with date in force (d/m/y)

2000, c. 24, s. 3 - 16/12/2000

Arbitration

150.4 (1) Subject to subsection (2), either party to negotiations for the renewal or replacement of a collective agreement that expires on April 30 in a given year according to section 150.2 may, by notice given in accordance with subsection (4), require that the matters in dispute between them be decided by arbitration. 2005, c. 15, s. 9.

Restriction

- (2) A party shall not give notice under subsection (1) until the later of,
- (a) the day on which a strike or lock-out would have been legal had it not been for section 150.3; and
 - (b) June 15 of the year in which the collective agreement that is being renewed or replaced expires. 2005, c. 15, s. 9.

Exception

- (3) Despite subsection (2), notice under subsection (1) may be given at any time after April 30 of the relevant year if,
- (a) notice of desire to bargain has been given; and
 - (b) both parties agree that notice may be given under subsection (1). 2005, c. 15, s. 9.

Notice

- (4) The notice shall be given in writing to the other party and to the Minister. 2005, c. 15, s. 9.

Effect of notice

- (5) If notice is given under subsection (1),
- (a) the parties may jointly appoint an arbitrator or either party may request the Minister in writing to appoint an arbitrator;
 - (b) if subsection (3) applies,
 - (i) the Minister shall not appoint a conciliation officer, a conciliation board or a mediator, and
 - (ii) the appointment of any previously appointed conciliation officer, conciliation board or mediator shall be deemed to be terminated; and
 - (c) subject to subsection (6), all terms and conditions of employment and all rights, privileges and duties that existed under the collective agreement that expired on April 30 of the relevant year shall apply with respect to the employer, the trade union and the employees, as the case may be, during the period beginning on the day on which notice was given and ending on the day,
 - (i) the collective agreement is renewed or replaced, or
 - (ii) the right of the trade union to represent the employees is terminated. 2005, c. 15, s. 9.

Exception

- (6) The employer and the trade union may agree to alter a term or condition of employment or a right, privilege or duty referred to in clause (5) (c). 2005, c. 15, s. 9.

Minister to appoint arbitrator

- (7) Upon receiving a request under clause (5) (a), the Minister shall appoint an arbitrator. 2005, c. 15, s. 9.

Replacement

- (8) If the arbitrator who is appointed is unable or unwilling to perform his or her duties, a new arbitrator shall be appointed in accordance with subsections (5) and (7). 2005, c. 15, s. 9.

Appointment and proceedings not to be questioned

- (9) The appointment of a person as an arbitrator under this section shall be conclusively presumed to have been properly made, and no application shall be made to question the appointment or to prohibit or restrain any of the arbitrator's proceedings. 2005, c. 15, s. 9.

Fees and expenses

- (10) Each party shall pay one-half of the arbitrator's fees and expenses. 2005, c. 15, s. 9.

Arbitration method and procedure

(11) If the parties do not agree on the method of arbitration or the arbitration procedure, the method or procedure, as the case may be, shall be as prescribed by the regulations. 2005, c. 15, s. 9.

Non-application of *Arbitration Act, 1991*

(12) The *Arbitration Act, 1991* does not apply to an arbitration under this section. 2005, c. 15, s. 9.

Regulations

(13) The Lieutenant Governor in Council may make regulations,

- (a) prescribing a method of arbitration, which may be mediation-arbitration, final offer selection or any other method of arbitration;
- (b) prescribing an arbitration procedure;
- (c) prescribing the powers of an arbitrator;
- (d) prescribing a scale of fees and expenses allowable to arbitrators with respect to their duties under this section and limiting or restricting the application of those fees or expenses;
- (e) providing a procedure for the review and determination of disputes concerning the fees and expenses charged or claimed by an arbitrator;
- (f) governing the filing of schedules of fees and expenses by arbitrators, requiring arbitrators to provide parties with a copy of the schedules upon being appointed and requiring arbitrators to charge fees and expenses in accordance with the filed schedules;
- (g) providing for the circumstances under which the jurisdiction of the arbitrator may be limited where the parties have agreed to some of the matters in dispute;
- (h) prescribing time limits for the commencement of arbitration proceedings or for the rendering of the arbitrator's decision and providing for the extension of those time limits;
- (i) requiring the parties to prepare and execute documents giving effect to the arbitrator's decision, requiring the arbitrator to prepare those documents if the parties fail to do so and providing for the deemed execution of the documents if either or both of the parties do not execute them. 2005, c. 15, s. 9.

Section Amendments with date in force (d/m/y)

2005, c. 15, s. 9 - 01/05/2005

Meetings at Director's discretion

150.5 (1) The Director of Dispute Resolution Services may, at his or her discretion, convene meetings of representatives of employers or employers' organizations and of trade unions or councils of trade unions to discuss matters of interest relating to collective bargaining and labour relations in the residential sector of the construction industry. 2005, c. 15, s. 9; 2009, c. 33, Sched. 20, s. 2 (10).

Same

(2) In deciding when and whether to convene a meeting under subsection (1), the Director may consider whether a meeting is necessary or would be beneficial and may consider a request made by a representative. 2005, c. 15, s. 9.

Selection

(3) The representatives invited to attend a meeting convened under subsection (1) shall be selected by the Director of Dispute Resolution Services in his or her sole discretion. 2005, c. 15, s. 9; 2009, c. 33, Sched. 20, s. 2 (11).

Section Amendments with date in force (d/m/y)

2005, c. 15, s. 9 - 01/05/2005

2009, c. 33, Sched. 20, s. 2 (10, 11) - 15/12/2009

Continued application of former provisions

150.6 (1) Former subsections 150.2 (1) to (17), as enacted by the Statutes of Ontario, 2002, chapter 18, Schedule J, section 4, continue to apply, despite their repeal by former subsection 150.2 (18) on April 30, 2005, for the purposes of any arbitration proceedings commenced under that former section 150.2 that are not completed on May 1, 2005. 2005, c. 15, s. 9.

Same

(2) Former subsections 150.2 (1) to (17), as enacted by the Statutes of Ontario, 2000, chapter 24, section 3, continue to apply, despite their repeal on April 30, 2002, for the purposes of any arbitration proceedings commenced under that former section 150.2 that were not completed before April 30, 2002. 2005, c. 15, s. 9.

Section Amendments with date in force (d/m/y)

2005, c. 15, s. 9 - 01/05/2005

SPECIAL RULES TRANSITION

Transition respecting certain certificates and agreements

150.7 (1) Any certificate issued by the Board pursuant to an application for certification made under this section that was made on or after May 2, 2019 is deemed to have not been issued. 2019, c. 9, Sched. 8, s. 2 (1).

Voluntary recognition agreements

(2) Any voluntary recognition agreement entered into under this section on or after May 2, 2019 is deemed to have not been made. 2019, c. 9, Sched. 8, s. 2 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 150.7 of the Act is repealed. (See: 2019, c. 9, Sched. 8, s. 2 (2))

Section Amendments with date in force (d/m/y)

2018, c. 8, Sched. 14, s. 6 - 08/05/2018

2019, c. 9, Sched. 8, s. 2 (1) - 06/06/2019; 2019, c. 9, Sched. 8, s. 2 (2) - not in force

PROVINCE-WIDE BARGAINING

Interpretation, application, designations

151 (1) In this section and in sections 144 and 153 to 168,

“affiliated bargaining agent” means a bargaining agent that, according to established trade union practice in the construction industry, represents employees who commonly bargain separately and apart from other employees and is subordinate or directly related to, or is, a provincial, national or international trade union, and includes an employee bargaining agency; (“agent négociateur affilié”)

“bargaining”, except when used in reference to an affiliated bargaining agent, means province-wide, multi-employer bargaining in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126; (“négociation”)

“designated regional employers’ organization” means an organization of employers that operate businesses in a particular geographic area in the construction industry if that organization is designated as such by the Minister; (“association patronale régionale désignée”)

“employee bargaining agency” means an organization of affiliated bargaining agents that are subordinate or directly related to the same provincial, national or international trade union, and that may include the parent or related provincial, national or international trade union, formed for purposes that include the representation of affiliated bargaining agents in bargaining and which may be a single provincial, national or international trade union; (“organisme négociateur syndical”)

“employer bargaining agency” means an employers’ organization or group of employers’ organizations formed for purposes that include the representation of employers in bargaining; (“organisme négociateur patronal”)

“provincial agreement” means an agreement in writing covering the whole of the Province of Ontario between a designated or accredited employer bargaining agency that represents employers, on the one hand, and a designated or certified employee bargaining agency that represents affiliated bargaining agents, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer bargaining agency, the employers represented by the employer bargaining agency and for whose employees the affiliated bargaining agents hold bargaining rights, the affiliated bargaining agents represented by the employee bargaining agency, or the employees represented by the affiliated bargaining agents and employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126. (“convention provinciale”) 1995, c. 1, Sched. A, s. 151 (1); 2000, c. 24, s. 4 (1); 2005, c. 15, s. 10.

Deemed recognition of affiliated bargaining agents

(2) Where an employer is represented by a designated or accredited employer bargaining agency, the employer shall be deemed to have recognized all of the affiliated bargaining agents represented by a designated or certified employee

bargaining agency that bargains with the employer bargaining agency as the bargaining agents for the purpose of collective bargaining in their respective geographic jurisdictions in respect of the employees of the employer employed in the industrial, commercial or institutional sector of the construction industry, referred to in the definition of “sector” in section 126, except those employees for whom a trade union other than one of the affiliated bargaining agents holds bargaining rights. 1995, c. 1, Sched. A, s. 151 (2).

Designation of regional employers’ organizations

(3) The Minister may, upon the terms and conditions the Minister considers appropriate, designate regional employers’ organizations. 2000, c. 24, s. 4 (2).

Non-application

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a designation made under subsection (3). 2000, c. 24, s. 4 (2); 2006, c. 21, Sched. F, s. 136 (1).

Section Amendments with date in force (d/m/y)

2000, c. 24, s. 4 (1, 2) - 16/12/2000

2005, c. 15, s. 10 - 13/06/2005

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

152 REPEALED: 2000, c. 38, s. 31.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 31 - 30/12/2000

Powers of Minister

153 (1) The Minister may, upon such terms and conditions as the Minister considers appropriate,

- (a) designate employee bargaining agencies to represent in bargaining provincial units of affiliated bargaining agents, and describe those provincial units;
- (b) despite an accreditation of an employers’ organization as the bargaining agent of employers, designate employer bargaining agencies to represent in bargaining provincial units of employers for whose employees affiliated bargaining agents hold bargaining rights, and describe those provincial units. 1995, c. 1, Sched. A, s. 153 (1).

Exclusion of certain bargaining relationships

(2) Where affiliated bargaining agents that are subordinate or directly related to the different provincial, national or international trade unions bargain as a council of trade unions with a single employer bargaining agency for a province-wide collective agreement, the Minister may exclude such bargaining relationships from the designations made under subsection (1), and subsection 162 (2) shall not apply to such exclusion. 1995, c. 1, Sched. A, s. 153 (2).

(3)-(3.4) **REPEALED:** 2019, c. 9, Sched. 8, s. 3.

Reference of question

(4) The Minister may refer to the Board any question that arises concerning a designation, or any terms or conditions therein, and the Board shall report to the Minister its decision on the question. 1995, c. 1, Sched. A, s. 153 (4).

Minister may alter, etc., designation

(5) Subject to sections 154 and 155, the Minister may alter, revoke or amend any designation from time to time and may make another designation. 1995, c. 1, Sched. A, s. 153 (5).

Non-application

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a designation made under subsection (1). 1995, c. 1, Sched. A, s. 153 (6); 2006, c. 21, Sched. F, s. 136 (1).

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

2018, c. 8, Sched. 14, s. 7 - 08/05/2018

2019, c. 9, Sched. 8, s. 3 - 06/06/2019

Application to Board by employee bargaining agency

154 (1) During the period between the 120th and the 180th days prior to the termination of a provincial agreement, an employee bargaining agency, whether designated or not, may apply to the Board to be certified to represent in bargaining a provincial unit of affiliated bargaining agents.

Certification by Board

(2) Where the Board is satisfied that a majority of the affiliated bargaining agents falling within the provincial unit is represented by the employee bargaining agency and that the majority of affiliated bargaining agents holds bargaining rights for a majority of employees that would be bound by a provincial agreement, the Board shall certify the employee bargaining agency. 1995, c. 1, Sched. A, s. 154.

Application to Board by employer bargaining agency

155 (1) During the period between the 120th and the 180th days prior to the termination of a provincial agreement, an employer bargaining agency, whether designated or not, may apply to the Board to be accredited to represent in bargaining a provincial unit of employers for whose employees affiliated bargaining agents hold bargaining rights.

Accreditation by Board

(2) Where the Board is satisfied that a majority of employers falling within the provincial unit is represented by the employer bargaining agency and that the majority of employers employ a majority of the employees for whom the affiliated bargaining agents hold bargaining rights, the Board shall accredit the employer bargaining agency. 1995, c. 1, Sched. A, s. 155.

Employee bargaining agencies, vesting of rights, etc.

156 Where an employee bargaining agency has been designated under section 153 or certified under section 154 to represent a provincial unit of affiliated bargaining agents, all rights, duties and obligations under this Act of the affiliated bargaining agents for which it bargains shall vest in the employee bargaining agency, but only for the purpose of conducting bargaining and, subject to the ratification procedures of the employee bargaining agency, concluding a provincial agreement. 1995, c. 1, Sched. A, s. 156.

Employer bargaining agencies, vesting of rights, etc.

157 Where an employer bargaining agency has been designated under section 153 or accredited under section 155 to represent a provincial unit of employers,

- (a) all rights, duties and obligations under this Act of employers for which it bargains shall vest in the employer bargaining agency, but only for the purpose of conducting bargaining and concluding a provincial agreement; and
- (b) an accreditation heretofore made under section 136 of an employers' organization as bargaining agent of the employers in the industrial, commercial and institutional sector of the construction industry, referred to in the definition of "sector" in section 126, represented or to be represented by the employer bargaining agency is null and void from the time of such designation under section 153 or accreditation under section 155. 1995, c. 1, Sched. A, s. 157.

Bargaining agents in the industrial, commercial and institutional sector

158 (1) An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126 shall be brought by either,

- (a) an employee bargaining agency; or
- (b) one or more affiliated bargaining agents of the employee bargaining agency,

on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (2) or by voluntary recognition.

Saving

(2) Despite subsection 128 (1), a trade union represented by an employee bargaining agency may bring an application for certification in relation to a unit of employees employed in all sectors of a geographic area other than the industrial, commercial and institutional sector and the unit shall be deemed to be a unit of employees appropriate for collective bargaining.

Voluntary recognition agreements

(3) A voluntary recognition agreement in so far as it relates to the industrial, commercial and institutional sector of the construction industry shall be between an employer on the one hand and either,

- (a) an employee bargaining agency;
- (b) one or more affiliated bargaining agents represented by an employee bargaining agency; or
- (c) a council of trade unions on behalf of one or more affiliated bargaining agents affiliated with the council of trade unions,

on the other hand, and shall be deemed to be on behalf of all the affiliated bargaining agents of the employee bargaining agency and the defined bargaining unit in the agreement shall include those employees who would be bound by a provincial agreement.

Exception

(4) Despite subsections (1) and (3), a trade union that is not represented by a designated or certified employee bargaining agency may bring an application for certification or enter into a voluntary recognition agreement on its own behalf. 1995, c. 1, Sched. A, s. 158.

Voting constituency

159 (1) The Board shall determine the voting constituency to be used for a representation vote. 1995, c. 1, Sched. A, s. 159 (1).

Direction for representation vote

(2) If the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the trade unions at the time the application was filed, the Board shall direct that a representation vote be taken among the individuals in the voting constituency. 1995, c. 1, Sched. A, s. 159 (2).

Election under s. 128.1

(3) This section does not apply when an application for certification is being dealt with under section 128.1. 2005, c. 15, s. 11.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 32 - 30/12/2000

2005, c. 15, s. 11 - 13/06/2005

Certification after representation vote

160 (1) Subject to section 11.1, the Board shall certify the trade unions on whose behalf an application for certification is brought as the bargaining agent of the employees in the bargaining unit if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade unions. The Board shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas. 1995, c. 1, Sched. A, s. 160 (1); 2005, c. 15, s. 12 (1).

Remedial certification

(2) If the Board certifies the trade unions on whose behalf an application for certification is brought as the bargaining agent of the employees in the bargaining unit under clause 11 (2) (c), the Board shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas. 2005, c. 15, s. 12 (2); 2017, c. 22, Sched. 2, s. 14; 2018, c. 14, Sched. 2, s. 19.

Bar to reapplying

(3) If the Board dismisses an application for certification under this section, the Board shall not consider another application for certification by the employee bargaining agency or the affiliated bargaining agent or agents to certify the trade unions as bargaining agent for the employees in the bargaining unit until one year has elapsed after the dismissal. 1995, c. 1, Sched. A, s. 160 (3).

Election under s. 128.1

(4) This section does not apply when an application for certification is being dealt with under section 128.1. 2005, c. 15, s. 12 (3).

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 33 - 30/12/2000

2005, c. 15, s. 12 (1-3) - 13/06/2005

2017, c. 22, Sched. 2, s. 14 - 01/01/2018

2018, c. 14, Sched. 2, s. 19 - 21/11/2018

160.1 REPEALED: 2015, c. 38, Sched. 12, s. 3.

Section Amendments with date in force (d/m/y)

2000, c. 24, s. 5 (1, 2) - 16/12/2000

2015, c. 38, Sched. 12, s. 1 - 10/12/2015; 2015, c. 38, Sched. 12, s. 3 - 10/12/2016

Termination of collective agreement

161 (1) Subject to subsection (2), any collective agreement in operation on October 27, 1977 in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126 and represented by affiliated bargaining agents is enforceable by and binding on the parties thereto only for the remainder of the term of operation of the agreement, regardless of any provision respecting its renewal. 1995, c. 1, Sched. A, s. 161 (1).

Same

(2) Every collective agreement in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126 and represented by affiliated bargaining agents entered into after January 1, 1977 and before April 30, 1978 shall be deemed to expire not later than April 30, 1978, regardless of any provision respecting its term of operation or its renewal. 1995, c. 1, Sched. A, s. 161 (2); 2000, c. 38, s. 34 (1).

Provincial agreement binding

(3) Where any collective agreement mentioned in subsection (1) ceases to operate, the affiliated bargaining agent, the employer and the employees for whom the affiliated bargaining agent holds bargaining rights shall be bound by the provincial agreement made between an employee bargaining agency representing the affiliated bargaining agent and the employer bargaining agency representing the employer. 1995, c. 1, Sched. A, s. 161 (3).

Same

(4) After April 30, 1978, where an affiliated bargaining agent obtains bargaining rights through certification or voluntary recognition in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126, the employer, the affiliated bargaining agent, and the employees for whom the affiliated bargaining agent has obtained bargaining rights are bound by the provincial agreement made between an employee bargaining agency representing the affiliated bargaining agent and an employer bargaining agency representing a provincial unit of employers in which the employer would have been included. 1995, c. 1, Sched. A, s. 161 (4).

When provincial agreement ceases to operate

(5) Where, under the provisions of this section, an employer, affiliated bargaining agent or employees become bound by a provincial agreement after the agreement has commenced to operate, the agreement ceases to be binding on the employer, affiliated bargaining agent or employees in accordance with the terms thereof. 1995, c. 1, Sched. A, s. 161 (5); 2000, c. 38, s. 34 (2).

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 34 (1, 2) - 30/12/2000

Agency shall make only one agreement

162 (1) An employee bargaining agency and an employer bargaining agency shall make only one provincial agreement for each provincial unit that it represents. 1995, c. 1, Sched. A, s. 162 (1).

No agreement other than provincial agreement

(2) Subject to sections 153, 160.1, 161, 163.1, 163.2 and 163.3, no person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers’ organization, group of employers’ organizations or employer bargaining agency shall bargain for, attempt to bargain for, or conclude any collective agreement or other arrangement affecting employees represented by affiliated bargaining agents other than a provincial agreement as

contemplated by subsection (1), and any collective agreement or other arrangement that does not comply with subsection (1) is null and void. 1995, c. 1, Sched. A, s. 162 (2); 1998, c. 8, s. 20; 2000, c. 24, s. 6; 2009, c. 33, Sched. 20, s. 2 (12); 2015, c. 38, Sched. 12, s. 2; 2018, c. 8, Sched. 14, s. 8; 2019, c. 9, Sched. 8, s. 4.

Expiry of provincial agreement

(3) Every provincial agreement shall provide for the expiry of the agreement on April 30 calculated triennially from April 30, 1992. 1995, c. 1, Sched. A, s. 162 (3).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 20 - 29/06/1998

2000, c. 24, s. 6 - 16/12/2000

2009, c. 33, Sched. 20, s. 2 (12) - 15/12/2009

2015, c. 38, Sched. 12, s. 2 - 10/12/2015

2018, c. 8, Sched. 14, s. 8 - 08/05/2018

2019, c. 9, Sched. 8, s. 4 - 06/06/2019

Provincial agreements

Non-application of s. 57

163 (1) Section 57 does not apply to a designated or accredited employer bargaining agency or a designated or certified employee bargaining agency.

Provincial agreement binding

(2) A provincial agreement is, subject to and for the purposes of this Act, binding upon the employer bargaining agency, the employers represented by the employer bargaining agency, the employee bargaining agency, the affiliated bargaining agents represented by the employee bargaining agency, the employees represented by the affiliated bargaining agents and employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126, and upon such employers, affiliated bargaining agents and employees as may be subsequently bound by the said agreement.

Parties

(3) Any employee bargaining agency, affiliated bargaining agent, employer bargaining agency and employer bound by a provincial agreement shall be considered to be a party for the purposes of section 133. 1995, c. 1, Sched. A, s. 163.

Project agreements

163.1 (1) A proponent of a construction project or a group of construction projects who believes that the project or projects are economically significant and who wishes to have a project agreement for the project or projects shall do the following:

1. Create a list of potential parties to the agreement, consisting of bargaining agents, subject to subsection (2).
2. Give each bargaining agent on the list a notice that the proponent wishes to have a project agreement and include with the notice a copy of the list, a general description of each of the projects which are proposed to be covered under the agreement and the estimated cost of each project.
3. Give a copy of the notice to each employee bargaining agency to which any of the bargaining agents on the list belong.
4. Give a copy of the notice to each employer bargaining agency that is a party to a provincial agreement by which a bargaining agent on the list is bound.
5. Give the Board a copy of the notice and evidence, in such form as the Board requires, that the notice has been given to each bargaining agent on the list. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (1, 2).

Requirements for list of potential parties

(2) The following apply with respect to the list of potential parties created by the proponent:

1. A bargaining agent may be included on the list only if it is bound by a provincial agreement.
2. A bargaining agent may be included on the list only if the proponent anticipates that any project that is proposed to be covered under the project agreement may include work within the bargaining agent’s geographic jurisdiction for which the bargaining agent would select, refer, assign, designate or schedule persons for employment. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (3).

Objection to Board

(3) A bargaining agent on the list may apply to the Board for an order that a project may not be the subject of a project agreement and the following apply with respect to such an application:

1. The application must be made within 14 days after receiving the notice that the proponent wishes to have a project agreement.
2. The parties to the application are the applicant, the proponent and such other persons as may be prescribed under the regulations or as may be specified by the Board in accordance with the regulations.
3. The Board shall dismiss the application if the project is an industrial project in the industrial, commercial and institutional sector of the construction industry.
4. The Board shall dismiss the application if the project is designated in the regulations as a project that may be the subject of a project agreement.
5. If neither paragraph 3 nor 4 apply, the Board shall grant the application and make an order that the project may not be the subject of a project agreement.
6. An order under paragraph 5 does not affect the preparation of another list and the giving of other notices under subsection (1) even if they relate to the same project. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (4, 5).

Contents of project agreement

(4) A project agreement must contain,

- (a) a general description of each project covered under the project agreement; and
- (b) a term providing that the agreement is in effect until every project covered under the agreement is completed or abandoned. 2000, c. 38, s. 35 (6).

Same

(4.1) A project agreement may contain a term providing that additional projects may be added to and governed by the project agreement. 2000, c. 38, s. 35 (6).

Notice of proposed agreement

(5) The proponent may give notice of a proposed project agreement if at least 40 per cent of the bargaining agents on the list agree, in writing, to the giving of the notice. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Who notice given to

(6) If the proponent gives notice under subsection (5), the proponent must give notice to each bargaining agent on the list, and the proponent shall also give a copy of the notice to the Board. 1998, c. 8, s. 21.

Content of notice

(7) A notice under subsection (5) must include,

- (a) a copy of the proposed project agreement; and
- (b) the names of the bargaining agents on the list that have agreed to the giving of the notice. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Approval of agreements

(8) The following apply with respect to the approval of a project agreement:

1. A bargaining agent on the list that wishes to approve or disapprove of the proposed agreement shall do so by giving notice of that approval or disapproval to the proponent within 30 days after receiving notice of the proposed agreement.
2. A bargaining agent that gives notice of approval or disapproval shall also give a copy of the notice to the Board.
3. The proposed agreement is approved if the agreement is approved by at least 60 per cent of the bargaining agents that gave notice, either of approval or disapproval, within the time period for doing so.
4. After the time period for every bargaining agent on the list to approve or disapprove has expired, the proponent shall forthwith determine whether the proposed agreement has been approved.

5. If the proponent determines that the proposed agreement has been approved, the proponent shall forthwith give notice that the proposed agreement has been approved to every bargaining agent on the list and shall give the Board a copy of the notice and evidence, in such form as the Board requires, that the notice has been given to each bargaining agent on the list.
6. If the proponent determines that the proposed agreement has not been approved, the proponent shall forthwith give notice that the proposed agreement has not been approved to every bargaining agent on the list and shall give the Board a copy of the notice. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Challenges to agreement

(9) A bargaining agent on the list that did not give notice of approval of the proposed project agreement may challenge the proposed project agreement by giving notice to the Board within 10 days after the Board receives the evidence described in paragraph 5 of subsection (8) and the following apply with respect to such a challenge:

1. The Board shall make an order either declaring that the proposed project agreement is in force or declaring that the proposed project agreement shall not come into force.
2. Paragraphs 3 and 4 apply if,
 - i. the bargaining agent challenging the proposed project agreement gave notice of disapproval of the project agreement, and
 - ii. the proposed project agreement would result in a reduction in the total wages and benefits, expressed as a rate, of an employee represented by the bargaining agent challenging the project agreement that is larger, proportionally, than the largest reduction that would apply to an employee represented by a bargaining agent that gave notice of approval of the project agreement.
3. In the circumstances described in paragraph 2, the Board shall make an order doing the following, unless the Board considers it inappropriate to do so,
 - i. amending the proposed project agreement so that no reduction in the total wages and benefits, expressed as a rate, of an employee represented by the bargaining agent challenging the project agreement is greater, proportionally, than the largest reduction that would apply to an employee represented by a bargaining agent that gave notice of approval of the project agreement, and
 - ii. declaring that the proposed project agreement, as amended, is in force.
4. In the circumstances described in paragraph 2, if the Board considers it inappropriate to make an order under paragraph 3, the Board may make an order declaring that the proposed project agreement shall not come into force.
5. The Board may make an order declaring that the proposed project agreement shall not come into force if the requirements of subsections (1) to (8) have not been satisfied and the failure to satisfy the requirements affected the bargaining agent challenging the project agreement.
6. In the circumstances prescribed in the regulations, the Board may make an order declaring that the proposed project agreement shall not come into force. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

When agreement comes into force

(10) A project agreement comes into force upon the Board making an order declaring that the proposed project agreement is in force or, if the project agreement is not challenged under subsection (9), upon the expiry of the time period for making such a challenge. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Notice of agreement in force

(11) If the project agreement comes into force, the proponent shall forthwith give notice that the project agreement is in force to the agents and agencies described in subsection (13). 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Notice of order not to come into force

(12) If the Board makes an order declaring that the proposed project agreement shall not come into force, the proponent shall forthwith give notice of that order to the agents and agencies described in subsection (13). 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Who notices given to

(13) The agents and agencies referred to in subsections (11) and (12) are the bargaining agents, employee bargaining agencies and employer bargaining agencies to which notice was given under subsection (1). 1998, c. 8, s. 21.

Effect of agreement

(14) The following apply with respect to projects to which a project agreement applies:

1. The project agreement applies to all construction work on the project that is within the jurisdiction of a bargaining agent on the list.
2. Each applicable provincial agreement, as modified by the project agreement, applies to the construction work on the project, even with respect to employers who would not otherwise be bound by the provincial agreement.
3. Subject to the project agreement, if a provincial agreement ceases to apply while the project agreement is in effect, the provincial agreement that applied when the project agreement was approved applies to the construction work on the project until a new provincial agreement is made. However, this paragraph does not apply with respect to provincial agreements that apply to work that the project agreement does not apply to.
4. No employees performing work to which the project agreement applies shall strike and no employer shall lock-out such employees while the project agreement is in effect even if a strike is called or authorized under subsection 164 (1) or a lock-out is called or authorized under subsection 164 (2).
5. For greater certainty, paragraph 4 does not affect the right to strike of an employee who performs work to which the project agreement does not apply nor does paragraph 4 affect the right of the employer to lock-out such an employee. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Application of subs. (16)

(15) Subsection (16) applies if,

- (a) a trade union is a bargaining agent that received notice of the coming into force of a project agreement under subsection (11);
- (b) the trade union does not have bargaining rights with respect to employees of an employer; and
- (c) the employer employs members of the trade union to perform work on a project that is governed by that project agreement. 2000, c. 38, s. 35 (8).

No certification or voluntary recognition

(16) Regardless of whether the work the members of the trade union perform is inside or outside of the construction industry, if the circumstances set out in subsection (15) apply,

- (a) the employment of the members of the trade union before the project is completed or abandoned shall not be considered in any application for certification by the trade union with respect to the employer; and
- (b) any agreement under which the employer agrees to employ only members of the trade union for that work before the project is completed or abandoned but not afterwards shall be deemed not to be an agreement voluntarily recognizing the trade union as the exclusive bargaining agent of those employees. 2000, c. 38, s. 35 (8).

Not voluntary recognition

(16.1) A person shall be deemed not to have voluntarily recognized a trade union as an exclusive bargaining agent if,

- (a) the person is a party to an agreement or operates under an agreement under which an employer agrees to employ members of the trade union to perform work, regardless of whether the work is inside or outside of the construction industry;
- (b) the trade union is a bargaining agent to which notice of the coming into force of a project agreement was given under subsection (11); and
- (c) the agreement includes work on a project to which the project agreement applies. 2000, c. 38, s. 35 (8).

Not party to collective agreement

(17) The proponent and, if the proponent is an agent, the person who owns or has an interest in the land for which the project is planned, are not, only by reason of being a party or operating under the project agreement or an agreement that includes work on the project, parties to any collective agreement. 2000, c. 38, s. 35 (8).

Same, project agreement

(17.1) Subsections (15) to (17) apply with respect to agreements entered into before the day subsection 35 (8) of the *Labour Relations Amendment Act, 2000* is proclaimed in force. 2000, c. 38, s. 35 (8).

Definition

(18) In this section,

“proponent” means a person who owns or has an interest in the land for which the project is planned and includes an agent of such a person. 1998, c. 8, s. 21.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 21 - 29/06/1998

2000, c. 38, s. 35 (1-8) - 30/12/2000

Adding new project to agreement

163.1.1 (1) This section applies if,

- (a) the proponent under an existing project agreement believes that a new construction project that is not included in the agreement is economically significant;
- (b) the proponent wishes to add the new project to be governed by the project agreement; and
- (c) the project agreement contains a term providing that additional projects may be added to and governed by the project agreement. 2000, c. 38, s. 36.

Notice to be given

(2) The proponent shall do the following:

1. Give notice that the proponent wishes to add a new project to be governed by an existing project agreement to the bargaining agents, employee bargaining agencies and employer bargaining agencies that received notice under subsection 163.1 (11).
2. Include with the notice a copy of the existing project agreement and a general description of the new project and its estimated cost.
3. Give the Board a copy of the notice and evidence, in the form required by the Board, that the notice has been given to each bargaining agent entitled to receive notice. 2000, c. 38, s. 36.

Challenge

(3) A bargaining agent entitled to receive notice under subsection (2) may apply to the Board for an order that the new project may not be the subject of the project agreement. 2000, c. 38, s. 36.

Same

(4) Subsection 163.1 (3) applies, with necessary modifications, to an application under subsection (3). 2000, c. 38, s. 36.

Application by bargaining agent

(5) A bargaining agent entitled to receive notice under subsection (2) may challenge the proposed addition of the new project to the existing project agreement by giving notice to the Board within 10 days after the Board receives a copy of the notice and evidence under paragraph 3 of subsection (2). 2000, c. 38, s. 36.

Decision of Board

(6) In a challenge under subsection (5), the Board shall make an order declaring that the new project shall not be added to the existing project agreement if the Board makes either of the following findings:

1. The project agreement does not contain a term that additional projects may be added to and governed by the project agreement.
2. The requirements in subsection (2) have not been satisfied and the failure to satisfy the requirements affected the bargaining agent making the challenge. 2000, c. 38, s. 36.

Same

(7) If the Board does not make any of the findings set out in subsection (6), the Board shall dismiss the challenge. 2000, c. 38, s. 36.

Notice that new project added

(8) The proponent may give notice to the bargaining agents, employee bargaining agencies and employer bargaining agencies specified in subsection (2) that the new project has been added to be governed by the project agreement if,

- (a) no application was made under subsection (3) within the time for making such an application;
- (b) no challenge is made under subsection (5) within the time for making such a challenge; or
- (c) the Board has dismissed any applications or challenges made under those subsections. 2000, c. 38, s. 36.

Effect of notice

(9) The following apply upon the proponent giving the notice under subsection (8):

- 1. The new project is added to the project agreement.
- 2. Subsections 163.1 (14), (15), (16) and (16.1) apply with respect to the new project on and after the day it is added to the project agreement. 2000, c. 38, s. 36.

Notice that new project not added

(10) If the Board grants an application made under subsection (3) or makes an order under subsection (6), the proponent shall give notice to the bargaining agents, employee bargaining agencies and employer bargaining agencies specified in subsection (2) that the new project has not been added to the project agreement. 2000, c. 38, s. 36.

Previous agreements re more than one project

(11) Multiple projects and the addition of new projects under a project agreement described in subsection (13) shall be governed in accordance with the project agreement and not in accordance with section 163.1 and subsections (1) to (10). 2000, c. 38, s. 36.

Previous agreements deemed valid

(12) The provisions in a project agreement described in subsection (13) dealing with multiple projects and the addition of new projects shall be deemed to be valid. 2000, c. 38, s. 36.

Same

(13) Subsections (11) and (12) apply with respect to a project agreement if notice was given under subsection 163.1 (11) with respect to the project agreement before November 2, 2000. 2000, c. 38, s. 36.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 36 - 30/12/2000

Local modifications to provincial agreement

163.2 (1) An employer bargaining agency that is a party to a provincial agreement may apply to an affiliated bargaining agent that is bound by that agreement to agree to amendments to the agreement which would apply to any of the following:

- 1. The kind of work performed, which could be all work performed in the industrial, commercial and institutional sector or a specified kind of that work.
- 2. The market in which it is performed, which could be work performed for all of the industrial, commercial and institutional sector or a specified market in it.
- 3. The location of the work, which could be work performed in all of the affiliated bargaining agent's geographic jurisdiction or a specified portion of it. 2000, c. 24, s. 7.

Same

(2) A designated regional employers' organization having members who are bound by a provincial agreement may apply to an affiliated bargaining agent that is bound by that agreement to agree to amendments to the agreement which would apply to any of the matters set out in paragraphs 1, 2 and 3 of subsection (1) if at least some of the members of the designated regional employers' organization who are bound by the provincial agreement carry on business in the area covered by the affiliated bargaining agent's geographic jurisdiction. 2000, c. 24, s. 7.

Restriction on timing of application

(3) No application shall be made under subsection (1) or (2) during the period of 120 days before the provincial agreement ceases to operate. 2000, c. 24, s. 7.

Restriction re amendments

(4) The application may seek only amendments that concern the following matters:

- 1. Wages, including overtime pay and shift differentials.

2. Restrictions on the hiring of employees who are members of another affiliated bargaining agent that is in the same employee bargaining agency as that in which the affiliated bargaining agent is a member but who are not members of the affiliated bargaining agent.
3. Restrictions on an employer's ability to select employees who are members of the affiliated bargaining agent.
4. Accommodation and travel allowances.
5. Requirements respecting the ratio of apprentices to journeypersons employed by an employer.
6. Hours of work and work schedules. 2000, c. 24, s. 7.

Form and content of application

- (5) The application shall be in writing and shall,
 - (a) state the kind of work, the specified market and the location with respect to which the amendments would apply;
 - (b) set out any submissions the applicant believes to be relevant to determine the question of whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage with respect to any of the matters referred to in clause (a); and
 - (c) set out the text of the amendments which are applied for. 2000, c. 24, s. 7.

Service of application

- (6) The applicant shall serve the application on the affiliated bargaining agent and shall serve a copy of it,
 - (a) on the employee bargaining agency of which the affiliated bargaining agent is a member;
 - (b) if the applicant is an employer bargaining agency, on any designated regional employers' organization having members who carry on a business in the area covered by the affiliated bargaining agent's geographic jurisdiction; and
 - (c) if the applicant is a designated regional employers' organization, on the employer bargaining agency that is a party to the provincial agreement and on any other designated regional employers' organization having members who carry on a business in the area covered by the affiliated bargaining agent's geographic jurisdiction. 2000, c. 24, s. 7.

Agreement on amendment

- (7) Subject to subsections (8) and (9), if the applicant and the affiliated bargaining agent agree to amend the provincial agreement and the employee bargaining agency of which the affiliated bargaining agent is a member advises the applicant in writing that it approves of the amendments, the provincial agreement is amended accordingly, but only with respect to the kind of work, the market and the location specified in the application. 2000, c. 24, s. 7.

Agreement requirements

- (8) The agreement is not effective unless it is in writing and sets out the text of the amendments. 2000, c. 24, s. 7.

Additional requirement re designated regional employers' organization

- (9) If the applicant is a designated regional employers' organization and the employer bargaining agency advises the employee bargaining agency in writing that it approves of the amendments that were agreed to under subsection (7), the provincial agreement shall be deemed to be so amended. 2000, c. 24, s. 7.

Bar to other applications

- (10) If an application has been made to an affiliated bargaining agent under this section, no other application may be made to that agent that would apply, in whole or in part, to the same kind of work with respect to the same market and in the same location,
 - (a) if the work, the market and the location are not the subject of a referral to an arbitrator under section 163.3, until six months and 21 days after the day on which the first application was served on the affiliated bargaining agent; and
 - (b) if the work, the market and the location are the subject of such a referral, until six months after the arbitration proceedings have terminated. 2000, c. 24, s. 7.

Application of section

- (11) This section applies only with respect to provincial agreements that come into operation after the day section 7 of the *Labour Relations Amendment Act (Construction Industry)*, 2000 comes into force. 2000, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

Referral to arbitration

163.3 (1) If a provincial agreement that is the subject of an application under section 163.2 is not amended in accordance with that section within 14 days after the day on which the application was served on the affiliated bargaining agent, the applicant may give notice to the bargaining agent that it is referring the matter to a single arbitrator. 2000, c. 24, s. 7.

Notice requirements

(2) The notice of referral shall be in writing and shall,

- (a) state the name of the individual whom the organization making the referral nominates as the arbitrator;
- (b) set out the organization's final offer with respect to the text of the amendments that the organization proposes to be made to the provincial agreement; and
- (c) be accompanied by copies of those statements and submissions under clauses 163.2 (5) (a) and (b) that were provided with the application made under subsection 163.2 (1) or (2). 2000, c. 24, s. 7.

Restriction re subject matter of amendments

(3) The amendments proposed in the final offer of the organization making the referral may deal only with those provisions of the provincial agreement that concern the matters permitted in the original application, as set out in subsection 163.2 (4). 2000, c. 24, s. 7.

Restriction re subject matter of amendments

(4) The organization making the referral may include in the notice of referral only those submissions that were included in the application under subsection 163.2 (1) or (2). 2000, c. 24, s. 7.

Service of notice

(5) The organization making the referral shall serve the notice of referral and the statements and submissions referred to in clause (2) (c) on the affiliated bargaining agent and shall serve a copy of the notice of referral without those statements and submissions,

- (a) on the employee bargaining agency of which the affiliated bargaining agent is a member;
- (b) if the organization making the referral is an employer bargaining agency, on any designated regional employers' organization having members who carry on a business in the area covered by the affiliated bargaining agent's geographic jurisdiction; and
- (c) if the organization making the referral is a designated regional employers' organization, on the employer bargaining agency that is a party to the provincial agreement and on any other designated regional employers' organization having members who carry on a business in the area covered by the affiliated bargaining agent's geographic jurisdiction. 2000, c. 24, s. 7.

Service of response

(6) Within seven days after being served with a notice of referral, the affiliated bargaining agent,

- (a) shall serve a response on the organization that made the referral; and
- (b) shall serve a copy of the response, without the submissions, if any, referred to in clause (7) (c), on the organizations described in clauses (5) (a), (b) and (c). 2000, c. 24, s. 7.

Form and content of response

(7) The response shall be in writing and,

- (a) shall state whether the affiliated bargaining agent agrees to the appointment of the individual whom the referrer nominated as the arbitrator and, if it does not agree, name the individual whom the affiliated bargaining agent nominates as arbitrator;
- (b) shall set out the affiliated bargaining agent's final offer with respect to the text of the amendments, if any, that it proposes to be made to the provincial agreement; and
- (c) shall set out any submissions that the affiliated bargaining agent believes are relevant to the question of whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage with respect to the kind of work, the market and the location to which the amendments would apply. 2000, c. 24, s. 7.

Joint appointment of arbitrator

(8) If the parties agree on the appointment of an arbitrator, they shall jointly appoint him or her and advise each organization that was served with copies of the notice of referral and response that they have done so. 2000, c. 24, s. 7.

Failure to appoint

(9) If, within seven days after the affiliated bargaining agent is served with a notice of referral under subsection (5), the bargaining agent and the organization making the referral have not appointed an arbitrator, either of them may make a written request to the Minister to appoint an arbitrator. 2000, c. 24, s. 7.

Appointment by Minister

(10) Within two days after receiving a request under subsection (9), the Minister shall appoint an arbitrator and shall inform the affiliated bargaining agent and the organization making the referral of the name and address of the arbitrator. 2000, c. 24, s. 7.

Replacement

(11) If the arbitrator who is appointed is unable or unwilling to perform his or her duties, a new arbitrator shall be appointed in accordance with subsections (8), (9) and (10). 2000, c. 24, s. 7.

Appointment and proceedings not to be questioned

(12) Where an individual has been appointed as an arbitrator under this section, it shall be presumed conclusively that the appointment was properly made and no application shall be made to question the appointment or to prohibit or restrain any of the arbitrator's proceedings. 2000, c. 24, s. 7.

Notice of appointment

(13) Where the Minister appoints an arbitrator, the parties shall advise each organization that was served with copies of the notice of referral and response that the Minister has done so. 2000, c. 24, s. 7.

Notice and response delivered to arbitrator

(14) When the organization making the referral and the affiliated bargaining agent appoint an arbitrator under subsection (8) or receive notice of an appointment under subsection (10), they shall each deliver to the arbitrator copies of the notice of referral and response, respectively. 2000, c. 24, s. 7.

Other organizations

(15) The organization making the referral shall advise the arbitrator of the names and mailing addresses of the organizations that were served with a copy of the notice of referral under clauses (5) (a), (b) or (c). 2000, c. 24, s. 7.

Submission re factual error

(16) If the organization that made the referral to the arbitrator believes that the affiliated bargaining agent's response under subsection (7) contains a factual error, the organization may make a written submission to the arbitrator concerning the alleged error. 2000, c. 24, s. 7.

Restriction

(17) The submission made under subsection (16) shall contain no new arguments in support of the organization's position with respect to the question of whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage. 2000, c. 24, s. 7.

Submission served on affiliated bargaining agent

(18) An organization that makes a written submission to the arbitrator under subsection (16) shall also serve that submission on the affiliated bargaining agent at the same time. 2000, c. 24, s. 7.

Response to submission under subs. (16)

(19) If the organization that made the referral makes a submission under subsection (16), the affiliated bargaining agent may make a written submission to the arbitrator in response and shall also serve a copy of it on the organization at the same time. 2000, c. 24, s. 7.

Restriction

(20) The submission made under subsection (19) shall contain no new arguments in support of the affiliated bargaining agent's position with respect to the question of whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage. 2000, c. 24, s. 7.

Written hearing

(21) After being appointed, the arbitrator shall hold a written hearing. 2000, c. 24, s. 7.

Restriction on what arbitrator may consider

(22) Subject to subsection (23), the arbitrator shall consider only the following when making a decision:

1. The statements and submissions under clauses 163.2 (5) (a) and (b) that were included with the original application under subsection 163.2 (1) or (2), as the case may be.
2. The final offer of the organization making the referral to arbitration.
3. The affiliated bargaining agent's final offer as set out under clause (7) (b).
4. The submissions contained in the affiliated bargaining agent's notice under clause (7) (c). 2000, c. 24, s. 7.

Use of submissions under subss. (16) and (19)

(23) The arbitrator may consider submissions made under subsections (16) and (19) but only with respect to matters of fact. 2000, c. 24, s. 7.

Same

(24) In considering a submission made under subsection (16) or (19), the arbitrator shall not consider any matters of opinion or any new arguments contrary to subsection (17) or (20). 2000, c. 24, s. 7.

Oral, electronic hearings

(25) The arbitrator may convene an oral or electronic hearing if he or she feels it is necessary to do so in order to resolve an issue arising from a submission made under subsection (16) or (19) or in order to resolve any other issue he or she feels cannot be adequately addressed without such a hearing. 2000, c. 24, s. 7.

Failure to serve an organization

(26) If the arbitrator becomes aware that an organization that should have been served with a copy of a notice of referral under subsection (5) or a copy of a response under subsection (6) was not so served, the arbitrator shall arrange for service on that organization. 2000, c. 24, s. 7.

Arbitrator's powers

(27) Subsection 48 (12) applies with necessary modifications with respect to the arbitrator. 2000, c. 24, s. 7.

No amendment of final offers

(28) The arbitrator shall not consider any purported amendment to a final offer. 2000, c. 24, s. 7.

Decision

(29) After considering the submissions and final offers which he or she may consider under this section, the arbitrator,

- (a) shall determine whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage with respect to the kind of work, the market and the location indicated in the application;
- (b) if the arbitrator finds that the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage, shall determine whether the competitive disadvantage would be removed if the provincial agreement were amended in accordance with either of the final offers;
- (c) if amendment of the provincial agreement in accordance with only one of the final offers would remove the competitive disadvantage, shall select that final offer;
- (d) if amendment of the provincial agreement in accordance with neither of the final offers would remove the competitive disadvantage, shall select the final offer that most reduces the disadvantage; and
- (e) if amendment of the provincial agreement in accordance with either of the final offers would remove the competitive disadvantage, shall select the final offer that would be less of a deviation from the provincial agreement. 2000, c. 24, s. 7.

Timing of decision

(30) Subject to subsection (32), the arbitrator shall give his or her written decision to the parties and any organizations that were served under subsection (5) or (26) within 12 days after the day on which he or she was appointed. 2000, c. 24, s. 7.

No reasons

(31) The decision shall not include reasons. 2000, c. 24, s. 7.

Extension of time by agreement

(32) The time limit set out in subsection (30) may be extended by agreement of the organization that made the referral, the affiliated bargaining agent and all of the organizations that were served with copies of the notice of referral. 2000, c. 24, s. 7.

Parties to prepare document

(33) If the arbitrator selects a final offer containing amendments to the provincial agreement, the parties to the provincial agreement shall prepare and execute a document giving effect to his or her decision within five days after the organization that made the referral is advised of the arbitrator's decision. 2000, c. 24, s. 7.

When document prepared by arbitrator

(34) If the parties have not prepared and executed a document within the time required by subsection (33), either party may ask the arbitrator to prepare the document and the arbitrator shall do so and provide the document to the organization that made the referral. 2000, c. 24, s. 7.

Deemed execution

(35) If the arbitrator has prepared a document and either party to the provincial agreement has not executed it within five days after the arbitrator provided it to the organization that made the referral, the document shall be deemed to have been executed by both parties. 2000, c. 24, s. 7.

Effective date of amended provincial agreement

(36) The amendments to the provincial agreement, as they appear in the document prepared and executed under subsections (33) to (35), shall be deemed to have come into effect on the day of the arbitrator's decision. 2000, c. 24, s. 7.

Fees and expenses

(37) The organization that made the referral and the affiliated bargaining agent shall each pay one-half of the fees and expenses of the arbitrator. 2000, c. 24, s. 7.

Non-application of *Arbitration Act, 1991*

(38) The *Arbitration Act, 1991* does not apply to an arbitration under this section. 2000, c. 24, s. 7.

Judicial review

(39) On an application for judicial review of the arbitrator's decision, no determination or selection that the arbitrator was required to make under subsection (29) shall be overturned unless the determination or selection was patently unreasonable. 2000, c. 24, s. 7.

Application of section

(40) This section applies only with respect to provincial agreements that come into operation after the day section 7 of the *Labour Relations Amendment Act (Construction Industry), 2000* comes into force. 2000, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2000, c. 24, s. 7 - 16/12/2000

Sections 163.2 and 163.3

163.4 (1) For the purposes of sections 163.2 and 163.3, service may be effected,

- (a) in the case of service on an organization, by personal service on an officer of the organization or by facsimile transmission to the organization;
- (b) in the case of service on an individual, by personal service or by facsimile transmission. 2000, c. 24, s. 7.

Amendment deemed under s. 58 (5)

(2) An amendment to a provincial agreement made in accordance with section 163.2 or 163.3 shall be deemed to be a revision by mutual consent of the parties within the meaning of subsection 58 (5). 2000, c. 24, s. 7.

Where conflict

(3) If there is a conflict between an amendment to a provincial agreement made in accordance with section 163.2 or 163.3 and provisions that are deemed to be included in the provincial agreement under subsection 163.5 (1), the amendment to the provincial agreement prevails. 2000, c. 24, s. 7.

Section Amendments with date in force (d/m/y)

2000, c. 24, s. 7 - 16/12/2000

Election

163.5 (1) A provincial agreement shall be deemed to include the following provision with respect to an employer who is bound by it if the employer so elects:

1. Up to 75 per cent of the employees who perform work in fulfilling a contract for construction in the industrial, commercial and institutional sector of the construction industry may be individuals who were hired by the employer without referral from or selection, designation, assignment or scheduling by or the concurrence of the affiliated bargaining agent in whose geographic jurisdiction the work is performed.
2. For the purposes of article 1, no more than 40 per cent of the employees who perform work in fulfilling the contract may be individuals who are not members of the affiliated bargaining agent in whose geographic jurisdiction the work is performed.
3. The percentages set out in articles 1 and 2 must apply with reference to the number of employees of the employer who perform work under the provincial agreement on each day during the period in which the contract is being fulfilled. 2000, c. 24, s. 8.

Scope of election

(2) The election may be made with respect to one or more or all of the construction contracts that the employer fulfils using employees who perform work under the provincial agreement. 2000, c. 24, s. 8.

Manner of election

(3) An election under subsection (1) shall be made by giving written notice of the election to the employee bargaining agency that is party to the provincial agreement. 2000, c. 24, s. 8.

Restriction re: membership in local

(4) Nothing in article 1 of the provision set out in subsection (1) permits an employer to employ an individual who is not a member of the affiliated bargaining agent in whose geographic jurisdiction the work is performed if,

- (a) the provincial agreement would prohibit that employment; and
- (b) the employment of the individual is not permitted under article 2 of the provision. 2000, c. 24, s. 8.

Restriction: membership in affiliate

(5) Nothing in article 2 of the provision set out in subsection (1) permits an employer to employ an individual who is not a member of an affiliated bargaining agent that is subordinate or directly related to the same provincial, national or international trade union as the affiliated bargaining agent in whose geographic jurisdiction the work is performed if the provincial agreement would prohibit that employment. 2000, c. 24, s. 8.

Inconsistency

(6) Subject to subsection 163.4 (3), a provision in a provincial agreement that is inconsistent with an article in the provision set out in subsection (1) is, to the extent of the inconsistency, of no effect. 2000, c. 24, s. 8.

Decreased percentages

(7) An employee bargaining agency and an employer bargaining agency may agree that an employer may not make the election under subsection (1) or may agree to either or both of the following:

1. That article 1 of the provision set out in subsection (1) shall be read as if it referred to a specified percentage less than 75 per cent.
2. That article 2 of the provision set out in subsection (1) shall be read as if it referred to a specified percentage less than 40 per cent. 2000, c. 24, s. 8.

Restriction re: impasse

(8) No strike or lock-out shall be called or authorized because there is a failure to reach an agreement under subsection (7). 2000, c. 24, s. 8.

Increased percentages

(9) An employee bargaining agency and an employer bargaining agency may agree to any or all of the following:

1. That article 1 of the provision set out in subsection (1) shall be read as if it referred to a specified percentage of more than 75 per cent.
2. That article 2 of the provision set out in subsection (1) shall be read as if it referred to a specified percentage of more than 40 per cent.
3. That article 3 of the provision set out in subsection (1) shall be read as if it required the percentages set out in sections 1 and 2 of the provision to be applied with reference to the total number of employees of the employer who perform work under the provincial agreement during the entire period in which the contract is being fulfilled. 2000, c. 24, s. 8.

Non-application of section

(10) This section does not apply with respect to a project agreement made under section 163.1. 2000, c. 24, s. 8; 2000, c. 38, s. 37 (2).

Section Amendments with date in force (d/m/y)

2000, c. 24, s. 8 - 01/05/2001; 2000, c. 38, s. 37 (2) - 01/05/2001

Calling of strikes and lock-outs

Calling of strikes

164 (1) Where an employee bargaining agency desires to call or authorize a lawful strike, all of the affiliated bargaining agents it represents shall call or authorize the strike in respect of all the employees represented by all affiliated bargaining agents affected thereby in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126, and no affiliated bargaining agent shall call or authorize a strike of the employees except in accordance with this subsection.

Calling of lock-outs

(2) Where an employer bargaining agency desires to call or authorize a lawful lock-out, all employers it represents shall call or authorize the lock-out in respect of all employees employed by such employers and represented by all the affiliated bargaining agents affected thereby in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126 and no employer shall lock out the employees except in accordance with this subsection. 1995, c. 1, Sched. A, s. 164.

Who may vote, employees

165 (1) Where an employee bargaining agency or an affiliated bargaining agent conducts a strike vote relating to a provincial bargaining unit or a vote to ratify a proposed provincial agreement, the only persons entitled to cast ballots in the vote shall be,

- (a) employees in the provincial bargaining unit on the date the vote is conducted; and
- (b) persons who are members of the affiliated bargaining agent or employee bargaining agency and who are not employed in any employment,
 - (i) on the day the vote is conducted, if the vote is conducted at a time when there is no strike or lock-out relating to the provincial bargaining unit, or
 - (ii) on the day before the commencement of the strike or lock-out, if the vote is conducted during a strike or lock-out relating to the provincial bargaining unit. 1995, c. 1, Sched. A, s. 165 (1).

Same, employers

(2) Where an employer bargaining agency or employers’ organization conducts a lock-out vote relating to a provincial bargaining unit or a vote to ratify a proposed provincial agreement, the only employers entitled to cast ballots in the vote shall be employers represented by the employer bargaining agency or employers’ organization that employed,

- (a) on the day the vote is conducted, if the vote is conducted at a time when there is no strike or lock-out relating to the provincial bargaining unit; or
- (b) on the day before the commencement of the strike or lock-out, if the vote is conducted during a strike or lock-out relating to the provincial bargaining unit,

employees who are represented by the employee bargaining agency or an affiliated bargaining agent that would be affected by the lock-out or would be bound by the provincial agreement. 1995, c. 1, Sched. A, s. 165 (2).

No counting until all voting completed

(3) In a vote to ratify a proposed provincial agreement, no ballots shall be counted until the voting is completed throughout the province. 1995, c. 1, Sched. A, s. 165 (3).

Certification of compliance

(4) Within five days after a vote is completed, the employee bargaining agency, affiliated bargaining agent, employers' organization or employer bargaining agency conducting the vote, as the case may be, shall file with the Minister a declaration in the prescribed form certifying the result of the vote and that it took reasonable steps to secure compliance with subsection (1) or (2), as the case may be, and with subsection (3). 1995, c. 1, Sched. A, s. 165 (4); 2009, c. 33, Sched. 20, s. 2 (13).

Complaints

(5) Where a complaint is made to the Minister that subsection (1), (2) or (3) has been contravened and that the result of a vote has been affected materially thereby, the Minister may, in the Minister's discretion, refer the matter to the Board. 1995, c. 1, Sched. A, s. 165 (5).

Same

(6) No complaint alleging a contravention of this section shall be made except as may be referred to the Board under subsection (5). 1995, c. 1, Sched. A, s. 165 (6).

Same

(7) No complaint shall be considered by the Minister unless it is received within 10 days after the vote is completed. 1995, c. 1, Sched. A, s. 165 (7).

Declaration and direction by Board

(8) Where, upon a matter being referred to the Board, the Board is satisfied that subsection (1), (2) or (3) has been contravened and that such contravention has affected materially the results of a vote, the Board may so declare and it may direct what action, if any, a person, employer, employers' organization, affiliated bargaining agent, employee bargaining agency or employer bargaining agency shall do or refrain from doing with respect to the vote and the provincial agreement or any related matter and such declaration or direction shall have effect from and after the day the declaration or direction is made. 1995, c. 1, Sched. A, s. 165 (8).

Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 20, s. 2 (13) - 15/12/2009

Application re sector

166 (1) A trade union, council of trade unions, or an employer or employers' organization may apply to the Board for a determination of any question that arises as to what sector of the construction industry work performed or to be performed by employees is in. 2000, c. 38, s. 38.

Withdraw application

(2) The applicant may withdraw an application under subsection (1) upon such conditions as the Board may determine. 2000, c. 38, s. 38.

Board to inquire

(3) The Board may inquire into an application made under this section. 2000, c. 38, s. 38.

No hearing

(4) The Board is not required to hold a hearing to make any determination under this section. 2000, c. 38, s. 38.

Meeting of representatives

(5) Representatives of the trade union or council of trade unions and of the employer or employers' organization or their substitutes shall promptly meet and attempt to settle the matters raised in the application and shall report the outcome to the Board. 2000, c. 38, s. 38.

Interim or final order

(6) The Board may make any interim or final order it considers appropriate after consulting with the parties. 2000, c. 38, s. 38.

Cease and desist order

(7) In an interim order or after making an interim order, the Board may order any person, trade union, council of trade unions or employers' organization to cease and desist from doing anything intended or likely to interfere with the terms of an interim order. 2000, c. 38, s. 38.

Filing in court

(8) A party to an interim or final order may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 2000, c. 38, s. 38.

When enforceable

(9) An order that has been filed with the court is enforceable by a person, trade union, council of trade unions or employers' organization affected by it on or after the day after the date fixed in the order for compliance. 2000, c. 38, s. 38.

Compliance

(10) A person, trade union, council of trade unions or employers' organization affected by an interim order made by the Board under this section shall comply with it despite any provision of this Act. 2000, c. 38, s. 38.

Effect of compliance

(11) A person, trade union, council of trade unions or employers' organization that is complying with an interim order made by the Board under this section shall be deemed not to have violated any provision of this Act or of any collective agreement by doing so. 2000, c. 38, s. 38.

Section Amendments with date in force (d/m/y)

2000, c. 38, s. 38 - 30/12/2000

Bargaining agency not to act in bad faith, etc.

167 (1) A designated or certified employee bargaining agency shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of the affiliated bargaining agents in the provincial unit of affiliated bargaining agents for which it bargains, whether members of the designated or certified employee bargaining agency or not and in the representation of employees, whether members of an affiliated bargaining agent or not.

Same

(2) A designated or accredited employer bargaining agency shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employers in the provincial unit of employers for which it bargains, whether members of the designated or accredited employer bargaining agency or not. 1995, c. 1, Sched. A, s. 167.

Corporation to facilitate ICI bargaining

168 (1) This section applies with respect to a corporation established under a regulation under this section or under a predecessor to this section.

Objects

(2) The objects of the corporation are to facilitate collective bargaining in, and otherwise assist, the industrial, commercial and institutional sector of the construction industry including,

- (a) collecting, analyzing and disseminating information concerning collective bargaining and economic conditions in the industrial, commercial and institutional sector of the construction industry;
- (b) holding conferences involving representatives of the employer bargaining agencies and the employee bargaining agencies; and
- (c) carrying out such additional objects as are prescribed.

Not agency of Crown

(3) The corporation is not an agency of the Crown.

Members of corporation

(4) The members of the corporation shall be appointed in the prescribed manner and shall consist of equal numbers of representatives of labour, management and the Government of Ontario.

Board of directors

(5) The board of directors of the corporation shall be composed of all the members of the corporation.

Funding of corporation

(6) The employer bargaining agencies and the employee bargaining agencies shall make payments to the corporation in accordance with the regulations.

If non-payment

(7) The corporation may make a complaint to the Board alleging a contravention of subsection (6) and section 96 applies with respect to such a complaint.

Regulations

(8) The Lieutenant Governor in Council may make regulations,

- (a) establishing a corporation without share capital;
- (b) governing the corporation including,
 - (i) providing for its dissolution,
 - (ii) governing the appointment of members, and
 - (iii) prescribing additional objects;
- (c) governing the payments to be made to the corporation by the employer bargaining agencies and the employee bargaining agencies including prescribing methods for determining the payments.

Same

(9) A regulation made under subclause (8) (b) (ii) may provide for the selection, by persons or organizations, of persons to be appointed as members. 1995, c. 1, Sched. A, s. 168.

ONTARIO POWER GENERATION INDUSTRY

Definitions

169 In this section and sections 170 to 189,

“bargaining agent” means the Power Workers’ Union (PWU), Canadian Union of Public Employees, Local 1000 - CLC; (“agent négociateur”)

“employees” means the employees of the employer who are represented by the bargaining agent and included in the power workers bargaining unit; (“employés”)

“employer” means Ontario Power Generation Inc.; (“employeur”)

“new collective agreement”, when used with respect to the power workers bargaining unit, means a collective agreement that,

- (a) applies to the employees in the unit, and
- (b) is executed on or after the day the *Labour Relations Amendment Act (Protecting Ontario’s Power Supply)*, 2018 receives Royal Assent or comes into force under subsection 189 (5); (“nouvelle convention collective”)

“parties”, when used in relation to a dispute, a dispute resolution proceeding dealing with the dispute or a new collective agreement, means the employer and the bargaining agent; (“parties”)

“power workers bargaining unit” means all regular, part-time and temporary employees, including technicians of the construction field forces and security employees but excluding,

- (a) employees represented by other bargaining agents,
- (b) persons above the rank of working supervisor,
- (c) persons who exercise managerial functions in accordance with this Act, and
- (d) persons employed in a confidential capacity in matters relating to labour relations in accordance with this Act,

as set out in Article 1.1 in the collective agreement between the employer and the bargaining agent effective from April 1, 2015 to March 31, 2018. (“unité de négociation des travailleurs du secteur énergétique”) 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 169 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Application of ss. 169 to 189

170 (1) Sections 169 to 189 apply to the employer, the bargaining agent and the employees if the employer and the bargaining agent have not executed a collective agreement after March 31, 2018 and before the day the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent with respect to the power workers bargaining unit. 2018, c. 18, s. 1.

Same, for greater certainty

(2) For greater certainty, sections 169 to 189 apply in accordance with subsection (1) even if the parties were otherwise in a lawful strike or lock-out position under this Act immediately before the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent. 2018, c. 18, s. 1.

Conflict

(3) In the event of a conflict between a provision in sections 169 to 189 and a provision in sections 1 to 125, the provision in sections 169 to 189 prevails. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 170 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Prohibition re strike

171 (1) Subject to section 175, no employee shall strike and no person or trade union shall call or authorize, or threaten to call or authorize, a strike by any employees. 2018, c. 18, s. 1.

Same

(2) Subject to section 175, no officer, official or agent of a trade union shall counsel, procure, support, encourage or threaten a strike by any employees. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 171 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Prohibition re lock-out

172 (1) Subject to section 175, the employer shall not lock out, authorize a lock-out or threaten to lock out any employees. 2018, c. 18, s. 1.

Same

(2) Subject to section 175, no officer, official or agent of the employer shall counsel, procure, support, encourage or threaten a lock-out of any employees. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 172 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Duties of employer and bargaining agent

Application of section

173 (1) This section applies if a strike or lock-out involving the employees is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent. 2018, c. 18, s. 1.

Operation of undertakings

(2) As soon as the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent, the employer shall use all reasonable efforts to operate and continue to operate its undertakings, including any operations interrupted during any lock-out or strike that is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent. 2018, c. 18, s. 1.

Termination of lock-out

(3) As soon as the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent, the employer shall terminate any lock-out of employees that is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent. 2018, c. 18, s. 1.

Termination of strike

(4) As soon as the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent, the bargaining agent shall terminate any strike by employees that is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent. 2018, c. 18, s. 1.

Same

(5) As soon as the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent, each employee shall terminate any strike that is in effect immediately before the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent and shall, without delay, resume the performance of the duties of his or her employment or shall continue performing them, as the case may be. 2018, c. 18, s. 1.

Exception

(6) Subsection (5) does not preclude an employee from not reporting to work and performing his or her duties for reasons of health or by mutual consent of the employee and the employer. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 173 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Non-application of s. 109

174 Section 109 does not apply in respect of a prosecution for a contravention of sections 171, 172 or 173. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 174 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Strike or lock-out after new collective agreement

175 After a new collective agreement with respect to the power workers bargaining unit is executed by the parties or comes into force under subsection 189 (5), sections 170 to 173 cease to apply and the right of the employees in the unit to strike and the right of the employer to lock out those employees is otherwise governed by this Act. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 175 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Deeming provision: unlawful strike or lock-out

176 A strike or lock-out in contravention of section 171, 172 or 173 is deemed to be an unlawful strike or lock-out for the purposes of this Act. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 176 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Terms of employment

177 Until a new collective agreement with respect to the power workers bargaining unit is executed by the parties or comes into force under subsection 189 (5), the terms and conditions of employment that applied with respect to the employees on the day before the first day on which it became lawful for any of the employees to strike continue to apply, unless the parties agree otherwise. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 177 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Deemed referral to mediator-arbitrator

178 If sections 169 to 189 apply to the employer and the bargaining agent in respect of the power workers bargaining unit, the parties are deemed to have referred to a mediator-arbitrator, on the day the *Labour Relations Amendment Act (Protecting*

Ontario's Power Supply), 2018 receives Royal Assent, all matters remaining in dispute between them with respect to the terms and conditions of employment of the employees. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 178 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Appointment of mediator-arbitrator

179 (1) On or before the fifth day after the *Labour Relations Amendment Act (Protecting Ontario's Power Supply)*, 2018 receives Royal Assent, the parties shall jointly appoint the mediator-arbitrator referred to in section 178 and shall forthwith notify the Minister of the name and address of the person appointed. 2018, c. 18, s. 1.

Same

(2) If the parties fail to notify the Minister as subsection (1) requires, the Minister shall forthwith appoint the mediator-arbitrator and notify the parties of the name and address of the person appointed. 2018, c. 18, s. 1.

Replacement

(3) If the parties notify the Minister that they agree that the mediator-arbitrator is unable or unwilling to perform his or her duties so as to make an award, the parties shall, on or before the fifth day after the notification, jointly appoint a new mediator-arbitrator and shall forthwith notify the Minister of the name and address of the person appointed. 2018, c. 18, s. 1.

Same

(4) If the Minister notifies the parties that in the Minister's opinion the mediator-arbitrator is unable or unwilling to perform his or her duties so as to make an award, the parties shall, on or before the fifth day after the notification, jointly appoint a new mediator-arbitrator and shall forthwith notify the Minister of the name and address of the person appointed. 2018, c. 18, s. 1.

Same

(5) If the parties fail to notify the Minister as subsection (3) or (4) requires, the Minister shall forthwith appoint a new mediator-arbitrator and notify the parties of the name and address of the person appointed. 2018, c. 18, s. 1.

Same

(6) The dispute resolution process shall begin anew on the appointment of a new mediator-arbitrator under subsection (3), (4) or (5). 2018, c. 18, s. 1.

Minister's power

(7) The Minister may appoint as a mediator-arbitrator a person who is, in the opinion of the Minister, qualified to act. 2018, c. 18, s. 1.

Delegation

(8) The Minister may delegate in writing to any person the Minister's power to make an appointment under this section. 2018, c. 18, s. 1.

Proof of appointment, etc.

(9) An appointment made under this section that purports to be signed by or on behalf of the Minister shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it without proof of the signature or the position of the person appearing to have signed it. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 179 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Selection of method of dispute resolution

180 (1) The mediator-arbitrator shall select the method of dispute resolution and shall notify the parties of the selection. 2018, c. 18, s. 1.

Same

(2) The mediator-arbitrator shall consider all methods of dispute resolution and in his or her sole discretion shall select the method that he or she believes is the most appropriate method having regard to the nature of the dispute. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 180 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Appointment and proceedings of mediator-arbitrator not subject to review

181 It is conclusively presumed that the appointment of a mediator-arbitrator made under section 179 is properly made, and no application shall be made to question the appointment or to prohibit or restrain any of the mediator-arbitrator's proceedings, including the selection of a method of dispute resolution made under section 180. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 181 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Jurisdiction of mediator-arbitrator

182 (1) The mediator-arbitrator has exclusive jurisdiction to determine all matters that he or she considers necessary to conclude a new collective agreement. 2018, c. 18, s. 1.

Time period

(2) The mediator-arbitrator remains seized of and may deal with all matters within his or her jurisdiction until the new collective agreement is executed by the parties or comes into force under subsection 189 (5). 2018, c. 18, s. 1.

Mediation

(3) The mediator-arbitrator may try to assist the parties to settle any matter that he or she considers necessary to conclude the new collective agreement. 2018, c. 18, s. 1.

Notice, matters agreed on

(4) As soon as possible after a mediator-arbitrator is appointed, but in any event no later than seven days after the appointment, the parties shall give the mediator-arbitrator written notice of the matters on which they reached agreement before the appointment. 2018, c. 18, s. 1.

Same

(5) The parties may at any time give the mediator-arbitrator written notice of matters on which they reach agreement after the appointment of a mediator-arbitrator. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 182 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Time limits

183 (1) The mediator-arbitrator shall begin the dispute resolution proceeding within 30 days after being appointed and shall make all awards under sections 169 to 189 within 90 days after being appointed, unless the proceeding is terminated under subsection 188 (2). 2018, c. 18, s. 1.

Extensions

(2) The parties and the mediator-arbitrator may, by written agreement, extend a time period specified in subsection (1) either before or after it expires. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 183 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Procedure

184 (1) The mediator-arbitrator shall determine the procedure for the selected method of dispute resolution but shall permit the parties to present evidence and make submissions. 2018, c. 18, s. 1.

Application of s. 48 (12) (a) to (i)

(2) Clauses 48 (12) (a) to (i) apply, with necessary modifications, to proceedings before the mediator-arbitrator and to his or her decisions. 2018, c. 18, s. 1.

Exclusions

(3) The *Arbitration Act, 1991* and the *Statutory Powers Procedure Act* do not apply to mediation-arbitration proceedings under sections 169 to 189. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 184 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Award of mediator-arbitrator

185 (1) An award by the mediator-arbitrator under sections 169 to 189 shall address all the matters to be dealt with in the new collective agreement with respect to the parties and the power workers bargaining unit. 2018, c. 18, s. 1.

Criteria

(2) In making an award, the mediator-arbitrator shall take into consideration all factors that he or she considers relevant, including the following criteria:

1. The employer's ability to pay in light of its fiscal situation.
2. The economic situation in Ontario.
3. A comparison, as between the employees and comparable employees in the public and private sectors, of the nature of the work performed and of the terms and conditions of employment.
4. The employer's ability to attract and retain qualified employees.
5. The purposes of the *Public Sector Dispute Resolution Act, 1997*. 2018, c. 18, s. 1.

Restriction — discipline and discharge

(3) The mediator-arbitrator shall not include a provision in an award that prohibits the employer from discharging or disciplining an employee for just cause in respect of any activity that took place during the period that begins on the date on which a strike or lock-out in respect of the power workers bargaining unit became lawful and ends on the date on which a new collective agreement is executed by the parties or comes into force under subsection 189 (5). 2018, c. 18, s. 1.

Same

(4) Any dispute between the parties concerning discharge or discipline in respect of activities that took place during the period described in subsection (3) shall be determined through the grievance procedure and arbitration procedure established in the new collective agreement. 2018, c. 18, s. 1.

Retroactive alteration of terms of employment

(5) The award may provide for the retroactive alteration of one or more terms and conditions of employment, to one or more dates after March 31, 2018, and may do so despite section 177. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 185 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Effect of award

186 The award of a mediator-arbitrator under sections 169 to 189 is final and binding on the parties and on the employees. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 186 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Costs

187 Each party shall pay one-half of the fees and expenses of the mediator-arbitrator. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 187 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Continued negotiation

188 (1) Until an award is made, nothing in sections 178 to 187 prohibits the parties from continuing to negotiate with a view to making a new collective agreement and they are encouraged to do so. 2018, c. 18, s. 1.

New collective agreement concluded by parties

(2) If the parties execute a new collective agreement before an award is made, they shall notify the mediator-arbitrator of the fact and the mediation-arbitration proceeding is thereby terminated. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 188 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Execution of new collective agreement

189 (1) Within seven days after the mediator-arbitrator makes an award, the parties shall prepare and execute documents giving effect to the award. 2018, c. 18, s. 1.

Same

(2) The documents required by subsection (1) constitute the new collective agreement between the parties. 2018, c. 18, s. 1.

Extension

(3) The mediator-arbitrator may extend the period referred to in subsection (1), but the extended period shall end no later than 30 days after the mediator-arbitrator made the award. 2018, c. 18, s. 1.

Preparation by mediator-arbitrator

(4) If the parties do not prepare and execute the documents as required under subsections (1) and (3), the mediator-arbitrator shall prepare the necessary documents and give them to the parties for execution. 2018, c. 18, s. 1.

Failure to execute

(5) If either party fails to execute the documents prepared by the mediator-arbitrator within seven days after receiving them, the documents come into force as though they had been executed by the parties and those documents constitute the new collective agreement between the parties. 2018, c. 18, s. 1.

Note: On a day to be named by proclamation of the lieutenant governor, section 189 of the Act is repealed. (See: 2018, c. 18, s. 2)

Section Amendments with date in force (d/m/y)

2018, c. 18, s. 1 - 20/12/2018; 2018, c. 18, s. 2 - not in force

Incorporation of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*

190 (1) Sections 1 to 16, 23.1 to 25 and 26 to 38 of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* shall be deemed to form part of this Act and apply to,

- (a) Ontario Power Generation Inc. and each of its subsidiaries;
- (b) any trade union certified or voluntarily recognized under this Act that represents employees of any of the employers referred to in clause (a); and
- (c) the employees of the employers referred to in clause (a) who are represented by the trade unions described in clause (b). 2019, c. 12, s. 41 (1); 2020, c. 36, Sched. 38, s. 5.

Conflict

(2) If there is a conflict between the provisions incorporated into this Act under subsection (1) and sections 1 to 189 of this Act, the provisions incorporated under subsection (1) prevail only for the purposes of those incorporated provisions. 2019, c. 12, s. 41 (1).

No application to the Board

(3) No application may be made to the Board in respect of the provisions incorporated into this Act under subsection (1). 2019, c. 12, s. 41 (1).

Non-application of section 104

(4) Section 104 of the Act does not apply in respect of the provisions incorporated into this Act under subsection (1). 2019, c. 12, s. 41 (1).

Minister responsible

(5) For greater certainty, for the purposes of the provisions incorporated into this Act under subsection (1), Minister means the President of the Treasury Board or such other member of the Executive Council to whom the administration of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* is assigned or transferred under the *Executive Council Act*. 2019, c. 12, s. 41 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 190 of the Act is repealed. (See: 2019, c. 12, s. 41 (2))

Section Amendments with date in force (d/m/y)

2019, c. 12, s. 41 (1) - 08/11/2019; 2019, c. 12, s. 41 (2) - not in force

2020, c. 36, Sched. 38, s. 5 - 08/12/2020

Français

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Occupational Health and Safety Act, 1990

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Occupational Health and Safety Act

R.S.O. 1990, CHAPTER O.1

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Definitions

1 (1) In this Act,

“Board” means the Ontario Labour Relations Board; (“Commission”)

“Building Code” means any version of the Ontario Building Code that was in force at any time since it was made under the *Building Code Act, 1974*, the *Building Code Act* of the Revised Statutes of Ontario, 1980, the *Building Code Act* of the Revised Statutes of Ontario, 1990, the *Building Code Act, 1992* or a successor to the *Building Code Act, 1992*; (“code du bâtiment”)

“certified member” means a committee member who is certified under section 7.6; (“membre agréé”)

“Chief Prevention Officer” means the Chief Prevention Officer appointed under subsection 22.3 (1); (“directeur général de la prévention”)

“committee” means a joint health and safety committee established under this Act; (“comité”)

“competent person” means a person who,

- (a) is qualified because of knowledge, training and experience to organize the work and its performance,
- (b) is familiar with this Act and the regulations that apply to the work, and
- (c) has knowledge of any potential or actual danger to health or safety in the workplace; (“personne compétente”)

“construction” includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any machinery or plant, and any work or undertaking in connection with a project but does not include any work or undertaking underground in a mine; (“construction”)

“constructor” means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer; (“constructeur”)

“Deputy Minister” means the Deputy Minister of Labour; (“sous-ministre”)

“designated substance” means a biological, chemical or physical agent or combination thereof prescribed as a designated substance to which the exposure of a worker is prohibited, regulated, restricted, limited or controlled; (“substance désignée”)

“Director” means an inspector under this Act who is appointed as a Director for the purposes of this Act; (“directeur”)

“employer” means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services; (“employeur”)

Note: On July 1, 2022, the day named by proclamation of the Lieutenant Governor, subsection 1 (1) of the Act is amended by adding the following definition: (See: 2021, c. 34, Sched. 15, s. 1 (1))

“engineer” means, subject to any prescribed requirements or restrictions, a person who is licensed as a professional engineer or who holds a limited licence under the *Professional Engineers Act*; (“ingénieur”)

“engineer of the Ministry” means a person who is employed by the Ministry and who is licensed as a professional engineer under the *Professional Engineers Act*; (“ingénieur du ministère”)

“factory” means,

- (a) a building or place other than a mine, mining plant or place where homework is carried on, where,
 - (i) any manufacturing process or assembling in connection with the manufacturing of any goods or products is carried on,
 - (ii) in preparing, inspecting, manufacturing, finishing, repairing, warehousing, cleaning or adapting for hire or sale any substance, article or thing, energy is,
 - (A) used to work any machinery or device, or
 - (B) modified in any manner,
 - (iii) any work is performed by way of trade or for the purposes of gain in or incidental to the making of any goods, substance, article or thing or part thereof,
 - (iv) any work is performed by way of trade or for the purposes of gain in or incidental to the altering, demolishing, repairing, maintaining, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance, article or thing, or
 - (v) aircraft, locomotives or vehicles used for private or public transport are maintained,
- (b) a laundry including a laundry operated in conjunction with,
 - (i) a public or private hospital,

Note: On a day to be named by proclamation of the Lieutenant Governor, subclause (b) (i) of the definition of “factory” in subsection 1 (1) of the Act is repealed and the following substituted: (See: 2017, c. 25, Sched. 9, s. 104)

- (i) a public hospital or a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*,
 - (ii) a hotel, or
 - (iii) a public or private institution for religious, charitable or educational purposes, and
- (c) a logging operation; (“usine”)

“hazardous material” means a biological or chemical agent named or described in the regulations as a hazardous material; (“matériau dangereux”)

“hazardous physical agent” means a physical agent named or described in the regulations as a hazardous physical agent; (“agent physique dangereux”)

“health and safety management system” means a coordinated system of procedures, processes and other measures that is designed to be implemented by employers in order to promote continuous improvement in occupational health and safety; (“système de gestion de la santé et de la sécurité”)

“health and safety representative” means a health and safety representative selected under this Act; (“délégué à la santé et à la sécurité”)

“homework” means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof by a person for wages in premises occupied primarily as living accommodation; (“travail à domicile”)

“industrial establishment” means an office building, factory, arena, shop or office, and any land, buildings and structures appertaining thereto; (“établissement industriel”)

“inspector” means an inspector appointed for the purposes of this Act and includes a Director; (“inspecteur”)

“labour relations officer” means a labour relations officer appointed under the *Labour Relations Act, 1995*; (“agent des relations de travail”)

“licensee” means a person who holds a licence under Part III of the *Crown Forest Sustainability Act, 1994*; (“titulaire d’un permis”)

“logging” means the operation of felling or trimming trees for commercial or industrial purposes or for the clearing of land, and includes the measuring, storing, transporting or floating of logs, the maintenance of haul roads, scarification, the carrying out of planned burns and the practice of silviculture; (“exploitation forestière”)

“mine” means any work or undertaking for the purpose of opening up, proving, removing or extracting any metallic or non-metallic mineral or mineral-bearing substance, rock, earth, clay, sand or gravel; (“mine”)

“mining plant” means any roasting or smelting furnace, concentrator, mill or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substance mentioned in the definition of “mine”; (“installation minière”)

“Minister” means the Minister of Labour; (“ministre”)

“Ministry” means the Ministry of Labour; (“ministère”)

“occupational illness” means a condition that results from exposure in a workplace to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an occupational disease for which a worker is entitled to benefits under the *Workplace Safety and Insurance Act, 1997*; (“maladie professionnelle”)

“Office of the Employer Adviser” means the office continued under subsection 176 (2) of the *Workplace Safety and Insurance Act, 1997*; (“Bureau des conseillers des employeurs”)

“Office of the Worker Adviser” means the office continued under subsection 176 (1) of the *Workplace Safety and Insurance Act, 1997*; (“Bureau des conseillers des travailleurs”)

“owner” includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate; (“propriétaire”)

“prescribed” means prescribed by a regulation made under this Act; (“prescrit”)

“project” means a construction project, whether public or private, including,

- (a) the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking lot, cofferdam, conduit, sewer, watermain, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof,
- (b) the moving of a building or structure, and
- (c) any work or undertaking, or any lands or appurtenances used in connection with construction; (“chantier”)

“regulations” means the regulations made under this Act; (“règlements”)

“shop” means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale; (“magasin”)

“supervisor” means a person who has charge of a workplace or authority over a worker; (“superviseur”)

“trade union” means a trade union as defined in the *Labour Relations Act, 1995* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a workplace and includes an organization representing workers or persons to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such workers or persons; (“syndicat”)

“worker” means any of the following, but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program:

1. A person who performs work or supplies services for monetary compensation.
2. A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
3. A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university, private career college or other post-secondary institution.
4. REPEALED: 2017, c. 22, Sched. 1, s. 71 (2).
5. Such other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation; (“travailleur”)

“workplace” means any land, premises, location or thing at, upon, in or near which a worker works; (“lieu de travail”)

“workplace harassment” means,

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or
- (b) workplace sexual harassment; (“harcèlement au travail”)

“workplace sexual harassment” means,

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- (b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome; (“harcèlement sexuel au travail”)

“workplace violence” means,

- (a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- (b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
- (c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker. (“violence au travail”) R.S.O. 1990, c. O.1, s. 1 (1); 1993, c. 27, Sched.; 1994, c. 24, s. 35; 1994, c. 25, s. 83 (1); 1997, c. 16, s. 2 (1-3); 1998, c. 8, s. 49; 2009, c. 23, s. 1; 2009, c. 33, Sched. 20, s. 3 (1); 2011, c. 11, s. 1; 2014, c. 10, Sched. 4, s. 1; 2016, c. 2, Sched. 4, s. 1 (1, 2); 2016, c. 37, Sched. 16, s. 1; 2017, c. 22, Sched. 1, s. 71.

Ship under repair

(2) For the purposes of this Act and the regulations, a ship being manufactured or under repair shall be deemed to be a project. R.S.O. 1990, c. O.1, s. 1 (2).

Limitation

(3) An owner does not become a constructor by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely to oversee quality control at a project. R.S.O. 1990, c. O.1, s. 1 (3).

Workplace harassment

(4) A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment. 2016, c. 2, Sched. 4, s. 1 (3).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991; 1994, c. 24, s. 35 - 1/01/1995; 1994, c. 25, s. 83 (1) - 1/04/1995; 1997, c. 16, s. 2 (1-3) - 1/01/1998; 1998, c. 8, s. 49 - 29/06/1998

2009, c. 23, s. 1 - 15/06/2010; 2009, c. 33, Sched. 20, s. 3 (1) - 15/12/2009

2011, c. 11, s. 1 - 1/06/2011

2014, c. 10, Sched. 4, s. 1 - 20/11/2014

2016, c. 2, Sched. 4, s. 1 (1-3) - 08/09/2016; 2016, c. 37, Sched. 16, s. 1 - 08/12/2016

2017, c. 22, Sched. 1, s. 71 (1, 2) - 01/01/2018; 2017, c. 25, Sched. 9, s. 104 - not in force

PART I APPLICATION

Crown and other Acts

Crown

2 (1) This Act binds the Crown and applies to an employee in the service of the Crown or an agency, board, commission or corporation that exercises any function assigned or delegated to it by the Crown.

Other Acts

(2) Despite anything in any general or special Act, the provisions of this Act and the regulations prevail. R.S.O. 1990, c. O.1, s. 2.

Private residences, farming, teaching

Private residences

3 (1) This Act does not apply to work performed by the owner or occupant or a servant of the owner or occupant to, in or about a private residence or the lands and appurtenances used in connection therewith.

Farming operations

(2) Except as is prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to farming operations.

Teachers, etc.

(3) Except as is prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to,

- (a) a person who is employed as a teacher as defined in the *Education Act*; or
- (b) a person who is employed as a member or teaching assistant of the academic staff of a university or a related institution. R.S.O. 1990, c. O.1, s. 3.

Self-employed persons

4 Subsection 25 (1), clauses 26 (1) (c), (e), (f) and (g), subsection 33 (1) and sections 37, 38, 39, 40, 41, 51, 52, 54, 57, 59, 60, 61, 62, 66, 67, 68 and 69, and the regulations in relation thereto, apply with necessary modifications to a self-employed person. 2001, c. 9, Sched. I, s. 3 (1); 2019, c. 14, Sched. 13, s. 1.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (1) - 29/06/2001; 2001, c. 9, Sched. I, s. 3 (2) - See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2019, c. 14, Sched. 13, s. 1 - 10/12/2019

PART II ADMINISTRATION

Administration of Act

4.1 (1) The Minister is responsible for the administration of this Act. 2011, c. 11, s. 2.

Powers of Minister

(2) In administering this Act, the Minister's powers and duties include the following:

1. To promote occupational health and safety and to promote the prevention of workplace injuries and occupational diseases.
2. To promote public awareness of occupational health and safety.
3. To educate employers, workers and other persons about occupational health and safety.

4. To foster a commitment to occupational health and safety among employers, workers and others.
5. To make grants, in such amounts and on such terms as the Minister considers advisable, to support occupational health and safety. 2011, c. 11, s. 2.

Duty to consider

(3) In administering this Act, the Minister shall consider advice that is provided to the Minister under this Act. 2011, c. 11, s. 2.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 2 - 1/04/2012

Delegation of powers

5 Where under this Act or the regulations any power or duty is granted to or vested in the Minister or the Deputy Minister, the Minister or Deputy Minister may in writing delegate that power or duty from time to time to any employee in the Ministry subject to such limitations, restrictions, conditions and requirements as the Minister or Deputy Minister may set out in the delegation. R.S.O. 1990, c. O.1, s. 5; 2006, c. 35, Sched. C, s. 93 (1).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 93 (1) - 20/08/2007

Appointment of inspectors and Directors

6 (1) Such persons as may be necessary to administer and enforce this Act and the regulations may be appointed as inspectors by the Deputy Minister and the Deputy Minister may designate one or more of the inspectors as a Director or Directors.

Director may act as inspector

(2) A Director may exercise any of the powers or perform any of the duties of an inspector under this Act or the regulations. R.S.O. 1990, c. O.1, s. 6.

Certificate of appointment

7 (1) The Deputy Minister shall issue a certificate of appointment, bearing his or her signature or a facsimile thereof, to every inspector.

Production of certificate

(2) Every inspector, in the exercise of any powers or duties under this Act, shall produce his or her certificate of appointment upon request. R.S.O. 1990, c. O.1, s. 7.

Standards – training programs

7.1 (1) The Chief Prevention Officer may establish standards for training programs required under this Act or the regulations. 2011, c. 11, s. 3.

Approval — training program

(2) The Chief Prevention Officer may approve a training program that is established before or after this subsection comes into force if the training program meets the standards established under subsection (1). 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Standards – persons who provide training

7.2 (1) The Chief Prevention Officer may establish standards that a person shall meet in order to become an approved training provider. 2011, c. 11, s. 3.

Approval – persons who provide training

(2) The Chief Prevention Officer may approve a person who meets the standards described in subsection (1) as a training provider with respect to one or more approved training programs. 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Amendment of standard

7.3 (1) The Chief Prevention Officer may amend a standard established under subsection 7.1 (1) or 7.2 (1). 2011, c. 11, s. 3.

Publication of standards

(2) The Chief Prevention Officer shall publish the standards established under subsections 7.1 (1) and 7.2 (1) promptly after establishing or amending them. 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Validity of approval

7.4 (1) An approval given under subsection 7.1 (2) or 7.2 (2) is valid for the period that the Chief Prevention Officer specifies in the approval. 2011, c. 11, s. 3.

Revocation, etc., of approval

(2) The Chief Prevention Officer may revoke or amend an approval given under subsection 7.1 (2) or 7.2 (2). 2011, c. 11, s. 3.

Information to be provided to Chief Prevention Officer

(3) The Chief Prevention Officer may require any person who is seeking an approval or is the subject of an approval under subsection 7.1 (2) or 7.2 (2) to provide the Chief Prevention Officer with whatever information, records or accounts he or she may require pertaining to the approval and the Chief Prevention Officer may make such inquiries and examinations as he or she considers necessary. 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Collection and use of training information

7.5 (1) The Chief Prevention Officer may collect information about a worker's successful completion of an approved training program for the purpose of maintaining a record of workers who have successfully completed approved training programs. 2011, c. 11, s. 3.

Disclosure by training provider

(2) The Chief Prevention Officer may require an approved training provider to disclose to him or her the information described in subsection (1). 2011, c. 11, s. 3.

Same

(3) The Chief Prevention Officer may specify the time at which, and the form in which, the information shall be provided. 2011, c. 11, s. 3.

Disclosure by Chief Prevention Officer

(4) The Chief Prevention Officer may disclose information collected under subsection (1) to any person, including but not limited to a current or potential employer of a worker, if the worker consents to the disclosure. 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Certification of members

7.6 (1) The Chief Prevention Officer may,

- (a) establish training and other requirements that a committee member shall fulfil in order to become a certified member; and
- (b) certify a committee member who fulfils the requirements described in clause (a). 2011, c. 11, s. 4.

Transition

(2) A person who is certified under paragraph 5 of subsection 4 (1) of the *Workplace Safety and Insurance Act, 1997* on the date section 20 of the *Occupational Health and Safety Statute Law Amendment Act, 2011* comes into force is deemed to be certified under this section. 2011, c. 11, s. 4.

Amendment

(3) The Chief Prevention Officer may amend training and other requirements established under clause (1) (a). 2019, c. 9, Sched. 10, s. 1.

Conditions

(4) The Chief Prevention Officer may establish conditions that a committee member certified under clause (1) (b) must meet in order to maintain their certification. 2019, c. 9, Sched. 10, s. 1.

Validity of certification

(5) A certification granted under clause (1) (b) is valid for the period that the Chief Prevention Officer specifies in the certification. 2019, c. 9, Sched. 10, s. 1.

Revocation, etc., of certification

(6) The Chief Prevention Officer may revoke or amend a certification granted under clause (1) (b). 2019, c. 9, Sched. 10, s. 1.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 4 - 1/04/2012

2019, c. 9, Sched. 10, s. 1 - 06/06/2019

Accreditation of health and safety management systems

7.6.1 (1) The Chief Prevention Officer may accredit a health and safety management system if the system meets any applicable standards established under subsection (2). 2016, c. 37, Sched. 16, s. 2.

Standards

(2) The Chief Prevention Officer may establish standards that a health and safety management system must meet in order to become an accredited health and safety management system. 2016, c. 37, Sched. 16, s. 2.

Amendment

(3) The Chief Prevention Officer may amend standards established under subsection (2). 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Recognition of employers

7.6.2 (1) The Chief Prevention Officer may give recognition to an employer in respect of one or more of its workplaces, upon the employer's application, if,

- (a) the employer satisfies the Chief Prevention Officer that it is a certified user of an accredited health and safety management system in its workplace or workplaces; and
- (b) the employer meets any applicable criteria established under subsection (2). 2016, c. 37, Sched. 16, s. 2.

Criteria

(2) The Chief Prevention Officer may establish criteria that an employer must meet for the purposes of clause (1) (b). 2016, c. 37, Sched. 16, s. 2.

Amendment

(3) The Chief Prevention Officer may amend criteria established under subsection (2). 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Validity of accreditations, recognitions

7.6.3 (1) An accreditation given under subsection 7.6.1 (1) or a recognition given under subsection 7.6.2 (1) is valid for the period that the Chief Prevention Officer specifies in the accreditation or recognition. 2016, c. 37, Sched. 16, s. 2.

Revocation, etc., of accreditations, recognitions

(2) The Chief Prevention Officer may revoke or amend an accreditation or recognition. 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Information re accreditations, recognitions

7.6.4 (1) The Chief Prevention Officer may require any person who is seeking an accreditation under subsection 7.6.1 (1) or recognition under subsection 7.6.2 (1), or who is the subject of an accreditation or recognition, to provide the Chief Prevention Officer with whatever information, records or accounts he or she may require pertaining to the accreditation or recognition and the Chief Prevention Officer may make such inquiries and examinations as he or she considers necessary. 2016, c. 37, Sched. 16, s. 2.

Disclosure by Director

(2) A Director may communicate or allow to be communicated or disclosed any information that was collected under the authority of this Act or the regulations to the Chief Prevention Officer or to a delegate for the purposes of determining whether the employer should receive recognition or should keep such recognition. 2016, c. 37, Sched. 16, s. 2.

Same

(3) Any disclosure of personal information that is authorized under subsection (2) shall be deemed to be in compliance with clause 42 (1) (d) of the *Freedom of Information and Protection of Privacy Act*. 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Publication

7.6.5 (1) The Chief Prevention Officer may publish or otherwise make available to the public information relating to health and safety management systems accredited under subsection 7.6.1 (1) and employers given recognition under subsection 7.6.2 (1), including the names of the systems and employers. 2016, c. 37, Sched. 16, s. 2.

Same

(2) The Chief Prevention Officer shall publish the standards for accreditation of health and safety management systems and the criteria for recognition of employers promptly after establishing or amending them. 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Delegation

7.7 The Chief Prevention Officer may delegate, in writing, any of his or her powers or duties under subsections 7.1 (2) and 7.2 (2), sections 7.4 and 7.5, clause 7.6 (1) (b), subsections 7.6 (5) and (6), 7.6.1 (1) and 7.6.2 (1), sections 7.6.3 and 7.6.4 and subsection 7.6.5 (1) to any person, including any person outside the Ministry, subject to such limitations, restrictions, conditions and requirements as the Chief Prevention Officer may set out in the delegation. 2016, c. 37, Sched. 16, s. 3; 2019, c. 9, Sched. 10, s. 2.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 5 - 1/06/2011

2016, c. 37, Sched. 16, s. 3 - 08/12/2016

2019, c. 9, Sched. 10, s. 2 - 06/06/2019

Mandatory selection of health and safety representative

8 (1) At a project or other workplace where no committee is required under section 9 and where the number of workers regularly exceeds five, the constructor or employer shall cause the workers to select at least one health and safety representative from among the workers at the workplace who do not exercise managerial functions. R.S.O. 1990, c. O.1, s. 8 (1).

Order appointing health and safety representatives

(2) If no health and safety representative is required under subsection (1) and no committee is required under section 9 for a workplace, the Minister may, by order in writing, require a constructor or employer to cause the workers to select one or more health and safety representatives from among the workers at the workplace or part thereof who do not exercise managerial functions, and may provide in the order for the qualifications of such representatives. R.S.O. 1990, c. O.1, s. 8 (2).

Idem

(3) The Minister may from time to time give such directions as the Minister considers advisable concerning the carrying out of the functions of a health and safety representative. R.S.O. 1990, c. O.1, s. 8 (3).

What Minister shall consider

(4) In exercising the power conferred by subsection (2), the Minister shall consider the matters set out in subsection 9 (5). R.S.O. 1990, c. O.1, s. 8 (4).

Selection of representatives

(5) The selection of a health and safety representative shall be made by those workers who do not exercise managerial functions and who will be represented by the health and safety representative in the workplace, or the part or parts thereof, as the case may be, or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions. R.S.O. 1990, c. O.1, s. 8 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 8 is amended by adding the following subsections:

Training requirement

(5.1) Unless otherwise prescribed, a constructor or employer shall ensure that a health and safety representative selected under subsection (5) receives training to enable him or her to effectively exercise the powers and perform the duties of a health and safety representative. 2011, c. 11, s. 6.

Same

(5.2) The training described in subsection (5.1) shall meet such requirements as may be prescribed. 2011, c. 11, s. 6.

Entitlement to be paid

(5.3) A health and safety representative is deemed to be at work while he or she is receiving the training described in subsection (5.1), and the representative's employer shall pay the representative for the time spent, at the representative's regular or premium rate as may be proper. 2011, c. 11, s. 6.

See: 2011, c. 11, ss. 6, 29 (2).

Inspections

(6) Unless otherwise required by the regulations or by an order by an inspector, a health and safety representative shall inspect the physical condition of the workplace at least once a month. R.S.O. 1990, c. O.1, s. 8 (6).

Idem

(7) If it is not practical to inspect the workplace at least once a month, the health and safety representative shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month. R.S.O. 1990, c. O.1, s. 8 (7).

Schedule of inspections

(8) The inspection required by subsection (7) shall be undertaken in accordance with a schedule agreed upon by the constructor or employer and the health and safety representative. R.S.O. 1990, c. O.1, s. 8 (8).

Inspections

(9) The constructor, employer and workers shall provide a health and safety representative with such information and assistance as the member may require for the purpose of carrying out an inspection of the workplace. R.S.O. 1990, c. O.1, s. 8 (9).

Idem

(10) A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his or her findings thereon to the employer, the workers and the trade union or trade unions representing the workers. R.S.O. 1990, c. O.1, s. 8 (10).

Powers of representative

(11) A health and safety representative has the power,

- (a) to obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety;

- (b) to be consulted about, and be present at the beginning of, testing referred to in clause (a) conducted in or about the workplace if the representative believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid; and
- (c) to obtain information from the constructor or employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge. R.S.O. 1990, c. O.1, s. 8 (11).

Response to recommendations

(12) A constructor or employer who receives written recommendations from a health and safety representative shall respond in writing within twenty-one days. R.S.O. 1990, c. O.1, s. 8 (12).

Idem

(13) A response of a constructor or employer under subsection (12) shall contain a timetable for implementing the recommendations the constructor or employer agrees with and give reasons why the constructor or employer disagrees with any recommendations that the constructor or employer does not accept. R.S.O. 1990, c. O.1, s. 8 (13).

Notice of accident, inspection by representative

(14) Where a person is killed or critically injured at a workplace from any cause, the health and safety representative may, subject to subsection 51 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings in writing to a Director. R.S.O. 1990, c. O.1, s. 8 (14).

Entitlement to time from work

(15) A health and safety representative is entitled to take such time from work as is necessary to carry out his or her duties under subsections (6) and (14) and the time so spent shall be deemed to be work time for which the representative shall be paid by his or her employer at the representative's regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 8 (15).

Additional powers of certain health and safety representatives

(16) A health and safety representative or representatives of like nature appointed or selected under the provisions of a collective agreement or other agreement or arrangement between the constructor or the employer and the workers, has, in addition to his or her functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a health and safety representative by this section. R.S.O. 1990, c. O.1, s. 8 (16).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 6 - not in force

Joint health and safety committee

Application

9 (1) Subject to subsection (3), this section does not apply,

- (a) to a constructor at a project at which work is expected to last less than three months; or
- (b) to a prescribed employer or workplace or class of employers or workplaces. R.S.O. 1990, c. O.1, s. 9 (1).

Joint health and safety committee

(2) A joint health and safety committee is required,

- (a) at a workplace at which twenty or more workers are regularly employed;
- (b) at a workplace with respect to which an order to an employer is in effect under section 33; or
- (c) at a workplace, other than a construction project where fewer than twenty workers are regularly employed, with respect to which a regulation concerning designated substances applies. R.S.O. 1990, c. O.1, s. 9 (2).

Minister's order

(3) Despite subsections (1) and (2), the Minister may, by order in writing, require a constructor or an employer to establish and maintain one or more joint health and safety committees for a workplace or a part thereof, and may, in such order, provide for the composition, practice and procedure of any committee so established. R.S.O. 1990, c. O.1, s. 9 (3).

Same

(3.1) Despite subsections (1) and (2), the Minister may, by order in writing, permit a constructor or an employer to establish and maintain one joint health and safety committee for more than one workplace or parts thereof, and may, in the order, provide for the composition, practice and procedure of any committee so established. 1994, c. 27, s. 120 (1).

Same

(3.2) In an order under subsection (3.1), the Minister may,

- (a) provide that the members of a committee who represent workers may designate a worker at a workplace who is not a member of the committee to inspect the physical condition of the workplace under subsection 9 (23) and to exercise a committee member's rights and responsibilities under clause 43 (4) (a) and subsections 43 (7), (11) and (12); and
- (b) require the employer to provide training to the worker to enable the worker to adequately perform the tasks or exercise the rights and responsibilities delegated by the committee. 2001, c. 9, Sched. I, s. 3 (3).

Same

(3.3) If a worker is designated under clause (3.2) (a), the following apply:

1. The designated worker shall comply with this section as if the worker were a committee member while exercising a committee member's rights and responsibilities.
2. Subsections 9 (35) and 43 (13), section 55, clauses 62 (5) (a) and (b) and subsection 65 (1) apply to the designated worker as if the worker were a committee member while the worker exercises a committee member's rights and responsibilities.
3. The worker does not become a member of the committee as a result of the designation. 2001, c. 9, Sched. I, s. 3 (3).

Establishment of committee

(4) The constructor or employer shall cause a joint health and safety committee to be established and maintained at the workplace unless the Minister is satisfied that a committee of like nature or an arrangement, program or system in which the workers participate was, on the 1st day of October, 1979, established and maintained pursuant to a collective agreement or other agreement or arrangement and that such committee, arrangement, program or system provides benefits for the health and safety of the workers equal to, or greater than, the benefits to be derived under a committee established under this section. R.S.O. 1990, c. O.1, s. 9 (4); 1993, c. 27, Sched.

What Minister shall consider

(5) In exercising the power conferred by subsection (3) or (3.1), the Minister shall consider,

- (a) the nature of the work being done;
- (b) the request of a constructor, an employer, a group of the workers or the trade union or trade unions representing the workers in a workplace;
- (c) the frequency of illness or injury in the workplace or in the industry of which the constructor or employer is a part;
- (d) the existence of health and safety programs and procedures in the workplace and the effectiveness thereof; and
- (e) such other matters as the Minister considers advisable. R.S.O. 1990, c. O.1, s. 9 (5); 1994, c. 27, s. 120 (2).

Composition of committee

(6) A committee shall consist of,

- (a) at least two persons, for a workplace where fewer than fifty workers are regularly employed; or
- (b) at least four persons or such greater number of people as may be prescribed, for a workplace where fifty or more workers are regularly employed. R.S.O. 1990, c. O.1, s. 9 (6).

Idem

(7) At least half the members of a committee shall be workers employed at the workplace who do not exercise managerial functions. R.S.O. 1990, c. O.1, s. 9 (7).

Selection of members

(8) The members of a committee who represent workers shall be selected by the workers they are to represent or, if a trade union or unions represent the workers, by the trade union or unions. R.S.O. 1990, c. O.1, s. 9 (8).

Idem

(9) The constructor or employer shall select the remaining members of a committee from among persons who exercise managerial functions for the constructor or employer and, to the extent possible, who do so at the workplace. R.S.O. 1990, c. O.1, s. 9 (9).

Requirement for committee membership

(10) A member of the committee who ceases to be employed at the workplace ceases to be a member of the committee. R.S.O. 1990, c. O.1, s. 9 (10).

Committee to be co-chaired

(11) Two of the members of a committee shall co-chair the committee, one of whom shall be selected by the members who represent workers and the other of whom shall be selected by the members who exercise managerial functions. R.S.O. 1990, c. O.1, s. 9 (11).

Certification requirement

(12) Unless otherwise prescribed, a constructor or employer shall ensure that at least one member of the committee representing the constructor or employer and at least one member representing workers are certified members. R.S.O. 1990, c. O.1, s. 9 (12).

Idem

(13) Subsection (12) does not apply with respect to a project where fewer than fifty workers are regularly employed or that is expected to last less than three months. R.S.O. 1990, c. O.1, s. 9 (13).

Designation of member to be certified

(14) If no member representing workers is a certified member, the workers or the trade unions who selected the members representing workers shall select from among them one or more who are to become certified. R.S.O. 1990, c. O.1, s. 9 (14).

Designation of certified members

(15) If there is more than one certified member representing workers, the workers or the trade unions who selected the members representing workers shall designate one or more certified members who then become solely entitled to exercise the rights and required to perform the duties under this Act of a certified member representing workers. R.S.O. 1990, c. O.1, s. 9 (15).

Idem

(16) If there is more than one certified member representing the constructor or employer, the constructor or employer shall designate one or more of them who then become solely entitled to exercise the rights and required to perform the duties under this Act of a certified member representing a constructor or an employer. R.S.O. 1990, c. O.1, s. 9 (16).

Replacement of certified member

(17) If a certified member resigns or is unable to act, the constructor or employer shall, within a reasonable time, take all steps necessary to ensure that the requirement set out in subsection (12) is met. R.S.O. 1990, c. O.1, s. 9 (17).

Powers of committee

(18) It is the function of a committee and it has power to,

- (a) identify situations that may be a source of danger or hazard to workers;
- (b) make recommendations to the constructor or employer and the workers for the improvement of the health and safety of workers;
- (c) recommend to the constructor or employer and the workers the establishment, maintenance and monitoring of programs, measures and procedures respecting the health or safety of workers;
- (d) obtain information from the constructor or employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge;
- (e) obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety; and

- (f) be consulted about, and have a designated member representing workers be present at the beginning of, testing referred to in clause (e) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid. R.S.O. 1990, c. O.1, s. 9 (18).

Idem

(19) The members of the committee who represent workers shall designate one of them who is entitled to be present at the beginning of testing described in clause (18) (f). R.S.O. 1990, c. O.1, s. 9 (19).

Powers of co-chairs

(19.1) If the committee has failed to reach consensus about making recommendations under subsection (18) after attempting in good faith to do so, either co-chair of the committee has the power to make written recommendations to the constructor or employer. 2011, c. 11, s. 7 (1).

Response to recommendations

(20) A constructor or employer who receives written recommendations from a committee or co-chair shall respond in writing within twenty-one days. R.S.O. 1990, c. O.1, s. 9 (20); 2011, c. 11, s. 7 (2).

Idem

(21) A response of a constructor or employer under subsection (20) shall contain a timetable for implementing the recommendations the constructor or employer agrees with and give reasons why the constructor or employer disagrees with any recommendations that the constructor or employer does not accept. R.S.O. 1990, c. O.1, s. 9 (21).

Minutes of proceedings

(22) A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector. R.S.O. 1990, c. O.1, s. 9 (22).

Inspections

(23) Subject to subsection (24), the members of a committee who represent workers shall designate a member representing workers to inspect the physical condition of the workplace. R.S.O. 1990, c. O.1, s. 9 (23).

Idem

(24) If possible, the member designated under subsection (23) shall be a certified member. R.S.O. 1990, c. O.1, s. 9 (24).

Idem

(25) The members of a committee are not required to designate the same member to perform all inspections or to perform all of a particular inspection. R.S.O. 1990, c. O.1, s. 9 (25).

Idem

(26) Unless otherwise required by the regulations or by an order by an inspector, a member designated under subsection (23) shall inspect the physical condition of the workplace at least once a month. R.S.O. 1990, c. O.1, s. 9 (26).

Idem

(27) If it is not practical to inspect the workplace at least once a month, the member designated under subsection (23) shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month. R.S.O. 1990, c. O.1, s. 9 (27).

Schedule of inspections

(28) The inspection required by subsection (27) shall be undertaken in accordance with a schedule established by the committee. R.S.O. 1990, c. O.1, s. 9 (28).

Inspections

(29) The constructor, employer and the workers shall provide a member designated under subsection (23) with such information and assistance as the member may require for the purpose of carrying out an inspection of the workplace. R.S.O. 1990, c. O.1, s. 9 (29).

Information reported to the committee

(30) The member shall inform the committee of situations that may be a source of danger or hazard to workers and the committee shall consider such information within a reasonable period of time. R.S.O. 1990, c. O.1, s. 9 (30).

Notice of accident, inspection by committee member

(31) The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is killed or critically injured at a workplace from any cause and one of those members may, subject to subsection 51 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings to a Director and to the committee. R.S.O. 1990, c. O.1, s. 9 (31).

Posting of names and work locations

(32) A constructor or an employer required to establish a committee under this section shall post and keep posted at the workplace the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the workers. R.S.O. 1990, c. O.1, s. 9 (32).

Meetings

(33) A committee shall meet at least once every three months at the workplace and may be required to meet by order of the Minister. R.S.O. 1990, c. O.1, s. 9 (33).

Entitlement to time from work

(34) A member of a committee is entitled to,

- (a) one hour or such longer period of time as the committee determines is necessary to prepare for each committee meeting;
- (b) such time as is necessary to attend meetings of the committee; and
- (c) such time as is necessary to carry out the member's duties under subsections (26), (27) and (31). R.S.O. 1990, c. O.1, s. 9 (34).

Entitlement to be paid

(35) A member of a committee shall be deemed to be at work during the times described in subsection (34) and the member's employer shall pay the member for those times at the member's regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 9 (35).

Idem

(36) A member of a committee shall be deemed to be at work while the member is fulfilling the requirements for becoming a certified member and the member's employer shall pay the member for the time spent at the member's regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 9 (36); 1998, c. 8, s. 50 (1); 2011, c. 11, s. 7 (3).

Exception

(37) Subsection (36) does not apply with respect to workers who are paid by the Workplace Safety and Insurance Board for the time spent fulfilling the requirements for becoming certified. R.S.O. 1990, c. O.1, s. 9 (37); 1998, c. 8, s. 50 (2).

Additional powers of certain committees

(38) Any committee of a like nature to a committee established under this section in existence in a workplace under the provisions of a collective agreement or other agreement or arrangement between a constructor or an employer and the workers has, in addition to its functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a committee by this section. R.S.O. 1990, c. O.1, s. 9 (38).

Dispute resolution

(39) Where a dispute arises as to the application of subsection (2), or the compliance or purported compliance therewith by a constructor or an employer, the dispute shall be decided by the Minister after consulting the constructor or the employer and the workers or the trade union or trade unions representing the workers. R.S.O. 1990, c. O.1, s. 9 (39).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991; 1994, c. 27, s. 120 (1, 2) - 9/12/1994; 1998, c. 8, s. 50 (1, 2) - 29/06/1998

2001, c. 9, Sched. I, s. 3 (3) - 29/06/2001

2011, c. 11, s. 7 (1-3) - 1/04/2012

Worker trades committee

10 (1) If a committee is required at a project, other than a project where fewer than fifty workers are regularly employed or that is expected to last less than three months, the committee shall establish a worker trades committee for the project.

Committee membership

(2) The members of a worker trades committee shall represent workers employed in each of the trades at the workplace.

Selection of members

(3) The members of a worker trades committee shall be selected by the workers employed in the trades the members are to represent or, if a trade union represents the workers, by the trade union.

Function of worker trades committee

(4) It is the function of a worker trades committee to inform the committee at the workplace of the health and safety concerns of the workers employed in the trades at the workplace.

Entitlement to time from work

(5) Subject to subsection (6), a member of a worker trades committee is entitled to such time from work as is necessary to attend meetings of the worker trades committee and the time so spent shall be deemed to be work time for which the member shall be paid by the employer at the member's regular or premium rate as may be proper.

Committee to determine maximum entitlement

(6) The committee for a workplace shall determine the maximum amount of time for which members of a worker trades committee for the workplace are entitled to be paid under subsection (5) for each meeting of the worker trades committee. R.S.O. 1990, c. O.1, s. 10.

Consultation on industrial hygiene testing

11 (1) The constructor or employer at a workplace shall consult a health and safety representative or the committee with respect to proposed testing strategies for investigating industrial hygiene at the workplace.

Information

(2) The constructor or employer shall provide information to a health and safety representative or the committee concerning testing strategies to be used to investigate industrial hygiene at the workplace.

Attendance at testing

(3) A health and safety representative or a designated committee member representing workers at a workplace is entitled to be present at the beginning of testing conducted with respect to industrial hygiene at the workplace if the representative or member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

Designation of member

(4) The committee members representing workers shall designate one of them for the purpose of subsection (3). R.S.O. 1990, c. O.1, s. 11.

Summary to be furnished

12 (1) For workplaces to which the insurance plan established under the *Workplace Safety and Insurance Act, 1997* applies, the Workplace Safety and Insurance Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost work day cases, the number of lost work days, the number of non-fatal cases that required medical aid without lost work days, the incidence of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable. R.S.O. 1990, c. O.1, s. 12 (1); 1997, c. 16, s. 2 (4).

Posting of copy of summary

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers.

Director to provide information

(3) A Director shall, in accordance with the objects and purposes of this Act, ensure that persons and organizations concerned with the purposes of this Act are provided with information and advice pertaining to its administration and to the protection of the occupational health and occupational safety of workers generally. R.S.O. 1990, c. O.1, s. 12 (2, 3).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (4) - 1/01/1998

13 REPEALED: 1997, c. 16, s. 2 (5).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (5) - 1/01/1998

14 REPEALED: 1997, c. 16, s. 2 (6).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (6) - 1/01/1998

15 REPEALED: 1997, c. 16, s. 2 (7).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (7) - 1/01/1998

16 REPEALED: 1997, c. 16, s. 2 (8).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (8) - 1/01/1998

17 REPEALED: 1997, c. 16, s. 2 (9).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (9) - 1/01/1998

18 REPEALED: 1997, c. 16, s. 2 (10).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (10) - 1/01/1998

19 REPEALED: 1997, c. 16, s. 2 (10).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (10) - 1/01/1998

Testimony in civil proceedings, etc.

20 (1) Except with the consent of the Board, no member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil proceeding or in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this Act.

Non-disclosure

(2) No information or material furnished to or received by a labour relations officer under this Act shall be disclosed except to the Board or as authorized by the Board. 1998, c. 8, s. 51.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 51 - 29/06/1998

Advisory committees

21 (1) The Minister may appoint committees, which are not committees as defined in subsection 1 (1), or persons to assist or advise the Minister on any matter arising under this Act or to inquire into and report to the Minister on any matter that the Minister considers advisable. R.S.O. 1990, c. O.1, s. 21 (1).

Remuneration and expenses

(2) Any person appointed under subsection (1) who is not a public servant within the meaning of the *Public Service of Ontario Act, 2006* may be paid such remuneration and expenses as may be from time to time fixed by the Lieutenant Governor in Council. R.S.O. 1990, c. O.1, s. 21 (2); 2006, c. 35, Sched. C, s. 93 (2).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 93 (2) - 20/08/2007

Contribution to defray cost

22 (1) The Workplace Safety and Insurance Board shall require Schedule 1 and Schedule 2 employers under the *Workplace Safety and Insurance Act, 1997* to make payments to defray the cost of administering this Act and the regulations. The Lieutenant Governor in Council may fix the total payment to be made by all employers for that purpose.

Same

(2) The Workplace Safety and Insurance Board shall remit the money collected from employers under this section to the Minister of Finance. 1997, c. 16, s. 2 (11).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (11) - 1/04/1997

Powers under federal legislation

22.1 (1) If a regulation under the *Canada Labour Code* incorporates by reference all or part of this Act or the regulations made under it, the Board and any person having powers under this Act may exercise any powers conferred by the regulation under the *Canada Labour Code*. 2011, c. 1, Sched. 7, s. 2 (1).

Same

(2) If a regulation under section 44 of the *Nuclear Safety and Control Act* (Canada) requires an employer to whom this Act applies to comply with all or part of this Act or the regulations made under it, the Board and any person having powers under this Act may exercise any powers conferred by the regulation under the *Nuclear Safety and Control Act* (Canada). 2011, c. 1, Sched. 7, s. 2 (1).

Section Amendments with date in force (d/m/y)

1998, c. 8, s.52 - 29/06/1998

2011, c. 1, Sched. 7, s. 2 (1) - 30/03/2011

PART II.1

PREVENTION COUNCIL, CHIEF PREVENTION OFFICER AND DESIGNATED ENTITIES

PREVENTION COUNCIL

Prevention Council

22.2 (1) The Minister shall establish a council to be known as the Prevention Council in English and Conseil de la prévention in French. 2011, c. 11, s. 8 (1).

Composition

(2) The Council shall be composed of such members as the Minister may appoint, and shall include representatives from each of the following groups:

1. Trade unions and provincial labour organizations.
2. Employers.
3. Non-unionized workers, the Workplace Safety and Insurance Board and persons with occupational health and safety expertise. 2011, c. 11, s. 8 (1).

Same

(3) In appointing members of the Council, the Minister shall ensure that,

- (a) an equal number of members are appointed to represent the groups described in paragraphs 1 and 2 of subsection (2); and
- (b) the group described in paragraph 3 of subsection (2) is represented by not more than one-third of the members of the Council. 2011, c. 11, s. 8 (1).

Appointment of members

(4) The members of the Council shall be appointed for such term as may be determined by the Minister. 2011, c. 11, s. 8 (1).

Chair

(5) The members of the Council shall choose a chair from among themselves by the date fixed by the Minister; if they fail to do so, the Minister shall designate a member as chair. 2011, c. 11, s. 8 (1).

Same

(6) Subsection (5) applies on the first appointment of members and thereafter whenever the office of chair is vacant. 2011, c. 11, s. 8 (1).

Functions

(7) The Council shall,

- (a) provide advice to the Minister on the appointment of a Chief Prevention Officer;
- (b) provide advice to the Chief Prevention Officer,
 - (i) on the prevention of workplace injuries and occupational diseases,
 - (ii) for the purposes of the provincial occupational health and safety strategy and the annual report under section 22.3, and
 - (iii) on any significant proposed changes to the funding and delivery of services for the prevention of workplace injuries and occupational diseases;
- (c) provide advice on any other matter specified by the Minister; and
- (d) perform such other functions as may be specified by the Minister. 2011, c. 11, s. 8 (1).

Advice

(8) For the purposes of subsection (7), any advice provided by the Council shall be communicated by the chair of the Council. 2011, c. 11, s. 8 (1).

Remuneration and expenses

(9) Any member of the Council who is not a public servant within the meaning of the *Public Service of Ontario Act, 2006* may be paid such remuneration and expenses as may be from time to time fixed by the Lieutenant Governor in Council. 2011, c. 11, s. 8 (1).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (1) - 1/06/2011

CHIEF PREVENTION OFFICER

Chief Prevention Officer

Functions

22.3 (1) The Minister shall appoint a Chief Prevention Officer to,

- (a) develop a provincial occupational health and safety strategy;
- (b) prepare an annual report on occupational health and safety;
- (c) exercise any power or duty delegated to him or her by the Minister under this Act;
- (d) provide advice to the Minister on the prevention of workplace injuries and occupational diseases;
- (e) provide advice to the Minister on any proposed changes to the funding and delivery of services for the prevention of workplace injuries and occupational diseases;
- (f) provide advice to the Minister on the establishment of standards for designated entities under section 22.5;
- (g) exercise the powers and perform the duties with respect to training that are set out in sections 7.1 to 7.5;
- (h) exercise the powers and perform the duties set out in section 7.6;
- (h.1) exercise the powers and perform the duties with respect to accreditation of health and safety management systems and recognition of employers that are set out in sections 7.6.1 to 7.6.5;
- (i) exercise the powers and perform the duties set out in section 22.7; and
- (j) exercise such other powers and perform such other duties as may be assigned to the Chief Prevention Officer under this Act. 2011, c. 11, s. 8 (1); 2016, c. 37, Sched. 16, s. 4; 2019, c. 9, Sched. 10, s. 3.

Appointment

(2) The Chief Prevention Officer may be appointed for a term not exceeding five years and may be reappointed for successive terms not exceeding five years each. 2011, c. 11, s. 8 (1).

Occupational health and safety strategy

- (3) The Chief Prevention Officer shall develop a written provincial occupational health and safety strategy that includes,
- (a) a statement of occupational health and safety goals;
 - (b) key performance indicators for measuring the achievement of the goals; and
 - (c) any other matter specified by the Minister. 2011, c. 11, s. 8 (1).

Advice of Prevention Council

(4) The Chief Prevention Officer shall consult with the Prevention Council and shall consider its advice in developing the strategy. 2011, c. 11, s. 8 (1).

Strategy provided to Minister

(5) The Chief Prevention Officer shall provide the strategy to the Minister on or before a day specified by the Minister. 2011, c. 11, s. 8 (1).

Minister's approval

(6) The Minister may approve the strategy or refer it back to the Chief Prevention Officer for further consideration. 2011, c. 11, s. 8 (1).

Publication

(7) After approving the strategy, the Minister shall publish it promptly. 2011, c. 11, s. 8 (1).

Annual report

(8) The Chief Prevention Officer shall provide an annual written report to the Minister on occupational health and safety that includes a measurement of the achievement of the goals established in the strategy, and that contains such other information as the Minister may require. 2011, c. 11, s. 8 (1).

Advice of Prevention Council

(9) The Chief Prevention Officer shall consult with the Prevention Council and shall consider its advice in developing the report. 2011, c. 11, s. 8 (1).

Report provided to Minister

(10) The Chief Prevention Officer shall provide the annual report to the Minister on or before a day specified by the Minister. 2011, c. 11, s. 8 (1).

Publication

(11) The Minister shall publish the Chief Prevention Officer's report promptly. 2011, c. 11, s. 8 (1).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (1) - 1/06/2011

2016, c. 37, Sched. 16, s. 4 - 08/12/2016

2019, c. 9, Sched. 10, s. 3 - 06/06/2019

CHANGES TO FUNDING AND DELIVERY OF SERVICES**If Minister proposes change**

22.4 (1) If the Minister is considering a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases, the Minister shall determine whether the proposed change would be a significant change. 2011, c. 11, s. 8 (1).

If proposed change significant

(2) If the Minister determines that the proposed change is significant, the Minister shall seek advice from the Chief Prevention Officer with respect to the proposed change. 2011, c. 11, s. 8 (1).

If Chief Prevention Officer advising on change

(3) If the Chief Prevention Officer is considering providing advice to the Minister concerning a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases, the Chief Prevention Officer shall determine whether the proposed change would be a significant change. 2011, c. 11, s. 8 (1).

Prevention Council endorsement

(4) If the Minister asks the Chief Prevention Officer for advice under subsection (2) or if the Chief Prevention Officer determines under subsection (3) that a proposed change would be a significant change, the Chief Prevention Officer shall,

- (a) ask the chair of the Prevention Council to state whether the Council endorses the proposed change; and
- (b) include that statement in the advice to the Minister. 2011, c. 11, s. 8 (1).

Matters to consider in determining if change is significant

(5) The Minister and the Chief Prevention Officer shall consider such matters as may be prescribed when determining whether a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases would be a significant change. 2011, c. 11, s. 8 (1).

Regulation

(6) On the recommendation of the Minister, the Lieutenant Governor in Council may make regulations prescribing matters to be considered when determining whether a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases would be a significant change. 2011, c. 11, s. 8 (1).

Same

(7) Before recommending to the Lieutenant Governor in Council that a regulation be made under subsection (6), the Minister shall seek the advice of the Chief Prevention Officer and require the Chief Prevention Officer to seek the advice of the Prevention Council with respect to the matters to be prescribed. 2011, c. 11, s. 8 (1).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (1) - 1/06/2011

DESIGNATED ENTITIES**Eligible for grant**

22.5 (1) An entity that is designated under this section is eligible for a grant from the Ministry. 2011, c. 11, s. 8 (2).

Designation by Minister

(2) The Minister may designate an entity as a safe workplace association or as a medical clinic or training centre specializing in occupational health and safety matters if the entity meets the standards established by the Minister. 2011, c. 11, s. 8 (2).

Standards

(3) The Minister may establish standards that an entity shall meet before it is eligible to be designated. 2011, c. 11, s. 8 (2).

Same

(4) The standards established under subsection (3) may address any matter the Minister considers appropriate, including governance, objectives, functions and operations. 2011, c. 11, s. 8 (2).

Same

(5) The Minister may establish different standards for associations, clinics or centres serving different industries or groups. 2011, c. 11, s. 8 (2).

Duty to comply

(6) A designated entity shall operate in accordance with the standards established under subsection (3) that apply to it, and in accordance with any other requirements imposed on it under section 22.6. 2011, c. 11, s. 8 (2).

Amendment of standard

(7) The Minister may amend a standard established under subsection (3). 2011, c. 11, s. 8 (2).

Date for compliance with amended standard

(8) If the Minister amends a standard established under subsection (3), the Minister shall establish a date by which designated entities to which the amended standard applies are required to comply with it. 2011, c. 11, s. 8 (2).

Publication of standards

(9) The Minister shall promptly publish,

- (a) the standards established under subsection (3); and
- (b) standards amended under subsection (7), together with the compliance date described in subsection (8). 2011, c. 11, s. 8 (2).

Transition

(10) When the Minister establishes and publishes standards under subsections (3) and (9) for the first time after the coming into force of subsection 8 (2) of the *Occupational Health and Safety Statute Law Amendment Act, 2011*, the Minister shall establish a date for the purposes of subsections (11) and (12) and shall publish it together with the standards. 2011, c. 11, s. 8 (2).

Same

(11) An entity that is designated as a safe workplace association or as a medical clinic or training centre specializing in occupational health and safety matters under section 6 of the *Workplace Safety and Insurance Act, 1997* on the date section 20 of the *Occupational Health and Safety Statute Law Amendment Act, 2011* comes into force is deemed to be designated for the purposes of this Act until the date established by the Minister under subsection (10). 2011, c. 11, s. 8 (2).

Same

(12) The standards that are in place under section 6 of the *Workplace Safety and Insurance Act, 1997* on the date section 20 of the *Occupational Health and Safety Statute Law Amendment Act, 2011* comes into force continue to apply, with necessary modifications, and are deemed to be standards for the purposes of this section, until the date established by the Minister under subsection (10). 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 1/04/2012

Effect of designation

Directions

22.6 (1) The Minister may direct a designated entity to take such actions as the Minister considers appropriate. 2011, c. 11, s. 8 (2).

Government directives

(2) In addition to the directions the Minister may issue under subsection (1), the Minister may direct an entity to comply with such government directives as the Minister specifies. 2011, c. 11, s. 8 (2).

Failure to comply

(3) If an entity has committed any failure described in paragraphs 1 to 3 of subsection 22.7 (3), the Minister may,

- (a) reduce or suspend grants to the entity while the non-compliance continues;
- (b) assume control of the entity and responsibility for its affairs and operations;
- (c) revoke the designation and cease to provide grants to the entity; or
- (d) take such other steps as he or she considers appropriate. 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 01/04/2012

Compliance and monitoring of designated entities

22.7 (1) The Chief Prevention Officer shall monitor the operation of designated entities and,

- (a) may require a designated entity to provide such information, records or accounts as the Chief Prevention Officer specifies; and
- (b) may make such inquiries and examinations as he or she considers necessary. 2011, c. 11, s. 8 (2).

Report to Minister

(2) The Chief Prevention Officer shall report to the Minister on the compliance of designated entities with the standards established under section 22.5 and with any directions given by the Minister under section 22.6. 2011, c. 11, s. 8 (2).

Advice to Minister

(3) Where the Chief Prevention Officer determines that any of the following have occurred, the Chief Prevention Officer shall report that determination to the Minister and may advise the Minister with respect to any action the Minister may decide to take under section 22.6:

1. A designated entity has failed to operate in accordance with a standard established under section 22.5 that applies to it.
2. A designated entity has failed to comply with a direction given by the Minister under section 22.6 or a requirement of the Chief Prevention Officer under clause (1) (a).
3. A designated entity has failed to co-operate in an inquiry or examination conducted by the Chief Prevention Officer under clause (1) (b). 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 1/04/2012

Appointment of administrator

22.8 (1) For the purposes of assuming control of an entity and responsibility for its affairs and operations under clause 22.6 (3) (b), the Minister may appoint an administrator. 2011, c. 11, s. 8 (2).

Term of appointment

(2) The appointment of the administrator remains valid until it is terminated by the Minister. 2011, c. 11, s. 8 (2).

Powers and duties of administrator

(3) The administrator has the exclusive right to exercise the powers and perform the duties of the board of directors and its officers and exercise the powers of its members. 2011, c. 11, s. 8 (2).

Same

(4) In the appointment, the Minister may specify the powers and duties of the administrator and the terms and conditions governing those powers and duties. 2011, c. 11, s. 8 (2).

Additional power of administrator

(5) The board of directors and officers may continue to act to the extent authorized by the Minister, but any such act is valid only if approved, in writing, by the administrator. 2011, c. 11, s. 8 (2).

Report, directions

(6) The administrator shall report to the Minister as required by him or her and shall carry out his or her directions. 2011, c. 11, s. 8 (2).

Meeting of members

(7) Before the termination of an administrator's appointment, the administrator may call a meeting of the members to elect a board of directors in accordance with the *Not-For-Profit Corporations Act, 2010*. 2011, c. 11, s. 8 (2, 3).

Unincorporated entity

(8) This section applies, with necessary modifications, to an entity that is not incorporated. 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 1/04/2012; 2011, c. 11, s. 8 (3) - 19/10/2021

Delegation of powers and duties

22.9 Despite section 5, the Minister may delegate his or her powers or duties under sections 22.5, 22.6 and 22.8 only to the Chief Prevention Officer. 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 1/04/2012

PART III DUTIES OF EMPLOYERS AND OTHER PERSONS

Duties of constructor

23 (1) A constructor shall ensure, on a project undertaken by the constructor that,

- (a) the measures and procedures prescribed by this Act and the regulations are carried out on the project;
- (b) every employer and every worker performing work on the project complies with this Act and the regulations; and
- (c) the health and safety of workers on the project is protected.

Notice of project

(2) Where so prescribed, a constructor shall, before commencing any work on a project, give to a Director notice in writing of the project containing such information as may be prescribed. R.S.O. 1990, c. O.1, s. 23.

Duties of licensees

24 (1) A licensee shall ensure that,

- (a) the measures and procedures prescribed by this Act and the regulations are carried out with respect to logging in the licensed area;
- (b) every employer performing logging in the licensed area for the licensee complies with this Act and the regulations; and
- (c) the health and safety of workers employed by employers referred to in clause (b) is protected. R.S.O. 1990, c. O.1, s. 24 (1).

Definition

(2) In this section,

“licensed area” means the lands on which the licensee is authorized to harvest or use forest resources. R.S.O. 1990, c. O.1, s. 24 (2); 1994, c. 25, s. 83 (2).

Section Amendments with date in force (d/m/y)

1994, c. 25, s. 83 (2) - 1/04/1995

Duties of employers

25 (1) An employer shall ensure that,

- (a) the equipment, materials and protective devices as prescribed are provided;
- (b) the equipment, materials and protective devices provided by the employer are maintained in good condition;
- (c) the measures and procedures prescribed are carried out in the workplace;
- (d) the equipment, materials and protective devices provided by the employer are used as prescribed; and
- (e) a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,
 - (i) as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,
 - (ii) in accordance with such other requirements as may be prescribed, or
 - (iii) in accordance with good engineering practice, if subclauses (i) and (ii) do not apply. R.S.O. 1990, c. O.1, s. 25 (1); 2011, c. 11, s. 9.

Idem

(2) Without limiting the strict duty imposed by subsection (1), an employer shall,

- (a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;
- (b) in a medical emergency for the purpose of diagnosis or treatment, provide, upon request, information in the possession of the employer, including confidential business information, to a legally qualified medical practitioner and to such other persons as may be prescribed;
- (c) when appointing a supervisor, appoint a competent person;
- (d) acquaint a worker or a person in authority over a worker with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment or a biological, chemical or physical agent;
- (e) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;

- (f) only employ in or about a workplace a person over such age as may be prescribed;
- (g) not knowingly permit a person who is under such age as may be prescribed to be in or about a workplace;
- (h) take every precaution reasonable in the circumstances for the protection of a worker;
- (i) post, in the workplace, a copy of this Act and any explanatory material prepared by the Ministry, both in English and the majority language of the workplace, outlining the rights, responsibilities and duties of workers;
- (j) prepare and review at least annually a written occupational health and safety policy and develop and maintain a program to implement that policy;
- (k) post at a conspicuous location in the workplace a copy of the occupational health and safety policy;
- (l) provide to the committee or to a health and safety representative the results of a report respecting occupational health and safety that is in the employer's possession and, if that report is in writing, a copy of the portions of the report that concern occupational health and safety; and
- (m) advise workers of the results of a report referred to in clause (l) and, if the report is in writing, make available to them on request copies of the portions of the report that concern occupational health and safety;
- (n) notify a Director if a committee or a health and safety representative, if any, has identified potential structural inadequacies of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, as a source of danger or hazard to workers. R.S.O. 1990, c. O.1, s. 25 (2); 2017, c. 34, Sched. 30, s. 1 (1).

Idem

(3) For the purposes of clause (2) (c), an employer may appoint himself or herself as a supervisor where the employer is a competent person. R.S.O. 1990, c. O.1, s. 25 (3).

Same

(3.1) Any explanatory material referred to under clause (2) (i) may be published as part of the poster required under section 2 of the *Employment Standards Act, 2000*. 2009, c. 23, s. 2.

Idem

(4) Clause (2) (j) does not apply with respect to a workplace at which five or fewer workers are regularly employed. R.S.O. 1990, c. O.1, s. 25 (4); 2011, c. 1, Sched. 7, s. 2 (2).

Same

(5) Clause (2) (n) does not apply to an employer that owns the workplace. 2017, c. 34, Sched. 30, s. 1 (2).

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 2 - 15/06/2010

2011, c. 1, Sched. 7, s. 2 (2) - 30/03/2011; 2011, c. 11, s. 9 - 1/06/2011

2017, c. 34, Sched. 30, s. 1 (1, 2) - 14/12/2017

Footwear

25.1 (1) An employer shall not require a worker to wear footwear with an elevated heel unless it is required for the worker to perform his or her work safely. 2017, c. 22, Sched. 3, s. 1.

Exception

(2) Subsection (1) does not apply with respect to an employer of a worker who works as a performer in the entertainment and advertising industry. 2017, c. 22, Sched. 3, s. 1.

Definitions

(3) In subsection (2),

“entertainment and advertising industry” means the industry of producing,

- (a) live or broadcast performances, or
- (b) visual, audio or audio-visual recordings of performances, in any medium or format; (“industrie du spectacle et de la publicité”)

“performance” means a performance of any kind, including theatre, dance, ice skating, comedy, musical productions, variety, circus, concerts, opera, modelling and voice-overs, and “performer” has a corresponding meaning. (“représentation”, “artiste”, “interprète”) 2017, c. 22, Sched. 3, s. 1.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 3, s. 1 - 27/11/2017

Additional duties of employers

26 (1) In addition to the duties imposed by section 25, an employer shall,

- (a) establish an occupational health service for workers as prescribed;
- (b) where an occupational health service is established as prescribed, maintain the same according to the standards prescribed;
- (c) keep and maintain accurate records of the handling, storage, use and disposal of biological, chemical or physical agents as prescribed;
- (d) accurately keep and maintain and make available to the worker affected such records of the exposure of a worker to biological, chemical or physical agents as may be prescribed;
- (e) notify a Director of the use or introduction into a workplace of such biological, chemical or physical agents as may be prescribed;
- (f) monitor at such time or times or at such interval or intervals the levels of biological, chemical or physical agents in a workplace and keep and post accurate records thereof as prescribed;
- (g) comply with a standard limiting the exposure of a worker to biological, chemical or physical agents as prescribed;
- (h) establish a medical surveillance program for the benefit of workers as prescribed;
- (i) provide for safety-related medical examinations and tests for workers as prescribed;
- (j) where so prescribed, only permit a worker to work or be in a workplace who has undergone such medical examinations, tests or x-rays as prescribed and who is found to be physically fit to do the work in the workplace;
- (k) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker; and
- (l) carry out such training programs for workers, supervisors and committee members as may be prescribed.

Idem

(2) For the purposes of clause (1) (a), a group of employers, with the approval of a Director, may act as an employer. R.S.O. 1990, c. O.1, s. 26 (1, 2).

Idem

(3) If a worker participates in a prescribed medical surveillance program or undergoes prescribed medical examinations or tests, his or her employer shall pay,

- (a) the worker’s costs for medical examinations or tests required by the medical surveillance program or required by regulation;
- (b) the worker’s reasonable travel costs respecting the examinations or tests; and
- (c) the time the worker spends to undergo the examinations or tests, including travel time, which shall be deemed to be work time for which the worker shall be paid at his or her regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 26 (3); 1994, c. 27, s. 120 (3).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 120 (3) - 9/12/1994

Duties of supervisor

27 (1) A supervisor shall ensure that a worker,

- (a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and

- (b) uses or wears the equipment, protective devices or clothing that the worker's employer requires to be used or worn.

Additional duties of supervisor

- (2) Without limiting the duty imposed by subsection (1), a supervisor shall,
 - (a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;
 - (b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and
 - (c) take every precaution reasonable in the circumstances for the protection of a worker. R.S.O. 1990, c. O.1, s. 27.

Duties of workers

- 28 (1) A worker shall,

- (a) work in compliance with the provisions of this Act and the regulations;
- (b) use or wear the equipment, protective devices or clothing that the worker's employer requires to be used or worn;
- (c) report to his or her employer or supervisor the absence of or defect in any equipment or protective device of which the worker is aware and which may endanger himself, herself or another worker; and
- (d) report to his or her employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he or she knows.

Idem

- (2) No worker shall,
 - (a) remove or make ineffective any protective device required by the regulations or by his or her employer, without providing an adequate temporary protective device and when the need for removing or making ineffective the protective device has ceased, the protective device shall be replaced immediately;
 - (b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself, herself or any other worker; or
 - (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.

Consent to medical surveillance

- (3) A worker is not required to participate in a prescribed medical surveillance program unless the worker consents to do so. R.S.O. 1990, c. O.1, s. 28.

Duties of owners

- 29 (1) The owner of a workplace that is not a project shall,

- (a) ensure that,
 - (i) such facilities as are prescribed are provided,
 - (ii) any facilities prescribed to be provided are maintained as prescribed,
 - (iii) the workplace complies with the regulations, and
 - (iv) no workplace is constructed, developed, reconstructed, altered or added to except in compliance with this Act and the regulations; and
- (b) where so prescribed, furnish to a Director any drawings, plans or specifications of any workplace as prescribed.

Mine plans

- (2) The owner of a mine shall cause drawings, plans or specifications to be maintained and kept up to date not more than six months last past on such scale and showing such matters or things as may be prescribed.

Plans of workplaces

- (3) Where so prescribed, an owner or employer shall,

- (a) not begin any construction, development, reconstruction, alteration, addition or installation to or in a workplace until the drawings, layout and specifications thereof and any alterations thereto have been filed with the Ministry for review by an engineer of the Ministry for compliance with this Act and the regulations; and

- (b) keep a copy of the drawings as reviewed in a convenient location at or near the workplace and such drawings shall be produced by the owner or employer upon the request of an inspector for his or her examination and inspection.

Additional information

- (4) An engineer of the Ministry may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information.

Fees

- (5) Fees as prescribed for the filing and review of drawings, layout or specifications shall become due and payable by the owner or employer upon filing. R.S.O. 1990, c. O.1, s. 29.

Duty of project owners

- 30** (1) Before beginning a project, the owner shall determine whether any designated substances are present at the project site and shall prepare a list of all designated substances that are present at the site.

Tenders

- (2) If any work on a project is tendered, the person issuing the tenders shall include, as part of the tendering information, a copy of the list referred to in subsection (1).

Idem

- (3) An owner shall ensure that a prospective constructor of a project on the owner's property has received a copy of the list referred to in subsection (1) before entering into a binding contract with the constructor.

Duty of constructors

- (4) The constructor for a project shall ensure that each prospective contractor and subcontractor for the project has received a copy of the list referred to in subsection (1) before the prospective contractor or subcontractor enters into a binding contract for the supply of work on the project.

Liability

- (5) An owner who fails to comply with this section is liable to the constructor and every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the project of a designated substance that the owner ought reasonably to have known of but that was not on the list prepared under subsection (1).

Idem

- (6) A constructor who fails to comply with this section is liable to every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the project of a designated substance that was on the list prepared under subsection (1). R.S.O. 1990, c. O.1, s. 30.

Duties of suppliers

- 31** (1) Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a workplace shall ensure,

- (a) that the machine, device, tool or equipment is in good condition;
- (b) that the machine, device, tool or equipment complies with this Act and the regulations; and
- (c) if it is the person's responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition.

Architects and engineers

- (2) An architect as defined in the *Architects Act*, and a professional engineer as defined in the *Professional Engineers Act*, contravenes this Act if, as a result of his or her advice that is given or his or her certification required under this Act that is made negligently or incompetently, a worker is endangered. R.S.O. 1990, c. O.1, s. 31.

Duties of directors and officers of a corporation

- 32** Every director and every officer of a corporation shall take all reasonable care to ensure that the corporation complies with,

- (a) this Act and the regulations;
- (b) orders and requirements of inspectors and Directors; and
- (c) orders of the Minister. R.S.O. 1990, c. O.1, s. 32.

**PART III.0.1
VIOLENCE AND HARASSMENT**

Policies, violence and harassment

32.0.1 (1) An employer shall,

- (a) prepare a policy with respect to workplace violence;
- (b) prepare a policy with respect to workplace harassment; and
- (c) review the policies as often as is necessary, but at least annually. 2009, c. 23, s. 3.

Written form, posting

(2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace. 2009, c. 23, s. 3.

Exception

(3) Subsection (2) does not apply if the number of workers regularly employed at the workplace is five or fewer, unless an inspector orders otherwise. 2009, c. 23, s. 3; 2011, c. 1, Sched. 7, s. 2 (3).

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

2011, c. 1, Sched. 7, s. 2 (3) - 30/03/2011

Program, violence

32.0.2 (1) An employer shall develop and maintain a program to implement the policy with respect to workplace violence required under clause 32.0.1 (1) (a). 2009, c. 23, s. 3.

Contents

(2) Without limiting the generality of subsection (1), the program shall,

- (a) include measures and procedures to control the risks identified in the assessment required under subsection 32.0.3 (1) as likely to expose a worker to physical injury;
- (b) include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
- (c) include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor;
- (d) set out how the employer will investigate and deal with incidents or complaints of workplace violence; and
- (e) include any prescribed elements. 2009, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

Assessment of risks of violence

32.0.3 (1) An employer shall assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work. 2009, c. 23, s. 3.

Considerations

(2) The assessment shall take into account,

- (a) circumstances that would be common to similar workplaces;
- (b) circumstances specific to the workplace; and
- (c) any other prescribed elements. 2009, c. 23, s. 3.

Results

(3) An employer shall,

- (a) advise the committee or a health and safety representative, if any, of the results of the assessment, and provide a copy if the assessment is in writing; and

- (b) if there is no committee or health and safety representative, advise the workers of the results of the assessment and, if the assessment is in writing, provide copies on request or advise the workers how to obtain copies. 2009, c. 23, s. 3.

Reassessment

(4) An employer shall reassess the risks of workplace violence as often as is necessary to ensure that the related policy under clause 32.0.1 (1) (a) and the related program under subsection 32.0.2 (1) continue to protect workers from workplace violence. 2009, c. 23, s. 3.

Same

(5) Subsection (3) also applies with respect to the results of the reassessment. 2009, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

Domestic violence

32.0.4 If an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the employer shall take every precaution reasonable in the circumstances for the protection of the worker. 2009, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

Duties re violence

32.0.5 (1) For greater certainty, the employer duties set out in section 25, the supervisor duties set out in section 27, and the worker duties set out in section 28 apply, as appropriate, with respect to workplace violence. 2009, c. 23, s. 3.

Information

- (2) An employer shall provide a worker with,
 - (a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace violence; and
 - (b) any other prescribed information or instruction. 2009, c. 23, s. 3.

Provision of information

(3) An employer's duty to provide information to a worker under clause 25 (2) (a) and a supervisor's duty to advise a worker under clause 27 (2) (a) include the duty to provide information, including personal information, related to a risk of workplace violence from a person with a history of violent behaviour if,

- (a) the worker can be expected to encounter that person in the course of his or her work; and
- (b) the risk of workplace violence is likely to expose the worker to physical injury. 2009, c. 23, s. 3.

Limit on disclosure

(4) No employer or supervisor shall disclose more personal information in the circumstances described in subsection (3) than is reasonably necessary to protect the worker from physical injury. 2009, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

Program, harassment

32.0.6 (1) An employer shall, in consultation with the committee or a health and safety representative, if any, develop and maintain a written program to implement the policy with respect to workplace harassment required under clause 32.0.1 (1) (b). 2016, c. 2, Sched. 4, s. 2 (1).

Contents

- (2) Without limiting the generality of subsection (1), the program shall,
 - (a) include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
 - (b) include measures and procedures for workers to report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser;

- (c) set out how incidents or complaints of workplace harassment will be investigated and dealt with;
- (d) set out how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law;
- (e) set out how a worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, will be informed of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation; and
- (f) include any prescribed elements. 2009, c. 23, s. 3; 2016, c. 2, Sched. 4, s. 2 (2).

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

2016, c. 2, Sched. 4, s. 2 (1, 2) - 08/09/2016

Duties re harassment

32.0.7 (1) To protect a worker from workplace harassment, an employer shall ensure that,

- (a) an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances;
- (b) the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation;
- (c) the program developed under section 32.0.6 is reviewed as often as necessary, but at least annually, to ensure that it adequately implements the policy with respect to workplace harassment required under clause 32.0.1 (1) (b); and
- (d) such other duties as may be prescribed are carried out. 2016, c. 2, Sched. 4, s. 3.

Results of investigation not a report

(2) The results of an investigation under clause (1) (a), and any report created in the course of or for the purposes of the investigation, are not a report respecting occupational health and safety for the purposes of subsection 25 (2). 2016, c. 2, Sched. 4, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

2016, c. 2, Sched. 4, s. 3 - 08/09/2016

Information and instruction, harassment

32.0.8 An employer shall provide a worker with,

- (a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace harassment; and
- (b) any other prescribed information. 2016, c. 2, Sched. 4, s. 3.

Section Amendments with date in force (d/m/y)

2016, c. 2, Sched. 4, s. 3 - 08/09/2016

**PART III.1
CODES OF PRACTICE**

Definition

32.1 In this Part,

“legal requirement” means a requirement imposed by a provision of this Act or by a regulation made under this Act. 2011, c. 11, s. 10.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (4) - 29/06/2001

2011, c. 11, s. 10 - 1/06/2011

Approval of code of practice

32.2 (1) The Minister may approve a code of practice and the approved code of practice may be followed to comply with a legal requirement specified in the approval. 2011, c. 11, s. 11.

Same

(1.1) An approval made under subsection (1) may be subject to such terms and conditions as the Minister considers appropriate and may be general or particular in its application. 2011, c. 11, s. 11.

Withdrawal of approval

(2) The Minister may withdraw an approval under subsection (1). 2001, c. 9, Sched. I, s. 3 (4).

Legislation Act, 2006, Part III

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply with respect to an approval under this section or the withdrawal of such an approval. 2001, c. 9, Sched. I, s. 3 (4); 2006, c. 21, Sched. F, s. 136 (1).

Delegation

(4) The Minister may delegate the Minister's power under this section to the Deputy Minister. 2001, c. 9, Sched. I, s. 3 (4).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (4) - 29/06/2001

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

2011, c. 11, s. 11 - 1/06/2011

Publication of approval, etc.

32.3 (1) An approval or a withdrawal of an approval under section 32.2 shall be published in *The Ontario Gazette*. 2001, c. 9, Sched. I, s. 3 (4).

Effect of publication

(2) Publication of an approval or withdrawal of approval in *The Ontario Gazette*,

- (a) is, in the absence of evidence to the contrary, proof of the approval or withdrawal of approval; and
- (b) shall be deemed to be notice of the approval or withdrawal of approval to everyone affected by it. 2001, c. 9, Sched. I, s. 3 (4).

Judicial notice

(3) Judicial notice shall be taken of an approval or withdrawal of approval published in *The Ontario Gazette*. 2001, c. 9, Sched. I, s. 3 (4).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (4) - 29/06/2001

Effect of approved code of practice

32.4 The following apply if a code of practice is approved under section 32.2:

- 1. Subject to any terms or conditions set out in the approval, compliance with the approved code of practice is deemed to be compliance with the legal requirement.
- 2. A failure to comply with the approved code of practice is not, in itself, a breach of the legal requirement. 2011, c. 11, s. 12.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (4) - 29/06/2001

2011, c. 11, s. 12 - 1/06/2011

PART IV TOXIC SUBSTANCES

Orders of Director

33 (1) Where a biological, chemical or physical agent or combination of such agents is used or intended to be used in the workplace and its presence in the workplace or the manner of its use is in the opinion of a Director likely to endanger the health of a worker, the Director shall by notice in writing to the employer order that the use, intended use, presence or manner of use be,

- (a) prohibited;
- (b) limited or restricted in such manner as the Director specifies; or
- (c) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies. R.S.O. 1990, c. O.1, s. 33 (1).

Contents of order

- (2) Where a Director makes an order to an employer under subsection (1), the order shall,
- (a) identify the biological, chemical or physical agent, or combination of such agents, and the manner of use that is the subject-matter of the order; and
 - (b) state the opinion of the Director as to the likelihood of the danger to the health of a worker, and the Director's reasons in respect thereof, including the matters or causes which give rise to his or her opinion. R.S.O. 1990, c. O.1, s. 33 (2).

Posting of order

(3) The employer shall provide a copy of an order made under subsection (1) to the committee, health and safety representative and trade union, if any, and shall cause a copy of the order to be posted in a conspicuous place in the workplace where it is most likely to come to the attention of the workers who may be affected by the use, presence or intended use of the biological, chemical or physical agent or combination of agents. R.S.O. 1990, c. O.1, s. 33 (3).

Appeal to Minister

(4) Where the employer, a worker or a trade union considers that he, she or it is aggrieved by an order made under subsection (1), the employer, worker or trade union may by notice in writing given within fourteen days of the making of the order appeal to the Minister. R.S.O. 1990, c. O.1, s. 33 (4).

Delegation

(5) The Minister may, having regard to the circumstances, direct that an appeal under subsection (4) be determined on his or her behalf by a person appointed by the Minister for that purpose. R.S.O. 1990, c. O.1, s. 33 (5).

Procedure

(6) The Minister or, where a person has been appointed under subsection (5), the person so appointed, may give such directions and issue such orders as he or she considers proper or necessary concerning the procedures to be adopted or followed and shall have all the powers of a chair of a board of arbitration under subsection 48 (12) of the *Labour Relations Act, 1995*. R.S.O. 1990, c. O.1, s. 33 (6); 2001, c. 9, Sched. I, s. 3 (5).

Substitution of findings

(7) On an appeal, the Minister or, where a person has been appointed under subsection (5), the person so appointed, may substitute his or her findings for those of the Director and may rescind or affirm the order appealed from or make a new order in substitution therefor and such order shall stand in the place of and have the like effect under this Act and the regulations as the order of the Director, and such order shall be final and not subject to appeal under this section. R.S.O. 1990, c. O.1, s. 33 (7).

Matters to be considered

(8) In making a decision or order under subsection (1) or (7), a Director, the Minister or, where a person has been appointed under subsection (5), the person so appointed shall consider as relevant factors,

- (a) the relation of the agent, combination of agents or by-product to a biological or chemical agent that is known to be a danger to health;
- (b) the quantities of the agent, combination of agents or by-product used or intended to be used or present;
- (c) the extent of exposure;

- (d) the availability of other processes, agents or equipment for use or intended use;
- (e) data regarding the effect of the process or agent on health; and
- (f) any criteria or guide with respect to the exposure of a worker to a biological, chemical or physical agent or combination of such agents that are adopted by a regulation. R.S.O. 1990, c. O.1, s. 33 (8).

Suspension of order by Minister, etc., pending disposition of appeal

(9) On an appeal under subsection (4), the Minister or, where a person has been appointed under subsection (5), the person so appointed may suspend the operation of the order appealed from pending the disposition of the appeal. R.S.O. 1990, c. O.1, s. 33 (9).

Remuneration of appointee

(10) A person appointed under subsection (5) shall be paid such remuneration and expenses as the Minister, with the approval of the Lieutenant Governor in Council, determines. R.S.O. 1990, c. O.1, s. 33 (10).

Application

(11) This section does not apply to designated substances. R.S.O. 1990, c. O.1, s. 33 (11).

No hearing required prior to issuing order

(12) A Director is not required to hold or afford to an employer or any other person an opportunity for a hearing before making an order under subsection (1). R.S.O. 1990, c. O.1, s. 33 (12).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (5) - 29/06/2001

34 REPEALED: 2019, c. 14, Sched. 13, s. 2.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (6) - See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2019, c. 14, Sched. 13, s. 2 - 10/12/2019

Designation of substances

35 Prior to a substance being designated under paragraph 23 of subsection 70 (2), the Minister,

- (a) shall publish in *The Ontario Gazette* a notice stating that the substance may be designated and calling for briefs or submissions in relation to the designation; and
- (b) shall publish in *The Ontario Gazette* a notice setting forth the proposed regulation relating to the designation of the substance at least sixty days before the regulation is filed with the Registrar of Regulations. R.S.O. 1990, c. O.1, s. 35.

36 REPEALED: 2001, c. 9, Sched. I, s. 3 (7).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (7) - 29/06/2001

Hazardous material identification and data sheets

37 (1) An employer,

- (a) shall ensure that all hazardous materials present in the workplace are identified in the prescribed manner;
- (b) shall obtain or prepare, as may be prescribed, a current safety data sheet for all hazardous materials present in the workplace; and
- (c) shall ensure that the identification required by clause (a) and safety data sheets required by clause (b) are available in English and such other languages as may be prescribed. R.S.O. 1990, c. O.1, s. 37 (1); 2015, c. 27, Sched. 4, s. 2 (1, 2).

Prohibition

(2) No person shall remove or deface the identification described in clause (1) (a) for a hazardous material. R.S.O. 1990, c. O.1, s. 37 (2).

Hazardous material not to be used

(3) An employer shall ensure that a hazardous material is not used, handled or stored at a workplace unless the prescribed requirements concerning identification, safety data sheets and worker instruction and training are met. R.S.O. 1990, c. O.1, s. 37 (3); 2015, c. 27, Sched. 4, s. 2 (2).

Notice to Director

(4) An employer shall advise a Director in writing if the employer, after making reasonable efforts, is unable to obtain a label or safety data sheet required by subsection (1). R.S.O. 1990, c. O.1, s. 37 (4); 2015, c. 27, Sched. 4, s. 2 (3).

(5) REPEALED: 2015, c. 27, Sched. 4, s. 2 (4).

Section Amendments with date in force (d/m/y)

2011, c. 1, Sched. 7, s. 2 (4, 5, 12-14) - no effect - see 2015, c. 27, Sched. 4, s. 11 - 03/12/2015

2015, c. 27, Sched. 4, s. 2 - 01/07/2016

Making safety data sheets available

38 (1) A copy of every current safety data sheet required by this Part in respect of hazardous materials in a workplace shall be,

- (a) made available by the employer in the workplace in such a manner as to allow examination by the workers;
- (b) furnished by the employer to the committee or health and safety representative, if any, for the workplace or to a worker selected by the workers to represent them, if there is no committee or health and safety representative;
- (c) furnished by the employer on request or if so prescribed to the medical officer of health of the health unit in which the workplace is located;
- (d) furnished by the employer on request or if so prescribed to the fire department which serves the location in which the workplace is located; and
- (e) filed by the employer with a Director on request or if so prescribed. 2001, c. 9, Sched. I, s. 3 (8); 2015, c. 27, Sched. 4, s. 3 (1).

Additional requirement

(1.1) In addition to complying with subsection (1), the employer shall make a copy of a safety data sheet readily available to those workers who may be exposed to the hazardous material to which it relates. 2015, c. 27, Sched. 4, s. 3 (2).

Public access

(2) The medical officer of health, at the request of any person, shall request an employer to furnish a copy of a current safety data sheet. 2001, c. 9, Sched. I, s. 3 (9); 2015, c. 27, Sched. 4, s. 3 (3).

Same

(3) At the request of any person, the medical officer of health shall make available to the person for inspection a copy of any safety data sheet requested by the person and in the possession of the medical officer of health. 2001, c. 9, Sched. I, s. 3 (9); 2015, c. 27, Sched. 4, s. 3 (4).

Idem

(4) A medical officer of health shall not disclose the name of any person who makes a request under subsection (2) or (3). R.S.O. 1990, c. O.1, s. 38 (4).

Electronic format

(5) For greater certainty, a copy of a safety data sheet in an electronic format is a copy for the purposes of this section. 2015, c. 27, Sched. 4, s. 3 (5).

Requirement to consult

(6) An employer shall consult with the committee and the health and safety representative, if any, on making safety data sheets available in the workplace or furnishing them as required by clauses (1) (a) and (b) and subsection (1.1). 2015, c. 27, Sched. 4, s. 3 (5).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (8, 9) - 29/06/2001

2011, c. 1, Sched. 7, s. 2 (6, 12-14) - no effect - see 2015, c. 27, Sched. 4, s. 11- 03/12/2015

2015, c. 27, Sched. 4, s. 3 - 01/07/2016

Assessment for hazardous materials

39 (1) Where so prescribed, an employer shall assess all biological and chemical agents produced in the workplace for use therein to determine if they are hazardous materials.

Assessments to be made available

(2) The assessment required by subsection (1) shall be in writing and a copy of it shall be,

- (a) made available by the employer in the workplace in such a manner as to allow examination by the workers;
- (b) furnished by the employer to the committee or health and safety representative, if any, for the workplace or to a worker selected by the workers to represent them, if there is no committee or health and safety representative. R.S.O. 1990, c. O.1, s. 39.

Confidential business information

40 (1) An employer may file a claim for an exemption from disclosing,

- (a) information required under this Part in a label or safety data sheet; or
- (b) the name of a toxicological study used by the employer to prepare a safety data sheet,

on the grounds that it is confidential business information. R.S.O. 1990, c. O.1, s. 40 (1); 2001, c. 9, Sched. I, s. 3 (10); 2015, c. 27, Sched. 4, s. 4 (1, 2).

Idem

(2) An application under subsection (1) shall be made only in respect of such types of confidential business information as may be prescribed. R.S.O. 1990, c. O.1, s. 40 (2).

Determination of claim

(3) A claim for an exemption made under subsection (1) shall be determined in accordance with the process set out in the *Hazardous Materials Information Review Act* (Canada). 2015, c. 27, Sched. 4, s. 4 (3).

Appeal

(4) The employer or any worker of the employer or any trade union representing the workers of the employer may, in accordance with the appeal process set out in the *Hazardous Materials Information Review Act* (Canada), appeal a determination made under subsection (3) and the appeal shall be determined in accordance with that process. 2015, c. 27, Sched. 4, s. 4 (3).

(5) REPEALED: 2015, c. 27, Sched. 4, s. 4 (3).

Effect of claim

(6) Information that an employer considers to be confidential business information is exempt from disclosure from the time a claim is filed under subsection (1) until the claim is finally determined and for three years thereafter, if the claim is found to be valid. R.S.O. 1990, c. O.1, s. 40 (6).

Effect of determination

(7) A determination made under this section applies for the purposes of this Part. 2015, c. 27, Sched. 4, s. 4 (4).

(8) REPEALED: 2015, c. 27, Sched. 4, s. 4 (4).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (10) - 29/06/2001

2011, c. 1, Sched. 7, s. 2 (12, 14) - no effect - see 2015, c. 27, Sched. 4, s. 11 - 03/12/2015

2015, c. 27, Sched. 4, s. 4 - 01/07/2016

Information privileged

40.1 (1) Subject to subsection (2), all information obtained by an employee in the Ministry from a person acting under the authority of the *Hazardous Materials Information Review Act* (Canada) is privileged and no employee in the Ministry shall knowingly, without consent in writing of the Chief Screening Officer appointed under that Act,

- (a) communicate or allow to be communicated to any person any information obtained; or
- (b) allow any person to inspect or to have access to any part of a book, record, writing or other document containing any information obtained. 2015, c. 27, Sched. 4, s. 5 (1).

Exception

(2) An employee in the Ministry may communicate or allow to be communicated information described in subsection (1) or allow inspection of or access to any part of a book, record, writing or other document containing any such information to or by,

- (a) another employee in the Ministry for the purpose of administering or enforcing this Act; or
- (b) a physician or a medical professional prescribed under the *Hazardous Materials Information Review Act* (Canada) who requests that information for the purpose of making a medical diagnosis of, or rendering medical treatment to, a person in an emergency. 1992, c. 14, s. 2 (1); 2006, c. 35, Sched. C, s. 93 (4).

Conditions

(3) No person who obtains any information under subsection (2) shall knowingly disclose that information to any other person or knowingly allow any other person to have access to that information except as may be necessary for the purposes mentioned in that subsection. 1992, c. 14, s. 2 (1).

Non-disclosure prevails

(4) Despite subsection 63 (1), the requirements in this section that information received from a person acting under the authority of the *Hazardous Materials Information Review Act* (Canada) not be disclosed prevail over any other law. 2015, c. 27, Sched. 4, s. 5 (2).

Section Amendments with date in force (d/m/y)

1992, c. 14, s. 2 (1) - 25/06/1992

2006, c. 35, Sched. C, s. 93 (3, 4) - 20/08/2007

2015, c. 27, Sched. 4, s. 5 - 01/07/2016

Hazardous physical agents

41 (1) A person who distributes or supplies, directly or indirectly, or manufactures, produces or designs a thing for use in a workplace that causes, emits or produces a hazardous physical agent when the thing is in use or operation shall ensure that such information as may be prescribed is readily available respecting the hazardous physical agent and the proper use or operation of the thing.

Duty of employer

(2) Where an employer has a thing described in subsection (1) in the workplace, the employer shall ensure that the information referred to in that subsection has been obtained and is,

- (a) made available in the workplace for workers who use or operate the thing or who are likely to be exposed to the hazardous physical agent; and
- (b) furnished by the employer to the committee or health and safety representative, if any, for the workplace or a worker selected by the workers to represent them, if there is no committee or health and safety representative.

Notices

(3) An employer to whom subsection (2) applies shall post prominent notices identifying and warning of the hazardous physical agent in the part of the workplace in which the thing is used or operated or is to be used or operated.

Idem

(4) Notices required by subsection (3) shall contain such information as may be prescribed and shall be in English and such other language or languages as may be prescribed. R.S.O. 1990, c. O.1, s. 41.

Instruction and training

42 (1) In addition to providing information and instruction to a worker as required by clause 25 (2) (a), an employer shall ensure that a worker exposed or likely to be exposed to a hazardous material or to a hazardous physical agent receives, and that the worker participates in, such instruction and training as may be prescribed.

Consultation

(2) The instruction and training to be given under subsection (1) shall be developed and implemented by the employer in consultation with the committee or health and safety representative, if any, for the workplace.

Review

(3) An employer shall review, in consultation with the committee or health and safety representative, if any, for the workplace, the training and instruction provided to a worker and the worker's familiarity therewith at least annually.

Idem

- (4) The review described in subsection (3) shall be held more frequently than annually, if,
- (a) the employer, on the advice of the committee or health and safety representative, if any, for the workplace, determines that such reviews are necessary; or
 - (b) there is a change in circumstances that may affect the health or safety of a worker. R.S.O. 1990, c. O.1, s. 42.

PART V

RIGHT TO REFUSE OR TO STOP WORK WHERE HEALTH OR SAFETY IN DANGER

Refusal to work

Non-application to certain workers

- 43** (1) This section does not apply to a worker described in subsection (2),
- (a) when a circumstance described in clause (3) (a), (b), (b.1) or (c) is inherent in the worker's work or is a normal condition of the worker's employment; or
 - (b) when the worker's refusal to work would directly endanger the life, health or safety of another person. R.S.O. 1990, c. O.1, s. 43 (1); 2009, c. 23, s. 4 (1).

Idem

- (2) The worker referred to in subsection (1) is,
- (a) a person employed in, or a member of, a police force to which the *Police Services Act* applies;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 43 (2) (a) of the Act is amended by striking out "a police force to which the *Police Services Act* applies" at the end and substituting "a police service to which the *Community Safety and Policing Act, 2019* applies". (See: 2019, c. 1, Sched. 4, s. 39 (1))

- (b) a firefighter as defined in subsection 1 (1) of the *Fire Protection and Prevention Act, 1997*;
- (c) a person employed in the operation of,
 - (i) a correctional institution or facility,
 - (ii) a place of secure custody designated under section 24.1 of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise,
 - (iii) a place of temporary detention under the *Youth Criminal Justice Act* (Canada), or
 - (iv) a similar institution, facility or place;
- (d) a person employed in the operation of,
 - (i) a hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility,
 - (ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,
 - (iii) an ambulance service or a first aid clinic or station,
 - (iv) a laboratory operated by the Crown or licensed under the *Laboratory and Specimen Collection Centre Licensing Act*, or
 - (v) a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in subclause (i) to (iv). R.S.O. 1990, c. O.1, s. 43 (2); 1997, c. 4, s. 84; 2001, c. 13, s. 22; 2006, c. 19, Sched. D, s. 14; 2007, c. 8, s. 221.

Refusal to work

- (3) A worker may refuse to work or do particular work where he or she has reason to believe that,
- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
 - (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;
 - (b.1) workplace violence is likely to endanger himself or herself; or
 - (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker. R.S.O. 1990, c. O.1, s. 43 (3); 2009, c. 23, s. 4 (2).

Report of refusal to work

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) a committee member who represents workers, if any;
- (b) a health and safety representative, if any; or
- (c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

who shall be made available and who shall attend without delay. R.S.O. 1990, c. O.1, s. 43 (4).

Worker to remain in safe place and available for investigation

- (5) Until the investigation is completed, the worker shall remain,
- (a) in a safe place that is as near as reasonably possible to his or her work station; and
 - (b) available to the employer or supervisor for the purposes of the investigation. 2009, c. 23, s. 4 (3).

Refusal to work following investigation

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

- (a) the equipment, machine, device or thing that was the cause of the refusal to work or do particular work continues to be likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works continues to be likely to endanger himself or herself;
- (b.1) workplace violence continues to be likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself, herself or another worker,

the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof. R.S.O. 1990, c. O.1, s. 43 (6); 2009, c. 23, s. 4 (4).

Investigation by inspector

(7) An inspector shall investigate the refusal to work in consultation with the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4) (a), (b) or (c). 2001, c. 9, Sched. I, s. 3 (11).

Decision of inspector

(8) The inspector shall, following the investigation referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person. 2009, c. 23, s. 4 (5).

Idem

(9) The inspector shall give his or her decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause (4) (a), (b) or (c). R.S.O. 1990, c. O.1, s. 43 (9).

Worker to remain in safe place and available for investigation

(10) Pending the investigation and decision of the inspector, the worker shall remain, during the worker's normal working hours, in a safe place that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation. 2009, c. 23, s. 4 (6).

Exception

(10.1) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any,

- (a) assigns the worker reasonable alternative work during the worker's normal working hours; or
- (b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker. 2009, c. 23, s. 4 (6).

Duty to advise other workers

(11) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or in the part of the workplace being investigated unless, in the presence of a person described in subsection (12), the worker has been advised of the other worker's refusal and of his or her reasons for the refusal. R.S.O. 1990, c. O.1, s. 43 (11).

Idem

(12) The person referred to in subsection (11) must be,

- (a) a committee member who represents workers and, if possible, who is a certified member;
- (b) a health and safety representative; or
- (c) a worker who because of his or her knowledge, experience and training is selected by the trade union that represents the worker or, if there is no trade union, by the workers to represent them. R.S.O. 1990, c. O.1, s. 43 (12).

Entitlement to be paid

(13) A person shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate, as may be proper,

- (a) for the time spent by the person carrying out the duties under subsections (4) and (7) of a person mentioned in clause (4) (a), (b) or (c); and
- (b) for time spent by the person carrying out the duties under subsection (11) of a person described in subsection (12). R.S.O. 1990, c. O.1, s. 43 (13).

Section Amendments with date in force (d/m/y)

1997, c. 4, s. 84 - 29/10/1997

2001, c. 9, Sched. I, s. 3 (11) - 29/06/2001; 2001, c. 13, s. 22 - 30/11/2001

2006, c. 19, Sched. D, s. 14 - 22/06/2006

2007, c. 8, s. 221 - 1/07/2010

2009, c. 23, s. 4 - 15/06/2010

2018, c. 3, Sched. 5, s. 41 (1) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 39 (1) - not in force

Definition and non-application**Definition**

44 (1) In sections 45 to 48,

“dangerous circumstances” means a situation in which,

- (a) a provision of this Act or the regulations is being contravened,
- (b) the contravention poses a danger or a hazard to a worker, and
- (c) the danger or hazard is such that any delay in controlling it may seriously endanger a worker.

Non-application

- (2) Sections 45 to 49 do not apply to,
- (a) a workplace at which workers described in clause 43 (2) (a), (b) or (c) are employed; or
 - (b) a workplace at which workers described in clause 43 (2) (d) are employed if a work stoppage would directly endanger the life, health or safety of another person. R.S.O. 1990, c. O.1, s. 44.

Bilateral work stoppage

45 (1) A certified member who has reason to believe that dangerous circumstances exist at a workplace may request that a supervisor investigate the matter and the supervisor shall promptly do so in the presence of the certified member.

Investigation by second certified member

(2) The certified member may request that a second certified member representing the other workplace party investigate the matter if the first certified member has reason to believe that dangerous circumstances continue after the supervisor's investigation and remedial actions, if any.

Idem

(3) The second certified member shall promptly investigate the matter in the presence of the first certified member.

Direction following investigation

(4) If both certified members find that the dangerous circumstances exist, the certified members may direct the constructor or employer to stop the work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing.

Constructor's or employer's duties

(5) The constructor or employer shall immediately comply with the direction and shall ensure that compliance is effected in a way that does not endanger a person.

Investigation by inspector

(6) If the certified members do not agree whether dangerous circumstances exist, either certified member may request that an inspector investigate the matter and the inspector shall do so and provide the certified members with a written decision.

Cancellation of direction

(7) After taking steps to remedy the dangerous circumstances, the constructor or employer may request the certified members or an inspector to cancel the direction.

Idem

(8) The certified members who issued a direction may jointly cancel it or an inspector may cancel it.

Delegation by certified member

(9) In such circumstances as may be prescribed, a certified member who represents the constructor or employer shall designate a person to act under this section in his or her stead when the certified member is not available at the workplace. R.S.O. 1990, c. O.1, s. 45.

Declaration against constructor, etc.

46 (1) A certified member at a workplace or an inspector who has reason to believe that the procedure for stopping work set out in section 45 will not be sufficient to protect a constructor's or employer's workers at the workplace from serious risk to their health or safety may apply to the Board for a declaration or recommendation described in subsection (5), or both. R.S.O. 1990, c. O.1, s. 46 (1); 1998, c. 8, s. 53 (1).

(2) REPEALED: 1998, c. 8, s. 53 (2).

Minister a party

(3) The Minister is entitled to be a party to a proceeding before the Board. R.S.O. 1990, c. O.1, s. 46 (3); 1998, c. 8, s. 53 (3).

Board procedure, etc.

(4) Subsections 61 (2) to (3.13) and subsection 61 (8) apply, with necessary modifications, with respect to applications under this section. 1998, c. 8, s. 53 (4).

Declaration and recommendation

(5) If the Board finds that the procedure for stopping work set out in section 45 will not be sufficient to protect the constructor's or employer's workers at the workplace from serious risk to their health or safety, the Board,

- (a) may issue a declaration that the constructor or employer is subject to the procedure for stopping work set out in section 47 for the period specified; and
- (b) may recommend to the Minister that an inspector be assigned to oversee the health and safety practices of the constructor or employer at the workplace on a full-time or part-time basis for a specified period. R.S.O. 1990, c. O.1, s. 46 (5); 1998, c. 8, s. 53 (5).

Criteria

(6) In making a finding under subsection (5), the Board shall determine, using the prescribed criteria, whether the constructor or employer has demonstrated a failure to protect the health and safety of workers and shall consider such other matters as may be prescribed. R.S.O. 1990, c. O.1, s. 46 (6); 1998, c. 8, s. 53 (6).

Decision final

(7) The decision of the Board on an application is final. R.S.O. 1990, c. O.1, s. 46 (7); 1998, c. 8, s. 53 (7).

Costs of inspector

(8) The employer shall reimburse the Province of Ontario for the wages, benefits and expenses of an inspector assigned to the employer as recommended by the Board. 1998, c. 8, s. 53 (8).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 53 - 29/06/1998

Unilateral work stoppage

47 (1) This section applies, and section 45 does not apply, to a constructor or an employer,

- (a) against whom the Board has issued a declaration under section 46; or
- (b) who advises the committee at a workplace in writing that the constructor or employer adopts the procedures set out in this section respecting work stoppages. R.S.O. 1990, c. O.1, s. 47 (1); 1998, c. 8, s. 54.

Direction re work stoppage

(2) A certified member may direct the constructor or employer to stop specified work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing if the certified member finds that dangerous circumstances exist.

Constructor's or employer's duties

(3) The constructor or employer shall immediately comply with the direction and shall ensure that compliance is effected in a way that does not endanger a person.

Investigation by constructor, etc.

(4) After complying with the direction, the constructor or employer shall promptly investigate the matter in the presence of the certified member.

Investigation by inspector

(5) If the certified member and the constructor or employer do not agree whether dangerous circumstances exist, the constructor or employer or the certified member may request that an inspector investigate the matter and the inspector shall do so and provide them with a written decision.

Cancellation of direction

(6) After taking steps to remedy the dangerous circumstances, the constructor or employer may request the certified member or an inspector to cancel the direction.

Idem

(7) The certified member who made the direction or an inspector may cancel it. R.S.O. 1990, c. O.1, s. 47 (2-7).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 54 - 29/06/1998

Entitlement to investigate

48 (1) A certified member who receives a complaint that dangerous circumstances exist is entitled to investigate the complaint.

Entitlement to be paid

(2) The time spent by a certified member in exercising powers and carrying out duties under this section and sections 45 and 47 shall be deemed to be work time for which the member's employer shall pay the member at the regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 48.

Complaint re direction to stop work

49 (1) A constructor, an employer, a worker at the workplace or a representative of a trade union that represents workers at the workplace may file a complaint with the Board if he, she or it has reasonable grounds to believe that a certified member at the workplace recklessly or in bad faith exercised or failed to exercise a power under section 45 or 47. R.S.O. 1990, c. O.1, s. 49 (1); 1998, c. 8, s. 55 (1).

Limitation

(2) A complaint must be filed not later than 30 days after the event to which the complaint relates. R.S.O. 1990, c. O.1, s. 49 (2); 1998, c. 8, s. 55 (2).

Minister a party

(3) The Minister is entitled to be a party to a proceeding before the Board. R.S.O. 1990, c. O.1, s. 49 (3); 1998, c. 8, s. 55 (3).

Board procedure, etc.

(3.1) Subsections 61 (2) to (3.13) and subsection 61 (8) apply, with necessary modifications, with respect to complaints under this section. 1998, c. 8, s. 55 (4).

Determination of complaint

(4) The Board shall make a decision respecting the complaint and may make such order as it considers appropriate in the circumstances including an order decertifying a certified member. 1998, c. 8, s. 55 (5).

Decision final

(5) The decision of the Board is final. R.S.O. 1990, c. O.1, s. 49 (5); 1998, c. 8, s. 55 (6).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 55 - 29/06/1998

**PART VI
REPRISALS BY EMPLOYER PROHIBITED**

No discipline, dismissal, etc., by employer

50 (1) No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the *Coroners Act*. R.S.O. 1990, c. O.1, s. 50 (1).

Arbitration

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection (1), the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint. 1998, c. 8, s. 56 (1).

Referral by inspector

(2.1) Where the circumstances warrant, an inspector may refer a matter to the Board if the following conditions are met:

1. The worker has not had the matter dealt with by final and binding settlement by arbitration under a collective agreement or filed a complaint with the Board under subsection (2).
2. The worker consents to the referral. 2011, c. 11, s. 13 (1).

Same

(2.2) Any rules governing the practice and procedure of the Board apply with all necessary modifications to a referral made under subsection (2.1). 2011, c. 11, s. 13 (1).

Referral not an order

(2.3) A referral made under subsection (2.1) is not an order or decision for the purposes of section 61. 2011, c. 11, s. 13 (1).

Inquiry by Board

(3) The Board may inquire into any complaint filed under subsection (2) or referral made under subsection (2.1) and section 96 of the *Labour Relations Act, 1995*, except subsection (5), applies with all necessary modifications as if such section, except subsection (5), is enacted in and forms part of this Act. 1998, c. 8, s. 56 (1); 2011, c. 11, s. 13 (2).

Same

(4) On an inquiry by the Board into a complaint filed under subsection (2) or a referral made under subsection (2.1), sections 110, 111, 114 and 116 of the *Labour Relations Act, 1995* apply with all necessary modifications. 1998, c. 8, s. 56 (1); 2011, c. 11, s. 13 (3).

Rules to expedite proceedings

(4.1) The chair of the Board may make rules under subsection 110 (18) of the *Labour Relations Act, 1995* to expedite proceedings relating to a complaint filed under subsection (2) or a referral made under subsection (2.1). 2011, c. 11, s. 13 (4).

Same

(4.2) Subsections 110 (20), (21) and (22) of the *Labour Relations Act, 1995* apply, with necessary modifications, to rules made under subsection (4.1). 2011, c. 11, s. 13 (4); 2018, c. 14, Sched. 2, s. 21.

Onus of proof

(5) On an inquiry by the Board into a complaint filed under subsection (2) or a referral made under subsection (2.1), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer. R.S.O. 1990, c. O.1, s. 50 (5); 1998, c. 8, s. 56 (2); 2011, c. 11, s. 13 (5).

Jurisdiction when complaint by public servant

(6) The Board shall exercise jurisdiction under this section when a complaint filed under subsection (2) or a referral made under subsection (2.1) is in respect of a worker who is a public servant within the meaning of the *Public Service of Ontario Act, 2006*. 2011, c. 11, s. 13 (6).

Board may substitute penalty

(7) Where on an inquiry by the Board into a complaint filed under subsection (2) or a referral made under subsection (2.1), the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances. 1995, c. 1, s. 84 (1); 1998, c. 8, s. 56 (4); 2011, c. 11, s. 13 (7).

Note: A complaint under subsection 50 (2) in which a final decision has not been issued on November 10, 1995 shall be decided as if subsection 50 (7), as re-enacted by the Statutes of Ontario, 1995, chapter 1, subsection 84 (1), were in force at all material times. See: 1995, c. 1, s. 84 (2).

Exception

(8) Despite subsections (2) and (2.1), a person who is subject to a rule or code of discipline under the *Police Services Act* shall have his or her complaint in relation to an alleged contravention of subsection (1) dealt with under that Act. R.S.O. 1990, c. O.1, s. 50 (8); 2011, c. 11, s. 13 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 50 (8) of the Act is repealed and the following substituted: (See: 2019, c. 1, Sched. 4, s. 39 (2))

Exception

(8) Despite subsections (2) and (2.1), a police officer under the *Community Safety and Policing Act, 2019* shall have his or her complaint in relation to an alleged contravention of subsection (1) dealt with under section 191 of that Act, with necessary modifications. 2019, c. 1, Sched. 4, s. 39 (2).

Section Amendments with date in force (d/m/y)

1995, c. 1, s. 84 (1-2) - 10/11/1995

1998, c. 8, s. 56 (1-4) - 29/06/1998

2006, c. 35, Sched. C, s. 93 (5) - 20/08/2007

2011, c. 11, s. 13 - 01/04/2012

2018, c. 3, Sched. 5, s. 41 (2) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019; 2018, c. 14, Sched. 2, s. 21 - 21/11/2018

2019, c. 1, Sched. 4, s. 39 (2) - not in force

Offices of the Worker and Employer Advisers

Office of the Worker Adviser

50.1 (1) In addition to the functions set out in section 176 of the *Workplace Safety and Insurance Act, 1997*, the Office of the Worker Adviser has the functions prescribed for the purposes of this Part, with respect to workers who are not members of a trade union. 2011, c. 11, s. 14.

Office of the Employer Adviser

(2) In addition to the functions set out in section 176 of the *Workplace Safety and Insurance Act, 1997*, the Office of the Employer Adviser has the functions prescribed for the purposes of this Part, with respect to employers that have fewer than 100 employees or such other number as may be prescribed. 2011, c. 11, s. 14.

Costs

(3) In determining the amount of the costs that may be incurred by each office under subsection 176 (3) of the *Workplace Safety and Insurance Act, 1997*, the Minister shall take into account any functions prescribed for the purposes of this Part. 2011, c. 11, s. 14.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 14 - 1/04/2012

PART VII NOTICES

Notice of death or injury

51 (1) Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe. R.S.O. 1990, c. O.1, s. 51 (1); 2011, c. 1, Sched. 7, s. 2 (7).

Preservation of wreckage

(2) Where a person is killed or is critically injured at a workplace, no person shall, except for the purpose of,

- (a) saving life or relieving human suffering;
- (b) maintaining an essential public utility service or a public transportation system; or
- (c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. R.S.O. 1990, c. O.1, s. 51 (2).

Section Amendments with date in force (d/m/y)

2011, c. 1, Sched. 7, s. 2 (7) - 30/03/2011

Notice of accident, explosion, fire or violence causing injury

52 (1) If a person is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or incident of workplace violence at a workplace, but no person dies or is critically injured because of that occurrence, the employer shall, within four days of the occurrence, give written notice of the occurrence containing the prescribed information and particulars to the following:

1. The committee, the health and safety representative and the trade union, if any.
2. The Director, if an inspector requires notification of the Director. 2001, c. 9, Sched. I, s. 3 (12); 2009, c. 23, s. 5.

Notice of occupational illness

(2) If an employer is advised by or on behalf of a worker that the worker has an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker, the employer shall give notice in writing, within four days of being so advised, to a Director, to the committee or a health and safety representative and to the trade union, if any, containing such information and particulars as are prescribed. R.S.O. 1990, c. O.1, s. 52 (2); 1997, c. 16, s. 2 (12).

Idem

(3) Subsection (2) applies with all necessary modifications if an employer is advised by or on behalf of a former worker that the worker has or had an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker. R.S.O. 1990, c. O.1, s. 52 (3); 1997, c. 16, s. 2 (13).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (12, 13) - 1/01/1998

2001, c. 9, Sched. I, s. 3 (12) - 29/06/2001

2009, c. 23, s. 5 - 15/06/2010

Accident, etc., at project site or mine

53 (1) If an accident, premature or unexpected explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article or thing, cave-in, subsidence, rockburst, or other prescribed incident occurs at a project site, mine, mining plant or other prescribed location, the person determined under subsection (2) shall, within two days after the occurrence, give notice in writing with the prescribed information and particulars,

- (a) to the committee, health and safety representative and trade union, if any; and
- (b) to a Director, unless a report under section 51 or a notice under section 52 has already been given to a Director. 2011, c. 1, Sched. 7, s. 2 (8); 2017, c. 34, Sched. 30, s. 2 (1).

Person required to notify

(2) The person required to give notice under subsection (1) is,

- (a) if the incident takes place at a project site, the constructor of the project;
- (b) if the incident occurs at a mine or a mining plant, the employer of a worker who works in the mine or plant; or
- (c) if the incident occurs at a prescribed location, the person prescribed for that location. 2017, c. 34, Sched. 30, s. 2 (2).

Section Amendments with date in force (d/m/y)

2011, c. 1, Sched. 7, s. 2 (8) - 30/03/2011

2017, c. 34, Sched. 30, s. 2 (1, 2) - 14/12/2017

Additional notices

53.1 In addition to the notice requirements set out in sections 51, 52 and 53, the regulations may specify additional notice requirements that must be met in the circumstances described in those sections, including specifying who is required to provide the notice, the timeframe in which it shall be provided and the information and particulars it must contain. 2017, c. 34, Sched. 30, s. 3.

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 30, s. 3 - 14/12/2017

PART VIII ENFORCEMENT

Powers of inspector

- 54 (1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,
- (a) subject to subsection (2), enter in or upon any workplace at any time without warrant or notice;
 - (b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;
 - (c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same;
 - (d) upon giving a receipt therefor, remove any drawings, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;
 - (e) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace and for such purposes, take and carry away such samples as may be necessary;
 - (f) require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as are specified by the inspector and to provide, at the expense of the employer, a report or assessment by that person;
 - (g) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him or her any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him or her and use any equipment or materials required for such purpose;
 - (h) make inquiries of any person who is or was in a workplace either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test;
 - (i) require that a workplace or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, investigation or test;
 - (j) require that any equipment, machine, device, article, thing or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;
 - (k) require in writing an employer to have equipment, machinery or devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and signature of the professional engineer stating that the equipment, machine or device is not likely to endanger a worker;
 - (l) require in writing that any equipment, machinery or device not be used pending testing described in clause (k);
 - (m) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,
 - (i) the load limits of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent,
 - (ii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or
 - (iii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,
 - (A) as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,
 - (B) in accordance with such other requirements as may be prescribed, or
 - (C) in accordance with good engineering practice, if sub-subclauses (A) and (B) do not apply;
 - (n) require in writing an owner of a mine or part thereof to provide, at the owner's expense, a report in writing bearing the seal and signature of a professional engineer stating that the ground stability of, the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered;
 - (o) require in writing, within such time as is specified, a person who is an employer, manufacturer, producer, importer, distributor or supplier to produce records or information, or to provide, at the expense of the person, a report or evaluation made or to be made by a person or organization having special, expert or professional knowledge or

qualifications as are specified by the inspector of any process or biological, chemical or physical agents or combination of such agents present, used or intended for use in a workplace and the manner of use, including,

- (i) the ingredients thereof and their common or generic name or names,
 - (ii) the composition and the properties thereof,
 - (iii) the toxicological effect thereof,
 - (iv) the effect of exposure thereto whether by contact, inhalation or ingestion,
 - (v) the protective measures used or to be used in respect thereof,
 - (vi) the emergency measures used or to be used to deal with exposure in respect thereof, and
 - (vii) the effect of the use, transport and disposal thereof; and
- (p) require the production of any materials concerning the content, frequency and manner of instruction of any training program and inspect, examine and copy the materials and attend any such program. R.S.O. 1990, c. O.1, s. 54 (1); 2011, c. 11, s. 15.

Entry to dwellings

(2) An inspector may only enter a dwelling or that part of a dwelling actually being used as a workplace with the consent of the occupier or under the authority of a warrant issued under this Act or the *Provincial Offences Act*. 2001, c. 26, s. 1.

Representative to accompany inspector

(3) Where an inspector makes an inspection of a workplace under the powers conferred upon him or her under subsection (1), the constructor, employer or group of employers shall afford a committee member representing workers or a health and safety representative, if any, or a worker selected by a trade union or trade unions, if any, because of knowledge, experience and training, to represent it or them and, where there is no trade union, a worker selected by the workers because of knowledge, training and experience to represent them, the opportunity to accompany the inspector during his or her physical inspection of a workplace, or any part or parts thereof. R.S.O. 1990, c. O.1, s. 54 (3).

Consultation with workers

(4) Where there is no committee member representing workers, no health and safety representative or worker selected under subsection (3), the inspector shall endeavour to consult during his or her physical inspection with a reasonable number of the workers concerning matters of health and safety at their work. R.S.O. 1990, c. O.1, s. 54 (4).

Entitlement to time from work

(5) The time spent by a committee member representing workers, a health and safety representative or a worker selected in accordance with subsection (3) in accompanying an inspector during his or her physical inspection, shall be deemed to be work time for which he or she shall be paid by his or her employer at his or her regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 54 (5).

Section Amendments with date in force (d/m/y)

2001, c. 26, s. 1 - 12/12/2001

2011, c. 11, s. 15 - 1/06/2011

Order for inspections

55 Subject to subsections 8 (6) and 9 (26), an inspector may in writing direct a health and safety representative or a member designated under subsection 9 (23) to inspect the physical condition of all or part of a workplace at specified intervals. R.S.O. 1990, c. O.1, s. 55; 2009, c. 33, Sched. 20, s. 3 (2).

Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 20, s. 3 (2) - 15/12/2009

Order for written policies

55.1 In the case of a workplace at which the number of workers regularly employed is five or fewer, an inspector may in writing order that the policies with respect to workplace violence and workplace harassment required under section 32.0.1 be in written form and posted at a conspicuous place in the workplace. 2009, c. 23, s. 6; 2011, c. 1, Sched. 7, s. 2 (9).

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 6 - 15/06/2010

2011, c. 1, Sched. 7, s. 2 (9) - 30/03/2011

Order for written assessment, etc.

55.2 An inspector may in writing order that the following be in written form:

1. The assessment of the risks of workplace violence required under subsection 32.0.3 (1).
2. A reassessment required under subsection 32.0.3 (4). 2009, c. 23, s. 6.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 6 - 15/06/2010

Order for workplace harassment investigation

55.3 (1) An inspector may in writing order an employer to cause an investigation described in clause 32.0.7 (1) (a) to be conducted, at the expense of the employer, by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector and to obtain, at the expense of the employer, a written report by that person. 2016, c. 2, Sched. 4, s. 4.

Report

(2) A report described in subsection (1) is not a report respecting occupational health and safety for the purposes of subsection 25 (2). 2016, c. 2, Sched. 4, s. 4.

Section Amendments with date in force (d/m/y)

2016, c. 2, Sched. 4, s. 4 - 08/09/2016

Warrants – investigative techniques, etc.

56 (1) On application without notice, a justice of the peace or a provincial judge may issue a warrant authorizing an inspector, subject to this section, to use any investigative technique or procedure or to do any thing described in the warrant if the justice of the peace or provincial judge, as the case may be, is satisfied by information under oath that there are reasonable grounds to believe that an offence against this Act or the regulations has been or is being committed and that information and other evidence concerning the offence will be obtained through the use of the technique or procedure or the doing of the thing. 2001, c. 26, s. 2.

Expert help

(1.1) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the inspector in the execution of the warrant. 2001, c. 26, s. 2.

Terms and conditions of warrant

(1.2) The warrant shall authorize the inspector to enter and search the place for which the warrant was issued and, without limiting the powers of the justice of the peace or the provincial judge under subsection (1), the warrant may, in respect of the alleged offence, authorize the inspector to,

- (a) seize or examine and copy any drawings, specifications, licence, document, record or report;
- (b) seize or examine any equipment, machine, device, article, thing, material or biological, chemical or physical agent;
- (c) require a person to produce any item described in clause (a) or (b);
- (d) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent, and take and carry away samples from the testing;
- (e) take measurements of and record by any means the physical circumstances of the workplace; and
- (f) make inquiries of any person either separate and apart from another person or in the presence of any other person. 2001, c. 26, s. 2.

Duration

(1.3) The warrant is valid for 30 days or for such shorter period as may be specified in it. 2001, c. 26, s. 2.

Other terms and conditions

(1.4) The warrant may contain terms and conditions in addition to those provided for in subsections (1) to (1.3) as the justice of the peace or provincial judge, as the case may be, considers advisable in the circumstances. 2001, c. 26, s. 2.

Further warrants

(1.5) A justice of the peace or provincial judge may issue further warrants under subsection (1). 2001, c. 26, s. 2.

Powers, duties not restricted

(1.6) Nothing in this section restricts any power or duty of an inspector under this Act or the regulations. 2001, c. 26, s. 2.

Possession

(2) The inspector may remove any thing seized under a warrant from the place from which it was seized or may detain it in that place. 2001, c. 26, s. 2.

Notice and receipt

(3) The inspector shall inform the person from whom the thing is seized as to the reason for the seizure and shall give the person a receipt for it. R.S.O. 1990, c. O.1, s. 56 (3).

Report to justice

(4) The inspector shall bring a thing seized under the authority of this section before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace. R.S.O. 1990, c. O.1, s. 56 (4).

Procedure

(5) Sections 159 and 160 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized under the authority of this section. R.S.O. 1990, c. O.1, s. 56 (5).

Section Amendments with date in force (d/m/y)

2001, c. 26, s. 2 - 12/12/2001

Power of inspector to seize

56.1 (1) An inspector who executes a warrant issued under section 56 may seize or examine and copy any drawings, specifications, licence, document, record or report or seize or examine any equipment, machine, device, article, thing, material or biological, chemical or physical agent, in addition to those mentioned in the warrant, that he or she believes on reasonable grounds will afford evidence in respect of an offence under this Act or the regulations. 2001, c. 26, s. 3.

Searches in exigent circumstances

(2) Although a warrant issued under section 56 would otherwise be required, an inspector may exercise any of the powers described in subsection 56 (1) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant. 2001, c. 26, s. 3.

Report to justice, etc.

(3) Subsections 56 (3), (4) and (5) apply with necessary modifications to a thing seized under this section. 2001, c. 26, s. 3.

Section Amendments with date in force (d/m/y)

2001, c. 26, s. 3 - 12/12/2001

Orders by inspectors where non-compliance

57 (1) Where an inspector finds that a provision of this Act or the regulations is being contravened, the inspector may order, orally or in writing, the owner, constructor, licensee, employer, or person whom he or she believes to be in charge of a workplace or the person whom the inspector believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies. R.S.O. 1990, c. O.1, s. 57 (1).

Idem

(2) Where an inspector makes an oral order under subsection (1), the inspector shall confirm the order in writing before leaving the workplace. R.S.O. 1990, c. O.1, s. 57 (2).

Contents of order

(3) An order made under subsection (1) shall indicate generally the nature of the contravention and where appropriate the location of the contravention. R.S.O. 1990, c. O.1, s. 57 (3).

Compliance plan

(4) An order made under subsection (1) may require a constructor, a licensee or an employer to submit to the Ministry a compliance plan prepared in the manner and including such items as required by the order. R.S.O. 1990, c. O.1, s. 57 (4).

Idem

(5) The compliance plan shall specify what the constructor, licensee or employer plans to do to comply with the order and when the constructor, licensee or employer intends to achieve compliance. R.S.O. 1990, c. O.1, s. 57 (5).

Orders by inspector where worker endangered

(6) Where an inspector makes an order under subsection (1) and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker, the inspector may,

- (a) order that any place, equipment, machine, device, article or thing or any process or material shall not be used until the order is complied with;
- (b) order that the work at the workplace as indicated in the order shall stop until the order to stop work is withdrawn or cancelled by an inspector after an inspection;
- (c) order that the workplace where the contravention exists be cleared of workers and isolated by barricades, fencing or any other means suitable to prevent access thereto by a worker until the danger or hazard to the health or safety of a worker is removed. R.S.O. 1990, c. O.1, s. 57 (6).

Resumption of work pending inspection

(7) Despite clause (6) (b), a constructor, a licensee or an employer who gives notice to an inspector of compliance with an order made under subsection (6) may resume work pending an inspection and decision by an inspector respecting compliance with the order if, before the resumption of work, a committee member representing workers or a health and safety representative, as the case may be, advises an inspector that in his or her opinion the order has been complied with. R.S.O. 1990, c. O.1, s. 57 (7).

Additional orders

(8) In addition to the orders that may be made under subsection (6), where an inspector makes an order under subsection (1) for a contravention of section 37 or 41 or a Director has been advised of an employer's inability to obtain a current safety data sheet, the inspector may order that the hazardous material shall not be used or that the thing that causes, emits or produces the hazardous physical agent not be used or operated until the order is withdrawn or cancelled. R.S.O. 1990, c. O.1, s. 57 (8); 2015, c. 27, Sched. 4, s. 6.

Posting of notice

(9) Where an inspector makes an order under this section, he or she may affix to the workplace, or to any equipment, machine, device, article or thing, a copy thereof or a notice of the order, in a form obtained from the Ministry, and no person, except an inspector, shall remove such copy or notice unless authorized to do so by an inspector. R.S.O. 1990, c. O.1, s. 57 (9); 2011, c. 1, Sched. 7, s. 2 (10).

Same

(10) Where an inspector makes an order in writing or issues a report of his or her inspection to an owner, constructor, licensee, employer or person in charge of the workplace,

- (a) the owner, constructor, licensee, employer or person in charge of the workplace shall forthwith cause a copy or copies of it to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers and shall furnish a copy of the order or report to the health and safety representative and the committee, if any; and
- (b) if the order or report resulted from a complaint of a contravention of this Act or the regulations and the person who made the complaint requests a copy of it, the inspector shall cause a copy of it to be furnished to that person. 2001, c. 9, Sched. I, s. 3 (13).

No hearing required prior to making order

(11) An inspector is not required to hold or afford to an owner, constructor, licensee, employer or any other person an opportunity for a hearing before making an order. R.S.O. 1990, c. O.1, s. 57 (11).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (13) - 29/06/2001

2011, c. 1, Sched. 7, s. 2 (10) - 30/03/2011; 2011, c. 1, Sched. 7, s. 2 (12, 13) - no effect - see 2015, c. 27, Sched. 4, s. 11 - 03/12/2015

2015, c. 27, Sched. 4, s. 6 - 01/07/2016

Entry into barricaded area

58 Where an order is made under clause 57 (6) (c), no owner, constructor, employer or supervisor shall require or permit a worker to enter the workplace except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the worker is protected from the danger or hazard. R.S.O. 1990, c. O.1, s. 58.

Notice of compliance

59 (1) Within three days after a constructor or employer who has received an order under section 57 believes that compliance with the order has been achieved, the constructor or employer shall submit to the Ministry a notice of compliance.

Idem

- (2) The notice shall be signed by the constructor or employer and shall be accompanied by,
- (a) a statement of agreement or disagreement with the contents of the notice, signed by a member of the committee representing workers or by a health and safety representative, as the case may be; or
 - (b) a statement that the member or representative has declined to sign the statement referred to in clause (a).

Idem

(3) The constructor or employer shall post the notice and the order issued under section 57 for a period of fourteen days following its submission to the Ministry in a place or places in the workplace where it is most likely to come to the attention of workers.

Compliance achieved

(4) Despite the submission of a notice of compliance, a constructor or employer achieves compliance with an order under section 57 when an inspector determines that compliance has been achieved. R.S.O. 1990, c. O.1, s. 59.

Injunction proceedings

60 In addition to any other remedy or penalty therefor, where an order made under subsection 57 (6) is contravened, such contravention may be restrained upon an application made without notice to a judge of the Superior Court of Justice made at the instance of a Director. R.S.O. 1990, c. O.1, s. 60; 2001, c. 9, Sched. I, s. 3 (14).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (14) - 29/06/2001

Appeals from order of an inspector

61 (1) Any employer, constructor, licensee, owner, worker or trade union which considers himself, herself or itself aggrieved by any order made by an inspector under this Act or the regulations may appeal to the Board within 30 days after the making of the order. 1998, c. 8, s. 57 (1).

Parties

- (2) The following are parties to the appeal:
- 1. The appellant.
 - 2. In the case of an appeal by an employer, the employer's workers and each trade union representing any of the workers.
 - 3. In the case of an appeal by a worker or trade union representing a worker, the worker's employer.
 - 4. A Director.
 - 5. Such other persons as the Board may specify. 1998, c. 8, s. 57 (2); 2011, c. 1, Sched. 7, s. 2 (11).

Inquiry by labour relations officer

(3) The Board may authorize a labour relations officer to inquire into an appeal. 1998, c. 8, s. 57 (2).

Same

(3.1) The labour relations officer shall forthwith inquire into the appeal and endeavour to effect a settlement of the matters raised in the appeal. 1998, c. 8, s. 57 (2).

Report to Board

(3.2) The labour relations officer shall report the results of his or her inquiry and endeavours to the Board. 1998, c. 8, s. 57 (2).

Hearings

(3.3) Subject to the rules made under subsection (3.8), the Board shall hold a hearing to consider the appeal unless the Board makes an order under subsection (3.4). 1998, c. 8, s. 57 (2).

Orders after consultation

(3.4) The Board may make any interim or final order it considers appropriate after consulting with the parties. 1998, c. 8, s. 57 (2).

Same

(3.5) The *Statutory Powers Procedure Act* does not apply with respect to a consultation the Board makes under subsection (3.4). 1998, c. 8, s. 57 (2).

Practice and procedure

(3.6) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to present their evidence and to make their submissions. 1998, c. 8, s. 57 (2).

Rules of practice

(3.7) The chair may make rules governing the Board's practice and procedure and the exercise of its powers and prescribing such forms as the chair considers advisable. 1998, c. 8, s. 57 (2).

Expedited appeals

(3.8) The chair of the Board may make rules to expedite appeals and such rules,

- (a) may provide that the Board is not required to hold a hearing; and
- (b) may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions. 1998, c. 8, s. 57 (2).

Effective date of rules

(3.9) Rules made under subsection (3.8) come into force on such dates as the Lieutenant Governor in Council may by order determine. 1998, c. 8, s. 57 (2).

Conflict with *Statutory Powers Procedure Act*

(3.10) Rules made under this section apply despite anything in the *Statutory Powers Procedure Act*. 1998, c. 8, s. 57 (2).

Rules not regulations

(3.11) Rules made under this section are not regulations within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1998, c. 8, s. 57 (2); 2006, c. 21, Sched. F, s. 136 (1).

Quorum

(3.12) The chair or a vice-chair of the Board constitutes a quorum for the purposes of this section and is sufficient for the exercise of the jurisdiction and powers of the Board under this section. 1998, c. 8, s. 57 (2).

Entering premises

(3.13) For the purposes of an appeal under this section, the Board may enter any premises where work is being or has been done by workers or in which the employer carries on business, whether or not the premises are those of the employer, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any matter and post therein any notice that the Board considers necessary to bring to the attention of persons having an interest in the appeal. 1998, c. 8, s. 57 (2).

Powers of the Board

(4) On an appeal under this section, the Board may substitute its findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Board shall stand in the place of and have the like effect under this Act and the regulations as the order of the inspector. 1998, c. 8, s. 57 (2).

Order, extended meaning

(5) In this section, an order of an inspector under this Act or the regulations includes any order or decision made or given or the imposition of any terms or conditions therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector. R.S.O. 1990, c. O.1, s. 61 (5).

Decision of adjudicator final

(6) A decision of the Board under this section is final. R.S.O. 1990, c. O.1, s. 61 (6); 1998, c. 8, s. 57 (3).

Suspension of order by adjudicator pending disposition of appeal

(7) On an appeal under subsection (1), the Board may suspend the operation of the order appealed from pending the disposition of the appeal. R.S.O. 1990, c. O.1, s. 61 (7); 1998, c. 8, s. 57 (4).

Reconsideration

(8) The Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it under this section and may vary or revoke any such decision, order, direction, declaration or ruling. 1998, c. 8, s. 57 (5).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 57 - 29/06/1998

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

2011, c. 1, Sched. 7, s. 2 (11) - 30/03/2011

Obstruction of inspector

62 (1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations or in the execution of a warrant issued under this Act or the *Provincial Offences Act* with respect to a matter under this Act or the regulations. 2001, c. 26, s. 4.

Assistance

(2) Every person shall furnish all necessary means in the person's power to facilitate any entry, search, inspection, investigation, examination, testing or inquiry by an inspector,

- (a) in the exercise of his or her powers or the performance of his or her duties under this Act or the regulations; or
- (b) in the execution of a warrant issued under this Act or the *Provincial Offences Act* with respect to a matter under this Act or the regulations. 2001, c. 26, s. 4.

False information, etc.

(3) No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector,

- (a) in the exercise of his or her powers or the performance of his or her duties under this Act or the regulations; or
- (b) in the execution of a warrant issued under this Act or the *Provincial Offences Act* with respect to a matter under this Act or the regulations. 2001, c. 26, s. 4.

Monitoring devices

(4) No person shall interfere with any monitoring equipment or device in a workplace. R.S.O. 1990, c. O.1, s. 62 (4).

Obstruction of committee, etc.

(5) No person shall knowingly,

- (a) hinder or interfere with a committee, a committee member or a health and safety representative in the exercise of a power or performance of a duty under this Act;
- (b) furnish a committee, a committee member or a health and safety representative with false information in the exercise of a power or performance of a duty under this Act; or
- (c) hinder or interfere with a worker selected by a trade union or trade unions or a worker selected by the workers to represent them in the exercise of a power or performance of a duty under this Act. R.S.O. 1990, c. O.1, s. 62 (5).

Section Amendments with date in force (d/m/y)

2001, c. 26, s. 4 - 12/12/2001

Information confidential

63 (1) Except for the purposes of this Act and the regulations or as required by law,

- (a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations;
- (b) REPEALED: 1992, c. 14, s. 2 (2).
- (c) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act or the regulations;
- (d) REPEALED: 1992, c. 14, s. 2 (3).
- (e) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and
- (f) no person shall disclose any information obtained in any medical examination, test or x-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case. R.S.O. 1990, c. O.1, s. 63 (1); 1992, c. 14, s. 2 (2, 3).

Employer access to health records

(2) No employer shall seek to gain access, except by an order of the court or other tribunal or in order to comply with another statute, to a health record concerning a worker without the worker's written consent. R.S.O. 1990, c. O.1, s. 63 (2).

Compellability, civil suit

(3) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector, is not a compellable witness in a civil suit or any proceeding, except an inquest under the *Coroners Act*, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations. R.S.O. 1990, c. O.1, s. 63 (3).

Compellability of witnesses

(3.1) Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser are not compellable witnesses in a civil suit or any proceeding respecting any information or material furnished to or obtained, made or received by them under this Act while acting within the scope of their employment. 2011, c. 11, s. 16.

Exception

(3.2) If the Office of the Worker Adviser or the Office of the Employer Adviser is a party to a proceeding, a person employed in the relevant Office may be determined to be a compellable witness. 2011, c. 11, s. 16.

Production of documents

(3.3) Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser are not required to produce, in a proceeding in which the relevant Office is not a party, any information or material furnished to or obtained, made or received by them under this Act while acting within the scope of their employment. 2011, c. 11, s. 16.

Power of Director to disclose

(4) A Director may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations. R.S.O. 1990, c. O.1, s. 63 (4).

Medical emergencies

(5) Subsection (1) does not apply so as to prevent any person from providing any information in the possession of the person, including confidential business information, in a medical emergency for the purpose of diagnosis or treatment. R.S.O. 1990, c. O.1, s. 63 (5).

Conflict

(6) This section prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 93.

Section Amendments with date in force (d/m/y)

1992, c. 14, s. 2 (2, 3) - 25/06/1992

2004, c. 3, Sched. A, s. 93 - 1/11/2004

2011, c. 11, s. 16 - 1/04/2012

Copies of reports

64 A Director may, upon receipt of a request in writing from the owner of a workplace who has entered into an agreement to sell the same and upon payment of the fee or fees prescribed, furnish to the owner or a person designated by the owner copies of reports or orders of an inspector made under this Act in respect of the workplace as to its compliance with subsection 29 (1). R.S.O. 1990, c. O.1, s. 64.

Immunity

65 (1) No action or other proceeding for damages, prohibition or mandamus shall be instituted respecting any act done in good faith in the execution or intended execution of a person's duties under this Act or in the exercise or intended exercise of a person's powers under this Act or for any alleged neglect or default in the execution or performance in good faith of the person's duties or powers if the person is,

- (a) an employee in the Ministry or a person who acts as an advisor for the Ministry;
- (b) an employee in the Office of the Worker Adviser or the Office of the Employer Adviser;
- (c) the Board or a labour relations officer;
- (d) a health and safety representative or a committee member; or
- (e) a worker selected by a trade union or trade unions or by workers to represent them. R.S.O. 1990, c. O.1, s. 65 (1); 1995, c. 5, s. 32; 1997, c. 16, s. 2 (14, 15); 1998, c. 8, s. 58; 2006, c. 35, Sched. C, s. 93 (6); 2011, c. 11, s. 17 (1).

Liability of Crown

(2) Subsection (1) does not, by reason of subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, relieve the Crown of liability in respect of a tort committed by a Director, the Chief Prevention Officer, an inspector or an engineer of the Ministry to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. R.S.O. 1990, c. O.1, s. 65 (2); 2011, c. 11, s. 17 (2); 2019, c. 7, Sched. 17, s. 127.

Section Amendments with date in force (d/m/y)

1995, c. 5, s. 32 - 23/08/1995; 1997, c. 16, s. 2 (14, 15) - 1/01/1998; 1998, c. 8, s. 58 - 29/06/1998

2006, c. 35, Sched. C, s. 93 (6) - 20/08/2007

2011, c. 11, s. 17 - 01/04/2012

2019, c. 7, Sched. 17, s. 127 - 01/07/2019

PART IX OFFENCES AND PENALTIES

Penalties

66 (1) Every person who contravenes or fails to comply with,

- (a) a provision of this Act or the regulations;
- (b) an order or requirement of an inspector or a Director; or
- (c) an order of the Minister,

is guilty of an offence and on conviction is liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than twelve months, or to both. R.S.O. 1990, c. O.1, s. 66 (1); 2017, c. 34, Sched. 30, s. 4 (1).

Idem

(2) If a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed upon the corporation is \$1,500,000 and not as provided therein. R.S.O. 1990, c. O.1, s. 66 (2); 2017, c. 34, Sched. 30, s. 4 (2).

Defence

(3) On a prosecution for a failure to comply with,

- (a) subsection 23 (1);
- (b) clause 25 (1) (b), (c) or (d); or
- (c) subsection 27 (1),

it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken. R.S.O. 1990, c. O.1, s. 66 (3).

Accused liable for acts or neglect of managers, agents, etc.

(4) In a prosecution of an offence under any provision of this Act, any act or neglect on the part of any manager, agent, representative, officer, director or supervisor of the accused, whether a corporation or not, shall be the act or neglect of the accused. R.S.O. 1990, c. O.1, s. 66 (4).

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 30, s. 4 (1, 2) - 14/12/2017

Certified copies of documents, etc., as evidence

67 (1) In any proceeding or prosecution under this Act,

- (a) a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister or an inspector;
- (b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom given or made under this Act or the regulations and purporting to be certified by an inspector;
- (c) a document purporting to certify the result of a test or an analysis of a sample of air and setting forth the concentration or amount of a biological, chemical or physical agent in a workplace or part thereof and purporting to be certified by an inspector; or
- (d) a document purporting to certify the result of a test or an analysis of any equipment, machine, device, article, thing or substance and purporting to be certified by an inspector,

is evidence of the order, decision, writing or document, and the facts appearing in the order, decision, writing or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof.

Service of orders and decisions

(2) In any proceeding or prosecution under this Act, a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister, a Director or an inspector may be served,

- (a) personally in the case of an individual or in case of a partnership upon a partner, and in the case of a corporation, upon the president, vice-president, secretary, treasurer or a director, or upon the manager or person in charge of the workplace; or
- (b) by registered letter addressed to a person or corporation mentioned in clause (a) at the last known place of business of the person or corporation,

and the same shall be deemed to be good and sufficient service thereof. R.S.O. 1990, c. O.1, s. 67.

Place of trial

68 (1) An information in respect of an offence under this Act may, at the election of the informant, be heard, tried and determined by the Ontario Court of Justice sitting in the county or district in which the accused is resident or carries on business although the subject-matter of the information did not arise in that county or district. R.S.O. 1990, c. O.1, s. 68 (1); 2001, c. 9, Sched. I, s. 3 (15).

Provincial judge required

(2) The Attorney General or an agent for the Attorney General may by notice to the clerk of the court having jurisdiction in respect of an offence under this Act require that a provincial judge preside over the proceeding. R.S.O. 1990, c. O.1, s. 68 (2).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (15) - 29/06/2001

Publication re convictions

68.1 (1) If a person, including an individual, is convicted of an offence under this Act, a Director may publish or otherwise make available to the general public the name of the person, a description of the offence, the date of the conviction and the person's sentence. 2006, c. 19, Sched. M, s. 5.

Internet publication

(2) Authority to publish under subsection (1) includes authority to publish on the Internet. 2006, c. 19, Sched. M, s. 5.

Disclosure

(3) Any disclosure made under subsection (1) shall be deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*. 2006, c. 19, Sched. M, s. 5; 2006, c. 34, Sched. C, s. 25.

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. M, s. 5 - 22/06/2006; 2006 - , c. 34, Sched. C, s. 25 - 1/04/2007

Limitation on prosecutions

69 No prosecution under this Act or the regulations shall be instituted more than one year after the later of,

- (a) the occurrence of the last act or default upon which the prosecution is based; or
- (b) the day upon which an inspector becomes aware of the alleged offence. 2017, c. 34, Sched. 30, s. 5.

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 30, s. 5 - 14/12/2017

PART X REGULATIONS

Regulations

70 (1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety of persons in or about a workplace. R.S.O. 1990, c. O.1, s. 70 (1).

Idem

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

1. defining any word or expression used in this Act or the regulations that is not defined in this Act;
2. designating or defining any industry, workplace, employer or class of workplaces or employers for the purposes of this Act, a part of this Act, or the regulations or any provision thereof;
3. exempting any workplace, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof from the application of a regulation or any provision thereof;
4. limiting or restricting the application of a regulation or any provision thereof to any workplace, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof;
5. exempting an employer from the requirements of clause 37 (1) (a) or (b) with respect to a hazardous material;
6. respecting any matter or thing that is required or permitted to be regulated or prescribed under this Act;
7. respecting any matter or thing, where a provision of this Act requires that the matter or thing be done, used or carried out or provided as prescribed;
8. respecting any matter or thing, where it is a condition precedent that a regulation be made prescribing the matter or thing before this Act or a provision of this Act has any effect;
9. providing for and prescribing fees and the payment or refund of fees;
10. prescribing classes of workplaces for which and circumstances under which a committee shall consist of more than four persons and in each case prescribing the number of persons;
11. prescribing employers or workplaces or classes thereof for the purposes of clause 9 (1) (b);
12. exempting any workplace, industry, activity, business, work, trade, occupation, profession, constructor or employer or any class thereof from the application of subsection 9 (2);
13. respecting the conditions for eligibility, qualifications, selection and term of committee members, including certified members, and the operation of the committee;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by adding the following paragraphs:

- 13.1 exempting any class of workplaces from the requirement set out in subsection 8 (5.1);

13.2 requiring that the training of health and safety representatives under subsection 8 (5.1) meet such requirements as may be prescribed;

See: 2011, c. 11, ss. 18 (1), 29 (2).

14. exempting any class of workplaces from the requirement set out in subsection 9 (12);
15. prescribing elements that any policy required under this Act must contain;
16. regulating or prohibiting the installation or use of any machine, device or thing or any class thereof;
17. requiring that any equipment, machine, device, article or thing used bear the seal of approval of an organization designated by the regulations to test and approve the equipment, machine, device, article or thing and designating organizations for such purposes;
18. prescribing classes of employers who shall establish and maintain a medical surveillance program in which workers may volunteer to participate;
19. governing medical surveillance programs;
20. respecting the reporting by physicians and others of workers affected by any biological, chemical or physical agents or combination thereof;
21. regulating or prohibiting atmospheric conditions to which any worker may be exposed in a workplace;
22. prescribing methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any biological, chemical or physical agent or combination thereof in a workplace;
23. prescribing any biological, chemical or physical agent or combination thereof as a designated substance;
24. prohibiting, regulating, restricting, limiting or controlling the handling of, exposure to, or the use and disposal of any designated substance;
25. adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and requiring compliance with any code or standard that is so adopted;
26. adopting by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof;
27. enabling a Director by notice in writing to designate that any part of a project shall be an individual project for the purposes of this Act and the regulations and prescribing to whom notice shall be given;
28. permitting the Minister to approve laboratories for the purpose of carrying out and performing sampling, analyses, tests and examinations, and requiring that sampling, analyses, examinations and tests be carried out and performed by a laboratory approved by the Minister;
29. requiring and providing for the registration of employers of workers;
30. providing for the establishment, equipment, operation and maintenance of mine rescue stations, as the Minister may direct, and providing for the payment of the cost thereof and the recovery of such cost from the mining industry;
31. prescribing training programs that employers shall provide;
- 31.1 requiring that training programs provided by employers meet such requirements as may be prescribed;
32. increasing the number of certified members required on a committee;
33. prescribing restrictions, prohibitions or conditions with respect to workers or workplaces relating to the risks of workplace violence;
34. prescribing forms and notices and providing for their use;
35. prescribing building standards for industrial establishments;
36. prescribing by name or description any biological or chemical agent as a hazardous material and any physical agent as a hazardous physical agent;
37. prohibiting an employer from altering a label on a hazardous material in prescribed circumstances;
38. REPEALED: 2015, c. 27, Sched. 4, s. 7 (1).
39. requiring an employer to disclose to such persons as may be prescribed the source of toxicological data used by the employer to prepare a safety data sheet;

40. prescribing the format and contents of a safety data sheet;
41. prescribing by class of employer the intervals at which a health and safety representative or a committee member designated under subsection 9 (23) shall inspect all or part of a workplace;
42. establishing criteria for determining, for the purpose of section 51, whether a person is critically injured;
43. prescribing first aid requirements to be met and first aid services to be provided by employers and constructors;
44. prescribing, for the purpose of clause 26 (1) (i), medical examinations and tests that a worker is required to undergo to ensure that the worker's health will not affect his or her ability to perform his or her job in a manner that might endanger others;
45. prescribing classes of workplace with respect to which section 45 does not apply;
46. prescribing the qualifications of persons whom a certified member may designate under subsection 45 (9);
47. prescribing, for the purpose of subsection 46 (6), criteria for determining whether a constructor or employer has demonstrated a failure to protect the health and safety of workers;
48. prescribing matters to be considered by the Board in deciding upon an application under section 46;
49. prescribing classes of workplace with respect to which section 47 does not apply;
50. requiring an employer to designate a person in a workplace to act as a workplace co-ordinator with respect to workplace violence and workplace harassment, and prescribing the functions and duties of the co-ordinator;
51. in the case of a worker described in subsection 43 (2), specifying situations in which a circumstance described in clause 43 (3) (a), (b), (b.1) or (c) shall be considered, for the purposes of clause 43 (1) (a), to be inherent in the worker's work or a normal condition of employment;
52. varying or supplementing subsections 43 (4) to (13) with respect to the following workers, in circumstances when section 43 applies to them:
 - i. workers to whom section 43 applies by reason of a regulation made for the purposes of subsection 3 (3), and
 - ii. workers described in subsection 43 (2);
53. providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of section 22.5;
54. prescribing the functions of the Office of the Worker Adviser for the purposes of Part VI;
55. prescribing the functions of the Office of the Employer Adviser for the purposes of Part VI;
56. prescribing a number of employees for the purposes of subsection 50.1 (2). R.S.O. 1990, c. O.1, s. 70 (2); 1997, c. 16, s. 2 (16); 1998, c. 8, s. 59; 2001, c. 9, Sched. I, s. 3 (16); 2009, c. 23, s. 7; 2011, c. 11, s. 18 (2-4); 2015, c. 27, Sched. 4, s. 7.

Rolling incorporation by reference

(3) The power to adopt by reference and require compliance with a code or standard in paragraph 25 of subsection (2) and to adopt by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof in paragraph 26 of subsection (2) includes the power to adopt a code, standard, criteria or guide as it may be amended from time to time. 2020, c. 18, Sched. 13, s. 1.

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (16) - 1/01/1998; 1998, c. 8, s. 59 - 29/06/1998

2001, c. 9, Sched. I, s. 3 (16) - 29/06/2001

2009, c. 23, s. 7 - 15/06/2010

2011, c. 1, Sched. 7, s. 2 (12, 14) - no effect - see 2015, c. 27, Sched. 4, s. 11 - 03/12/2015; 2011, c. 11, s. 18 (1) - not in force; 2011, c. 11, s. 18 (2) - 01/06/2011; 2011, c. 11, s. 18 (3, 4) - 01/04/2012

2015, c. 27, Sched. 4, s. 7 - 01/07/2016

2020, c. 18, Sched. 13, s. 1 - 21/07/2020

Regulations, taxi industry

71 (1) The Lieutenant Governor in Council may make regulations governing the application of the duties and rights set out in Part III.0.1 to the taxi industry. 2009, c. 23, s. 8.

Same

- (2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
- (a) specifying that all or any of the duties set out in Part III.0.1 apply for the purposes of the regulations, with such modifications as may be necessary in the circumstances;
 - (b) specifying who shall be considered an employer for the purposes of the regulations and requiring that person to carry out the specified duties;
 - (c) specifying who shall be considered a worker for the purposes of the regulations;
 - (d) specifying what shall be considered a workplace for the purposes of the regulations. 2009, c. 23, s. 8.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 8 - 15/06/2010

Français

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Pay Equity Act, 1990

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Pay Equity Act

R.S.O. 1990, CHAPTER P.7

Consolidation Period: From April 1, 2020 to the [e-Laws currency date](#).

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Note: This consolidation incorporates the amendments, repeals, enactments and re-enactments of provisions of the *Pay Equity Act* effected by Schedule J of the *Savings and Restructuring Act, 1996*, S.O. 1996, c. 1. That schedule was declared to be unconstitutional and of no force and effect by the Divisional Court on Sept. 5, 1997 in *Service Employees International Union, Local 204 v. Ontario (Attorney General)*, 1997 CanLII 12286 (On. S.C.).

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Preamble

Whereas it is desirable that affirmative action be taken to redress gender discrimination in the compensation of employees employed in female job classes in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I **GENERAL**

Interpretation, posting and miscellaneous

Definitions

1 (1) In this Act,

“bargaining agent” means a trade union as defined in the *Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in an establishment and includes an organization representing employees to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such employees; (“agent négociateur”)

“collective agreement” means an agreement in writing between an employer and a bargaining agent covering terms and conditions of employment; (“convention collective”)

“Commission” means the Pay Equity Commission of Ontario established by this Act; (“Commission”)

“compensation” means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount; (“rétribution”)

“effective date” means the 1st day of January, 1988; (“date d’entrée en vigueur”)

“employee” does not include a student employed for his or her vacation period; (“employé”)

“establishment” means all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under section 14 or decided upon under section 15; (“établissement”)

“female job class” means, except where there has been a decision that a job class is a male job class as described in clause (b) of the definition of “male job class”,

- (a) a job class in which 60 per cent or more of the members are female,
- (b) a job class that a review officer or the Hearings Tribunal decides is a female job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a female job class; (“catégorie d’emplois à prédominance féminine”)

“geographic division” means a geographic area prescribed under the *Territorial Division Act, 2002*; (“zone géographique”)

“Hearings Tribunal” means the Pay Equity Hearings Tribunal established by this Act; (“Tribunal”)

“job class” means those positions in an establishment that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates; (“catégorie d’emplois”)

“job rate” means the highest rate of compensation for a job class; (“taux de catégorie”)

“job-to-job method of comparison” means the method of determining whether pay equity exists that is set out in section 6; (“méthode de comparaison d’un emploi à l’autre”)

“male job class” means, except where there has been a decision that a job class is a female job class as described in clause (b) of the definition of “female job class”,

- (a) a job class in which 70 per cent or more of the members are male, or
- (b) a job class that a review officer or the Hearings Tribunal decides is a male job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a male job class; (“catégorie d’emplois à prédominance masculine”)

“Minister” means the Minister of Labour; (“ministre”)

“pay equity plan” means,

- (a) a document as described in section 13, for a plan being prepared under Part II, or
- (b) a document as described in section 21.6, for a plan being prepared or revised under Part III.1; (“programme d’équité salariale”)

“private sector” means all of the employers who are not in the public sector; (“secteur privé”)

“proportional value method of comparison” means the method of determining whether pay equity exists that is described in Part III.1; (“méthode de comparaison de la valeur proportionnelle”)

“public sector” means all of the employers who are referred to in the Schedule; (“secteur public”)

“regulations” means the regulations made under this Act; (“règlements”)

“review officer” means a person designated as a review officer under subsection 34 (1). (“agent de révision”) R.S.O. 1990, c. P.7, s. 1 (1); 1993, c. 4, s. 1; 1996, c. 1, Sched. J, s. 1; 1997, c. 26, Sched.; 2000, c. 5, s. 19; 2002, c. 17, Sched. C, s. 20 (1).

Posting

(2) Where this Act requires that a document be posted in the workplace, the employer shall post a copy of the document in prominent places in each workplace for the establishment to which the document relates in such a manner that it may be read by all of the employees in the workplace. R.S.O. 1990, c. P.7, s. 1 (2).

Idem

(3) The employer shall provide a copy of every document posted in the workplace under this Act,

- (a) to the bargaining agent, if any, that represents the employees who are affected by the document;
- (b) to any employee who requests a copy of the document, if the employee is not represented by a bargaining agent and the employee is affected by the document. R.S.O. 1990, c. P.7, s. 1 (3).

Calculation of number of employees

(4) If Part II or III applies to an employer, a reference in this Act to the number of employees of the employer shall be deemed to be a reference to the average number of employees employed in Ontario by the employer during the twelve-month period preceding the effective date or during the period from the day the first employee commenced employment in Ontario with the employer until the effective date, whichever period is shorter. R.S.O. 1990, c. P.7, s. 1 (4).

Decisions re job classes

(5) In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of work and such other criteria as may be prescribed by the regulations. R.S.O. 1990, c. P.7, s. 1 (5).

One-member job classes

(6) A job class may consist of only one position if it is unique in the establishment because its duties, responsibilities, qualifications, recruiting procedures or compensation schedule, salary grade or range of salary rates are not similar to those of any other position in the establishment. R.S.O. 1990, c. P.7, s. 1 (6).

Disabled, etc., not to be classed separately

(7) A position shall not be assigned to a job class different than that of other positions in the same establishment that have similar duties and responsibilities, require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates only because the needs of the occupant of the position have been accommodated for the purpose of complying with the *Human Rights Code*. R.S.O. 1990, c. P.7, s. 1 (7).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 1 (1-3) - 01/07/1998; 1996, c. 1, Sched. J, s. 1 (1, 2) - 01/01/1997; 1997, c. 26, Sched. - 01/01/1998

2000, c. 5, s. 19 - 01/01/2001

2002, c. 17, Sched. C, s. 20 (1) - 31/12/2012

Crown as employer

1.1 (1) For the purposes of this Act, the Crown is not the employer of a person unless the person,

- (a) is a public servant employed under Part III of the *Public Service of Ontario Act, 2006*; or
- (b) is employed by a body prescribed in the regulations. 2006, c. 35, Sched. C, s. 107 (1).

Plans posted before Dec. 18, 1991

(2) If the Crown and a bargaining agent have agreed that the Crown is the employer of the employees represented by the bargaining agent and a pay equity plan in accordance with that agreement was posted before the 18th day of December, 1991, the Crown shall be deemed to be the employer of those employees. 1993, c. 4, s. 2.

Same

(3) If the Crown posted a pay equity plan before the 18th day of December, 1991 for employees who are not represented by a bargaining agent, the Crown shall be deemed to be the employer of those employees. 1993, c. 4, s. 2.

Application

(4) This section does not apply,

- (a) if a determination that the Crown is the employer was made by the Hearings Tribunal before the 18th day of December, 1991; or
- (b) if an application respecting a proceeding in which the Crown's status as an employer is an issue was filed with the Hearings Tribunal before the 18th day of December, 1991. 1993, c. 4, s. 2.

Same

(5) This section, except for subsections (2) and (3), does not apply to determine the identity of the employer of an individual if a pay equity plan applicable to that individual prepared in accordance with a review officer's order was posted before the 18th day of December, 1991. 1993, c. 4, s. 2.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 2 - 18/12/1991

2006, c. 35, Sched. C, s. 107 (1) - 20/08/2007

Combined establishments

2 (1) Two or more employers and the bargaining agent or agents for their employees, who come together to negotiate a central agreement, may agree that, for the purposes of a pay equity plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Idem

(2) Two or more employers who are municipalities in the same geographic division and the bargaining agent or agents for their employees or, if there is no bargaining agent, the employees, may agree that, for the purposes of a pay equity plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Employers to implement plans

(3) Despite the fact that the employees of two or more employers are considered to be one establishment under subsection (1) or (2), each employer is responsible for implementing and maintaining the pay equity plan with respect to the employer's employees. R.S.O. 1990, c. P.7, s. 2.

Application

3 (1) This Act applies to all employers in the private sector in Ontario who employ ten or more employees, all employers in the public sector, the employees of employers to whom this Act applies and to their bargaining agents, if any.

Idem

(2) If at any time after the coming into force of this Act an employer employs ten or more employees in Ontario, this Act applies with respect to the employer although the number of employees is subsequently reduced to fewer than ten. R.S.O. 1990, c. P.7, s. 3.

Purpose

4 (1) The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes.

Identification of systemic gender discrimination

(2) Systemic gender discrimination in compensation shall be identified by undertaking comparisons between each female job class in an establishment and the male job classes in the establishment in terms of compensation and in terms of the value of the work performed. R.S.O. 1990, c. P.7, s. 4.

Value determination

5 (1) For the purposes of this Act, the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed.

Idem, disabled employees, etc.

(2) The fact that an employee's needs have been accommodated for the purpose of complying with the *Human Rights Code* shall not be considered in determining the value of work performed. R.S.O. 1990, c. P.7, s. 5.

Achievement of pay equity

5.1 (1) For the purposes of this Act, pay equity is achieved in an establishment when every female job class in the establishment has been compared to a job class or job classes under the job-to-job method of comparison or the proportional value method of comparison and any adjustment to the job rate of each female job class that is indicated by the comparison has been made. 1996, c. 1, Sched. J, s. 2.

Deemed compliance

(2) A pay equity plan that used the proportional value method of comparison shall be deemed to have complied with section 6, as it reads immediately before this section comes into force,

- (a) from the date on which the plan is posted if it is posted before Part III.1 comes into force by an employer to whom Part II applies; or
- (b) from the date on which the plan is prepared if it is prepared before Part III.1 comes into force by an employer to whom Part III applies. 1993, c. 4, s. 3.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 3 - 01/07/1993; 1996, c. 1, Sched. J, s. 2 - 01/01/1997

Achievement of pay equity

6 (1) For the purposes of this Act, pay equity is achieved under the job-to-job method of comparison when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class in the same establishment where the work performed in the two job classes is of equal or comparable value. R.S.O. 1990, c. P.7, s. 6 (1); 1993, c. 4, s. 4 (1).

Idem

(2) Where there is no male job class with which to make a comparison for the purposes of subsection (1), pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate of a male job class in the same establishment that at the time of comparison had a higher job rate but performs work of lower value than the female job class.

Basis of comparison

(3) If more than one comparison is possible between a female job class in an establishment and male job classes in the same establishment, pay equity is achieved when the job rate for the female job class is at least as great as the job rate for the male job class,

- (a) with the lowest job rate, if the work performed in both job classes is of equal or comparable value; or
- (b) with the highest job rate, if the work performed in the male job class is of less value. R.S.O. 1990, c. P.7, s. 6 (2, 3).

Idem

(4) Comparisons under the job-to-job method of comparison,

- (a) for job classes inside a bargaining unit, shall be made between job classes in the bargaining unit; and
- (b) for job classes outside any bargaining unit, shall be made between job classes that are outside any bargaining unit. R.S.O. 1990, c. P.7, s. 6 (4); 1993, c. 4, s. 4 (2).

Idem

(5) If, after applying subsection (4), no male job class is found in which the work performed is of equal or comparable value to that of the female job class that is the subject of the comparison, the female job class shall be compared to male job classes throughout the establishment.

Groups of jobs

(6) An employer may treat job classes that are arranged in a group of jobs as one female job class if 60 per cent or more of the employees in the group are female.

Idem

(7) An employer shall treat job classes that are arranged in a group of jobs as one female job class if a review officer or the Hearings Tribunal decides that the group should be treated as one female job class.

Idem

(8) An employer may, with the agreement of the bargaining agent, if any, for the employees of the employer, decide to treat job classes that are arranged in a group of jobs as one female job class.

Job rate, value of work

(9) Where a group of jobs is being treated as a female job class, the job rate of the individual job class within the group that has the greatest number of employees is the job rate for the group and the value of the work performed by that individual job class is the value of the work performed by the group.

Definition

(10) In this section,

“group of jobs” means a series of job classes that bear a relationship to each other because of the nature of the work required to perform the work of each job class in the series and that are organized in successive levels. R.S.O. 1990, c. P.7, s. 6 (5-10).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 4 (1, 2) - 01/07/1993

Pay equity required

7 (1) Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer.

Idem

(2) No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1). R.S.O. 1990, c. P.7, s. 7.

Posting of notice

7.1 (1) Every employer to whom Part III applies and any other employer who is directed to do so by the Pay Equity Office shall post in the employer's workplace a notice setting out,

- (a) the employer's obligation to establish and maintain compensation practices that provide for pay equity; and
- (b) the manner in which an employee may file a complaint or objection under this Act.

Language

(2) The notice shall be in English and the language other than English that is understood by the greatest number of employees in the workplace.

Form of notice

(3) The notice shall be in a form made available to employers by the Pay Equity Office. 1993, c. 4, s. 5.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 5 - 01/07/1993

Exceptions

8 (1) This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of,

- (a) a formal seniority system that does not discriminate on the basis of gender;
- (b) a temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program;
- (c) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender;
- (d) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent; or
- (e) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

Idem

(2) After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength.

Idem

(3) A position that an employer designates as a position that provides employment on a casual basis may be excluded in determining whether a job class is a female job class or a male job class and need not be included in compensation adjustments under a pay equity plan.

Idem

(4) A position shall not be designated under subsection (3) if,

- (a) the work is performed for at least one-third of the normal work period that applies to similar full-time work;
- (b) the work is performed on a seasonal basis in the same position for the same employer; or

- (c) the work is performed on a regular and continuing basis, although for less than one-third of the normal work period that applies to similar full-time work. R.S.O. 1990, c. P.7, s. 8.

Limitation re maintaining pay equity

(5) The requirement that an employer maintain pay equity for a female job class is subject to such limitations as may be prescribed in the regulations. 1993, c. 4, s. 6.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 6 - 01/07/1993

Reduction, intimidation, adjustments

Reduction of compensation prohibited

9 (1) An employer shall not reduce the compensation payable to any employee or reduce the rate of compensation for any position in order to achieve pay equity.

Intimidation prohibited

(2) No employer, employee or bargaining agent and no one acting on behalf of an employer, employee or bargaining agent shall intimidate, coerce or penalize, or discriminate against, a person,

- (a) because the person may participate, or is participating, in a proceeding under this Act;
- (b) because the person has made, or may make, a disclosure required in a proceeding under this Act;
- (c) because the person is exercising, or may exercise, any right under this Act; or
- (d) because the person has acted or may act in compliance with this Act, the regulations or an order made under this Act or has sought or may seek the enforcement of this Act, the regulations or an order made under this Act.

Compensation adjustments

(3) Where, to achieve pay equity, it is necessary to increase the rate of compensation for a job class, all positions in the job class shall receive the same adjustment in dollar terms. R.S.O. 1990, c. P.7, s. 9.

PART II

IMPLEMENTATION: PUBLIC SECTOR AND LARGE PRIVATE SECTOR EMPLOYERS

Definition

10 In this Part,

“mandatory posting date” means,

- (a) the second anniversary of the effective date, in respect of employers in the public sector and in respect of employers in the private sector who have at least 500 employees on the effective date,
- (b) the third anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date,
- (c) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20, and
- (d) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least ten but fewer than fifty employees on the effective date and who have posted a notice under section 20. R.S.O. 1990, c. P.7, s. 10.

Application

11 (1) This Part applies to all employers in the public sector, all employers in the private sector who, on the effective date, employ 100 or more employees and those employers in the private sector who post a notice under section 20.

Idem

(2) This Part does not apply to an employer who does not have employees on the effective date. R.S.O. 1990, c. P.7, s. 11.

Same

(3) Despite subsection (2), sections 13.1, 14.1 and 14.2 apply to public sector employers that did not have employees on the effective date but that had employees on July 1, 1993. 1994, c. 27, s. 121 (1).

Section Amendments with date in force (d/m/y)

Comparison of job classes

12 Before the mandatory posting date, every employer to whom this Part applies shall, using a gender-neutral comparison system, compare the female job classes in each establishment of the employer with the male job classes in the same establishment to determine whether pay equity exists for each female job class. R.S.O. 1990, c. P.7, s. 12.

Pay equity plans required

13 (1) Documents, to be known as pay equity plans, shall be prepared in accordance with this Part to provide for pay equity for the female job classes in each establishment of every employer to whom this Part applies and, without restricting the generality of the foregoing,

- (a) shall identify the establishment to which the plan applies; and
- (b) shall identify all job classes which formed the basis of the comparisons under section 12.

Idem

(2) If both female job classes and male job classes exist in an establishment, every pay equity plan for the establishment,

- (a) shall describe the gender-neutral comparison system used for the purposes of section 12;
- (b) shall set out the results of the comparisons carried out under section 12;
- (c) shall identify all positions and job classes in which differences in compensation are permitted by subsection 8 (1) or (3) and give the reasons for relying on such subsection;
- (d) shall, with respect to all female job classes for which pay equity does not exist according to the comparisons under section 12, describe how the compensation in those job classes will be adjusted to achieve pay equity; and
- (e) shall set out the date on which the first adjustments in compensation will be made under the plan, which date shall not be later than,
 - (i) the second anniversary of the effective date, in respect of employers in the public sector,
 - (ii) the third anniversary of the effective date, in respect of employers in the private sector who have at least 500 employees on the effective date,
 - (iii) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date,
 - (iv) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20, and
 - (v) the sixth anniversary of the effective date, in respect of employers in the private sector who have at least ten but fewer than fifty employees on the effective date and who have posted a notice under section 20.

Idem

(3) A pay equity plan shall provide that the female job class or classes that have, at any time during the implementation of the plan, the lowest job rate shall receive increases in rates of compensation under the plan that are greater than the increases under the plan for other female job classes until such time as the job rate for the female job class or classes receiving the greater increases is equal to the lesser of,

- (a) the job rate required to achieve pay equity; and
- (b) the job rate of the female job class or classes entitled to receive an adjustment under the plan with the next lowest job rate.

Minimum adjustments

(4) The first adjustments in compensation under a pay equity plan are payable as of the date provided for in clause (2) (e) and shall be such that the combined compensation payable under all pay equity plans of the employer during the twelve-month period following the first adjustments shall be increased by an amount that is not less than the lesser of,

- (a) 1 per cent of the employer's payroll during the twelve-month period preceding the first adjustments; and
- (b) the amount required to achieve pay equity.

Idem

(5) Adjustments shall be made in compensation under a pay equity plan on each anniversary of the first adjustments in compensation under the plan and shall be such that during the twelve-month period following each anniversary the combined compensation payable under all pay equity plans of the employer shall be increased by an amount that is not less than the lesser of,

- (a) 1 per cent of the employer's payroll during the twelve-month period preceding the anniversary; and
- (b) the amount required to achieve pay equity.

Maximum adjustments

(6) Except for the purpose of making retroactive adjustments in compensation under a pay equity plan or unless required to do so by an order described in clause 36 (g), nothing in this Act requires an employer to increase compensation payable under the pay equity plans of the employer during a twelve-month period in an amount greater than 1 per cent of the employer's payroll during the preceding twelve-month period. R.S.O. 1990, c. P.7, s. 13 (1-6).

Exception

(7) Despite subsection (6), pay equity plans in the public sector shall provide for adjustments in compensation such that the plan will be fully implemented not later than the 1st day of January, 1998.

Transition, application

(7.1) Subsections (7.2) and (7.3) apply with respect to an employer in the public sector who has set out in a pay equity plan that was posted or in another agreement that was made before this subsection comes into force a schedule of compensation adjustments for achieving pay equity.

Same, bargaining agent

(7.2) If the employees to whom the plan or agreement applies are represented by a bargaining agent, the employer is not bound by the schedule set out in it if the employer gives written notice to the bargaining agent that the employer wishes to enter into negotiations concerning a replacement schedule.

Same, no bargaining agent

(7.3) The employer is not bound by the schedule set out in the plan or agreement if the employees to whom it applies are not represented by a bargaining agent. 1993, c. 4, s. 7 (1).

Definition

(8) In this section,

“payroll” means the total of all wages and salaries payable to the employees in Ontario of the employer.

Pay equity plan binding

(9) A pay equity plan that is approved under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to prevail

(10) A pay equity plan that is approved under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements.

Deemed compliance

(11) Every employer who prepares and implements a pay equity plan under this Part shall be deemed not to be in contravention of subsection 7 (1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the effective date. R.S.O. 1990, c. P.7, s. 13 (8-11).

Application

(12) If a pay equity plan is amended under section 14.1 or 14.2, subsections (9), (10) and (11) apply, with necessary modifications, to the amended plan. 1993, c. 4, s. 7 (2).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 7 (1, 2) - 01/07/1993

Sale of a business

13.1 (1) If an employer who is bound by a pay equity plan sells a business, the purchaser shall make any compensation adjustments that were to be made under the plan in respect of those positions in the business that are maintained by the purchaser and shall do so on the date on which the adjustments were to be made under the plan.

Plan no longer appropriate

(2) If, because of the sale, the seller's plan or the purchaser's plan is no longer appropriate, the seller or the purchaser, as the case may be, shall,

- (a) in the case of employees represented by a bargaining agent, enter into negotiations with a view to agreeing on a new plan; and
- (b) in the case of employees not represented by a bargaining agent, prepare a new plan. 1993, c. 4, s. 8.

Same

(3) Clause 14 (2) (a), subsections 14.1 (1) to (6) and 14.2 (1) and (2) apply, with necessary modifications, to the negotiation or preparation of a new plan. 1997, c. 21, s. 4 (1).

(4) REPEALED: 1997, c. 21, s. 4 (1).

Application to certain events

(4.1) This section applies with respect to an occurrence described in sections 3 to 10 of the *Public Sector Labour Relations Transition Act, 1997*. For the purposes of this section, the occurrence shall be deemed to be the sale of a business, each of the predecessor employers shall be deemed to be a seller and the successor employer shall be deemed to be the purchaser. 1997, c. 21, s. 4 (2).

Definitions

(5) In this section,

“business” includes a part or parts thereof; (“entreprise”)

“sells” includes leases, transfers and any other manner of disposition. (“vend”) 1993, c. 4, s. 8.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 8 - 01/07/1993; 1997, c. 21, s. 4 (1, 2) - 29/10/1997

13.2 REPEALED: 2019, c. 7, Sched. 53, s. 8.

Section Amendments with date in force (d/m/y)

2006, c. 4, s. 50 (1) - 28/03/2006

2019, c. 5, Sched. 3, s. 15 (1) - no effect - see 2019, c. 7, Sched. 53, s. 8 - 29/05/2019; 2019, c. 7, Sched. 53, s. 8 - 29/05/2019

Establishments with bargaining units

14 (1) In an establishment in which any of the employees are represented by a bargaining agent, there shall be a pay equity plan for each bargaining unit and a pay equity plan for that part of the establishment that is not in any bargaining unit.

Bargaining unit plans

(2) The employer and the bargaining agent for a bargaining unit shall negotiate in good faith and endeavour to agree, before the mandatory posting date, on,

- (a) the gender-neutral comparison system used for the purposes of section 12; and
- (b) a pay equity plan for the bargaining unit.

Idem

(3) As part of the negotiations required by subsection (2), the employer and the bargaining agent may agree, for the purposes of the pay equity plan,

- (a) that the establishment of the employer includes two or more geographic divisions; and
- (b) that a job class is a female job class or a male job class.

Posting of plan

(4) When an employer and a bargaining agent agree on a pay equity plan, they shall execute the agreement and, on or before the mandatory posting date, the employer shall post a copy of the plan in the workplace.

Deemed approval and first adjustments

(5) When a pay equity plan has been executed by an employer and a bargaining agent, the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Failure to agree

(6) Where an employer and a bargaining agent fail to agree on a pay equity plan by the mandatory posting date, the employer, forthwith after that date, shall give notice of the failure to the Commission.

Idem

(7) Subsection (6) does not prevent the bargaining agent from notifying the Commission of a failure to agree on a pay equity plan by the mandatory posting date.

Non-bargaining unit plan

(8) An employer shall prepare a pay equity plan for that part of the employer's establishment that is outside any bargaining unit in the establishment and, on or before the mandatory posting date, shall post a copy of the plan in the workplace.

Idem

(9) Subsections 15 (2) to (8) apply to a pay equity plan described in subsection (8). R.S.O. 1990, c. P.7, s. 14.

Changed circumstances

14.1 (1) If, in an establishment in which any of the employees are represented by a bargaining agent, the employer or the bargaining agent is of the view that because of changed circumstances in the establishment the pay equity plan for the bargaining unit is no longer appropriate, the employer or the bargaining agent, as the case may be, may by giving written notice require the other to enter into negotiations concerning the amendment of the plan.

Application of s. 14

(2) Clause 14 (2) (b) and subsections 14 (3), (4) and (5) apply, with necessary modifications, to the negotiations and to any amendment of the plan that is agreed upon.

Failure to agree

(3) If the employer and the bargaining agent do not agree on an amendment before the expiry of 120 days from the date on which notice to enter into negotiations is given, the employer shall give notice of the failure to the Commission.

Same

(4) Subsection (3) does not prevent the bargaining agent from notifying the Commission of a failure to agree on an amendment by the date referred to in that subsection.

Non-bargaining unit plan

(5) If the employer is of the view that, because of changed circumstances in the establishment, the pay equity plan for that part of the establishment that is outside any bargaining unit is no longer appropriate, the employer may amend the plan and post in the workplace a copy of the amended plan with the amendments clearly indicated.

Same

(6) Subsection 15 (2) and subsections 15 (4) to (8) apply, with necessary modifications, in respect of an amended plan described in subsection (5).

Adjustments

(7) If a plan is amended under this section, the compensation adjustment for each position to which the amended plan applies shall not be less than the adjustment that would have been made under the plan before it was amended. 1993, c. 4, s. 9.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 9 - 01/07/1993

Changed circumstances, no bargaining units

14.2 (1) In an establishment where no employee is represented by a bargaining agent, if the employer is of the view that because of changed circumstances in the establishment the pay equity plan for the establishment is no longer appropriate, the employer may amend the plan and post in the workplace a copy of the amended plan with the amendments clearly indicated.

Application of s. 15

(2) Subsections 15 (2) to (8) apply, with necessary modifications, in respect of the amended plan.

Adjustments

(3) If a plan is amended under this section, the compensation adjustment for each position to which the amended plan applies shall not be less than the adjustment that would have been made under the plan before it was amended. 1993, c. 4, s. 9.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 9 - 01/07/1993

Establishments without bargaining units

15 (1) In an establishment where no employee is represented by a bargaining agent, the employer shall prepare a pay equity plan for the employer's establishment and the employer, on or before the mandatory posting date, shall post a copy of the plan in the workplace.

Idem

(2) For the purposes of a pay equity plan required by this section or subsection 14 (8), the employer may decide,

- (a) that the establishment of the employer includes two or more geographic divisions; and
- (b) that a job class is a female job class or a male job class.

Idem

(3) An agreement under section 14 between an employer and a bargaining agent shall not affect any pay equity plan required by this section or subsection 14 (8). R.S.O. 1990, c. P.7, s. 15 (1-3).

Employee review

(4) The employees to whom a pay equity plan required by this section or subsection 14 (8) applies shall have until the ninetieth day after the date on which the copy of the plan is posted to review and submit comments to the employer on the plan. R.S.O. 1990, c. P.7, s. 15 (4); 1993, c. 4, s. 10.

Changes

(5) If as a result of comments received during the review period referred to in subsection (4), the employer is of the opinion that a pay equity plan should be changed, the employer may change the plan.

Posting of notice

(6) Not later than seven days after the end of the review period referred to in subsection (4), the employer shall post in the workplace a notice stating whether the pay equity plan has been amended under this section and, if the plan has been amended, the employer shall also post a copy of the amended plan with the amendments clearly indicated.

Objections

(7) Any employee or group of employees to whom a pay equity plan applies, within thirty days following a posting in respect of the plan under subsection (6), may file a notice of objection with the Commission whether or not the employee or group of employees has submitted comments to the employer under subsection (4).

Deemed approval and first adjustments

(8) If no objection in respect of a pay equity plan is filed with the Commission under subsection (7), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity. R.S.O. 1990, c. P.7, s. 15 (5-8).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 10 - 01/07/1993

Investigation by review officer

16 (1) If the Commission,

- (a) is advised by an employer or a bargaining agent that no agreement has been reached on a pay equity plan or an amendment to a pay equity plan; or
- (b) receives a notice of objection to a pay equity plan for employees who are not represented by a bargaining agent or a notice of objection to an amendment of such a plan,

a review officer shall investigate the matter and endeavour to effect a settlement. R.S.O. 1990, c. P.7, s. 16 (1); 1993, c. 4, s. 11.

Orders by review officer

(2) If the review officer is unable to effect a settlement as provided for in subsection (1), he or she shall by order decide all outstanding matters.

Posting of plan

(3) Where a review officer effects a settlement under subsection (1) or makes an order under subsection (2), the employer shall forthwith post in the workplace a copy of the pay equity plan that reflects the settlement or order.

Objections

(4) Where a pay equity plan has been posted under subsection (3), objections with respect to the plan may be filed with the Commission within thirty days of the posting as follows:

1. If the plan relates to a bargaining unit, objections may be filed only if the review officer has made an order under subsection (2) and only the employer or the bargaining agent for the bargaining unit may file objections.
2. If the plan does not relate to a bargaining unit and a review officer effected a settlement under subsection (1) with the agreement of the objector who filed the objection under subsection 15 (7), only an employee or group of employees to whom the plan applies, other than the objector, may file an objection.
3. If the plan does not relate to a bargaining unit and a review officer has made an order under subsection (2), the employer or any employee or group of employees to whom the plan applies may file an objection.

Deemed approval and first adjustments

(5) If a review officer effects a settlement of a pay equity plan for a bargaining unit under subsection (1) or, if in any other case, no objection in respect of a pay equity plan is filed with the Commission in accordance with subsection (4), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Idem

(6) Where adjustments in compensation are made after the day provided for in the pay equity plan, the employer shall make the adjustments retroactive to that date. R.S.O. 1990, c. P.7, s. 16 (2-6).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 11 - 01/07/1993

Settling of plan

17 (1) If the Commission receives a notice of objection under subsection 16 (4), the Hearings Tribunal shall hold a hearing and, in its decision, shall settle the pay equity plan to which the objection relates.

Posting of plan

(2) Forthwith after receiving the decision of the Hearings Tribunal, the employer shall post a copy of the decision in the workplace and, on the day provided for in the plan, shall make the first adjustments in compensation required to achieve pay equity.

Idem

(3) Where adjustments in compensation are made after the day provided for in a pay equity plan, the employer shall make the adjustments retroactive to that date. R.S.O. 1990, c. P.7, s. 17.

Part III (SS. 18-21) REPEALED: R.S.O. 1990, C. P.7, S. 21 (2).

18.-21 REPEALED: R.S.O. 1990, c. P.7, s. 21 (2).

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. P.7, s. 21 (2) - 01/01/1994

PART III.1
PROPORTIONAL VALUE METHOD OF COMPARISON

Application

21.1 (1) This Part applies to employers to whom Part II applies and to public sector employers that did not have employees on the effective date but that had employees on July 1, 1993.

Transition, deemed plan

(2) A plan for the achievement of pay equity shall be deemed to be a pay equity plan if it was prepared by a public sector employer described in subsection (1) before the coming into force of this subsection as if this Part applied to the employer. 1994, c. 27, s. 121 (2).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993; 1994, c. 27, s. 121 (2) - 09/12/1994

Proportional method required

21.2 (1) If a female job class within an employer's establishment cannot be compared to a male job class in the establishment using the job-to-job method of comparison, the employer shall use the proportional value method of comparison to make a comparison for that female job class.

Adjustments

(2) If an employer uses the proportional value method of comparison to make a comparison for a female job class that can be compared to a male job class using the job-to-job method of comparison, the compensation adjustment made for members of that female job class shall not be less than the adjustment that is indicated under the job-to-job method.

Exception, Part II

(3) Subsection (2) does not apply to an employer to whom Part II applies if the employer prepared a pay equity plan using the proportional value method of comparison and posted it before the coming into force of this Part. However, subsection (2) does apply if the employer has also posted a pay equity plan using the job-to-job method of comparison.

Exception, Part III

(4) Subsection (2) does not apply to an employer to whom Part III applies if the employer prepared a pay equity plan using the proportional value method of comparison before the coming into force of this Part. However, subsection (2) does apply if the employer has also prepared a pay equity plan using the job-to-job method of comparison.

Notice

(5) If a female job class within an employer's establishment cannot be compared to a male job class within the establishment under either the job-to-job method of comparison or the proportional value method of comparison, the employer shall notify the Pay Equity Office.

Investigation and complaints

- (6) If notice is given under subsection (5),
- (a) section 16 applies, with necessary modifications, as if the review officer had received advice under clause 16 (1) (a) or a notice under clause 16 (1) (b);
 - (b) section 22 applies, with necessary modifications, as if a person had filed a complaint with the Commission concerning whether the job-to-job method or the proportional value method of comparison can be used in the circumstances;
 - (c) section 23 applies, with necessary modifications, as if the Commission had received a complaint concerning whether the job-to-job method or the proportional value method can be used in the circumstances;
 - (d) subsection 24 (1) applies. 1993, c. 4, s. 12.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993

Proportional value comparison method

21.3 (1) Pay equity is achieved for a female job class under the proportional value method of comparison,

- (a) when the class is compared with a representative male job class or representative group of male job classes in accordance with this section; and

- (b) when the job rate for the class bears the same relationship to the value of the work performed in the class as the job rate for the male job class bears to the value of the work performed in that class or as the job rates for the male job classes bear to the value of the work performed in those classes, as the case may be.

Comparisons required

(2) Comparisons required by this section,

- (a) for job classes inside a bargaining unit shall be made between job classes in the unit; and
- (b) for job classes outside any bargaining unit shall be made between job classes that are outside any bargaining unit.

Same

(3) If, after applying subsection (2), no representative male job class or classes is found to compare to the female job class, the female job class shall be compared to a representative male job class elsewhere in the establishment or to a representative group of male job classes throughout the establishment.

Comparison system

(4) The comparisons shall be carried out using a gender-neutral comparison system.

Group of jobs

(5) Subsections 6 (6) to (10) apply, with necessary modifications, to the proportional value method of comparison. 1993, c. 4, s. 12.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993

Amended pay equity plans

21.4 (1) If a pay equity plan prepared under Part II for an establishment does not achieve pay equity for all the female job classes at the establishment, the employer shall amend the plan to the extent necessary to achieve pay equity in accordance with this Part.

Same

(2) Subject to subsection 21.2 (2), an employer may, with the agreement of the bargaining agent, if any, replace a pay equity plan prepared under Part II with another plan prepared under this Part using the proportional value method of comparison. 1993, c. 4, s. 12.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993

Plan binding

21.5 (1) A pay equity plan prepared or amended under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to prevail

(2) A pay equity plan prepared or amended under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements. 1993, c. 4, s. 12.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993

Contents of plans

21.6 (1) A pay equity plan prepared or amended under this Part must contain the information required by this section.

Same

(2) Subsections 13 (1) and (2) apply, with necessary modifications, with respect to a pay equity plan prepared or amended under this Part.

Method of comparison

(3) The plan must,

- (a) state, for each female job class, what method of comparison has been used to determine whether pay equity exists;
- (b) describe the methodology used for the calculations required by the proportional value method of comparison; and
- (c) describe any amendments to be made to the pay equity plan prepared under Part II. 1993, c. 4, s. 12.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993

Requirement to post plans

21.7 The employer shall post a copy of each pay equity plan prepared or amended under this Part in the workplace not later than six months after this section comes into force. 1993, c. 4, s. 12.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993

Bargaining unit employees

21.8 Sections 14, 16 and 17 apply, with necessary modifications, with respect to a pay equity plan that is prepared or amended under this Part for employees in a bargaining unit. 1993, c. 4, s. 12.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993

Non-bargaining unit employees

21.9 (1) This section applies with respect to pay equity plans prepared or amended under this Part for employees who are not in a bargaining unit.

Review period

(2) Employees shall have until the ninetieth day after the plan is posted to review it and submit comments to the employer on the plan or, if the plan is an amended plan, the amendments to the plan. 1993, c. 4, s. 12.

Same

(2.1) For a plan described in subsection 21.1 (2) that is posted before this subsection comes into force, employees shall have until the ninetieth day after this subsection comes into force to review the plan and submit comments on it. 1994, c. 27, s. 121 (3).

Application of certain provisions

(3) Subsections 15 (2), (3) and (5) to (8) and sections 16 and 17 apply, with necessary modifications, with respect to the plan. 1993, c. 4, s. 12.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993; 1994, c. 27, s. 121 (3) - 09/12/1994

Date of first compensation adjustments

21.10 (1) If a pay equity plan is prepared or amended under this Part, the employer shall make the first adjustments in compensation in respect of the new or amended portions of the plan,

- (a) in the case of employers in the private sector with 100 or more employees, effective as of the 1st day of January, 1993;
- (b) in the case of employers in the public sector, effective as of the 1st day of January, 1993;
- (c) in the case of employers in the private sector with at least fifty but fewer than 100 employees, effective as of the 1st day of January, 1993;
- (d) in the case of employers in the private sector with at least ten but fewer than fifty employees, on or before the 1st day of January, 1994.

Same

(2) An employer described in clause (1) (a), (b) or (c) shall make the first payment in respect of the first adjustment within six months after the coming into force of this Part. 1993, c. 4, s. 12.

Same

(2.1) A public sector employer that did not have employees on the effective date but that had employees on July 1, 1993 shall make the first payment in respect of the first adjustment within six months after the coming into force of this subsection. 1994, c. 27, s. 121 (4).

Application of certain provisions

(3) Subsections 13 (3) to (8) apply, with necessary modifications, to compensation payable under a pay equity plan prepared or amended under this Part.

Deemed compliance

(4) Every employer who prepares or amends a pay equity plan under this Part and implements it shall be deemed not to be in contravention of subsection 7 (1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the 1st day of January, 1993. 1993, c. 4, s. 12.

Credit for payments

(5) A payment made under a plan described in subsection 21.1 (2) before this subsection comes into force shall be taken into account in determining whether the employer has complied with this Act. 1994, c. 27, s. 121 (4).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 12 - 01/07/1993; 1994, c. 27, s. 121 (4) - 09/12/1994

Part III.2 (SS. 21.11-21.23) REPEALED: 1996, C. 1, SCHED. J, S. 4.

21.11-21.23 REPEALED: 1996, c. 1, Sched. J, s. 4.

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. J, s. 4 - 01/01/1997

PART IV ENFORCEMENT

Complaints

22 (1) Any employer, employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining that there has been a contravention of this Act, the regulations or an order of the Commission.

Idem

(2) Any employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining with respect to a pay equity plan that applies to the employee or group of employees that,

- (a) the plan is not being implemented according to its terms; or
- (b) because of changed circumstances in the establishment, the plan is not appropriate for the female job class to which the employee or group of employees belongs.

Combining of complaints

(3) The Hearings Tribunal may combine two or more complaints and deal with them in one proceeding if the complaints,

- (a) are made against the same person and bring into question the same or a similar issue; or
- (b) have questions of law or fact in common. R.S.O. 1990, c. P.7, s. 22.

Investigation of complaints

23 (1) Subject to subsection (2), when the Commission receives a complaint, a review officer shall investigate the complaint and may endeavour to effect a settlement.

Idem

(2) The review officer shall notify the parties and the Hearings Tribunal as soon as he or she decides that a settlement cannot be effected and that he or she will not be making an order under subsection 24 (3).

Decision to not deal with complaint

- (3) A review officer may decide that a complaint should not be considered if the review officer is of the opinion that,
- (a) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith; or
 - (b) the complaint is not within the jurisdiction of the Commission.

Hearing before Tribunal

- (4) The review officer shall notify the complainant of his or her decision under subsection (3) and the complainant may request a hearing before the Hearings Tribunal with respect to the decision. R.S.O. 1990, c. P.7, s. 23.

Orders by review officers

- 24** (1) Where a review officer is of the opinion that a pay equity plan is not being prepared as required by Part II or III.1, the review officer may order the employer and the bargaining agent, if any, to take such steps as are set out in the order to prepare the plan. R.S.O. 1990, c. P.7, s. 24 (1); 1993, c. 4, s. 14 (1); 1996, c. 1, Sched. J, s. 5 (1).

Idem

- (2) Where a review officer is of the opinion that a pay equity plan is not being implemented according to its terms, the review officer may order the employer to take such steps as are set out in the order to implement the plan. R.S.O. 1990, c. P.7, s. 24 (2).

Same

- (2.1) If a review officer is of the opinion that because of changed circumstances a pay equity plan is no longer appropriate, the officer may order the employer to amend the plan in such manner as is set out in the order or to take such steps with a view to amending the plan as are set out in the order. 1993, c. 4, s. 14 (2).

Same

- (3) If a review officer is of the opinion that there has been a contravention of this Act by an employer, employee or bargaining agent, the officer may order the employer, employee or bargaining agent to take such steps to comply with the Act as are set out in the order. 1993, c. 4, s. 14 (3).

Idem

- (4) An order under subsection (1) may provide for a mandatory posting date that is later than the one provided in section 10 or a posting date that is later than the one provided under section 21.7. R.S.O. 1990, c. P.7, s. 24 (4); 1993, c. 4, s. 14 (4); 1996, c. 1, Sched. J, s. 5 (2).

Reference to Tribunal

- (5) Where an employer or a bargaining agent fails to comply with an order under this section, a review officer may refer the matter to the Hearings Tribunal. R.S.O. 1990, c. P.7, s. 24 (5).

Same

- (5.1) The Pay Equity Office shall be deemed to be the applicant for a reference under subsection (5).

Same

- (5.2) On a reference under subsection (5), the Hearings Tribunal shall not consider the merits of the order that is the subject of the reference.

Burden of proving compliance

- (5.3) On a reference under subsection (5), the person against whom the order was made has the burden of proving that he, she or it has complied with the order. 1993, c. 4, s. 14 (5).

Hearing before Tribunal

- (6) An employer or bargaining agent named in an order under this section may request a hearing before the Hearings Tribunal with respect to the order, and, where the order was made following a complaint but the complaint has not been settled, the complainant may also request a hearing. R.S.O. 1990, c. P.7, s. 24 (6).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 14 (1-5) - 01/07/1993; 1996, c. 1, Sched. J, s. 5 (1, 2) - 01/01/1997

Hearings

- 25** (1) The Hearings Tribunal shall hold a hearing,

- (a) if a review officer is unable to effect a settlement of a complaint and has not made an order under subsection 24 (3);
- (b) if a request for a hearing, as described in subsection 23 (4) or 24 (6), is received by the Hearings Tribunal; or
- (c) if a review officer refers a matter to the Hearings Tribunal under subsection 24 (5). R.S.O. 1990, c. P.7, s. 25 (1).

Reference stayed

(1.1) A reference under subsection 24 (5) respecting an order shall not proceed if the Hearings Tribunal has confirmed, varied or revoked the order following a hearing requested under subsection 23 (4) or 24 (6). 1993, c. 4, s. 15 (1).

Orders

(2) The Hearings Tribunal shall decide the issue that is before it for a hearing and, without restricting the generality of the foregoing, the Hearings Tribunal,

- (a) where it finds that an employer or a bargaining agent has failed to comply with Part II or III.1, may order that a review officer prepare a pay equity plan for the employer's establishment and that the employer and the bargaining agent, if any, or either of them, pay all of the costs of preparing the plan;
- (b) where it finds that an employer has contravened subsection 9 (2) by dismissing, suspending or otherwise penalizing an employee, may order the employer to reinstate the employee, restore the employee's compensation to the same level as before the contravention and pay the employee the amount of all compensation lost because of the contravention;
- (c) where it finds that an employer has contravened subsection 9 (1) by reducing compensation, or has failed to make an adjustment in accordance with subsection 21.2 (2), may order the employer to adjust the compensation of all employees affected to the rate to which they would have been entitled but for the reduction in compensation and to pay compensation equal to the amount lost because of the reduction;
- (d) may confirm, vary or revoke orders of review officers;
- (e) may, for the female job class that is the subject of the complaint or reference, order adjustments in compensation in order to achieve pay equity, where the Hearings Tribunal finds that there has been a contravention of subsection 7 (1);
- (e.1) may determine whether a sale of a business has occurred;
- (f) may order that the pay equity plan be revised in such manner as the Hearings Tribunal considers appropriate, where it finds that the plan is not appropriate for the female job class that is the subject of the complaint or reference because there has been a change of circumstances in the establishment; and
- (g) may order a party to a proceeding to take such action or refrain from such action as in the opinion of the Hearings Tribunal is required in the circumstances. R.S.O. 1990, c. P.7, s. 25 (2); 1993, c. 4, s. 15 (2-4); 1996, c. 1, Sched. J, s. 6 (1).

Idem

(3) An order under clause (2) (a) may provide that a review officer may retain the services of such experts as the review officer considers necessary to prepare a pay equity plan. R.S.O. 1990, c. P.7, s. 25 (3).

Application of Parts II, III.1 and III.2

- (4) Parts II and III.1, apply with necessary modifications to a pay equity plan prepared under clause (2) (a) but,
 - (a) the order of the Hearings Tribunal may provide for a mandatory posting date that is later than the one provided in section 10 or a posting date that is later than the one provided under section 21.7;
 - (b) the order of the Hearings Tribunal shall not provide for a compensation adjustment date that is different than the relevant date set out in clause 13 (2) (e) or a date that is later than the one provided under section 21.10;
 - (c) the review officer shall perform the duties of the employer and the bargaining agent, if any;
 - (d) when the review officer posts the plan in the workplace as subsection 14 (4) or 15 (6) provides, the employer, the bargaining agent (if the plan relates to a bargaining unit), or any employee or group of employees to whom the plan applies (if the plan does not relate to a bargaining unit) may file an objection with the Hearings Tribunal; and
 - (e) an objection under clause (d) shall be dealt with by the Hearings Tribunal under section 17. R.S.O. 1990, c. P.7, s. 25 (4); 1993, c. 4, s. 15 (5-7); 1996, c. 1, Sched. J, s. 6 (2-4).

Same

(4.1) Despite subsection (4), section 16 does not apply with respect to a pay equity plan prepared under clause (2) (a). 1993, c. 4, s. 15 (8).

Retroactive compensation adjustments

(5) An order under clause (2) (e) may be retroactive to the day of the contravention of subsection 7 (1).

Idem

(6) An order under clause (2) (f) may provide that adjustments in compensation resulting from the revision of the pay equity plan be made retroactive to the day of the change in circumstances that gave rise to the order. R.S.O. 1990, c. P.7, s. 25 (5, 6).

Burden of proof

(7) In a hearing before the Hearings Tribunal, a person who is alleged to have contravened subsection 9 (2) has the burden of proving that he, she or it did not contravene the subsection. 1993, c. 4, s. 15 (9).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 15 (1-9) - 01/07/1993; 1996, c. 1, Sched. J, s. 6 (1-4) - 01/01/1997

Settlements

25.1 (1) The parties to a matter in respect of which the Hearings Tribunal is required to hold a hearing may settle the matter in writing.

Binding effect

(2) A settlement under subsection (1) binds the parties to it.

Bargaining unit employees

(3) If a bargaining agent is a party to a settlement under subsection (1), the settlement also binds the employees who are represented by the bargaining agent.

Complaint

(4) A party to the settlement may file with the Hearings Tribunal a complaint that the settlement is not being complied with.

Hearing

(5) The Hearings Tribunal shall hold a hearing respecting the complaint.

Finding

(6) If the Hearings Tribunal finds that a party is not complying with the settlement, it may order the party to take such steps as it may specify to come into compliance or to rectify the failure to comply. 1993, c. 4, s. 16.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 16 - 01/07/1993

Offences and penalties

26 (1) Every person who contravenes or fails to comply with subsection 9 (2) or subsection 35 (5) or an order of the Hearings Tribunal is guilty of an offence and on conviction is liable to a fine of not more than \$5,000, in the case of an individual, and not more than \$50,000, in any other case.

Parties

(2) If a corporation or bargaining agent contravenes or fails to comply with subsection 9 (2) or subsection 35 (5) or an order of the Hearings Tribunal, every officer, official or agent thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or bargaining agent has been prosecuted or convicted. R.S.O. 1990, c. P.7, s. 26 (1, 2).

Confidentiality

(2.1) Every person who uses information obtained under Part III.2 other than for the purposes of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 in the case of an individual, and not more than \$50,000 in any other case.

Parties

(2.2) If a corporation or bargaining agent contravenes subsection (2.1), every officer, official or agent of the corporation or bargaining agent who authorizes, permits or acquiesces in the contravention is party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or bargaining agent has been prosecuted or convicted. 1996, c. 1, Sched. J, s. 7.

Prosecution against bargaining agent

(3) A prosecution for an offence under this Act may be instituted against a bargaining agent in its own name.

Consent

(4) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Hearings Tribunal. R.S.O. 1990, c. P.7, s. 26 (3, 4).

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. J, s. 7 - 01/01/1997

PART V ADMINISTRATION

Commission continued

27 (1) The commission known in English as the Pay Equity Commission of Ontario and in French as Commission de l'équité salariale de l'Ontario is continued. R.S.O. 1990, c. P.7, s. 27 (1).

Idem

(2) The Commission shall consist of the Pay Equity Hearings Tribunal and the Pay Equity Office. R.S.O. 1990, c. P.7, s. 27 (2).

Employees

(3) Such employees as are necessary for the proper conduct of the Commission's work may be appointed under Part III of the *Public Service of Ontario Act, 2006* to serve in the Pay Equity Office. R.S.O. 1990, c. P.7, s. 27 (3); 2006, c. 35, Sched. C, s. 107 (2).

Services of ministries, etc.

(4) The Commission shall, if appropriate, use the services and facilities of a ministry, board, commission or agency of the Government of Ontario. R.S.O. 1990, c. P.7, s. 27 (4).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 107 (2) - 20/08/2007

Hearings Tribunal

28 (1) The Hearings Tribunal shall be composed of a presiding officer, one or more deputy presiding officers and as many other members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council. R.S.O. 1990, c. P.7, s. 28 (1).

Alternate presiding officer

(2) The Lieutenant Governor in Council shall designate one of the deputy presiding officers to be alternate presiding officer and the person so designated, in the absence of the presiding officer or if the presiding officer is unable to act, shall have all of the powers of the presiding officer. R.S.O. 1990, c. P.7, s. 28 (2).

Remuneration and expenses

(3) The members of the Hearings Tribunal who are not public servants employed under Part III of the *Public Service of Ontario Act, 2006* shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred by them in the course of their duties under this Act. R.S.O. 1990, c. P.7, s. 28 (3); 2006, c. 35, Sched. C, s. 107 (3).

Resignation of member

(4) Where a member of the Hearings Tribunal resigns, he or she may carry out and complete any duties or responsibilities and exercise any powers that he or she would have had if he or she had not ceased to be a member, in connection with any matter in respect of which there was any proceeding in which he or she participated as a member of the Hearings Tribunal. R.S.O. 1990, c. P.7, s. 28 (4).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 107 (3) - 20/08/2007

Powers and duties of Tribunal

29 (1) The Hearings Tribunal may exercise such powers and shall perform such duties as are conferred or imposed upon it by this Act or the regulations. R.S.O. 1990, c. P.7, s. 29 (1).

Idem

- (2) Without limiting the generality of subsection (1), the Hearings Tribunal,
- (a) may decide in an order made under subsection 17 (1) or clause 25 (2) (a) that any job class is a female job class or a male job class;
 - (b) may make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it;
 - (c) may require that any person seeking a determination of any matter by the Hearings Tribunal shall give written notice, in such form and manner as the Hearings Tribunal specifies, to the persons that the Hearings Tribunal specifies;
 - (d) may, upon the request of the parties or on its own initiative, convene one or more pre-hearing conferences;
 - (e) may order a party to disclose such evidence and to produce such documents and other things as the Tribunal may specify before the commencement of a hearing;
 - (f) may authorize the presiding officer or a deputy presiding officer to exercise the powers of the Tribunal under clause (d) or (e); and
 - (g) may in a hearing admit such oral or written evidence as it, in its discretion, considers proper, whether admissible in a court of law or not. R.S.O. 1990, c. P.7, s. 29 (2); 1993, c. 4, s. 17.

Panels

(3) The presiding officer may establish panels of the Hearings Tribunal and it may sit in two or more panels simultaneously so long as a quorum of the Hearings Tribunal is present on each panel.

Quorum

(4) The presiding officer or a deputy presiding officer, one member representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Hearings Tribunal.

Decisions

(5) The decision of the majority of the members of the Hearings Tribunal present and constituting a quorum is the decision of the Hearings Tribunal, but, if there is no majority, the decision of the presiding officer or deputy presiding officer governs. R.S.O. 1990, c. P.7, s. 29 (3-5).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 17 - 01/07/1993

Death or incapacity of member

29.1 (1) If, after a panel of the Hearings Tribunal begins holding a hearing respecting a matter but before it reaches a decision on all the issues before it, the presiding officer or deputy presiding officer dies or becomes incapacitated, another panel of the Tribunal shall decide whether,

- (a) the hearing should continue but with the member who died or became incapacitated having been replaced by a presiding officer or deputy presiding officer; or
- (b) a new hearing should be held before another panel.

Same

(2) If, after a panel of the Hearings Tribunal begins holding a hearing respecting a matter and before it reaches a decision on all the issues before it, a member who is a representative of employers or employees dies or becomes incapacitated, another panel of the Tribunal shall decide whether,

- (a) the hearing should continue but with the member who died or became incapacitated having been replaced by another representative of employers or employees, as the case may be;
- (b) the hearing should continue but with the members who are representative of employers and employees having been replaced by other representatives of employers and employees;

- (c) the hearing should continue without representatives of either employers or employees; or
- (d) a new hearing should be held before another panel.

Panels

(3) If it is decided that there should be a new hearing before another panel, that panel may include a member of the panel one of whose members died or became incapacitated.

Severable matters

(4) A panel that decides that there should be a new hearing under clause (1) (b) or (2) (d) may, if the previous panel had reached a decision respecting some of the issues before it, direct that any decision respecting those issues stands and that the new panel should consider only the issues that remain outstanding.

Hearing

(5) Before making a decision under subsection (1) or (2), the panel shall hold a hearing.

One-person quorum

(6) If it is decided that a hearing should continue under clause (2) (c), the presiding officer or deputy presiding officer, as the case may be, shall constitute a quorum and shall resume the hearing without the other member.

New panel

(7) If a new hearing is held under this section, subsections 29 (4) and (5) apply, with necessary modifications. 1993, c. 4, s. 18.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 18 - 01/07/1993

Exclusive jurisdiction

30 (1) The Hearings Tribunal has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and the action or decision of the Hearings Tribunal thereon is final and conclusive for all purposes.

Reconsideration of decisions, etc.

(2) The Hearings Tribunal may at any time, if it considers it advisable to do so, reconsider a decision or order made by it and vary or revoke the decision or order. R.S.O. 1990, c. P.7, s. 30.

Testimony in civil proceedings

31 Except with the consent of the Hearings Tribunal, no member of the Hearings Tribunal, employee of the Commission or person whose services have been contracted for by the Commission shall be required to testify in any civil proceeding, in any proceeding before the Hearings Tribunal or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this Act. R.S.O. 1990, c. P.7, s. 31.

Parties to proceedings

Definition

32 (0.1) In this section,

“representative” means, in respect of a proceeding under this Act, a person authorized under the *Law Society Act* to represent a person or persons in that proceeding. 2006, c. 21, Sched. C, s. 127 (1).

Parties to proceedings

(1) Where a hearing is held before the Hearings Tribunal or where a review officer investigates for the purposes of effecting a settlement of an objection or complaint, the parties to the proceeding are,

- (a) the employer;
- (b) the objector or complainant;
- (c) the bargaining agent (if the pay equity plan relates to a bargaining unit) or the employees to whom the plan relates (if the plan does not relate to a bargaining unit); and
- (d) any other persons entitled by law to be parties. R.S.O. 1990, c. P.7, s. 32 (1); 1993, c. 4, s. 19 (1).

Same

(1.1) The Hearings Tribunal or a review officer may require an employer to post a notice relating to this Act in a workplace. 1993, c. 4, s. 19 (2).

Notice

(2) Where the Hearings Tribunal or a review officer requires that a notice be given by the employer to employees, the employer shall post the notice in the workplace and such notice shall be deemed to have been sufficiently given to all employees in the workplace when it is so posted. R.S.O. 1990, c. P.7, s. 32 (2).

Same

(2.1) If the Hearings Tribunal is satisfied that a notice required to be posted under subsection (1.1) has not been posted, the Tribunal may order a review officer to enter the workplace and post the notice. 1993, c. 4, s. 19 (2).

Representation

(3) An employee or a group of employees may appoint a representative to represent the employee or group of employees before the Hearings Tribunal or before a review officer. 2006, c. 21, Sched. C, s. 127 (2).

Idem

(4) Where an employee or group of employees advises the Hearings Tribunal or the Pay Equity Office in writing that the employee or group of employees wishes to remain anonymous, the representative of the employee or group of employees shall be the party to the proceeding before the Hearings Tribunal or review officer and not the employee or group of employees. R.S.O. 1990, c. P.7, s. 32 (4); 1993, c. 4, s. 19 (3); 2006, c. 21, Sched. C, s. 127 (3).

Idem

(5) Where subsection (4) applies, the representative, in the representative's name, may take all actions that an employee may take under this Act including the filing of objections under Part II and the filing of complaints under Part IV. R.S.O. 1990, c. P.7, s. 32 (5); 2006, c. 21, Sched. C, s. 127 (4).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 19 (1-3) - 01/07/1993

2006, c. 21, Sched. C, s. 127 (1-4) - 01/05/2007

Pay Equity Office

33 (1) The Pay Equity Office is responsible for the enforcement of this Act. R.S.O. 1990, c. P.7, s. 33 (1); 1993, c. 4, s. 20 (1).

Idem

(2) Without limiting the generality of subsection (1), the Pay Equity Office,

- (a) may conduct research and produce papers concerning any aspect of pay equity and related subjects and make recommendations to the Minister in connection therewith;
- (b) may conduct public education programs and provide information concerning any aspect of pay equity and related subjects;
- (c) shall provide support services to the Hearings Tribunal;
- (d) shall conduct such studies as the Minister requires and make reports and recommendations in relation thereto;
- (e) shall conduct a study with respect to systemic gender discrimination in compensation for work performed, in sectors of the economy where employment has traditionally been predominantly female, by female job classes in establishments that have no appropriate male job classes for the purpose of comparison under section 5 and, within one year of the effective date, shall make reports and recommendations to the Minister in relation to redressing such discrimination; and
- (f) shall prepare and make available to employers a form of notice to be posted under subsection 7.1 (1). R.S.O. 1990, c. P.7, s. 33 (2); 1993, c. 4, s. 20 (2).

Chief administrative officer

(3) The Lieutenant Governor in Council shall appoint a person to be the head of the Pay Equity Office and that person shall be the chief administrative officer of the Commission.

Minister may require studies, etc.

(4) The Minister may require the Pay Equity Office to conduct such studies related to pay equity as are set out in a request to the head of the Office and to make reports and recommendations in relation thereto.

Annual report

(5) The head of the Pay Equity Office shall prepare an annual report on the Commission, provide it to the Minister no later than 90 days after the end of the Commission's fiscal year and make it available to the public. 2017, c. 34, Sched. 46, s. 47.

Same

(6) The head of the Pay Equity Office shall comply with such directives as may be issued by the Management Board of Cabinet with respect to,

- (a) the form and content of the annual report; and
- (b) when and how to make it available to the public. 2017, c. 34, Sched. 46, s. 47.

Same

(7) The head of the Pay Equity Office shall include such additional content in the annual report as the Minister may require. 2017, c. 34, Sched. 46, s. 47.

Tabling of annual report

(8) The Minister shall table the annual report in the Assembly and shall comply with such directives as may be issued by the Management Board of Cabinet with respect to when to table it. 2017, c. 34, Sched. 46, s. 47.

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 20 (1, 2) - 01/07/1993

2017, c. 34, Sched. 46, s. 47 - 01/01/2018

Review officers

34 (1) The head of the Pay Equity Office shall designate one or more employees of the Office to be review officers.

Review officers, duties

(2) Review officers shall monitor the preparation and implementation of pay equity plans, shall investigate objections and complaints filed with the Commission, may attempt to effect settlements and shall take such other action as is set out in this Act or in an order of the Hearings Tribunal.

Powers

- (3) A review officer, for the purpose of carrying out his or her duties,
- (a) may enter any place at any reasonable time;
 - (b) may request the production for inspection of documents or things that may be relevant to the carrying out of the duties;
 - (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them;
 - (d) may question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination; and
 - (e) may provide in an order made under subsection 16 (2) or 24 (1) that any job class is a female job class or a male job class.

Procedure

(4) The *Statutory Powers Procedure Act* does not apply to a review officer and he or she is not required to hold a hearing before making an order authorized by this Act. R.S.O. 1990, c. P.7, s. 34.

Warrants

35 (1) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant for search

(2) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of a review officer's duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the review officer named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for entry

(3) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a review officer may carry out his or her duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry by the review officer named in the warrant.

Execution and expiry of warrant

(4) A warrant issued under this section,

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(5) No person shall hinder, obstruct or interfere with a review officer in the execution of a warrant or otherwise impede a review officer in carrying out his or her duties under this Act.

Idem

(6) Subsection (5) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (2).

Admissibility of copies

(7) Copies of, or extracts from, documents and things removed from premises under this Act and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts. R.S.O. 1990, c. P.7, s. 35.

PART VI REGULATIONS AND MISCELLANEOUS

Regulations

36 (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and notices and providing for their use;
- (b) prescribing methods for determining the historical incumbency of a job class;
- (c) prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class;
- (c.1) prescribing bodies for the purposes of clause 1.1 (1) (b);
- (d) prescribing the method of valuing any form of compensation;
- (e) prescribing criteria that shall be taken into account in determining whether work performed in two job classes is of equal or comparable value;
- (f) prescribing criteria that shall be taken into account in deciding whether or not a difference in compensation between a female job class and a male job class is a difference that is permitted by subsection 8 (1) or (2);
- (f.1) prescribing limitations on the requirement that an employer maintain pay equity for a female job class;
- (g) permitting the Hearings Tribunal, on the application of an employer and in accordance with such criteria as may be prescribed in the regulations, to change the mandatory posting date and the dates for adjustments in compensation to dates later than those set out in Part II and to vary the minimum adjustments in compensation required by that Part, subject to such conditions as the Hearings Tribunal may impose in its order granting the application;
- (g.1) prescribing one or more methods of comparing male and female job classes as proportional value methods of comparison;

- (h) amending the Appendix to the Schedule and providing that the mandatory posting date for an entity included in the Appendix by amendment is the date set out in the regulations. R.S.O. 1990, c. P.7, s. 36; 1993, c. 4, s. 21 (1, 2); 1996, c. 1, Sched. J, s. 8; 2006, c. 35, Sched. C, s. 107 (4).

Retroactivity

- (2) A regulation made under clause (1) (f.1) is, if it so provides, effective with reference to a period before it was filed. 1993, c. 4, s. 21 (3).

Section Amendments with date in force (d/m/y)

1993, c. 4, s. 21 (1-3) - 01/07/1993; 1996, c. 1, Sched. J, s. 8 - 01/01/1997

2006, c. 35, Sched. C, s. 107 (4) - 20/08/2007

Review of Act

- 37** (1) Seven years after the effective date, the Lieutenant Governor in Council shall appoint a person who shall undertake a comprehensive review of this Act and its operation.

Report to Minister

- (2) The person appointed under subsection (1) shall prepare a report on his or her findings and shall submit the report to the Minister.

Idem

- (3) The Minister shall table the report before the Assembly if it is in session or, if not, at the next session. R.S.O. 1990, c. P.7, s. 37.

Crown bound

- 38** This Act binds the Crown in right of Ontario. R.S.O. 1990, c. P.7, s. 38.

SCHEDULE

1 The public sector in Ontario consists of,

- (a) the Crown in right of Ontario, every agency thereof, and every authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council;
- (b) the corporation of every municipality in Ontario, every local board as defined by the *Municipal Affairs Act*, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario;
- (c) every board as defined in the *Education Act*, and every college, university or post-secondary school educational institution in Ontario the majority of the capital or annual operating funds of which are received from the Crown;
- (d) every hospital referred to in the list of hospitals and their grades and classifications maintained by the Minister of Health and Long-Term Care under the *Public Hospitals Act* and every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 1 (d) of the Schedule to the Act is repealed and the following substituted: (See: 2017, c. 25, Sched. 9, s. 108)

- (d) every hospital referred to in the list of hospitals and their grades and classifications maintained by the Minister of Health and Long-Term Care under the *Public Hospitals Act* and every community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*;
- (e) every corporation with share capital, at least 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;
- (f) every corporation without share capital, the majority of whose members or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;
- (g) every board of health under the *Health Protection and Promotion Act*, and every board of health under an Act of the Legislature that establishes or continues a regional municipality;
- (h) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly, the Office of the Ombudsman and the Auditor General; and

- (i) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commissions, corporations, offices, persons or organizations of persons, set out in the Appendix to this Schedule or added to the Appendix by the regulations made under this Act.

2 REPEALED: 2002, c. 17, Sched. C, s. 21.

Section Amendments with date in force (d/m/y)

2017, c. 25, Sched. 9, s. 108 - not in force

APPENDIX

MINISTRY OF THE ATTORNEY GENERAL

- 1 Community legal clinics that receive funding from the legal aid plan established under the *Legal Aid Act*.
- 2 Supervised access centres that receive funding from the Ministry of the Attorney General.

MINISTRY OF CITIZENSHIP, CULTURE AND RECREATION

- 1 Organizations providing services for immigrants and refugees that receive funding through the Newcomer Settlement Program of the Ministry of Citizenship, Culture and Recreation.
- 2 A native friendship centre, being an employer that is a not-for-profit corporation established to assist in improving the quality of life of urban and migrating native people.
- 3 The Art Gallery of Ontario.
- 4 CJRT-FM Inc.
- 5 Royal Botanical Gardens.
- 6 Community information centres.
- 7 The Northern Ontario Library Service Board.
- 8 The Southern Ontario Library Service Board.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

MINISTRY OF CHILDREN AND YOUTH SERVICES

- 1 Any corporation or organization of persons, other than one that has no employees other than employees who directly or indirectly control it, that,
 - (a) operates a children's residence under the authority of a licence issued under subsection 254 (3) of the *Child, Youth and Family Services Act, 2017*;
 - (b) provides residential care under the authority of a licence issued under subsection 254 (3) of the *Child, Youth and Family Services Act, 2017* unless the provider is a foster parent;
 - (c) REPEALED: 2007, c. 8, s. 223 (1).
 - (d) provides counselling services if the provision of those services is funded under the *General Welfare Assistance Act* (R.S.O. 1990, c. G.6);
 - (e) provides counselling services if the provision of those services is funded under the *Ministry of Community and Social Services Act* (R.S.O. 1990, c. M.20);
 - (f) operates a hostel providing services if the provision of those services is funded under the *General Welfare Assistance Act* (R.S.O. 1990, c. G.6);
 - (g) provides community services for adults if the provision of those services is funded by the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1990, c. M.20);
 - (h) provides vocational rehabilitation services if the provision of those services is funded under the *Vocational Rehabilitation Services Act* (R.S.O. 1990, c. V.5);
 - (i) operates a workshop under the *Vocational Rehabilitation Services Act* (R.S.O. 1990, c. V.5);
 - (j) operates a supported employment program, being a program established under subclause 5 (i) (ii) of the *Vocational Rehabilitation Services Act* (R.S.O. 1990, c. V.5) that provides individualized training and support for a disabled person to enable him or her to obtain and retain employment;

- (k) provides services funded under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* (S.O. 2008, c. 14);
- (l) provides the services of homemakers or nurses if the provision of those services is funded under the *Homemakers and Nurses Services Act* (R.S.O. 1990, c. H.10);
- (m) REPEALED: 2001, c. 13, s. 23 (2).
- (n) operates a child care centre or is a home child care agency within the meaning of the *Child Care and Early Years Act, 2014*;
- (o) operates programs providing services to child care centres funded under the *Child Care and Early Years Act, 2014*;
- (p) operates a program that receives a payment under the *Seniors Active Living Centres Act, 2017*;
- (q) provides services for young persons under Part VI of the *Child, Youth and Family Services Act, 2017* or under an agreement with the Ministry of Children and Youth Services;
- (r) provides children's services funded or purchased by the Ministry of Children and Youth Services or the Ministry of Community and Social Services under the *Child, Youth and Family Services Act, 2017*;
- (s) operates a childcare resource centre, being an employer providing services to persons providing care to young children and receiving funding under the *Ministry of Community and Social Services Act* (R.S.O. 1990, c. M.20);
- (t) provides a service funded under or provided under the authority of a licence issued under the *Child, Youth and Family Services Act, 2017*.

2 Societies, as defined in the *Child, Youth and Family Services Act, 2017*.

3, 4 REPEALED: 2007, c. 8, s. 223 (1).

5 District Welfare Administration Boards operating under the *District Welfare Administration Boards Act* (R.S.O. 1990, c. D.15).

MINISTRY OF ECONOMIC DEVELOPMENT, TRADE AND TOURISM

1 Metropolitan Toronto Convention Centre.

2 The St. Clair Parkway Commission.

MINISTRY OF EDUCATION AND TRAINING

1 Algoma College.

2 Assumption University.

3 Brescia College.

4 Canterbury College.

4.1 Centre franco-ontarien de ressources pédagogiques.

5 Collège dominicain de philosophie et de théologie.

6 Concordia Lutheran Seminary.

7 Conrad Grebel College.

8 Hearst College.

9 Holy Redeemer College.

10 Huntington University.

11 Huron College.

12 Iona College.

13 King's College.

14 Knox College.

15 L'Université de Sudbury.

16 McMaster Divinity College.

- 17 Nipissing College.
- 18 Queen's Theological College.
- 19 Regis College.
- 20 Renison College.
- 21 St. Augustine's Seminary.
- 22 St. Paul's United College.
- 23 St. Paul University.
- 24 St. Peter's Seminary.
- 25 The University of St. Jerome's College.
- 26 The University of St. Michael's College.
- 27 Thorneloe University.
- 28 Trinity College.
- 29 Victoria University.
- 30 Waterloo Lutheran Seminary.
- 31 Wycliffe College.
- 32 Youth employment centres providing community-based vocational planning and counselling that receive funding from the Ministry of Education and Training.

MINISTRY OF HEALTH AND LONG-TERM CARE

1 Any corporation or organization of persons, other than one that has no employees other than employees who directly or indirectly control it, that operates or provides,

- (a) an ambulance service, under the authority of a licence issued under the *Ambulance Act* (R.S.O. 1990, c. A.19);
- (b) a long-term care home under the authority of a licence issued, or an approval granted, under the *Long-Term Care Homes Act, 2007* but, for greater certainty, only in respect of its long-term care home beds with respect to which funding is received from the Province of Ontario a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006* or the corporation continued by section 3 of the *Connecting Care Act, 2019*;

Note: On April 11, 2022, the day named by proclamation of the Lieutenant Governor, clause 1 (b) under the heading "MINISTRY OF HEALTH AND LONG-TERM CARE" in the Appendix to the Schedule to the Act is amended by striking out "under the authority of a licence issued, or an approval granted, under the Long-Term Care Homes Act, 2007" and substituting "under the authority of a licence issued or replaced, or an approval granted or continued, under the Fixing Long-Term Care Act, 2021" (See: 2021, c. 39, Sched. 2, s. 19)

- (c) a laboratory or a specimen collection centre, under the authority of a licence issued under the Laboratory and Specimen Collection Centre Licensing Act (R.S.O. 1990, c. L.1);
- (d) a psychiatric facility within the meaning of the Mental Health Act (R.S.O. 1990, c. M.7), the operation of which is funded in whole or in part by the Ministry of Health and Long-Term Care a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006 or the corporation continued by section 3 of the Connecting Care Act, 2019;
- (e) a home for special care established, approved or licensed under the Homes for Special Care Act (R.S.O. 1990, c. H.2);
- (f) a home care facility within the meaning of the General Regulation made under the Health Insurance Act (R.S.O. 1990, c. H.6) or a facility which, by arrangement with any such home care facility,
 - i) provides nursing, physiotherapy, occupational therapy, speech therapy, nutritional counselling, social work, homemaking or other services to persons in their homes that are insured home care services under the General Regulation made under the Health Insurance Act (R.S.O. 1990, c. H.6), and
 - ii) is entitled to payment from the home care facility for or in respect of supplying such services;
- (g) a rehabilitation centre or a crippled children's centre listed in the relevant Schedule to the General Regulation made under the Health Insurance Act (R.S.O. 1990, c. H.6);

- (h.1) services relating to addiction if the provider of the services receives funding from the Ministry of Health and Long-Term Care a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006* or the corporation continued by section 3 of the *Connecting Care Act, 2019*;
- (i) an adult community mental health service the operation of which is, pursuant to an agreement in writing, funded in whole or in part by the Ministry of Health and Long-Term Care a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006* or the corporation continued by section 3 of the *Connecting Care Act, 2019*;
- (j) a placement service the operation of which is, pursuant to a “Placement Co-ordination Service Agreement” or other agreement in writing, funded in whole or in part by the Ministry of Health and Long-Term Care a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006* or the corporation continued by section 3 of the *Connecting Care Act, 2019*. 2019, c. 5, Sched. 3, s. 15 (2)

2 REPEALED: 2006, c. 4, s. 50 (3).

3 A laundry that is operated exclusively for one or more than one hospital.

4 Hospital Food Services-Ontario Inc.

5 REPEALED: O. Reg. 395/93, s. 8 (4).

6 Alcoholism and Drug Addiction Research Foundation.

7 The Canadian Red Cross Society in respect of its operations in Ontario.

8 The Hospital Council of Metropolitan Toronto.

9 The Hospital Medical Records Institute.

10 The Ontario Cancer Institute.

11 REPEALED: 2019, c. 5, Sched. 3, s. 15 (3).

12 REPEALED: 2017, c. 25, Sched. 8, s. 2.

13 Michener Institute for Applied Health Sciences.

14 A community health centre, being an employer,

- (a) who provides primary health services primarily to,

- (i) a group or groups of individuals who, because of culture, sex, language, socio-economic factors or geographic isolation, would be unlikely to receive some or all of those services from other sources, or

- (ii) a group or groups of individuals who, because of age, sex, socio-economic factors or environmental factors, are more likely to be in need of some or all of those services than other individuals; and

- (b) who receives funding from the Ministry of Health and Long-Term Care a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006* or the corporation continued by section 3 of the *Connecting Care Act, 2019* in accordance with the number or type of services provided. 2019, c. 5, Sched. 3, s. 15 (2).

15 A comprehensive health organization, being a not-for-profit corporation that,

- (a) provides or arranges for the provision of comprehensive health care services for individuals who are enrolled as members of the patient roster of the corporation; and

- (b) receives funding from the Ministry of Health and Long-Term Care a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006* or the corporation continued by section 3 of the *Connecting Care Act, 2019* in accordance with the number of individuals on the roster. 2019, c. 5, Sched. 3, s. 15 (2).

MINISTRY OF LABOUR

1 Pay Equity Advocacy and Legal Services.

2 A help centre, being an employer providing employment and vocational counselling services to adults that receives funding from the Ontario Help Centre Program of the Ministry of Labour.

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

1 Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) the collection, removal and disposal of garbage and other refuse for a municipality;

- (b) the operation and maintenance of buses for the conveyance of passengers under an agreement with a municipality.
- 2 Ontario Municipal Employees Retirement Board.
- 3 Toronto District Heating Corporation.

MINISTRY OF NATURAL RESOURCES

- 1 Conservation Authorities established under the *Conservation Authorities Act* (R.S.O. 1990, c. C.27).

MINISTRY OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES

- 1 Any agency, corporation or organization of persons, other than one that has no employees other than employees who directly or indirectly control it, that, under funding from the Ministry of the Solicitor General and Correctional Services,
 - (a) provides community residential or non-residential services; or
 - (b) supervises persons who have been convicted of or been found guilty of a criminal provincial offence or who have been accused of a criminal or provincial offence.
- 2 Sexual assault centres.

OFFICE RESPONSIBLE FOR WOMEN'S ISSUES

- 1 Any corporation or organization of persons, other than one that has no employees other than employees who directly or indirectly control it, that receives funding from the program administered by the Office Responsible for Women's Issues and known as Women's Centres Program: Investing in Women's Futures and that provides counselling, referral or information services for women.

R.S.O. 1990, c. P.7, Sched.; O. Reg. 395/93; 1998, c. 18, Sched. G, s. 67; O. Reg. 81/99; 2001, c. 13, s. 23; O. Reg. 37/02; 2002, c. 17, Sched. C, s. 21; 2004, c. 17, s. 32; 2006, c. 4, s. 50 (2-5); 2006, c. 19, Sched. D, s. 17; 2006, c. 19, Sched. M, s. 6; 2007, c. 8, s. 223; 2008, c. 14, s. 57; 2009, c. 33, Sched. 18, s. 24; 2014, c. 11, Sched. 6, s. 6; 2017, c. 11, Sched. 6, s. 14; 2017, c. 25, Sched. 8, s. 2; 2017, c. 14, Sched. 4, s. 25; 2017, c. 25, Sched. 8, s. 2; 2019, c. 5, Sched. 3, s. 15 (2, 3).

Section Amendments with date in force (d/m/y)

O. Reg. 395/93, s. 1-14 - 30/06/1993; 1998, c. 18, Sched. G, s. 67 - 01/02/1999; O. Reg. 81/99, s. 1-4 - 26/02/1999
 2001, c. 13, s. 23 (1, 2) - 30/11/2001
 O. Reg. 37/02, s. 1 - 07/02/2002; 2002, c. 17, Sched. C, s. 21 - 01/01/2003
 2004, c. 17, s. 32 - 30/11/2004
 2006, c. 4, s. 50 (2-5) - 28/03/2006; 2006, c. 19, Sched. D, s. 17 - 22/06/2006; 2006, c. 19, Sched. M, s. 6 (1, 2) - 22/06/2006
 2007, c. 8, s. 223 (1, 2) - 01/07/2010
 2008, c. 14, s. 57 - 01/01/2011
 2009, c. 33, Sched. 18, s. 24 - 15/12/2009
 CTS 20 SE 10 - 9
 2014, c. 11, Sched. 6, s. 6 - 31/08/2015
 2017, c. 11, Sched. 6, s. 14 - 01/10/2017; 2017, c. 14, Sched. 4, s. 25 (1-3) - 30/04/2018; 2017, c. 25, Sched. 8, s. 2 - 31/03/2018
 2019, c. 5, Sched. 3, s. 15 (2) - 06/06/2019; 2019, c. 5, Sched. 3, s. 15 (3) - 01/04/2020

Français

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Workplace Safety and Insurance Act, 1997

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Workplace Safety and Insurance Act, 1997

S.O. 1997, CHAPTER 16 SCHEDULE A

Consolidation Period: From October 19, 2021 to the [e-Laws currency date](#).

Last amendment: 2021, c. 4, Sched. 11, s. 42.

Legislative History: 1997, c. 26, Sched.; 1998, c. 36; 1999, c. 6, s. 67; 2000, c. 26, Sched. I; 2001, c. 9, Sched. I, s. 4; 2002, c. 8, Sched. P, s. 8; 2002, c. 18, Sched. J, s. 5; 2004, c. 8, s. 46, 47 (2); 2004, c. 17, s. 32; 2005, c. 5, s. 73; 2005, c. 29, s. 7; 2006, c. 13, s. 4; 2006, c. 19, Sched. M, s. 7; 2007, c. 3; 2007, c. 7, Sched. 41; 2008, c. 20; 2009, c. 33, Sched. 6, s. 91; 2009, c. 33, Sched. 20, s. 4; 2010, c. 15, s. 248; 2010, c. 16, Sched. 9, s. 2; 2010, c. 26, Sched. 21; 2011, c. 1, Sched. 7, s. 3; 2011, c. 11, s. 19-28; CTS 30 SE 11 - 2; Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*; 2014, c. 10, Sched. 5; 2015, c. 34, Sched. 3; 2015, c. 38, Sched. 23; 2016, c. 4, s. 1, 2; 2017, c. 7, s. 6; 2017, c. 8, Sched. 33; 2017, c. 14, Sched. 4, s. 36; 2017, c. 24, s. 82; 2017, c. 34, Sched. 45; 2017, c. 34, Sched. 46, s. 55; 2018, c. 3, Sched. 5, s. 68 (see: 2019, c. 1, Sched. 3, s. 5); 2018, c. 6, Sched. 3, s. 16; 2018, c. 8, Sched. 37; 2019, c. 1, Sched. 4, s. 66; 2019, c. 7, Sched. 17, s. 169; 2019, c. 9, Sched. 13; 2021, c. 3; 2021, c. 4, Sched. 11, s. 42.

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PART I INTERPRETATION

Purpose

1 The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:

1. To promote health and safety in workplaces.
2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
4. To provide compensation and other benefits to workers and to the survivors of deceased workers. 1997, c. 16, Sched. A, s. 1; 1999, c. 6, s. 67 (1); 2005, c. 5, s. 73 (1); 2011, c. 11, s. 19.

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (1) - 01/03/2000

2005, c. 5, s. 73 (1) - 09/03/2005

2011, c. 11, s. 19 - 01/04/2012

Definitions

2 (1) In this Act,

“accident” includes,

- (a) a wilful and intentional act, not being the act of the worker,
- (b) a chance event occasioned by a physical or natural cause, and
- (c) disablement arising out of and in the course of employment; (“accident”)

“Appeals Tribunal” means the Workplace Safety and Insurance Appeals Tribunal; (“Tribunal d’appel”)

“attorney” means a person authorized under a power of attorney for property given under the *Substitute Decisions Act, 1992*; (“procureur”)

“Board” means the Workplace Safety and Insurance Board; (“Commission”)

“child” means a child within the meaning of subsection 1 (1) of the *Family Law Act*; (“enfant”)

“construction” means any of the industries listed in Class G of Schedule 1; (“construction”)

“dependants” means such of the following persons as were wholly or partly dependent upon the worker’s earnings at the time of his or her death or who, but for the incapacity due to the accident, would have been so dependent:

- 1. Parent, stepparent or person who stood in the role of parent to the worker.
- 2. Sibling or half-sibling.
- 3. Grandparent.
- 4. Grandchild; (“personnes à charge”)

“earnings” or “wages” include any remuneration capable of being estimated in terms of money but does not include contributions made under section 25 for employment benefits; (“gains” ou “salaire”)

“emergency worker” means a person described in paragraph 6, 7 or 8 of the definition of worker who is injured while engaged in the activity described in that paragraph; (“travailleur dans une situation d’urgence”)

“employer” means every person having in his, her or its service under a contract of service or apprenticeship another person engaged in work in or about an industry and includes,

- (a) a trustee, receiver, liquidator, executor or administrator who carries on an industry,
- (b) a person who authorizes or permits a learner to be in or about an industry for the purpose of undergoing training or probationary work, or
- (c) a deemed employer; (“employeur”)

“guardian”, except in subsections 30 (7) and 60 (4), means a guardian of property appointed under the *Substitute Decisions Act, 1992* or a statutory guardian of property designated by or appointed under that Act; (“tuteur”)

“health care practitioner” means a health professional, a drugless practitioner regulated under the *Drugless Practitioners Act* or a social worker; (“praticien de la santé”)

“health professional” means a member of the College of a health profession as defined in the *Regulated Health Professions Act, 1991*; (“professionnel de la santé”)

“impairment” means a physical or functional abnormality or loss (including disfigurement) which results from an injury and any psychological damage arising from the abnormality or loss; (“déficience”)

“independent operator”, subject to section 12.1, means a person who carries on an industry included in Schedule 1 or Schedule 2 and who does not employ any workers for that purpose; (“exploitant indépendant”)

“industry” includes an establishment, undertaking, trade, business or service and, if domestics are employed, includes a household; (“secteur d’activité”)

“insurance fund” means the fund described in section 96; (“caisse d’assurance”)

“insurance plan” means the benefits and obligations set out in Parts III to IX; (“régime d’assurance”)

“learner” means a person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry for the purpose of undergoing training or probationary work; (“stagiaire”)

“medical assistance in dying” means medical assistance in dying within the meaning of section 241.1 of the *Criminal Code* (Canada); (“aide médicale à mourir”)

“Minister” means the Minister of Labour; (“ministre”)

“occupational disease” includes,

- (a) a disease resulting from exposure to a substance relating to a particular process, trade or occupation in an industry,
- (b) a disease peculiar to or characteristic of a particular industrial process, trade or occupation,
- (c) a medical condition that in the opinion of the Board requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition may be a precursor to an occupational disease,
- (d) a disease mentioned in Schedule 3 or 4, or
- (e) a disease prescribed under clause 15.1 (8) (d); (“maladie professionnelle”)

“permanent impairment” means impairment that continues to exist after the worker reaches maximum medical recovery; (“déficience permanente”)

“personal representative” means a personal representative as defined in subsection 1 (1) of the *Succession Law Reform Act*; (“représentant successoral”)

“prescribed” means prescribed by the regulations made under this Act; (“prescrit”)

“Schedule 1 employer” means an employer in a class or group of industries included in Schedule 1 but does not include an employer who is a Schedule 2 employer (other than a Schedule 2 employer declared by the Board under section 74 to be deemed to be a Schedule 1 employer); (“employeur mentionné à l’annexe 1”)

“Schedule 2 employer” means an employer in a class of industries included in Schedule 2; (“employeur mentionné à l’annexe 2”)

“silicosis” means a fibrotic condition of the lungs caused by the inhalation of silica dust that is sufficient to produce a lessened capacity for work; (“silicose”)

“spouse” means a person,

- (a) to whom the person is married, or
- (b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,
 - (i) have cohabited for at least one year,
 - (ii) are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*; (“conjoint”)

“student” means a person who is pursuing formal education as a full-time or part-time student and is employed by an employer for the purposes of the employer’s industry, although not as a learner or an apprentice; (“étudiant”)

“survivor” means a spouse, child or dependant of a deceased worker; (“survivant”)

“temporary help agency” means an employer referred to in section 72 who primarily engages in the business of lending or hiring out the services of its workers to other employers on a temporary basis for a fee; (“agence de placement temporaire”)

“worker” means a person who has entered into or is employed under a contract of service or apprenticeship and includes the following:

1. A learner.
2. A student.
3. An auxiliary member of a police force.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 of the definition of “worker” in subsection 2 (1) of the Act is amended by striking out “police force” at the end and substituting “police service”. (See: 2019, c. 1, Sched. 4, s. 66 (1))

4. A member of a volunteer ambulance brigade.
5. A member of a municipal volunteer fire brigade whose membership has been approved by the chief of the fire department or by a person authorized to do so by the entity responsible for the brigade.
6. A person summoned to assist in controlling or extinguishing a fire by an authority empowered to do so.

7. A person who assists in a search and rescue operation at the request of and under the direction of a member of the Ontario Provincial Police.
8. A person who assists in connection with an emergency that has been declared by the Lieutenant Governor in Council or the Premier under section 7.0.1 of the *Emergency Management and Civil Protection Act* or by the head of council of a municipality under section 4 of that Act.
9. A person deemed to be a worker of an employer by a direction or order of the Board.
10. A person deemed to be a worker under section 12 or 12.2.
11. A pupil deemed to be a worker under the *Education Act*. (“travailleur”) 1997, c. 16, Sched. A, s. 2 (1); 1999, c. 6, s. 67 (2-4); 2002, c. 18, Sched. J, s. 5 (1); 2005, c. 5, s. 73 (2-4); 2006, c. 13, s. 4 (1); 2007, c. 3, s. 1; 2008, c. 20, s. 1; 2014, c. 10, Sched. 5, s. 1; 2017, c. 7, s. 6 (1); 2021, c. 4, Sched. 11, s. 42 (1).

Schedules

(2) A reference in this Act to Schedule 1, 2, 3 or 4 means the schedules as established in the regulations made under this Act. 1997, c. 16, Sched. A, s. 2 (2).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (2-4) - 01/03/2000
 2002, c. 18, Sched. J, s. 5 (1) - 26/11/2002
 2005, c. 5, s. 73 (2-4) - 09/03/2005
 2006, c. 13, s. 4 (1) - 30/06/2006
 2007, c. 3, s. 1 - 04/05/2007
 2008, c. 20, s. 1 (1-3) - 01/01/2013
 2014, c. 10, Sched. 5, s. 1 - 06/04/2018
 2017, c. 7, s. 6 (1) - 10/05/2017
 2018, c. 3, Sched. 5, s. 68 (1) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019
 2019, c. 1, Sched. 4, s. 66 (1) - not in force
 2021, c. 4, Sched. 11, s. 42 (1) - 19/04/2021

Human Rights Code

2.1 (1) A provision of this Act or the regulations under it, or a decision or policy made under this Act or the regulations under it, that requires or authorizes a distinction because of age applies despite sections 1 and 5 of the *Human Rights Code*. 2005, c. 29, s. 7.

Same

(2) Subsection (1) applies with necessary modifications to any predecessor to this Act or the regulations under it, or any decision or policy made under such an Act or regulation. 2005, c. 29, s. 7.

Same

(3) Subsections (1) and (2) apply even if the facts in respect of which the requirement or distinction is made occurred before the day on which this section comes into force. 2005, c. 29, s. 7.

Section Amendments with date in force (d/m/y)

2005, c. 29, s. 7 - 12/12/2005

Medical assistance in dying

2.2 For the purposes of this Act, a worker who receives medical assistance in dying is deemed to have died as a result of the injury or disease for which the worker was determined to be eligible to receive medical assistance in dying in accordance with paragraph 241.2 (3) (a) of the *Criminal Code* (Canada). 2017, c. 7, s. 6 (2).

Section Amendments with date in force (d/m/y)

2017, c. 7, s. 6 (2) - 10/05/2017

Part II (SS. 3-10) REPEALED: 2011, C. 11, S. 20.

3 REPEALED: 2011, c. 11, s. 20.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 20 - 01/04/2012

4 REPEALED: 2011, c. 11, s. 20.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 2 - no effect - see 2011, c. 11, s. 20 - 01/04/2012

2010, c. 16, Sched. 9, s. 2 - 25/10/2010

2011, c. 11, s. 20 - 01/04/2012

5-7 REPEALED: 2011, c. 11, s. 20.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 20 - 01/04/2012

8 REPEALED: 2011, c. 11, s. 20.

Section Amendments with date in force (d/m/y)

2010, c. 15, s. 248 (1) - no effect - see 2011, c. 11, s. 20 - 01/04/2012

2011, c. 11, s. 20 - 01/04/2012

9 REPEALED: 2011, c. 11, s. 20.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 20 - 01/04/2012

10 REPEALED: 2011, c. 11, s. 20.

Section Amendments with date in force (d/m/y)

1997, c. 16, Sched. A, s. 10 (2) - no effect - see 2011, c. 11, s. 20 - 01/04/2012

2011, c. 11, s. 20 - 01/04/2012

**PART III
INSURANCE PLAN**

INSURED EMPLOYMENT, INJURIES AND DISEASES

Insured workers

11 (1) The insurance plan applies to every worker who is employed by a Schedule 1 employer or a Schedule 2 employer. However, it does not apply to workers who are,

- (a) persons whose employment by an employer is of a casual nature and who are employed otherwise than for the purposes of the employer's industry; or
- (b) persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in the person's own home or on other premises not under the control or management of the person who gave out the articles or materials. 1997, c. 16, Sched. A, s. 11 (1).

Exception

(2) Subject to sections 12 and 12.2, the insurance plan does not apply to workers who are executive officers of a corporation. 1997, c. 16, Sched. A, s. 11 (2); 2008, c. 20, s. 3.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 3 - 01/01/2013

Optional insurance

Deemed workers

12 (1) Any of the following persons may apply to the Board for a declaration that he or she is deemed to be a worker to whom the insurance plan applies:

1. An independent operator who carries on business in an industry included in Schedule 1 or Schedule 2, other than construction.
2. A sole proprietor who carries on business in an industry included in Schedule 1 or Schedule 2, other than construction.
3. A partner in a partnership that carries on business in an industry included in Schedule 1 or Schedule 2, other than construction. 2008, c. 20, s. 4.

Exception, construction

(2) Despite paragraph 3 of subsection (1), a partner in a partnership that carries on business in construction may make an application under subsection (1) for a declaration that he or she is deemed to be a worker to whom the insurance plan applies for any period of time during which the partner is not deemed to be a worker under subsection 12.2 (1). 2008, c. 20, s. 4.

Deemed worker, executive officer

(3) A corporation that carries on business in an industry included in Schedule 1 or Schedule 2, other than construction, may apply to the Board for a declaration that an executive officer of the corporation is deemed to be a worker to whom the insurance plan applies. 2008, c. 20, s. 4.

Exception, executive officers re construction

(4) Despite subsection (3), a corporation that carries on business in construction may apply to the Board for a declaration that an executive officer of the corporation is deemed to be a worker to whom the insurance plan applies for any period of time during which the executive officer is not deemed to be a worker under subsection 12.2 (1). 2008, c. 20, s. 4.

Executive officer's consent

(5) An application under subsection (3) may be made only with the executive officer's consent. 2008, c. 20, s. 4.

Conditions

(6) The Board may make a declaration under subsection (1) or (3) subject to such conditions as it considers appropriate. The declaration may provide that the person is deemed to be a worker only for such period as is specified. 2008, c. 20, s. 4.

Deemed employer

(7) When the Board makes a declaration under subsection (1) or (3), the independent operator, sole proprietor, partnership or corporation, as the case may be, is deemed to be the employer for the purposes of the insurance plan. 2008, c. 20, s. 4.

Payment in advance

(8) The Board may require the employer to pay in advance all or part of any premiums payable in respect of the person. 2008, c. 20, s. 4.

Revocation

(9) The Board may revoke a declaration made under subsection (1) or (3) if the employer defaults at any time in paying the required premiums in respect of the person. 2008, c. 20, s. 4.

Set-off

(10) If the employer defaults in paying the required premiums in respect of the person and the person or his or her survivors are entitled to receive payments under the insurance plan, the Board may deduct from those payments the amount owed by the employer. 2008, c. 20, s. 4.

Exempt home renovation work

- (11) Despite anything else in this section, subsections (1) to (10) apply, with necessary modifications, in respect of,
- (a) independent operators and sole proprietors described in clause 12.2 (8) (a); and
 - (b) partners and executive officers described in clause 12.2 (8) (b). 2008, c. 20, s. 4.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 4 - 01/01/2013

Meaning of “independent operator” in ss. 12.2, 12.3 and 182.1

12.1 In sections 12.2, 12.3 and 182.1,

“independent operator” means,

- (a) an individual who,
 - (i) does not employ any workers,
 - (ii) reports himself or herself as self-employed for the purposes of an Act or regulation of Ontario, Canada or another province or territory of Canada, and
 - (iii) is retained as a contractor or subcontractor by more than one person during the time period set out in a Board policy, or
- (b) an individual who is an executive officer of a corporation that,
 - (i) does not employ any workers other than the individual, and
 - (ii) is retained as a contractor or subcontractor by more than one person during the time period set out in a Board policy. 2008, c. 20, s. 4; 2011, c. 1, Sched. 7, s. 3 (1, 2).

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 4 - 01/01/2013

2011, c. 1, Sched. 7, s. 3 (1, 2) - 01/01/2013

Compulsory insurance — construction

Deemed workers

12.2 (1) The following persons are deemed to be workers to whom the insurance plan applies:

1. Every independent operator carrying on business in construction.
2. Every sole proprietor carrying on business in construction.
3. Except as otherwise provided by the regulations, every partner in a partnership carrying on business in construction.
4. Except as otherwise provided by the regulations, every executive officer of a corporation carrying on business in construction. 2008, c. 20, s. 4.

Deemed employer

(2) When a person is deemed to be a worker under subsection (1), the independent operator, sole proprietor, partnership or corporation, as the case may be, is deemed to be the employer for the purposes of the insurance plan. 2008, c. 20, s. 4.

Payment in advance

(3) The Board may require the employer to pay in advance all or part of any premiums payable in respect of the person. 2008, c. 20, s. 4.

Set-off

(4) If the employer defaults in paying the required premiums in respect of the person and the person or his or her survivors are entitled to receive payments under the insurance plan, the Board may deduct from those payments the amount owed by the employer. 2008, c. 20, s. 4.

Regulations, partners and executive officers

(5) The Lieutenant Governor in Council may make regulations,

- (a) exempting a partner or executive officer from the application of subsections (1) to (4);
- (b) prescribing the conditions that must be satisfied by the partner, partnership, executive officer or corporation, as the case may be, for the exemption to apply. 2008, c. 20, s. 4.

Same

(6) A regulation made under subsection (5) may prescribe conditions relating to, but not limited to,

- (a) the minimum number of executive officers of the corporation;
- (b) the nature of the work performed by a partner or executive officer;

- (c) the size of the partnership or corporation and the manner of determining the size of each;
- (d) the number or the manner of determining the number of partners of a partnership or executive officers of a corporation that are exempt. 2008, c. 20, s. 4.

Same

- (7) A regulation made under subsection (5) may,
 - (a) prescribe different conditions relating to partners and executive officers and to partnerships and corporations;
 - (b) prescribe such requirements as may be necessary to enable the Board to administer the regulation and to determine if, at any particular time, a partner or executive officer is exempt from the application of subsections (1) to (4). 2008, c. 20, s. 4.

Exempt home renovation work

- (8) Subsections (1) to (4) do not apply in respect of,
 - (a) independent operators and sole proprietors who perform no construction work other than exempt home renovation work; and
 - (b) partners in partnerships and executive officers of corporations who perform no construction work other than exempt home renovation work. 2008, c. 20, s. 4.

Material change in circumstances

- (9) A person in respect of whom the exemption set out in subsection (8) applies shall notify the Board of any material change in circumstances in connection with the exemption, within 10 days after the material change occurs. 2008, c. 20, s. 4.

Definitions

- (10) In this section,

“exempt home renovation work” means construction work that is performed,

- (a) by an independent operator, a sole proprietor, a partner in a partnership or an executive officer of a corporation, and
- (b) on an existing private residence that is occupied or to be occupied by the person who directly retains the independent operator, sole proprietor, partnership or corporation, or by a member of the person’s family; (“travaux de rénovation domiciliaire exemptés”)

“member of the person’s family” means,

- (a) the person’s spouse,
- (b) the person’s child or grandchild,
- (c) the person’s parent, grandparent, father-in-law or mother-in-law,
- (d) the person’s sibling, or
- (e) anyone whose relationship to the person is a “step” relationship corresponding to one mentioned in clause (b), (c) or (d); (“membre de sa famille”)

“private residence” includes,

- (a) a private residence that is used seasonally or for recreational purposes, and
- (b) structures that are,
 - (i) normally incidental or subordinate to the private residence,
 - (ii) situated on the same site, and
 - (iii) used exclusively for non-commercial purposes. (“résidence privée”) 2008, c. 20, s. 4; 2021, c. 4, Sched. 11, s. 42 (2).

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 4 - 01/01/2013

2021, c. 4, Sched. 11, s. 42 (2) - 19/04/2021

Registration

12.3 (1) Every independent operator carrying on business in construction shall register with the Board within 10 days after becoming such an independent operator. 2008, c. 20, s. 4.

Same

(2) Every sole proprietor who carries on business in construction and does not employ any workers shall register with the Board within 10 days after becoming such a sole proprietor. 2008, c. 20, s. 4.

Same

(3) Every partner in a partnership that carries on business in construction and does not employ any workers shall register with the Board within 10 days after becoming such a partner unless the partner is not subject to subsections 12.2 (1) to (4). 2008, c. 20, s. 4.

Information

(4) A person who registers with the Board under this section shall, when registering and at such other times as the Board may require, make and file with the Board a declaration containing such information as the Board may require to administer section 12.2. 2008, c. 20, s. 4.

Exempt home renovation work

(5) Subsections (1) to (4) do not apply in respect of,

- (a) independent operators and sole proprietors described in clause 12.2 (8) (a); and
- (b) partners described in clause 12.2 (8) (b). 2008, c. 20, s. 4; 2011, c. 1, Sched. 7, s. 3 (3).

Material change in circumstances

(6) A person who registers with the Board under this section shall notify the Board of any material change in circumstances in connection with information given to the Board under subsection (4), within 10 days after the material change occurs. 2008, c. 20, s. 4.

Same, exemption

(7) A person in respect of whom the exemption set out in subsection (5) applies shall notify the Board of any material change in circumstances in connection with the exemption, within 10 days after the material change occurs. 2008, c. 20, s. 4.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 4 - 01/01/2013

2011, c. 1, Sched. 7, s. 3 (3) - 01/01/2013

Insured injuries

13 (1) A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan. 1997, c. 16, Sched. A, s. 13 (1).

Presumptions

(2) If the accident arises out of the worker's employment, it is presumed to have occurred in the course of the employment unless the contrary is shown. If it occurs in the course of the worker's employment, it is presumed to have arisen out of the employment unless the contrary is shown. 1997, c. 16, Sched. A, s. 13 (2).

Exception, employment outside Ontario

(3) Except as provided in sections 18 to 20, the worker is not entitled to benefits under the insurance plan if the accident occurs while the worker is employed outside of Ontario. 1997, c. 16, Sched. A, s. 13 (3).

Mental stress

(4) Subject to subsection (5), a worker is entitled to benefits under the insurance plan for chronic or traumatic mental stress arising out of and in the course of the worker's employment. 2017, c. 8, Sched. 33, s. 1.

Personal injury

(4.1) The worker is entitled to benefits under the insurance plan as if the mental stress were a personal injury by accident. 2017, c. 34, Sched. 45, s. 1.

Same, exception

(5) A worker is not entitled to benefits for mental stress caused by decisions or actions of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the employment. 2017, c. 8, Sched. 33, s. 1.

Section Amendments with date in force (d/m/y)

2016, c. 4, s. 1 - 06/04/2016

2017, c. 8, Sched. 33, s. 1 - 01/01/2018; 2017, c. 34, Sched. 45, s. 1 - 01/01/2018

Transition rules re mental stress

13.1 (1) The rules set out in subsections (2) to (9) apply for the purposes of determining entitlement to benefits under subsection 13 (4). 2017, c. 34, Sched. 45, s. 2.

New claim

(2) If a worker's mental stress occurs on or after April 29, 2014 and the worker has not filed a claim in respect of entitlement to benefits for mental stress before January 1, 2018, the worker or the worker's survivor may file a claim for entitlement to benefits for mental stress with the Board and the Board shall decide the claim in accordance with subsection 13 (4) as it reads at the time the Board makes its decision. 2017, c. 34, Sched. 45, s. 2.

No refiling of claims

(3) Subject to subsection (9), if a worker filed a claim for entitlement to benefits for mental stress and the claim was denied by the Board or by the Appeals Tribunal before January 1, 2018, the worker may not refile the claim under this section. 2017, c. 34, Sched. 45, s. 2.

Time limits

(4) The time limits in subsections 22 (1) and (2) do not apply in respect of a claim that is filed under subsection (2) that is made in respect of mental stress that occurred on or after April 29, 2014 and before January 1, 2018. 2017, c. 34, Sched. 45, s. 2.

Same

(5) A claim filed under subsection (2) that is made in respect of mental stress that occurred on or after April 29, 2014 and before January 1, 2018 must be filed on or before July 1, 2018. 2017, c. 34, Sched. 45, s. 2.

Pending claim

(6) If a worker or a survivor has filed a claim for entitlement for mental stress within the time limits set out in subsection 22 (1) or 22 (2), or pursuant to an extension of time granted by the Board under subsection 22 (3), and the claim is pending before the Board on January 1, 2018, the Board shall decide the claim in accordance with subsection 13 (4) as it reads at the time the Board makes its decision, regardless of the date on which the worker's mental stress occurred. 2017, c. 34, Sched. 45, s. 2.

Same

(7) For the purposes of subsection (6), a claim is pending on January 1, 2018 if,

- (a) the Board had not yet made a decision in respect of the claim by that day; or
- (b) the Board had not yet made a final decision in respect of the claim by that day. 2017, c. 34, Sched. 45, s. 2.

Pending appeal

(8) If a worker or a survivor has filed a claim with the Board for entitlement to benefits for mental stress within the time limits set out in subsection 22 (1) or 22 (2), or pursuant to an extension of time granted by the Board under subsection 22 (3), and the claim is pending before the Appeals Tribunal on January 1, 2018, the Appeals Tribunal shall refer the claim back to the Board and the Board shall decide the claim in accordance with subsection 13 (4) as it reads at the time the Board makes its decision, regardless of the date on which the worker's mental stress occurred. 2017, c. 34, Sched. 45, s. 2.

Other appeal

(9) If, on or after January 1, 2018 and within the time limit set out in subsection 125 (2), a worker or a survivor files a notice of appeal of a final decision of the Board made before January 1, 2018 regarding a claim for entitlement to benefits for mental stress with the Appeals Tribunal, the Appeals Tribunal shall refer the claim back to the Board and the Board shall decide the claim in accordance with subsection 13 (4) as it reads at the time the Board makes its decision, regardless of the date on which the worker's mental stress occurred. 2017, c. 34, Sched. 45, s. 2.

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 45, s. 2 - 01/01/2018

Posttraumatic stress disorder, first responders and other workers

Definitions

14 (1) In this section,

“ambulance service” has the same meaning as in subsection 1 (1) of the *Ambulance Act*; (“service d’ambulance”)

“ambulance service manager” means a worker employed in an ambulance service who manages or supervises one or more paramedics and whose duties include providing direct support to paramedics dispatched by a communications officer on a request for ambulance services; (“chef de service d’ambulance”)

“band council” means a council of the band as defined in subsection 2 (1) of the *Indian Act* (Canada); (“conseil de bande”)

“communications officer” means a communications officer for the purposes of the *Ambulance Act*; (“agent de répartition”)

“correctional institution” means a correctional institution as defined in section 1 of the *Ministry of Correctional Services Act* or a similar institution operated for the custody of inmates; (“établissement correctionnel”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “correctional institution” in subsection 14 (1) of the Act is amended by striking out “section 1 of the *Ministry of Correctional Services Act*” and substituting “section 2 of the *Correctional Services and Reintegration Act, 2018*”. (See: 2018, c. 6, Sched. 3, s. 16)

“correctional services officer” means a worker who is directly involved in the care, health, discipline, safety and custody of an inmate confined to a correctional institution, but does not include a bailiff, probation officer or parole officer; (“agent des services correctionnels”)

“emergency medical attendant” has the same meaning as in subsection 1 (1) of the *Ambulance Act*; (“ambulancier”)

“firefighter” means,

- (a) a firefighter as defined in subsection 1 (1) of the *Fire Protection and Prevention Act, 1997*, or
- (b) a worker who,
 - (i) is employed by a band council and assigned to undertake fire protection services on a reserve, or
 - (ii) provides fire protection services on a reserve, either as a volunteer or for a nominal consideration, honorarium, training or activity allowance; (“pompier”)

“fire investigator” means,

- (a) a worker to whom the Fire Marshal appointed under subsection 8 (1) of the *Fire Protection and Prevention Act, 1997* has delegated the duty to investigate the cause, origin and circumstances of a fire,
- (b) a worker who was an inspector appointed under subsection 2 (4) of the *Fire Marshals Act* before that Act was repealed by the *Fire Protection and Prevention Act, 1997*, or
- (c) a worker who is employed by a band council and assigned to investigate the cause, origin and circumstances of a fire on a reserve; (“enquêteur sur les incendies”)

“full-time firefighter” means a worker who is a firefighter, is regularly employed on a salaried basis and is scheduled to work an average of 35 hours or more per week; (“pompier à temps plein”)

“member of an emergency response team” means a person who provides first aid or medical assistance in an emergency, either as a volunteer or for a nominal consideration, honorarium or training or activity allowance, and who is dispatched by a communications officer to provide the assistance, but does not include an emergency medical attendant, a firefighter, a paramedic or a police officer; (“membre d’une équipe d’intervention d’urgence”)

“operational manager” means a worker who directly supervises one or more correctional services officers; (“chef des opérations”)

“paramedic” has the same meaning as in subsection 1 (1) of the *Ambulance Act*; (“auxiliaire médical”)

“part-time firefighter” means a worker who is a firefighter and is not a volunteer firefighter or full-time firefighter; (“pompier à temps partiel”)

“place of secure custody” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“lieu de garde en milieu fermé”)

“place of secure temporary detention” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“lieu de détention provisoire en milieu fermé”)

“police officer” means a chief of police, any other police officer or a First Nations Constable, but does not include a person who is appointed as a police officer under the *Interprovincial Policing Act, 2009*, a special constable, a municipal law enforcement officer or an auxiliary member of a police force; (“agent de police”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “police officer” in subsection 14 (1) of the Act is amended by striking out “First Nations Constable” and substituting “First Nation Officer” and by striking out “police force” at the end and substituting “police service”. (See: 2019, c. 1, Sched. 4, s. 66 (2))

“posttraumatic stress disorder” means, subject to subsection (19), posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published by the American Psychiatric Association; (“état de stress post-traumatique”)

“psychiatrist” has the same meaning as in subsection 1 (1) of the *Mental Health Act*; (“psychiatre”)

“psychologist” means a member of the College of Psychologists of Ontario who holds a certificate of registration for a psychologist authorizing autonomous practice, or an individual who has a similar status in another province or territory of Canada; (“psychologue”)

“reserve” means a reserve as defined in subsection 2 (1) of the *Indian Act* (Canada); (“réserve”)

“worker in a correctional institution” means a correctional services officer, an operational manager, or a worker who is employed at a correctional institution to provide direct health care services by assessing, treating, monitoring, evaluating and administering medication to an inmate confined to a correctional institution; (“travailleur d’un établissement correctionnel”)

“worker in a place of secure custody or place of secure temporary detention” means a youth services worker, a youth services manager, or a worker who is employed at a place of secure custody or place of secure temporary detention to provide direct health care services by assessing, treating, monitoring, evaluating and administering medication to a young person in custody or detention at the place of secure custody or secure temporary detention; (“travailleur d’un lieu de garde en milieu fermé ou d’un lieu de détention provisoire en milieu fermé”)

“worker involved in dispatch” means a communications officer, a worker whose duties include the dispatch of firefighters and police officers, or a worker who receives emergency calls that initiate the dispatch of ambulance services, firefighters and police officers; (“travailleur s’occupant de répartition”)

“young person” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“adolescent”)

“youth services manager” means a worker who is employed in a management position at a place of secure custody or secure temporary detention, and who directly supervises youth services workers, but does not include an administrator of a place of secure custody or secure temporary detention or a manager who only supervises educational, health-related or counselling services to young persons at the facility; (“chef des services aux jeunes”)

“youth services worker” means a worker who is employed at a place of secure custody or secure temporary detention, and who directly supervises young persons who are in custody or detention at the place of secure custody or secure temporary detention, including supervising daily routines and programs, but does not include a worker who provides only educational, health-related or counselling services to young persons at the facility. (“travailleur des services aux jeunes”) 2016, c. 4, s. 2; 2017, c. 14, Sched. 4, s. 36; 2018, c. 8, Sched. 37, s. 1 (1).

Application

(2) This section applies with respect to the following workers:

1. Full-time firefighters.
2. Part-time firefighters.
3. Volunteer firefighters.
4. Fire investigators.
5. Police officers.
6. Members of an emergency response team.
7. Paramedics.

8. Emergency medical attendants.
9. Ambulance service managers.
10. Workers in a correctional institution.
11. Workers in a place of secure custody or place of secure temporary detention.
12. Workers involved in dispatch.
13. Members of the College of Nurses of Ontario who directly provide patient care and who are not workers described in paragraph 10 or 11.
14. Provincial bailiffs appointed under the *Ministry of Correctional Services Act*.

Note: On the day section 33 of Schedule 2 to the *Correctional Services Transformation Act, 2018* comes into force, paragraph 14 of subsection 14 (2) of the Act is amended by striking out “*Ministry of Correctional Services Act*” at the end and substituting “*Correctional Services and Reintegration Act, 2018*”. (See: 2018, c. 8, Sched. 37, s. 3 (3))

15. Probation officers appointed under or in accordance with the *Ministry of Correctional Services Act* or the *Child and Family Services Act*.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 15 of subsection 14 (2) of the Act is amended by striking out “*Child and Family Services Act*” at the end and substituting “*Child, Youth and Family Services Act, 2017*”. (See: 2018, c. 8, Sched. 37, s. 1 (3))

Note: On the day section 153 of Schedule 2 to the *Correctional Services Transformation Act, 2018* comes into force, paragraph 15 of subsection 14 (2) of the Act is amended by striking out “*Ministry of Correctional Services Act*” and substituting “*Correctional Services and Reintegration Act, 2018*”. (See: 2018, c. 8, Sched. 37, s. 3 (4))

16. Workers who directly supervise workers described in paragraph 15.
17. Special constables appointed under the *Police Services Act*.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 17 of subsection 14 (2) of the Act is amended by striking out “*Police Services Act*” at the end and substituting “*Police Services Act, 2018*”. (See: 2018, c. 8, Sched. 37, s. 1 (4))

18. Members of a police force, as defined in the *Police Services Act*, other than those described in paragraph 5, who perform work in a forensic identification unit or a Violent Crime Linkage Analysis System unit of the police force. 2016, c. 4, s. 2; 2018, c. 8, Sched. 37, s. 1 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 18 of subsection 14 (2) of the Act is amended by striking out “police force” wherever it appears and substituting in each case “police service”, and by striking out “*Police Services Act*” and substituting “*Police Services Act, 2018*”. (See: 2018, c. 8, Sched. 37, s. 1 (5))

Entitlement to benefits

(3) Subject to subsection (7), a worker is entitled to benefits under the insurance plan for posttraumatic stress disorder arising out of and in the course of the worker’s employment if,

- (a) the worker,
 - (i) is a worker listed in subsection (2),
 - (ii) was a worker listed in paragraphs 1 to 12 of subsection (2) for at least one day on or after April 6, 2014, or
 - (iii) was a worker listed in paragraphs 13 to 18 of subsection (2) for at least one day on or after the day the *Plan for Care and Opportunity Act (Budget Measures), 2018* receives Royal Assent;
- (b) the worker is or was diagnosed with posttraumatic stress disorder by a psychiatrist or psychologist; and
- (c) for a worker who,
 - (i) is a worker listed in paragraphs 1 to 12 of subsection (2) at the time of filing a claim, the diagnosis is made on or after April 6, 2014,
 - (ii) ceases to be a worker listed in paragraphs 1 to 12 of subsection (2) on or after April 6, 2016, the diagnosis is made on or after April 6, 2014 but no later than 24 months after the day on which the worker ceases to be a listed worker,
 - (iii) ceased to be a worker listed in paragraphs 1 to 12 of subsection (2) after April 6, 2014 but before April 6, 2016, the diagnosis is made on or after April 6, 2014 but no later than April 6, 2018, or

- (iv) ceases to be a worker listed in paragraphs 13 to 18 of subsection (2) on or after the day the *Plan for Care and Opportunity Act (Budget Measures), 2018* receives Royal Assent, the diagnosis is made no later than 24 months after the day on which the worker ceases to be a listed worker. 2018, c. 8, Sched. 37, s. 1 (6).

(4) REPEALED: 2018, c. 8, Sched. 37, s. 1 (6).

Same

(5) The worker is entitled to benefits under the insurance plan as if the posttraumatic stress disorder were a personal injury. 2016, c. 4, s. 2.

Presumption re: course of employment

(6) For the purposes of subsection (3), the posttraumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment, unless the contrary is shown. 2016, c. 4, s. 2.

No entitlement, employer's decisions or actions

(7) A worker is not entitled to benefits under the insurance plan for posttraumatic stress disorder if it is shown that the worker's posttraumatic stress disorder was caused by decisions or actions of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment. 2016, c. 4, s. 2; 2017, c. 8, Sched. 33, s. 2.

s. 13 entitlement

(8) Nothing in this section affects entitlement to benefits under section 13 for posttraumatic stress disorder that meets the requirements of that section. 2016, c. 4, s. 2.

No refiling of claims

(9) If a worker filed a claim in respect of posttraumatic stress disorder and the claim was denied by the Board or by the Appeals Tribunal, the worker may not refile the claim under this section. 2016, c. 4, s. 2.

Time limits

(10) The time limits in subsections 22 (1) and (2) do not apply in respect of a claim made under this section by a worker listed in paragraphs 1 to 12 of subsection (2) that is made with respect to posttraumatic stress disorder that was diagnosed on or after April 6, 2014 but before April 6, 2016. 2018, c. 8, Sched. 37, s. 1 (7).

Same

(11) A claim made under this section by a worker listed in paragraphs 1 to 12 of subsection (2) with respect to posttraumatic stress disorder that was diagnosed on or after April 6, 2014 but before April 6, 2016 must be filed on or before October 6, 2016. 2018, c. 8, Sched. 37, s. 1 (7).

Pending claim

(12) If a worker listed in paragraphs 1 to 12 of subsection (2) filed a claim for entitlement to benefits relating to posttraumatic stress disorder and the claim was pending before the Board on April 6, 2016, the Board shall decide the claim in accordance with this section as it reads at the time the Board makes its decision as though the requirements in clauses (3) (a) and (c) were satisfied. 2018, c. 8, Sched. 37, s. 1 (7).

Same

(13) If a worker listed in paragraphs 13 to 18 of subsection (2) has filed a claim for entitlement to benefits relating to posttraumatic stress disorder and the claim is pending before the Board on the day the *Plan for Care and Opportunity Act (Budget Measures), 2018* receives Royal Assent, the Board shall decide the claim in accordance with this section as it reads at the time the Board makes its decision as though the requirements in clauses (3) (a) and (c) were satisfied. 2018, c. 8, Sched. 37, s. 1 (7).

Same

(14) For the purposes of subsections (12) and (13), a claim is pending if the Board has not made a final decision in respect of the claim. 2018, c. 8, Sched. 37, s. 1 (7).

Pending appeal

(15) If a worker listed in paragraphs 1 to 12 of subsection (2) filed a claim for entitlement to benefits relating to posttraumatic stress disorder and the claim was pending before the Appeals Tribunal on April 6, 2016, the Appeals Tribunal shall refer the claim back to the Board and the Board shall decide the claim in accordance with this section as it reads at the time the Board makes its decision as though the requirements in clauses (3) (a) and (c) were satisfied. 2018, c. 8, Sched. 37, s. 1 (7).

Same

(16) If a worker listed in paragraphs 13 to 18 of subsection (2) has filed a claim for entitlement to benefits relating to posttraumatic stress disorder and the claim is pending before the Appeals Tribunal on the day the *Plan for Care and Opportunity Act (Budget Measures), 2018* receives Royal Assent, the Appeals Tribunal shall refer the claim back to the Board and the Board shall decide the claim in accordance with this section as it reads at the time the Board makes its decision as though the requirements in clauses (3) (a) and (c) were satisfied. 2018, c. 8, Sched. 37, s. 1 (7).

Other appeal

(17) If, on or after April 6, 2016 and on or before October 6, 2016, a worker listed in paragraphs 1 to 12 of subsection (2) filed a notice of appeal of a final decision of the Board that was made before April 6, 2016 regarding a claim for entitlement to benefits relating to posttraumatic stress disorder with the Appeals Tribunal, the Appeals Tribunal shall refer the claim back to the Board and the Board shall decide the claim in accordance with this section as it reads at the time the Board makes its decision as though the requirements in clauses (3) (a) and (c) were satisfied. 2018, c. 8, Sched. 37, s. 1 (7).

Same

(18) If, on or after the day the *Plan for Care and Opportunity Act (Budget Measures), 2018* receives Royal Assent and within the time limit set out in subsection 125 (2), a worker listed in paragraphs 13 to 18 of subsection (2) files a notice of appeal of a final decision of the Board that was made before the *Plan for Care and Opportunity Act (Budget Measures), 2018* receives Royal Assent regarding a claim for entitlement to benefits relating to posttraumatic stress disorder with the Appeals Tribunal, the Appeals Tribunal shall refer the claim back to the Board and the Board shall decide the claim in accordance with this section as it reads at the time the Board makes its decision as though the requirements in clauses (3) (a) and (c) were satisfied. 2018, c. 8, Sched. 37, s. 1 (7).

Transition, prior diagnosis

(19) For the purposes of the following claims, posttraumatic stress disorder includes posttraumatic stress disorder as described in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), published by the American Psychiatric Association:

1. Claims and appeals in respect of workers listed in paragraphs 1 to 12 of subsection (2) that were pending on April 6, 2016.
2. New claims made under this section by workers listed in paragraphs 1 to 12 of subsection (2) on or before October 6, 2016.
3. Claims and appeals in respect of workers listed in paragraphs 13 to 18 of subsection (2) that are pending on the day the *Plan for Care and Opportunity Act (Budget Measures), 2018* receives Royal Assent.
4. Claims described in subsections (17) and (18). 2018, c. 8, Sched. 37, s. 1 (7).

Section Amendments with date in force (d/m/y)

Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2016, c. 4, s. 2 - 06/04/2016

2017, c. 8, Sched. 33, s. 2 - 01/01/2018; 2017, c. 14, Sched. 4, s. 36 - 30/04/2018

2018, c. 3, Sched. 5, s. 68 (2) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019; 2018, c. 6, Sched. 3, s. 16 - not in force; 2018, c. 8, Sched. 37, s. 1 (1, 2, 6, 7) - 08/05/2018; 2018, c. 8, Sched. 37, s. 1 (3-5), 3 (3, 4) - not in force

2019, c. 1, Sched. 4, s. 66 (2) - not in force

Occupational diseases

15 (1) This section applies if a worker suffers from and is impaired by an occupational disease that occurs due to the nature of one or more employments in which the worker was engaged.

Entitlement to benefits

(2) The worker is entitled to benefits under the insurance plan as if the disease were a personal injury by accident and as if the impairment were the happening of the accident.

Presumption re causation

(3) If, before the date of the impairment, the worker was employed in a process set out in Schedule 3 and if he or she contracts the disease specified in the Schedule, the disease is presumed to have occurred due to the nature of the worker's employment unless the contrary is shown.

Causation of disease

(4) If, before the date of the impairment, the worker was employed in a process set out in Schedule 4 and if he or she contracts the disease specified in the Schedule, the disease shall be deemed to have occurred due to the nature of the worker's employment.

Restriction, silicosis

(5) A worker and his or her survivors are not entitled to benefits under the insurance plan for impairment from silicosis unless the worker has been actually exposed to silica dust for at least two years in his or her employment in Ontario prior to becoming impaired.

Restriction, pneumoconiosis, etc.

(6) Subsection (5) applies, with necessary modifications, with respect to impairment from pneumoconiosis and stone worker's or grinder's phthisis.

Other occupational diseases

(7) This section does not affect the right of a worker to benefits under the insurance plan in respect of an occupational disease to which this section does not apply if the disease is the result of an injury for which the worker is entitled to benefits under the insurance plan. 1997, c. 16, Sched. A, s. 15.

Presumptions re: firefighters, etc.**Heart injury**

15.1 (1) If a worker is prescribed under clause (8) (a) and sustains an injury to the heart in circumstances prescribed under clause (8) (c), the injury is presumed to be a personal injury arising out of and in the course of the worker's employment as a firefighter or fire investigator, unless the contrary is shown. 2007, c. 3, s. 2.

Time of injury

(2) The presumption in subsection (1) applies only to injuries sustained on or after January 1, 1960. 2007, c. 3, s. 2.

Injuries sustained before 1998

(3) Where the presumption in subsection (1) applies in relation to an injury to the heart sustained by a worker before January 1, 1998, the rights of the worker or his or her survivor shall, subject to the presumption, be determined in accordance with Part IX. 2007, c. 3, s. 2.

Occupational disease

(4) If a worker is prescribed under clause (8) (a) and suffers from and is impaired by a disease prescribed under clause (8) (d), the disease is presumed to be an occupational disease that occurs due to the nature of the worker's employment as a firefighter or fire investigator, unless the contrary is shown. 2007, c. 3, s. 2.

Time of diagnosis

(5) The presumption in subsection (4) applies only to diseases diagnosed on or after January 1, 1960. 2007, c. 3, s. 2.

Diseases diagnosed before 1998

(6) Where the presumption in subsection (4) applies in relation to a disease of a worker that is diagnosed before January 1, 1998, the rights of the worker or his or her survivor shall, subject to the presumption, be determined in accordance with Part IX. 2007, c. 3, s. 2.

Conditions and restrictions

(7) The presumptions in subsections (1) and (4) are subject to any conditions and restrictions prescribed under clause (8) (e). 2007, c. 3, s. 2.

Regulations

(8) The Lieutenant Governor in Council may make regulations,

- (a) prescribing firefighters, fire investigators, or classes of firefighters or fire investigators, as workers to whom subsection (1) or (4) applies;
- (b) defining "firefighter" and "fire investigator";
- (c) prescribing circumstances in which an injury to the heart is sustained for the purposes of subsection (1);
- (d) prescribing diseases for the purposes of subsection (4);

- (e) prescribing conditions and restrictions relating to the presumptions established by subsections (1) and (4), including, but not limited to, conditions and restrictions related to nature of employment, length of employment, time during which the worker was employed or age of the worker;
- (f) providing that section 15.2, in whole or in part, does not apply in circumstances specified in the regulation;
- (g) if a regulation is made under clause (f), providing for alternative rules to govern claims to which section 15.2, in whole or in part, would have applied;
- (h) providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in relation to this section, the regulations under this section and section 15.2. 2007, c. 3, s. 2.

Same

- (9) A regulation made under clause (8) (b) may define firefighter to include,
 - (a) volunteer firefighters; and
 - (b) workers who are not included in the definition of “firefighter” in the *Fire Protection and Prevention Act, 1997*. 2007, c. 3, s. 2.

Same

- (10) A regulation made under this section may be general or particular in its application. 2007, c. 3, s. 2.

Section Amendments with date in force (d/m/y)

2007, c. 3, s. 2 - 04/05/2007

Claims based on presumptions

15.2 (1) This section applies where a regulation under section 15.1 is made or amended and, as a result, a presumption established under section 15.1 applies to an injury sustained by a worker or to a disease with which a worker is diagnosed. 2007, c. 3, s. 2.

New claims

- (2) If the worker or his or her survivor never filed a claim in respect of the injury or disease, the worker or his or her survivor may file a claim with the Board, and the Board shall decide the claim in accordance with section 15.1 and the regulations under it, as that section and those regulations read at the time the Board makes its decision. 2007, c. 3, s. 2.

Refiled claims

- (3) Subject to subsection (4), if the worker or his or her survivor filed a claim in respect of the injury or disease and the claim was denied by the Board or by the Appeals Tribunal, the worker or his or her survivor may refile the claim with the Board, and the Board shall decide the claim in accordance with section 15.1 and the regulations under it, as that section and those regulations read at the time the Board makes its decision. 2007, c. 3, s. 2.

Time limits

- (4) The time limits in subsections 22 (1) and (2) do not apply in respect of a claim that is refiled under subsection (3). 2007, c. 3, s. 2.

Pending appeal

- (5) If a claim is pending before the Appeals Tribunal, the Appeals Tribunal shall refer the claim back to the Board, and the Board shall decide the claim in accordance with section 15.1 and the regulations under it, as that section and those regulations read at the time the Board makes its decision. 2007, c. 3, s. 2.

Pending claim

- (6) If a claim is pending before the Board, the Board shall decide the claim in accordance with section 15.1 and the regulations under it, as that section and those regulations read at the time the Board makes its decision. 2007, c. 3, s. 2.

Section Amendments with date in force (d/m/y)

2007, c. 3, s. 2 - 04/05/2007

No waiver of entitlement

16 An agreement between a worker and his or her employer to waive or to forego any benefit to which the worker or his or her survivors are or may become entitled under the insurance plan is void. 1997, c. 16, Sched. A, s. 16.

Serious and wilful misconduct

17 If an injury is attributable solely to the serious and wilful misconduct of the worker, no benefits shall be provided under the insurance plan unless the injury results in the worker's death or serious impairment. 1997, c. 16, Sched. A, s. 17.

Employment outside Ontario

18 (1) This section applies if the accident happens while the worker is employed outside of Ontario, if the worker resides and is usually employed in Ontario and if the employer's place of business is in Ontario.

Outside Ontario less than six months

(2) The worker is entitled to benefits under the insurance plan if the employment outside of Ontario has lasted less than six months.

Same, six months or more

(3) Upon the application of the employer, the Board may declare that the insurance plan applies to a worker whose employment outside of Ontario lasts or is likely to last six months or more. 1997, c. 16, Sched. A, s. 18.

Accident outside Ontario

19 (1) A worker who resides outside of Ontario is entitled to benefits under the insurance plan if his or her employer's place of business is in Ontario, the worker's usual place of employment is in Ontario and the accident happens while the worker is employed outside of Ontario for a temporary purpose connected with the worker's employment.

Same, non-Ontario employer

(2) If the accident happens outside of Ontario, the employer's place of business is outside of Ontario and the worker is entitled to compensation under the law of the place where the accident happens, the worker is entitled to benefits under the insurance plan only if the worker's place of employment is in Ontario and the accident happens while the worker is employed outside of Ontario for a casual or incidental purpose connected with the worker's employment.

Same, on a vessel

(3) If the accident happens outside of Ontario on a vessel, the worker is entitled to benefits under the insurance plan if the worker resides in Ontario and,

- (a) if the vessel is registered in Canada; or
- (b) if the chief place of business of its owner or of the person who offers it for charter is in Ontario.

Same, certain vehicles, etc.

(4) If the accident happens outside of Ontario on a train, an aircraft or a vessel or on a vehicle used to transport passengers or goods, the worker is entitled to benefits under the insurance plan if he or she resides in Ontario and is required to perform his or her employment both in and outside of Ontario. 1997, c. 16, Sched. A, s. 19.

Obligation to elect, concurrent entitlement outside Ontario

20 (1) This section applies if a worker is entitled to benefits under the insurance plan relating to an accident and is also entitled to compensation under the laws of another jurisdiction in respect of the accident regardless of where the accident occurs. This section also applies with necessary modifications if the worker's survivors are so entitled.

Same

(2) The worker shall elect whether to receive benefits under the insurance plan or to receive compensation under the laws of the other jurisdiction and shall notify the Board of the option elected. If the worker is employed by a Schedule 2 employer, the worker shall also notify the employer.

Deadline for electing

(3) The election must be made within three months after the accident occurs or, if the accident results in death, within three months after the date of death. However, the Board may permit the election to be made within a longer period.

Failure to elect

(4) If an election is not made or if notice of the election is not given, the worker is presumed to have elected not to receive benefits under the insurance plan unless the contrary is shown. 1997, c. 16, Sched. A, s. 20.

NOTICE OF ACCIDENT AND CLAIM FOR BENEFITS

Notice by employer of accident

21 (1) An employer shall notify the Board within three days after learning of an accident to a worker employed by him, her or it if the accident necessitates health care or results in the worker not being able to earn full wages.

Same

(2) The notice must be on a form approved by the Board and the employer shall give the Board such other information as the Board may require from time to time in connection with the accident.

Failure to comply

(3) An employer who fails to comply with this section shall pay the prescribed amount to the Board. This payment is in addition to any penalty imposed by a court for an offence under subsection 152 (3).

Copy to worker

(4) The employer shall give a copy of the notice to the worker at the time the notice is given to the Board. 1997, c. 16, Sched. A, s. 21.

Claim for benefits

Claim for benefits, worker

22 (1) A worker shall file a claim as soon as possible after the accident that gives rise to the claim, but in no case shall he or she file a claim more than six months after the accident or, in the case of an occupational disease, after the worker learns that he or she suffers from the disease.

Same, survivor

(2) A survivor who is entitled to benefits as a result of the death of a worker shall file a claim as soon as possible after the worker's death, but in no case shall he or she file a claim more than six months after the worker's death.

Extension of time

(3) The Board may permit a claim to be filed after the six-month period expires if, in the opinion of the Board, it is just to do so.

Form and contents

(4) A claim must be on a form approved by the Board and must be accompanied by such information and documents as the Board may require.

Consent re functional abilities

(5) When filing a claim, a worker must consent to the disclosure to his or her employer of information provided by a health professional under subsection 37 (3) concerning the worker's functional abilities. The disclosure is for the sole purpose of facilitating the worker's return to work.

Failure to file

(6) If the claimant does not file the claim with the Board in accordance with this section or does not give the consent required by subsection (5), no benefits shall be provided under the insurance plan unless the Board, in its opinion, decides that it is just to do so.

Notice to employer

(7) The claimant shall give a copy of his or her claim to the worker's employer at the time the claim is given to the Board.

Same, occupational disease

(8) A copy of the claim for an occupational disease must be given to the employer who has most recently employed the worker in the employment to the nature of which the disease is due. 1997, c. 16, Sched. A, s. 22.

Prohibition, claim suppression

22.1 (1) No employer shall take any action, including but not limited to the prohibited actions set out in subsection (2), in respect of a worker with the intent of,

- (a) discouraging or preventing the worker from filing a claim for benefits under section 22; or
- (b) influencing or inducing the worker to withdraw or abandon a claim for benefits made under section 22. 2015, c. 34, Sched. 3, s. 1.

Same

(2) For the purposes of subsection (1), the following actions are prohibited:

1. Dismissing or threatening to dismiss a worker.
2. Disciplining or suspending, or threatening to discipline or suspend a worker.
3. Imposing a penalty upon a worker.
4. Directly or indirectly intimidating or coercing a worker with threats, promises, persuasion or other means. 2015, c. 34, Sched. 3, s. 1.

Administrative penalty

(3) An employer who contravenes subsection (1) shall pay the prescribed amount to the Board. This payment is in addition to any penalty imposed by a court for an offence under section 155.1. 2015, c. 34, Sched. 3, s. 1.

Section Amendments with date in force (d/m/y)

2015, c. 34, Sched. 3, s. 1 - 10/12/2015

Continuing obligation to provide information

23 (1) A person receiving benefits under the insurance plan or who may be entitled to do so shall give the Board such information as the Board may require from time to time in connection with the person's claim.

Effect of non-compliance

(2) If the person fails to comply with subsection (1), the Board may reduce or suspend payments to him or her while the non-compliance continues.

Notice of material change in circumstances

(3) A person receiving benefits under the insurance plan or who may be entitled to do so shall notify the Board of a material change in circumstances in connection with the entitlement within 10 days after the material change occurs. 1997, c. 16, Sched. A, s. 23.

WAGES AND EMPLOYMENT BENEFITS**Wages for day of accident**

24 (1) The employer shall pay a worker who is entitled to benefits under the insurance plan his or her wages and employment benefits for the day of the injury as if the accident had not occurred.

Payment by Board

(2) If the employer fails to comply with subsection (1), the Board shall pay the wages and employment benefits to or on behalf of the worker.

Failure to comply

(3) If the employer fails to comply with subsection (1), the employer shall pay to the Board a sum equal to the wages and employment benefits owing under that subsection. This requirement is in addition to any other penalty imposed on the employer or liability of the employer for the failure to comply. 1997, c. 16, Sched. A, s. 24.

Employment benefits

25 (1) Throughout the first year after a worker is injured, the employer shall make contributions for employment benefits in respect of the worker when the worker is absent from work because of the injury. However, the contributions are required only if,

- (a) the employer was making contributions for employment benefits in respect of the worker when the injury occurred; and
- (b) the worker continues to pay his or her contributions, if any, for the employment benefits while the worker is absent from work. 1997, c. 16, Sched. A, s. 25 (1).

Failure to comply

(2) If the employer fails to comply with subsection (1),

- (a) the employer is liable to the worker for any loss the worker suffers as a result of the failure to comply; and

- (b) the Board may levy a penalty on the employer not exceeding the amount of one year's contributions for employment benefits in respect of the worker. 1997, c. 16, Sched. A, s. 25 (2).

Contributions re emergency workers

(3) The actual employer of an emergency worker shall make the contributions required by subsection (1), instead of the worker's deemed employer. The deemed employer shall reimburse the actual employer for the contributions. 1997, c. 16, Sched. A, s. 25 (3).

Certain volunteers

(3.1) Subsection (3) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker. 2000, c. 26, Sched. I, s. 1 (1); 2002, c. 18, Sched. J, s. 5 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 25 (3.1) of the Act is amended by striking out "police force" and substituting "police service". (See: 2019, c. 1, Sched. 4, s. 66 (3))

Multi-employer benefit plans

(4) Subsection (1) does not apply to an employer who participates in a multi-employer benefit plan in respect of the worker if, when the worker is absent from work because of the injury during the first year after it occurs,

- (a) the plan continues to provide the worker with the benefits to which he or she would otherwise be entitled; and
- (b) the plan does not require the employer to make contributions during the worker's absence and does not require the worker to draw upon his or her benefit credits, if any, under the plan during the absence. 1997, c. 16, Sched. A, s. 25 (4).

Same

(5) Every multi-employer benefit plan shall contain or be deemed to contain provisions that are,

- (a) sufficient to enable all employers who participate in the plan to be exempted under subsection (4) from the requirement to make contributions; and
- (b) sufficient to provide each worker with the benefits described in subsection (4) in the circumstances described in that subsection. 1997, c. 16, Sched. A, s. 25 (5).

Entitlement under benefit plans

(6) For the purpose of determining a worker's entitlement to benefits under a benefit plan, fund or arrangement, the worker shall be deemed to continue to be employed by the employer for one year after the date of the injury. 1997, c. 16, Sched. A, s. 25 (6).

Definition

(7) In this section,

"contributions for employment benefits" means amounts paid in whole or in part by an employer on behalf of a worker or the worker's spouse, child or dependant for health care, life insurance and pension benefits. 1997, c. 16, Sched. A, s. 25 (7); 1999, c. 6, s. 67 (5); 2005, c. 5, s. 73 (5).

Section Amendments with date in force (d/m/y)

1998, c. 36, s. 1 - 01/01/1998; 1999, c. 6, s. 67 (5) - 01/03/2000

2000, c. 26, Sched. I, s. 1 (1) - 01/01/1998

2002, c. 18, Sched. J, s. 5 (2) - 26/11/2002

2005, c. 5, s. 73 (5) - 09/03/2005

2018, c. 3, Sched. 5, s. 68 (3) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 66 (3) - not in force

RIGHTS OF ACTION

No action for benefits

26 (1) No action lies to obtain benefits under the insurance plan, but all claims for benefits shall be heard and determined by the Board. 1997, c. 16, Sched. A, s. 26 (1).

Benefits in lieu of rights of action

(2) Entitlement to benefits under the insurance plan is in lieu of all rights of action (statutory or otherwise) that a worker, a worker's survivor or a worker's spouse, child or dependant has or may have against the worker's employer or an executive officer of the employer for or by reason of an accident happening to the worker or an occupational disease contracted by the worker while in the employment of the employer. 1997, c. 16, Sched. A, s. 26 (2); 1999, c. 6, s. 67 (6); 2005, c. 5, s. 73 (6).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (6) - 01/03/2000

2005, c. 5, s. 73 (6) - 09/03/2005

Application of certain sections

27 (1) Sections 28 to 31 apply with respect to a worker who sustains an injury or a disease that entitles him or her to benefits under the insurance plan and to the survivors of a deceased worker who are entitled to benefits under the plan. 1997, c. 16, Sched. A, s. 27 (1).

Same

(2) If a worker's right of action is taken away under section 28 or 29, the worker's spouse, child, dependant or survivors are, also, not entitled to commence an action under section 61 of the *Family Law Act*. 1997, c. 16, Sched. A, s. 27 (2); 1999, c. 6, s. 67 (7); 2005, c. 5, s. 73 (7).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (7) - 01/03/2000

2005, c. 5, s. 73 (7) - 09/03/2005

Certain rights of action extinguished

28 (1) A worker employed by a Schedule 1 employer, the worker's survivors and a Schedule 1 employer are not entitled to commence an action against the following persons in respect of the worker's injury or disease:

1. Any Schedule 1 employer.
2. A director, executive officer or worker employed by any Schedule 1 employer.

Same, Schedule 2 employer

(2) A worker employed by a Schedule 2 employer and the worker's survivors are not entitled to commence an action against the following persons in respect of the worker's injury or disease:

1. The worker's Schedule 2 employer.
2. A director, executive officer or worker employed by the worker's Schedule 2 employer.

Restriction

(3) If the workers of one or more employers were involved in the circumstances in which the worker sustained the injury, subsection (1) applies only if the workers were acting in the course of their employment.

Exception

(4) Subsections (1) and (2) do not apply if any employer other than the worker's employer supplied a motor vehicle, machinery or equipment on a purchase or rental basis without also supplying workers to operate the motor vehicle, machinery or equipment. 1997, c. 16, Sched. A, s. 28.

Liability where negligence, fault

29 (1) This section applies in the following circumstances:

1. In an action by or on behalf of a worker employed by a Schedule 1 employer or a survivor of such a worker, any Schedule 1 employer or a director, executive officer or another worker employed by a Schedule 1 employer is determined to be at fault or negligent in respect of the accident or the disease that gives rise to the worker's entitlement to benefits under the insurance plan.
2. In an action by or on behalf of a worker employed by a Schedule 2 employer or a survivor of such a worker, the worker's Schedule 2 employer or a director, executive officer or another worker employed by the employer is determined to be at fault or negligent in respect of the accident or the disease that gives rise to the worker's entitlement to benefits under the insurance plan.

Same

(2) The employer, director, executive officer or other worker is not liable to pay damages to the worker or his or her survivors or to contribute to or indemnify another person who is liable to pay such damages.

Determination of fault

(3) The court shall determine what portion of the loss or damage was caused by the fault or negligence of the employer, director, executive officer or other worker and shall do so whether or not he, she or it is a party to the action.

Same

(4) No damages, contribution or indemnity for the amount determined under subsection (3) to be caused by a person described in that subsection is recoverable in an action. 1997, c. 16, Sched. A, s. 29.

Election, concurrent entitlements

30 (1) This section applies when a worker or a survivor of a deceased worker is entitled to benefits under the insurance plan with respect to an injury or disease and is also entitled to commence an action against a person in respect of the injury or disease. 1997, c. 16, Sched. A, s. 30 (1).

Election

(2) The worker or survivor shall elect whether to claim the benefits or to commence the action and shall notify the Board of the option elected. 1997, c. 16, Sched. A, s. 30 (2).

Same

(3) If the worker is or was employed by a Schedule 2 employer, the worker or survivor shall also notify the employer. 1997, c. 16, Sched. A, s. 30 (3).

Same

(4) The election must be made within three months after the accident occurs or, if the accident results in death, within three months after the date of death. 1997, c. 16, Sched. A, s. 30 (4).

Same

(5) The Board may permit the election to be made within a longer period if, in the opinion of the Board, it is just to do so. 1997, c. 16, Sched. A, s. 30 (5).

Same

(6) If an election is not made or if notice of election is not given, the worker or survivor shall be deemed, in the absence of evidence to the contrary, to have elected not to receive benefits under the insurance plan. 1997, c. 16, Sched. A, s. 30 (6).

Same, minor

(7) If the worker or survivor is less than 18 years of age, his or her parent or guardian or the Children's Lawyer may make the election on his or her behalf. 1997, c. 16, Sched. A, s. 30 (7); 2021, c. 4, Sched. 11, s. 42 (3).

Same, incapable person

(8) If a worker is mentally incapable of making the election or is unconscious as a result of the injury,

- (a) the worker's guardian or attorney may make the election on behalf of the worker;
- (b) if there is no guardian or attorney, the worker's spouse may make the election on behalf of the worker; or
- (c) if there is no guardian or attorney and if no election is made within 60 days after the date of the injury, the Public Guardian and Trustee shall make the election on behalf of the worker. 1997, c. 16, Sched. A, s. 30 (8); 1999, c. 6, s. 67 (8); 2005, c. 5, s. 73 (8).

Same

(9) If a survivor is mentally incapable of making the election,

- (a) the survivor's guardian or attorney may make the election on behalf of the survivor; or
- (b) if there is no guardian or attorney and if no election is made within 60 days after the death of the worker, the Public Guardian and Trustee shall make the election on behalf of the survivor. 1997, c. 16, Sched. A, s. 30 (9).

Subrogation, Schedule 1 employer

(10) If the worker or survivor elects to claim benefits under the insurance plan and if the worker is employed by a Schedule 1 employer or the deceased worker was so employed, the Board is subrogated to the rights of the worker or survivor in respect of the action. The Board is solely entitled to determine whether or not to commence, continue or abandon the action and whether to settle it and on what terms. 1997, c. 16, Sched. A, s. 30 (10).

Same, Schedule 2 employer

(11) If the worker or survivor elects to claim benefits under the insurance plan and if the worker is employed by a Schedule 2 employer or the deceased worker was so employed, the employer is subrogated to the rights of the worker or survivor in respect of the action. The employer is solely entitled to determine whether or not to commence, continue or abandon the action and whether to settle it and on what terms. 1997, c. 16, Sched. A, s. 30 (11).

Surplus

(12) If the Board or the employer pursues the action and receives an amount of money greater than the amount expended in pursuing the action and providing the benefits under the insurance plan to the worker or the survivor, the Board or the employer (as the case may be) shall pay the surplus to the worker or survivor. 1997, c. 16, Sched. A, s. 30 (12).

Effect of surplus

(13) Future payments to the worker or survivor under the insurance plan shall be reduced to the extent of the surplus paid to him or her. 1997, c. 16, Sched. A, s. 30 (13).

If worker elects to commence action

(14) The following rules apply if the worker or survivor elects to commence the action instead of claiming benefits under the insurance plan:

1. The worker or survivor is entitled to receive benefits under the insurance plan to the extent that, in a judgment in the action, the worker or survivor is awarded less than the amount described in paragraph 3.
2. If the worker or survivor settles the action and the Board approves the settlement before it is made, the worker or survivor is entitled to receive benefits under the insurance plan to the extent that the amount of the settlement is less than the amount described in paragraph 3.
3. For the purposes of paragraphs 1 and 2, the amount is the cost to the Board of the benefits that would have been provided under the plan to the worker or survivor, if the worker or survivor had elected to claim benefits under the plan instead of commencing the action. 1997, c. 16, Sched. A, s. 30 (14).

Determining amount

(15) For the purpose of determining the amount of benefits a worker or survivor is entitled to under subsection (14), the amount of a judgment in an action or the amount of a settlement shall be calculated as including the amount of any benefits that have been or will be received by the worker or survivor from any other source if those benefits,

- (a) have reduced the amount for which the defendant is liable to the worker or survivor in the action; or
- (b) would have been payable by the defendant but for an immunity granted to the defendant under any law. 1997, c. 16, Sched. A, s. 30 (15).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (8) - 01/03/2000

2005, c. 5, s. 73 (8) - 09/03/2005

2021, c. 4, Sched. 11, s. 42 (3) - 19/04/2021

Decisions re rights of action and liability

31 (1) A party to an action or an insurer from whom statutory accident benefits are claimed under section 268 of the *Insurance Act* may apply to the Appeals Tribunal to determine,

- (a) whether, because of this Act, the right to commence an action is taken away;
- (b) whether the amount that a person may be liable to pay in an action is limited by this Act; or
- (c) whether the plaintiff is entitled to claim benefits under the insurance plan.

Same

(2) The Appeals Tribunal has exclusive jurisdiction to determine a matter described in subsection (1).

Finality of decision

(3) A decision of the Appeals Tribunal under this section is final and is not open to question or review in a court.

Claim for benefits

(4) Despite subsections 22 (1) and (2), a worker or survivor may file a claim for benefits within six months after the tribunal's determination under subsection (1).

Extension of time

(5) The Board may permit a claim to be filed after the six-month period expires if, in the opinion of the Board, it is just to do so. 1997, c. 16, Sched. A, s. 31.

**PART IV
HEALTH CARE**

Definition

32 In this Part,

“health care” means,

- (a) professional services provided by a health care practitioner,
- (b) services provided by or at hospitals and health facilities,
- (c) drugs,
- (d) the services of an attendant,
- (e) modifications to a person's home and vehicle and other measures to facilitate independent living as in the Board's opinion are appropriate,
- (f) assistive devices and prostheses,
- (g) extraordinary transportation costs to obtain health care,
- (h) such measures to improve the quality of life of severely impaired workers as, in the Board's opinion, are appropriate. 1997, c. 16, Sched. A, s. 32.

Entitlement to health care

33 (1) A worker who sustains an injury is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury and is entitled to make the initial choice of health professional for the purposes of this section.

Arrangements for health care

(2) The Board may arrange for the worker's health care or may approve arrangements for his or her health care. The Board shall pay for the worker's health care.

Same

(3) The Board may establish such fee schedules for health care as it considers appropriate.

Penalty for late billing

(4) If the Board does not receive a bill for health care within such time as the Board may specify, the Board may reduce the amount payable for the health care by such percentage as the Board considers an appropriate penalty.

Prohibition

(5) No health care practitioner shall request a worker to pay for health care or any related service provided under the insurance plan.

No right of action

(6) No action lies against the Board to obtain payment of an amount greater than is established in the applicable fee schedule for health care provided to a worker. No action lies against a person other than the Board for payment for health care provided to a worker.

Questions re health care

(7) The Board shall determine all questions concerning,

- (a) the necessity, appropriateness and sufficiency of health care provided to a worker or that may be provided to a worker; and
- (b) payment for health care provided to a worker. 1997, c. 16, Sched. A, s. 33.

Duty to co-operate

34 (1) A worker who claims or is receiving benefits under the insurance plan shall co-operate in such health care measures as the Board considers appropriate.

Failure to comply

(2) If the worker fails to comply with subsection (1), the Board may reduce or suspend payments to the worker under the insurance plan while the non-compliance continues. 1997, c. 16, Sched. A, s. 34.

Board request for health examination

35 (1) Upon the request of the Board, a worker who claims or is receiving benefits under the insurance plan shall submit to a health examination by a health professional selected and paid for by the Board.

Failure to comply

(2) If the worker fails to comply with subsection (1) or obstructs the examination without reasonable cause or excuse, the Board may reduce or suspend payments to the worker under the insurance plan while the non-compliance or obstruction continues. 1997, c. 16, Sched. A, s. 35.

Employer request for health examination

36 (1) Upon the request of his or her employer, a worker who claims or is receiving benefits under the insurance plan shall submit to a health examination by a health professional selected and paid for by the employer.

Objection

(2) Despite subsection (1), the worker may object to undergoing the examination or to the nature and extent of the examination requested by the employer. The worker shall notify the employer of his or her objection.

Request to Board

(3) Within 14 days after receiving the worker's objection, the employer may request that the Board direct the worker to submit to the examination and, if necessary, that the Board determine the nature and extent of the examination.

Decision final

(4) A decision of the Board under this section is final and is not appealable to the Appeals Tribunal.

Failure to comply

(5) If the worker does not comply with a direction of the Board made under subsection (3), the Board may reduce or suspend payments to the worker under the insurance plan while the non-compliance continues. 1997, c. 16, Sched. A, s. 36.

Reports

Reports re health care

37 (1) Every health care practitioner who provides health care to a worker claiming benefits under the insurance plan or who is consulted with respect to his or her health care shall promptly give the Board such information relating to the worker as the Board may require.

Same

(2) Every hospital or health facility that provides health care to a worker claiming benefits under the insurance plan shall promptly give the Board such information relating to the worker as the Board may require.

Report re functional abilities

(3) When requested to do so by an injured worker or the employer, a health professional treating the worker shall give the Board, the worker and the employer such information as may be prescribed concerning the worker's functional abilities. The required information must be provided on the prescribed form.

Confidentiality of report

(4) Neither an employer nor an employer's representative shall disclose the information contained in the functional abilities form except to a person assisting the employer to return the worker to work under section 40 or 41.

Payment

(5) The Board shall pay the health care practitioner, hospital or health facility for providing the required information and shall fix the amount to be paid to him, her or it. 1997, c. 16, Sched. A, s. 37.

Transportation to hospital, etc.

38 (1) At the time an injury occurs, the injured worker's employer shall provide transportation for the worker (if the worker needs it) to a hospital or a physician located within a reasonable distance or to the worker's home. The employer shall pay for the transportation.

Failure to comply

(2) If the employer fails to comply with subsection (1), the Board may order the employer to pay for any transportation obtained by or on behalf of the worker or provided by the Board. 1997, c. 16, Sched. A, s. 38.

Repair to assistive devices

39 (1) The Board may pay to repair or replace a worker's assistive device or prosthesis if it is damaged as a result of an accident in the worker's employment.

Eligibility for benefits

(2) If the worker is unable to work because of the damage to his or her assistive device or prosthesis, the worker is entitled to benefits under the insurance plan as if the inability to work had been caused by a personal injury.

Allowance

(3) If the Board pays for an assistive device or prosthesis, the Board may upon request give the worker an annual allowance to repair or replace clothing that is worn or damaged because of it. 1997, c. 16, Sched. A, s. 39.

**PART V
RETURN TO WORK**

Duty to co-operate in return to work

40 (1) The employer of an injured worker shall co-operate in the early and safe return to work of the worker by,

- (a) contacting the worker as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment;
- (b) attempting to provide suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores the worker's pre-injury earnings;
- (c) giving the Board such information as the Board may request concerning the worker's return to work; and
- (d) doing such other things as may be prescribed. 1997, c. 16, Sched. A, s. 40 (1).

Same, worker

(2) The worker shall co-operate in his or her early and safe return to work by,

- (a) contacting his or her employer as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment;
- (b) assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores his or her pre-injury earnings;
- (c) giving the Board such information as the Board may request concerning the worker's return to work; and
- (d) doing such other things as may be prescribed. 1997, c. 16, Sched. A, s. 40 (2).

Same, construction industry

(3) Employers engaged primarily in construction and workers who perform construction work shall co-operate in a worker's early and safe return to work and shall do so in accordance with such requirements as may be prescribed. Subsections (1) and (2) do not apply with respect to those employers and workers. 1997, c. 16, Sched. A, s. 40 (3).

Same, emergency workers

(4) If an emergency worker is injured, the worker's deemed employer is not required to comply with this section. The worker's actual employer, if any, is required to do so. However, the deemed employer is required to pay the costs of the actual employer's compliance with this section. 1997, c. 16, Sched. A, s. 40 (4).

Certain volunteers

(4.1) Subsection (4) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker. 2000, c. 26, Sched. I, s. 1 (2); 2002, c. 18, Sched. J, s. 5 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 40 (4.1) of the Act is amended by striking out "police force" and substituting "police service". (See: 2019, c. 1, Sched. 4, s. 66 (4))

Board assistance, etc.

(5) The Board may contact the employer and the worker to monitor their progress on returning the worker to work, to determine whether they are fulfilling their obligations to co-operate and to determine whether any assistance is required to facilitate the worker's return to work. 1997, c. 16, Sched. A, s. 40 (5).

Notice of dispute

(6) The employer or the worker shall notify the Board of any difficulty or dispute concerning their co-operation with each other in the worker's early and safe return to work. 1997, c. 16, Sched. A, s. 40 (6).

Resolution of dispute

(7) The Board shall attempt to resolve the dispute through mediation and, if mediation is not successful, shall decide the matter within 60 days after receiving the notice or within such longer period as the Board may determine. 1997, c. 16, Sched. A, s. 40 (7).

Transition, vocational rehabilitation

(8) Until this section applies to an employer and the workers employed by the employer, subsections 53 (1) to (3) of the *Workers' Compensation Act*, as deemed to be amended by this Act, continue to apply with necessary modifications despite their repeal. 1997, c. 16, Sched. A, s. 40 (8).

Section Amendments with date in force (d/m/y)

1998, c. 36, s. 2 - 18/12/1998

2000, c. 26, Sched. I, s. 1 (2) - 01/01/1998

2002, c. 18, Sched. J, s. 5 (3) - 26/11/2002

2018, c. 3, Sched. 5, s. 68 (4) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 66 (4) - not in force

Obligation to re-employ

41 (1) The employer of a worker who has been unable to work as a result of an injury and who, on the date of the injury, had been employed continuously for at least one year by the employer shall offer to re-employ the worker in accordance with this section. 1997, c. 16, Sched. A, s. 41 (1).

Exception

(2) This section does not apply in respect of employers who regularly employ fewer than 20 workers or such classes of employers as may be prescribed. 1997, c. 16, Sched. A, s. 41 (2).

Determinations re return to work

(3) The Board may determine the following matters on its own initiative or shall determine them if the worker and the employer disagree about the fitness of the worker to return to work:

1. If the worker has not returned to work with the employer, the Board shall determine whether the worker is medically able to perform the essential duties of his or her pre-injury employment or to perform suitable work.
2. If the Board has previously determined that the worker is medically able to perform suitable work, the Board shall determine whether the worker is medically able to perform the essential duties of the worker's pre-injury employment. 1997, c. 16, Sched. A, s. 41 (3).

Obligation to re-employ

(4) When the worker is medically able to perform the essential duties of his or her pre-injury employment, the employer shall,

- (a) offer to re-employ the worker in the position that the worker held on the date of injury; or
- (b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the date of injury. 1997, c. 16, Sched. A, s. 41 (4).

Same

(5) When the worker is medically able to perform suitable work (although he or she is unable to perform the essential duties of his or her pre-injury employment), the employer shall offer the worker the first opportunity to accept suitable employment that may become available with the employer. 1997, c. 16, Sched. A, s. 41 (5).

Duty to accommodate

(6) The employer shall accommodate the work or the workplace for the worker to the extent that the accommodation does not cause the employer undue hardship. 1997, c. 16, Sched. A, s. 41 (6).

Duration of obligation

(7) The employer is obligated under this section until the earliest of,

- (a) the second anniversary of the date of injury;
- (b) one year after the worker is medically able to perform the essential duties of his or her pre-injury employment; and
- (c) the date on which the worker reaches 65 years of age. 1997, c. 16, Sched. A, s. 41 (7); 2000, c. 26, Sched. I, s. 1 (3).

Construction industry requirements

(8) Employers engaged primarily in construction shall comply with such requirements as may be prescribed concerning the re-employment of workers who perform construction work. The application of this subsection is not contingent on the length of a worker's continuous employment as required under subsection (1). Subsections (2), (4) to (7) and (10) do not apply with respect to those workers and employers. 1997, c. 16, Sched. A, s. 41 (8).

Transition

(9) Until requirements referred to in subsection (8) are prescribed, subsection 54 (9) of the *Workers' Compensation Act* and Ontario Regulation 259/92 continue to apply with necessary modifications to employers and workers referred to in subsection (8) despite the repeal of subsection 54 (9). 1997, c. 16, Sched. A, s. 41 (9).

Effect of termination

(10) If an employer re-employs a worker in accordance with this section and then terminates the employment within six months, the employer is presumed not to have fulfilled the employer's obligations under this section. The employer may rebut the presumption by showing that the termination of the worker's employment was not related to the injury. 1997, c. 16, Sched. A, s. 41 (10).

Determination re compliance

(11) Upon the request of a worker or on its own initiative, the Board shall determine whether the employer has fulfilled the employer's obligations to the worker under this section. 1997, c. 16, Sched. A, s. 41 (11).

Restriction

(12) The Board is not required to consider a request under subsection (11) by a worker who has been re-employed and whose employment is terminated within six months if the request is made more than three months after the date of termination of employment. 1997, c. 16, Sched. A, s. 41 (12).

Failure to comply

(13) If the Board decides that the employer has not fulfilled the employer's obligations to the worker, the Board may,

- (a) levy a penalty on the employer not exceeding the amount of the worker's net average earnings for the year preceding the injury; and
- (b) make payments to the worker for a maximum of one year as if the worker were entitled to payments under section 43 (loss of earnings). 1997, c. 16, Sched. A, s. 41 (13).

Same

(14) A penalty payable under subsection (13) is an amount owing to the Board. 1997, c. 16, Sched. A, s. 41 (14).

Conflict with collective agreement

(15) If this section conflicts with a collective agreement that is binding upon the employer and if the employer's obligations under this section afford the worker greater re-employment terms than does the collective agreement, this section prevails over the collective agreement. However, this subsection does not operate to displace the seniority provisions of the collective agreement. 1997, c. 16, Sched. A, s. 41 (15).

Emergency workers

(16) If an emergency worker is injured, the worker's deemed employer is not required to comply with this section. The worker's actual employer, if any, is required to do so. However, the deemed employer is required to pay the costs of the actual employer's compliance with subsection (6). 1997, c. 16, Sched. A, s. 41 (16).

Certain volunteers

(17) Subsection (16) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker. 2000, c. 26, Sched. I, s. 1 (4); 2002, c. 18, Sched. J, s. 5 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 41 (17) of the Act is amended by striking out "police force" and substituting "police service". (See: 2019, c. 1, Sched. 4, s. 66 (5))

Section Amendments with date in force (d/m/y)

1998, c. 36, s. 3 - 01/01/1998

2000, c. 26, Sched. I, s. 1 (3) - 06/12/2000; 2000, c. 26, Sched. I, s. 1 (4) - 01/01/1998

2002, c. 18, Sched. J, s. 5 (4) - 26/11/2002

2018, c. 3, Sched. 5, s. 68 (5) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 66 (5) - not in force

Labour market re-entry

Labour market re-entry assessment

42 (1) The Board shall provide a worker with a labour market re-entry assessment if any of the following circumstances exist:

1. If it is unlikely that the worker will be re-employed by his or her employer because of the nature of the injury.
2. If the worker's employer has been unable to arrange work for the worker that is consistent with the worker's functional abilities and that restores the worker's pre-injury earnings.
3. If the worker's employer is not co-operating in the early and safe return to work of the worker. 1997, c. 16, Sched. A, s. 42 (1).

Labour market re-entry plan

(2) Based on the results of the assessment, the Board shall decide if a worker requires a labour market re-entry plan in order to enable the worker to re-enter the labour market and reduce or eliminate the loss of earnings that may result from the injury. 1997, c. 16, Sched. A, s. 42 (2).

Suitable employment or business

(3) In deciding whether a plan is required for a worker, the Board shall determine the employment or business that is suitable for the worker and is available. 1997, c. 16, Sched. A, s. 42 (3); 2007, c. 7, Sched. 41, s. 1 (1).

Preparation of plan

(4) The Board shall arrange for a plan to be prepared for a worker if the Board determines that the worker requires a labour market re-entry plan. 1997, c. 16, Sched. A, s. 42 (4).

Consultation required

(5) The labour market re-entry plan shall be prepared in consultation with,

- (a) the worker and, unless the Board considers it inappropriate to do so, the worker's employer; and

(b) the worker's health practitioners if the Board considers it necessary to do so. 1997, c. 16, Sched. A, s. 42 (5).

Contents of plan

(6) The plan shall contain the steps necessary to enable the worker to re-enter the labour market in the employment or business that is suitable for the worker and is available. 1997, c. 16, Sched. A, s. 42 (6); 2007, c. 7, Sched. 41, s. 1 (2).

Duty to co-operate

(7) The worker shall co-operate in all aspects of the labour market re-entry assessment or plan provided to the worker. 1997, c. 16, Sched. A, s. 42 (7).

Expenses

(8) The Board shall pay such expenses related to the plan as the Board considers appropriate to enable the worker to re-enter the labour market. 1997, c. 16, Sched. A, s. 42 (8).

Section Amendments with date in force (d/m/y)

2007, c. 7, Sched. 41, s. 1 (1, 2) - 01/07/2007

PART VI INSURED PAYMENTS

COMPENSATION

Payments for loss of earnings

43 (1) A worker who has a loss of earnings as a result of the injury is entitled to payments under this section beginning when the loss of earnings begins. The payments continue until the earliest of,

- (a) the day on which the worker's loss of earnings ceases;
- (b) the day on which the worker reaches 65 years of age, if the worker was less than 63 years of age on the date of the injury;
- (c) two years after the date of the injury, if the worker was 63 years of age or older on the date of the injury;
- (d) the day on which the worker is no longer impaired as a result of the injury. 1997, c. 16, Sched. A, s. 43 (1).

Amount

(2) Subject to subsections (2.1), (2.2), (3) and (4), the amount of the payments is 85 per cent of the difference between,

- (a) the worker's net average earnings before the injury; and
- (b) the net average earnings that the worker earns or is able to earn in suitable and available employment or business after the injury. 2017, c. 8, Sched. 33, s. 3 (1).

Minimum amount, full loss of earnings

(2.1) The minimum amount of the payments for full loss of earnings is the lesser of \$22,904.44 and the worker's net average earnings before the injury. 2017, c. 8, Sched. 33, s. 3 (1).

Minimum amount, partial loss of earnings

(2.2) The minimum amount of the payments for partial loss of earnings is,

- (a) if the worker's net average earnings before the injury is less than \$17,559.88, the difference between the worker's net average earnings before the injury and the net average earnings that the worker earns or is able to earn in suitable and available employment or business after the injury; or
- (b) if the worker's net average earnings before the injury is greater than or equal to \$17,559.88, but 85 per cent of the worker's net average earnings before the injury is less than \$17,559.88, the higher of,
 - (i) the difference between \$17,559.88 and the net average earnings that the worker earns or is able to earn in suitable and available employment or business after the injury, and
 - (ii) 85 per cent of the difference between the worker's net average earnings before the injury and the net average earnings that the worker earns or is able to earn in suitable and available employment or business after the injury. 2017, c. 8, Sched. 33, s. 3 (2).

Payments where co-operating

(3) The amount of the payment is 85 per cent of the difference between his or her net average earnings before the injury and any net average earnings the worker earns after the injury, if the worker is co-operating in health care measures and,

- (a) his or her early and safe return to work; or
- (b) all aspects of a labour market re-entry assessment or plan. 1997, c. 16, Sched. A, s. 43 (3); 2000, c. 26, Sched. I, s. 1 (6).

Earnings after injury

(4) The Board shall determine the worker's earnings after the injury to be the earnings that the worker is able to earn from the employment or business that is suitable for the worker under section 42 and is available and,

- (a) if the worker is provided with a labour market re-entry plan, the earnings shall be determined as of the date the worker completes the plan; or
- (b) if the Board decides that the worker does not require a labour market re-entry plan, the earnings shall be determined as of the date the Board makes the decision. 2007, c. 7, Sched. 41, s. 2 (2).

Calculation of amount

(5) The calculation of the amount of the payments is subject to the following rules:

- 1. The amount of the payment must be adjusted by the indexing factor for each January 1, beginning January 1, 2018.
- 2. The amount described in clause (2) (b) must reflect any disability payments paid to the worker under the *Canada Pension Plan* or the *Quebec Pension Plan* in respect of the injury. 2015, c. 38, Sched. 23, s. 1.

(6) REPEALED: 2015, c. 38, Sched. 23, s. 1.

Failure to co-operate

(7) The Board may reduce or suspend payments to the worker during any period when the worker is not co-operating,

- (a) in health care measures;
- (b) in his or her early and safe return to work; or
- (c) in all aspects of a labour market re-entry assessment or plan provided to the worker. 1997, c. 16, Sched. A, s. 43 (7).

Transition, full loss of earnings

(8) The following rules apply for the purpose of calculating amounts payable for full loss of earnings under this section for any period before January 1, 2017, regardless of when the Board determines that the worker is entitled to the amount:

- 1. The minimum amount for full loss of earnings set out in subsection (2) as it read on December 30, 2017, and as adjusted in accordance with section 51, as it read on December 31, 2017, continues to apply for the purpose of calculating amounts payable for full loss of earnings under this section for the calendar year in which the injury was sustained.
- 2. The minimum amount for full loss of earnings set out in subsection (2) as it read on December 30, 2017, and as adjusted in accordance with the alternate indexing factor described in subsection 50 (1), as it read on December 31, 2017, continues to apply for the purpose of calculating amounts payable for full loss of earnings under this section for subsequent years. 2017, c. 8, Sched. 33, s. 3 (3).

Same, 2017 injury

(9) The following rules apply for the purpose of calculating amounts payable for full loss of earnings under this section for injuries sustained between January 1, 2017 and December 31, 2017, regardless of when the Board determines that the worker is entitled to the amount:

- 1. The minimum amount for full loss of earnings set out in subsection (2) as it read on December 30, 2017, and as adjusted in accordance with section 51, as it read on December 31, 2017, continues to apply for the purpose of calculating amounts payable for full loss of earnings under this section for the 2017 calendar year.
- 2. For the purpose of calculating the January 1, 2018 annual adjustment to amounts payable required under section 52, the Board shall calculate the amount payable using the minimum amount for full loss of earnings set out in subsection (2.1). 2017, c. 8, Sched. 33, s. 3 (3).

Transition, partial loss of earnings

(10) Any payments made for partial loss of earnings under this section for any period before January 1, 2018 that were calculated in the manner described in subsection (11) are not invalid solely on the ground that they were calculated in that manner, and there is no right to object to or appeal a decision, or to commence an action or other legal proceeding on that ground alone. 2017, c. 8, Sched. 33, s. 3 (4).

Same

(11) The amounts payable were calculated in accordance with the rules respecting the determination of the minimum amount of payments for partial loss of earnings, as set out in subsection (2.2), with the following modifications:

1. The calculations were based on a dollar amount of \$15,312.51, as of January 1, 1998.
2. The dollar amount set out in paragraph 1 was adjusted annually in accordance with section 51, as it read on December 31, 2017. 2017, c. 8, Sched. 33, s. 3 (4).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (5) - 01/01/1998; 2000, c. 26, Sched. I, s. 1 (6) - 06/12/2000

2007, c. 7, Sched. 41, s. 2 (1, 2) - 01/07/2007

2015, c. 38, Sched. 23, s. 1 - 01/01/2018

2017, c. 8, Sched. 33, s. 3 (1) - 31/12/2017; 2017, c. 8, Sched. 33, s. 3 (2, 4) - 17/05/2017; 2017, c. 8, Sched. 33, s. 3 (3) - 01/01/2018

Review re loss of earnings

44 (1) Every year or if a material change in circumstances occurs, the Board may review payments to a worker for loss of earnings and may confirm, vary or discontinue the payments. 1997, c. 16, Sched. A, s. 44 (1).

No review after 72-month period

(2) Subject to subsection (2.1), the Board shall not review the payments more than 72 months after the date of the worker's injury. 2002, c. 18, Sched. J, s. 5 (5).

Exception

(2.1) The Board may review the payments more than 72 months after the date of the worker's injury if,

- (a) before the 72-month period expires, the worker fails to notify the Board of a material change in circumstances or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan;
- (b) the worker was provided with a labour market re-entry plan and the plan is not completed when the 72-month period expires;
- (c) after the 72-month period expires, the worker suffers a significant deterioration in his or her condition that results in a redetermination of the degree of the permanent impairment under section 47;
- (d) after the 72-month period expires, the worker suffers a significant deterioration in his or her condition that results in a determination of a permanent impairment under section 47;
- (e) after the 72-month period expires, the worker suffers a significant deterioration in his or her condition that is likely, in the Board's opinion, to result in a redetermination of the degree of permanent impairment under section 47;
- (f) after the 72-month period expires, the worker suffers a significant temporary deterioration in his or her condition that is related to the injury; or
- (g) when the 72-month period expires,
 - (i) the worker and the employer are co-operating in the worker's early and safe return to work in accordance with section 40, or
 - (ii) the worker is co-operating in health care measures in accordance with section 34. 2002, c. 18, Sched. J, s. 5 (5); 2007, c. 7, Sched. 41, s. 3 (1, 2).

Time for review when clause (2.1) (a) applies

(2.2) If clause (2.1) (a) applies, the Board may review the payments at any time. 2002, c. 18, Sched. J, s. 5 (5).

Time for review when clause (2.1) (b) applies

(2.3) If clause (2.1) (b) applies, the Board may review the payments,

- (a) within the 30 days after the date on which the plan is completed; and
- (b) at any time, if the worker, at any time on or before the day that is 30 days after the date on which the plan is completed, fails to notify the Board of a material change in circumstances, or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan. 2002, c. 18, Sched. J, s. 5 (5).

Time for review when clause (2.1) (c) applies

(2.4) If clause (2.1) (c) applies, the Board may review the payments,

- (a) within the 24 months after the date on which it redetermines the degree of permanent impairment;
- (a.1) within 30 days after the date on which the labour market re-entry plan is completed, where the Board redetermines the degree of permanent impairment of a worker who was provided with a labour market re-entry plan that is not completed when the 24-month period in clause (a) expires; and
- (b) at any time, if the worker, at any time on or before the day on which the Board reviews the payments under clause (a), fails to notify the Board of a material change in circumstances, or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan. 2002, c. 18, Sched. J, s. 5 (5); 2007, c. 7, Sched. 41, s. 3 (3).

Time for review when clause (2.1) (d) applies

(2.4.1) If clause (2.1) (d) applies, the Board may review the payments,

- (a) within 24 months after the date on which the Board determines the degree of permanent impairment under section 47; and
- (b) within 30 days after the date on which the labour market re-entry plan is completed, where the Board determines the degree of permanent impairment of a worker who was provided with a labour market re-entry plan that is not completed when the 24-month period in clause (a) expires. 2007, c. 7, Sched. 41, s. 3 (4).

Time for review when clause (2.1) (e) applies

(2.4.2) If clause (2.1) (e) applies, the Board may review the payments during the period that begins on the day the Board determines that the significant deterioration in the worker's condition is likely to result in a redetermination of the degree of permanent impairment and ends on the day it makes the redetermination or determines that no redetermination shall be made. 2007, c. 7, Sched. 41, s. 3 (4).

Time for review when clause (2.1) (f) applies

(2.4.3) If clause (2.1) (f) applies, the Board may review the payments,

- (a) at any time it considers appropriate in the period during which the worker is suffering a significant temporary deterioration in his or her condition; and
- (b) when it determines that the worker has recovered from the significant temporary deterioration in his or her condition. 2007, c. 7, Sched. 41, s. 3 (4).

Time for review when clause (2.1) (g) applies

(2.4.4) If clause (2.1) (g) applies, the Board may review the payments up to 24 months after the date of the expiry of the 72-month period. 2007, c. 7, Sched. 41, s. 3 (4).

Additional review

(2.4.5) The Board may review the payments at any time,

- (a) in a case to which clause (2.4) (a.1) or (2.4.1) (b) applies, if the worker, at any time on or before the day that is 30 days after the date on which the labour market re-entry plan is completed, fails to notify the Board of a material change in circumstances, or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan;
- (b) in a case to which clause (2.4.1) (a) or subsection (2.4.2), (2.4.3) or (2.4.4) applies, if the worker, at any time on or before the day on which the Board reviews the payments under that clause or subsection, fails to notify the Board of a material change in circumstances, or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan. 2007, c. 7, Sched. 41, s. 3 (4).

Transition

(2.5) Clause (2.1) (b) and subsection (2.3) apply with respect to,

- (a) a worker who has been provided with a labour market re-entry plan that is not completed before November 26, 2002;
- (b) a worker who is provided with a labour market re-entry plan on or after November 26, 2002. 2007, c. 7, Sched. 41, s. 3 (5).

Same

(2.6) Clauses (2.1) (c) and (2.4) (a) and (b) apply with respect to a worker whose degree of permanent impairment is redetermined by the Board on or after November 26, 2002. 2007, c. 7, Sched. 41, s. 3 (5).

Same

(2.7) Clauses (2.1) (c) and (2.4) (a.1) apply with respect to a worker whose degree of permanent impairment is redetermined by the Board on or after July 1, 2007. 2007, c. 7, Sched. 41, s. 3 (5).

Same

(2.8) Clauses (2.1) (d) and (e) and subsections (2.4.1) and (2.4.2) apply with respect to,

- (a) a worker who, on or after July 1, 2007, is suffering a significant deterioration in his or her condition that began after the 72-month period expired and that,
 - (i) results in a determination of the degree of permanent impairment under section 47, or
 - (ii) in the Board's opinion, is likely to result in a redetermination of the degree of permanent impairment under section 47;
- (b) a worker who is provided with a labour market re-entry plan that is not completed before July 1, 2007; and
- (c) a worker who is provided with a labour market re-entry plan on or after July 1, 2007. 2007, c. 7, Sched. 41, s. 3 (5).

Same

(2.9) Clause (2.1) (f) and subsection (2.4.3) apply with respect to a worker who, on or after July 1, 2007, is suffering a significant temporary deterioration in his or her condition that began after the 72-month period expired. 2007, c. 7, Sched. 41, s. 3 (5).

Same

(2.10) Clause (2.1) (g) and subsection (2.4.4) apply with respect to a worker if the 72-month period expires before July 1, 2007. 2007, c. 7, Sched. 41, s. 3 (5).

Adjustments prospective

(2.11) Nothing in this section entitles a person to claim an adjustment of a loss of earning payment made under clauses (2.1) (c) and (2.4) (a.1) in respect of a period before July 1, 2007. 2007, c. 7, Sched. 41, s. 3 (5).

Same

(2.12) Nothing in this section entitles a person to claim an adjustment of a loss of earning payment made under clause (2.1) (d), (e), (f) or (g) in respect of a period before July 1, 2007. 2007, c. 7, Sched. 41, s. 3 (5).

Same, certain older workers

- (3) A worker may direct the Board not to review the payments for loss of earnings,
 - (a) if the worker is 55 years old or more when the Board determines that he or she is entitled to payments for loss of earnings;
 - (b) if he or she has reached maximum medical recovery; and
 - (c) if a labour market re-entry plan for the worker has been completed. 1997, c. 16, Sched. A, s. 44 (3); 2002, c. 18, Sched. J, s. 5 (6).

Same

- (4) The direction must be given within 30 days after the later of,
 - (a) the date on which the worker reaches maximum medical recovery; and
 - (b) the date on which the worker's labour market re-entry plan is completed. 1997, c. 16, Sched. A, s. 44 (4); 2002, c. 18, Sched. J, s. 5 (7).

Effect of direction

(5) If the worker gives the direction to the Board, he or she is entitled to receive the payments until he or she reaches 65 years of age. The direction is irrevocable. 1997, c. 16, Sched. A, s. 44 (5).

Same

(6) If the worker gives the direction to the Board, the Board shall review payments to the worker only if, before the direction was given, the worker failed to notify the Board of a material change in circumstances or engaged in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan. 1997, c. 16, Sched. A, s. 44 (6).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. J, s. 5 (5-7) - 26/11/2002

2007, c. 7, Sched. 41, s. 3 (1-5) - 01/07/2007

Payments for loss of retirement income

45 (1) This section applies with respect to a worker who is receiving payments under the insurance plan for loss of earnings. However, it does not apply with respect to a worker who was 64 years of age or older on the date of the injury. 1997, c. 16, Sched. A, s. 45 (1).

Amount set aside

(2) If a worker has received payments for loss of earnings for 12 continuous months, the Board shall set aside for him or her an amount equal to 5 per cent of every subsequent payment to him or her for loss of earnings. (Payments made under section 65 to another person shall be deemed to have been made to the worker.) 1997, c. 16, Sched. A, s. 45 (2).

Contribution by worker

(3) If amounts are being set aside for a worker under subsection (2), he or she may elect to contribute an amount equal to 5 per cent of every payment to him or her for loss of earnings. The election is irrevocable and must be in writing in a form approved by the Board. 1997, c. 16, Sched. A, s. 45 (3).

Same

(4) If the worker makes the election under subsection (3), the Board shall deduct the worker's contribution from each payment to him or her for loss of earnings. 1997, c. 16, Sched. A, s. 45 (4).

Entitlement to benefit

(5) When the worker reaches 65 years of age, he or she is entitled to receive a retirement benefit under this section. The amount of the benefit is the sum of the amount set aside by the Board and the contribution by the worker, if any, plus the accumulated investment income on those amounts. 1997, c. 16, Sched. A, s. 45 (5).

Payment scheme

(6) The worker may select the payment scheme for the benefit from among such schemes and subject to such restrictions as may be prescribed. 2011, c. 1, Sched. 7, s. 3 (4).

Lump sum

(6.1) Despite subsection (6), the Board shall pay the benefit as a lump sum if,

- (a) in the case of a worker who reaches the age of 65 before the specified date, the amount of the benefit is less than \$3,000 per year;
- (b) in the case of a worker who reaches the age of 65 on or after the specified date, the amount of the benefit is less than or equal to the maximum amount of average earnings determined under section 54 for the year in which the worker reaches the age of 65. 2011, c. 1, Sched. 7, s. 3 (4).

Specified date

(6.2) For the purpose of subsection (6.1), the specified date is the day that is one month after the day the *Good Government Act, 2011* receives Royal Assent. 2011, c. 1, Sched. 7, s. 3 (4).

Prescribed benefits – survivors

(7) When the worker dies, his or her survivors are entitled to the prescribed benefits in respect of amounts set aside for the worker under subsection (2). However, a survivor who receives benefits under section 48 is not entitled to benefits under this subsection. 2002, c. 18, Sched. J, s. 5 (8).

Prescribed benefits – beneficiary or estate

(7.1) If the worker has no survivors and has designated a beneficiary, the beneficiary is entitled to the prescribed benefits. If the worker has not designated a beneficiary, the worker's estate is entitled to the prescribed benefits. 2002, c. 18, Sched. J, s. 5 (8).

No entitlement to prescribed benefits

(7.2) If there is no entitlement to the prescribed benefits under subsection (7) or (7.1), the Board shall remove from the fund maintained under subsection (12) the amounts set aside for the worker and the accumulated investment income on the amounts, and shall transfer the total,

- (a) to the worker's employer, if it is a Schedule 2 employer that is individually liable to pay benefits with respect to the worker under the insurance plan; or
- (b) in any other case, to the insurance fund. 2002, c. 18, Sched. J, s. 5 (8).

Application

(7.3) Subsections (7) to (7.2) apply in respect of any worker who dies on or after January 1, 1998. 2002, c. 18, Sched. J, s. 5 (8).

Same

(8) The amount of the benefits under subsection (7) shall be based on the amounts set aside for the worker plus the accumulated investment income on the amounts. 1997, c. 16, Sched. A, s. 45 (8).

Same, worker's contributions

(9) When the worker dies, his or her survivors are entitled to the prescribed benefits in respect of amounts contributed by the worker under subsection (3). If there are no survivors, the beneficiary designated by the worker or (if no beneficiary is designated) the worker's estate is entitled to the benefits under this subsection. 1997, c. 16, Sched. A, s. 45 (9).

Same

(10) The amount of the benefits under subsection (9) shall be based on the amounts contributed by the worker plus the accumulated investment income on the amounts. 1997, c. 16, Sched. A, s. 45 (10).

Annual statements

(11) The Board shall provide the worker with an annual statement setting out,

- (a) the amounts set aside by the Board in the worker's name in the year;
- (b) the amounts contributed by the worker in the year, if any;
- (c) the accumulated investment income earned on the amounts referred to in clauses (a) and (b) in the year;
- (d) the date when the worker will become entitled to a benefit;
- (e) the name of any designated beneficiary; and
- (f) such other information as the Board considers appropriate. 1997, c. 16, Sched. A, s. 45 (11); 1999, c. 6, s. 67 (9); 2001, c. 9, Sched. I, s. 4 (1).

Benefit fund

(12) The Board shall maintain a fund into which the amounts set aside under subsection (2) or contributed under subsection (3) shall be deposited. 1997, c. 16, Sched. A, s. 45 (12).

Investment

(13) Subsections 97 (4) to (7) apply with respect to the investment of money in the fund. 1997, c. 16, Sched. A, s. 45 (13).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (9) - 01/03/2000

2000, c. 26, Sched. I, s. 1 (7) - 01/01/1998

2001, c. 9, Sched. I, s. 4 (1) - 29/06/2001

2002, c. 18, Sched. J, s. 5 (8) - 15/03/2003

2007, c. 7, Sched. 41, s. 4 - 01/07/2007

2011, c. 1, Sched. 7, s. 3 (4) - 30/03/2011

Compensation for non-economic loss

46 (1) If a worker's injury results in permanent impairment, the worker is entitled to compensation under this section for his or her non-economic loss. 1997, c. 16, Sched. A, s. 46 (1).

Amount

(2) The amount of the compensation is calculated by multiplying the percentage of the worker's permanent impairment from the injury (as determined by the Board) and,

- (a) \$59,095.26 plus \$1,313.71 for each year by which the worker's age at the time of the injury was less than 45; or
- (b) \$59,095.26 less \$1,313.71 for each year by which the worker's age at the time of the injury was greater than 45.

However, the maximum amount to be multiplied by the percentage of the worker's impairment is \$85,359.27 and the minimum amount is \$32,831.21. 1997, c. 16, Sched. A, s. 46 (2); 2017, c. 8, Sched. 33, s. 4 (1).

Lump sum or monthly payment

(3) If the worker becomes entitled to compensation under this section before the specified date, the following rules apply to the payment of the compensation:

- 1. If the amount of the compensation is greater than \$13,132.01, it is payable as a monthly payment for the life of the worker. If it is \$13,132.01 or less, it is payable as a lump sum.
- 2. Despite paragraph 1, the worker may elect to receive as a lump sum an amount that would otherwise be payable monthly if he or she does so within 30 days after receiving notice of the amount from the Board. 2011, c. 1, Sched. 7, s. 3 (5); 2017, c. 8, Sched. 33, s. 4 (2).

Same

(4) If the worker becomes entitled to compensation under this section on or after the specified date, the compensation is payable as a lump sum unless the following conditions are satisfied:

- 1. The amount of compensation is greater than \$13,132.01.
- 2. The worker elects, within 30 days after receiving notice of the amount from the Board, to receive it as a monthly payment for his or her life. 2011, c. 1, Sched. 7, s. 3 (5); 2017, c. 8, Sched. 33, s. 4 (3).

Specified date

(5) For the purpose of subsections (3) and (4), the specified date is the day the Good Government Act, 2011 receives Royal Assent. 2011, c. 1, Sched. 7, s. 3 (5).

Election

(6) An election described in subsection (3) or (4) is irrevocable. 2011, c. 1, Sched. 7, s. 3 (5).

Transition

(7) The amount of compensation payable to a worker under this section for non-economic loss for any period before January 1, 2018 shall be calculated using the amounts set out in this section as it read on December 30, 2017, and as adjusted in accordance with section 51, as it read on December 31, 2017, regardless of when the Board determines that the worker is entitled to the amount. 2017, c. 8, Sched. 33, s. 4 (4).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (8) - 01/01/1998

2011, c. 1, Sched. 7, s. 3 (5) - 30/03/2011

2017, c. 8, Sched. 33, s. 4 (1-3) - 31/12/2017; 2017, c. 8, Sched. 33, s. 4 (4) - 01/01/2018

Degree of permanent impairment

47 (1) If a worker suffers permanent impairment as a result of the injury, the Board shall determine the degree of his or her permanent impairment expressed as a percentage of total permanent impairment. 1997, c. 16, Sched. A, s. 47 (1).

Same

(2) The determination must be made in accordance with the prescribed rating schedule (or, if the schedule does not provide for the impairment, the prescribed criteria) and,

- (a) having regard to medical assessments, if any, conducted under this section; and
- (b) having regard to the health information about the worker on file with the Board. 1997, c. 16, Sched. A, s. 47 (2).

Medical assessment

(3) The Board may require a worker to undergo a medical assessment after he or she reaches maximum medical recovery. 1997, c. 16, Sched. A, s. 47 (3).

Selection of physician

(4) The worker shall select a physician from a roster maintained by the Board to perform the assessment. If the worker does not make the selection within 30 days after the Board gives the worker a copy of the roster, the Board shall select the physician. 1997, c. 16, Sched. A, s. 47 (4).

Same

(5) The physician who is selected to perform the assessment shall examine the worker and assess the extent of his or her permanent impairment. When performing the assessment, the physician shall consider any reports by the worker's treating health professional. 1997, c. 16, Sched. A, s. 47 (5).

Report

(6) The physician shall promptly give the Board a report on the assessment. 1997, c. 16, Sched. A, s. 47 (6).

Worker and employer to receive copies

(7) The Board shall give a copy of the report to the worker and to the employer who employed him or her on the date of the injury. 2011, c. 1, Sched. 7, s. 3 (6).

Notice

(7.1) Despite subsection (7), before giving the employer a copy of the report, the Board shall notify the worker that the Board proposes to do so and shall give him or her an opportunity to object to the disclosure, and subsections 59 (2) to (6) apply with necessary modifications. 2011, c. 1, Sched. 7, s. 3 (6).

Request to reassess

(8) The Board may request a physician to perform a second assessment of the worker if the Board considers the initial assessment or the report on it to be incomplete or inaccurate. 1997, c. 16, Sched. A, s. 47 (8).

Request for redetermination

(9) If the degree of the worker's permanent impairment is greater than zero and if the worker suffers a significant deterioration in his or her condition, the worker may request that the Board redetermine the degree of the permanent impairment. 1997, c. 16, Sched. A, s. 47 (9).

Restriction

(10) The worker is not entitled to request a redetermination until 12 months have elapsed since the most recent determination by the Board concerning the degree of his or her impairment. 1997, c. 16, Sched. A, s. 47 (10).

Redetermination

(11) Subsections (1) to (8) apply with respect to the redetermination. 1997, c. 16, Sched. A, s. 47 (11).

Payment for medical assessments

(12) The Board shall pay the physician for performing the medical assessment and providing the report and shall fix the amount to be paid to him or her. 1997, c. 16, Sched. A, s. 47 (12).

Permanent impairment

(13) For the purposes of this Act, a worker shall be deemed not to have a permanent impairment if the degree of his or her permanent impairment is determined to be zero. 1997, c. 16, Sched. A, s. 47 (13).

Section Amendments with date in force (d/m/y)

2011, c. 1, Sched. 7, s. 3 (6) - 30/03/2011

Death benefits

48 (1) This section applies when a worker's death results from an injury for which the worker would otherwise have been entitled to benefits under the insurance plan. 1997, c. 16, Sched. A, s. 48 (1).

Spouse lump sum payment

(2) A surviving spouse who was cohabiting with the worker at the time of the worker's death is entitled to payment of a lump sum of \$80,673.30,

- (a) plus \$2,016.83 for each year by which the spouse's age on the date of the worker's death is less than 40; or
- (b) minus \$2,016.83 for each year by which the spouse's age at the date of the worker's death is greater than 40.

However, the maximum amount payable under this subsection is \$121,009.87 and the minimum amount is \$40,336.60. 1997, c. 16, Sched. A, s. 48 (2); 1999, c. 6, s. 67 (10); 2005, c. 5, s. 73 (9); 2017, c. 8, Sched. 33, s. 5 (1).

Periodic payment to spouse, no children

(3) If the deceased worker is survived by a spouse who was cohabiting with the worker at the time of the worker's death, but no children, the spouse is entitled to be paid, by periodic payments, 40 per cent of the deceased worker's net average earnings,

- (a) plus 1 per cent of the net average earnings for each year by which the spouse's age on the date of the worker's death is greater than 40; or
- (b) minus 1 per cent of the net average earnings for each year by which the spouse's age on the date of the worker's death is less than 40.

However, the maximum percentage payable under this subsection is 60 per cent and the minimum percentage is 20 per cent. If the deceased worker's net average earnings are less than \$22,904.44, they shall be deemed to be \$22,904.44. 1997, c. 16, Sched. A, s. 48 (3); 1999, c. 6, s. 67 (11); 2005, c. 5, s. 73 (10); 2017, c. 8, Sched. 33, s. 5 (2).

Periodic payment to spouse with children

(4) If the deceased worker is survived by a spouse and one or more children, the spouse is entitled to be paid, by periodic payments, 85 per cent of the deceased worker's net average earnings until the youngest child reaches 19 years of age. However, the minimum amount payable under this subsection is \$22,904.44 per year. 1997, c. 16, Sched. A, s. 48 (4); 1999, c. 6, s. 67 (12); 2005, c. 5, s. 73 (11); 2017, c. 8, Sched. 33, s. 5 (3).

Exception

(5) Subsection (4) does not apply if the Board determines that the spouse and the children do not reside together or that the children are not in the custody or in the care and control of the spouse. In those circumstances, the Board shall apportion the amount otherwise payable under subsection (4) in a manner that the Board considers appropriate among the children, the spouse and any other person who has the care, control or custody of the children. 1997, c. 16, Sched. A, s. 48 (5); 1999, c. 6, s. 67 (13); 2005, c. 5, s. 73 (12).

Same

(6) Subject to subsection (19), a spouse who ceases to be entitled to payments under subsection (4) becomes entitled to payments under subsection (3) as if the worker had died immediately after the day on which the youngest child reached 19 years of age. 1997, c. 16, Sched. A, s. 48 (6); 1999, c. 6, s. 67 (14); 2005, c. 5, s. 73 (13).

Separated spouse

(7) If, immediately before his or her death, the deceased worker was required to make support or maintenance payments under a separation agreement or judicial order to a person who had been his or her spouse, the person is entitled to benefits under this section as a spouse. Despite the absence of a separation agreement or judicial order, the Board may pay benefits under this section to a person who had been a spouse of the deceased worker as if he or she were a spouse if the person was dependent on the worker at the time of the worker's death. 1997, c. 16, Sched. A, s. 48 (7); 1999, c. 6, s. 67 (15); 2005, c. 5, s. 73 (14).

Apportionment among spouses

(8) If there is more than one person entitled to payments under this section as a spouse of the deceased worker, the following rules apply:

1. The total lump sum payments to the spouses must not exceed \$121,009.87.
2. The total periodic payments to the spouses must not exceed 85 per cent of the deceased worker's net average earnings.
3. The Board shall apportion the payments among the spouses in accordance with,
 - i. the relative degree of financial and emotional dependance of each spouse on the deceased worker at the time of death,

- ii. the period of separation, if any, of each spouse from the deceased worker at the time of death, and
- iii. the size of the relative entitlements of those so entitled without reference to this subsection. 1997, c. 16, Sched. A, s. 48 (8); 1999, c. 6, s. 67 (16); 2005, c. 5, s. 73 (15); 2017, c. 8, Sched. 33, s. 5 (4).

Labour market re-entry plan for spouse

(9) Upon request, the Board shall provide a spouse with a labour market re-entry assessment. The request must be made within one year after the death of the worker. 1997, c. 16, Sched. A, s. 48 (9); 1999, c. 6, s. 67 (17); 2005, c. 5, s. 73 (16).

Same

(10) Subsections 42 (2) to (8) apply with necessary modifications with respect to the labour market re-entry plan. 1997, c. 16, Sched. A, s. 48 (10).

Same

(11) If the spouse fails to comply with subsection 42 (7), the Board may discontinue the provision of a labour market re-entry assessment or plan. 1997, c. 16, Sched. A, s. 48 (11); 1999, c. 6, s. 67 (18); 2000, c. 26, Sched. I, s. 1 (9); 2005, c. 5, s. 73 (17).

Bereavement counselling

(12) Upon request, the Board may pay for bereavement counselling for the spouse or the children of the worker. The request must be received within one year after the worker's death. 1997, c. 16, Sched. A, s. 48 (12); 1999, c. 6, s. 67 (19); 2005, c. 5, s. 73 (18).

Lump sum payment to dependent children, no spouse

(13) If there is no spouse when the worker dies and if the deceased worker is survived by one or more dependent children, the dependent children as a class are entitled to payment of a lump sum of \$80,673.30. 1997, c. 16, Sched. A, s. 48 (13); 1999, c. 6, s. 67 (20); 2005, c. 5, s. 73 (19); 2017, c. 8, Sched. 33, s. 5 (5).

Periodic payment to dependent children, no spouse

(14) If there is no spouse or if the spouse dies and the deceased worker is survived by only one dependent child, the dependent child is entitled to be paid, by periodic payments, 30 per cent of the deceased worker's net average earnings. However, if the deceased worker's net average earnings are less than \$22,904.44, they shall be deemed to be \$22,904.44. 1997, c. 16, Sched. A, s. 48 (14); 1999, c. 6, s. 67 (21); 2005, c. 5, s. 73 (20); 2017, c. 8, Sched. 33, s. 5 (6).

Same

(15) If there is no spouse or if the spouse dies and the deceased worker is survived by more than one dependent child, the dependent children as a class are entitled to be paid, by periodic payments, 30 per cent of the deceased worker's net average earnings plus 10 per cent of the net average earnings for each dependent child, except one child. However, if the deceased worker's net average earnings are less than \$22,904.44 they shall be deemed to be \$22,904.44 and the total amount payable under this subsection shall not exceed 85 per cent of the net average earnings of the worker at the time of the accident. 1997, c. 16, Sched. A, s. 48 (15); 1999, c. 6, s. 67 (22); 2005, c. 5, s. 73 (21); 2017, c. 8, Sched. 33, s. 5 (7).

Cessation of payments for children

(16) Periodic payments in respect of a child cease when the child reaches 19 years of age, except in the circumstances described in subsections (17) and (18). 1997, c. 16, Sched. A, s. 48 (16).

Periodic payments, education of children

(17) If the Board is satisfied that it is advisable for a child over 19 years of age to continue his or her education, the child is entitled to be paid, by periodic payments, 10 per cent of the deceased worker's net average earnings until such time as the Board considers appropriate. 1997, c. 16, Sched. A, s. 48 (17).

Periodic payments, incapable children

(18) Periodic payments in respect of a child who is physically or mentally incapable of earning wages continue until the child is able to earn wages or until his or her death. 1997, c. 16, Sched. A, s. 48 (18).

Maximum payable to spouse and children

(19) The total periodic payments to the spouse and the children of the deceased worker must not exceed 85 per cent of the deceased worker's net average earnings. 1997, c. 16, Sched. A, s. 48 (19); 1999, c. 6, s. 67 (23); 2005, c. 5, s. 73 (22).

Parent (not spouse)

(20) Despite subsections (14) and (15), the following rules apply if one or more children who are entitled to payments under this section are being maintained by a parent who is not the spouse of the deceased worker or by another person who is acting in the role of parent:

1. The parent or other person is entitled to receive the periodic payments to which a spouse of the deceased worker would be entitled under subsection (4).
2. In the circumstances described in paragraph 1, the payments to the parent or other person with respect to the children are in lieu of the periodic payments to which the children would otherwise be entitled under this section.
3. If there is more than one individual who is a parent or other person and if there is more than one child, the Board shall apportion the payments.
4. The total periodic payments under this subsection must not exceed 85 per cent of the deceased worker's net average earnings. 1997, c. 16, Sched. A, s. 48 (20); 1999, c. 6, s. 67 (24); 2005, c. 5, s. 73 (23); 2021, c. 4, Sched. 11, s. 42 (4).

Dependants, no spouse or children

(21) If the deceased worker has no spouse or children but is survived by other dependants, the dependants are entitled to reasonable compensation proportionate to the loss occasioned to each of them. The following rules apply with respect to that compensation:

1. The Board shall determine the amount of the compensation.
2. The total periodic payments to the dependants must not exceed 50 per cent of the deceased worker's net average earnings.
3. The periodic payments to a dependant are payable only as long as the worker could have been reasonably expected to continue to support the dependant if the deceased worker had not suffered injury. 1997, c. 16, Sched. A, s. 48 (21); 1999, c. 6, s. 67 (25); 2005, c. 5, s. 73 (24).

Burial expenses

(22) The Board shall determine and pay the necessary expenses of burial or cremation of the deceased worker, paying at least \$3,025.25. If, because of the circumstances of the case, the worker's body is transported a considerable distance for burial or cremation, the Board may also pay the necessary transportation costs. 1997, c. 16, Sched. A, s. 48 (22); 2017, c. 8, Sched. 33, s. 5 (8).

Deductions for CPP and QPP payments

(23) In calculating the compensation payable by way of periodic payments under this section, the Board shall have regard to any payments of survivor benefits for death caused by injury that are received under the *Canada Pension Plan* or the *Quebec Pension Plan* in respect of the deceased worker. 1997, c. 16, Sched. A, s. 48 (23).

Net average earnings

(24) For the purposes of this section, the deceased worker's net average earnings are to be determined as of the date of the injury to the worker. 1997, c. 16, Sched. A, s. 48 (24).

Transition

(25) The amount of a payment payable to a person under this section for any period before January 1, 2018 shall be calculated using the amounts set out in this section as it read on December 30, 2017, and as adjusted in accordance with the alternate indexing factor described in subsection 50 (1), as it read on December 31, 2017, regardless of when the Board determines that the person is entitled to the amount. 2017, c. 8, Sched. 33, s. 5 (9).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (10-25) - 01/03/2000

2000, c. 26, Sched. I, s. 1 (9) - 01/01/1998

2005, c. 5, s. 73 (9-24) - 09/03/2005

2017, c. 8, Sched. 33, s. 5 (1-8) - 31/12/2017; 2017, c. 8, Sched. 33, s. 5 (9) - 01/01/2018

2021, c. 4, Sched. 11, s. 42 (4) - 19/04/2021

Average earnings — death benefits

Application

48.1 (1) This section applies to payments payable under section 48 as a result of a worker's injury that occurred on or after January 1, 1998. 2015, c. 34, Sched. 3, s. 2.

Determination of average earnings

(2) Despite section 53 and the minimum amounts set out in subsections 48 (3), (14) and (15), for the purpose of determining amounts payable under section 48, the Board may, in such circumstances as it considers appropriate, determine the amount of a deceased worker's average earnings taking into account the average earnings at the time of the worker's injury of a person engaged in the same trade, occupation, profession or calling as the worker was engaged in and out of which the worker's injury arose. 2015, c. 34, Sched. 3, s. 2.

Reconsideration of Board decision

(3) Despite section 121, if, before the day the *Employment and Labour Statute Law Amendment Act, 2015* receives Royal Assent, a worker or his or her survivor filed a claim in respect of an injury that resulted in the worker's death and the Board made a decision that involved the determination of average earnings for the purposes of section 48, and if the survivor requests that the Board reconsider its decision, the Board shall do so in accordance with subsection (2). 2015, c. 34, Sched. 3, s. 2.

Refiled claims

(4) If, before the day the *Employment and Labour Statute Law Amendment Act, 2015* receives Royal Assent, a worker or his or her survivor filed a claim in respect of an injury that resulted in the worker's death and the Appeals Tribunal made a decision that involved a determination by the Board of average earnings for the purposes of section 48, the survivor may refile the claim with the Board, and the Board shall decide the claim in accordance with subsection (2). 2015, c. 34, Sched. 3, s. 2.

Time limits

(5) The time limits in subsections 22 (1) and (2) do not apply in respect of a claim that is refiled under subsection (4). 2015, c. 34, Sched. 3, s. 2.

Pending appeal

(6) If, on the day the *Employment and Labour Statute Law Amendment Act, 2015* receives Royal Assent, a claim for payments payable under section 48 is pending before the Appeals Tribunal, the Appeals Tribunal shall refer the claim back to the Board, and the Board shall decide the claim in accordance with subsection (2). 2015, c. 34, Sched. 3, s. 2.

Pending claim

(7) If, on the day the *Employment and Labour Statute Law Amendment Act, 2015* receives Royal Assent, a claim for payments payable under section 48 is pending before the Board, the Board shall decide the claim in accordance with subsection (2). 2015, c. 34, Sched. 3, s. 2.

Section Amendments with date in force (d/m/y)

2015, c. 34, Sched. 3, s. 2 - 10/12/2015

ANNUAL ADJUSTMENTS

Indexing factor

49 (1) Subject to subsection (2), on January 1 of every year, an indexing factor shall be calculated that is equal to the amount of the percentage change in the Consumer Price Index for Canada for all items, for the 12-month period ending on October 31 of the previous year, as published by Statistics Canada. 2015, c. 38, Sched. 23, s. 2.

Same, minimum

(2) The indexing factor calculated under subsection (1) shall not be less than 0 per cent. 2015, c. 38, Sched. 23, s. 2.

Application

(3) The indexing factor applies with respect to the calculation of all amounts payable under this Part. 2015, c. 38, Sched. 23, s. 2.

Section Amendments with date in force (d/m/y)

2007, c. 7, Sched. 41, s. 5 - 01/07/2007

2015, c. 38, Sched. 23, s. 2 - 01/01/2018

50 REPEALED: 2015, c. 38, Sched. 23, s. 3.

Section Amendments with date in force (d/m/y)

2015, c. 38, Sched. 23, s. 3 - 01/01/2018

Indexation of amounts in the Act

51 (1) On January 1 every year, the amounts set out in this Act (as adjusted on the preceding January 1) shall be adjusted by the amount of the indexing factor described in subsection 49 (1). 1997, c. 16, Sched. A, s. 51 (1); 2015, c. 38, Sched. 23, s. 4 (1).

(1.1) REPEALED: 2015, c. 38, Sched. 23, s. 4 (2).

Exceptions

(2) Subsection (1) does not apply with respect to the amounts established in subsection 158 (1). 1997, c. 16, Sched. A, s. 51 (2); 2000, c. 26, Sched. I, s. 1 (10).

Payments made prior to 2018

(2.1) Any payments made before January 1, 2018 that were calculated using an amount set out in this Act that was required to be adjusted in accordance with this section, as it read on December 31, 2017, but that was instead adjusted in accordance with the alternate indexing factor described in subsection 50 (1), as it read on December 31, 2017, are not invalid solely on the ground that the amount used to calculate the payment was not adjusted as required in accordance with this section, as it read on December 31, 2017, and there is no right to object to or appeal a decision, or to commence an action or other legal proceeding on that ground alone. 2017, c. 8, Sched. 33, s. 6.

(3)-(7) REPEALED: 2015, c. 38, Sched. 23, s. 4 (2).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (10) - 06/12/2000

2007, c. 7, Sched. 41, s. 6 - 01/07/2007

2015, c. 38, Sched. 23, s. 4 (1, 2) - 01/01/2018

2017, c. 8, Sched. 33, s. 6 - 17/05/2017

Annual adjustment of amounts payable

52 On January 1 every year, the Board shall adjust the amounts payable under this Part by applying the indexing factor to the amounts payable as adjusted on the preceding January 1. 2015, c. 38, Sched. 23, s. 5.

Section Amendments with date in force (d/m/y)

2007, c. 7, Sched. 41, s. 7 (1, 2) - 01/07/2007

2015, c. 38, Sched. 23, s. 5 - 01/01/2018

Increases prospective

52.1 (1) Nothing in sections 51 and 52 entitles a person to claim additional compensation under this Act for any period before January 1, 2018. 2015, c. 38, Sched. 23, s. 5.

Same, adjustments

(2) Nothing in sections 51 and 52 authorizes the Board to adjust amounts payable to a person under this Act for any period before January 1, 2018. 2015, c. 38, Sched. 23, s. 5.

Transition

52.2 Amounts payable under this Act for any period before January 1, 2018 shall be adjusted in accordance with sections 49, 50, 51 and 52 as they read on December 31, 2017, regardless of when the Board determines that the worker is entitled to the amount. 2015, c. 38, Sched. 23, s. 5.

Section Amendments with date in force (d/m/y)

2007, c. 7, Sched. 41, s. 8 - 01/07/2007

2015, c. 38, Sched. 23, s. 5 - 01/01/2018

ANCILLARY MATTERS

Average earnings

53 (1) The Board shall determine the amount of a worker's average earnings for the purposes of the insurance plan and in doing so shall take into account,

- (a) the rate per week at which the worker was remunerated by each of the employers for whom he or she worked at the time of the injury;
- (b) any pattern of employment that results in a variation in the worker's earnings; and
- (c) such other information as it considers appropriate.

Exception

(2) The average earnings do not include any sum paid to the worker for special expenses incurred because of the nature of the work.

Recalculation

(3) The Board shall recalculate the amount of a worker's average earnings if the Board determines that it would not be fair to continue to make payments under the insurance plan on the basis of the determination made under subsection (1). The Board shall take into account such information as it considers appropriate when recalculating the amount.

Apprentices, etc.

(4) The Board shall consider such criteria as may be prescribed in determining the average earnings of an apprentice, learner or student.

Emergency workers

(5) The earnings of an emergency worker are the worker's earnings in his or her actual employment. If the worker has no such earnings, the Board shall fix the amount of the worker's earnings for the purposes of the insurance plan.

Average earnings, recurrence of loss of earnings

(6) When a worker becomes entitled to payments for a loss of earnings arising out of an accident in respect of which he or she previously received benefits under the insurance plan, the worker's average earnings (for the purpose of calculating the amount payable for the loss of earnings) are the greater of,

- (a) his or her average earnings at the date of the accident; or
- (b) his or her average earnings when he or she was most recently employed. 1997, c. 16, Sched. A, s. 53.

Maximum amount of average earnings

54 (1) If a worker's average earnings exceed 175 per cent of the average industrial wage for Ontario for the year, his or her average earnings shall be deemed to be 175 per cent of the average industrial wage for Ontario for the year.

Average industrial wage

(2) The calculation of the average industrial wage for Ontario for a calendar year is based upon the most recent published material that is available on July 1 of the preceding year with respect to the estimated average weekly earnings industrial aggregate for Ontario as published by Statistics Canada. 1997, c. 16, Sched. A, s. 54.

Indexation

(3) On January 1 every year, the Board shall adjust the amount that, in the year the worker was injured, was deemed to be a worker's average earnings under subsection (1) by applying the indexing factor to the amount as first determined, or as adjusted on the preceding January, as the case may be, and shall round the adjusted amount to the nearest \$100. 2015, c. 38, Sched. 23, s. 6.

Section Amendments with date in force (d/m/y)

2015, c. 38, Sched. 23, s. 6 - 01/01/2018

Net average earnings

55 (1) The Board shall determine the amount of a worker's net average earnings by deducting from his or her earnings,

- (a) the probable income tax payable by the worker on his or her earnings;
- (b) the probable *Canada Pension Plan* or *Quebec Pension Plan* premiums payable by the worker; and

(c) the probable employment insurance premiums payable by the worker.

(2) REPEALED: 2015, c. 38, Sched. 23, s. 7.

Schedule of net average earnings

(3) On January 1 every year, the Board shall establish a schedule setting out a table of net average earnings determined in accordance with this section. The schedule is conclusive and final. 1997, c. 16, Sched. A, s. 55.

Section Amendments with date in force (d/m/y)

2015, c. 38, Sched. 23, s. 7 - 01/01/2018

ADMINISTRATION

Effect of payment, etc., from employer

56 (1) When determining the amount of any payments under the insurance plan to be made to a worker or his or her survivors, the Board shall have regard to any payment or benefit relating to the accident that is paid by the worker's employer or provided wholly at the employer's expense.

Payment to employer

(2) If the payments to the worker or survivors are made from the insurance fund, the Board may pay to the employer from the fund any amount deducted under subsection (1) from the payments. 1997, c. 16, Sched. A, s. 56.

Worker's access to records

57 (1) If there is an issue in dispute, the Board shall, upon request, give a worker access to the file kept by the Board about his or her claim and shall give the worker a copy of the documents in the file. If the worker is deceased, the Board shall give access and copies to the persons who may be entitled to payments under section 48. 1997, c. 16, Sched. A, s. 57 (1).

Same

(2) If there is an issue in dispute and the worker is deceased, the Board, upon request, shall give access to and copies of such documents as the Board considers to be relevant to the issue in dispute to persons who may be entitled to payments under subsections 45 (7), (7.1) and (9). 1997, c. 16, Sched. A, s. 57 (2); 2011, c. 1, Sched. 7, s. 3 (7).

Same

(3) The Board shall give the same access to the file and copies of documents to a representative of a person entitled to the access and copies, if the representative has written authorization from the person. 1997, c. 16, Sched. A, s. 57 (3).

Exception

(4) The Board shall not give a worker or his or her representative access to a document that contains health or other information that the Board believes would be harmful to the worker to see. Instead, the Board shall give a copy of the document to the worker's treating health professional and shall advise the worker or representative that it has done so. 1997, c. 16, Sched. A, s. 57 (4).

Section Amendments with date in force (d/m/y)

2011, c. 1, Sched. 7, s. 3 (7) - 30/03/2011

Employer's access to records

58 (1) If there is an issue in dispute, the Board shall, upon request, give a worker's employer access to such documents in the Board's file about the claim as the Board considers to be relevant to the issue and shall give the employer a copy of those documents.

Same

(2) The Board shall give the same access and copies to a representative of the employer, if the representative has written authorization from the employer.

Notice to worker

(3) The Board shall notify the worker or his or her representative if the Board has given access and copies to the employer (or the employer's representative) and shall give a copy of the same documents to the worker. 1997, c. 16, Sched. A, s. 58.

Employer's access to health records

59 (1) Despite section 58, before giving the employer access to a report or opinion of a health care practitioner about a worker, the Board shall notify the worker or other claimant that the Board proposes to do so and shall give him or her an opportunity to object to the disclosure.

Objection

(2) If the worker or claimant notifies the Board within the time specified by the Board that he or she objects to the disclosure of the report or opinion, the Board shall consider the objection before deciding whether to disclose the report or opinion.

Notice of decision

(3) The Board shall notify the worker, claimant and employer of its decision in the matter but shall not, in any event, disclose the report or opinion until after the later of,

- (a) the expiry of 21 days after giving notice of its decision; or
- (b) if the decision is appealed, the day on which the Appeals Tribunal finally disposes of the matter.

Appeal

(4) The worker, claimant or employer may appeal the Board's decision to the Appeals Tribunal and shall do so within 21 days after the Board gives notice of its decision.

Same

(5) If the Board or the Appeals Tribunal decides to disclose all or part of a report or opinion, the Board or the tribunal may impose such conditions on the employer's access as it considers appropriate.

Duty of confidentiality

(6) The employer and the employer's representatives shall not disclose any health information obtained from the Board except in a form calculated to prevent the information from being identified with a particular worker or case. 1997, c. 16, Sched. A, s. 59.

Payments to incapable persons

60 (1) This section applies if a person entitled to payments under the insurance plan is a person that the Board considers to be incapable of managing his or her own affairs. 1997, c. 16, Sched. A, s. 60 (1).

Payments

(2) Any payments to which the person is entitled shall be made on his or her behalf to the person's guardian or attorney. If no guardian or attorney has been appointed, the payments may be made to the worker's spouse or parent or to such other person for such purposes as the Board considers to be in the person's best interest. If there is no guardian or attorney or other suitable person, the payments shall be made to the Public Guardian and Trustee. 1997, c. 16, Sched. A, s. 60 (2); 1999, c. 6, s. 67 (26); 2005, c. 5, s. 73 (25); 2021, c. 4, Sched. 11, s. 42 (5).

Public Guardian and Trustee

(3) If payments are made to the Public Guardian and Trustee on the person's behalf, the Public Guardian and Trustee has a duty to receive and administer the payments. 1997, c. 16, Sched. A, s. 60 (3).

Same, minor

(4) If a person entitled to payments under the insurance plan is a minor, the payments shall be made on his or her behalf to the person's spouse, if not a minor, parent or guardian or to the Accountant of the Superior Court of Justice. 1997, c. 16, Sched. A, s. 60 (4); 1999, c. 6, s. 67 (27); 2005, c. 5, s. 73 (26); 2009, c. 33, Sched. 20, s. 4 (1); 2021, c. 4, Sched. 11, s. 42 (5).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (26, 27) - 01/03/2000

2005, c. 5, s. 73 (25, 26) - 09/03/2005

2009, c. 33, Sched. 20, s. 4 (1) - 15/12/2009

2021, c. 4, Sched. 11, s. 42 (5) - 19/04/2021

Payments owing to deceased workers

61 (1) If benefits owing under the insurance plan are payable to an estate and there is no personal representative of the estate to whom the Board may make the payment, the Board,

- (a) shall make reasonable inquiries to determine to whom the money owing to the estate shall be paid; or
- (b) may apply, without notice, to the court for an order for payment of money into court.

Court order

(2) Upon an application under clause (1) (b), the court may upon such notice, if any, as it considers necessary make such order as it considers appropriate.

Payments to persons entitled

(3) If the Board concludes that a person should be paid the benefits owing to the estate under clause (1) (a), the Board shall pay the benefits to the appropriate person.

Court costs

(4) If the Board makes a payment into court under a court order, the court may,

- (a) fix, without assessment, the costs incurred upon or in conjunction with any application or order; and
- (b) order any costs to be paid out of the benefits.

Discharge from liability

(5) A payment to a person under subsection (3) or a payment made pursuant to a court order discharges the Board from any liability to the extent of the payment.

Application

(6) The application of this section is not limited to amounts held by the Board for workers who die after this Act comes into force. 1997, c. 16, Sched. A, s. 61.

Frequency of payments

62 (1) Periodic payments under the insurance plan shall be made at such times as the Board may determine.

Commutation of payments

(2) Subject to subsection (3), the Board may commute payments to a worker under section 43 (loss of earnings) and pay him or her a lump sum instead,

- (a) if the amount of the payments is 10 per cent or less of the worker's full loss of earnings; and
- (b) if the 72-month period for reviewing payments to the worker has expired or if the Board is not permitted to review the payments.

Election

(3) The worker referred to in subsection (2) may elect to receive periodic payments instead of the lump sum, and if he or she does so, the Board shall make the periodic payments. The election is irrevocable.

Advances on payments

(4) If a person is entitled to payments under the insurance plan, the Board may advance money to the person (or for his or her benefit) if the Board is of the opinion that the interest or pressing need of the person warrants it. 1997, c. 16, Sched. A, s. 62.

Agreements re payments

63 (1) An agreement between a Schedule 2 employer and a worker or a worker's survivor,

- (a) that fixes the amount that the employer will pay to the worker or survivor under the insurance plan; or
- (b) in which the worker or survivor agrees to accept a specified amount in lieu of or in satisfaction of the payments to which he or she is entitled under the insurance plan,

is not binding upon the worker or survivor unless it is approved by the Board.

Exception

(2) Subsection (1) does not apply with respect to payments to a worker for a loss of earnings that lasts for less than four weeks. However, the Board may set aside such an agreement upon such terms as it considers just, either on its own initiative or on the request of the worker.

Effect of provision

(3) Nothing in this section authorizes the making of an agreement except with respect to an accident that has already happened and the payments to which the worker or survivor has become entitled because of it. 1997, c. 16, Sched. A, s. 63.

Benefits not assignable, etc.

64 Subject to section 65, no benefits shall be assigned, garnished, charged or attached without the permission of the Board. They do not pass by operation of law except to a personal representative. No claim may be set off against them. 1997, c. 16, Sched. A, s. 64.

Deduction for support or maintenance

65 (1) This section applies if a person is entitled to payments under the insurance plan and his or her spouse (as defined in Part III of the *Family Law Act*), children or dependants are entitled to support or maintenance under a court order. 1997, c. 16, Sched. A, s. 65 (1); 1999, c. 6, s. 67 (28); 2005, c. 5, s. 73 (27).

Same

- (2) The Board shall pay all or part of the amount owing to the person under the insurance plan,
- (a) in accordance with a garnishment notice issued by a court in Ontario; or
 - (b) in accordance with a notice of a support deduction order served upon the Board by the Director of the Family Responsibility Office. 1997, c. 16, Sched. A, s. 65 (2).

Limits and procedures

(3) Garnishment of payments is subject to the limits and procedures set out in subsections 7 (1) and (5) of the *Wages Act*. Amounts payable under the insurance plan (other than amounts set aside under section 45 (loss of retirement income)) shall be deemed to be wages for the purposes of the *Wages Act*. 1997, c. 16, Sched. A, s. 65 (3).

Same

(4) The deduction of payments under a notice of a support deduction order is subject to the limits and procedures set out in the *Family Responsibility and Support Arrears Enforcement Act, 1996*. 1997, c. 16, Sched. A, s. 65 (4).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (28) - 01/03/2000

2005, c. 5, s. 73 (27) - 09/03/2005

Suspension of payments

66 If payments are suspended under the insurance plan, no compensation is payable in respect of the period of suspension. 1997, c. 16, Sched. A, s. 66.

PART VII EMPLOYERS AND THEIR OBLIGATIONS

PARTICIPATING EMPLOYERS

Participating employers

67 The insurance plan applies to every Schedule 1 employer and Schedule 2 employer including the Crown and a permanent board or commission appointed by the Crown. 1997, c. 16, Sched. A, s. 67.

“Trade” of municipal corporations, etc.

68 The exercise by the following entities of their powers and the performance of their duties shall be deemed to be their trade or business for the purposes of the insurance plan:

1. A municipal corporation.
2. A public utilities commission or any other commission or any board (other than a hospital board) that manages a work or service owned by or operated for a municipal corporation.

3. A public library board.
4. The board of trustees of a police village.
5. A school board. 1997, c. 16, Sched. A, s. 68.

Training agencies and trainees

69 (1) In this section,

“placement host” means a person with whom a trainee is placed by a training agency to gain work skills and experience; (“agent d’accueil”)

“training agency” means,

- (a) a person who is registered under the *Private Career Colleges Act* to operate a private career college, or
- (b) a member of a prescribed class who provides vocational or other training. (“organisme de formation”) 1997, c. 16, Sched. A, s. 69 (1); 2002, c. 8, Sched. P, s. 8.

Election

(2) A training agency that places trainees with a placement host may elect to have the trainees considered to be workers of the training agency during their placement. However, only a training agency in an industry included in Schedule 1 or 2 may make such an election. 1997, c. 16, Sched. A, s. 69 (2).

Effect of election

(3) When the Board receives written notice of a training agency’s election, the following rules apply with respect to each trainee placed with a placement host, other than a trainee who receives wages from the placement host:

1. The placement host shall be deemed not to be an employer of the trainee for the purposes of this Act. However, the placement host remains the employer of the trainee for the purposes of section 28 (rights of action).
2. The training agency shall be deemed to be the employer of the trainee for the purposes of this Act.
3. The trainee shall be deemed to be a learner employed by the training agency. 1997, c. 16, Sched. A, s. 69 (3).

Injury to trainee

(4) If a trainee in relation to whom subsection (3) applies suffers a personal injury by accident or occupational disease while on a placement with a placement host,

- (a) the trainee’s benefits under the insurance plan shall be determined as if the placement host were the trainee’s employer; and
- (b) sections 40 and 41 (return to work) do not apply to the placement host or the training agency. 1997, c. 16, Sched. A, s. 69 (4).

Revocation of election

(5) The training agency may revoke an election by giving the Board written notice of the revocation. The revocation takes effect 120 days after the Board receives the notice. 1997, c. 16, Sched. A, s. 69 (5).

Effect of revocation

(6) An election that is revoked continues to apply with respect to an injury sustained before the revocation takes effect. 1997, c. 16, Sched. A, s. 69 (6).

Section Amendments with date in force (d/m/y)

2002, c. 8, Sched. P, s. 8 - 27/06/2002

Deemed employer, certain volunteer or auxiliary workers

70 One of the following entities, as may be appropriate, shall be deemed to be the employer of a member of a municipal volunteer fire brigade or volunteer ambulance brigade or an auxiliary member of a police force:

1. A municipal corporation.
2. A public utilities commission or any other commission or any board (other than a hospital board) that manages the brigade for a municipal corporation.
- 2.1 Any other person that manages the volunteer ambulance brigade for a municipal corporation.

3. The board of trustees of a police village.
4. A police force. 2000, c. 26, Sched. I, s. 1 (11); 2002, c. 18, Sched. J, s. 5 (9, 10).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 70 of the Act is amended by striking out “police force” wherever it appears and substituting in each case “police service”. (See: 2019, c. 1, Sched. 4, s. 66 (6))

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (11) - 01/01/1998

2002, c. 18, Sched. J, s. 5 (9, 10) - 26/11/2002

2018, c. 3, Sched. 5, s. 68 (6) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 66 (6) - not in force

Deemed employer, emergency workers

71 (1) An authority who summons a person to assist in controlling or extinguishing a fire shall be deemed to be the person’s employer. 1997, c. 16, Sched. A, s. 71 (1).

Same, search and rescue operation

(2) The Crown shall be deemed to be the employer of a person who assists in a search and rescue operation at the request of and under the direction of a member of the Ontario Provincial Police. 1997, c. 16, Sched. A, s. 71 (2).

Same, declaration of emergency

(3) The Crown shall be deemed to be the employer of a person who assists in connection with an emergency declared by the Lieutenant Governor in Council or the Premier under section 7.0.1 of the *Emergency Management and Civil Protection Act*. 2006, c. 13, s. 4 (2).

Same

(4) The municipality shall be deemed to be the employer of a person who assists in connection with an emergency declared by the head of the municipal council to exist. 1997, c. 16, Sched. A, s. 71 (4); 2006, c. 13, s. 4 (3).

Section Amendments with date in force (d/m/y)

2006, c. 13, s. 4 (2, 3) - 30/06/2006

Deemed employer, seconded worker

72 If an employer temporarily lends or hires out the services of a worker to another employer, the first employer shall be deemed to be the employer of the worker while he or she is working for the other employer. 1997, c. 16, Sched. A, s. 72.

Deemed status, illegal employment of minor

73 (1) This section applies if a claim for benefits is made in respect of a worker who is a minor and the Board determines that a Schedule 1 employer employed the minor in contravention of the law.

Declaration

(2) The Board may declare that the employer is liable as if the employer were a Schedule 2 employer with respect to the worker. However, the employer continues to be a Schedule 1 employer for the purposes of sections 28 to 30. 1997, c. 16, Sched. A, s. 73.

Declaration of deemed status

74 (1) Upon application, the Board may declare an employer to be deemed to be a Schedule 1 employer or a Schedule 2 employer for the purposes of the insurance plan.

Exception

(2) A Schedule 1 employer is not eligible to be deemed to be a Schedule 2 employer under this section.

Same

(3) The declaration may be restricted to an industry or part of an industry or a department of work or service engaged in by the employer.

Same

(4) The Board may impose such conditions upon the declaration as it considers appropriate. 1997, c. 16, Sched. A, s. 74.

REGISTRATION AND INFORMATION REQUIREMENTS

Registration

75 (1) Every Schedule 1 and Schedule 2 employer shall register with the Board within 10 days after becoming such an employer.

Information re wages

(2) When registering, a Schedule 1 employer shall give the Board a statement setting out the total estimated wages that workers are expected to earn during the current year.

Other information

(3) When registering and at such other times as the Board may require, a Schedule 1 employer shall give the Board such information as it may require to assign the employer to a class, subclass or group and such other information as the Board may request.

Same

(4) When registering and at such other times as the Board may require, a Schedule 2 employer shall give the Board such information as it may require to determine the amount of any payment to the Board that may be required under the insurance plan and such other information as the Board may request. 1997, c. 16, Sched. A, s. 75.

Notice of change of status

76 (1) An employer who ceases to be a Schedule 1 employer or a Schedule 2 employer shall notify the Board of the change within 10 days after it occurs.

Information re wages

(2) The notice from a former Schedule 1 employer must be accompanied by a statement of the total wages earned during the year by all workers up to the date of the change.

Premiums

(3) A former Schedule 1 employer shall promptly pay the premiums for which the employer is liable up to the date of the change.

Payments

(4) A former Schedule 2 employer shall promptly pay the Board all the amounts determined by the Board to be owing up to the date of the change. 1997, c. 16, Sched. A, s. 76.

Material change in circumstances

77 A Schedule 1 or Schedule 2 employer shall notify the Board of a material change in circumstances in connection with the employer's obligations under this Act within 10 days after the material change occurs. 1997, c. 16, Sched. A, s. 77.

Annual statements

78 (1) Every year on or before the date specified by the Board, a Schedule 1 employer shall give the Board a statement setting out the total wages earned during the preceding year by all workers and such other information as the Board may request. 1997, c. 16, Sched. A, s. 78 (1).

Same

(2) Upon the request of the Board, the statement must also set out the total estimated wages that workers are expected to earn during the current year. 1997, c. 16, Sched. A, s. 78 (2).

Same, certain volunteer or auxiliary workers

(3) If the statement is made by a deemed employer of a municipal volunteer fire brigade, of a volunteer ambulance brigade or of auxiliary members of a police force, it shall set out,

- (a) the number of members of the brigade or auxiliary members of the police force; and
- (b) the amount of earnings, fixed by the deemed employer, to be attributed to each member for the purposes of the insurance plan. 2002, c. 18, Sched. J, s. 5 (11).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 78 (3) of the Act is amended by striking out "police force" wherever it appears and substituting in each case "police service". (See: 2019, c. 1, Sched. 4, s. 66 (7))

Additional statements

(4) The Board may require a Schedule 1 employer to submit a statement at any time setting out the information described in subsection (1), (2) or (3) with respect to such other periods of time as the Board may specify. 1997, c. 16, Sched. A, s. 78 (4).

Separate statements

(5) The Board may require an employer to submit separate statements with respect to different branches of the employer's business or, if the employer carries on business in more than one class of industry, with respect to the different classes. 1997, c. 16, Sched. A, s. 78 (5).

Board determination of premiums

(6) If an employer does not submit a statement to the Board, the Board may determine the amount of premiums that should have been paid by the employer, and if it is later ascertained that the amount of the premium determined by the Board is less than the actual amount of the premium that should have been paid based on the wages of the employer's workers, the employer is liable to pay to the Board the difference between the amount fixed by the Board and the actual amount owing by the employer. 1997, c. 16, Sched. A, s. 78 (6).

Effect of non-compliance

(7) The Board may require an employer who fails to submit a statement, or who fails to do so by the date specified by the Board, to pay,

- (a) interest at a rate determined by the Board on the employer's premiums for the period to which the statement relates; or
- (b) an additional percentage as determined by the Board of the employer's premiums for that period. 1997, c. 16, Sched. A, s. 78 (7).

Same

(8) If an employer underestimates the amount of the total wages required to be reported in a statement, the Board may require the employer to pay interest as described in clause (7) (a) or an additional percentage as described in clause (7) (b). 1997, c. 16, Sched. A, s. 78 (8).

Same

(9) A payment required under subsection (7) or (8) is in addition to any penalty imposed by a court for an offence under section 152. 1997, c. 16, Sched. A, s. 78 (9).

Section Amendments with date in force (d/m/y)

1998, c. 36, s. 4 - 01/01/1998

2000, c. 26, Sched. I, s. 1 (12) - 01/01/1998

2002, c. 18, Sched. J, s. 5 (11) - 26/11/2002

2018, c. 3, Sched. 5, s. 68 (7) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 66 (7) - not in force

Certification requirement

79 The information in a statement given to the Board under section 75, 76 or 78 must be certified to be accurate by the employer or the manager of the employer's business or, if the employer is a corporation, by an officer of the corporation who has personal knowledge of the matters to which the statement relates. 1997, c. 16, Sched. A, s. 79.

Record-keeping

80 (1) A Schedule 1 employer shall keep accurate records of all wages paid to the employer's workers and shall keep the records in Ontario. 1997, c. 16, Sched. A, s. 80.

Produce records

(2) The employer shall produce the records referred to in subsection (1) when the Board or any of its officers requires the employer to do so. 2001, c. 9, Sched. I, s. 4 (2).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 4 (2) - 29/06/2001

CALCULATING PAYMENTS BY EMPLOYERS

Premiums, all Schedule 1 employers

81 (1) The Board shall determine the total amount of the premiums to be paid by all Schedule 1 employers with respect to each year in order to maintain the insurance fund under this Act.

Apportionment among classes, etc.

(2) The Board shall apportion the total amount of the premiums among the classes, subclasses and groups of employers and shall take into account the extent to which each class, subclass or group is responsible for, or benefits from, the costs incurred under this Act.

Premium rates

(3) The Board shall establish rates to be used to calculate the premiums to be paid by employers in the classes, subclasses or groups for each year.

Same

(4) The Board may establish different premium rates for a class, subclass or group of employers in relation to the risk of the class, subclass or group. The rates may vary for each individual industry or plant.

Method of determining premiums

(5) The Board shall establish the method to be used by employers to calculate their premiums. The method may be based on the wages earned by an employer's worker.

Bases for calculation

(6) The Board may establish different payment schedules for different employers for premiums to be paid in a year based on such factors as the Board considers appropriate. 1997, c. 16, Sched. A, s. 81.

Partners and executive officers

81.1 (1) The Board may establish premium rates for,

- (a) partners in a partnership described in paragraph 3 of subsection 12.2 (1) who do not perform construction work; and
- (b) executive officers of a corporation described in paragraph 4 of subsection 12.2 (1) who do not perform construction work. 2019, c. 9, Sched. 13, s. 1.

Same

(2) The premium rates established under subsection (1) may be different from the premium rates established under section 81 for the employers of the partners and executive officers. 2019, c. 9, Sched. 13, s. 1.

Same

(3) The Board may establish a specific method for determining the frequency of work injuries and accident costs relating to the partners and executive officers. 2019, c. 9, Sched. 13, s. 1.

Same

(4) The Board may use any determinations made under the method described in subsection (3) for the purposes of adjusting premium rates established under subsection (1). 2019, c. 9, Sched. 13, s. 1.

Section Amendments with date in force (d/m/y)

2019, c. 9, Sched. 13, s. 1 - 06/06/2019

Adjustments in premiums for particular employers

82 The Board may increase or decrease the premiums otherwise payable by a particular employer in such circumstances as the Board considers appropriate including the following:

1. If, in the opinion of the Board, the employer has not taken sufficient precautions to prevent accidents to workers or the working conditions are not safe for workers.
2. If the employer's accident record has been consistently good and the employer's ways, works, machinery and appliances conform to modern standards so as to reduce the hazard of accidents to a minimum.
3. If the employer has complied with the regulations made under this Act or the *Occupational Health and Safety Act* respecting first aid.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 is amended by striking out “this Act or”. See: 2011, c. 11, ss. 21, 29 (2).

4. If the frequency of work injuries among the employer’s workers and the accident cost of those injuries is consistently higher than that of the average in the industry in which the employer is engaged. 1997, c. 16, Sched. A, s. 82.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 21 - not in force

Experience and merit rating programs

83 (1) The Board may establish experience and merit rating programs to encourage employers to reduce injuries and occupational diseases and to encourage workers’ return to work.

Same

- (2) The Board may establish the method for determining the frequency of work injuries and accident costs of an employer.

Same

- (3) The Board shall increase or decrease the amount of an employer’s premiums based upon the frequency of work injuries or the accident costs or both. 1997, c. 16, Sched. A, s. 83.

Regulations re temporary help workers

- (4) The Lieutenant Governor in Council may make regulations,
 - (a) defining a temporary help agency for the purposes of this section;
 - (b) requiring that, despite section 72, if a temporary help agency lends or hires out the services of a worker to another employer who participates in a program established under subsection (1) and the worker sustains an injury while performing work for the other employer, the Board,
 - (i) deem the total wages that are paid in the current year to the worker by the temporary help agency for work performed for the other employer to be paid by the other employer,
 - (ii) attribute the injury and the accident costs arising from the injury to the other employer,
 - (iii) increase or decrease the amount of the other employer’s premiums based upon the frequency of work injuries or the accident costs or both, and
 - (iv) deem the other employer to be an employer for the purposes of sections 58 and 59 in such circumstances as may be prescribed;
 - (c) prescribing circumstances for the purposes of subclause (b) (iv);
 - (d) requiring that, if a temporary help agency lends or hires out the services of a worker to another employer who participates in a program established under subsection (1) and the worker sustains an injury while performing work for the other employer, the other employer notify the Board of the injury;
 - (e) for the purposes of a notice required by a regulation made under clause (d), governing the notice, including prescribing the manner in which notice of an injury is to be given, the period of time within which notice is to be given and the parties to whom copies of the notice must be given; and
 - (f) prescribing penalties for failure to comply with requirements prescribed under clauses (d) and (e). 2014, c. 10, Sched. 5, s. 2.

Section Amendments with date in force (d/m/y)

2014, c. 10, Sched. 5, s. 2 - 06/04/2018

Transfer of costs

84 In a case where subsection 28 (1) applies and the Board is satisfied that the accident giving rise to the worker’s injury was caused by the negligence of some other employer in Schedule 1 or that other employer’s workers, the Board may direct that the benefits, or a proportion of them, in that case be charged against the class or group to which the other employer belongs and to the accident cost record of the other employer. 1997, c. 16, Sched. A, s. 84.

Payments by Schedule 2 employers

85 (1) The Board shall determine the total payments to be paid by all Schedule 2 employers with respect to each year to defray their fair share (as determined by the Board) of the expenses of the Board and the cost of administering this Act and such other costs as are directed under any Act to be paid by the Board.

Special funds

(2) The Board, where it considers proper, may add to the amount payable by an employer under subsection (1) a percentage or sum for the purpose of raising special funds and the Board may use such money to meet a loss or relieve any Schedule 2 employer from all or part of the costs arising from any disaster or other circumstance where, in the opinion of the Board, it is proper to do so. 1997, c. 16, Sched. A, s. 85.

Penalty, failure to co-operate

86 (1) If the Board decides that an employer has failed to comply with section 40 (return to work), the Board may levy a penalty on the employer that is such percentage as the Board may determine of the cost to the Board of providing benefits to the worker while the non-compliance continues.

Same

(2) The penalty is an amount owing to the Board. 1997, c. 16, Sched. A, s. 86.

Notice to employers

87 (1) Each year, the Board shall notify each Schedule 1 employer of the method to be used to calculate the employer's premiums, the premium rate and the payment schedule.

Same, Schedule 2 employers

(2) Each year, the Board shall notify each Schedule 2 employer of the amount of the employer's payments under section 85 and the payment schedule.

Liability if no notice

(3) If for any reason an employer does not receive a notice for a year, the employer is liable to pay the amount that the employer would have been required to pay had the notice been given or received. 1997, c. 16, Sched. A, s. 87.

PAYMENT OBLIGATIONS OF SCHEDULE 1 EMPLOYERS

Payment of premiums

88 (1) Every Schedule 1 employer shall calculate and pay premiums to the Board in accordance with the notice given under section 87.

No liability for benefits

(2) A Schedule 1 employer is not individually liable to pay benefits directly to workers or their survivors under the insurance plan.

Maximum earnings

(3) The premium payable by an employer applies only with respect to the maximum amount of average earnings determined under section 54 for each of the employer's workers.

Error in calculation

(4) If the Board considers that an employer has incorrectly calculated the amount of the premiums payable and, as a result, has paid an insufficient amount, the Board may require the employer to pay additional premiums in an amount sufficient to rectify the error. The Board may fix the amount of the additional premiums to be paid.

Penalty for error

(5) If an employer has incorrectly calculated the amount of premiums payable for a year and, as a result, has paid an insufficient amount, the employer shall pay additional premiums in an amount sufficient to rectify the error and, as a penalty, shall pay that amount again to the Board.

Relief

(6) The Board may relieve the employer from paying all or part of the penalty if the Board is satisfied that the incorrect calculation was not intentional and that the employer honestly desired to pay the correct amount. 1997, c. 16, Sched. A, s. 88.

Exception, 2021 calendar year

88.1 (1) Despite subsection 88 (3), for the period beginning on January 1, 2021 and ending on December 31, 2021 or such later date as may be prescribed, the premium payable by an employer for each of the employer's workers applies only with respect to a maximum amount of average earnings of,

- (a) \$97,308; or
- (b) if another amount is prescribed for the purposes of this section, that amount. 2021, c. 3, s. 1.

Regulations

- (2) The Lieutenant Governor in Council may make regulations,
 - (a) prescribing a date for the purposes of subsection (1);
 - (b) prescribing an amount for the purposes of clause (1) (b). 2021, c. 3, s. 1.

Same

- (3) A regulation made under clause 2 (a) shall not prescribe a date that is later than December 31, 2022. 2021, c. 3, s. 1.

Section Amendments with date in force (d/m/y)

2021, c. 3, s. 1 - 14/04/2021

Default in paying premiums

89 (1) An employer who does not pay premiums when they become due shall pay to the Board such additional percentage on the outstanding balance as the Board may require.

Cost of benefits

(2) An employer who does not pay premiums when they become due shall pay to the Board the amount or the capitalized value (as determined by the Board) of the benefits payable in respect of any accident to the employer's workers during the period of the default.

Exception

(3) The Board may relieve the employer of making all or part of the payment under subsection (2) in such circumstances as the Board considers appropriate. 1997, c. 16, Sched. A, s. 89.

PAYMENT OBLIGATIONS OF SCHEDULE 2 EMPLOYERS**Payment of benefits**

90 (1) Every Schedule 2 employer is individually liable to pay the benefits under the insurance plan respecting workers employed by the employer on the date of the accident.

Reimbursement

(2) The employer shall reimburse the Board for any payments made by the Board on behalf of the employer under the insurance plan. The amount to be reimbursed is an amount owing to the Board.

Payment of commuted value

(3) The Board may require a Schedule 2 employer to pay to the Board an amount equal to the commuted value of the payments to be made under Part VI (payments for loss of earnings and other losses) with respect to a worker or survivor.

Same

(4) If the amount is insufficient to meet the whole of the payments, the employer is nevertheless liable to pay to the Board such other sum as may be required to meet the payments.

Same

(5) The Board shall return to the employer any amount remaining after the Board ceases to make payments with respect to the worker or survivor. 1997, c. 16, Sched. A, s. 90.

Payments re expenses of the Board

91 Every Schedule 2 employer shall make payments to the Board in accordance with the notice given under section 87. 1997, c. 16, Sched. A, s. 91.

Deposit by Schedule 2 employers

92 (1) If the Board considers it to be necessary for the prompt payment of benefits, the Board may require a Schedule 2 employer to pay a specified amount of money as a deposit.

Use of money

(2) The Board shall use the money on deposit to pay benefits on behalf of the employer.

Investment

(3) Subsections 97 (4) to (7) apply with respect to the investment of money on deposit and commuted value payments under subsection 90 (3). 1997, c. 16, Sched. A, s. 92.

Direction to insure workers

93 (1) The Board may direct a Schedule 2 employer to obtain insurance for injuries in respect of which the employer may become liable to make payments under the insurance plan. The insurance must be for an amount specified by the Board and with an insurer approved by the Board.

Failure to comply

(2) If the employer fails to comply with the direction of the Board, the Board may obtain the required insurance for the employer. The employer shall pay the Board for the cost of the insurance.

Notice to insurer

(3) If a claim for benefits is made in any case where a Schedule 2 employer is insured against the liability to pay benefits, notice of the claim shall be given to the insurer and to the employer.

Payment to Board

(4) The Board shall determine the worker's or survivor's right to compensation and may direct the insurer to pay to the Board instead of the employer any amount payable under the contract of insurance upon the injury or death of a worker. The insurer shall do so. 1997, c. 16, Sched. A, s. 93.

OBLIGATIONS IN SPECIAL CIRCUMSTANCES**Schedule 2 employers, occupational disease**

94 (1) This section applies if a worker is entitled to benefits under the insurance plan because of an occupational disease that may have occurred as a result of more than one employment by Schedule 2 employers. 1997, c. 16, Sched. A, s. 94 (1).

Employer

(2) Subject to subsections (5) and (6), the Schedule 2 employer who last employed the worker in the employment in which the disease occurs is the worker's employer for the purposes of the insurance plan. 1997, c. 16, Sched. A, s. 94 (2).

Prior employers

(3) Upon request, the worker or his or her survivors shall give the employer the names and addresses of the previous employers in whose employment the worker could have contracted the disease. 1997, c. 16, Sched. A, s. 94 (3).

Determination by Board

(4) The employer may request that the Board determine whether the worker contracted the disease while employed by one or more other employers. The employer making the request must provide the Board with the necessary evidence to determine the matter. 1997, c. 16, Sched. A, s. 94 (4).

Effect of decision

(5) If the Board decides that another employer employed the worker when he or she contracted the disease, the other employer is the worker's employer for the purposes of the insurance plan. 1997, c. 16, Sched. A, s. 94 (5).

Same

(6) If the Board decides that the disease is of such a nature as to be contracted by a gradual process and that the worker was employed by more than one employer in the employment to the nature of which the disease is due, the Board shall determine the obligations of each employer for the purposes of the insurance plan. The employers are liable to make such payments as the Board considers just to the employer who is liable to pay the benefits under the plan. 1997, c. 16, Sched. A, s. 94 (6).

Exception, Schedule 2 employer

(7) Despite sections 15, 15.1 and 15.2, a worker is not entitled to benefits under the insurance plan and a Schedule 2 employer is not liable to make payments under the insurance plan to or for the worker or his survivors,

- (a) if there is insufficient information concerning the worker's prior employers to enable the Board to make the determination requested under subsection (4); and
- (b) if the employer proves that the worker did not contract the disease while employed by the employer. 1997, c. 16, Sched. A, s. 94 (7); 2007, c. 3, s. 3.

Section Amendments with date in force (d/m/y)

2007, c. 3, s. 3 - 04/05/2007

Increases in benefits

95 The Board may require Schedule 1 and 2 employers carrying on or previously carrying on industries to which this Act applies to pay such additional amounts to the Board as are necessary to provide for increases in benefits related to prior accidents. 1997, c. 16, Sched. A, s. 95.

NO CONTRIBUTIONS FROM WORKERS

No contributions from workers

95.1 (1) No employer shall,

- (a) directly or indirectly deduct from a worker's wages an amount that the employer is, or may become, liable to pay to the worker under the insurance plan; or
- (b) require or permit a worker to contribute in any way toward indemnifying the employer against any liability that the employer has incurred or may incur under the insurance plan. 2000, c. 26, Sched. I, s. 1 (13).

Right of action

(2) Without limiting any other remedies the worker may have, a worker may bring an action in a court of competent jurisdiction to recover an amount that was deducted from the worker's wages or that the worker was required or permitted to contribute in contravention of subsection (1). 2000, c. 26, Sched. I, s. 1 (13).

Same, certain deductions, etc., before section in force

(3) Without limiting any other remedies the worker may have, a worker may bring an action in a court of competent jurisdiction to recover an amount that was deducted from the worker's wages or that the worker was required or permitted to contribute if the deduction, requirement or permission occurred on or after January 1, 1998 but before this section came into force and the deduction, requirement or permission contravened subsection 155 (1) or (2) as those subsections read before being repealed by subsection 1 (21) of Schedule I to the *Red Tape Reduction Act, 2000*. 2000, c. 26, Sched. I, s. 1 (13).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (13) - 06/12/2000

PART VIII INSURANCE FUND

Insurance fund

Definitions

96 (1) In this Part,

“current benefits” means the benefits payable under the insurance plan in the current calendar year; (“prestations courantes”)

“future benefits” means the present value of the cost of benefits that will become due under the insurance plan in the future in respect of current or past claims, as determined by the Board's actuary. (“prestations futures”) 2010, c. 26, Sched. 21, s. 1 (2).

Insurance fund

(2) The Board shall maintain an insurance fund for the following purposes:

- 1. To pay for current benefits and to provide for future benefits under the insurance plan to workers employed by Schedule 1 employers and to the survivors of deceased workers.

2. To pay the expenses of the Board and the cost of administering this Act.
3. To pay such other costs as are required under any Act to be paid by the Board or out of the insurance fund. 2010, c. 26, Sched. 21, s. 1 (2).

Sufficiency of fund

(3) Subject to the regulations, the Board shall maintain the insurance fund so that the amount of the fund is sufficient to allow the Board to meet its obligations under this Act to make payments under the insurance plan for current benefits as they become due and to provide for future benefits. 2010, c. 26, Sched. 21, s. 1 (2).

Same

(4) The Board shall meet its obligation under subsection (3) in accordance with the regulations. 2010, c. 26, Sched. 21, s. 1 (2).

Same

(5) The Board shall maintain the insurance fund so as not to burden unduly or unfairly any class of Schedule 1 employers with payments,

- (a) in any year in respect of current benefits; or
- (b) in future years in respect of future benefits. 2010, c. 26, Sched. 21, s. 1 (2).

Section Amendments with date in force (d/m/y)

2010, c. 26, Sched. 21, s. 1 (1) - 08/12/2010; 2010, c. 26, Sched. 21, s. 1 (2) - 01/01/2013

Plan, sufficiency of fund

96.1 (1) If the insurance fund is insufficient for the purposes set out in subsection 96 (3) at any time before the date prescribed under clause 100 (b), the Board shall develop and implement a plan to achieve sufficiency that complies with the prescribed requirements. 2010, c. 26, Sched. 21, s. 1 (2).

Same

(2) The Board shall ensure that the plan sets out the steps the Board will take to ensure that the insurance fund is sufficient by the date prescribed under clause 100 (b). 2010, c. 26, Sched. 21, s. 1 (2).

Revision of plan

(3) Subject to any regulation made under clause 100 (d), the Board may revise the plan. 2010, c. 26, Sched. 21, s. 1 (2).

Plan submitted to Minister

(4) The Board shall submit the plan and any revisions made to the plan to the Minister. 2010, c. 26, Sched. 21, s. 1 (2).

Report to Minister

(5) The Board shall report to the Minister on the progress of the plan at such times as the Minister may determine and shall address in the report such matters as the Minister may specify. 2010, c. 26, Sched. 21, s. 1 (2).

Minister may obtain review

(6) If, at any time before the date prescribed under clause 100 (b), the Minister determines that it is unlikely that the insurance fund will become sufficient by the prescribed date, the Minister may obtain a review of the following:

1. The sufficiency of the fund.
2. The plan made under subsection (1) and the Board's implementation of the plan. 2010, c. 26, Sched. 21, s. 1 (2).

Same

(7) The review shall be conducted by an actuary or auditor appointed by the Minister. 2010, c. 26, Sched. 21, s. 1 (2).

Report on findings of review

(8) The actuary or auditor shall,

- (a) on completing the review, submit a written report to the Board and the Minister on the findings of the review; and
- (b) address in the report such matters as the Minister may specify. 2010, c. 26, Sched. 21, s. 1 (2).

Revised or new plan

(9) If a finding of the review is that it is unlikely that the insurance fund will become sufficient by the date prescribed under clause 100 (b), the Board shall revise its plan or make a new plan and subsections (1) to (5) apply to the plan with necessary modifications. 2010, c. 26, Sched. 21, s. 1 (2).

Costs of review

(10) The costs of the review are an administrative expense of the Board. 2010, c. 26, Sched. 21, s. 1 (2).

Section Amendments with date in force (d/m/y)

2010, c. 26, Sched. 21, s. 1 (2) - 01/01/2013

Insufficiency of fund after prescribed date

96.2 If the insurance fund is insufficient at any time after the date prescribed under clause 100 (b), the Board shall comply with the prescribed requirements to make the fund sufficient. 2010, c. 26, Sched. 21, s. 1 (2).

Section Amendments with date in force (d/m/y)

2010, c. 26, Sched. 21, s. 1 (2) - 01/01/2013

Transition

96.3 The accident fund maintained under the *Workers' Compensation Act* is continued as the insurance fund. 2010, c. 26, Sched. 21, s. 1 (2).

Section Amendments with date in force (d/m/y)

2010, c. 26, Sched. 21, s. 1 (2) - 01/01/2013

Reserve funds

97 (1) Once the insurance fund is sufficient for the purposes set out in subsection 96 (3), the Board may establish and maintain one or more reserve funds to provide for future benefits. 2010, c. 26, Sched. 21, s. 2 (2).

Use of reserve funds

(2) If, before the insurance fund becomes sufficient for the purposes set out in subsection 96 (3), there is not sufficient money available in the fund to allow the Board to meet its obligations under this Act to make payments under the insurance plan for current benefits as they become due without resorting to the reserve funds, the Board may make the payments out of the reserve funds. 2010, c. 26, Sched. 21, s. 2 (2).

Same

(2.1) Subject to the regulations, if, after the insurance fund becomes sufficient for the purposes set out in subsection 96 (3), there is not sufficient money available in the fund to allow the Board to meet its obligations under this Act to make payments under the insurance plan for current benefits as they become due and to provide for future benefits without resorting to the reserve funds, the Board may make the payments out of the reserve funds. 2010, c. 26, Sched. 21, s. 2 (2).

Same

(3) The Board may provide for larger reserve funds for some classes of industry than for others. 1997, c. 16, Sched. A, s. 97 (3).

Investment

(4) The money in the reserve funds shall be invested only in such investments as are authorized under the *Pension Benefits Act* for the investment of money from pension funds and shall be invested in the same manner as is authorized for those pension funds. 1997, c. 16, Sched. A, s. 97 (4).

Responsibility for agent

(5) If the Board designates an agent to make the investments authorized under subsection (4), it shall select as an agent a person that it is satisfied is suitable to perform the act for which the agent is designated. 1997, c. 16, Sched. A, s. 97 (5).

Same

(6) The Board is responsible for prudent and reasonable supervision of the agent. 1997, c. 16, Sched. A, s. 97 (6).

Standards for agent

(7) The agent is subject to the standards that apply, with necessary modifications, to an administrator of a pension plan under subsections 22 (1), (2) and (4) of the *Pension Benefits Act*. 1997, c. 16, Sched. A, s. 97 (7).

Insurance fund

(8) The reserve funds form part of the insurance fund. 1997, c. 16, Sched. A, s. 97 (8).

Section Amendments with date in force (d/m/y)

2010, c. 26, Sched. 21, s. 2 (1) - 08/12/2010; 2010, c. 26, Sched. 21, s. 2 (2) - 01/01/2013

Special reserve fund

98 (1) The Board may establish a special reserve fund to meet losses that may arise from a disaster or other circumstance that, in the opinion of the Board, would unfairly burden the employers in any class.

Same

(2) Subsections 97 (3) to (8) apply with necessary modifications with respect to the special reserve fund. 1997, c. 16, Sched. A, s. 98.

Deficiency in premiums

99 (1) If there is a deficiency in the amount of premiums in any class because of a failure of any of the employers in the class to pay an amount owing or by any other circumstance that, in the opinion of the Board, would unfairly burden the employers in that class, the deficiency shall be made up by a payment of additional premiums by the employers in all the classes.

Apportionment of payment

(2) If the employer responsible for the deficiency in subsection (1) pays to the Board any part of the amount owing, that amount shall be apportioned among the other employers in proportion to the amount they contributed to the deficiency.

Continued liability of defaulting employer

(3) If a deficiency is paid for by the other employers, the employer responsible for the deficiency continues to be liable for the amount of the deficiency. 1997, c. 16, Sched. A, s. 99.

Regulations

100 The Lieutenant Governor in Council may make regulations,

- (a) prescribing anything referred to in this Part as prescribed;
- (b) prescribing the date by which the insurance fund must become sufficient and prescribing interim dates by which the fund must become partially sufficient;
- (c) prescribing the amount of the insurance fund required to make the fund sufficient by the prescribed date or partially sufficient by prescribed interim dates, or prescribing the method of determining those amounts, including any formula, ratio or percentage to be used to calculate the amounts;
- (d) prescribing the requirements for a plan for the purposes of subsection 96.1 (1), including the contents of the plan and the time period within which the plan is to be established by the Board and submitted to the Minister;
- (e) prescribing the requirements with which the Board shall comply for the purposes of section 96.2, including the time period within which the Board must comply with those requirements;
- (f) prescribing any terms, conditions, limitations or requirements on the use of reserve funds for the purposes of subsection 97 (2.1);
- (g) providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in relation to this Part and the regulations made under it. 2010, c. 26, Sched. 21, s. 3 (2).

Section Amendments with date in force (d/m/y)

2010, c. 26, Sched. 21, s. 3 (1) - 08/12/2010; 2010, c. 26, Sched. 21, s. 3 (2) - 01/01/2013

PART IX TRANSITIONAL RULES

INTERPRETATION

Definitions

101 In this Part,

“pre-1997 Act” means the *Workers’ Compensation Act* as it read on December 31, 1997; (“Loi d’avant 1997”)

“pre-1998 injury” means a personal injury by accident or an occupational disease that occurs before January 1, 1998. (“lésion d’avant 1998”) 1997, c. 16, Sched. A, s. 101.

PRE-1998 INJURIES

Continued application of pre-1997 Act

102 The pre-1997 Act, as it is deemed to have been amended by this Part, continues to apply with respect to pre-1998 injuries. 1997, c. 16, Sched. A, s. 102.

Section Amendments with date in force (d/m/y)

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Maximum medical rehabilitation

103 The pre-1997 Act shall be deemed to be amended by striking out “maximum medical rehabilitation” wherever it appears and substituting in each case “maximum medical recovery”. 1997, c. 16, Sched. A, s. 103.

Definition of “spouse”

103.1 The definition of “spouse” in subsection 1 (1) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

“spouse” means either of two persons who, at the time of death of the one who was the worker, were cohabiting and,

- (a) were married to each other, or
- (b) were living together in a conjugal relationship outside marriage and,
 - (i) had cohabited for at least one year,
 - (ii) were together the parents of a child, or
 - (iii) had together entered into a cohabitation agreement under section 53 of the *Family Law Act*. 2005, c. 5, s. 73 (28).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (29) - 01/03/2000

2005, c. 5, s. 73 (28) - 09/03/2005

103.2, 103.3 REPEALED: 2005, c. 5, s. 73 (28).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (29) - 01/03/2000

2005, c. 5, s. 73 (28) - 09/03/2005

Death benefits

104 (0.1) REPEALED: 2005, c. 5, s. 73 (29).

Same

(1) Clause 35 (1) (c) of the pre-1997 Act shall be deemed to be repealed. 1997, c. 16, Sched. A, s. 104 (1).

Same

(2) Subsections 35 (2) and (3) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Labour market re-entry plan for spouse

(2) Upon request, the Board shall provide a spouse with a labour market re-entry assessment. The request must be made within one year after the death of the worker.

Same, transition

(3) If, before January 1, 1998, the Board has provided the spouse of a deceased worker with a vocational rehabilitation assessment but not a vocational rehabilitation program, the Board shall determine whether a labour market re-entry plan is to be prepared for the spouse.

Same

(3.1) Subsections 42 (2) to (8) of the *Workplace Safety and Insurance Act, 1997* apply with necessary modifications with respect to the labour market re-entry plan, if any, for the spouse.

Same

(3.2) If a spouse was provided with a vocational rehabilitation program under this Act, it shall be deemed to be a labour market re-entry plan for the purpose of this section.

Failure to comply

(3.3) If the spouse fails to comply with subsection 42 (7) of the *Workplace Safety and Insurance Act, 1997*, the Board may discontinue the provision of the labour market re-entry assessment or plan.

Bereavement counselling

(3.4) Upon the request of the spouse, the Board may pay for bereavement counselling for the spouse or children of the worker. The request must be received within one year after the worker's death. 1997, c. 16, Sched. A, s. 104 (2); 1999, c. 6, s. 67 (31-36); 2000, c. 26, Sched. I, s. 1 (14); 2005, c. 5, s. 73 (30-35).

(3)-(12) REPEALED: 2005, c. 5, s. 73 (36).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (30-37) - 01/03/2000

2000, c. 26, Sched. I, s. 1 (14) - 01/01/1998

2005, c. 5, s. 73 (29-36) - 09/03/2005

Temporary partial disability

105 Subclause 37 (2) (b) (i) of the pre-1997 Act shall be deemed to be amended by striking out "a medical or vocational rehabilitation program which" in the second, third and fourth lines and substituting "a medical rehabilitation program, an early and safe return to work program or a labour market re-entry plan, as the circumstances require, which". 1997, c. 16, Sched. A, s. 105.

105.1 REPEALED: 2005, c. 5, s. 73 (37).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (38) - 01/03/2000

2005, c. 5, s. 73 (37) - 09/03/2005

Non-economic loss where permanent impairment

106 (1) Subsection 42 (3) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Payment

(3) If the compensation for non-economic loss is greater than \$10,000, it is payable as a monthly payment for the life of the worker.

Same

(3.1) Despite subsection (3), within 30 days of the worker being notified of the amount of the compensation for non-economic loss the worker may elect to receive in a lump sum the amount otherwise payable monthly. The election is irrevocable.

Same

(2) Subsections 42 (5) to (25) of the pre-1997 Act shall be deemed to be repealed. Subsections 47 (1) to (13) of this Act apply instead with respect to a determination by the Board of the degree of a worker's permanent impairment for the purposes of the pre-1997 Act. 1997, c. 16, Sched. A, s. 106.

Compensation for future loss of earnings

107 (1) Subsection 43 (6) of the pre-1997 Act shall be deemed to be repealed. 1997, c. 16, Sched. A, s. 107 (1).

Same

(2) Subsection 43 (13) of the pre-1997 Act shall be deemed to be repealed. Instead, subsections 44 (1) to (2.9) of this Act, except clause 44 (2.1) (g) and subsection 44 (2.4.4), apply with necessary modifications with respect to a review by the Board of the amount of compensation for future loss of earnings payable under section 43 of the pre-1997 Act. However, a reference to “more than 72 months after the date of the worker’s injury” in subsection 44 (2) of this Act shall be read as “more than 60 months after the date the compensation for future loss of earnings is determined by the Board under section 43 of the pre-1997 Act” and any reference to “72-month period” in subsections 44 (2.1), (2.8) and (2.9) of this Act shall be read as “60-month period”. 2007, c. 7, Sched. 41, s. 9.

Same

(3) Subsection 43 (15) of the pre-1997 Act shall be deemed to be repealed. Instead, subsections 62 (2) and (3) of this Act apply, with necessary modifications, with respect to the payment of compensation for future loss of earnings under section 43 of the pre-1997 Act. However, a reference to “72-month period” in the first line of clause 62 (2) (b) shall be read as “60-month period”. 1997, c. 16, Sched. A, s. 107 (3).

Same

(4) Clauses 43 (9) (a) and (b) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

- (a) that began within 24 months after the date the compensation for future loss of earnings is determined under this section; or
- (b) that began within 12 months after a determination is made under subsection 47 (9) of the *Workplace Safety and Insurance Act, 1997*. 1997, c. 16, Sched. A, s. 107 (4).

Section Amendments with date in force (d/m/y)

2007, c. 7, Sched. 41, s. 9 - 01/07/2007

2002, c. 18, Sched. J, s. 5 (12) - 26/11/2002

Indexation of compensation for future loss of earnings

107.1 (1) For the purposes of determining compensation payable under section 43 of the pre-1997 Act on or after January 1, 2018, subsections 43 (4) and (5) of the pre-1997 Act shall be deemed to be repealed. 2015, c. 38, Sched. 23, s. 8.

Same

(2) For the purposes of determining compensation payable under section 43 of the pre-1997 Act on or after January 1, 2018, subsection 43 (6.1) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Indexing

(6.1) The amount of compensation payable under this section shall be adjusted on January 1 each year by applying the indexing factor described in subsection 148 (1). 2015, c. 38, Sched. 23, s. 8.

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (39) - 01/03/2000

2005, c. 5, s. 73 (38) - 09/03/2005

2015, c. 38, Sched. 23, s. 8 - 01/01/2018

107.2-107.3 REPEALED: 2005, c. 5, s. 73 (38).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (39) - 01/03/2000

2005, c. 5, s. 73 (38) - 09/03/2005

Vocational rehabilitation

108 (1) Subsection 53 (2) of the pre-1997 Act shall be deemed to be amended by striking out “identifying the worker’s need for vocational rehabilitation services” in the fourth, fifth and sixth lines and substituting “deciding if assistance is required to facilitate the worker’s early and safe return to work or whether a labour market re-entry assessment is to be provided to the worker and section 42 of the *Workplace Safety and Insurance Act, 1997* applies”. 1997, c. 16, Sched. A, s. 108 (1).

Same

(2) Subsection 53 (2.1) of the pre-1997 Act shall be deemed to be amended by striking out “identifying the employer’s need for vocational rehabilitation services” in the third and fourth lines and substituting “deciding if assistance is required to facilitate the worker’s early and safe return to work or whether a labour market re-entry assessment is to be provided to the worker and section 42 of the *Workplace Safety and Insurance Act, 1997* applies”. 1997, c. 16, Sched. A, s. 108 (2).

Same

(3) Subsection 53 (3) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Assistance re: return to work

(3) The Board shall assist the worker and the employer with the worker’s early and safe return to work if the Board considers it appropriate to do so. 1997, c. 16, Sched. A, s. 108 (3).

Same

(4) Subsections 53 (4) to (10) of the pre-1997 Act shall be deemed to be repealed. Subsections 42 (3) to (8) of this Act apply instead with respect to the preparation of a labour market re-entry plan for the worker. 1997, c. 16, Sched. A, s. 108 (4); 2000, c. 26, Sched. I, s. 1 (15).

Same

(5) If, before January 1, 1998, the Board has provided the worker with a vocational rehabilitation assessment but not a vocational rehabilitation program under subsection 53 (9) of the pre-1997 Act, the Board shall determine whether a labour market re-entry plan is to be prepared for the worker. Subsections 42 (3) to (8) of the *Workplace Safety and Insurance Act, 1997* apply in the circumstances. 1997, c. 16, Sched. A, s. 108 (5).

Same

(6) If a worker was provided with a vocational rehabilitation program under the pre-1997 Act, it shall be deemed either as an early and safe return to work program or a labour market re-entry plan, as the circumstances require. 1997, c. 16, Sched. A, s. 108 (6).

Same

(7) Subsections 53 (10.1) to (13) of the pre-1997 Act shall be deemed to be repealed. 1997, c. 16, Sched. A, s. 108 (7).

Same

(8) The pre-1997 Act shall be deemed to be amended by striking out,

- (a) “medical and vocational rehabilitation” in the first and second lines of clause 43 (7) (d) and substituting “medical rehabilitation and return to work or labour market re-entry”;
- (b) “vocational rehabilitation program” in the second and third lines of clause 43 (8) (c) and substituting “labour market re-entry plan”;
- (c) “vocational or medical rehabilitation program” in the third and fourth lines of subsection 43 (9) and substituting “medical rehabilitation program, early and safe return to work program or labour market re-entry plan”;
- (d) “vocational rehabilitation services or programs provided” in the second and third lines of subsection 103 (4.1) and substituting “an early and safe return to work program or labour market re-entry plan that is provided to the worker”; and
- (e) “vocational rehabilitation services and programs” in the last two lines of subsection 103 (4.2) and substituting “an early and safe return to work program or a labour market re-entry plan that is provided to the worker”. 1997, c. 16, Sched. A, s. 108 (8).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (15) - 01/01/1998

108.1-108.5 REPEALED: 2005, c. 5, s. 73 (39).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (40) - 01/03/2000

2005, c. 5, s. 73 (39) - 09/03/2005

Restoring rights

109 Any person whose benefits were terminated for reason of marriage or remarriage under subsection 36 (2) or 37 (1) of the *Workers' Compensation Act*, as it read on March 31, 1985, may apply to the Board for a reinstatement of benefits, and the Board shall reinstate the benefits, as of April 1, 1985. 1997, c. 16, Sched. A, s. 109.

Permanent partial disability supplements

110 (1) Subsection 147 (1) of the pre-1997 Act shall be deemed to be amended by adding the following definition:

“labour market re-entry plan” means a labour market re-entry plan prepared in accordance with section 42 of the *Workplace Safety and Insurance Act*, 1997. (“programme de réintégration sur le marché du travail”)

Same

(2) Subsection 147 (2) of the pre-1997 Act shall be deemed to be amended by striking out,

- (a) “vocational rehabilitation program” in the fourth and fifth lines and substituting “labour market re-entry plan”; and
- (b) “vocational rehabilitation” in the eighth line and substituting “completion of the plan”.

Same

(3) Subsection 147 (3) of the pre-1997 Act shall be deemed to be amended by striking out “vocational rehabilitation program” in the fourth line and substituting “labour market re-entry plan”.

Same

(4) Subsection 147 (4) of the pre-1997 Act shall be deemed to be amended by striking out,

- (a) “vocational rehabilitation program” in clause (a) and substituting “labour market re-entry plan”; and
- (b) “vocational rehabilitation program” in clause (b) and substituting “labour market re-entry plan”.

Same

(5) Clause 147 (6) (c) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

- (c) the day the worker ceases to participate in a labour market re-entry plan. 1997, c. 16, Sched. A, s. 110.

Same

(6) Section 147 of the pre-1997 Act shall be deemed to be amended by adding the following subsections:

Amount as adjusted annually

(8.1) Subsection (8) does not apply with respect to the amount of the supplement, as that amount is adjusted annually under section 148.

Same, transition

(8.2) Despite subsection (8.1), subsection (8) continues to apply to the amount of a supplement, as that amount is adjusted annually under section 148, and payable under subsection (4) for any period before January 1, 2018, regardless of when the Board determines that the worker is entitled to the supplement.

2017, c. 8, Sched. 33, s. 7 (1).

Same

(7) Subsection 147 (13) of the pre-1997 Act shall be deemed to be amended by striking out “and recalculate” and substituting “and may recalculate”. 2017, c. 8, Sched. 33, s. 7 (1).

Same

(8) Paragraph 4 of subsection 147 (16) of the pre-1997 Act shall be deemed to be repealed. 2017, c. 8, Sched. 33, s. 7 (2).

Same

(9) Paragraph 4 of subsection 147 (17) of the pre-1997 Act shall be deemed to be repealed. 2017, c. 8, Sched. 33, s. 7 (2).

Same

(10) Subsections (11) and (12) apply to a worker who, on or after April 27, 2017 is entitled to the additional payment provided for in subsection 147 (14) of the pre-1997 Act, but whose payment was reduced under subsection 147 (16) or (17) of the pre-1997 Act as those subsections applied before the day subsection 7 (2) of Schedule 33 to the *Stronger, Healthier Ontario Act (Budget Measures)*, 2017 comes into force. 2017, c. 8, Sched. 33, s. 7 (2).

Same

(11) If the Board has made a decision relating to the calculation of a reduction made under subsection 147 (16) or (17) of the pre-1997 Act before the day subsection 7 (2) of Schedule 33 to the *Stronger, Healthier Ontario Act (Budget Measures), 2017* comes into force, the worker who is in receipt of the reduced payment, or whose payment was reduced to nil, may request that the Board reconsider the claim, and the Board shall do the following:

1. The Board shall determine if the payment was reduced as a result of the application of paragraph 4 of subsection 147 (16) or 147 (17) of the pre-1997 Act, as the case may be, as those subsections applied before the day subsection 7 (2) of Schedule 33 to the *Stronger, Healthier Ontario Act (Budget Measures), 2017* comes into force.
2. If the Board determines that the payment was not reduced in the manner described in paragraph 1, the Board shall advise the worker of its determination.
3. If the Board determines that the payment was reduced in the manner described in paragraph 1, the Board shall recalculate the reduction in accordance with subsection (8) or (9), as the case may be, and shall pay the worker any difference owing. 2017, c. 8, Sched. 33, s. 7 (2).

Same

(12) If the Appeals Tribunal has made a decision regarding a Board decision relating to the calculation of a reduction made under subsection 147 (16) or (17) of the pre-1997 Act before the day subsection 7 (2) of Schedule 33 to the *Stronger, Healthier Ontario Act (Budget Measures), 2017* comes into force, the worker who is in receipt of the reduced payment, or whose payment was reduced to nil, may request that the Appeals Tribunal refer the decision back to the Board, and the Appeals Tribunal shall refer the decision back to the Board, and the Board shall follow the steps set out in paragraphs 1 to 3 of subsection (11). 2017, c. 8, Sched. 33, s. 7 (2).

Section Amendments with date in force (d/m/y)

2017, c. 8, Sched. 33, s. 7 (1) - 31/12/2017; 2017, c. 8, Sched. 33, s. 7 (2) - 31/12/2017

Indexation of compensation payable on or after January 1, 2018

111 (1) This section applies for the purposes of determining compensation payable under the pre-1997 Act on or after January 1, 2018. 2015, c. 38, Sched. 23, s. 9.

Same

(2) Section 148 of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Indexation

148 (1) The indexing factor determined under subsection 49 (1) of the *Workplace Safety and Insurance Act, 1997* applies with respect to the calculation of all compensation payable under this Act.

Annual adjustment

- (2) On the 1st day of January in each year, beginning January 1, 2018, the Board shall,
- (a) adjust the dollar amounts set out in this Act and in provisions continued by Part III by applying the indexing factor to the amounts as adjusted under this Part on the preceding January; and
 - (b) adjust the amounts payable under this Act and under provisions continued by Part III by applying the indexing factor to the amounts payable as adjusted under this Part on the preceding January.

Increases prospective

(3) Nothing in this section entitles a person to claim additional compensation under this Act for any period before January 1, 2018.

Same, adjustments

(4) Nothing in this section authorizes the Board to adjust amounts payable to a person under this Act for any period before January 1, 2018. 2015, c. 38, Sched. 23, s. 9.

Section Amendments with date in force (d/m/y)

2015, c. 38, Sched. 23, s. 9 - 01/01/2018

Transition, indexation of compensation payable before January 1, 2018

111.1 (1) This section applies for the purposes of determining compensation payable under the pre-1997 Act before January 1, 2018. 2015, c. 38, Sched. 23, s. 9.

Same

(2) Subsections 148 (1) and (1.1) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Indexation

(1) Subject to subsection (1.2), the general indexing factor determined under subsection 49 (1) of the *Workplace Safety and Insurance Act, 1997*, as it read on December 31, 2017, applies with respect to the calculation of all compensation payable under this Act. 2015, c. 38, Sched. 23, s. 9.

Same

(3) That portion of subsection 148 (1.2) of the pre-1997 Act that precedes paragraph 1 shall be deemed to be repealed and the following substituted:

Exception

(1.2) The alternate indexing factor determined under subsection 50 (1) of the *Workplace Safety and Insurance Act, 1997*, as it read on December 31, 2017, applies with respect to the calculation of the following:

.

2015, c. 38, Sched. 23, s. 9.

Same

(4) Paragraph 6 of subsection 148 (1.2) of the pre-1997 Act shall be deemed to be repealed. 2015, c. 38, Sched. 23, s. 9.

Same

(5) Subsection 148 (1.3) of the pre-1997 Act shall be deemed to be repealed. 2015, c. 38, Sched. 23, s. 9.

Same

(6) The pre-1997 Act shall be deemed to be amended by striking out “subsection 148 (1.3)” wherever it appears in paragraph 1 of subsection 43 (4), subparagraph 2 ii of subsection 43 (4), paragraph 1 of subsection 43 (5) and clause 43 (6.1) (b) and substituting in each case “subsection 148 (1.2)”. 2015, c. 38, Sched. 23, s. 9.

Same

(7) Subsection 148 (2) of the pre-1997 Act shall be deemed to be amended by striking out “the indexing factor” in clauses (a) and (b) and by substituting in clause (a) “the general indexing factor” and in clause (b) “the general or alternate indexing factor, as the case may be”. 2015, c. 38, Sched. 23, s. 9.

Section Amendments with date in force (d/m/y)

2015, c. 38, Sched. 23, s. 9 - 01/01/2018

Jurisdiction of Appeals Tribunal

112 (1) Subsection 81 (1) and sections 84 and 86 of the pre-1997 Act shall be deemed to be repealed.

Board of directors review

(2) Section 93 of the pre-1997 Act shall be deemed to be repealed.

Application

(3) Sections 120 and 123, subsection 125 (2), section 126 and subsections 174 (1) to (5) of this Act apply, with necessary modifications, to pre-1998 injuries and to decisions of the Board rendered before January 1, 1998, but the time limits in section 120 and subsection 125 (2) apply only from January 1, 1998.

Exception

(4) Despite subsections (1) to (3), if,

- (a) a panel of the Appeals Tribunal has commenced a hearing or consideration of an application or appeal pursuant to section 17, 23, 71 or 84 of the *Workers' Compensation Act*; or

- (b) the board of directors of the Board has exercised its discretion to review a decision of the Appeals Tribunal pursuant to section 93 of the *Workers' Compensation Act*,

and a final decision has not been made before this section comes into force, the panel or board of directors, as the case may be, may carry out and perform any duties and exercise any powers in connection with the application, appeal or review as though this section had not come into force. 1997, c. 16, Sched. A, s. 112.

PART X UNINSURED EMPLOYMENT

Application

113 (1) This Part applies with respect to industries that are not included in Schedule 1 or Schedule 2 and with respect to workers employed in those industries.

Same

(2) This Part applies with respect to the following types of workers who are employed in industries that are included in Schedule 1 or Schedule 2:

1. Persons whose employment by an employer is of a casual nature and who are employed otherwise than for the purposes of the employer's industry.
2. Persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in the person's own home or on other premises not under the control or management of the person who gave out the articles or materials. 1997, c. 16, Sched. A, s. 113.

Employer's liability

114 (1) A worker may bring an action for damages against his or her employer for an injury that occurs in any of the following circumstances:

1. The worker is injured by reason of a defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises used in the employer's business or connected with or intended for that business.
2. The worker is injured by reason of the employer's negligence.
3. The worker is injured by reason of the negligence of a person in the employer's service who is acting within the scope of his or her employment.

Same, deceased worker

(2) If a worker dies as a result of an injury that occurs in a circumstance described in subsection (1), an action for damages may be brought against the employer by the worker's estate or by a person entitled to damages under Part V of the *Family Law Act*. 1997, c. 16, Sched. A, s. 114.

Liability of owner, etc.

115 (1) A worker may bring an action for damages against the person for whom work is being done under a contract and against the contractor and subcontractor, if any, for an injury that occurs in any of the following circumstances:

1. The injury occurs by reason of a defect in the condition or arrangement of any ways, works, machinery, plant, building or premises. The person for whom the work is being done owns or supplies the ways, works, machinery, plant, building or premises.
2. The injury occurs as a result of the negligence of the person for whom all or part of the work is being done.
3. The injury occurs as a result of the negligence of a person in the service of the person for whom all or part of the work is being done, and the person who was negligent was acting within the scope of his or her employment.

Same

(2) Nothing in subsection (1) affects any right or liability of the person for whom the work is being done and the contractor and subcontractor as among themselves.

Same

(3) The worker is not entitled to recover damages under this section as well as under section 114 for the same injury. 1997, c. 16, Sched. A, s. 115.

Voluntary assumption of risk

116 (1) An injured worker shall not be considered to have voluntarily incurred the risk of injury in his or her employment solely on the grounds that, before he or she was injured, he or she knew about the defect or negligence that caused the injury.

Certain common law rules abrogated

(2) An injured worker shall not be considered to have voluntarily incurred the risk of injury that results from the negligence of his or her fellow workers.

Contributory negligence

(3) In an action for damages for an injury that occurs when a worker is in the service of an employer, contributory negligence by the worker is not a bar to recovery,

(a) by the injured worker; or

(b) if the worker dies as a result of the injury, by a person entitled to damages under Part V of the *Family Law Act*.

Same

(4) The worker's contributory negligence, if any, shall be taken into account in assessing the damages in such an action. 1997, c. 16, Sched. A, s. 116.

Insurance proceeds

117 (1) If an employer is insured against the employer's liability to a worker for damages, the employer's insurance shall be deemed to be for the benefit of the worker.

Same

(2) If the worker suffers an injury for which he or she is entitled to recover damages from the employer, the insurer shall not, without the consent of the worker, pay to the employer the amount for which the insurer is liable in respect of the injury until the worker's claim has been satisfied. 1997, c. 16, Sched. A, s. 117.

PART XI DECISIONS AND APPEALS

DECISIONS BY THE BOARD

Jurisdiction

118 (1) The Board has exclusive jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where this Act provides otherwise. 1997, c. 16, Sched. A, s. 118 (1).

Same

(2) Without limiting the generality of subsection (1), the Board has exclusive jurisdiction to determine the following matters:

1. Whether an industry or a part, branch or department of an industry falls within a class or group of industries in Schedule 1 or in Schedule 2 and, if so, which one.
2. Whether personal injury or death has been caused by an accident.
3. Whether an accident arose out of and in the course of an employment by a Schedule 1 or Schedule 2 employer.
4. Whether a person is co-operating in reaching his or her maximum medical recovery, in returning to work or in the preparation and implementation of a labour market re-entry plan.
5. Whether an employer has fulfilled his, her or its obligations under the insurance plan to return a worker to work or re-employ the worker.
6. Whether a labour market re-entry plan for a person is to be prepared and implemented.
7. Whether loss of earnings has resulted from an injury.
8. Whether permanent impairment has resulted from an injury, and the degree of the impairment.
9. The amount of a person's average earnings and net average earnings.
10. Whether a person is a spouse, child or dependant of an injured worker for the purposes of the insurance plan. 1997, c. 16, Sched. A, s. 118 (2); 1999, c. 6, s. 67 (41); 2005, c. 5, s. 73 (40).

Finality of decision

(3) An action or decision of the Board under this Act is final and is not open to question or review in a court. 1997, c. 16, Sched. A, s. 118 (3).

Same

(4) No proceeding by or before the Board shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court. 1997, c. 16, Sched. A, s. 118 (4).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 67 (41) - 01/03/2000

2005, c. 5, s. 73 (40) - 09/03/2005

Board: miscellaneous rules

Principle of decisions

119 (1) The Board shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.

Same

(2) If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for or against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.

Hearing

(3) The Board shall give an opportunity for a hearing.

Hearings

(4) The Board may conduct hearings orally, electronically or in writing. 1997, c. 16, Sched. A, s. 119.

Objection to Board decision

120 (1) A worker, survivor, employer, parent or other person acting in the role of a parent under subsection 48 (20) or beneficiary designated by the worker under subsection 45 (9) who objects to a decision of the Board shall file a notice of objection with the Board,

- (a) in the case of a decision concerning return to work or a labour market re-entry plan, within 30 days after the decision is made or within such longer period as the Board may permit; and
- (b) in any other case, within six months after the decision is made or within such longer period as the Board may permit. 1997, c. 16, Sched. A, s. 120 (1); 2021, c. 4, Sched. 11, s. 42 (6).

Notice of objection

(2) The notice of objection must be in writing and must indicate why the decision is incorrect or why it should be changed. 1997, c. 16, Sched. A, s. 120 (2).

Section Amendments with date in force (d/m/y)

2021, c. 4, Sched. 11, s. 42 (6) - 19/04/2021

Power to reconsider

121 The Board may reconsider any decision made by it and may confirm, amend or revoke it. The Board may do so at any time if it considers it advisable to do so. 1997, c. 16, Sched. A, s. 121.

Mediation

122 (1) The Board may provide mediation services in such circumstances as it considers appropriate.

Time limit, return to work, etc.

(2) If the mediation relates to an objection to a decision by the Board concerning return to work or a labour market re-entry plan and if the mediation is unsuccessful, the Board shall decide the matter within 60 days after receiving the notice of objection or within such longer period as the Board may permit.

Role of mediator

(3) The mediator shall not participate in any application or proceeding relating to the matter that is the subject of mediation unless the parties to the application or proceeding consent. 1997, c. 16, Sched. A, s. 122.

APPEALS TRIBUNAL

Jurisdiction

123 (1) The Appeals Tribunal has exclusive jurisdiction to hear and decide,

- (a) all appeals from final decisions of the Board with respect to entitlement to health care, return to work, labour market re-entry and entitlement to other benefits under the insurance plan;
- (b) all appeals from final decisions of the Board with respect to transfer of costs, an employer's classification under the insurance plan and the amount of the premiums and penalties payable by a Schedule 1 employer and the amounts and penalties payable by a Schedule 2 employer; and
- (c) such other matters as are assigned to the Appeals Tribunal under this Act. 1997, c. 16, Sched. A, s. 123 (1).

Same

(2) For greater certainty, the jurisdiction of the Appeals Tribunal under subsection (1) does not include the jurisdiction to hear and decide an appeal from decisions made under the following Parts or provisions:

- 1. REPEALED: 2011, c. 11, s. 22.
- 2. Sections 26 to 30 (rights of action) and 36 (health examination).
- 3. Section 60, subsections 62 (1) to (3) and sections 64 and 65 (payment of benefits).
- 4. Subsections 81 (1) to (6), 81.1 (1) to (3), 83 (1) and (2) and section 85 (allocation of payments).
- 5. Part VIII (insurance fund).
- 6. Part XII (enforcement), other than decisions concerning whether security must be given under section 137 or whether a person is liable under subsection 146 (2) to make payments. 1997, c. 16, Sched. A, s. 123 (2); 2011, c. 11, s. 22; 2019, c. 9, Sched. 13, s. 2.

Decisions on an appeal

(3) On an appeal, the Appeals Tribunal may confirm, vary or reverse the decision of the Board. 1997, c. 16, Sched. A, s. 123 (3).

Finality of decision

(4) An action or decision of the Appeals Tribunal under this Act is final and is not open to question or review in a court. 1997, c. 16, Sched. A, s. 123 (4).

Same

(5) No proceeding by or before the Appeals Tribunal shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court. 1997, c. 16, Sched. A, s. 123 (5).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 22 - 01/04/2012

2019, c. 9, Sched. 13, s. 2 - 06/06/2019

Appeals Tribunal: miscellaneous rules

Principle of decision

124 (1) The Appeals Tribunal shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.

Same

(2) If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for or against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.

Hearings

(3) The Appeals Tribunal may conduct hearings orally, electronically or in writing. 1997, c. 16, Sched. A, s. 124.

Appeal

125 (1) A worker, employer, survivor, parent or other person acting in the role of a parent under subsection 48 (20) or beneficiary designated by the worker under subsection 45 (9) may appeal a final decision of the Board to the Appeals Tribunal. 1997, c. 16, Sched. A, s. 125 (1); 2021, c. 4, Sched. 11, s. 42 (7).

Notice of appeal

(2) The person shall file a notice of appeal with the Appeals Tribunal within six months after the decision or within such longer period as the tribunal may permit. The notice of appeal must be in writing and must indicate why the decision is incorrect or why it should be changed. 1997, c. 16, Sched. A, s. 125 (2).

Notice by Appeals Tribunal

(3) The Appeals Tribunal shall promptly notify the Board and the parties of record of the appeal and the issues to be decided on the appeal and shall give them copies of any written submissions made in connection with the appeal. 1997, c. 16, Sched. A, s. 125 (3).

Board records, etc.

(4) The Board shall give the Appeals Tribunal a copy of its records relating to the appeal promptly upon being notified of the appeal. 1997, c. 16, Sched. A, s. 125 (4).

Section Amendments with date in force (d/m/y)

2021, c. 4, Sched. 11, s. 42 (7) - 19/04/2021

Board policies

126 (1) If there is an applicable Board policy with respect to the subject-matter of an appeal, the Appeals Tribunal shall apply it when making its decision.

Notice of Board policies

(2) The Board shall state in writing which policy, if any, applies to the subject-matter of an appeal after receiving notice of the appeal under subsection 125 (3).

Same

(3) If the Board does not state that a particular policy applies in respect of the subject-matter of an appeal, the tribunal may ask the Board to notify it if there is an applicable policy and the Board shall do so as soon as practicable.

Referral by Appeals tribunal

(4) If the tribunal, in a particular case, concludes that a Board policy of which it is notified is inconsistent with, or not authorized by, the Act or does not apply to the case, the tribunal shall not make a decision until it refers the policy to the Board for its review and the Board issues a direction under subsection (8).

Same

(5) The tribunal shall make the referral in writing and state the reasons for its conclusion.

Board review

(6) If there is a referral under subsection (4), the Board shall review the policy to determine whether it is consistent with, or authorized by, the Act or whether it applies to the case.

Submissions

(7) The Board shall provide the parties to the appeal in respect of which there is a referral an opportunity to make written submissions with respect to the policy.

Board direction

(8) Within 60 days after a referral to it, the Board shall issue a written direction, with reasons, to the tribunal that determines the issue raised in the tribunal's referral under subsection (4). 1997, c. 16, Sched. A, s. 126.

Time limit for decisions

127 (1) The Appeals Tribunal shall decide an appeal within 120 days after the hearing of the appeal ends or within such longer period as the tribunal may permit.

Transition

(2) If a notice of appeal is filed before January 1, 1998 and the Appeals Tribunal hears but does not decide the appeal before that date, the tribunal shall decide it not later than April 30, 1998 or such later date as the tribunal may permit.

Same

(3) If a notice of appeal is filed before January 1, 1998 and the Appeals Tribunal does not hear the appeal before that date, the tribunal shall decide it within 120 days after the hearing ends or within such longer period as the tribunal may permit. 1997, c. 16, Sched. A, s. 127.

Periodic payments pending decision

128 Periodic payments required by a decision that is under appeal must continue pending the outcome of the appeal. 1997, c. 16, Sched. A, s. 128.

Power to reconsider

129 The Appeals Tribunal may reconsider its decision and may confirm, amend or revoke it. The tribunal may do so at any time if it considers it advisable to do so. 1997, c. 16, Sched. A, s. 129.

Mediation

130 The Appeals Tribunal may provide mediation services in such circumstances as it considers appropriate. 1997, c. 16, Sched. A, s. 130.

PROCEDURAL AND OTHER POWERS

Practice and procedure

131 (1) The Board shall determine its own practice and procedure in relation to applications, proceedings and mediation. With the approval of the Lieutenant Governor in Council, the Board may make rules governing its practice and procedure.

Same, Appeals Tribunal

(2) Subsection (1) applies with necessary modifications with respect to the Appeals Tribunal.

Non-application

(3) The *Statutory Powers Procedure Act* does not apply with respect to decisions and proceedings of the Board or the Appeals Tribunal.

Notice of decisions

(4) The Board or the Appeals Tribunal, as the case may be, shall promptly notify the parties of record of its decision in writing and the reasons for the decision. The Appeals Tribunal shall also notify the Board of the decision. 1997, c. 16, Sched. A, s. 131.

Certain powers

Powers re proceedings

132 (1) The Board and the Appeals Tribunal may do the following things in connection with a proceeding:

1. Summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath or affirmation. These powers may be exercised in the same manner as a court of record in civil proceedings.
2. Require persons to produce such documents or things as the Board or tribunal considers necessary to make its decision. This power may be exercised in the same manner as a court of record in civil proceedings.
3. Accept such oral or written evidence as the Board or tribunal considers proper, whether or not it would be admissible in a court.

Powers of entry and inspection, etc.

(2) The Board and the Appeals Tribunal may do the following things in the exercise of their power to make decisions:

1. Enter premises where work is being done or has been done by a worker or in which an employer carries on business (whether or not the premises are those of the employer).
2. Inspect anything on the premises.
3. Make inquiries of any person on the premises.
4. Post notices on the premises.

Posting notices

(3) The Board or the Appeals Tribunal may require a person to post a notice in a conspicuous place on the person's premises and to keep the notice posted, if the Board or tribunal considers it necessary for the purposes of this Act.

Authorization

(4) The Board or the Appeals Tribunal may authorize a person to do anything that the Board or tribunal can do under this section and may require the person to report when he or she does so. 1997, c. 16, Sched. A, s. 132.

Payment of expenses of witnesses, etc.

133 (1) The Board or the Appeals Tribunal may pay the reasonable travel and living expenses of, and other allowances for,

- (a) a worker and his or her witnesses;
- (b) the survivors of a deceased worker and their witnesses;
- (c) the parent or other person referred to in subsection 48 (20); or
- (d) a designated beneficiary referred to in subsection 45 (9). 1997, c. 16, Sched. A, s. 133 (1); 2021, c. 4, Sched. 11, s. 42 (8).

Same

(2) Amounts paid under subsection (1) are expenses of the Board or the Appeals Tribunal, as the case may be. 1997, c. 16, Sched. A, s. 133 (2).

Section Amendments with date in force (d/m/y)

2021, c. 4, Sched. 11, s. 42 (8) - 19/04/2021

Health professionals

134 (1) The chair of the Appeals Tribunal may establish a list of health professionals upon whom the tribunal may call for assistance in determining matters of fact in a proceeding. The list must not include employees of the tribunal or the Board.

Remuneration

(2) The chair shall determine the remuneration to be paid to a health professional who assists the Appeals Tribunal and, in doing so, shall take into account any fee schedule established by the Board for services provided by health professionals.

Same

(3) The Appeals Tribunal shall pay a health professional the amount determined by the chair.

Assistance by health professional

(4) The Appeals Tribunal may call upon a health professional on the list for assistance at any time before or during a proceeding.

Restriction

(5) The Appeals Tribunal shall not call upon a particular health professional for assistance in any of the following circumstances except with the written consent of the parties to the proceeding:

- 1. If the health professional has previously examined the worker whose claim is the subject of the proceeding.
- 2. If the health professional has previously treated the worker or a member of his or her family.
- 3. If the health professional has acted as a consultant in the treatment of the worker or as a consultant to the employer.
- 4. If the health professional is a partner to a health professional described in paragraph 1, 2 or 3.

Health examination

(6) If the chair or a vice chair of the Appeals Tribunal determines that an issue on an appeal concerns the Board's decision on a health report or opinion, the chair or vice chair may require the worker to submit to an examination by a health professional (selected by the chair or vice chair) and the worker shall do so.

Same

(7) The health professional shall give the Appeals Tribunal a written report on his or her examination of the worker and the tribunal shall give a copy of the report to the parties for the purpose of receiving their submissions on it.

Failure to comply

(8) If a worker fails to comply with subsection (6) or obstructs the examination without reasonable cause, the Appeals Tribunal may suspend payments to the worker under the insurance plan and may suspend the worker's right to a final decision by the tribunal while the non-compliance or obstruction continues. 1997, c. 16, Sched. A, s. 134.

PART XII ENFORCEMENT

POWERS OF EXAMINATION AND INVESTIGATION

Examination and inspection

Examination, etc., of records

135 (1) The Board or a person authorized by it may examine the books and accounts of an employer and may investigate and make such inquiries as the Board considers necessary for the following purposes:

1. To ascertain whether a statement given to the Board by the employer is accurate.
2. To ascertain the amount of the employer's payroll.
3. To ascertain whether the employer is a Schedule 1 or a Schedule 2 employer.
4. To ascertain whether an employer has contravened section 22.1. 1997, c. 16, Sched. A, s. 135 (1); 2015, c. 34, Sched. 3, s. 3 (1).

Inspection of premises

(2) The Board may enter into the establishment of an employer and the premises connected with the establishment for the following purposes:

1. To ascertain whether the ways, works, machinery or appliances in the establishment or on the premises are safe, adequate and sufficient.
2. To ascertain whether all proper precautions are being taken to prevent accidents to the workers employed in or about the establishment or premises.
3. To ascertain whether the safety appliances or safeguards required by law are used and employed in the establishment or on the premises.
4. For such other purpose as the Board considers necessary to determine the proportion in which the employer should make payments under this Act.
5. To ascertain whether an employer has contravened section 22.1. 1997, c. 16, Sched. A, s. 135 (2); 2015, c. 34, Sched. 3, s. 3 (2).

Order for search and seizure

(3) The Board may apply without notice to a judge of the Superior Court of Justice for an order authorizing one or more persons designated by the Board (together with such police officers as they may call upon for assistance),

- (a) to enter and search a building, receptacle or place for books and accounts of an employer and to do so by force if necessary;
- (b) to remove the books and accounts for the purpose of examining them; and
- (c) to retain the books and accounts until the examination is completed. 1997, c. 16, Sched. A, s. 135 (3); 2000, c. 26, Sched. I, s. 1 (16).

Same

(4) The court may issue such an order. 1997, c. 16, Sched. A, s. 135 (4).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (16) - 06/12/2000

2015, c. 34, Sched. 3, s. 3 (1, 2) - 10/12/2015

Application of *Public Inquiries Act, 2009*

136 (1) Section 33 of the *Public Inquiries Act, 2009* applies to an examination, investigation and inspection conducted by the Board or any person appointed by the Board. 2009, c. 33, Sched. 6, s. 91.

Identification

(2) A person appointed by the Board to conduct an examination, investigation or inspection shall produce evidence of his or her appointment upon request when conducting an examination, investigation or inspection. 1997, c. 16, Sched. A, s. 136 (2).

Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 6, s. 91 - 01/06/2011

ENFORCEMENT OF PAYMENT OBLIGATIONS

Security for payment

137 (1) The Board may require an employer to give the Board security for the payment of amounts that are or may become due under the insurance plan.

Same

(2) The Board may specify the type and amount of security to be provided and may vary the type and amount if it considers it appropriate to do so.

Same

(3) The employer shall provide the security within 15 days after being directed to do so.

Enforcement

(4) The Board may enforce an obligation to provide security as if it were an obligation by the employer to make a payment under this Act. 1997, c. 16, Sched. A, s. 137.

Set-off and other remedies

Right of set-off

138 (1) The Board may deduct from money payable to a person by the Board all or part of an amount owing under this Act by the person.

Other remedies

(2) The Board may pursue such other remedies as it considers appropriate to recover an amount owing to it. 1997, c. 16, Sched. A, s. 138.

Enforcement by the courts

139 (1) If a person does not pay amounts owing under this Act when they become due, the Board may issue a certificate stating that the person is in default under this Act and setting out the amount owed and the person to whom it is owed. 1997, c. 16, Sched. A, s. 139 (1).

Same

(2) The Board may file the certificate with the Superior Court of Justice or with the Small Claims Court and it shall be entered in the same way as an order of that court and is enforceable as such. Despite any other rule of the court, the Board may file the certificate by mail and personal attendance at the court is not required. 1997, c. 16, Sched. A, s. 139 (2); 2000, c. 26, Sched. I, s. 1 (17).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (17) - 06/12/2000

Enforcement through municipal tax rolls

140 (1) If an employer does not pay amounts owing under this Act within 30 days after they become due, the Board may issue a certificate setting out the employer's status under this Act and the address of the employer's establishment, stating that the employer is more than 30 days in default under this Act and setting out the amount owed.

Same

(2) The Board may give the certificate to the clerk of a municipality in which the employer's establishment is located. The clerk shall enter the amount owed by the employer on the collector's roll as if it were taxes due from the employer in respect of the establishment.

Same

(3) The collector shall collect the amount as if it were taxes due from the employer and shall pay the amount collected to the Board. The collector may collect an additional 5 per cent in the same manner and shall keep it to pay for the collector's services.

Same

(4) The Board may issue certificates under this section and section 139 in respect of the same amount and may pursue both types of remedies. 1997, c. 16, Sched. A, s. 140.

Contractors and subcontractors, except in construction**Application**

141 (1) This section applies when a person retains a contractor or subcontractor to perform work in an industry included in Schedule 1 or Schedule 2, other than construction. 2008, c. 20, s. 5.

Deemed employer

(2) The Board may determine that the person is deemed to be the employer of the workers employed by the contractor or subcontractor to perform the work, and in that case the person is liable to pay the premiums payable by the contractor or subcontractor in respect of their workers as if the person were the contractor or subcontractor. 2008, c. 20, s. 5.

Right to reimbursement

(3) Subject to subsection (4), the person is entitled to be reimbursed by the contractor or subcontractor for amounts paid under subsection (2) in respect of workers employed by the contractor or subcontractor. 2008, c. 20, s. 5.

Same

(4) The Board shall determine the extent of the contractor's or subcontractor's liability under subsection (3). 2008, c. 20, s. 5.

Right of set-off

(5) The person may deduct amounts for which the contractor or subcontractor is liable under subsection (3) from money payable to the contractor or subcontractor. 2008, c. 20, s. 5.

Obligation to pay

- (6) If the person is not deemed to be the employer under subsection (2), the person,
- (a) shall ensure that the contractor or subcontractor complies with the contractor's or subcontractor's obligations to make payments under the insurance plan as an employer; and
 - (b) is liable to the extent the contractor or subcontractor does not meet those obligations. 2008, c. 20, s. 5.

Right of indemnity

(7) The person is entitled to be indemnified by the contractor or subcontractor for amounts paid under subsection (6). 2008, c. 20, s. 5.

Role of Board

(8) The Board shall determine all issues relating to subsections (6) and (7). 2008, c. 20, s. 5.

Liability of contractor, subcontractor

(9) Nothing in this section prevents the Board from requiring the contractor or subcontractor to pay premiums or reimburse the Board in respect of workers who have a deemed employer under this section. 2008, c. 20, s. 5.

Certificates

(10) For the purposes of this section, the Board may issue a certificate to the person who retains a contractor or subcontractor, or to the contractor or subcontractor, on such terms and conditions as it considers appropriate, confirming that the contractor or subcontractor has complied with the contractor's or subcontractor's obligations to make payments under the insurance plan. 2008, c. 20, s. 5.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 5 - 01/01/2013

Contractors and subcontractors in construction

Application

141.1 (1) This section applies when a person directly retains a contractor or subcontractor to perform construction work. 2008, c. 20, s. 5.

Duty of person who retains contractor or subcontractor

- (2) A person who directly retains a contractor or subcontractor to perform construction work,
- (a) shall ensure that the contractor or subcontractor complies with the contractor's or subcontractor's payment obligations under this Act in respect of the work; and
 - (b) is liable for those obligations, to the extent that the contractor or subcontractor does not comply with them. 2008, c. 20, s. 5.

Right to reimbursement

(3) Subject to subsection (4), the person is entitled to be reimbursed by the contractor or subcontractor for amounts paid under subsection (2). 2008, c. 20, s. 5.

Same

(4) The Board shall determine the extent of the contractor's or subcontractor's liability under subsection (3). 2008, c. 20, s. 5.

Right of set-off

(5) The person may deduct amounts for which the contractor or subcontractor is liable under subsection (3) from money payable to the contractor or subcontractor. 2008, c. 20, s. 5.

Right of indemnity

(6) The person is entitled to be indemnified by the contractor or subcontractor for amounts paid under subsection (2). 2008, c. 20, s. 5.

Role of Board

(7) The Board shall determine all issues relating to subsections (2) and (6). 2008, c. 20, s. 5.

Exempt home renovation work

(8) Subsections (1) to (7) do not apply in respect of a person who directly retains a contractor or subcontractor to perform exempt home renovation work as defined in subsection 12.2 (10). 2008, c. 20, s. 5.

Exception, compliance with s. 141.2

(9) Subsections (1) to (7) do not apply in respect of a person who complies with section 141.2. 2008, c. 20, s. 5.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 5 - 01/01/2013

Construction work, obligations respecting certificates

Application

141.2 (1) This section applies in respect of a person who directly retains a contractor or subcontractor to perform construction work. 2008, c. 20, s. 5.

Obtaining certificate

(2) Before permitting the contractor or subcontractor to begin construction work, the person shall obtain a certificate or a copy of a certificate issued under subsection (3). 2008, c. 20, s. 5.

Issuance by Board

(3) If the Board is satisfied that the contractor or subcontractor has registered with the Board and complied with the payment obligations under this Act, it shall issue to the contractor or subcontractor or to the person, on request, a certificate that,

- (a) confirms the registration and compliance; and

(b) states the period during which the certificate is in effect. 2008, c. 20, s. 5.

Revocation

(4) The Board may, at any time, revoke the certificate by giving a written notice of revocation to the contractor or subcontractor. 2008, c. 20, s. 5.

Notice

(5) On receiving the notice of revocation under subsection (4), the contractor or subcontractor shall immediately inform the person. 2008, c. 20, s. 5.

New certificate

(6) The person shall obtain a new certificate from the Board or from the contractor or subcontractor if, before the construction work is completed,

(a) the certificate expires; or

(b) the certificate is revoked and the person becomes aware of the fact. 2008, c. 20, s. 5.

Prohibition

(7) The contractor or subcontractor shall not perform construction work for the person during a period for which no certificate is in effect. 2008, c. 20, s. 5.

Same

(8) The person shall not permit the contractor or subcontractor to perform construction work for the person during a period for which the person is aware that no certificate is in effect. 2008, c. 20, s. 5.

Retention of certificate or copy

(9) The person shall keep a certificate or copy of a certificate obtained under this section for at least three years after the date it is obtained, and shall produce it for inspection at the request of the Board or of a person appointed or authorized by the Board. 2008, c. 20, s. 5.

Exempt home renovation work

(10) Subsections (1) to (9) do not apply in respect of a person who directly retains a contractor or subcontractor to perform exempt home renovation work as defined in subsection 12.2 (10). 2008, c. 20, s. 5.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 5 - 01/01/2013

Lienholder under *Construction Act*

142 (1) This section applies if a Schedule 1 employer is entitled to a lien under the *Construction Act* at a premises. 1997, c. 16, Sched. A, s. 142 (1); 2017, c. 24, s. 82 (1, 3).

Liability of owner

(2) The owner (as defined in the *Construction Act*) of the premises has a duty to see that the employer pays the premiums to the Board relating to the work or service performed for the owner and, if the owner fails to do so, the owner is liable to make those payments to the Board. 1997, c. 16, Sched. A, s. 142 (2); 2017, c. 24, s. 82 (2, 3).

Enforcement

(3) The Board may enforce the obligation on the owner as if it were an obligation by an employer to pay premiums under the insurance plan. 1997, c. 16, Sched. A, s. 142 (3).

Section Amendments with date in force (d/m/y)

2017, c. 24, s. 82 (1, 2) - 12/12/2017; 2017, c. 24, s. 82 (3) - 01/07/2018

Licensee, *Crown Forest Sustainability Act, 1994*

143 (1) If a licence is granted under Part III of the *Crown Forest Sustainability Act, 1994* and forest resources are harvested or used for a designated purpose under that Act by a person other than the licensee, the licensee shall ensure that the premiums, if any, payable by the other person under the insurance plan are paid. The licensee is liable to the extent that the other person does not pay the premiums.

Indemnification, etc.

(2) The licensee is entitled to be indemnified by the other person for premiums paid by the licensee and may deduct from money payable to the other person the amount of the premiums paid by the licensee.

Same

(3) The Board shall determine all issues relating to the rights of the licensee under subsection (2) and the amount to which the licensee is entitled.

Enforcement

(4) The Board may enforce a licensee's obligation to pay premiums as if the licensee were an employer. 1997, c. 16, Sched. A, s. 143.

Preference upon certain distributions

144 (1) This section applies when a person owes money under this Act to the Board or to another person and,

- (a) the person who owes the money is an individual who dies;
- (b) the person who owes the money is a corporation that is being wound up; or
- (c) there is an assignment of all or part of the assets of the person who owes the money. 1997, c. 16, Sched. A, s. 144 (1).

Same

(2) For the purposes of the *Assignments and Preferences Act*, the *Corporations Act*, the *Not-for-Profit Corporations Act*, 2010 and the *Trustee Act*, amounts due under this Act immediately before the effective date described in subsection (4) shall be deemed to be amounts to be paid in priority to all other debts. 1997, c. 16, Sched. A, s. 144 (2); 2010, c. 15, s. 248 (2).

Commuted value

(3) If the person who owes money under this Act is required to make periodic payments under this Act after the effective date, the Board shall calculate the commuted value of the periodic payments. The commuted value shall be deemed to be due immediately before the effective date. 1997, c. 16, Sched. A, s. 144 (3).

Effective date

(4) For the purposes of this section, the effective date is the date of death of the individual, the date on which the winding up of the corporation begins or the date on which the assets are assigned. 1997, c. 16, Sched. A, s. 144 (4).

Section Amendments with date in force (d/m/y)

2010, c. 15, s. 248 (2) - 19/10/2021

Lien upon property

145 (1) Subject to subsection (2), the amount set out in a certificate filed with the court under subsection 139 (2) is, after municipal taxes, a first lien upon all of the property of the employer used in connection with the industry with respect to which the employer is required to make payments under the insurance plan.

Notice of lien

(2) The lien is effective only if,

- (a) notice of the lien is filed by way of writ of seizure and sale in the office of the sheriff for the area in which the affected property is situated; and
- (b) a copy of the writ is delivered by the sheriff or by registered mail to the proper land registrar, if affected land is registered under the *Land Titles Act*. 1997, c. 16, Sched. A, s. 145.

Obligations of successor employers

146 (1) This section applies when an employer sells, leases, transfers or otherwise disposes of all or part of the employer's business either directly or indirectly to another person other than a trustee in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada), a receiver, a liquidator under the *Winding-up and Restructuring Act* (Canada) or a person who acquires any or all of the employer's business pursuant to an arrangement under the *Companies' Creditors Arrangement Act* (Canada). 1997, c. 16, Sched. A, s. 146 (1); 2017, c. 34, Sched. 45, s. 3.

Liability of person

(2) The person is liable to pay all amounts owing under this Act by the employer immediately before the disposition. 1997, c. 16, Sched. A, s. 146 (2).

Enforcement

(3) The Board may enforce the obligation against the person as if the person had been the employer at all relevant times. 1997, c. 16, Sched. A, s. 146 (3).

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 45, s. 3 - 14/12/2017

Overpayments

147 (1) An overpayment made by the Board to a person under this Act is an amount owing to the Board at the time the overpayment is made.

Amount

(2) The amount of the overpayment is as determined by the Board. 1997, c. 16, Sched. A, s. 147.

Enforcement policies

148 (1) The Board shall develop policies governing the circumstances in which the powers under subsections 12 (8) and (9), subsection 12.2 (3) and sections 76, 137, 139 and 146 are to be exercised and setting out criteria governing the fair, reasonable and timely exercise of those powers. 1997, c. 16, Sched. A, s. 148 (1); 2008, c. 20, s. 6.

Same

(2) The Board shall be bound by the policies in its administration of those sections. 1997, c. 16, Sched. A, s. 148 (2).

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 6 - 01/01/2013

OFFENCES AND PENALTIES

Offences

Offence, false or misleading statement

149 (1) A person who knowingly makes a false or misleading statement or representation to the Board in connection with any person's claim for benefits under the insurance plan is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (1).

Same, material change in circumstances

(2) A person who wilfully fails to inform the Board of a material change in circumstances in connection with his or her entitlement to benefits within 10 days after the change occurs is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (2).

Same

(3) An employer who wilfully fails to inform the Board of a material change in circumstances in connection with an obligation of the employer under this Act within 10 days after the change occurs is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (3).

Same, by supplier, etc.

(4) A person who knowingly makes a false or misleading statement or representation to the Board to obtain payment for goods or services provided to the Board, whether or not the Board received the goods or services, is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (4).

Same, material change in circumstances, s. 12.2 (9)

(4.1) A person who wilfully fails to comply with subsection 12.2 (9) is guilty of an offence. 2008, c. 20, s. 7.

Same, false or misleading statement, s. 12.3 (4)

(4.2) A person who knowingly makes a false or misleading statement or representation in a declaration made under subsection 12.3 (4) is guilty of an offence. 2008, c. 20, s. 7.

Same, material change in circumstances, s. 12.3 (6), (7)

(4.3) A person who wilfully fails to comply with subsection 12.3 (6) or (7) is guilty of an offence. 2008, c. 20, s. 7.

Restitution order

(5) If a person is convicted of an offence under this section, the court may also order the person to pay to the Board any money received by the person or obtained by the person on behalf of another person by reason of the commission of the

offence. The money payable to the Board shall be deemed to be an amount owing under this Act. 1997, c. 16, Sched. A, s. 149 (5).

(6) REPEALED: 2001, c. 9, Sched. I, s. 4 (3).

Other remedies

(7) Subsection (5) does not limit the right of the Board to take such other steps as it considers appropriate to recover an amount owing to it. 1997, c. 16, Sched. A, s. 149 (7).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 4 (3) - 29/06/2001

2008, c. 20, s. 7 - 01/01/2013

Offence, confidential information

150 (1) An employer or employer's representative who contravenes subsection 37 (4), 59 (6) or 181 (3) is guilty of an offence.

Same, Board employees, etc.

(2) A person who contravenes subsection 181 (1) is guilty of an offence. 1997, c. 16, Sched. A, s. 150.

Offences, ss. 75, 76

Offence, employer registration, etc.

151 (1) An employer who fails to register or to provide the information required under section 75 is guilty of an offence. 1997, c. 16, Sched. A, s. 151 (1).

Same, false information

(1.1) An employer who knowingly provides false or misleading information under section 75 is guilty of an offence. 2000, c. 26, Sched. I, s. 1 (18).

Same, change of status

(2) An employer who fails to comply with section 76 is guilty of an offence. 1997, c. 16, Sched. A, s. 151 (2).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (18) - 06/12/2000

Offence, s. 12.3 (1) to (3)

151.1 A person who fails to comply with subsection 12.3 (1), (2) or (3) is guilty of an offence. 2008, c. 20, s. 8.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 8 - 01/01/2013

Offences, s. 141.2

151.2 (1) A person who fails to comply with subsection 141.2 (2), (6) or (9) or contravenes subsection 141.2 (8) is guilty of an offence. 2008, c. 20, s. 8.

Same

(2) A contractor or subcontractor who fails to comply with subsection 141.2 (5) or contravenes subsection 141.2 (7) is guilty of an offence. 2008, c. 20, s. 8.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 8 - 01/01/2013

Offences, ss. 21, 78, 80

Offence, statements and records

152 (1) An employer who fails to comply with subsection 78 (1), (2) or (3) or 80 (1) is guilty of an offence. 2001, c. 9, Sched. I, s. 4 (4).

Same

(1.1) An employer who fails to comply with a requirement of the Board under subsection 78 (4) or 80 (2) is guilty of an offence. 2001, c. 9, Sched. I, s. 4 (4).

Same

(2) An employer who provides a statement under subsection 78 (1), (2), (3) or (4) that is not an accurate statement of a matter required to be set out in it is guilty of an offence. 1997, c. 16, Sched. A, s. 152 (2); 2000, c. 26, Sched. I, s. 1 (20).

Same, notice of accident

(3) An employer who fails to comply with section 21 is guilty of an offence. 1997, c. 16, Sched. A, s. 152 (3).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (19, 20) - 06/12/2000

2001, c. 9, Sched. I, s. 4 (4) - 29/06/2001

Offence, obstruction

153 (1) A person who obstructs or hinders an examination, investigation or inquiry authorized by subsection 135 (1) is guilty of an offence.

Same

(2) A person who obstructs or hinders an inspection authorized by subsection 135 (2) is guilty of an offence. 1997, c. 16, Sched. A, s. 153.

Offence, security for payment

154 An employer who fails to comply with a requirement of the Board under section 137 is guilty of an offence. 1997, c. 16, Sched. A, s. 154.

Offence, deduction from wages

155 (1) An employer who contravenes subsection 95.1 (1) is guilty of an offence. 2000, c. 26, Sched. I, s. 1 (21).

Restitution order

(2) If a person is convicted of an offence under this section, the court shall also order the person to pay to the Board on behalf of an affected worker any sum deducted from the worker's wages or any sum that the worker was required or permitted to pay in contravention of subsection 95.1 (1). The amount payable to the Board shall be deemed to be an amount owing under this Act. 2000, c. 26, Sched. I, s. 1 (21).

Same

(3) When the court makes an order under subsection (2), the Board shall pay the sum determined under the order to the worker. 2000, c. 26, Sched. I, s. 1 (21).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (21) - 06/12/2000

Offence, claim suppression

155.1 An employer who contravenes section 22.1 is guilty of an offence. 2015, c. 34, Sched. 3, s. 4.

Section Amendments with date in force (d/m/y)

2015, c. 34, Sched. 3, s. 4 - 10/12/2015

Offence, regulations

156 (1) A person who contravenes or fails to comply with a regulation made under this Act is guilty of an offence.

Restriction on prosecution

(2) A prosecution shall not be instituted for an offence under this section except with the consent in writing of the Board. 1997, c. 16, Sched. A, s. 156.

Offence by director, officer

157 If a corporation commits an offence under this Act, every director or officer of the corporation who knowingly authorized, permitted or acquiesced in the commission of the offence is guilty of an offence, whether or not the corporation has been prosecuted or convicted. 1997, c. 16, Sched. A, s. 157.

Restriction on prosecution

157.1 (1) A prosecution for an offence under this Act shall not be commenced more than two years after the day on which the most recent act or omission upon which the prosecution is based comes to the knowledge of the Board. 2001, c. 9, Sched. I, s. 4 (5).

Exception

(2) Despite subsection (1), there is no limitation period for prosecuting an offence under section 149. 2001, c. 9, Sched. I, s. 4 (5).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 4 (5) - 29/06/2001

Penalty

158 (1) A person who is convicted of an offence is liable to the following penalty:

1. If the person is an individual, he or she is liable to a fine not exceeding \$25,000 or to imprisonment not exceeding six months or to both.
2. If the person is not an individual, the person is liable to a fine not exceeding \$500,000. 1997, c. 16, Sched. A, s. 158 (1); 2015, c. 34, Sched. 3, s. 5.

Fines

(2) Any fine paid as a penalty for a conviction under this Act shall be paid to the Board and shall form part of the insurance fund. 1997, c. 16, Sched. A, s. 158 (2).

Section Amendments with date in force (d/m/y)

2015, c. 34, Sched. 3, s. 5 - 10/12/2015

**PART XIII
ADMINISTRATION OF THE ACT**

WORKPLACE SAFETY AND INSURANCE BOARD

Board: continued, powers, etc.**Board continued**

159 (1) The body corporate known as the Workers' Compensation Board is continued under the name Workplace Safety and Insurance Board in English and Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail in French and is composed of the members of its board of directors. 1997, c. 16, Sched. A, s. 159 (1).

Powers of the Board

- (2) Subject to this Act, the Board has the powers of a natural person including the power,
- (a) to establish policies concerning the premiums payable by employers under the insurance plan;
 - (a.1) to establish policies concerning the interpretation and application of this Act;
 - (a.2) to establish policies concerning evidentiary requirements for establishing entitlement to benefits under the insurance plan;
 - (a.3) to establish policies concerning the adjudicative principles to be applied for the purpose of determining entitlement to benefits under the insurance plan;
 - (b) to review this Act and the regulations and recommend amendments or revisions to them;
 - (c) to consider and approve annual operating and capital budgets;
 - (d) to review and approve its investment policies;
 - (e) to review and approve major changes in its programs;

- (f) to enact by-laws and pass resolutions for the adoption of a seal and the conduct of business and affairs;
- (g) to establish, maintain and regulate advisory councils or committees, their composition and their functions;
- (h) to provide, on such terms as it sees fit, financial assistance to an employer who will modify the work or workplace so that an injured worker or the spouse of a deceased worker may re-enter the labour force;
- (i) to establish a program to designate return to work and labour market re-entry service providers, to monitor the service providers' performance and to charge them a fee for the cost of the program. 1997, c. 16, Sched. A, s. 159 (2); 1999, c. 6, s. 67 (42); 2005, c. 5, s. 73 (41); 2017, c. 8, Sched. 33, s. 8 (1).

Same

(2.1) A policy established under clause (2) (a.2) or (a.3) may provide that different evidentiary requirements or adjudicative principles apply to different types of entitlements, where it is appropriate, having regard to the different basis for and the characteristics of each entitlement. 2017, c. 8, Sched. 33, s. 8 (2).

Employees

(3) The Board may employ upon such terms as it approves such persons as it considers necessary for its purposes. 1997, c. 16, Sched. A, s. 159 (3).

(4) SPENT: 1997, c. 16, Sched. A, s. 159 (4).

Investigations, research and training

(5) The Board may undertake and carry on investigations, research and training and, for those purposes, may make grants to individuals, institutions and organizations in such amounts and subject to such conditions as the Board considers acceptable and may publish the results of the investigations and research. 1997, c. 16, Sched. A, s. 159 (5).

First aid requirements

(5.1) The Board may require employers in such industries as it considers appropriate to have such first aid appliances and services as may be prescribed. 2011, c. 11, s. 23 (1).

Repeal

(5.2) Subsection (5.1) is repealed on a day to be named by proclamation of the Lieutenant Governor. 2011, c. 11, s. 23 (1).

Acquisition of real property

(6) With the approval of the Lieutenant Governor in Council, the Board may acquire real property that the Board considers necessary for its purposes and may dispose of it. 1997, c. 16, Sched. A, s. 159 (6).

Agreements to co-operate

(7) The Board may enter into agreements with the government of Canada or of a province or territory of Canada or with the appropriate authority of such a government providing for co-operation in matters relating to workers' compensation and return to work and providing for the avoidance of any duplication in compensation. 1997, c. 16, Sched. A, s. 159 (7); 2011, c. 11, s. 23 (2).

Same

(8) With the approval of the Lieutenant Governor in Council, the Board may enter into agreements with any state, government or authority outside Canada providing for co-operation in matters relating to workers' compensation and return to work and providing for the avoidance of any duplication in compensation. 1997, c. 16, Sched. A, s. 159 (8); 2011, c. 11, s. 23 (3).

Agreements to exchange information

(9) With the approval of the Lieutenant Governor in Council, for the purpose of administering this Act the Board may enter into agreements with the government of Canada or of a province or territory of Canada or with a ministry, board, commission or agency of such a government under which,

- (a) the government, ministry, board, commission or agency will be allowed access to information obtained by the Board under this Act; and
- (b) the government, ministry, board, commission or agency will allow the Board to have access to information obtained by the government, ministry, board, commission or agency under statutory authority. 1997, c. 16, Sched. A, s. 159 (9).

Exception

(9.1) The requirement in subsection (9) to obtain the approval of the Lieutenant Governor in Council does not apply to an agreement between the Board and the Ministry of Labour to exchange the information described in subsection (9). 2011, c. 11, s. 23 (4).

Agreements for cost sharing

(10) Despite any provision in this Act, the Board may enter into an agreement with the appropriate authority in any other jurisdiction in Canada to provide for the apportionment of the costs of the claims for occupational diseases for workers who have had exposure employment in more than one Canadian jurisdiction. 1997, c. 16, Sched. A, s. 159 (10).

Same, industrial noise claims

(11) Despite any provision in this Act, the Board may enter into an agreement with the appropriate authority in any other province or territory of Canada to provide for the sharing of costs of workers' claims for hearing loss induced by occupational noise. The Board's share must be in proportion to the actual or estimated amount of workers' exposure to occupational noise in Ontario which contributed to their hearing loss. 1997, c. 16, Sched. A, s. 159 (11).

Non-application of corporate Acts

(12) The *Corporations Act* and the *Not-for-Profit Corporations Act, 2010* do not apply to the Board. 2010, c. 15, s. 248 (3).

Section Amendments with date in force (d/m/y)

1997, c. 16, Sched. A, s. 159 (3) - 10/04/1995 - see 1997, c. 16, Sched. A, s. 159 (4) - 01/01/1998; 1999, c. 6, s. 67 (42) - 01/03/2000

2005, c. 5, s. 73 (41) - 09/03/2005

2010, c. 15, s. 248 (3) - 19/10/2021

2011, c. 11, s. 23 (1-3) - 01/04/2012; 2011, c. 11, s. 23 (4) - 01/06/2011

2017, c. 8, Sched. 33, s. 8 (1, 2) - 17/05/2017

Agreement re duplication of premiums

160 (1) The Board may enter into an agreement with the workers' compensation authority of another province or territory of Canada for the purpose of avoiding duplication of the premiums for which an employer may be liable with respect to the earnings of workers who are employed in Ontario part of the time and in the other province or territory part of the time.

Same

(2) The agreement may provide for such adjustments in employers' premiums under the insurance plan as is equitable.

Relief from premiums

(3) The Board may relieve an employer from paying all or part of the employer's premiums with respect to those workers.

Reimbursement

(4) The Board may reimburse the workers' compensation authority for any payments made under the agreement by the authority for compensation, rehabilitation or health care. 1997, c. 16, Sched. A, s. 160.

Duties of the Board

161 (1) The Board shall administer the insurance plan and shall perform such other duties as it is assigned under this Act and any other Act. 2011, c. 11, s. 24 (1).

Duty to evaluate proposed changes

(2) The Board shall evaluate the consequences of any proposed change in benefits, services, programs and policies to ensure that the purposes of this Act are achieved. 1997, c. 16, Sched. A, s. 161 (2).

Duty to monitor

(3) The Board shall monitor developments in the understanding of the relationship between workplace insurance and injury and occupational disease,

(a) so that generally accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies in a way that is consistent with the purposes of this Act; and

(b) in order to improve the efficiency and effectiveness of the insurance plan. 2011, c. 11, s. 24 (2).

Section Amendments with date in force (d/m/y)

Board of directors

162 (1) A board of directors shall be constituted to govern the Board and to exercise the powers and perform the duties of the Board under this or any other Act. It shall be composed of,

- (a) a chair appointed by the Lieutenant Governor in Council;
- (b) the president of the Board appointed by the Lieutenant Governor in Council; and
- (c) a minimum of seven and a maximum of nine members who are representative of workers, employers and such others as the Lieutenant Governor in Council considers appropriate, appointed by the Lieutenant Governor in Council. 1997, c. 16, Sched. A, s. 162 (1); 2007, c. 7, Sched. 41, s. 10 (1).

Same

(1.1) For greater certainty, the positions of chair and president shall be held by different persons. 2007, c. 7, Sched. 41, s. 10 (2).

Consultation re president

(2) The Lieutenant Governor in Council shall consult with the chair and the members described in clause (1) (c) before appointing the president of the Board. 1997, c. 16, Sched. A, s. 162 (2).

Remuneration and expenses

(3) The Board shall pay members of the board of directors such remuneration and benefits and reimburse them for such reasonable expenses as may be determined by the Lieutenant Governor in Council. The remuneration and expenses are administrative expenses of the Board. 1997, c. 16, Sched. A, s. 162 (3).

Meetings of the board

(4) The board of directors shall meet at the call of the chair and in no case shall more than two months elapse between meetings of the board of directors. 1997, c. 16, Sched. A, s. 162 (4).

Quorum

(5) A majority of members of the board of directors holding office constitutes a quorum and a decision of a majority of the members constituting the quorum is the decision of the board of directors. 1997, c. 16, Sched. A, s. 162 (5).

Vacancy

(6) The board of directors may act despite a vacancy in its membership. 1997, c. 16, Sched. A, s. 162 (6).

Absence of chair

(7) The chair shall decide which member of the board of directors is to act as chair in his or her absence. If the chair does not do so, the board of directors may decide which member is to act in the chair's absence. 1997, c. 16, Sched. A, s. 162 (7).

(8)-(12) REPEALED: 2000, c. 26, Sched. I, s. 1 (22).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (22) - 06/12/2000

2007, c. 7, Sched. 41, s. 10 (1) - 26/01/2009; 2007, c. 7, Sched. 41, s. 10 (2) - 01/07/2007

Duties of the board of directors

163 (1) The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties.

Same, board members

(2) Members of the board of directors shall act in good faith with a view to the best interests of the Board and shall exercise the care, diligence and skill of a reasonably prudent person. 1997, c. 16, Sched. A, s. 163.

Delegation

164 The board of directors may delegate a power or duty of the Board to a member of the board of directors or to an officer or employee of the Board and may impose conditions and limitations on the delegation. The delegation must be made in writing. 1997, c. 16, Sched. A, s. 164.

Offices of the Board

165 (1) The main offices of the Board shall be situate in the City of Toronto. 1997, c. 16, Sched. A, s. 165 (1); 1997, c. 26, Sched.

Place of meeting

(2) The board of directors may hold meetings in any place in Ontario that the board considers convenient. 1997, c. 16, Sched. A, s. 165 (2).

Section Amendments with date in force (d/m/y)

1997, c. 26, Sched. - 01/01/1998

Memorandum of understanding

166 (1) Every five years, the Board and the Minister shall enter into a memorandum of understanding containing only such terms as may be directed by the Minister.

Contents

(2) The memorandum of understanding must impose the following requirements:

1. Each year, the Board must give the Minister a strategic plan setting out its plans for the following five years.
2. The Board must give the Minister an annual statement setting out its proposed priorities for administering this Act and the regulations.
3. The Board must give the Minister an annual statement of its investment policies and goals.

Same

(3) The memorandum of understanding must address any matter that may be required by order of the Lieutenant Governor in Council or by a direction of Management Board of Cabinet.

Same

(4) The memorandum of understanding may address the following matters:

1. Any direction by the Minister about the programs to be reviewed under section 168.
2. Any matter proposed by the Board and agreed to by the Minister.
3. Any other matter the Minister considers appropriate.

Compliance

(5) The Board shall comply with the memorandum of understanding. 1997, c. 16, Sched. A, s. 166.

Information

167 (1) The Minister may direct the Board to provide the Minister with information that the Minister considers necessary for the proper administration of this Act. 2021, c. 3, s. 2.

Same

(2) If the Minister directs the Board to provide information under subsection (1), the Board shall provide the information on or before the date specified by the Minister and in the form specified by the Minister. 2021, c. 3, s. 2.

Same, delegation to Deputy Minister

(3) The Minister may delegate the Minister's powers under this section to the Deputy Minister. 2021, c. 3, s. 2.

Section Amendments with date in force (d/m/y)

2010, c. 26, Sched. 21, s. 4 - 08/12/2010

2021, c. 3, s. 2 - 14/04/2021

Value for money audit

168 (1) The board of directors shall ensure that a review is performed each year of the cost, efficiency and effectiveness of at least one program that is provided under this Act. 1997, c. 16, Sched. A, s. 168 (1).

Same

(2) The Minister may determine which program is to be reviewed and shall notify the board of directors if he or she selects a program for review. 1997, c. 16, Sched. A, s. 168 (2).

Same

(3) The review must be performed under the direction of the Auditor General by one or more public accountants who are licensed under the *Public Accounting Act, 2004*. 1997, c. 16, Sched. A, s. 168 (3); 2004, c. 17, s. 32; 2004, c. 8, ss. 46, 47 (2).

Section Amendments with date in force (d/m/y)

2004, c. 8, s. 46, 47 (2) - 01/11/2005; 2004, c. 17, s. 32 - 30/11/2004

Audit of accounts

169 (1) The accounts of the Board shall be audited by the Auditor General or under his or her direction by an auditor appointed by the Lieutenant Governor in Council to audit them. 1997, c. 16, Sched. A, s. 169 (1); 2004, c. 17, s. 32.

Remuneration, etc.

(2) The Board shall pay the remuneration and reasonable expenses of an auditor appointed by the Lieutenant Governor in Council. The remuneration and expenses are administrative expenses of the Board. 1997, c. 16, Sched. A, s. 169 (2).

Section Amendments with date in force (d/m/y)

2004, c. 17, s. 32 - 30/11/2004

Annual report

170 (1) The Board shall prepare an annual report, provide it to the Minister and make it available to the public. 2017, c. 34, Sched. 46, s. 55.

Same

- (2) The Board shall comply with such directives as may be issued by the Management Board of Cabinet with respect to,
- (a) the form and content of the annual report;
 - (b) when to provide it to the Minister; and
 - (c) when and how to make it available to the public. 2017, c. 34, Sched. 46, s. 55.

Same

(3) The Board shall include such additional content in the annual report as the Minister may require. 2017, c. 34, Sched. 46, s. 55.

Tabling of annual report

170.1 The Minister shall table the Board's annual report in the Assembly and shall comply with such directives as may be issued by the Management Board of Cabinet with respect to when to table it. 2017, c. 34, Sched. 46, s. 55.

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 46, s. 55 - 01/01/2018

Employee's pension plan

171 (1) The purpose of the employees' pension plan is to pay superannuation allowances and allowances upon the death or disability of full-time members of the board of directors and employees of the Board. 2018, c. 8, Sched. 37, s. 2 (1).

Expenses

(2) The Board's cost of maintaining and administering the pension plan is chargeable to the insurance fund. 2018, c. 8, Sched. 37, s. 2 (1).

(3) REPEALED: 2018, c. 8, Sched. 37, s. 2 (1).

Deemed employees

(4) The following persons shall be deemed to be employees of the Board for the purposes of the pension plan:

1. The employees of safe workplace associations that were designated under section 6 at any time before the repeal of that section by section 20 of the *Occupational Health and Safety Statute Law Amendment Act, 2011*.

- 1.1 The employees of safe workplace associations designated under section 22.5 of the *Occupational Health and Safety Act*.
2. Persons who are deemed, on January 1, 1998, to be employees of the Workers' Compensation Board under paragraph 2 of subsection 68 (3) of the *Workers' Compensation Act*.
3. Persons who are deemed, on January 1, 1998, to be employees of the Workers' Compensation Board under subsection 68 (5) of the *Workers' Compensation Act*.
4. The employees of safety and accident prevention associations that, on January 1, 1998, are designated under subclause 16 (1) (n) (ii) of the *Occupational Health and Safety Act*. 1997, c. 16, Sched. A, s. 171 (4); 2000, c. 26, Sched. I, s. 1 (23); 2011, c. 11, s. 25.

(5), (6) REPEALED: 2000, c. 26, Sched. I, s. 1 (24).

(7), (8) REPEALED: 2018, c. 8, Sched. 37, s. 2 (2).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (23) - 01/01/1998; 2000, c. 26, Sched. I, s. 1 (24) - 06/12/2000

2011, c. 11, s. 25 - 01/04/2012

2018, c. 8, Sched. 37, s. 2 (1, 2) - 01/07/2020

Mines

Mine rescue stations

172 (1) The Board shall pay the reasonable expenses of establishing, maintaining and operating mine rescue stations under the *Occupational Health and Safety Act*.

Medical examinations for mine workers

(2) The Board may pay the remuneration and expenses of medical officers to examine workers and applicants for employment in a mine or mining plant in accordance with the regulations made under the *Occupational Health and Safety Act*.

Same

(3) The Board may take into account amounts paid under subsection (2) when determining the premiums to be paid under the insurance plan by Schedule 1 employers or the payments to be made by Schedule 2 employers who have workers receiving benefits under the insurance plan for silicosis. 1997, c. 16, Sched. A, s. 172.

Payments to construction workers

172.1 The Board shall pay persons who are regularly employed in the construction industry for the time they spend fulfilling the requirements to become certified for the purposes of the *Occupational Health and Safety Act*. However, the Board shall not pay persons who may represent management as members of a joint health and safety committee. 2011, c. 11, s. 26.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 26 - 01/04/2012

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Appeals Tribunal

173 (1) The Workers' Compensation Appeals Tribunal is continued under the name Workplace Safety and Insurance Appeals Tribunal in English and Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail in French. 1997, c. 16, Sched. A, s. 173 (1).

Remuneration and expenses

(2) The Appeals Tribunal shall pay persons appointed to the tribunal such remuneration and benefits and reimburse them for such reasonable expenses as may be determined by the Lieutenant Governor in Council. 1997, c. 16, Sched. A, s. 173 (2).

Chair and chief executive officer

(3) A chair of the Appeals Tribunal appointed by the Lieutenant Governor in Council shall hear and decide appeals and such other matters as are conferred upon the tribunal under this Act and act as the tribunal's chief executive officer. 1997, c. 16, Sched. A, s. 173 (3); 2000, c. 26, Sched. I, s. 1 (25).

Absence of chair

(4) The chair shall decide which vice-chair is to act as chair in his or her absence. If the chair does not do so, the Minister may decide which vice-chair is to act in the chair's absence. 1997, c. 16, Sched. A, s. 173 (4).

Employees

(5) The chair may, on behalf of the Appeals Tribunal employ such persons as the chair considers necessary for its purposes. The terms and conditions of their employment must conform to such guidelines as may be established by Management Board of Cabinet. 1997, c. 16, Sched. A, s. 173 (5).

Operating costs

(6) The operating costs of the Appeals Tribunal are expenses of the Board. 1997, c. 16, Sched. A, s. 173 (6).

(7) REPEALED: 2000, c. 26, Sched. I, s. 1 (26).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (25) - 01/01/1998; 2000, c. 26, Sched. I, s. 1 (26) - 06/12/2000

Tribunal may contract

173.1 (1) The Appeals Tribunal may contract with any other person for any purpose that the chair considers necessary and the Appeals Tribunal is deemed to be a person for the purposes of the contract and is a party to the contract. 2017, c. 34, Sched. 45, s. 3.

Appointees, employees not parties to contract

(2) Persons appointed to and employees of the Appeals Tribunal are not parties to a contract made pursuant to subsection (1) and no person with whom the Appeals Tribunal contracts may commence an action against them for breach of contract. 2017, c. 34, Sched. 45, s. 3.

Tribunal party to action

(3) The Appeals Tribunal may commence an action against any person with whom it contracts and may be named as a party to an action commenced by a person with whom it contracts. 2017, c. 34, Sched. 45, s. 3.

Damages

(4) Any damages or costs for which the Appeals Tribunal is found liable by a court in an action described in subsection (3) are operating costs of the Appeals Tribunal and shall be paid by the Board. 2017, c. 34, Sched. 45, s. 3.

Transition, prior contracts

(5) Any contract that names the Appeals Tribunal as a party that was made before the day section 4 of Schedule 45 to the *Stronger, Fairer Ontario Act (Budget Measures), 2017* comes into force and to which a person appointed to or an employee of the Appeals Tribunal is a signatory is deemed to be a contract into which the Appeals Tribunal has entered into as a person and to which the Appeals Tribunal is a party. 2017, c. 34, Sched. 45, s. 3.

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 45, s. 4 - 14/12/2017

Hearing of appeals

174 (1) In addition to the chair appointed under subsection 173 (3), the following persons appointed by the Lieutenant Governor in Council to the Appeals Tribunal shall hear and decide appeals and such other matters as are conferred upon the tribunal under this Act:

1. One or more vice-chairs.
2. The number of members who are representative of employers and of workers that the Lieutenant Governor in Council considers appropriate. 1997, c. 16, Sched. A, s. 174 (1); 2000, c. 26, Sched. I, s. 1 (27).

Same

(2) Subject to subsection (3), the chair, or vice-chair assigned by the chair, sitting alone shall hear and decide appeals and such other matters as are conferred upon the tribunal under this Act. 1997, c. 16, Sched. A, s. 174 (2).

Exception

(3) If the chair considers it appropriate in the circumstances, the chair may appoint a panel of three or five members to hear and decide an appeal or other matter conferred upon the Appeals Tribunal under this Act and the panel composition shall be as follows:

1. A three-member panel shall consist of the chair or a vice-chair, one tribunal member who is representative of employers and one tribunal member who is representative of workers.
2. A five-member panel shall consist of,
 - i. the chair and two vice-chairs, or three vice-chairs, and
 - ii. one tribunal member who is representative of employers and one who is representative of workers. 2017, c. 34, Sched. 45, s. 5.

Decision

(4) The decision of a majority of a three or five-member panel is the decision of the Appeals Tribunal. 2017, c. 34, Sched. 45, s. 5.

Panels

(5) A member sitting alone or a three or five-member panel has all the jurisdiction and powers of the Appeals Tribunal. 2017, c. 34, Sched. 45, s. 5.

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (27, 28) - 01/01/1998

2017, c. 34, Sched. 45, s. 5 - 14/12/2017

Continuing authority

175 If a member of the Appeals Tribunal ceases to hold office before completing his or her duties in respect of a proceeding, the member may complete those duties. 1997, c. 16, Sched. A, s. 175.

OFFICES OF THE WORKER AND EMPLOYER ADVISERS

Offices of the Worker and Employer Advisers

Office continued

176 (1) The Office of the Worker Adviser is continued. Its functions are to educate, advise and represent workers who are not members of a trade union and their survivors. 1997, c. 16, Sched. A, s. 176 (1).

Same, Employer Adviser

(2) The Office of the Employer Adviser is continued. Its functions are to educate, advise and represent primarily those employers that have fewer than 100 employees. 1997, c. 16, Sched. A, s. 176 (2); 2006, c. 19, Sched. M, s. 7.

Costs

(3) The Minister shall determine the amount of the costs that may be incurred by each office in performing its functions and the Board shall pay them. 1997, c. 16, Sched. A, s. 176 (3).

(4) REPEALED: 2011, c. 11, s. 27.

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. M, s. 7 - 22/06/2006

2011, c. 11, s. 27 - 01/06/2011

FAIR PRACTICES COMMISSIONER

Appointment of Fair Practices Commissioner

176.1 (1) The board of directors shall appoint a Fair Practices Commissioner as an ombudsman of the Board. 2015, c. 34, Sched. 3, s. 6.

Functions

(2) The board of directors shall specify the functions of the Fair Practices Commissioner, which shall include investigating complaints and making recommendations. 2015, c. 34, Sched. 3, s. 6.

Annual report

- (3) Every year, the Fair Practices Commissioner shall,
- (a) prepare a report on his or her activities during the previous year; and
 - (b) provide a copy of the report to the board of directors and make the report available to the public. 2015, c. 34, Sched. 3, s. 6.

Section Amendments with date in force (d/m/y)

2015, c. 34, Sched. 3, s. 6 - 10/12/2015

GENERAL

Committee of employers

177 (1) The Schedule 1 employers in a class may appoint a committee to watch over their interests in matters to which the insurance plan relates.

Composition

- (2) The committee is composed of a maximum of five members, each of whom must be an employer in the class.

Function

- (3) The committee may be the medium of communication between the Board and the employers in the class to which the committee relates.

Certificate re claim

- (4) The committee may certify to the Board that a person claiming benefits under the insurance plan is entitled to receive them, if the benefits relate to a worker employed by a member of the class to which the committee relates.

Effect

- (5) The Board may act upon the certificate if it is satisfied that the committee sufficiently represents the employers in the class to which the committee relates.

Certificate re amount

- (6) The committee may also certify to the Board the amount of the payments to which the person is entitled under the insurance plan, and the Board may act upon the certificate if the person is satisfied with the amount certified by the committee. 1997, c. 16, Sched. A, s. 177.

French language services

178 Services under this Act shall be made available in the French language where appropriate. 1997, c. 16, Sched. A, s. 178.

Immunity

179 (1) No action or other proceeding for damages may be commenced against any of the following persons for an act or omission done or omitted by the person in good faith in the execution or intended execution of any power or duty under this Act:

1. Members of the board of directors, officers and employees of the Board.
2. The chair, vice-chairs, members and employees of the Appeals Tribunal.
3. Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser.
4. REPEALED: 2011, c. 11, s. 28 (1).
5. Physicians who conduct an assessment under section 47 (degree of permanent impairment).
6. Persons who are engaged by the Board to conduct an examination, investigation, inquiry, inspection or test or who are authorized to perform any function. 1997, c. 16, Sched. A, s. 179 (1); 2006, c. 19, Sched. M, s. 7; 2011, c. 11, s. 28 (1).

Transition

(1.1) Despite the repeal of paragraph 4 of subsection (1) by subsection 28 (1) of the *Occupational Health and Safety Statute Law Amendment Act, 2011*, no action or other proceeding for damages may be commenced against persons employed by a safe workplace association, a medical clinic or a training centre designated under section 6 for an act or omission done or omitted by the person in good faith in the execution or intended execution of any power or duty under this Act before the date

on which subsection 28 (1) of the *Occupational Health and Safety Statute Law Amendment Act, 2011* comes into force. 2011, c. 11, s. 28 (2).

Exception

(2) Subsection (1) does not relieve the Board of any liability to which the Board would otherwise be subject in respect of a person described in paragraph 1, 4, 5 or 6 of subsection (1). 1997, c. 16, Sched. A, s. 179 (2).

Liability of the Crown

(3) Subsection (1) does not, by reason of subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, relieve the Crown of liability in respect of a tort committed by a person described in paragraphs 2 and 3 of subsection (1) to which the Crown would otherwise be subject. 1997, c. 16, Sched. A, s. 179 (3); 2019, c. 7, Sched. 17, s. 169.

Immunity for health care practitioners, etc.

(4) No action or other proceeding may be commenced against a health care practitioner, hospital or health facility for providing information under section 37 or 47 unless he or she or it acts maliciously. 1997, c. 16, Sched. A, s. 179 (4).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. M, s. 7 - 22/06/2006

2011, c. 11, s. 28 (1, 2) - 01/04/2012

2019, c. 7, Sched. 17, s. 169 - 01/07/2019

Rules re witnesses and documents

Compellability of witnesses

180 (1) The following persons are not compellable witnesses before a court or tribunal respecting any information or material furnished to or obtained, made or received by them while acting within the scope of their employment under this Act:

1. Members of the board of directors of the Board.
2. The chair, vice-chairs and members of the Appeals Tribunal.
3. Employees of the Board or of the Appeals Tribunal.
4. Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser.
5. Persons who are engaged by the Board or the Appeals Tribunal to conduct an examination, investigation, inquiry, inspection or test or who are authorized by the Board or the Appeals Tribunal to perform any function.
6. Health care practitioners providing information under section 37. 1997, c. 16, Sched. A, s. 180 (1); 2006, c. 19, Sched. M, s. 7; 2009, c. 33, Sched. 20, s. 4 (2).

Production of documents

(2) The Board, the members of the board of directors and the employees of, and persons engaged or authorized by the Board are not required to produce, in a proceeding in which the Board is not a party, any information or material furnished, obtained, made or received in the performance of the Board's, member's, employee's or person's duties under this Act. The same is true, with necessary modifications, if the Appeals Tribunal, the Office of the Worker Adviser or the Office of the Employer Adviser is not a party to a proceeding. 2000, c. 26, Sched. I, s. 1 (29); 2006, c. 19, Sched. M, s. 7.

Exception

(3) If the Board is a party to a proceeding, the members of the board of directors and employees of and persons engaged or authorized by the Board may be determined to be compellable witnesses. The same is true, with necessary modifications, if the Appeals Tribunal, the Office of the Worker Adviser or the Office of the Employer Adviser is a party to a proceeding. 1997, c. 16, Sched. A, s. 180 (3); 2006, c. 19, Sched. M, s. 7.

Privileged reports

(4) Information provided under section 37 or 47 is privileged and shall not be produced in any action or proceeding. 1997, c. 16, Sched. A, s. 180 (4).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. I, s. 1 (29) - 06/12/2000

2006, c. 19, Sched. M, s. 7 - 22/06/2006

2009, c. 33, Sched. 20, s. 4 (2) - 15/12/2009

Prohibition re disclosing information

181 (1) No member of the board of directors or employee of the Board and no person authorized to make an inquiry under this Act shall disclose information that has come to his or her knowledge in the course of an examination, investigation, inquiry or inspection under this Act Nor shall he or she allow it to be disclosed.

Exception

(2) The board member, employee or person may disclose information or allow it to be disclosed in the performance of his or her duties or under the authority of the Board.

Same

(3) No employer or employer's representative shall disclose health information received from a health care practitioner, hospital, health facility or any other person or organization about a worker who has made a claim for benefits unless specifically permitted by the Act. 1997, c. 16, Sched. A, s. 181.

Evidence of decisions

182 A document or extract that purports to be certified on behalf of the Board as a true copy shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the document or extract without proof of the signature or the position of the person appearing to have signed the certificate. 1997, c. 16, Sched. A, s. 182.

Voluntary pre-registration

182.1 (1) Before the first anniversary of the day section 9 of the *Workplace Safety and Insurance Amendment Act, 2008* comes into force, the following persons may make and file with the Board a declaration in a form approved by the Board, in order to allow the Board to prepare for the implementation of sections 12.2 and 12.3:

1. Every independent operator who carries on business in construction.
2. Every sole proprietor who carries on business in construction and does not employ any workers.
3. Every partner in a partnership that carries on business in construction and does not employ any workers. 2008, c. 20, s. 9.

Exempt home renovation work

- (2) Subsection (1) does not apply in respect of,
- (a) independent operators and sole proprietors described in clause 12.2 (8) (a); and
 - (b) partners and executive officers described in clause 12.2 (8) (b). 2008, c. 20, s. 9.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 9 - 01/01/2012

Deemed registration

182.2 Every person who has made and filed a declaration under subsection 182.1 (1) is deemed to have registered with the Board under section 12.3 on the first anniversary of the day section 9 of the *Workplace Safety and Insurance Amendment Act, 2008* comes into force. 2008, c. 20, s. 10.

Section Amendments with date in force (d/m/y)

2008, c. 20, s. 10 - 01/01/2013

Regulations

183 (1) Subject to the approval of the Lieutenant Governor in Council, the Board may make such regulations for carrying out this Act as may be considered expedient including regulations,

- (a) prescribing anything that must or may be prescribed under this Act other than anything in respect of which this Act expressly permits the Lieutenant Governor in Council to make a regulation;
- (b) prescribing the way in which payments received by a person under the *Canada Pension Plan* or the *Quebec Pension Plan* are to be taken into account when calculating the amount of the payments under the insurance plan to which the person is entitled. 1997, c. 16, Sched. A, s. 183 (1); 2007, c. 3, ss. 4, 5; 2007, c. 7, Sched. 41, s. 11; 2008, c. 20, s. 11 (1).

Same, transitional matters

(1.1) Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations providing for any transitional matters that arise out of the implementation of the *Workplace Safety and Insurance Amendment Act, 2008*. 2008, c. 20, s. 11 (2).

Same, identification of construction workers

(1.2) Subject to the approval of the Lieutenant Governor in Council, the Board may, by regulation, establish a system to identify workers performing construction work. 2008, c. 20, s. 11 (2).

Same

(1.3) Without limiting the generality of subsection (1.2), the Board may, subject to the approval of the Lieutenant Governor in Council, make regulations,

- (a) requiring each employer carrying on business in construction to provide to the Board, at the prescribed intervals,
 - (i) the name of each worker employed during a prescribed period,
 - (ii) any identifying number, symbol or other particular assigned to the worker by the employer,
 - (iii) information about the worker's earnings during the prescribed period, and
 - (iv) any other information relating to the worker's employment during the prescribed period that is specified in the regulation;
- (b) requiring each worker in construction,
 - (i) to carry or have available for inspection, at all times when performing construction work, an identification card approved by the Board,
 - (ii) to produce the identification card for inspection on the request of the Board or of a person appointed or authorized by the Board, and
 - (iii) to do anything else in connection with the identification system that is specified in the regulation. 2008, c. 20, s. 11 (2).

Same, Schedules 1 and 2

(2) Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations establishing Schedules 1 and 2 and,

- (a) adding classes of industries to Schedule 1 or Schedule 2, deleting classes from a schedule, redefining classes within a schedule or transferring classes from one schedule to the other;
- (b) including an industry in, or excluding it from, a class in whole or in part;
- (c) excluding a trade, employment, occupation, calling, avocation or service from an industry for the purposes of the insurance plan;
- (d) subdividing a class of employers into subclasses or groups according to the risk of the industry. 1997, c. 16, Sched. A, s. 183 (2).

Same, Schedules 3 and 4

(3) Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations establishing Schedules 3 and 4, setting out in the schedules descriptions of processes and specifying the occupational disease to which each process relates. 1997, c. 16, Sched. A, s. 183 (3).

Declaration re disease

(4) Subject to the approval of the Lieutenant Governor in Council, the Board may declare a disease to be an occupational disease for the purposes of this Act and may amend Schedule 3 or 4 accordingly. 1997, c. 16, Sched. A, s. 183 (4).

Classes, etc.

(5) A regulation may create different classes of persons, industries or things and may impose different requirements or create different entitlements with respect to each class. 1997, c. 16, Sched. A, s. 183 (5).

Retroactivity

(6) A regulation is, if it so provides, effective with reference to a period before it is filed. However, no regulation may be made effective as of a date before January 1, 1998. 1997, c. 16, Sched. A, s. 183 (6).

Section Amendments with date in force (d/m/y)

2007, c. 3, s. 4 - 04/05/2007; 2007, c. 3, s. 5 (3) - 01/07/2007; 2007, c. 7, Sched. 41, s. 11 - 01/07/2007

2008, c. 20, s. 11 (1, 2) - 01/01/2013

2010, c. 26, Sched. 21, s. 5 (1) - 01/01/2013

184 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1997, c. 16, Sched. A, s. 184.

185 OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1997, c. 16, Sched. A, s. 185.

Français

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