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**Electrical Safety Authority**

**2021**  
**MASTER ELECTRICIAN EXAMINATION**  
**REFERENCE MATERIAL**

**SECTION 1:**  
**BUSINESS ADMINISTRATION**

**SECTION 2:**  
**WORKER SAFETY**



**Publication 2021-001**

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# Section 1: Business Administration

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# Building Opportunities in the Skilled Trades Act, 2021

## S.O. 2021, CHAPTER 28

**Consolidation Period:** From January 1, 2022 to the [e-Laws currency date](#).

Last amendment: 2021, c. 28, s. 67.

Legislative History: 2021, c. 28, s. 67.

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

GENERAL

**Definitions**

**1** In this Act,

- “apprentice” means an individual who, pursuant to a registered training agreement, is receiving or is to receive training in a trade that is required as part of an apprenticeship program; (“apprenti”)
- “apprenticeship program” means an apprenticeship program established by the Registrar under section 14; (“programme d’apprentissage”)
- “certificate of apprenticeship” means a certificate of apprenticeship issued to an individual under section 16; (“certificat d’apprentissage”);
- “certificate of qualification” means a certificate of qualification in a trade issued to an individual under section 10; (“certificat de qualification”)
- “compliance order” means an order made under section 26; (“ordre de mise en conformité”)
- “compulsory trade” means a trade classified by a regulation as a compulsory trade; (“métier à accréditation obligatoire”)
- “Corporation” means Skilled Trades Ontario; (“Société”)
- “Deputy Minister” means the deputy minister of the Ministry; (“sous-ministre”)
- “Director” means an inspector who is designated as a Director under subsection 20 (2); (“directeur”)
- “inspector” means an individual appointed by the Deputy Minister to act as an inspector under subsection 20 (1); (“inspecteur”)
- “Minister” means the member of the Executive Council to whom responsibility for the administration of this Act or part of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)
- “Ministry” means the ministry of the Minister; (“ministère”)
- “Ontario Labour Relations Board” means the board continued under section 110 of the *Labour Relations Act, 1995*; (“Commission des relations de travail de l’Ontario”)



“person” means an individual, corporation, partnership, sole proprietorship, association or any other organization or entity; (“personne”)

“personal information” means personal information as defined in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)

“prescribed” means prescribed by regulations made under this Act; (“prescrit”)

“provisional certificate of qualification” means a provisional certificate of qualification in a trade issued to an individual under section 17; (“certificat de qualification temporaire”)

“registered training agreement” means an agreement registered under section 15 under which an individual is receiving or is to receive training in a trade required as part of an apprenticeship program; (“contrat d’apprentissage enregistré”)

“Registrar” means the Registrar of the Corporation; (“registraire”)

“regulation” means a regulation made under this Act; (“règlement”)

“sponsor” means a person who, pursuant to a registered training agreement, is required to ensure that an individual is provided with the training required as part of an apprenticeship program; (“parrain”)

“trade” means a trade prescribed as a trade for the purposes of this Act. (“métier”)

### Minister’s functions

2 The functions of the Minister for the purposes of this Act are,

- (a) to prescribe trades as trades for the purposes of this Act;
- (b) to classify trades as compulsory trades;
- (c) to prescribe scopes of practice for trades;
- (d) to approve persons to provide in-class training for apprenticeship programs;
- (e) to register training agreements;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 2 (e) of the Act is repealed. (See: 2021, c. 28, s. 67 (1))**

- (f) to administer examinations, including certifying examinations;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 2 (f) of the Act is repealed. (See: 2021, c. 28, s. 67 (1))**

- (g) to provide those who successfully complete an apprenticeship program with a certificate of apprenticeship;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause 2 (g) of the Act is repealed. (See: 2021, c. 28, s. 67 (1))**

- (h) to promote trades and apprenticeship;
- (i) to conduct research in relation to trades and apprenticeship;
- (j) to work with other governments in Canada with respect to the Interprovincial Standards Red Seal Program for apprenticeship and with respect to standards, qualifications and other requirements required for trades; and
- (k) to exercise such other powers and perform such other duties and functions as are provided for in this Act or the regulations.

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

2021, c. 28, s. 67 (1) - not in force

### Other powers of Minister

#### Committees

3 (1) The Minister may establish committees to advise the Minister or the Registrar on any matter under this Act or the regulations.

#### Same

(2) A committee established under subsection (1) shall consist of one or more individuals including individuals who shall have experience in the trades and apprenticeship system.

#### Delegation to employee

4 (1) 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.

**Regulation-making power**

(2) The Minister may not delegate the power to make regulations conferred by this Act.

SCOPE OF PRACTICE AND COMPULSORY TRADES

**Scope of practice**

5 (1) The Minister may prescribe a scope of practice for every trade prescribed as a trade for the purposes of this Act.

**Same**

(2) A particular practice may be included in more than one trade’s scope of practice.

**Practice, compulsory trades**

6 No individual shall engage in the practice of a compulsory trade unless,

- (a) the individual is an apprentice in that trade and is working pursuant to a registered training agreement that is not suspended;
- (b) the individual holds a certificate of qualification or a provisional certificate of qualification in that trade that is not suspended; or
- (c) a regulation exempts the individual from the prohibition.

**Work of compulsory trades**

7 No person shall employ or otherwise engage an individual to perform work or to engage in the practice of a compulsory trade unless,

- (a) the individual is an apprentice in that trade and is working pursuant to a registered training agreement that is not suspended;
- (b) the individual holds a certificate of qualification or a provisional certificate of qualification in that trade that is not suspended; or
- (c) a regulation exempts the individual from the prohibition.

**Ratio**

8 If a trade has been prescribed as being subject to an apprentice to journeyman ratio,

- (a) the number of apprentices who may be sponsored or employed by a person in the trade in relation to the number of journeymen employed or otherwise engaged by the person in the trade shall not exceed one apprentice for each journeyman; and
- (b) no sponsor shall permit an apprentice to work except in accordance with the ratio set out in clause (a) or, if another ratio is prescribed, in accordance with the prescribed ratio.

**Proof of certificate**

9 (1) For the purpose of determining compliance with section 6, 7 or 8, the holder of a certificate of qualification or a provisional certificate of qualification shall carry proof of their certification and when requested to do so, shall produce the proof to an inspector or a person authorized by regulation to request such production.

**Apprenticeship**

(2) For the purpose of determining compliance with section 6, 7 or 8, or compliance with a registered training agreement, an apprentice shall carry proof of their apprenticeship and when requested to do so, shall produce the proof to an inspector or a person authorized by regulation to request such production.

**Form of proof**

(3) The proof required under subsection (1) or (2) shall be in accordance with the regulations, if any.

CERTIFICATES OF QUALIFICATION

**Certificate of qualification**

10 (1) A certificate of qualification in a trade may be issued in accordance with subsection (2) only in respect of a trade that has been prescribed as a trade for which a certifying examination is required.

**Same**

(2) The Registrar shall issue to an individual a certificate of qualification in a trade, in a form determined by the Registrar, if the individual,

- (a) holds a certificate of apprenticeship in the trade, or has experience or qualifications that the Registrar considers equivalent to those required to obtain such a certificate;
- (b) achieves a grade satisfactory to the Registrar on the certifying examination for the trade;
- (c) submits a completed application and pays any required fee for the application; and
- (d) meets any other criteria prescribed by the Minister.

#### **Extension of certificate pending renewal**

(3) If an individual who holds a certificate of qualification in a compulsory trade applies to the Registrar for the renewal of the certificate before the certificate expires or within any other prescribed time period, the term of the certificate is deemed to be extended,

- (a) until the day the Registrar grants the renewal; or
- (b) if the Registrar proposes to refuse to grant the renewal, until the period of time for requesting the hearing has expired or, if a hearing is requested, until the prescribed person or body makes a decision.

#### **Renewal**

(4) The Registrar shall renew an individual's certificate of qualification in a compulsory trade in a form determined by the Registrar, if the individual,

- (a) submits a completed application and pays any required fee for the application; and
- (b) meets any other prescribed criteria.

#### **Term of certificate**

(5) A certificate of qualification in a compulsory trade issued under subsection (2) or renewed under subsection (4) shall have the prescribed term, or if no term is prescribed, a term of three years.

#### **Expiry**

(6) A certificate of qualification in a compulsory trade expires at the end of its term.

#### **Terms, conditions, limitations**

**11** (1) A certificate of qualification is subject to any terms, conditions and limitations imposed on it by the Registrar.

#### **Same**

(2) Upon issuing or renewing a certificate of qualification, or at any other time, the Registrar may impose on the certificate the terms, conditions and limitations that the Registrar considers appropriate.

#### **Amendment of terms, conditions and limitations**

(3) The Registrar may at any time amend the terms, conditions and limitations imposed on a certificate of qualification.

#### **Subject to regulations**

(4) The Registrar's authority under subsections (2) and (3) to impose or amend terms, conditions and limitations on a certificate of qualification is subject to the regulations, if any.

#### **Suspension, revocation, other actions**

**12** (1) The Registrar may suspend or revoke a certificate of qualification if, in the Registrar's opinion,

- (a) any of the criteria in subsection 10 (2) or (4) were not met at the time the application for the issuance or renewal of the certificate was made;
- (b) the individual who holds the certificate made a false or misleading statement, representation or declaration in or in connection with their application for the issuance or renewal of the certificate; or
- (c) any other circumstance specified in the regulations exists.

#### **Proposed refusal, terms, suspension, etc.**

(2) If the Registrar proposes to,

- (a) impose or amend terms, conditions or limitations on a certificate of qualification;
- (b) suspend or revoke a certificate of qualification;
- (c) refuse to issue or renew a certificate of qualification; or
- (d) take any other action relating to the certificate of qualification that is set out in the regulations,

the Registrar shall notify the applicant or the individual who holds the certificate in writing of the proposed action.

**Same**

(3) The notice shall provide the reasons for the proposed action and shall state that the applicant or the individual who holds the certificate is entitled to a hearing before the prescribed person or body if, within 15 days after service of the notice, the applicant or individual serves a written request for a hearing on the prescribed person or body.

**No hearing**

(4) If the applicant or the individual who holds the certificate does not request a hearing in accordance with subsection (3), the Registrar may carry out the proposed action.

**Hearing**

(5) Where the applicant or the individual who holds the certificate serves a written request for a hearing under subsection (3), the prescribed person or body shall hold a hearing.

**Same**

(6) The hearing shall be conducted in accordance with the regulations, if any.

**Other certificates**

13 (1) The Registrar may issue such other certificates as may be prescribed.

**Conditions, suspension, revocation**

(2) Section 12 applies to other certificates issued under subsection (1), with the necessary modifications.

APPRENTICESHIP

**Apprenticeship program**

14 (1) The Registrar shall establish an apprenticeship program for each trade, which may include on-the-job training standards, in-class curriculum standards, examinations and other requirements.

**Same**

(2) An apprenticeship program for a trade shall correspond to the scope of practice prescribed for that trade.

**In-class training**

(3) The Minister may approve persons to provide in-class training for apprenticeship programs.

**Same**

(4) A person who has been approved to provide in-class training for an apprenticeship program must provide training in accordance with the requirements of the program.

**Registered training agreements**

15 (1) The Minister shall register a training agreement under which an individual is to receive training in a trade required as part of an apprenticeship program if,

- (a) the individual to receive the training is at least 16 years old;
- (b) if any academic standards or sponsor criteria are prescribed, the standards and criteria are satisfied;
- (c) the individual submits a completed application for registration and pays any required fee for the application; and
- (d) any other prescribed criteria are satisfied.

**Revocation on request**

(2) The Minister may revoke the registration of a registered training agreement on the written request of a party to the agreement.

**Suspension or revocation**

- (3) The Minister may suspend or revoke the registration of a registered training agreement if, in the Minister's opinion,
  - (a) a party to the agreement,
    - (i) has failed to comply with the registered training agreement,
    - (ii) made a false or misleading statement, representation or declaration in or in connection with their application for the registration of the agreement, or
    - (iii) is deceased or no longer exists; or
  - (b) any other circumstance specified in the regulations exists.

**Notice**

(4) If the Minister proposes to suspend or revoke the registration of an agreement under subclause (3) (a) (i) or (ii), the Minister shall notify the parties to the agreement in writing of the proposed action.

**Same**

(5) The notice shall provide the reasons for the proposed action and shall state that the parties are entitled to a hearing before the prescribed person or body if, within 15 days after service of the notice, a party serves a written request for a hearing on the prescribed person or body.

**No hearing**

(6) If the parties do not request a hearing in accordance with subsection (5), the Minister may carry out the proposed action.

**Hearing**

(7) Where a party to the agreement serves a written request for a hearing in accordance with subsection (5), the prescribed person or body shall hold a hearing.

**Same**

(8) The hearing shall be conducted in accordance with the regulations, if any.

**Fees**

(9) The Minister may establish and collect fees for applications made under this Act, for examinations required under this Act, or for any other power of the Minister that is exercised or any duty or function that is performed in connection with this Act or the regulations.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 15 of the Act is repealed and the following substituted: (See: 2021, c. 28, s. 67 (2))

**Registered training agreements**

**15** (1) The Registrar shall register a training agreement under which an individual is to receive training in a trade required as part of an apprenticeship program if,

- (a) the individual to receive the training is at least 16 years old and has successfully completed the prescribed academic standard, if any, for the trade;
- (b) the sponsor to the agreement meets the prescribed criteria, if any;
- (c) the individual submits a completed application for registration and pays any required fee for the application; and
- (d) any other prescribed criteria are satisfied. 2021, c. 28, s. 67 (2).

**Revocation on request**

(2) The Registrar may revoke the registration of a registered training agreement on the written request of a party to the agreement. 2021, c. 28, s. 67 (2).

**Suspension or revocation**

(3) The Registrar may suspend or revoke the registration of a registered training agreement if, in the Registrar's opinion,

- (a) a party to the agreement,
  - (i) has failed to comply with the registered training agreement,
  - (ii) made a false or misleading statement, representation or declaration in or in connection with their application for the registration of the agreement, or
  - (iii) is deceased or no longer exists; or
- (b) any other circumstance specified in the regulations exists. 2021, c. 28, s. 67 (2).

**Notice**

(4) If the Registrar proposes to suspend or revoke the registration of an agreement under subclause (3) (a) (i) or (ii), the Registrar shall notify the parties to the agreement in writing of the proposed action. 2021, c. 28, s. 67 (2).

**Same**

(5) The notice shall provide the reasons for the proposed action and shall state that the parties are entitled to a hearing before the prescribed person or body if, within 15 days after service of the notice, a party serves a written request for a hearing on the prescribed person or body. 2021, c. 28, s. 67 (2).

**No hearing**

(6) If the parties do not request a hearing in accordance with subsection (5), the Registrar may carry out the proposed action. 2021, c. 28, s. 67 (2).

**Hearing**

(7) Where a party to the agreement serves a written request for a hearing in accordance with subsection (5), the prescribed person or body shall hold a hearing. 2021, c. 28, s. 67 (2).

**Same**

(8) The hearing shall be conducted in accordance with the regulations, if any. 2021, c. 28, s. 67 (2).

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

2021, c. 28, s. 67 (2) - not in force

**Certificate of apprenticeship**

**16** (1) The Minister shall issue a certificate of apprenticeship, in a form determined by the Minister, to an individual who successfully completes an apprenticeship program.

**Revocation of certificate**

- (2) The Minister may revoke an individual’s certificate of apprenticeship if, in the Minister’s opinion,
- (a) the individual did not successfully complete an apprenticeship program;
  - (b) the individual made a false or misleading statement, representation or declaration in or in connection with the completion of their apprenticeship program; or
  - (c) any other circumstance specified in the regulations exists.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 16 of the Act is repealed and the following substituted: (See: 2021, c. 28, s. 67 (2))**

**Certificate of apprenticeship**

**16** (1) The Registrar shall issue a certificate of apprenticeship, in a form determined by the Registrar, to an individual who successfully completes an apprenticeship program. 2021, c. 28, s. 67 (2).

**Revocation of certificate**

- (2) The Registrar may revoke a certificate of apprenticeship if, in the Registrar’s opinion,
- (a) the individual did not successfully complete an apprenticeship program;
  - (b) the individual made a false or misleading statement, representation or declaration in or in connection with the completion of their apprenticeship program; or
  - (c) any other circumstance specified in the regulations exists. 2021, c. 28, s. 67 (2).

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

2021, c. 28, s. 67 (2) - not in force

**Provisional certificates of qualification**

**17** (1) If the Minister issues a certificate of apprenticeship to an individual in a trade for which a certifying exam is required, the Registrar shall provide the individual with a provisional certificate of qualification in that trade.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 17 (1) of the Act is amended by striking out “if the Minister” and substituting “if the Registrar”. (See: 2021, c. 28, s. 67 (3))**

**Term of certificate**

(2) A provisional certificate of qualification shall have the prescribed term or, if no term is prescribed, a term of one year.

**Extension**

(3) An individual who holds a provisional certificate of qualification may apply to the Registrar for an extension of the period in subsection (2) and the Registrar may grant an extension in accordance with the regulations.

**Expiry**

(4) A provisional certificate of qualification expires at the end of its term or its extended term.

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

2021, c. 28, s. 67 (3) - not in force

**Terms, conditions, limitations**

**18** (1) A provisional certificate of qualification is subject to any terms, conditions and limitations imposed on it by the Registrar.

**Same**

(2) Upon issuing or extending a provisional certificate of qualification or at any other time, the Registrar may impose on the certificate the terms, conditions and limitations that the Registrar considers appropriate.

**Amendment of terms, conditions and limitations**

(3) The Registrar may at any time amend the terms, conditions and limitations imposed on a provisional certificate of qualification.

**Subject to regulations**

(4) The Registrar's authority under subsections (2) and (3) to impose or amend terms, conditions and limitations on a provisional certificate of qualification is subject to the regulations, if any.

**Suspension, revocation, other actions**

**19** (1) The Registrar may suspend or revoke an individual's provisional certificate of qualification if, in the Registrar's opinion,

- (a) the individual did not successfully complete an apprenticeship program;
- (b) the individual made a false or misleading statement, representation or declaration in connection with the completion of their apprenticeship program; or
- (c) any other circumstance specified in the regulations exists.

**Proposed refusal, terms, suspension, etc.**

(2) If the Registrar proposes to,

- (a) impose or amend terms, conditions or limitations on a provisional certificate of qualification;
- (b) suspend or revoke a provisional certificate of qualification;
- (c) refuse to issue or extend a provisional certificate of qualification; or
- (d) take any other action relating to the provisional certificate of qualification that is set out in the regulations,

the Registrar shall notify the applicant or individual who holds the certificate in writing of the proposed action.

**Same**

(3) The notice shall provide the reasons for the proposed action and shall state that the applicant or the individual who holds the certificate is entitled to a hearing before the prescribed person or body if, within 15 days after service of the notice, the applicant or individual serves a written request for a hearing on the prescribed person or body.

**No hearing**

(4) If the applicant or the individual who holds the certificate does not request a hearing in accordance with subsection (3), the Registrar may carry out the proposed action.

**Hearing**

(5) Where the applicant or the individual who holds the certificate serves a written request for a hearing under subsection (3), the prescribed person or body shall hold a hearing.

**Same**

(6) The hearing shall be conducted in accordance with the regulations, if any.

## INSPECTIONS AND INVESTIGATIONS

**Inspections and investigations**

**20** (1) The Deputy Minister may appoint inspectors for the purposes of,

- (a) determining compliance with section 6, 7 or 8 or any other provision of this Act or the regulations;
- (b) determining whether apprentices are receiving training in accordance with a registered training agreement and with any requirements of an apprenticeship program;
- (c) determining whether a person who has been approved to provide in-class training for an apprenticeship program is providing training in accordance with the requirements of the program; and
- (d) determining compliance with a compliance order.

**Director**

(2) The Deputy Minister may designate one or more inspectors as a Director or Directors.

**Certificate of appointment**

(3) The Deputy Minister shall issue a certificate of appointment, bearing his or her signature or a facsimile thereof, to every inspector.

**Production of certificate**

(4) Every inspector, in the exercise of any powers or performance of any duties under this Act, shall produce his or her certificate of appointment upon request.

**Powers on inspection or investigation**

- (5) An inspector conducting an inspection or investigation may,
- (a) examine a document, record or other thing that is relevant to the inspection or investigation;
  - (b) demand the production for inspection of a document, record or other thing that is relevant to the inspection or investigation;
  - (c) on issuing a written receipt, remove for review and copying a document, record or other thing that is relevant to the inspection or investigation;
  - (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 on the premises;
  - (e) take photographs, video recordings or other visual or audio recordings that are relevant to the inspection or investigation; and
  - (f) question a person on matters relevant to the inspection or investigation.

**Limitation re photographs and recordings**

(6) A photograph or recording made under clause (5) (e) must be made in a manner that does not intercept any private communication and that accords with reasonable expectations of privacy.

**Powers and duties**

(7) An inspector shall have the powers and duties set out in this Act and such other powers and duties as may be prescribed.

**Same, compliance and enforcement framework**

(8) An inspector shall exercise their powers and perform their duties in accordance with the compliance and enforcement framework referred to in section 24, if any.

**Written demand**

- (9) A demand that a document, record or other thing be produced for inspection must be in writing and must state,
- (a) the nature of the document, record or other thing required; and
  - (b) when the document, record or other thing is to be produced.

**Obligation to produce and assist**

(10) If an inspector demands that a document, record or other thing be produced for inspection, the person having custody of the document, record or other thing shall produce it for the inspector within the time provided for in the demand, and shall, upon the inspector’s demand,

- (a) provide whatever assistance is reasonably necessary to produce a document, record or other thing in a readable form, including using a data storage, processing or retrieval device or system; and
- (b) provide whatever assistance is reasonably necessary to interpret a document, record or other thing for the inspector.

**Entry on premises**

(11) An inspector may, at any reasonable time and without a warrant, enter and inspect any premises for the purposes referred to in subsection (1).

**Dwellings**

(12) Subsection (11) does not authorize entry of a dwelling without the consent of the occupier.

**Entries and searches by warrant: inspections and investigations**

**21** (1) On the application, made without notice, of an inspector, a justice of the peace may issue a warrant authorizing the inspector to enter and search a place and examine anything that is relevant to the purposes referred to in subsection 20 (1), if



the justice of the peace is satisfied that the inspector has been properly appointed and that there are reasonable and probable grounds for believing that something relevant to the inspection or investigation is at the place.

#### **Searches by day unless stated**

(2) A warrant issued under subsection (1) does not authorize an entry or search after sunset or before sunrise unless it is expressly stated in the warrant.

#### **Assistance and entry by force**

(3) An inspector entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by a peace officer and may enter a place by force.

#### **Inspector to show identification**

(4) An inspector entering and searching a place under the authority of a warrant issued under subsection (1) shall produce their identification, on request, to any person at the place.

#### **Return of things**

**22** A document, record or other thing that has been removed for review and copying,

- (a) shall be made available to the person from whom it was removed on request and at a time and place that are convenient for the person and for the inspector; and
- (b) shall be returned to the person within a reasonable time.

#### **Admissibility of certain documents**

**23** A copy of a document, record or other thing certified by an inspector to be a true copy shall be admissible in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document, record or thing itself.

### COMPLIANCE

#### **Compliance and enforcement framework**

**24** (1) The Minister may make regulations setting out a compliance and enforcement framework.

(2) A compliance and enforcement framework referred to in subsection (1) shall address factors to be considered when determining compliance, the measures to be taken respecting non-compliance and when such measures may be taken.

#### **Compliance and Enforcement Committee**

**25** The Minister may establish a Compliance and Enforcement Committee to provide advice to the Minister on compliance and enforcement issues under this Act.

#### **Compliance orders**

**26** (1) If an inspector believes on reasonable grounds that a person is not in compliance with a provision of this Act or the regulations, with a registered training agreement or with a compliance order that was previously made, the inspector, subject to the compliance and enforcement framework, if any, may make an order,

- (a) ordering the person to comply with the provision, registered training agreement or compliance order;
- (b) ordering the person to do or refrain from doing anything specified in the order in order to become compliant;
- (c) specifying dates by which the person is required to do or refrain from doing the things specified; and
- (d) ordering the person to do anything else prescribed.

#### **Requirements**

(2) Without limiting the generality of subsection (1), a compliance order may include a requirement that the person submit a plan to the Ministry specifying the steps the person shall take to come into compliance and to maintain compliance.

#### **Content of order**

(3) A compliance order shall include any prescribed information.

#### **Service**

(4) The compliance order shall be served on the person whom the inspector believes is not in compliance with this Act or the regulations.

#### **Amendment or revocation of order**

(5) If the inspector makes a compliance order under subsection (1), he or she may amend or revoke it.

#### **Subject to regulations**

(6) The inspector's authority under subsection (5) to amend or revoke a compliance order is subject to the regulations, if any.

**Notice**

(7) Upon amending or revoking a compliance order under subsection (5), the inspector shall give written notice of the amendment or revocation to the person to whom the order is directed.

ADMINISTRATIVE PENALTIES

**Notice of contravention**

**27** (1) If an inspector believes that a person has contravened section 6, 7 or 8 or has failed to comply with a compliance order, the inspector, subject to the compliance and enforcement framework, if any, may issue a notice of contravention to the person, setting out their belief and requiring the person to pay the prescribed administrative penalty for the contravention in question.

**Purpose of administrative penalty**

- (2) The following are the purposes for which a person may be required to pay an administrative penalty under this section:
1. To encourage compliance with sections 6, 7 and 8 and with compliance orders.
  2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of a contravention of section 6, 7 or 8 or of a compliance order.

**Factors**

- (3) Prior to issuing a notice of contravention, other than a notice in respect of a failure to comply with a compliance order, the inspector appointed under section 20 shall consider,
- (a) the scope of practice of every trade that may be relevant; and
  - (b) the compliance and enforcement framework referred to in section 24, if any.

**Amount of administrative penalty**

(4) The amount of an administrative penalty prescribed for a contravention shall reflect the purposes referred to in subsection (2).

**One-year limitation**

(5) A notice of contravention shall not be issued under this section more than one year after the contravention first came to the knowledge of the inspector.

**Content of notice of contravention**

- (6) The notice of contravention shall,
- (a) contain or be accompanied by information setting out,
    - (i) the nature of the contravention, and
    - (ii) the date on which and the location where the contravention occurred;
  - (b) set out the amount of the penalty to be paid and specify the time and manner of the payment; and
  - (c) inform the person of their right to request a review of the notice by the Ontario Labour Relations Board and of the timelines to do so set out in section 28.

**If no review requested**

(7) If a person who has received a notice of contravention does not apply for a review under subsection 28 (1), the person shall pay the penalty to the Minister of Finance within 30 days after the day the notice of contravention was served.

**Review**

**28** (1) A person who receives a notice of contravention under section 27 may apply to the Ontario Labour Relations Board for a review of the notice of contravention in a form approved by the Ontario Labour Relations Board,

- (a) within 15 days after receipt of the notice of contravention; or
- (b) if the Ontario Labour Relations Board considers it appropriate in the circumstances to extend the time for applying, within the period specified by the Ontario Labour Relations Board.

**If review requested**

(2) If a person who has received a notice of contravention applies for a review under subsection (1), the Ontario Labour Relations Board shall conduct the review in accordance with any rules that may be made by the Chair of the Ontario Labour Relations Board under clause (3) (a) or subsection (4).

**Ontario Labour Relations Board rules**

- (3) The Chair of the Ontario Labour Relations Board may make rules,
- (a) governing the practices and procedures and the exercise of its powers applicable to a review of a notice of contravention; and
  - (b) requiring the use of forms approved by the Ontario Labour Relations Board.

**Same**

- (4) Without limiting the generality of clause (3) (a), the Chair may make rules to expedite any proceeding under this section, and such rules may,
- (a) provide that the Ontario Labour Relations Board is not required to hold a hearing;
  - (b) limit the extent to which the Ontario Labour Relations Board is required to give full opportunity to the parties to present their evidence and to make submissions; and
  - (c) authorize the Ontario Labour Relations Board to make or cause to be made such examination of records and such other inquiries as it considers necessary in the circumstances.

**Conflict with the *Statutory Powers Procedure Act***

- (5) Rules made under subsection (3) or (4) apply despite anything in the *Statutory Powers Procedure Act*.

**Part III of *Legislation Act, 2006***

- (6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to rules made under subsection (3) or (4).

**Parties to review**

- (7) The parties to a review of a notice of contravention are,
- (a) the Director;
  - (b) the person who received the notice of contravention; and
  - (c) such other persons as the Ontario Labour Relations Board may specify.

**Powers of Ontario Labour Relations Board**

- (8) For the purposes of a review of a notice of contravention, the Ontario Labour Relations Board has power,
- (a) to require any party to furnish particulars before or during a consultation or hearing;
  - (b) to require any party to produce documents or things that may be relevant to the review and to do so before or during a consultation or 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 Ontario Labour Relations Board considers requisite to the review 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 make interim orders concerning procedural matters on such terms as it considers appropriate; and
  - (g) to determine the form in which and the time as of which any party to the review 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.

**Mistakes in names of parties**

- (9) Where, in a review of a notice of contravention, the Ontario Labour Relations Board is satisfied that a mistake has been made in good faith with the result that the proper person has not been named as a party or has been incorrectly named, the Ontario Labour Relations Board may order the proper person to be substituted or added as a party to the review or to be correctly named on such terms as appear to the Ontario Labour Relations Board to be just.

**Factors**

- (10) In conducting a review, other than a review of a notice of contravention in respect of a failure to comply with a compliance order, the Ontario Labour Relations Board shall consider,
- (a) the scope of practice of every trade that may be relevant;
  - (b) the compliance and enforcement framework referred to in section 24, if any; and

(c) any other factors it considers relevant, having regard to the public interest.

**Ontario Labour Relations Board’s decision**

29 (1) Upon a review of a notice of contravention, the Ontario Labour Relations Board may, as appropriate under this Act,

- (a) resolve the notice of contravention in the manner consented to by the parties;
- (b) rescind the notice of contravention;
- (c) affirm the notice of contravention; or
- (d) amend the notice of contravention by reducing the amount of the penalty if it is excessive in the circumstances.

**Decision final**

(2) A decision by the Ontario Labour Relations Board under this section is final and binding on the parties to the review.

**Judicial review**

(3) Nothing in subsection (2) prevents a court from reviewing a decision of the Ontario Labour Relations Board under this section, but a decision of the Ontario Labour Relations Board concerning the interpretation of this Act shall not be overturned unless the decision is unreasonable.

**Payment after review**

(4) If the Ontario Labour Relations Board affirms a notice of contravention or amends the notice by reducing the amount of the penalty, the person shall pay the penalty determined by the Ontario Labour Relations Board within 30 days after the day of the Ontario Labour Relations Board’s decision.

**Payment to Minister of Finance**

(5) A person who is required to pay a penalty under this section shall pay the penalty to the Minister of Finance.

**Testimony in civil proceedings, etc.**

(6) Except with the consent of the Ontario Labour Relations Board, no member of the Ontario Labour Relations Board, its registrar, its other officers or clerks or servants can be compelled to testify in a civil proceeding, in a proceeding before the Ontario Labour Relations Board or in a proceeding before any other tribunal respecting information obtained in the course of their duties under this Act.

**Settlement through labour relations officer**

30 The Ontario Labour Relations Board may authorize a labour relations officer to attempt to effect a settlement of the matters raised in an application for review of a notice of contravention.

**Enforcement of administrative penalty**

31 (1) If a person who is required to pay an administrative penalty fails to pay it within the time required under subsection 27 (7) or 29 (4), the notice of contravention or the Ontario Labour Relations Board’s decision, as the case may be, 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.

**Same**

(2) Section 129 of the *Courts of Justice Act* applies in respect of a notice of contravention or decision filed with the Superior Court of Justice under subsection (1) of this section and, for the purpose, the date on which the notice of contravention or decision is filed under subsection (1) shall be deemed to be the date of the order that is referred to in section 129 of the *Courts of Justice Act*.

**Crown debt**

32 An administrative penalty imposed under subsection 27 (1) or 29 (1) that is not paid within the time required under subsection 27 (7) or 29 (4) is a debt due to the Crown and enforceable as such.

**Minister may authorize collector**

33 (1) The Minister may authorize any person to act as a collector for the purposes of this section and sections 34 and 35 and to exercise the powers that the Minister specifies in the authorization to collect administrative penalties owing under this Act.

**Costs of collection**

(2) Despite clause 22 (a) of the *Collection and Debt Settlement Services Act*, the Minister may also authorize a collector to collect a reasonable fee or reasonable disbursements or both from each person from whom the collector seeks to collect administrative penalties owing under this Act.

**Same**

(3) The Minister may impose conditions on an authorization under subsection (2) and may determine what constitutes a reasonable fee or reasonable disbursements for the purposes of that subsection.

**Exception re disbursements**

(4) The Minister shall not authorize a collector who is required to be registered under the *Collection and Debt Settlement Services Act* to collect disbursements.

**Fees and disbursements**

**34** (1) If a collector is seeking to collect an administrative penalty owing under a notice of contravention, any fees and disbursements authorized under subsection 33 (2) shall be deemed to be owing under and shall be deemed to be added to the amount of the penalty set out in the notice of contravention.

**Distribution of money collected**

(2) A collector shall pay the amount collected under this section with respect to the penalty to the Minister of Finance and may retain the amount collected with respect to the collector's fees and disbursements.

**Settlement by collector**

**35** (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 the Minister.

**Payment**

(2) 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 subsection 34 (2).

**Publication**

**36** The Minister may publish particulars of a notice of contravention issued under subsection 27 (1) or amended under subsection 29 (1) in accordance with the regulations.

## OFFENCES

**Offences****Offence, false representation**

**37** (1) Every person who makes a representation, knowing it to be false, for the purpose of having a certificate issued under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

**Offence, assist in false representation**

(2) Every person who knowingly assists a person in committing an offence under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

**Offence, submitting false information**

(3) Every person who knowingly submits false information as part of an application to register a training agreement or in any information provided in relation to a training agreement is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

**Offence, examinations**

(4) A person is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 if a certifying examination is required to obtain a certificate of qualification in a trade and,

- (a) the person assists another person taking the examination by knowingly conveying or disclosing to that person, directly or indirectly, any information respecting the contents of the examination; or
- (b) the person is an applicant for a certificate of qualification who knowingly acquires or attempts to acquire any information respecting the contents of the examination.

## SKILLED TRADES ONTARIO

**Skilled Trades Ontario**

**38** (1) The Ontario College of Trades is continued as a corporation without share capital under the name Skilled Trades Ontario in English and *Métiers spécialisés Ontario* in French.

**Crown agency**

(2) The Corporation is an agent of the Crown in right of Ontario.

**Composition**

(3) The Corporation is composed of the members of its board of directors.

**Application of certain Acts**

(4) The *Not-for-Profit Corporations Act, 2010* and the *Corporations Information Act* do not apply to the Corporation except as prescribed in the regulations. 2021, c. 28, s. 38 (4); 2021, c. 28, s. 67 (4).

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

2021, c. 28, s. 67 (4) - 01/01/2022

**Powers**

**39** (1) Except as limited by this Act, the Corporation has the capacity, rights and powers of a natural person for the purposes of carrying out its objects.

**Subsidiaries**

(2) The Corporation shall not create or acquire a subsidiary.

**Fees**

(3) The Corporation may, subject to the review and approval of the Minister, establish and collect fees for applications made under this Act, for examinations required under this Act, or for any other power of the Corporation that is exercised or any duty or function that is performed in connection with this Act or the regulations.

**Objects**

**40** The Corporation has the following objects:

1. To establish apprenticeship programs and other training programs for trades, including training standards, curriculum standards and certifying examinations.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 40 of the Act is amended by adding the following paragraphs: (See: 2021, c. 28, s. 67 (5))**

- 1.1 To register training agreements.
- 1.2 To administer examinations, including certifying examinations.
2. To conduct research and evaluate whether a trade should be prescribed as a trade for the purposes of this Act and to make recommendations on these matters to the Minister.
3. To issue certificates for the purposes of this Act.
4. To assess whether the experience and qualifications obtained by applicants for a certificate of qualification who do not complete an apprenticeship are equivalent to those received through completing an apprenticeship.
5. To maintain a public register of every apprentice in a compulsory trade and every holder of a certificate of qualification in a compulsory trade or provisional certificate of qualification in a compulsory trade.
6. To promote trades and apprenticeship.
7. To conduct research in relation to trades and apprenticeship.
8. To work with other governments in Canada with respect to the Interprovincial Standards Red Seal Program for apprenticeship and with respect to standards, qualifications and other requirements required for trades.
9. To promote inclusivity and diversity in relation to trades and apprenticeship.
10. Such other objects as may be prescribed.

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

2021, c. 28, s. 67 (5) - not in force

**Board of directors**

**41** (1) The board of directors of the Corporation shall consist of not more than 11 members appointed by the Lieutenant Governor in Council, on the recommendation of the Minister.

**Remuneration**

(2) The members of the board shall receive remuneration and reimbursement for reasonable expenses as determined by the Lieutenant Governor in Council.

**Term of office**

(3) The term of office of the members of the board shall be at the pleasure of the Lieutenant Governor in Council.

**Chair**

(4) The Lieutenant Governor in Council shall designate one of the members as the chair.

**Vice-chair**

(5) The board, in accordance with the by-laws, shall elect the vice-chair.

**Acting chair**

(6) If the chair is absent or unable to act, or if the office of the chair is vacant, the vice-chair shall act as the chair.

**Same**

(7) If the chair and vice-chair are absent, the members present shall appoint an acting chair from among themselves.

**Quorum**

(8) A majority of the members constitutes a quorum of the board.

**Vacancies in board**

(9) If one or more vacancies occur in the membership of the board, the members remaining on the board constitute the board.

**Duty to meet**

(10) The board shall meet at least six times each year.

**Voting rights**

(11) Each director, including the chair of the board, has one vote.

**Powers and duties of the board**

**42** (1) Subject to directives issued under clause 44 (1) (b), the board of directors of the Corporation shall manage and administer the activities and affairs of the Corporation.

**Committees**

(2) The board may by by-law establish committees of the board and, subject to subsection (3), may delegate powers and assign duties to those committees.

**Limitation on delegation**

(3) The following powers cannot be delegated to a committee of the board:

1. The power to make, amend or repeal by-laws of the Corporation.
2. The power to approve the Corporation's budget.
3. The power to approve the Corporation's business plan, annual reports and financial statements.
4. The power to establish committees of the board and fill vacancies on those committees.
5. Any other prescribed power.

**Employees**

(4) The Corporation may employ such individuals as it determines are necessary for the proper conduct of its affairs.

**Same**

(5) The Corporation may establish job categories, salary ranges and conditions of employment for its officers and employees, subject to the approval of the Minister.

**By-laws**

**43** (1) The board of directors may make by-laws and pass resolutions regulating its proceedings and generally for the conduct and management of the affairs of the Corporation.

**Officers**

(2) Without limiting the generality of subsection (1), the board of directors may make by-laws or pass resolutions to appoint officers and assign to them such powers and duties as the board considers appropriate.

**Notice to Minister**

(3) The Corporation shall deliver a copy of every by-law to the Minister.

**Effect of approval**

(4) A by-law that is approved by the Minister becomes effective on the date the Minister approves the by-law or on such later date as the by-law may provide.

**Effect of rejection**

(5) A by-law that is rejected by the Minister does not become effective.

### **Effect of return for further consideration**

(6) A by-law that is returned to the Corporation for further consideration does not become effective until the Corporation amends the by-law as directed by the Minister, returns it to the Minister and the Minister approves it.

### **Expiry of review period**

(7) If the Minister does not approve, reject or return the by-law for further consideration within 60 days after it is delivered to the Minister, the by-law becomes effective on the 75th day after it is delivered or on such later date as the by-law may provide.

### **Financial by-laws**

(8) The following apply with respect to a by-law relating to borrowing, investing or managing financial risks:

1. Subsections (4) to (7) do not apply.
2. The by-law does not take effect unless it is approved by the Minister and the Minister of Finance.
3. The by-law becomes effective upon being approved under paragraph 2 or on such later date as the by-law provides.

### **Publication**

(9) The Corporation shall publish each by-law on its website as soon as practicable after the by-law becomes effective.

### **Part III of *Legislation Act, 2006***

(10) Part III (Regulations) of the *Legislation Act, 2006* does not apply to by-laws or resolutions made by the Corporation.

### **Minister's powers and duties re board**

44 (1) The Minister may,

- (a) review the activities of the Corporation and require it to provide reports and information; and
- (b) issue directives in writing to the board of directors in respect of the operations of the Corporation.

### **Board to comply**

(2) If the Minister issues a directive under clause (1) (b), the board shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report to the Minister respecting the compliance.

### **Part III of *Legislation Act, 2006***

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply to directives issued by the Minister under clause (1) (b).

### **Chief executive officer**

45 (1) The Lieutenant Governor in Council, on the recommendation of the Minister, shall appoint a chief executive officer of the Corporation who shall be an employee of the Corporation.

### **Remuneration and benefits**

(2) The Corporation shall pay remuneration and benefits to the chief executive officer as is determined by the Lieutenant Governor in Council.

### **Responsibilities**

(3) The chief executive officer is responsible for the operations of the Corporation, subject to the supervision and direction of the board of directors, and for such other functions as may be assigned by the board.

### **Industry advisory committees**

(4) The chief executive officer shall establish such industry advisory committees as the chief executive officer considers necessary or advisable for the purpose of advising the chief executive officer on matters relating to the objects of the Corporation.

### **Same**

(5) The chief executive officer may establish terms of reference for the industry advisory committees.

### **Board meetings**

(6) The chief executive officer is entitled to attend and participate at any board meeting but cannot vote.

### **Exception**

(7) Despite subsection (6), the board may exclude the chief executive officer from attending any meeting if a matter to be discussed at the meeting involves the position, performance or functions and duties of the chief executive officer.



**Registrar**

**46** (1) The chief executive officer of the Corporation is the Registrar of the Corporation.

**Duties and functions**

(2) The Registrar may exercise the powers and shall perform the duties and functions conferred or imposed on the Registrar by or under this Act.

**Registrar's functions**

(3) The functions of the Registrar for the purposes of this Act are,

- (a) to issue, renew and amend certificates of qualification and issue and extend provisional certificates of qualification;
- (b) to establish apprenticeship programs for trades;

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 46 (3) of the Act is amended by adding the following clauses: (See: 2021, c. 28, s. 67 (6))**

- (b.1) to register training agreements;
- (b.2) to administer examinations, including certifying examinations;
- (b.3) to provide those who successfully complete an apprenticeship program with a certificate of apprenticeship;
- (c) to exercise such other powers and perform such other duties and functions as are provided for in this Act or the regulations.

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

2021, c. 28, s. 67 (6) - not in force

**Register**

**47** Subject to any regulation respecting the removal of information from the register, the Registrar shall establish and maintain a public register which shall contain,

- (a) the name of each apprentice working in a compulsory trade pursuant to a registered training agreement that is not suspended, and the name of the trade in which the apprentice is receiving or is to receive training as part of an apprenticeship program;
- (b) the name of each individual who holds a certificate of qualification in a compulsory trade and each compulsory trade for which the individual holds a certificate of qualification;
- (c) the name of each individual who holds a provisional certificate of qualification in a compulsory trade and each compulsory trade for which the individual holds a provisional certificate of qualification;
- (d) any terms, conditions and limitations imposed on an individual's certificate of qualification or provisional certificate of qualification;
- (e) a notation of every suspension or revocation of a certificate of qualification or provisional certificate of qualification;
- (f) any Red Seal endorsements for the trade issued by the Interprovincial Standards Red Seal Program, if applicable; and
- (g) any other information that is prescribed as information to be kept in the register.

**Reports****Annual report**

**48** (1) The Corporation shall prepare an annual report, provide it to the Minister and make it available to the public.

**Same**

(2) The Corporation 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.

**Same**

(3) The Corporation shall include such additional content in the annual report as the Minister may require.

### **Tabling of annual report**

(4) The Minister shall table the Corporation'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.

### **Other reports**

(5) The Corporation shall promptly give the Minister such other reports and information as the Minister may require.

### **Revenue and assets**

**49** (1) Despite Part I of the *Financial Administration Act*, the revenue and assets of the Corporation do not form part of the Consolidated Revenue Fund.

### **Exceptions**

(2) Despite subsection (1), and subject to the regulations made under this Act, the Corporation shall pay into the Consolidated Revenue Fund all money received by the Corporation from administrative penalties.

### **Use of revenues**

(3) The Corporation shall apply its revenues to carry out the objects of, and the powers conferred and duties imposed on, the Corporation under this Act.

### **Approval**

(4) The Corporation shall not acquire, hold or dispose of any interest in real property, except for renting office space, without the approval of the Lieutenant Governor in Council.

### **Expenses, expenditures and borrowing**

**50** (1) The Corporation may borrow money with the approval, in writing, of the Minister and the Minister of Finance.

### **Same**

(2) An approval under subsection (1) may be subject to such conditions as any minister granting the approval considers advisable.

### **Co-ordination of certain financial activities**

(3) The Ontario Financing Authority shall co-ordinate and arrange all borrowing, investing of funds and managing of financial risks of the Corporation.

### **Same**

(4) The Minister of Finance may, in writing, direct a person other than the Ontario Financing Authority to perform the functions referred to in subsection (3).

### **Direction of Minister of Finance**

(5) A direction of the Minister of Finance under subsection (4) may be general or specific and may include terms and conditions that the Minister of Finance considers advisable.

### **Non-application of *Legislation Act, 2006, Part III***

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a direction issued under subsection (5).

### **Payment of judgments against Corporation**

**51** The Minister of Finance shall pay from the Consolidated Revenue Fund the amount of any judgment against the Corporation that remains unpaid after the Corporation has made reasonable efforts, including liquidating assets, to pay the amount of the judgment.

### **Budget and other financial statements**

**52** (1) On or before March 31 in each year, or another date specified by the Minister, the Corporation shall submit its budget for the following fiscal year, or for any other period of time specified by the Minister, to the Minister for his or her approval.

### **Form and content of budget**

(2) The budget shall be in the form required by the Minister.

### **Annual financial statements**

(3) The Corporation shall prepare audited financial statements annually for the previous fiscal year.

### **Fiscal year**

(4) The fiscal year of the Corporation begins on April 1 in a year and ends on March 31 in the following year.

**Audit**

**53** (1) The Corporation's board of directors shall select one or more licensed public accountants to audit the accounts and transactions of the Corporation for the previous fiscal year.

**Auditor General**

(2) The Auditor General may also audit the accounts and transactions of the Corporation for any fiscal year.

**Minister-appointed auditor**

(3) The Minister may at any time appoint a licensed public accountant, other than the person selected under subsection (1), to audit the accounts and transactions of the Corporation for any period of time specified by the Minister.

**Same**

(4) If the Auditor General conducts an audit under subsection (2) or the Minister appoints an auditor under subsection (3), the Corporation shall give the Auditor General or auditor and employees of the Auditor General or auditor access to all records and other information required to conduct the audit.

**Provincial funding of Corporation**

**54** (1) The Lieutenant Governor in Council may raise by way of loan in the manner provided by the *Financial Administration Act* such sums as the Lieutenant Governor in Council considers necessary for the purposes of this Act.

**Province may make loans**

(2) The Lieutenant Governor in Council may by order authorize the Minister of Finance to make loans to the Corporation, including loans of the sums raised under subsection (1), on the terms and conditions that the Minister of Finance may determine.

**Payment from Consolidated Revenue Fund**

(3) The Minister of Finance shall pay from the Consolidated Revenue Fund any amount required for the purpose of subsection (2).

**Limits**

(4) The total of the amounts of loans made under subsection (2) shall not exceed the amount that may be specified by the Lieutenant Governor in Council as the maximum principal amount that may be advanced, purchased or outstanding at any time and shall be subject to any other terms and conditions that may be specified by the Lieutenant Governor in Council.

## MISCELLANEOUS

**No personal liability, Crown officials**

**55** (1) No cause of action arises against any of the following individuals as a result of any act done in good faith in the exercise or performance or intended exercise or performance of their duties or powers under this Act, the regulations or directives made under this Act or any alleged neglect or default in the performance in good faith of such duties or powers:

1. A member of the Executive Council, including the Minister.
2. The Deputy Minister.
3. An employee, officer or agent of the Crown.

**Crown liability for Crown officials**

(2) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (1) does not relieve the Crown of liability to which it would otherwise be subject.

**Loss of status as Crown official**

(3) A person mentioned in subsection (1) who accepts employment in or assignment to the Corporation, including appointment as a director of the Corporation, is deemed not to be an employee, officer or agent of the Crown for the purposes of this Act during the period of the employment or assignment, as the case may be, in respect of any act or omission relating to the employment or assignment.

**No Crown liability, individuals other than Crown officials**

**56** No cause of action arises against the Crown, or any person mentioned in subsection 55 (1), as a direct or indirect result of any act or omission of a person who is not a person mentioned in subsection 55 (1) if the act or omission is related, directly or indirectly, to the exercise or performance or intended exercise or performance of a duty or power under this Act, the regulations or directives made under this Act.

### **No personal liability, Corporation officials**

**57** (1) No cause of action arises against any of the following individuals as a result of any act done in good faith in the exercise or performance or intended exercise or performance of their duties or powers under this Act, the regulations or directives made under this Act or the Corporation's by-laws or any alleged neglect or default in the performance in good faith of such duties or powers:

1. The chief executive officer of the Corporation.
2. The chair or vice-chair of the board of directors of the Corporation.
3. A director or an officer of the Corporation.
4. A person whom the Corporation employs or whose services the Corporation retains in accordance with this Act.
5. An agent of the Corporation.

### **Liability of corporation for corporation officials**

(2) Subsection (1) does not relieve the Corporation of liability to which it would otherwise be subject in respect of the acts or omissions of a person mentioned in subsection (1).

### **Proceedings barred**

**58** (1) No proceeding, including but not limited to any proceeding in contract, restitution, tort or trust, shall be instituted against,

- (a) any person mentioned in subsection 55 (1) in respect of a matter referred to in that subsection;
- (b) any person, including the Crown, mentioned in section 56 in respect of a matter referred to in that section; or
- (c) any person mentioned in subsection 57 (1) in respect of a matter referred to in that subsection.

### **Application**

(2) Without limiting the generality of subsection (1), that subsection applies to any proceeding, including a court, administrative or arbitral proceeding, claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, including loss of revenue and loss of profit, or any other remedy or relief, and includes a proceeding to enforce a judgment, order or award made by a court, tribunal or arbitrator outside of Canada.

### **Same**

(3) Subsection 57 (1) and subsection (2) of this section do not relieve the Corporation of any liability to which it would otherwise be subject in respect of the acts or omissions of a person mentioned in subsection 57 (1).

### **Same**

(4) This section does not apply to prevent an application for judicial review.

### **Interpretation, former officials**

**59** Except for the purposes of subsection 55 (3), a reference in sections 55, 56, 57 and 58 to an officer, employee, agent or other official includes reference to a former officer, employee, agent or other official in relation to the exercise of powers and the performance of duties and functions in his or her capacity as an officer, employee, agent or other official.

### **Conflict with *Statutory Powers Procedure Act***

**60** If there is a conflict between this Act or the regulations and the *Statutory Powers Procedure Act*, the provisions of this Act or the regulations prevail.

### **Service of notice or document**

**61** (1) A notice or document to be given or served under this Act is sufficiently given or served if it is,

- (a) delivered personally;
- (b) sent by mail;
- (c) sent or delivered by another method, if the sender can prove receipt; or
- (d) sent by any other prescribed manner.

### **Deemed service**

(2) If a notice, order or request is served by mail, the service is deemed to be made on the fifth day after the day of mailing unless the person on whom the document is served establishes that he, she or it did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive it until a later date.

**Personal information****Collection of information by Minister**

62 (1) The Minister may collect personal information, directly or indirectly, for purposes related to the following matters, and may use it for those purposes:

1. Administering this Act and the regulations.
2. Ensuring compliance with this Act and the regulations.
3. Planning or delivering programs or services in relation to trades and apprenticeship that the Ministry provides or funds, in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring and preventing fraud or any unauthorized receipt of services or benefits related to any of them.
4. Risk management, error management or activities to improve or maintain the quality of the programs or services in relation to trades and apprenticeship that the Ministry provides or funds, in whole or in part.
5. Any other prescribed matters related to apprenticeship or trades, whether or not the trades are prescribed as trades for the purposes of this Act.

**Collection of information by Corporation**

(2) The Corporation may collect personal information, directly or indirectly, for purposes related to the following matters, and may use it for those purposes:

1. Administering this Act, the regulations and the Corporation's by-laws.
2. Planning or delivering programs or services in relation to trades and apprenticeship, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring and preventing fraud or any unauthorized receipt of services or benefits related to any of them.
3. Risk management, error management or activities to improve or maintain the quality of the programs or services in relation to trades and apprenticeship that the Corporation provides.
4. Any other prescribed matters related to apprenticeship or trades, whether or not the trades are prescribed as trades for the purposes of this Act.

**Disclosure**

(3) The Minister may require any of the following to disclose to the Minister such personal information as is reasonably necessary for the purposes described in subsection (1):

1. Persons approved by the Minister to provide in-class training for apprenticeship programs.
2. Sponsors.
3. Employers of apprentices and individuals who hold a certificate issued under this Act.
4. The Corporation.
5. Other prescribed persons.

**Same**

(4) The Minister may specify the time at which, and the form in which, the information must be provided.

**Limits on collection, use and disclosure**

63 (1) The Minister and the Corporation shall not collect, use or disclose personal information under section 62 if other information will serve the purpose of the collection, use or disclosure.

**Same**

(2) The Minister and the Corporation shall not collect, use or disclose more personal information than is reasonably necessary to meet the purpose of the collection, use or disclosure.

**Notice required by s. 39 (2) of FIPPA**

(3) If the Minister or the Corporation collects personal information indirectly under subsection (1), without limiting the 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 the Ministry's website.

**Same**

(4) A notice given in the manner described in subsection (3) is deemed to comply with subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act*.

### **Disclosure, Minister**

(5) The Minister may disclose personal information that is collected for the purposes of administering this Act and that is under the control of the ministry,

- (a) to any person employed in the administration of similar legislation in another province or territory of Canada;
- (b) to any person for the purpose of administering the Act or fulfilling the Minister's functions under the Act; or
- (c) to any person if, in the opinion of the Minister, the disclosure or communication would clearly benefit the individual who is the subject of the information.

### **Disclosure, Corporation**

(6) With the approval of the chief executive officer, the Corporation may disclose personal information that is collected for the purposes of administering this Act and that is under the control of the Corporation,

- (a) to any person employed in the administration of similar legislation in another province or territory of Canada;
- (b) to any person for the purpose of administering the Act or fulfilling the Corporation's functions under the Act; or
- (c) to any person if, in the opinion of the chief executive officer, the disclosure or communication would clearly benefit the individual who is the subject of the information.

### **Reports and information**

**64** The Minister may require the following persons to provide reports and information and may specify the time at which, and the form in which, the reports and information must be provided:

1. Persons approved by the Minister to provide in-class training for apprenticeship programs.
2. The Corporation.
3. Other prescribed persons.

### **Regulations, Minister**

**65** (1) The Minister may make regulations governing anything the Minister considers necessary or advisable for the effective administration and implementation of this Act, including regulations,

- (a) prescribing a trade as a trade for the purposes of this Act;
- (b) classifying a trade as a compulsory trade for the purposes of this Act;
- (c) prescribing the criteria and the process to be used to determine whether or not a trade should be classified or continue to be classified as a compulsory trade;
- (d) prescribing the scope of practice for a trade;
- (e) prescribing what constitutes engaging in the practice of a trade or a compulsory trade;
- (f) prescribing trades for which a certifying examination is required;
- (g) governing what constitutes proof of certification for the purposes of subsection 9 (1) or proof of apprenticeship for the purposes of subsection 9 (2);
- (h) designating persons by name, job title or otherwise who are authorized to request proof of a certificate of qualification, provisional certificate of qualification or proof of apprenticeship;
- (i) governing certificates of qualification and provisional certificates of qualification, including,
  - (i) applications for certificates, the issuance, renewal and extension of certificates, and criteria for obtaining a certificate or a renewal or extension of a certificate,
  - (ii) the term for which a certificate may be issued, renewed or extended, including providing for different terms depending on the trade,
  - (iii) the imposition of terms, conditions and limitations on certificates,
  - (iv) the suspension and revocation of certificates, including the circumstances in which certificates may be suspended or revoked,
  - (v) other actions that may be taken in relation to certificates of qualification and provisional certificates of qualification;
- (j) prescribing other certificates that may be issued by the Registrar;
- (k) governing apprenticeship programs, including with respect to on-the-job training standards, in-class curriculum standards, examinations and other requirements;

- (l) governing certificates of apprenticeship, including the revocation of certificates of apprenticeship and the circumstances in which they may be revoked;
- (m) governing registered training agreements and the registration of training agreements, including prescribing academic standards, sponsor criteria and any other criteria that must be satisfied in order to register a training agreement, and the suspension and revocation of a registered training agreement, including the circumstances in which an agreement may be suspended or revoked and the process for suspension or revocation;
- (n) deeming an individual from another province or territory of Canada to be an apprentice under a registered training agreement under which he or she is to receive training in a trade required as part of an apprenticeship program, subject to such conditions and restrictions as may be specified in the regulations;
- (o) governing apprentice to journeyman ratios, including,
  - (i) prescribing a trade as being subject to an apprentice to journeyman ratio,
  - (ii) prescribing that a different apprentice to journeyman ratio applies for a trade than the ratio set out in section 8,
  - (iii) governing when individuals shall be deemed to be apprentices or journeymen for the purposes of the apprentice to journeyman ratio applicable to a trade,
  - (iv) governing the determination of compliance with an apprentice to journeyman ratio set out in section 8 or in a regulation,
  - (v) establishing and governing processes by which the Minister may grant a person an exemption from an apprentice to journeyman ratio or specify a different ratio for that person;
- (p) setting out a compliance and enforcement framework;
- (q) governing the public register;
- (r) prescribing alternative methods for serving a notice or document;
- (s) providing that a different time period or deadline shall apply instead of a time period or deadline specified in this Act;
- (t) exempting any person from any provision of this Act or the regulations;
- (u) prescribing or otherwise providing for anything required or permitted under this Act to be prescribed or otherwise provided for in the regulations, other than anything referred to in section 66, including governing anything required or permitted to be done in accordance with the regulations.

### **Regulations, transitional**

- (2) The Minister may make regulations providing for any transitional matters relating to the implementation of this Act and the repeal of the *Ontario College of Trades and Apprenticeship Act, 2009* or relating to amendments to this Act, including,
- (a) deeming certificates of qualification, statements of membership and statements of completion of an apprenticeship program under the *Ontario College of Trades and Apprenticeship Act, 2009* to be certificates under this Act and providing for any related processes;
  - (b) providing that terms, conditions and limitations on a certificate or statement issued under the *Ontario College of Trades and Apprenticeship Act, 2009* continue to apply or apply with modifications to a certificate or statement deemed to be a certificate issued under this Act;
  - (c) deeming registered training agreements under the *Ontario College of Trades and Apprenticeship Act, 2009* to be registered training agreements under this Act and providing for any related processes;
  - (d) providing for any transitional matter that may arise in connection with a trade no longer being prescribed as a trade for the purpose of this Act or no longer being classified as a compulsory trade;
  - (e) governing proceedings under Part V of the *Ontario College of Trades and Apprenticeship Act, 2009* or relating to administrative penalties under Part VIII.1 of that Act that are outstanding on the day subsection 38 (1) of this Act comes into force.

### **Conflict**

- (3) In the event of a conflict between a regulation made under subsection (2) and this Act or the *Ontario College of Trades and Apprenticeship Act, 2009*, the regulation prevails.

### **Regulations, Lieutenant Governor in Council**

66 The Lieutenant Governor in Council may make regulations,

- (a) prescribing additional powers, duties or functions of the Minister for the purposes of clause 2 (k);

- (b) governing hearings under sections 12, 15 and 19, including prescribing the person or body who shall conduct hearings, the process for conducting hearings and the period within which a hearing must be requested;
- (c) governing inspections and investigations under this Act, including prescribing additional powers and duties of inspectors;
- (d) governing compliance orders, including governing their content and when they may be amended or revoked;
- (e) governing administrative penalties and all matters necessary and incidental to the administration of a system of administrative penalties under this Act;
- (f) prescribing additional objects of the Corporation;
- (g) respecting the application of the *Corporations Act* and the *Corporations Information Act* to the Corporation;
- (h) prescribing powers of the board of the Corporation that cannot be delegated to a committee of the board;
- (i) prescribing additional powers, duties or functions of the Registrar for the purposes of clause 46 (3) (c);
- (j) prescribing matters for the purposes of paragraph 5 of subsection 62 (1) and paragraph 4 of subsection 62 (2);
- (k) prescribing persons who may be required by the Minister to disclose information to the Minister under subsection 62 (3);
- (l) governing reports and information that may be required under section 64, including prescribing persons to whom section 64 applies;
- (m) defining, for the purposes of this Act and the regulations, any word or expression used in this Act that has not already been expressly defined in this Act;
- (n) delegating to the Minister the power to make regulations with respect to any matter that may be the subject of a regulation under this subsection.

**67** OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT).

**68-71** OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).

**72** OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

**73** OMITTED (ENACTS SHORT TITLE OF THIS ACT).

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# Construction Act

R.S.O. 1990, CHAPTER C.30

**Consolidation Period:** From September 1, 2021 to the [e-Laws currency date](#).

Last amendment: 2021, c. 4, Sched. 3, s. 20.

Legislative History: 1994, c. 27, s. 42; 1996, c. 25, s. 4; 1997, c. 19, s. 30; 1997, c. 23, s. 4; 1999, c. 12, Sched. B, s. 3; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 21, Sched. C, s. 102; 2010, c. 16, Sched. 2, s. 2; 2017, c. 24, s. 1-73, 83-85; 2017, c. 33, Sched. 2, s. 76; 2018, c. 17, Sched. 8, s. 1-20; 2019, c. 7, Sched. 17, s. 56; 2020, c. 11, Sched. 5, s. 14; 2021, c. 4, Sched. 3, s. 20.

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**Interpretation**

**Definitions**

1 (1) In this Act,

“action” means an action under Part VIII; (“action”)

“broader public sector organization” has the same meaning as in the *Broader Public Sector Accountability Act, 2010*; (“organisme du secteur parapublic”)

“contract” means the contract between the owner and the contractor, and includes any amendment to that contract; (“contrat”)

“contractor” means a person contracting with or employed directly by the owner or an agent of the owner to supply services or materials to an improvement and includes a joint venture entered into for the purposes of an improvement or improvements; (“entrepreneur”)

“court” means the Superior Court of Justice; (“tribunal”)

“Crown” includes a Crown agency to which the *Crown Agency Act* applies; (“Couronne”)

“holdback” means the 10 per cent of the value of the services or materials supplied under a contract or subcontract required to be withheld from payment by Part IV; (“retenue”)

“home” means,

- (a) a self-contained one-family dwelling, detached or attached to one or more others by a common wall,
  - (b) a building composed of two self-contained, one-family dwellings under one ownership, or
  - (c) a condominium one-family dwelling unit, including the common interests appurtenant thereto,
- and includes any structure or works used in conjunction therewith; (“logement”)

“home buyer” means a person who buys the interest of an owner in a premises that is a home, whether built or not at the time the agreement of purchase and sale in respect thereof is entered into, provided,

- (a) not more than 30 per cent of the purchase price, excluding money held in trust under section 81 of the *Condominium Act, 1998*, is paid prior to the conveyance, and
- (b) the home is not conveyed until it is ready for occupancy, evidenced in the case of a new home by the issuance of a municipal permit authorizing occupancy or the issuance under the *Ontario New Home Warranties Plan Act* of a certificate of completion and possession; (“acquéreur d’un logement”)

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) of the definition of “home buyer” in subsection 1 (1) of the Act is amended by striking out “the issuance under the *Ontario New Home Warranties Plan Act* of a certificate of completion and possession” and substituting “the issuance of material prescribed for the purpose of this clause by the regulations made under the *Protection for Owners and Purchasers of New Homes Act, 2017*”. (See: 2017, c. 33, Sched. 2, s. 76 (1))**

“improvement” means, in respect of any land,

- (a) any alteration, addition or capital repair to the land,
- (b) any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works, or
- (c) the complete or partial demolition or removal of any building, structure or works on the land; (“améliorations”)

“interest in the premises” means an estate or interest of any nature, and includes a statutory right given or reserved to the Crown to enter any lands or premises belonging to any person or public authority for the purpose of doing any work, construction, repair or maintenance in, upon, through, over or under any lands or premises; (“intérêt sur les lieux”)

“land” includes any building, structure or works affixed to the land, or an appurtenance to any of them, but does not include the improvement; (“bien-fonds”)

“lien claimant” means a person having a preserved or perfected lien; (“créancier privilégié”)

“materials” means every kind of movable property,

- (a) that becomes, or is intended to become, part of the improvement, or that is used directly in the making of the improvement, or that is used to facilitate directly the making of the improvement,
- (b) that is equipment rented without an operator for use in the making of the improvement; (“matériaux”)

“monetary supplementary benefit” includes any contribution, remittance, union dues, deduction, payment or other additional compensation of any kind; (“avantage pécuniaire supplémentaire”)

“mortgage” includes a charge and “mortgagee” includes a chargee; (“hypothèque”, “créancier hypothécaire”)

“municipality” means,

- (a) a municipality within the meaning of the *Municipal Act, 2001*, and
- (b) a local board within the meaning of the *Municipal Act, 2001* or the *City of Toronto Act, 2006*; (“municipalité”)

“owner” means any person, including the Crown, having an interest in a premises at whose request and,

- (a) upon whose credit, or

(b) on whose behalf, or

(c) with whose privity or consent, or

(d) for whose direct benefit,

an improvement is made to the premises but does not include a home buyer; (“propriétaire”)

“payer” means the owner, contractor or subcontractor who is liable to pay for the services or materials supplied to an improvement under a contract or subcontract; (“responsable du paiement”)

“payment certifier” means an architect, engineer or any other person upon whose certificate payments are made under a contract or subcontract; (“personne qui autorise le paiement”)

“person having a lien” includes both a lien claimant and a person with an unreserved lien; (“titulaire d’un privilège”)

“premises” includes,

(a) the improvement,

(b) all materials supplied to the improvement, and

(c) the land occupied by the improvement, or enjoyed therewith, or the land upon or in respect of which the improvement was done or made; (“lieux”)

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

“price” means,

(a) the contract or subcontract price,

(i) agreed on between the parties, or

(ii) if no specific price has been agreed on between them, the actual market value of the services or materials that have been supplied to the improvement under the contract or subcontract, and

(b) any direct costs incurred as a result of an extension of the duration of the supply of services or materials to the improvement for which the contractor or subcontractor, as the case may be, is not responsible; (“prix”)

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

“services or materials” includes both services and materials; (“services ou matériaux”)

“subcontract” means any agreement between the contractor and a subcontractor, or between two or more subcontractors, relating to the supply of services or materials to the improvement and includes any amendment to that agreement; (“contrat de sous-traitance”)

“subcontractor” means a person not contracting with or employed directly by the owner or an agent of the owner but who supplies services or materials to the improvement under an agreement with the contractor or under the contractor with another subcontractor and includes a joint venture entered into for the purposes of an improvement or improvements; (“sous-traitant”)

“suffers damages as a result” means suffers damages that could be reasonably foreseen to result; (“subir des dommages en conséquence”)

“supply of services” means any work done or service performed upon or in respect of an improvement, and includes,

(a) the rental of equipment with an operator, and

(b) where the making of the planned improvement is not commenced, the supply of a design, plan, drawing or specification that in itself enhances the value of the owner’s interest in the land,

and a corresponding expression has a corresponding meaning; (“prestation de services”)

“wages” means the money earned by a worker for work done by time or as piece work, and includes all monetary supplementary benefits, whether provided for by statute, contract or collective bargaining agreement; (“salaire”)

“worker” means a person employed for wages in any kind of labour; (“ouvrier”)

“workers’ trust fund” means any trust fund maintained in whole or in part on behalf of any worker on an improvement and into which any monetary supplementary benefit is payable as wages for work done by the worker in respect of the improvement; (“fonds en fiducie des ouvriers”)

“written notice of a lien” means a written notice of a lien in the prescribed form, given by a person having a lien. (“avis écrit d’un privilège”) R.S.O. 1990, c. C.30, s. 1 (1); 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. C, s. 1 (1); 2010, c. 16, Sched. 2, s. 2 (1, 2); 2017, c. 24, s. 2 (1-16), 66, 70, 71.

### **Capital repair**

(1.1) For the purposes of clause (a) of the definition of “improvement” in subsection (1), a capital repair to land is any repair intended to extend the normal economic life of the land or of any building, structure or works on the land, or to improve the value or productivity of the land, building, structure or works, but does not include maintenance work performed in order to prevent the normal deterioration of the land, building, structure or works or to maintain the land, building, structure or works in a normal, functional state. 2017, c. 24, s. 2 (17).

### **Direct costs**

(1.2) For the purposes of clause (b) of the definition of “price” in subsection (1), the direct costs incurred are the reasonable costs of performing the contract or subcontract during the extended period of time, including costs related to the additional supply of services or materials (including equipment rentals), insurance and surety bond premiums, and costs resulting from seasonal conditions, that, but for the extension, would not have been incurred, but do not include indirect damages suffered as a result, such as loss of profit, productivity or opportunity, or any head office overhead costs. 2017, c. 24, s. 2 (17).

### **When materials supplied**

(2) For the purposes of this Act, materials are supplied to an improvement when they are,

- (a) placed on the land on which the improvement is being made;
- (b) placed upon land designated by the owner or an agent of the owner that is in the immediate vicinity of the premises, but placing materials on the land so designated does not, of itself, make that land subject to a lien; or
- (c) in any event, incorporated into or used in making or facilitating directly the making of the improvement. R.S.O. 1990, c. C.30, s. 1 (2); 2017, c. 24, s. 71.

### **Same**

(3) A contractor or subcontractor to whom materials are supplied and who designates land under clause (2) (b) is deemed to be the owner’s agent for that purpose, unless the person supplying the materials has actual notice to the contrary. R.S.O. 1990, c. C.30, s. 1 (3).

### **Commencement of a procurement process**

(4) For the purposes of this Act, a procurement process is commenced on the earliest of the making of,

- (a) a request for qualifications;
- (b) a request for quotation;
- (c) a request for proposals; or
- (d) a call for tenders. 2018, c. 17, Sched. 8, s. 1.

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

2002, c. 17, Sched. F, Table - 01/01/2003

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2010, c. 16, Sched. 2, s. 2 (1, 2) - 25/10/2010

2017, c. 24, s. 2 (1-3, 5, 7, 8, 12, 14, 16, 17) - 01/07/2018; 2017, c. 24, s. 2 (4, 6, 9-11, 13, 15), 66, 70, 71 - 12/12/2017; 2017, c. 33, Sched. 2, s. 76 (1) - not in force

2018, c. 17, Sched. 8, s. 1 - 06/12/2018

### **Alternative financing and procurement arrangements**

**1.1** (1) This section applies if the Crown, a municipality or a broader public sector organization, as the owner of a premises, enters into a project agreement with a special purpose entity that requires the entity to finance and undertake an improvement on behalf of the Crown, municipality or broader public sector organization, as the case may be, and, for the purpose, to enter into an agreement with a contractor in respect of the improvement. 2017, c. 24, s. 3 (1).

### Application of Act, regulations

(2) Except as provided by this section, this Act and the regulations apply, with the modifications set out in this section and any other necessary modifications,

- (a) to a project agreement between the Crown, a municipality or a broader public sector organization and a special purpose entity as if the project agreement were a contract and the special purpose entity were the contractor; and
- (b) to the agreement between the special purpose entity and the contractor as if the agreement were a subcontract made under the contract. 2017, c. 24, s. 3 (1).

### Specified modifications, Part I.1

(2.1) Part I.1 applies with the following modifications:

1. The Part does not apply with respect to any portion of a project agreement that provides for the operation or maintenance of the improvement by the special purpose entity, or to any portion of an agreement between the special purpose entity and the contractor or any other subcontract made under the project agreement that pertains to the operation or maintenance of the improvement by the special purpose entity.
2. Subsection 6.3 (2) does not apply, and nothing in the Part shall be read as preventing the inclusion, in a project agreement or agreement between a special purpose entity and a contractor, of a provision requiring certification or approval prior to the giving of a proper invoice. 2017, c. 24, s. 3 (2).

### Specified modifications, Part II.1

(2.2) Part II.1 applies with the following modifications:

1. The following matters may not be the subject of an adjudication under the Part:
  - i. A determination of when,
    - A. a project agreement is substantially completed, or
    - B. an agreement between a special purpose entity and a contractor is substantially performed, as provided under subsection (5).
  - ii. A determination of whether a milestone in relation to the improvement has been reached, if reaching the milestone requires an amount to be paid.
  - iii. Any prescribed matters.
2. If the parties to a project agreement are the parties to an adjudication and the project agreement specifies an independent certifier, the parties shall, provided that a representative of the independent certifier is listed as an adjudicator in the registry established under clause 13.3 (1) (c), request that the representative conduct the adjudication, in which case subsections 13.9 (2) and (3) do not apply. 2017, c. 24, s. 3 (2).

### Specified modifications, Part IV

(3) For the purposes of section 22, holdback amounts shall be determined in reference to the agreement between the special purpose entity and the contractor. 2017, c. 24, s. 3 (1).

### Specified modifications, Part XI.1

(4) Section 85.1 applies with the following modifications:

1. The agreement between the special purpose entity and the contractor is deemed, for the purposes of the section, to be a public contract between the Crown, municipality or broader public sector organization, as the case may be, and the contractor.
2. The Crown, municipality or broader public sector organization, as the case may be, may require a coverage limit other than one specified in clause 85.1 (4) (b) or (5) (b), provided that it meets or exceeds any coverage limit that may be prescribed for the purposes of this paragraph.
3. Paragraph 2 does not apply unless the bonds required under subsections 85.1 (4) and (5) and any other security required by the Crown, municipality or broader public sector organization, as the case may be, taken together, reflect an appropriate balance between the adequacy of the security required to ensure the payment of persons supplying services or materials under the public contract on the one hand and the cost of the security on the other. 2017, c. 24, s. 3 (1).

**Where entity deemed to be owner**

(5) The special purpose entity is deemed to be the owner of the premises in place of the Crown, municipality or broader public sector organization, and the agreement between the special purpose entity and the contractor is deemed to be the contract, for the purposes of the following portions and provisions of this Act and any regulations made for the purposes of them and, for the purpose, the portions, provisions and regulations apply with such modifications as may be prescribed and any other necessary modifications:

1. Subsections 2 (1) and (2).
2. Section 31.
3. Section 32.
4. Section 33.
5. Section 39.
6. Any other portion or provision that may be prescribed. 2017, c. 24, s. 3 (1).

**Interpretation, substantial performance of a contract**

(6) For the purposes of subsection (5), a reference in this Act or the regulations to the substantial performance of a contract, as it applies in relation to a project agreement, shall be read as a reference to the substantial performance of the agreement between the special purpose entity and the contractor, subject to any exceptions that may be prescribed. 2017, c. 24, s. 3 (1).

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

2017, c. 24, s. 3 (1) - 01/07/2018; 2017, c. 24, s. 3 (2) - 01/10/2019

**Contracts, substantial performance and completion****When contract substantially performed**

2 (1) For the purposes of this Act, a contract is substantially performed,

- (a) when the improvement to be made under that contract or a substantial part thereof is ready for use or is being used for the purposes intended; and
- (b) when the improvement to be made under that contract is capable of completion or, where there is a known defect, correction, at a cost of not more than,
  - (i) 3 per cent of the first \$1,000,000 of the contract price,
  - (ii) 2 per cent of the next \$1,000,000 of the contract price, and
  - (iii) 1 per cent of the balance of the contract price. R.S.O. 1990, c. C.30, s. 2 (1); 2017, c. 24, s. 4 (1, 2).

**Same**

(2) For the purposes of this Act, where the improvement or a substantial part thereof is ready for use or is being used for the purposes intended and the owner and the contractor agree not to complete the improvement expeditiously, the price of the services or materials remaining to be supplied and required to complete the improvement shall be deducted from the contract price in determining substantial performance. R.S.O. 1990, c. C.30, s. 2 (2); 2017, c. 24, s. 4 (3), 66.

**Adjudication amounts**

(2.1) For the purposes of this Act, if an adjudicator makes a determination under Part II.1 in relation to a contract before the certification or declaration of the substantial performance of the contract under section 32,

- (a) any amount determined by the adjudicator to be payable by a party to the contract shall be added to the contract price in determining substantial performance; and
- (b) any amount determined by the adjudicator to have been overpaid by a party to the contract shall be deducted from the contract price in determining substantial performance. 2017, c. 24, s. 4 (4).

**Same**

(2.2) Subsection (2.1) ceases to apply if,

- (a) the adjudicator's determination ceases to be binding on the parties to the adjudication under section 13.15; or
- (b) the determination of the adjudicator is set aside on judicial review. 2017, c. 24, s. 4 (4).



**When contract deemed completed**

(3) For the purposes of this Act, a contract shall be deemed to be completed and services or materials shall be deemed to be last supplied to the improvement when the price of completion, correction of a known defect or last supply is not more than the lesser of,

- (a) 1 per cent of the contract price; and
- (b) \$5,000. R.S.O. 1990, c. C.30, s. 2 (3); 2017, c. 24, s. 4 (5, 6).

**Multiple improvements under a contract**

(4) If more than one improvement is to be made under a contract and each of the improvements is to lands that are not contiguous, then, if the contract so provides, each improvement is deemed for the purposes of this section to be under a separate contract. 2017, c. 24, s. 4 (7).

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

2017, c. 24, s. 4 (1-3, 6, 7) - 01/07/2018; 2017, c. 24, s. 4 (4) - 01/10/2019; 2017, c. 24, s. 4 (5), 66 - 12/12/2017

**PART I  
GENERAL**

**Act binds Crown**

**3** (1) Subject to section 16 (where lien does not attach to the premises), this Act binds the Crown. R.S.O. 1990, c. C.30, s. 3 (1); 2017, c. 24, s. 70.

(2) REPEALED: 2017, c. 24, s. 5.

**Exception re notice of claim**

(3) Section 18 of the *Crown Liability and Proceedings Act, 2019* does not apply in respect of an action against the Crown under this Act. R.S.O. 1990, c. C.30, s. 3 (3); 2019, c. 7, Sched. 17, s. 56.

(4) REPEALED: 1997, c. 23, s. 4 (1).

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

1997, c. 23, s. 4 (1) - 28/11/1997

2017, c. 24, s. 5, 70 - 12/12/2017

2019, c. 7, Sched. 17, s. 56 - 01/07/2019

**No waiver of rights**

**4** An agreement by any person who supplies services or materials to an improvement that this Act does not apply to the person or that the remedies provided by it are not available for the benefit of the person is void. R.S.O. 1990, c. C.30, s. 4; 2017, c. 24, s. 69.

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

2017, c. 24, s. 69 - 12/12/2017

**Contracts to conform**

**5** (1) Every contract or subcontract related to an improvement is deemed to be amended in so far as is necessary to be in conformity with this Act. R.S.O. 1990, c. C.30, s. 5 (1).

**Retention of holdbacks authorized**

(2) Without restricting the generality of subsection (1), where the purchaser is an owner, an agreement of purchase and sale that provides for the making or completion of an improvement shall be deemed to provide for the retention of holdbacks by the purchaser, and tender by the purchaser on closing is not defective by reason only that the purchaser does not tender the amount of the holdbacks. R.S.O. 1990, c. C.30, s. 5 (2).

**Minor errors, irregularities**

**6** (1) No certificate, declaration or claim for lien is invalidated by reason only of a failure to comply strictly with subsection 32 (2), 33 (1) or 34 (5) unless, in the opinion of the court, a person has been prejudiced as a result, and then only to the extent of the prejudice suffered. 2017, c. 24, s. 6 (2); 2018, c. 17, Sched. 8, s. 2.

**Same**

- (2) Minor errors or irregularities to which subsection (1) applies include,
- (a) a minor error or irregularity in,
    - (i) the name of an owner, a person for whom services or materials were supplied or a payment certifier,
    - (ii) the legal description of a premises, or
    - (iii) the address for service; and
  - (b) including an owner's name in the wrong portion of a claim for lien. 2017, c. 24, s. 6 (2).

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

2017, c. 24, s. 6 (1) - 12/12/2017; 2017, c. 24, s. 6 (2) - 01/07/2018

2018, c. 17, Sched. 8, s. 2 - 06/12/2018

**PART I.1  
PROMPT PAYMENT**

**Definition, "proper invoice"****6.1** In this Part,

"proper invoice" means a written bill or other request for payment for services or materials in respect of an improvement under a contract, if it contains the following information and, subject to subsection 6.3 (2), meets any other requirements that the contract specifies:

1. The contractor's name and address.
2. The date of the proper invoice and the period during which the services or materials were supplied.
3. Information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied.
4. A description, including quantity where appropriate, of the services or materials that were supplied.
5. The amount payable for the services or materials that were supplied, and the payment terms.
6. The name, title, telephone number and mailing address of the person to whom payment is to be sent.
7. Any other information that may be prescribed. 2017, c. 24, s. 7.

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

2017, c. 24, s. 7 - 01/10/2019

**Subject to holdback requirements**

**6.2** A requirement to pay an amount in accordance with this Part is subject to any requirement to retain a holdback in accordance with Part IV. 2017, c. 24, s. 7.

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

2017, c. 24, s. 7 - 01/10/2019

**Giving of proper invoices**

**6.3** (1) Proper invoices shall be given to an owner (1) on a monthly basis, unless the contract provides otherwise. 2017, c. 24, s. 7.

**Restriction on conditions**

(2) A provision in a contract that makes the giving of a proper invoice conditional on the prior certification of a payment certifier or on the owner's prior approval is of no force or effect. 2017, c. 24, s. 7.

**Same**

(3) For greater certainty, subsection (2) has no application to a provision in a contract that provides for the certification of a payment certifier or the owner's approval after a proper invoice is given. 2017, c. 24, s. 7.

**Exception**

(4) Subsection (2) does not apply to a provision in a contract that provides for the testing and commissioning of the improvement or of services or materials supplied under the contract. 2017, c. 24, s. 7.

**Revisions**

- (5) A proper invoice may be revised by the contractor after the contractor has given it to the owner, if,
- (a) the owner agrees in advance to the revision;
  - (b) the date of the proper invoice is not changed; and
  - (c) the proper invoice continues to meet the requirements referred to in the definition of “proper invoice” in section 6.1. 2017, c. 24, s. 7.

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

2017, c. 24, s. 7 - 01/10/2019

**Payment deadline, owner to contractor**

**6.4** (1) Subject to the giving of a notice of non-payment under subsection (2), an owner shall pay the amount payable under a proper invoice no later than 28 days after receiving the proper invoice from the contractor. 2017, c. 24, s. 7.

**Exception, notice of non-payment if dispute**

(2) An owner who disputes a proper invoice may refuse to pay all or any portion of the amount payable under the proper invoice within the time specified in subsection (1) if, no later than 14 days after receiving the proper invoice from the contractor, the owner gives to the contractor a notice of non-payment, in the prescribed form and manner, specifying the amount of the proper invoice that is not being paid and detailing all of the reasons for non-payment. 2017, c. 24, s. 7.

**Requirement to pay remaining amount**

(3) Subsection (1) continues to apply to any amount payable under the proper invoice that is not the subject of a notice under subsection (2). 2017, c. 24, s. 7.

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

2017, c. 24, s. 7 - 01/10/2019

**Payment deadlines, contractor to subcontractor****Full payment**

**6.5** (1) Subject to the giving of a notice of non-payment under subsection (6), a contractor who receives full payment of a proper invoice within the time specified in subsection 6.4 (1) shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice the amount payable to the subcontractor. 2017, c. 24, s. 7.

**Partial payment, paid amount**

(2) Subject to the giving of a notice of non-payment under subsection (6), if the payment received by the contractor from the owner is only for a portion of the amount payable under a proper invoice, the contractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract with the contractor that were included in the proper invoice from the amount paid by the owner. 2017, c. 24, s. 7.

**Same**

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment shall be made in accordance with the following rules:

1. If the amount not paid by the owner is specific to services or materials supplied by a particular subcontractor or subcontractors, the remaining subcontractors shall be paid, with any amount paid by the owner in respect of the subcontractor or subcontractors who are implicated in the dispute payable to them on a rateable basis, as applicable.
2. In any other case, subcontractors shall be paid on a rateable basis. 2017, c. 24, s. 7.

**Non or partial payment, unpaid amount**

(4) Subject to the giving of a notice of non-payment under subsection (5) or (6), if the owner does not pay some or all of a proper invoice within the time specified in subsection 6.4 (1), the contractor shall, no later than 35 days after giving the proper invoice to the owner, pay each subcontractor who supplied services or materials under a subcontract with the

contractor that were included in the proper invoice the amount payable to the subcontractor, to the extent that he or she was not paid fully under subsection (2). 2017, c. 24, s. 7.

**Exception, notice of non-payment if owner does not pay**

(5) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (7), the contractor gives to the subcontractor, in the prescribed manner,

- (a) a notice of non-payment, in the prescribed form,
  - (i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the owner,
  - (ii) specifying the amount not being paid, and
  - (iii) providing an undertaking to refer the matter to adjudication under Part II.1 no later than 21 days after giving the notice to the subcontractor; and
- (b) a copy of any notice of non-payment given by the owner under subsection 6.4 (2). 2017, c. 24, s. 7.

**Exception, notice of non-payment if dispute**

(6) A contractor who disputes, in whole or in part, the entitlement of a subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (7), the contractor gives to the subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment. 2017, c. 24, s. 7.

**Timing of notice**

(7) For the purposes of subsections (5) and (6), the contractor must give notice no later than,

- (a) seven days after receiving a notice of non-payment from the owner under subsection 6.4 (2); or
- (b) if no notice was given by the owner, before the expiry of the period referred to in subsection (4). 2017, c. 24, s. 7.

**Payment deadline once payment received from owner**

(8) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice under subsection (5), once the amount is paid by the owner. 2017, c. 24, s. 7.

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

2017, c. 24, s. 7 - 01/10/2019

**Payment deadlines, subcontractor to subcontractor**

**Full payment**

**6.6** (1) Subject to the giving of a notice of non-payment under subsection (7), a subcontractor who receives full payment from a contractor in respect of a proper invoice within the time specified in subsection 6.5 (1) shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor. 2017, c. 24, s. 7.

**Partial payment, paid amount**

(2) Subject to the giving of a notice of non-payment under subsection (7), if the payment received by the subcontractor from the contractor is only for a portion of the amount payable to the subcontractor in respect of a proper invoice, the subcontractor shall, no later than seven days after receiving payment, pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice from the amount paid by the contractor. 2017, c. 24, s. 7.

**Same**

(3) For the purposes of subsection (2), if more than one subcontractor is entitled to payment, payment shall be made in accordance with the following rules:

1. If the amount not paid by the contractor is specific to services or materials supplied by a particular subcontractor or subcontractors, the remaining subcontractors shall be paid, with any amount paid by the contractor in respect of the subcontractor or subcontractors who are implicated in the dispute payable to them on a rateable basis, as applicable.
2. In any other case, subcontractors shall be paid on a rateable basis. 2017, c. 24, s. 7.

**Non or partial payment, unpaid amount**

(4) Subject to the giving of a notice of non-payment under subsection (6) or (7), if the contractor does not pay some or all of the amount payable to a subcontractor in respect of a proper invoice within the time specified in section 6.5, the subcontractor shall, no later than the date specified in subsection (5), pay each subcontractor who supplied services or materials under a subcontract between them that were included in the proper invoice the amount payable to the subcontractor, to the extent that he or she was not paid fully under subsection (2). 2017, c. 24, s. 7.

**Same, payment deadline**

(5) For the purposes of subsection (4), the subcontractor shall pay the amounts no later than,

- (a) seven days after the subcontractor receives payment from the contractor; or
- (b) if no payment is made by the contractor to the subcontractor, 42 days after the proper invoice was given to the owner. 2017, c. 24, s. 7.

**Exception, notice of non-payment if contractor does not pay**

(6) Subsection (4) does not apply in respect of a subcontractor if, no later than the date specified in subsection (8), the subcontractor required to pay under subsection (4) gives to the other subcontractor, in the prescribed manner,

- (a) a notice of non-payment, in the prescribed form,
  - (i) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (4) due to non-payment by the contractor,
  - (ii) specifying the amount not being paid, and
  - (iii) unless the failure of the contractor to pay is as a result of non-payment by the owner, providing an undertaking to refer the matter to adjudication under Part II.1 no later than 21 days after giving the notice to the subcontractor; and
- (b) a copy of any notices of non-payment received by the subcontractor in relation to the proper invoice. 2017, c. 24, s. 7.

**Exception, notice of non-payment if dispute**

(7) A subcontractor who disputes, in whole or in part, the entitlement of another subcontractor to payment of an amount under the subcontract may refuse to pay all or any portion of the amount within the time specified in subsection (1), (2) or (4), as the case may be, if, no later than the date specified in subsection (8), the subcontractor gives to the other subcontractor a notice of non-payment, in the prescribed form and manner, specifying the amount that is not being paid and detailing all of the reasons for non-payment. 2017, c. 24, s. 7.

**Timing of notice**

(8) For the purposes of subsections (6) and (7), the subcontractor must give notice no later than,

- (a) seven days after receiving a notice of non-payment from the contractor under subsection 6.5 (5) or (6); or
- (b) if no notice was given by the contractor, before the expiry of the period referred to in clause (5) (b). 2017, c. 24, s. 7.

**Payment deadline once payment received from contractor**

(9) Subsections (1) and (2) apply, with necessary modifications, in respect of any amount that is the subject of a notice under subsection (6), once the amount is paid by the contractor. 2017, c. 24, s. 7.

**Date proper invoice was given**

(10) On the request of a subcontractor who is required to make payments in accordance with this section, a contractor shall, as soon as possible, provide to the subcontractor confirmation of the date on which the contractor gave a proper invoice to the owner. 2017, c. 24, s. 7.

**Further application**

(11) This section applies, with necessary modifications, in respect of a subcontractor who is entitled to payment in accordance with this section and any amounts payable by that subcontractor to any other subcontractor under a subcontract in respect of the improvement. 2017, c. 24, s. 7.

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

2017, c. 24, s. 7 - 01/10/2019

**Reasons for non-payment**

**6.7** Reasons for non-payment in accordance with this Part may include the retention of amounts under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off). 2017, c. 24, s. 7.

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

2017, c. 24, s. 7 - 01/10/2019

**No effect on wages**

**6.8** Nothing in this Part in any way reduces, derogates from or alters the obligations of a contractor or subcontractor to pay wages as provided for by statute, contract or collective bargaining agreement. 2017, c. 24, s. 7.

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

2017, c. 24, s. 7 - 01/10/2019

**Interest on late payments**

**6.9** Interest begins to accrue on an amount that is not paid when it is due to be paid under this Part, at the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act* or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the prejudgment interest rate and the interest rate specified in the contract or subcontract. 2017, c. 24, s. 7.

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

2017, c. 24, s. 7 - 01/10/2019

## PART II TRUST PROVISIONS

**Owner's trust****Amounts received for financing a trust**

**7 (1)** All amounts received by an owner, other than the Crown or a municipality, that are to be used in the financing of the improvement, including any amount that is to be used in the payment of the purchase price of the land and the payment of prior encumbrances, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 7 (1).

**Amounts certified as payable**

**(2)** Where amounts become payable under a contract to a contractor by the owner on a certificate of a payment certifier, an amount that is equal to an amount so certified that is in the owner's hands or received by the owner at any time thereafter constitutes a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 7 (2).

**Where substantial performance certified**

**(3)** Where the substantial performance of a contract has been certified, or has been declared by the court, an amount that is equal to the unpaid price of the substantially performed portion of the contract that is in the owner's hands or is received by the owner at any time thereafter constitutes a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 7 (3).

**Obligations as trustee**

**(4)** The owner is the trustee of the trust fund created by subsection (1), (2) or (3), and the owner shall not appropriate or convert any part of a fund to the owner's own use or to any use inconsistent with the trust until the contractor is paid all amounts related to the improvement owed to the contractor by the owner. R.S.O. 1990, c. C.30, s. 7 (4).

**Contractor's and subcontractor's trust****Amounts received a trust**

**8 (1)** All amounts,

- (a) owing to a contractor or subcontractor, whether or not due or payable; or
- (b) received by a contractor or subcontractor,

on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (1); 2017, c. 24, s. 66.

**Obligations as trustee**

(2) The contractor or subcontractor is the trustee of the trust fund created by subsection (1) and the contractor or subcontractor shall not appropriate or convert any part of the fund to the contractor's or subcontractor's own use or to any use inconsistent with the trust until all subcontractors and other persons who supply services or materials to the improvement are paid all amounts related to the improvement owed to them by the contractor or subcontractor. R.S.O. 1990, c. C.30, s. 8 (2); 2017, c. 24, s. 66.

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

2017, c. 24, s. 66 - 12/12/2017

**Contractor's, subcontractor's duties re trust funds**

**8.1** (1) Every person who is a trustee under section 8 shall comply with the following requirements respecting the trust funds of which he or she is trustee:

1. The trust funds shall be deposited into a bank account in the trustee's name. If there is more than one trustee of the trust funds, the funds shall be deposited into a bank account in all of the trustees' names.
2. The trustee shall maintain written records respecting the trust funds, detailing the amounts that are received into and paid out of the funds, any transfers made for the purposes of the trust, and any other prescribed information.
3. If the person is a trustee of more than one trust under section 8, the trust funds may be deposited together into a single bank account, as long as the trustee maintains the records required under paragraph 2 separately in respect of each trust. 2017, c. 24, s. 8.

**Multiple trust funds in single account**

(2) Trust funds from separate trusts that are deposited together into a single bank account in accordance with subsection (1) are deemed to be traceable, and the depositing of trust funds in accordance with that subsection does not constitute a breach of trust. 2017, c. 24, s. 8.

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

2017, c. 24, s. 8 - 01/07/2018

**Vendor's trust****Amounts received a trust**

**9** (1) Where the owner's interest in a premises is sold by the owner, an amount equal to,

- (a) the value of the consideration received by the owner as a result of the sale,
- less,
- (b) the reasonable expenses arising from the sale and the amount, if any, paid by the vendor to discharge any existing mortgage indebtedness on the premises,

constitutes a trust fund for the benefit of the contractor. R.S.O. 1990, c. C.30, s. 9 (1); 2017, c. 24, s. 9, 70.

**Obligations as trustee**

(2) The former owner is the trustee of the trust created by subsection (1), and shall not appropriate or convert any part of the trust property to the former owner's own use or to any use inconsistent with the trust until the contractor is paid all amounts owed to the contractor that relate to the improvement. R.S.O. 1990, c. C.30, s. 9 (2).

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

2017, c. 24, s. 9, 70 - 12/12/2017

**Payment discharging trust**

**10** Subject to Part IV (holdbacks), every payment by a trustee to a person the trustee is liable to pay for services or materials supplied to the improvement discharges the trust of the trustee making the payment and the trustee's obligations and liability as trustee to all beneficiaries of the trust to the extent of the payment made by the trustee. R.S.O. 1990, c. C.30, s. 10.

**Where trust funds may be reduced**

**11** (1) Subject to Part IV, a trustee who pays in whole or in part for the supply of services or materials to an improvement out of money that is not subject to a trust under this Part may retain from trust funds an amount equal to that paid by the trustee without being in breach of the trust. R.S.O. 1990, c. C.30, s. 11 (1); 2017, c. 24, s. 66.

**Application of trust funds to discharge loan**

(2) Subject to Part IV, where a trustee pays in whole or in part for the supply of services or materials to an improvement out of money that is loaned to the trustee, trust funds may be applied to discharge the loan to the extent that the lender's money was so used by the trustee, and the application of trust money does not constitute a breach of the trust. R.S.O. 1990, c. C.30, s. 11 (2).

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

2017, c. 24, s. 66 - 12/12/2017

**Set-off by trustee**

**12** Subject to Part IV, a trustee may, without being in breach of trust, retain from trust funds an amount that, as between the trustee and the person the trustee is liable to pay under a contract or subcontract related to the improvement, is equal to the balance in the trustee's favour of all outstanding debts, claims or damages related to the improvement or, if the contractor or subcontractor, as the case may be, becomes insolvent, all outstanding debts, claims or damages whether or not related to the improvement. R.S.O. 1990, c. C.30, s. 12; 2017, c. 24, s. 10.

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

2017, c. 24, s. 10 (1) - 12/12/2017; 2017, c. 24, s. 10 (2) - 01/07/2018

**Liability for breach of trust****By corporation**

**13 (1)** In addition to the persons who are otherwise liable in an action for breach of trust under this Part,

- (a) every director or officer of a corporation; and
- (b) any person, including an employee or agent of the corporation, who has effective control of a corporation or its relevant activities,

who assents to, or acquiesces in, conduct that he or she knows or reasonably ought to know amounts to breach of trust by the corporation is liable for the breach of trust. R.S.O. 1990, c. C.30, s. 13 (1).

**Effective control of corporation**

(2) The question of whether a person has effective control of a corporation or its relevant activities is one of fact and in determining this the court may disregard the form of any transaction and the separate corporate existence of any participant. R.S.O. 1990, c. C.30, s. 13 (2).

**Joint and several liability**

(3) Where more than one person is found liable or has admitted liability for a particular breach of trust under this Part, those persons are jointly and severally liable. R.S.O. 1990, c. C.30, s. 13 (3).

**Contribution**

(4) A person who is found liable, or who has admitted liability, for a particular breach of a trust under this Part is entitled to recover contribution from any other person also liable for the breach in such amount as will result in equal contribution by all parties liable for the breach unless the court considers such apportionment would not be fair and, in that case, the court may direct such contribution or indemnity as the court considers appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 13 (4).

**PART II.1****CONSTRUCTION DISPUTE INTERIM ADJUDICATION****Definitions**

**13.1** In this Part,

“adjudication” means construction dispute interim adjudication under this Part with respect to a matter referred to in section 13.5; (“arbitrage intérimaire”)

“adjudicator” means a person who is qualified by the Authority as an adjudicator; (“arbitre intérimaire”)

“Authority” means the Authorized Nominating Authority designated under section 13.2; (“Autorité”)

“notice of adjudication” means a notice that meets the requirements of section 13.7. (“avis d’arbitrage intérimaire”) 2017, c. 24, s. 11 (1).

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



2017, c. 24, s. 11 (1) - 01/10/2019

### **Authorized Nominating Authority**

**13.2** (1) The Minister responsible for the administration of this Act may designate an entity to act as Authorized Nominating Authority for the purposes of this Part. 2017, c. 24, s. 11 (1).

#### **Criteria**

(2) An entity may not be designated under subsection (1), or act as Authorized Nominating Authority, unless it meets the prescribed criteria, if any. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

### **Duties and powers of Authority**

#### **Duties**

**13.3** (1) The Authority shall,

- (a) develop and oversee programs for the training of persons as adjudicators;
- (b) qualify persons who meet the prescribed requirements as adjudicators;
- (c) establish and maintain a publicly available registry of adjudicators;
- (d) appoint adjudicators for the purposes of subsection 13.9 (5); and
- (e) perform any other duties of the Authority set out in this Part or that may be prescribed for the purposes of this Part. 2017, c. 24, s. 11 (1).

#### **Powers**

(2) The Authority may,

- (a) subject to the regulations, set fees, costs or other charges related to the administration of adjudication under this Part, including fees, costs or charges for the training and qualification of persons as adjudicators or for the appointment of adjudicators, and require their payment; and
- (b) exercise any other power of the Authority set out in this Part or that may be prescribed for the purposes of this Part. 2017, c. 24, s. 11 (1); 2018, c. 17, Sched. 8, s. 3 (1).

#### **Setting fees**

(3) In setting the fees, costs and charges referred to in clause (2) (a), the Authority may, subject to the regulations, specify their amounts or the method for determining the amounts. 2018, c. 17, Sched. 8, s. 3 (2).

#### **Fee retention**

(4) Money collected by the Authority under clause (2) (a),

- (a) is revenue belonging to the Authority and not public money within the meaning of the *Financial Administration Act*; and
- (b) may be retained and used by the Authority for its own account. 2018, c. 17, Sched. 8, s. 3 (2).

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

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 3 (1, 2) - 01/10/2019

### **Minister as interim Authority**

**13.4** (1) The Minister responsible for the administration of this Act may act as Authorized Nominating Authority in accordance with subsection (2) on an interim basis, for any period during which an entity is not designated under section 13.2. 2017, c. 24, s. 11 (1).

#### **Same**

(2) If the Minister responsible for the administration of this Act acts as Authorized Nominating Authority, the Minister,

- (a) shall, subject to subsection (3), perform the duties of the Authority, other than the duty set out in clause 13.3 (1) (a); and

(b) may exercise the powers of the Authority, other than the power set out in clause 13.3 (2) (a). 2017, c. 24, s. 11 (1).

#### **Same**

(3) A duty of the Authority that is set out in the regulations for the purposes of clause 13.3 (1) (e) must only be performed by the Minister if the regulations prescribed for the purposes of this section so provide. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

#### **Availability of adjudication**

#### **Contract**

**13.5** (1) Subject to subsection (3), a party to a contract may refer to adjudication a dispute with the other party to the contract respecting any of the following matters:

1. The valuation of services or materials provided under the contract.
2. Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.
3. Disputes that are the subject of a notice of non-payment under Part I.1.
4. Amounts retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).
5. Payment of a holdback under section 26.1 or 26.2.
6. Non-payment of holdback under section 27.1.
7. Any other matter that the parties to the adjudication agree to, or that may be prescribed. 2017, c. 24, s. 11 (1).

#### **Subcontract**

(2) Subject to subsection (3), a party to a subcontract may refer to adjudication a dispute with the other party to the subcontract respecting any of the matters referred to in subsection (1), with necessary modifications. 2017, c. 24, s. 11 (1).

#### **Expiry of adjudication period**

(3) An adjudication may not be commenced if the notice of adjudication is given after the date the contract or subcontract is completed, unless the parties to the adjudication agree otherwise. 2017, c. 24, s. 11 (1).

#### **Multiple matters**

(4) An adjudication may only address a single matter, unless the parties to the adjudication and the adjudicator agree otherwise. 2017, c. 24, s. 11 (1).

#### **Application despite other proceeding**

(5) A party may refer a matter to adjudication under this Part even if the matter is the subject of a court action or of an arbitration under the *Arbitration Act, 1991*, unless the action or arbitration has been finally determined. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

#### **Adjudication procedures**

**13.6** (1) An adjudication shall be conducted in accordance with the adjudication procedures set out in this Part, the regulations, and, subject to subsection (2), any additional adjudication procedures that may be set out in the contract or subcontract. 2018, c. 17, Sched. 8, s. 4.

#### **Same**

(2) Adjudication procedures set out in a contract or subcontract apply only to the extent that they do not conflict with this Part and the regulations, and their application is subject to the exercise of the adjudicator's powers under section 13.12. 2018, c. 17, Sched. 8, s. 4.

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

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 4 - 01/10/2019

### Notice of adjudication

**13.7** (1) A party to a contract or subcontract who wishes to refer a dispute to adjudication shall give to the other party a written notice of adjudication that includes,

- (a) the names and addresses of the parties;
- (b) the nature and a brief description of the dispute, including details respecting how and when it arose;
- (c) the nature of the redress sought; and
- (d) the name of a proposed adjudicator to conduct the adjudication. 2017, c. 24, s. 11 (1).

### Copies

(2) If the regulations so provide, a party who gives notice under subsection (1) shall give a copy of the notice, in the prescribed manner, to the prescribed persons or entities. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

### Consolidated adjudications

**13.8** (1) If the same matter or related matters in respect of an improvement are the subject of disputes to be adjudicated in separate adjudications under subsections 13.5 (1) and (2), the parties to each of the adjudications may agree to the adjudication of the disputes together by a single adjudicator as a consolidated adjudication. 2017, c. 24, s. 11 (1).

### May be required by contractor

(2) If the same matter or related matters in respect of an improvement are the subject of disputes to be adjudicated in separate adjudications under subsections 13.5 (1) and (2) but the parties to each of the adjudications do not agree to consolidated adjudication, the contractor may, in accordance with the regulations, nevertheless require the consolidation of the adjudications. 2017, c. 24, s. 11 (1).

### Application

(3) This Part applies with the following and any other necessary modifications to a consolidated adjudication:

- 1. Subsection 13.10 (3) does not apply, and the adjudicator may determine how the adjudication fee is to be apportioned between the parties.
- 2. The reference in subsection 13.12 (3) to either or both parties to an adjudication shall be read as a reference to any or all of the parties to the consolidated adjudication.
- 2.1 The reference in clause 13.11 (b) to the other party shall be read as a reference to every other party.
- 3. The references in section 13.17 to the other party to the adjudication shall be read as a reference to any party to the consolidated adjudication. 2017, c. 24, s. 11 (1); 2018, c. 17, Sched. 8, s. 5.

### Multiple matters permitted

(4) This section applies despite subsection 13.5 (4). 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 5 - 01/10/2019

### Adjudicator

**13.9** (1) An adjudication may only be conducted by an adjudicator listed in the registry established under clause 13.3 (1) (c). 2017, c. 24, s. 11 (1).

### Selection of adjudicator

(2) The parties to the adjudication may agree to an adjudicator, or may request that the Authority appoint an adjudicator. 2017, c. 24, s. 11 (1).

### Contract, subcontract may not name adjudicator

(3) A provision in a contract or subcontract that purports to name a person to act as an adjudicator in the event of an adjudication is of no force or effect. 2017, c. 24, s. 11 (1).

**Requirement to request appointment**

(4) If an adjudicator does not consent to conduct the adjudication within four days after the notice of adjudication is given, the party who gave the notice shall request that the Authority appoint an adjudicator. 2017, c. 24, s. 11 (1).

**Appointment**

(5) The Authority shall appoint an adjudicator, subject to his or her prior consent, to conduct an adjudication no later than seven days after receiving a request for the appointment. 2017, c. 24, s. 11 (1).

**No requirement to act**

(6) Nothing in this Part or the regulations shall be read as requiring an adjudicator to agree to conduct an adjudication or to accept an appointment by the Authority to conduct an adjudication. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Adjudicator fee**

**13.10** (1) An adjudicator shall be paid a fee for conducting the adjudication, which shall be determined in accordance with subsection (2) before the adjudication commences. 2017, c. 24, s. 11 (1).

**Fee amount**

(2) The fee payable to an adjudicator is,

- (a) the fee agreed to by the parties to the adjudication and the adjudicator; or
- (b) if the parties and the adjudicator do not agree to a fee amount, the amount determined by the Authority, in accordance with the regulations, if any, on the adjudicator's request. 2017, c. 24, s. 11 (1).

**Equal apportionment**

(3) The parties to the adjudication shall split payment of the adjudication fee equally, subject to a different determination under section 13.17. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Documents to adjudicator, party**

**13.11** No later than five days after an adjudicator agrees or is appointed to conduct the adjudication, the party who gave the notice of adjudication shall,

- (a) provide to the adjudicator a copy of the notice; and
- (b) provide to the adjudicator and to the other party a copy of the contract or subcontract and any documents the party intends to rely on during the adjudication. 2018, c. 17, Sched. 8, s. 6.

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

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 6 - 01/10/2019

**Response to notice**

**13.11.1** A party who receives a notice of adjudication may, in accordance with the regulations, respond in writing. 2018, c. 17, Sched. 8, s. 6.

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

2018, c. 17, Sched. 8, s. 6 - 01/10/2019

**Conduct of adjudication****Powers of adjudicator**

**13.12** (1) In conducting an adjudication, an adjudicator may exercise the following powers and any other power of an adjudicator that may be specified in the contract or subcontract:

1. Issuing directions respecting the conduct of the adjudication.

2. Taking the initiative in ascertaining the relevant facts and law.
3. Drawing inferences based on the conduct of the parties to adjudication.
4. Subject to subsection (2), conducting an on-site inspection of the improvement that is the subject of the contract or subcontract.
5. Obtaining the assistance of a merchant, accountant, actuary, building contractor, architect, engineer or other person in such a way as the adjudicator considers fit, as is reasonably necessary to enable him or her to determine better any matter of fact in question.
6. Making a determination in the adjudication.
7. Any other power that may be prescribed. 2017, c. 24, s. 11 (1).

### **On-site inspection**

(2) The exercise of the power to conduct an on-site inspection under paragraph 4 of subsection (1) is subject to the prior consent of,

- (a) the owner of the premises if,
  - (i) the premises is a home in which the owner resides, or
  - (ii) the owner is not a party to the adjudication; and
- (b) any other person who has the legal authority to exclude others from the premises. 2017, c. 24, s. 11 (1).

### **Costs of assistance**

(3) If the adjudicator obtains the assistance of a person under paragraph 5 of subsection (1), the adjudicator may fix the remuneration of the person as is reasonable and proportionate to the dispute and direct payment of the remuneration by either or both of the parties to the adjudication. 2017, c. 24, s. 11 (1).

### **Conduct**

(4) Subject to this section, the adjudicator may conduct the adjudication in the manner he or she determines appropriate in the circumstances. 2017, c. 24, s. 11 (1).

### **Impartiality**

(5) An adjudicator shall conduct an adjudication in an impartial manner. 2017, c. 24, s. 11 (1).

### ***Statutory Powers Procedure Act***

(6) The *Statutory Powers Procedure Act* does not apply to adjudications. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

### **Determination**

**13.13** (1) Subject to subsection (2), an adjudicator shall make a determination of the matter that is the subject of an adjudication no later than 30 days after receiving the documents required by section 13.11. 2017, c. 24, s. 11 (1).

### **Extension**

(2) The deadline for an adjudicator's determination may be extended, at any time before its expiry and after the provision of documents to the adjudicator under section 13.11,

- (a) on the adjudicator's request, with the written consent of the parties to the adjudication, for a period of no more than 14 days; or
- (b) on the written agreement of the parties to the adjudication, subject to the adjudicator's consent, for the period specified in the agreement. 2017, c. 24, s. 11 (1).

### **Notice of extension**

(3) If the party who gave the notice of adjudication also gave a notice of non-payment under Part I.1 in relation to the matter that is the subject of the adjudication, the party shall give notice of an extension under clause (2) (b), specifying the period of the extension, to the person to whom he or she gave the notice of non-payment. 2017, c. 24, s. 11 (1).

**Same**

(4) A person who receives notice of an extension under subsection (3) or under this subsection shall give notice of the extension, specifying the period of the extension, to any person to whom he or she gave notice of non-payment under Part I.1 in relation to the matter that is the subject of the adjudication. 2017, c. 24, s. 11 (1).

**Delayed determination**

(5) A determination made by an adjudicator after the date determined under subsection (1) or (2) is of no force or effect. 2017, c. 24, s. 11 (1).

**Written reasons**

(6) The adjudicator's determination shall be in writing and shall include reasons for the determination. 2017, c. 24, s. 11 (1).

**Admissibility**

(7) The determination and reasons of an adjudicator are admissible as evidence in court. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Termination of adjudication**

**13.14** At any time after the notice of adjudication is given and before the adjudicator makes his or her determination, the parties to the adjudication may agree to terminate the adjudication, on notice to the adjudicator and subject to the payment of the adjudicator's fee. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Effect of determination**

**13.15** (1) The determination of a matter by an adjudicator is binding on the parties to the adjudication until a determination of the matter by a court, a determination of the matter by way of an arbitration conducted under the *Arbitration Act, 1991*, or a written agreement between the parties respecting the matter. 2017, c. 24, s. 11 (1).

**Authority of court, arbitrator**

(2) Subject to section 13.18, nothing in this Part restricts the authority of a court or of an arbitrator acting under the *Arbitration Act, 1991* to consider the merits of a matter determined by an adjudicator. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Costs**

**13.16** Subject to section 13.17, the parties to an adjudication shall bear their own costs of the adjudication. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Frivolous, vexatious, etc.**

**13.17** If an adjudicator determines that a party to the adjudication has acted in respect of the improvement in a manner that is frivolous, vexatious, an abuse of process or other than in good faith, the adjudicator may provide, as part of his or her determination of the matter, that the party be required to pay some or all of the other party's costs, any part of the fee amount determined under section 13.10 that would otherwise be payable by the other party, or both. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Setting aside on judicial review****Leave required**

**13.18** (1) An application for judicial review of a determination of an adjudicator may only be made with leave of the Divisional Court in accordance with this section and the rules of court. 2017, c. 24, s. 11 (1).

**Timing**

(2) A motion for leave to bring an application for judicial review of a determination of an adjudicator shall be filed, with proof of service, in accordance with the rules of court no later than 30 days after the determination is communicated to the parties. 2017, c. 24, s. 11 (1).

**Dismissal without reasons**

(3) A motion for leave to bring an application for judicial review may be dismissed without reasons. 2017, c. 24, s. 11 (1).

**No appeal**

(4) No appeal lies from an order on a motion for leave to bring an application for judicial review. 2017, c. 24, s. 11 (1).

**Setting aside only for specified reasons**

(5) The determination of an adjudicator may only be set aside on an application for judicial review if the applicant establishes one or more of the following grounds:

1. The applicant participated in the adjudication while under a legal incapacity.
2. The contract or subcontract is invalid or has ceased to exist.
3. The determination was of a matter that may not be the subject of adjudication under this Part, or of a matter entirely unrelated to the subject of the adjudication.
4. The adjudication was conducted by someone other than an adjudicator.
5. The procedures followed in the adjudication did not accord with the procedures to which the adjudication was subject under this Part, and the failure to accord prejudiced the applicant's right to a fair adjudication.
6. There is a reasonable apprehension of bias on the part of the adjudicator.
7. The determination was made as a result of fraud. 2017, c. 24, s. 11 (1); 2018, c. 17, Sched. 8, s. 7.

**Amounts paid**

(6) If the Divisional Court sets aside the decision of an adjudicator, the Court may require that any or all amounts paid in compliance with the determination be returned. 2017, c. 24, s. 11 (1).

**No stay**

(7) An application for judicial review of a decision of an adjudicator does not operate as a stay of the operation of the determination unless the Divisional Court orders otherwise. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

2018, c. 17, Sched. 8, s. 7 - 01/10/2019

**Amounts payable****Subject to holdback**

**13.19** (1) A requirement to pay an amount in accordance with this section is subject to any requirement to retain a holdback in accordance with Part IV. 2017, c. 24, s. 11 (1).

**Enforcement of amounts payable**

(2) A party who is required under the determination of an adjudicator to pay an amount to another person shall pay the amount no later than 10 days after the determination has been communicated to the parties to the adjudication. 2017, c. 24, s. 11 (1).

**Interest on late payments**

(3) Interest begins to accrue on an amount that is not paid when it is due to be paid under this Part, at the prejudgment interest rate determined under subsection 127 (2) of the *Courts of Justice Act* or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the prejudgment interest rate and the interest rate specified in the contract or subcontract. 2017, c. 24, s. 11 (1).

**No interest on interest**

(4) Subsection (3) does not apply in respect of any amount payable under section 6.9. 2017, c. 24, s. 11 (1).

**Suspension of work**

(5) If an amount payable to a contractor or subcontractor under a determination is not paid by the party when it is due under this section, the contractor or subcontractor may suspend further work under the contract or subcontract until the party pays the following amounts:

1. The amount required to be paid under the determination.
2. Any interest accrued on that amount under subsection (3).
3. Any reasonable costs incurred by the contractor or subcontractor as a result of the suspension of work. 2017, c. 24, s. 11 (1).

**Same, costs of resumption**

(6) A contractor or subcontractor who suspends work under subsection (5) is entitled to payment, by the party, of any reasonable costs incurred by him or her as a result of the resumption of work following the payment of the amounts referred to in that subsection. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Enforcement by court**

**13.20** (1) A party to an adjudication may, no later than the date referred to in subsection (2), file a certified copy of the determination of an adjudicator with the court and, on filing, the determination is enforceable as if it were an order of the court. 2017, c. 24, s. 11 (1).

**Deadline**

- (2) The filing of a determination under subsection (1) may not be made after the later of,
- (a) the second anniversary of the communication of the determination to the parties; and
  - (b) if a party makes a motion under section 13.18 for leave to bring an application for judicial review of a determination of an adjudicator, the second anniversary of the dismissal of the motion or, if the motion was not dismissed, the final determination of the application, if it did not result in the adjudicator's determination being set aside. 2017, c. 24, s. 11 (1).

**Notice of filing**

(3) A party shall, no later than 10 days after filing a determination under subsection (1), notify the other party of the filing. 2017, c. 24, s. 11 (1).

**Effect on requirement to make payments**

(4) If a determination requiring that an amount be paid to a contractor or subcontractor is filed under subsection (1), any related requirement of the contractor or subcontractor, as the case may be, to make payment to a subcontractor is deferred pending the outcome of the enforcement. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Immunity**

**13.21** No action or other proceeding shall be commenced against an adjudicator or his or her employees for any act done in good faith in the execution or intended execution of any duty or power under this Part or the regulations, or for any alleged neglect or default in the execution in good faith of that duty or power. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019

**Testimonial immunity**

**13.22** An adjudicator shall not be compelled to give evidence in any action or other proceeding in respect of a matter that was the subject of an adjudication that he or she conducted. 2017, c. 24, s. 11 (1).

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

2017, c. 24, s. 11 (1) - 01/10/2019



### Application of Part to surety bonds (Part XI.1)

**13.23** If the regulations so provide, this Part applies, with such modifications as the regulations specify, to disputes in respect of such surety bonds to which Part XI.1 applies as are specified by the regulations. 2017, c. 24, s. 11 (2).

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

2017, c. 24, s. 11 (2) - 01/10/2019

## PART III THE LIEN

### Creation of lien

**14** (1) A person who supplies services or materials to an improvement for an owner, contractor or subcontractor, has a lien upon the interest of the owner in the premises improved for the price of those services or materials. R.S.O. 1990, c. C.30, s. 14 (1); 2017, c. 24, s. 12 (1), 66.

### No lien for interest

(2) No person is entitled to a lien for any interest on the amount owed to the person in respect of the services or materials that have been supplied by the person, but nothing in this subsection affects any right that the person may otherwise have to recover that interest. R.S.O. 1990, c. C.30, s. 14 (2).

### Architects

(3) For greater certainty, subsection (1) applies to services or materials supplied by an architect as defined in the *Architects Act* and any employees of the architect. 2017, c. 24, s. 12 (2)

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

2017, c. 24, s. 12 (1, 2), 66 - 12/12/2017

### When lien arises

**15** A person's lien arises and takes effect when the person first supplies services or materials to the improvement. R.S.O. 1990, c. C.30, s. 15.

### Crown, municipal interest in premises

**16** (1) A lien does not attach to the interest in a premises of,

- (a) the Crown; or
- (b) a municipality. 2017, c. 24, s. 13 (4).

### Interest of other person

(2) Where an improvement is made to a premises in which the Crown or a municipality has an interest but the Crown or municipality is not an owner of the premises, the lien may attach to the interest of any other person in the premises. 2017, c. 24, s. 13 (4).

### Where lien does not attach to premises

(3) A lien does not attach to a premises, but constitutes a charge under section 21, if,

- (a) the owner of the premises is the Crown or a municipality; or
- (b) the premises is a railway right-of-way. 2017, c. 24, s. 13 (4).

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

2017, c. 24, s. 13 (1-3) - 12/12/2017; 2017, c. 24, s. 13 (4) - 01/10/2019

### Limitation on value of lien

**17** (1) The lien of a person is limited to the amount owing to the person in relation to the improvement and, subject to Part IV (holdbacks), it is further limited to the least amount owed in relation to the improvement by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the supply of services or materials giving rise to the lien. R.S.O. 1990, c. C.30, s. 17 (1); 2017, c. 24, s. 67.

### Same

(2) Subject to Part IV, the total value of the liens of all members of a class, as defined in section 79, is limited to the least amount owed in relation to the improvement by a payer to the contractor or to any subcontractor whose contract or

subcontract was in whole or in part performed by the supply of services or materials made by the members of the class. R.S.O. 1990, c. C.30, s. 17 (2).

#### **Set-off**

(3) Subject to Part IV, in determining the amount of a lien under subsection (1) or (2), there may be taken into account the amount that is, as between a payer and the person the payer is liable to pay, equal to the balance in the payer's favour of all outstanding debts, claims or damages related to the improvement or, if the contractor or subcontractor, as the case may be, becomes insolvent, all outstanding debts, claims or damages whether or not related to the improvement. R.S.O. 1990, c. C.30, s. 17 (3); 2017, c. 24, s. 14 (1, 2).

#### **Liability of municipality**

(4) Despite subsection (1), where land is dedicated to a municipality as a public street or highway and an improvement is made to the land at the written request of, or under an agreement with, the municipality, but not at its expense, the municipality shall nevertheless, on default of payment by the proper payer, be liable to the value of the holdbacks under Part IV that would have been required were the improvement made at the expense of the municipality, and the procedure for making a claim under this subsection shall be the same as for enforcing a claim for lien against a municipality. R.S.O. 1990, c. C.30, s. 17 (4); 2017, c. 24, s. 14 (3); 2017, c. 24, s. 14 (4).

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

2017, c. 24, s. 14 (1, 3), 67 - 12/12/2017; 2017, c. 24, s. 14 (2) - 01/07/2018; 2017, c. 24, s. 14 (4) - 01/10/2019

#### **Joint or common interests**

**18** Where the interest of the owner in the premises is held jointly or in common with another person who knew or ought reasonably to have known of the making of the improvement, the joint or common interest in the premises of that person is also subject to the lien unless the contractor receives actual notice, before the supply of services or materials to the improvement is commenced, that the person having the joint or common interest assumes no responsibility for the improvement to be made. R.S.O. 1990, c. C.30, s. 18; 2017, c. 24, s. 15.

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

2017, c. 24, s. 15 - 12/12/2017

#### **Leasehold interest**

**19** (1) If the interest of the owner to which a lien attaches is leasehold, and if payment for all or part of the improvement is accounted for under the terms of the lease or any renewal of it, or under any agreement to which the landlord is a party that is connected to the lease, the landlord's interest is also subject to the lien, to the extent of 10 percent of the amount of such payment. 2017, c. 24, s. 16 (1).

#### **Forfeiture or termination of lease, effect of**

(2) No forfeiture of a lease to, or termination of a lease by, a landlord, except for non-payment of rent, deprives any person having a lien against the leasehold of the benefit of the person's lien. R.S.O. 1990, c. C.30, s. 19 (2).

#### **Notice to lien claimants**

(3) Where a landlord intends to enforce forfeiture or terminate a lease of the premises because of non-payment of rent, and there is a claim for lien registered against the premises in the proper land registry office, the landlord shall give notice in writing of the intention to enforce forfeiture or terminate the lease and of the amount of the unpaid rent to each person who has registered a claim for lien against the premises. R.S.O. 1990, c. C.30, s. 19 (3); 2017, c. 24, s. 16 (2), 71.

#### **Payment of unpaid rent**

(4) A person receiving notice under subsection (3) may, within ten days thereafter, pay to the landlord the amount of the unpaid rent, and the amount so paid may be added by that person to the person's claim for lien. R.S.O. 1990, c. C.30, s. 19 (4); 2017, c. 24, s. 63.

#### **Landlord as owner**

(5) Nothing in this section prevents a determination in respect of a premises that the landlord is instead its owner, if he or she meets the criteria set out in the definition of "owner" in subsection 1 (1). 2017, c. 24, s. 16 (3).

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

2017, c. 24, s. 16 (1, 3) - 01/07/2018; 2017, c. 24, s. 16 (2), 63, 71 - 12/12/2017

### **General lien, more than one premises**

**20** (1) Where an owner enters into a single contract for improvements on more than one premises of the owner, any person supplying services or materials under that contract, or under a subcontract under that contract, may choose to have the person's lien follow the form of the contract and be a general lien against each of those premises for the price of all services and materials the person supplied to all the premises. R.S.O. 1990, c. C.30, s. 20 (1); 2017, c. 24, s. 72.

#### **Where subs. (1) does not apply**

(2) Subsection (1) does not apply and no general lien arises under or in respect of a contract that provides in writing that liens shall arise and expire on a lot-by-lot basis. R.S.O. 1990, c. C.30, s. 20 (2).

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

2017, c. 24, s. 72 - 12/12/2017

### **Lien a charge**

**21** The lien of a person is a charge upon the holdbacks required to be retained by Part IV, and subject to subsection 17 (3), any additional amount owed in relation to the improvement by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the supply of services or materials giving rise to the lien. R.S.O. 1990, c. C.30, s. 21; 2017, c. 24, s. 67.

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

2017, c. 24, s. 67 - 12/12/2017

## **PART IV HOLDBACKS**

### **Holdbacks**

#### **Basic holdback**

**22** (1) Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials as they are actually supplied under the contract or subcontract until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 22 (1); 2017, c. 24, s. 17 (1), 66.

#### **Separate holdback for finishing work**

(2) Where the contract has been certified or declared to be substantially performed but services or materials remain to be supplied to complete the contract, the payer upon the contract, or a subcontract, under which a lien may arise shall retain, from the date certified or declared to be the date of substantial performance of the contract, a separate holdback equal to 10 per cent of the price of the remaining services or materials as they are actually supplied under the contract or subcontract, until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 22 (2); 2017, c. 24, s. 17 (2), 66.

#### **When obligation to retain applies**

(3) The obligation to retain the holdbacks under subsections (1) and (2) applies irrespective of whether the contract or subcontract provides for partial payments or payment on completion. R.S.O. 1990, c. C.30, s. 22 (3).

#### **Permissible forms of holdback**

(4) Some or all of any holdbacks may, instead of being retained in the form of funds, be retained in one or more of the following forms:

1. A letter of credit in the prescribed form.
2. A demand-worded holdback repayment bond in the prescribed form.
3. Any other form that may be prescribed. 2017, c. 24, s. 17 (3).

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

2017, c. 24, s. 17 (1, 2), 66 - 12/12/2017; 2017, c. 24, s. 17 (3) - 01/07/2018

### **Personal liability**

**23** (1) Subject to subsections (2), (3) and (4), an owner is personally liable for holdbacks that the owner is required to retain under this Part to those lien claimants who have valid liens against the owner's interest in the premises. R.S.O. 1990, c. C.30, s. 23 (1); 2017, c. 24, s. 70.

**Limitation**

(2) Where the defaulting payer is the contractor, the owner's personal liability to a lien claimant or to a class of lien claimants as defined by section 79 does not exceed the holdbacks the owner is required to retain. R.S.O. 1990, c. C.30, s. 23 (2).

**Same**

(3) Where the defaulting payer is a subcontractor, the owner's personal liability to a lien claimant or to a class of lien claimants as defined by section 79 does not exceed the lesser of,

- (a) the holdbacks the owner is required to retain; and
- (b) the holdbacks required to be retained by the contractor or a subcontractor from the lien claimant's defaulting payer. R.S.O. 1990, c. C.30, s. 23 (3).

**How determined**

(4) The personal liability of an owner under this section may only be determined by an action under this Act. R.S.O. 1990, c. C.30, s. 23 (4).

(5) REPEALED: 2017, c. 24, s. 18.

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

2017, c. 24, s. 18, 70 - 12/12/2017

**Payments that may be made**

**24** (1) A payer may, without jeopardy, make payments on a contract or subcontract up to 90 per cent of the price of the services or materials that have been supplied under that contract or subcontract unless, prior to making payment, the payer has received written notice of a lien. R.S.O. 1990, c. C.30, s. 24 (1); 2017, c. 24, s. 19 (1), 66.

**Same**

(2) Where a payer has received written notice of a lien and has retained, in addition to the holdbacks required by this Part, an amount sufficient to satisfy the lien, the payer may, without jeopardy, make payment on a contract or subcontract up to 90 per cent of the price of the services or materials that have been supplied under that contract or subcontract, less the amount retained. R.S.O. 1990, c. C.30, s. 24 (2); 2017, c. 24, s. 19 (2, 3).

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

2017, c. 24, s. 19 (1-3), 66 - 12/12/2017

**Payment where subcontract certified complete**

**25** Where a subcontract has been certified complete under section 33, each payer upon the contract and any subcontract may, without jeopardy, make payment reducing the holdbacks required by this Part to the extent of the amount of holdback the payer has retained in respect of the completed subcontract, where all liens in respect of the completed subcontract have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 25; 2017, c. 24, s. 20 (1, 2).

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

2017, c. 24, s. 20 (1, 2) - 12/12/2017

**Payment of basic holdback**

**26** Subject to section 27.1, each payer upon the contract or a subcontract shall make payment of the holdback the payer is required to retain by subsection 22 (1) (basic holdback), so as to discharge all claims in respect of that holdback, where all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 26; 2017, c. 24, s. 21.

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

2017, c. 24, s. 21 (1, 4) - 12/12/2017; 2017, c. 24, s. 21 (2, 3) - 01/07/2018

**Payment of holdback on annual basis**

**26.1** (1) If the conditions in subsection (2) are met, a payer may make payment of the accrued holdback he or she is required to retain under subsection 22 (1) on an annual basis, in relation to the services or materials supplied during the applicable annual period. 2017, c. 24, s. 22.

**Conditions**

(2) Subsection (1) applies if,

- (a) the contract provides for a completion schedule that is longer than one year;
- (b) the contract provides for the payment of accrued holdback on an annual basis;
- (c) the contract price at the time the contract is entered into exceeds the prescribed amount; and
- (d) as of the applicable payment date,
  - (i) there are no preserved or perfected liens in respect of the contract, or
  - (ii) all liens in respect of the contract have been satisfied, discharged or otherwise provided for under this Act. 2017, c. 24, s. 22.

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

2017, c. 24, s. 22 - 01/07/2018

**Payment of holdback on phased basis**

**26.2** (1) If the conditions in subsection (2) are met, a payer may make payment of the accrued holdback he or she is required to retain under subsection 22 (1) on the completion of phases of an improvement, in relation to the services or materials supplied during each phase. 2017, c. 24, s. 22.

**Conditions**

(2) Subsection (1) applies if,

- (a) the contract provides for the payment of accrued holdback on a phased basis and identifies each phase;
- (b) the contract price at the time the contract is entered into exceeds the prescribed amount; and
- (c) as of the applicable payment date,
  - (i) there are no preserved or perfected liens in respect of the contract, or
  - (ii) all liens in respect of the contract have been satisfied, discharged or otherwise provided for under this Act. 2017, c. 24, s. 22.

**Payment on completion of design phase**

(3) If a contract provides for payment of accrued holdback on a phased basis but only with respect to a specified design phase, clause (2) (b) does not apply. 2017, c. 24, s. 22.

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

2017, c. 24, s. 22 - 01/07/2018

**Payment of holdback for finishing work**

**27** Subject to section 27.1, each payer upon the contract or a subcontract shall make payment of the holdback the payer is required to retain by subsection 22 (2) (holdback for finishing work), so as to discharge all claims in respect of that holdback, where all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 27; 2017, c. 24, s. 23.

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

2017, c. 24, s. 23 (1, 4) - 12/12/2017; 2017, c. 24, s. 23 (2, 3) - 01/07/2018

**Non-payment of holdback****By owner**

**27.1** (1) An owner may refuse to pay some or all of the amount the owner is required to pay to a contractor under section 26 or 27, as the case may be, if,

- (a) the owner publishes a notice in the prescribed form specifying the amount of the holdback that the owner refuses to pay, and the notice is published in the manner set out in the regulations no later than 40 days after the date on which,
  - (i) the applicable certification or declaration of substantial performance is published under section 32, or

(ii) if no certification or declaration of substantial performance is published, the date on which the contract is completed, abandoned or terminated; and

(b) the owner notifies, in accordance with the regulations, if any, the contractor of the publication of the notice. 2018, c. 17, Sched. 8, s. 8 (1).

#### **By contractor**

(2) A contractor may refuse to pay some or all of the amount the contractor is required to pay to a subcontractor under section 26 or 27, as the case may be, if,

(a) the owner refuses to pay some or all of the amount the owner is required to pay to the contractor under that section;

(b) the contractor refers the matter to adjudication under Part II.1; and

(c) the contractor notifies, in accordance with the regulations, if any, every subcontractor to whom the contractor is required to pay the amount that the amount is not being paid and that the matter is being referred to adjudication. 2018, c. 17, Sched. 8, s. 8 (1, 2).

#### **By subcontractor**

(3) A subcontractor may refuse to pay some or all of the amount the subcontractor is required to pay to another subcontractor under section 26 or 27, as the case may be, if,

(a) the contractor refuses to pay some or all of the amount the contractor is required to pay to the subcontractor under that section;

(b) the subcontractor refers the matter to adjudication under Part II.1; and

(c) the subcontractor notifies, in accordance with the regulations, if any, every subcontractor to whom the subcontractor is required to pay the amount that the amount is not being paid and that the matter is being referred to adjudication. 2018, c. 17, Sched. 8, s. 8 (1, 3).

#### **Same**

(4) Subsection (3) applies, with necessary modifications, with respect to a subcontractor who receives notice under that subsection. 2018, c. 17, Sched. 8, s. 8 (1).

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

2017, c. 24, s. 24 (1) - 01/07/2018; 2017, c. 24, s. 24 (2) - no effect - 2018, c. 17, Sched. 8, s. 8 (1) - 06/12/2018

2018, c. 17, Sched. 8, s. 8 (1) - 06/12/2018; 2018, c. 17, Sched. 8, s. 8 (2, 3) - 01/10/2019

#### **Direct payment to person having lien**

**28** Where an owner, contractor or subcontractor makes a payment without obligation to do so to any person having a lien for or on account of any amount owing to that person for services or materials supplied to the improvement and gives written notice of the payment or the intention to pay to the proper payer of that person, the payment shall be deemed to be a payment by the owner, contractor or subcontractor to the proper payer of that person, but no such payment reduces the amount of the holdback required to be retained under this Part or reduces the amount that must be retained in response to a written notice of lien given by a person other than the person to whom payment is made. R.S.O. 1990, c. C.30, s. 28.

#### **Discharge of lien**

**29** Payments made in accordance with this Part operate as a discharge of the lien to the extent of the amount paid. R.S.O. 1990, c. C.30, s. 29.

#### **How holdback not to be applied**

**30** Where the contractor or a subcontractor defaults in the performance of a contract or subcontract, a holdback shall not be applied by any payer toward obtaining services or materials in substitution for those that were to have been supplied by the person in default, nor in payment or satisfaction of any claim against the person in default, until all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 30; 2017, c. 24, s. 25.

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

2017, c. 24, s. 25 - 12/12/2017

**PART V**  
**EXPIRY, PRESERVATION AND PERFECTION OF LIENS**

**Expiry of liens**

**31** (1) Unless preserved under section 34, the liens arising from the supply of services or materials to an improvement expire as provided in this section. R.S.O. 1990, c. C.30, s. 31 (1); 2017, c. 24, s. 67.

**Contractor's liens**

(2) Subject to subsection (4), the lien of a contractor,

- (a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,
  - (i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published as provided in section 32, and
  - (ii) the date the contract is completed, abandoned or terminated; and
- (b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of substantial performance, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,
  - (i) the date the contract is completed, and
  - (ii) the date the contract is abandoned or terminated. R.S.O. 1990, c. C.30, s. 31 (2); 2017, c. 24, s. 26 (1-5), 66.

**Workers' trust fund lien**

(2.1) Subject to subsection (4), the lien of the trustee of a workers' trust fund on behalf of a worker or workers,

- (a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earliest of,
  - (i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published, as provided in section 32,
  - (ii) the date on which the final worker who is a beneficiary of the workers' trust fund last supplies services or materials to the improvement,
  - (iii) the date the contract is completed, abandoned or terminated, and
  - (iv) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract; and
- (b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,
  - (i) the date on which the final worker who is a beneficiary of the workers' trust fund last supplied services or materials to the improvement,
  - (ii) the date the contract is completed, abandoned or terminated, and
  - (iii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract. 2017, c. 24, s. 26 (6).

**Liens of other persons**

(3) Subject to subsection (4), the lien of any other person,

- (a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earliest of,
  - (i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published, as provided in section 32,

- (ii) the date on which the person last supplies services or materials to the improvement,
  - (ii.1) the date the contract is completed, abandoned or terminated, and
  - (iii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract; and
- (b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,
- (i) the date on which the person last supplied services or materials to the improvement,
  - (i.1) the date the contract is completed, abandoned or terminated, and
  - (ii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract. R.S.O. 1990, c. C.30, s. 31 (3); 2017, c. 24, s. 26 (7-10).

### **Separate liens when ongoing supply**

(4) Where a person has supplied services or materials to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract and has also supplied, or is to supply, services or materials after that date, the person's lien in respect of the services or materials supplied on or before the date of substantial performance expires without affecting any lien that the person may have for the supply of services or materials after that date. R.S.O. 1990, c. C.30, s. 31 (4); 2017, c. 24, s. 67.

### **Declaration of last supply**

(5) Where a person who has supplied services or materials under a contract or subcontract makes a declaration in the prescribed form declaring,

- (a) the date on which the person last supplied services or materials under that contract or subcontract; and
- (b) that the person will not supply any further services or materials under that contract or subcontract,

then the facts so stated shall be deemed to be true against the person making the declaration. R.S.O. 1990, c. C.30, s. 31 (5); 2017, c. 24, s. 65, 66.

### **Notice of termination**

(6) If a contract is terminated, either the owner or the contractor or other person whose lien is subject to expiry shall publish, in the manner set out in the regulations, a notice of the termination in the prescribed form and, for the purposes of this section, the date on which the contract is terminated is the termination date specified in the notice for the contract. 2017, c. 24, s. 26 (11).

### **Validity of termination**

(7) Subsection (6) does not prevent a person from contesting the validity of a termination. 2017, c. 24, s. 26 (11).

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

2017, c. 24, s. 26 (1-3, 5-11) - 01/07/2018; 2017, c. 24, s. 26 (4), 65-67 - 12/12/2017

### **Rules governing certification or declaration of substantial performance**

**32** (1) The following rules govern the certification and declaration of the substantial performance of a contract:

1. On the application of the contractor, the payment certifier shall determine whether the contract has been substantially performed in accordance with section 2, and, if the payment certifier so determines, shall certify the substantial performance of the contract by signing a certificate in the prescribed form. If there is no payment certifier, the owner and contractor shall make the determination jointly and shall both sign the certificate.
2. The payment certifier or the owner and the contractor jointly, as the case may be, shall set out in the certificate the date on which the contract was substantially performed.
3. The date set out in the certificate as the date on which the contract was substantially performed is deemed for the purpose of this Act to be the date on which that event occurred.
4. Where the payment certifier certifies the substantial performance of a contract the payment certifier shall within seven days of the day the certificate is signed give a copy of the certificate to the owner and to the contractor.



5. The contractor shall publish a copy of the certificate in the manner set out in the regulations.
6. Where the contractor does not publish a copy of the certificate within seven days of receiving a copy of the certificate signed by the payment certifier or, where there is no payment certifier, signed by the owner, any person may publish a copy of the certificate.
7. Where there is a failure or refusal to certify substantial performance of the contract within a reasonable time, any person may apply to the court, and the court, upon being satisfied that the contract is substantially performed, and upon such terms as to costs or otherwise as it considers fit, may declare that the contract has been substantially performed, and the declaration has the same force and effect as a certificate of substantial performance of the contract.
8. Unless the court otherwise orders, the day the declaration is made shall be deemed to be the date the contract was substantially performed.
9. The person who applied to the court shall publish a copy of the declaration of substantial performance in the manner set out in the regulations.
10. For the purposes of this Part, a certificate or declaration of the substantial performance of a contract has no effect until a copy of the certificate or declaration is published. R.S.O. 1990, c. C.30, s. 32 (1); 2017, c. 24, s. 27 (1), 65.

#### **Contents of certificate**

- (2) Every certificate or declaration made or given under this section shall include,
  - (a) the name and address for service of the owner and of the contractor;
  - (b) the name and address of the payment certifier, where there is one;
  - (c) a short description of the improvement;
  - (d) the date on which the contract was substantially performed;
  - (e) if the lien attaches to the premises, a legal description of the premises, including all property identifier numbers and addresses for the premises; and
  - (f) if the lien does not attach to the premises, a concise description of the premises, including addresses, and the name and address of the person or body to whom a copy of the claim for lien must be given under section 34. R.S.O. 1990, c. C.30, s. 32 (2); 2010, c. 16, Sched. 2, s. 2 (3); 2017, c. 24, s. 27 (2), 70, 71; 2018, c. 17, Sched. 8, s. 9.

#### **Liability for refusal to certify**

- (3) Any person who is required by this section to make a determination of the substantial performance of a contract, and who after receiving an application fails or refuses within a reasonable time to certify the substantial performance of the contract, even though there is no reasonable doubt that the contract has, in fact, been substantially performed, is liable to anyone who suffers damages as a result. R.S.O. 1990, c. C.30, s. 32 (3).

#### **Liability for failure to furnish copy of certificate**

- (4) A payment certifier who fails to comply with paragraph 4 of subsection (1) is liable to anyone who suffers damages as a result. R.S.O. 1990, c. C.30, s. 32 (4).
- (5) REPEALED: 2017, c. 24, s. 27 (3).

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

2010, c. 16, Sched. 2, s. 2 (3) - 25/10/2010

2017, c. 24, s. 27 (1-3) - 01/07/2018; 2017, c. 24, s. 65, 70, 71 - 12/12/2017

2018, c. 17, Sched. 8, s. 9 - 06/12/2018

#### **Certificate re subcontract**

- 33** (1) Upon the request of the contractor, the payment certifier on the contract may determine whether a subcontract has been completed, and, if the payment certifier so determines, shall certify the completion of the subcontract in the prescribed form; alternatively, the owner and the contractor may jointly make the declaration and certify completion in the prescribed form. R.S.O. 1990, c. C.30, s. 33 (1); 2017, c. 24, s. 65.

#### **Date subcontract deemed completed**

- (2) Where a subcontract is certified to be completed, the subcontract shall be deemed to have been completed on the date of certification. R.S.O. 1990, c. C.30, s. 33 (2).

**Services or materials supplied after subcontract certified completed**

(3) If services or materials are supplied to the improvement under or in respect of a subcontract after the date the subcontract is certified to be completed, those services or materials shall be deemed to have been last supplied on the date of certification. R.S.O. 1990, c. C.30, s. 33 (3).

**Copy of certificate**

(4) Within seven days of the date the subcontract is certified to be completed, the payment certifier or the owner and the contractor, as the case may be, shall give a copy of the certificate,

- (a) to the subcontractor whose subcontract has been certified as complete; and
- (b) to the owner and the contractor, where certification is by the payment certifier. R.S.O. 1990, c. C.30, s. 33 (4).

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

2017, c. 24, s. 65 - 12/12/2017

**Notice of intention to register in accordance with the *Condominium Act, 1998*****Definitions**

**33.1** (1) In this section,

“declaration” means a declaration as defined in the *Condominium Act, 1998*; (“déclaration”)

“description” means a description as defined in the *Condominium Act, 1998*; (“description”)

“registered” means registered as defined in the *Condominium Act, 1998*. (“enregistré”) 2010, c. 16, Sched. 2, s. 2 (4).

**Notice required**

(2) An owner of land described in a description that is intended to be registered together with a declaration in accordance with the *Condominium Act, 1998* shall publish notice of the intended registration in the manner set out in the regulations. 2010, c. 16, Sched. 2, s. 2 (4); 2017, c. 24, s. 28.

**Contents**

(3) The notice shall be in the prescribed form and shall include,

- (a) the owner’s name and address for service;
- (b) a concise overview of the land described in the description, including reference to the lot and plan number and the parcel number or numbers of the land; and
- (c) if, to the best of the owner’s knowledge, information and belief, a contractor supplied services or materials to an improvement in respect of the land during the 90-day period preceding the day on which the description is to be submitted for approval under subsection 9 (3) of the *Condominium Act, 1998*, the contractor’s name, address and, if known, address for service. 2010, c. 16, Sched. 2, s. 2 (4); 2017, c. 24, s. 65.

**Liability for failure to comply**

(4) An owner who fails to comply with this section is liable to any person entitled to a lien who suffers damages as a result. 2010, c. 16, Sched. 2, s. 2 (4).

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

2010, c. 16, Sched. 2, s. 2 (4) - 01/07/2011

2017, c. 24, s. 28 - 01/07/2018; 2017, c. 24, s. 65 - 12/12/2017

**How lien preserved**

**34** (1) A lien may be preserved during the supplying of services or materials or at any time before it expires,

- (a) where the lien attaches to the premises, by the registration in the proper land registry office of a claim for lien on the title of the premises in accordance with this Part; and
- (b) where the lien does not attach to the premises, by giving to the owner a copy of the claim for lien. R.S.O. 1990, c. C.30, s. 34 (1); 2010, c. 16, Sched. 2, s. 2 (5); 2017, c. 24, s. 63, 64, 68, 70, 71.

(2) REPEALED: 2017, c. 24, s. 29 (2).

**Premises owned by Crown**

(3) Where the owner of the premises is the Crown, the copy of the claim for lien shall be given to the prescribed office, or, where no office has been prescribed, to the ministry or Crown agency for whom the improvement is made. R.S.O. 1990, c. C.30, s. 34 (3); 2010, c. 16, Sched. 2, s. 2 (7); 2017, c. 24, s. 29 (3), 63, 71.

**Premises owned by municipality**

(3.1) Where the owner of the premises is a municipality, the copy of the claim for lien shall be given to the clerk of the municipality. 2017, c. 24, s. 29 (4).

**Railway right-of-way**

(4) Where the premises is a railway right-of-way, the copy of the claim for lien shall be given to the manager or any person apparently in charge of any office of the railway in Ontario. R.S.O. 1990, c. C.30, s. 34 (4); 2010, c. 16, Sched. 2, s. 2 (7); 2017, c. 24, s. 29 (5), 63.

**Contents of claim for lien**

(5) Every claim for lien shall set out,

- (a) the name and address for service of the person claiming the lien or, in the case of a claim on behalf of a worker by a workers' trust fund, the name and address of the trustee;
  - (a.1) the name and address of the owner of the premises and of the person for whom the services or materials were supplied;
  - (a.2) the time within which the services or materials were supplied;
  - (b) a short description of the services or materials that were supplied;
  - (c) the contract price or subcontract price;
  - (d) the amount claimed in respect of services or materials that have been supplied; and
  - (e) a description of the premises,
    - (i) where the lien attaches to the premises, sufficient for registration under the *Land Titles Act* or the *Registry Act*, as the case may be, or
    - (ii) where the lien does not attach to the premises, being the address or other identification of the location of the premises. R.S.O. 1990, c. C.30, s. 34 (5); 2010, c. 16, Sched. 2, s. 2 (8); 2017, c. 24, s. 29 (6, 7), 63, 70, 71.
- (6) REPEALED: 2010, c. 16, Sched. 2, s. 2 (9).

**Preservation of general lien**

(7) Subject to subsection 44 (4) (apportionment), a general lien shall be preserved against each of the premises that the person having the lien desires the lien to continue to apply against, and the claim against each premises may be for the price of the services or materials that have been supplied to all the premises. R.S.O. 1990, c. C.30, s. 34 (7); 2017, c. 24, s. 29 (8), 66, 72.

**Who may join in claim**

(8) Any number of persons having liens upon the same premises may unite in a claim for lien. R.S.O. 1990, c. C.30, s. 34 (8); 2010, c. 16, Sched. 2, s. 2 (10); 2017, c. 24, s. 29 (9).

**Notice of preservation of lien re common elements of condominium**

(9) A person who preserves a lien under this section that relates, in whole or in part, to an improvement to the common elements of a corporation under the *Condominium Act, 1998* shall give notice of the lien's preservation, in the prescribed form, to the corporation and to each person who is,

- (a) in the case of a corporation that is not a common elements condominium corporation, as defined in that Act, an owner of a unit in the corporation; and
- (b) in the case of a common elements condominium corporation, an owner of a parcel of land mentioned in subsection 139 (1) of that Act to which a common interest is attached and which is described in the declaration of the corporation. 2017, c. 24, s. 29 (10).

**Adjudication and expiry**

(10) If the matter that is the subject of a lien that has not expired is also a matter that is the subject of an adjudication under Part II.1, the lien is deemed, for the purposes of this section only, to have expired on the later of the date on which the lien

would expire under section 31 and the conclusion of the 45-day period next following the receipt by the adjudicator of documents under section 13.11. 2017, c. 24, s. 29 (11).

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

2010, c. 16, Sched. 2, s. 2 (5-7, 9, 10) - 01/07/2011; 2010, c. 16, Sched. 2, s. 2 (8) - 25/10/2010

2017, c. 24, s. 29 (1, 3, 5, 7-9), 63, 64, 66, 68, 70-72 - 12/12/2017; 2017, c. 24, s. 29 (2, 4, 11) - 01/10/2019; 2017, c. 24, s. 29 (6, 10) - 01/07/2018

**Exaggerated, false claims**

**Liability**

**35** (1) In addition to any other ground on which the person may be liable, any person who preserves a claim for lien or who gives written notice of a lien in the following circumstances is liable to any person who suffers damages as a result:

1. The person knows or ought to know that the amount of the lien has been wilfully exaggerated.
2. The person knows or ought to know that he or she does not have a lien. 2017, c. 24, s. 30 (2).

**Reduction of lien amount**

(2) In the circumstances described in paragraph 1 of subsection (1), the court may, on motion, order that the lien amount be reduced by the exaggerated portion, as determined in accordance with section 17, if it finds that the person has acted in good faith. 2017, c. 24, s. 30 (2).

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

2017, c. 24, s. 30 (1) - 12/12/2017; 2017, c. 24, s. 30 (2) - 01/07/2018

**What liens may be perfected**

**36** (1) A lien may not be perfected unless it is preserved. R.S.O. 1990, c. C.30, s. 36 (1).

**Expiry of preserved lien**

(2) A lien that has been preserved expires unless it is perfected prior to the end of the 90-day period next following the last day, under section 31, on which the lien could have been preserved. R.S.O. 1990, c. C.30, s. 36 (2); 2017, c. 24, s. 31 (1).

**How lien perfected**

(3) A lien claimant perfects the lien claimant's preserved lien,

- (a) where the lien attaches to the premises, when the lien claimant commences an action to enforce the lien and, except where an order to vacate the registration of the lien is made, the lien claimant registers a certificate of action in the prescribed form on the title of the premises; or
- (b) where the lien does not attach to the premises, when the lien claimant commences an action to enforce the lien. R.S.O. 1990, c. C.30, s. 36 (3); 2017, c. 24, s. 65, 70, 71; 2018, c. 17, Sched. 8, s. 10.

**Rules re sheltering**

(4) A preserved lien becomes perfected by sheltering under a lien perfected by another lien claimant in respect of the same improvement in accordance with the following rules:

1. The preserved lien of a lien claimant is perfected by sheltering under the perfected lien of another lien claimant in respect of the same improvement where,
  - i. the lien of that other lien claimant was a subsisting perfected lien at the time when the lien of the lien claimant was preserved, or
  - ii. the lien of that other lien claimant is perfected in accordance with clause (3) (a) or (b) between the time when the lien of the lien claimant was preserved and the time that the lien of the lien claimant would have expired under subsection (2).
2. The validity of the perfection of a sheltered lien does not depend upon the validity, proper preservation or perfection of the lien under which it is sheltered.
3. A sheltered claim for lien is perfected only as to the defendants and the nature of the relief claimed in the statement of claim under which it is sheltered.

4. Upon notice given by a defendant named in a statement of claim, any lien claimant whose lien is sheltered under that statement of claim shall provide the defendant with further particulars of the claim for lien or of any fact alleged in the claim for lien. R.S.O. 1990, c. C.30, s. 36 (4); 2017, c. 24, s. 31 (2-4).

#### **General lien**

(5) Subject to subsection 44 (4) (apportionment), a preserved general lien that attaches to the premises shall be perfected against each premises to which the person having the lien desires the lien to continue to apply. R.S.O. 1990, c. C.30, s. 36 (5); 2017, c. 24, s. 72.

#### **Where period of credit extended**

(6) A person who has preserved a lien, but who has extended a period of credit for the payment of the amount to which the lien relates, may commence an action for the purpose of perfecting the lien even though the period of credit has not at the time expired. R.S.O. 1990, c. C.30, s. 36 (6).

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

2017, c. 24, s. 31 (1) - 01/07/2018; 2017, c. 24, s. 31 (2-4), 65, 70-72 - 12/12/2017

2018, c. 17, Sched. 8, s. 10 - 06/12/2018

#### **Expiry of perfected lien**

**37** (1) A perfected lien expires immediately after the second anniversary of the commencement of the action that perfected the lien, unless one of the following occurs on or before that anniversary:

1. An order is made for the trial of an action in which the lien may be enforced.
2. An action in which the lien may be enforced is set down for trial. 1994, c. 27, s. 42 (1).

#### **Motion under s. 46**

(2) Where a lien has expired under subsection (1), a motion may be made under section 46. R.S.O. 1990, c. C.30, s. 37 (2).

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

1994, c. 27, s. 42 (1) - 02/04/1983

#### **Saving other rights**

**38** The expiration of a lien under this Act shall not affect any other legal or equitable right or remedy otherwise available to the person whose lien has expired. R.S.O. 1990, c. C.30, s. 38.

## **PART VI RIGHT TO INFORMATION**

#### **Right to information;**

**39** (1) Any person having a lien or who is the beneficiary of a trust under Part II or who is a mortgagee may, at any time, by written request, require information to be provided within a reasonable time, not to exceed twenty-one days, as follows:

##### **from owner or contractor**

1. By the owner or contractor, other than a landlord described in paragraph 4, with,
  - i. the names of the parties to the contract, the date on which the contract was entered into and the date on which any applicable procurement process was commenced,
  - ii. the contract price,
  - iii. a state of accounts between the owner and the contractor containing the information listed in subsection (4.1),
  - iv. a copy of any labour and material payment bond in respect of the contract posted by the contractor with the owner,
  - v. a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis, and
  - vi. a statement of whether the contract provides that payment under the contract shall be based on the completion of specified phases or the reaching of other milestones in its completion.

##### **from contractor or subcontractor**

2. By the contractor or a subcontractor, with,

- i. the names of the parties to a subcontract and the date on which the subcontract was entered into,
- ii. a state of accounts between the contractor and a subcontractor, or between a subcontractor and another subcontractor, containing the information listed in subsection (4.1),
- iii. a statement of whether there is a provision in a subcontract providing for certification of the subcontract,
- iv. a statement of whether a subcontract has been certified as complete, and
- v. a copy of any labour and material payment bond posted by a subcontractor with the contractor or by a subcontractor with another subcontractor.

**from owner**

- 3. By an owner who is selling the owner's interest in a premises that is a home, with,
  - i. the name and address of the purchaser, the sale price, the amount of the purchase price paid or to be paid prior to the conveyance, the scheduled date of the conveyance and the lot and plan number or other legal description of the premises as contained in the agreement of purchase and sale, and
  - ii. the date on which a permit authorizing occupancy or a certificate of completion and possession has been issued.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph 3 ii of subsection 39 (1) of the Act is repealed and the following substituted: (See: 2017, c. 33, Sched. 2, s. 76 (2))**

- ii. the date on which the permit or material described in clause (b) of the definition of home buyer in subsection 1 (1) has been issued.

**from landlord**

- 4. By a landlord whose interest in a premises is subject to a lien under subsection 19 (1), with,
  - i. the names of the parties to the lease,
  - ii. the amount of the payment referred to in subsection 19 (1), and
  - iii. the state of accounts between the landlord and the tenant containing the information listed in subsection (4.1). R.S.O. 1990, c. C.30, s. 39 (1); 2017, c. 24, s. 32 (1-7), 71; 2018, c. 17, Sched. 8, s. 11.

**from mortgagee or unpaid vendor**

- (2) Any person having a lien or any beneficiary of a trust under Part II may, at any time, by written request, require a mortgagee or unpaid vendor to provide the person within a reasonable time, not to exceed twenty-one days, with,
- (a) sufficient details concerning any mortgage on the premises to enable the person who requests the information to determine whether the mortgage was taken by the mortgagee for the purposes of financing the making of the improvement;
  - (b) a statement showing the amount advanced under the mortgage, the dates of those advances, and any arrears in payment including any arrears in the payment of interest; or
  - (c) a statement showing the amount secured under the agreement of purchase and sale and any arrears in payment including any arrears in the payment of interest. R.S.O. 1990, c. C.30, s. 39 (2); 2017, c. 24, s. 70.

**by trustee or workers' trust fund**

- (3) The trustee of a workers' trust fund may at any time by written request require any contractor or subcontractor to permit the trustee, within a reasonable time after making the request, not to exceed twenty-one days, to inspect the payroll records of all workers who are beneficiaries of the fund, and who have supplied labour to the making of the improvement, and who are employed by the contractor or the subcontractor. R.S.O. 1990, c. C.30, s. 39 (3).

**respecting publication of certificate of substantial performance**

- (4) A contractor shall, on the written request of a person, provide to the person within a reasonable time after the request is made written confirmation of the date and location of the publication of the copy of the certificate of substantial performance under subsection 32 (1). 2017, c. 24, s. 32 (8).

**State of accounts**

- (4.1) A state of accounts under subsection (1) shall contain the following information, as of a specified date:
- 1. The price of the services or materials that have been supplied under the contract or subcontract.

2. The amounts paid under the contract or subcontract.
3. In the case of a state of accounts under paragraph 4 of subsection (1), which of the amounts paid under the contract or subcontract constitute any part of the payment referred to in subsection 19 (1).
4. The amount of the applicable holdbacks.
5. The balance owed under the contract or subcontract.
6. Any amount retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).
7. Any other information that may be prescribed. 2017, c. 24, s. 32 (9).

#### **Information provided by mortgagee**

(4.2) For the purposes of clause (2) (b), if amounts have been advanced under the mortgage for the purposes of financing both the purchase price of the land and the making of the improvement, the statement must show the amount advanced under the mortgage for each of those purposes. 2017, c. 24, s. 32 (9).

#### **Liability for failure to provide information**

(5) Where a person, who is required under subsection (1), (2), (3) or (4) to provide information or access to information, does not provide the information or access to information as required or knowingly or negligently mis-states that information, the person is liable to the person who made the request for any damages suffered as a result. R.S.O. 1990, c. C.30, s. 39 (5); 2017, c. 24, s. 32 (10).

#### **Order by court to comply with request**

(6) Upon motion, the court may at any time, whether or not an action has been commenced, order a person to comply with a request that has been made to the person under this section and, when making the order, the court may make any order as to costs as it considers appropriate in the circumstances, including an order for the payment of costs on a substantial indemnity basis. R.S.O. 1990, c. C.30, s. 39 (6); 2006, c. 21, Sched. C, s. 102 (1).

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

2006, c. 21, Sched. C, s. 102 (1) - 01/05/2007

2017, c. 24, s. 32 (1-4, 6-9) - 01/07/2018; 2017, c. 24, s. 32 (5, 10), 70, 71 - 12/12/2017; 2017, c. 33, Sched. 2, s. 76 (2) - not in force

2018, c. 17, Sched. 8, s. 11 (1, 2) - 06/12/2018

#### **Cross-examination on claim for lien**

**40** (1) Any of the following persons is liable to be cross-examined without an order on a claim for lien at any time, regardless of whether an action has been commenced:

1. The lien claimant.
2. An agent or assignee of the lien claimant.
3. A trustee of the workers' trust fund, where subsection 81 (2) applies. 2010, c. 16, Sched. 2, s. 2 (11); 2017, c. 24, s. 63.

#### **Who may participate**

(2) There shall be only one examination under subsection (1), but the contractor, the payer of the lien claimant, and every person named in the claim for lien who has an interest in the premises are entitled to participate therein. R.S.O. 1990, c. C.30, s. 40 (2); 2017, c. 24, s. 63, 70.

#### **Notice**

(3) Any person intending to examine a person under subsection (1) shall give at least seven days notice of the examination specifying the time and place for the examination to,

- (a) the person to be examined or the person's solicitor;
- (b) every other person named in the claim for lien as having an interest in the premises;
- (c) the contractor; and
- (d) the payer of the lien claimant. R.S.O. 1990, c. C.30, s. 40 (3); 2017, c. 24, s. 63, 70.

### **Application of rules of court**

(4) The rules of court pertaining to examinations apply, with necessary modifications, to cross-examinations under this section. R.S.O. 1990, c. C.30, s. 40 (4).

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

2010, c. 16, Sched. 2, s. 2 (11) - 01/07/2011

2017, c. 24, s. 63, 70 - 12/12/2017

## **PART VII DISCHARGE OF PRESERVED OR PERFECTED LIENS**

### **Discharge of lien and withdrawal of written notice of lien**

#### **Discharge of lien**

**41** (1) A preserved or perfected lien may be discharged,

- (a) where the lien attaches to the premises, by the registration of a discharge of lien in the prescribed form on the title to the premises and the discharge shall, except where the lien claimant is a corporation, be supported by an affidavit of execution; or
- (b) where the lien does not attach to the premises, by giving a discharge of lien in the prescribed form to the owner, in the manner set out in section 34 for the giving of copies of the claim for lien. R.S.O. 1990, c. C.30, s. 41 (1); 2017, c. 24, s. 33 (1, 2), 63, 65, 70.

#### **Withdrawal of written notice of lien**

(2) A written notice of a lien may be withdrawn by giving a withdrawal in the prescribed form to the person to whom the written notice of a lien was given, and a payer given the withdrawal shall, in respect of the operation of subsection 24 (2), be in the same position as if the written notice of a lien had never been given. R.S.O. 1990, c. C.30, s. 41 (2); 2017, c. 24, s. 33 (3).

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

2017, c. 24, s. 33 (1-3) - 01/07/2018; 2017, c. 24, s. 63, 65, 70 - 12/12/2017

#### **Discharge of general lien**

**42** A preserved or perfected general lien may be discharged against any one or more of the premises that are subject to it, without affecting its application to any other premises to which it applies, by the registration of a discharge of lien in the prescribed form on the title to the applicable premises. R.S.O. 1990, c. C.30, s. 42; 2017, c. 24, s. 34, 65, 72.

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

2017, c. 24, s. 34 (1), 65, 72 - 12/12/2017; 2017, c. 24, s. 34 (2) - 01/07/2018

#### **Postponement of lien claim**

**43** A preserved or perfected lien may be postponed in favour of the interest of another person in the premises by the registration on the title to the premises of a notice of postponement in the prescribed form, and, in that case, subsection 78 (8) applies (priorities in event of postponement). R.S.O. 1990, c. C.30, s. 43; 2017, c. 24, s. 35, 65.

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

2017, c. 24, s. 35, 65 - 12/12/2017

#### **Vacating lien by payment into court**

##### **Without notice**

**44** (1) Upon the motion of any person, without notice to any other person, the court shall make an order vacating,

- (a) where the lien attaches to the premises, the registration of a claim for lien and any certificate of action in respect of that lien; or
- (b) where the lien does not attach to the premises, the claim for lien,

where the person bringing the motion pays into court, or posts security in an amount equal to, the total of,

- (c) the full amount claimed as owing in the claim for lien; and



- (d) the lesser of \$250,000 or 25 per cent of the amount described in clause (c), as security for costs. R.S.O. 1990, c. C.30, s. 44 (1); 2017, c. 24, s. 36 (1), 63, 64, 70; 2018, c. 17, Sched. 8, s. 12 (1).

#### **On payment in of reasonable amount**

- (2) Upon the motion of any person, the court may make an order vacating the registration of a claim for lien, and any certificate of action in respect of that lien, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien. R.S.O. 1990, c. C.30, s. 44 (2); 2017, c. 24, s. 63; 2018, c. 17, Sched. 8, s. 12 (2).

#### **Condominium**

- (2.1) The owner of a condominium unit under the *Condominium Act, 1998* may make a motion under clause (1) (a) or subsection (2) regarding a lien respecting an improvement to common elements that include the common interest appurtenant to the owner's unit, and, for the purpose, the full amount claimed as owing in the claim for lien is deemed to be that portion of the lien amount that is attributable to the owner's common interest as specified in the applicable declaration registered under that Act. 2017, c. 24, s. 36 (2).

#### **Common elements condominium corporation**

- (2.2) An owner of a parcel of land mentioned in subsection 139 (1) of the *Condominium Act, 1998* to which a common interest is attached, in the case of a common elements condominium corporation, may make a motion under clause (1) (a) or subsection (2) regarding a lien respecting an improvement to common elements that include the common interest appurtenant to the owner's parcel of land, and, for the purpose, the full amount claimed as owing in the claim for lien is deemed to be that portion of the lien amount that is attributable to the owner's common interest as specified in the applicable declaration registered under that Act. 2017, c. 24, s. 36 (2).

#### **Where lien does not attach to premises**

- (3) Where the lien does not attach to the premises, the court may make an order, upon the motion of any person, vacating a claim for lien given to the owner, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien. R.S.O. 1990, c. C.30, s. 44 (3); 2017, c. 24, s. 36 (3), 70; 2018, c. 17, Sched. 8, s. 12 (2).

#### **Vacating written notice of lien**

- (3.1) The court shall, on motion, vacate a written notice of a lien if any of the circumstances in subsection (1), (2) or (3) apply. 2017, c. 24, s. 36 (4); 2018, c. 17, Sched. 8, s. 12 (3).

#### **Where general lien**

- (4) Where a motion is made to vacate the registration of a general lien against one or more of the premises subject to that lien, the court may apportion the general lien between the premises in respect of which the motion is made and all other premises that are subject to the lien. R.S.O. 1990, c. C.30, s. 44 (4); 2017, c. 24, s. 72; 2018, c. 17, Sched. 8, s. 12 (4).

#### **Reduction of amount paid into court**

- (5) Where an amount has been paid into court or security has been posted with the court under this section, the court, upon notice to such persons as it may require, may order where it is appropriate to do so,
- (a) the reduction of the amount paid into court, and the payment of any part of the amount paid into court to the person entitled; or
  - (b) the reduction of the amount of security posted with the court, and the delivery up of the security posted with the court for cancellation or substitution, as the case may be. R.S.O. 1990, c. C.30, s. 44 (5).

#### **Letters of credit**

- (5.1) A letter of credit containing reference to an international commercial convention is acceptable as security for the purposes of this section, as long as the convention text is written into the terms of the credit and the letter of credit is unconditional and accepted by a bank listed in Schedule I to the *Bank Act* (Canada) that is operating in Ontario. 2017, c. 24, s. 36 (5).

#### **Lien a charge upon amount paid into court**

- (6) Where an order is made under clause (1) (a) or subsection (2), the lien ceases to attach to the premises and ceases to attach to the holdbacks and other amounts subject to a charge under section 21, and becomes instead a charge upon the amount paid into court or security posted, and the owner or payer shall, in respect of the operation of sections 21, 23 and 24, be in the same position as if the lien had not been preserved or written notice of the lien had not been given. R.S.O. 1990, c. C.30, s. 44 (6); 2017, c. 24, s. 70.

**Same**

(7) Where an order is made under clause (1) (b) or subsection (3), the lien ceases to attach to the holdbacks and other amounts subject to a charge under section 21 and becomes instead a charge upon the amount paid into court or security posted and the owner or payer shall, in respect of the operation of sections 21, 23 and 24, be in the same position as if the lien had not been preserved or written notice of the lien had not been given. R.S.O. 1990, c. C.30, s. 44 (7).

**Consolidation of motions**

(8) Where more than one motion is made under subsection (1), (2) or (3) for the payment into court or posting of security to obtain an order vacating the registration of one or more preserved or perfected liens arising from the same improvement, the court may consolidate the motions and require that the amount paid into court or security posted be adequate to satisfy all the liens that are the subject of each of the motions, or make any other order that it considers appropriate. R.S.O. 1990, c. C.30, s. 44 (8); 2018, c. 17, Sched. 8, s. 12 (5).

**Rules**

(9) Where an order is made under subsection (1), (2) or (3), the following rules apply:

1. The lien claimant whose lien was the subject of the order may proceed with an action to enforce the claim against the amount paid into court or security posted in accordance with the procedures under Part VIII, but no certificate of action shall be registered against the premises.
2. The amount paid into court or security posted is subject to the claims of all persons having a lien to the same extent as if the amount paid into court or security posted was realized by the sale of the premises in an action to enforce the lien and shall be distributed among all lien claimants in accordance with the priorities provided for in section 80.
3. Where any amount is realized in a lien action by the sale of the premises or otherwise, it shall be pooled into a common fund with the amount paid into court or security posted under this section, and shall be distributed among all lien claimants in accordance with the priorities provided for in section 80.
4. A lien claimant whose lien is sheltered, in accordance with subsection 36 (4), under the lien that was the subject of the order may proceed with an action to enforce the sheltered lien as if the order had not been made. R.S.O. 1990, c. C.30, s. 44 (9); 2010, c. 16, Sched. 2, s. 2 (12); 2017, c. 24, s. 36 (6), 71.

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

2010, c. 16, Sched. 2, s. 2 (12) - 01/07/2011

2017, c. 24, s. 36 (1, 2, 4-6) - 01/07/2018; 2017, c. 24, s. 36 (3), 63, 64, 70-72 - 12/12/2017

2018, c. 17, Sched. 8, s. 12 (1-5) - 06/12/2018

**Declaration by court that preserved lien has expired**

**45** (1) Where a lien that attaches to the premises is not preserved or is not perfected within the time allowed for doing so under section 31 or 36, the court upon,

- (a) the motion of any person without notice to any other person;
- (b) proof that the lien has not been preserved or perfected within the time allowed; and
- (c) production of,
  - (i) a certificate of search under the *Land Titles Act*, or
  - (ii) a registrar's abstract under the *Registry Act*,
 together with a certified copy of the claim for lien,

shall declare that the lien has expired and order that the registration of the claim for lien be vacated. R.S.O. 1990, c. C.30, s. 45 (1); 2017, c. 24, s. 63, 70; 2018, c. 17, Sched. 8, s. 13.

**Same**

(2) Where the court is satisfied that a lien that does not attach to the premises has not been preserved or perfected within the time allowed for doing so under section 31 or 36, the court upon the motion of any person without notice to any other person shall declare that the lien has expired. R.S.O. 1990, c. C.30, s. 45 (2); 2017, c. 24, s. 70.

**Order returning amount paid into court or cancelling security**

(3) Where a declaration is made under subsection (1) or (2), the court shall order that,

- (a) any amount that has been paid into court under section 44 in respect of that lien be returned to the person who paid the amount into court; and
- (b) any security that has been posted under section 44 in respect of that lien be cancelled. R.S.O. 1990, c. C.30, s. 45 (3).

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

2017, c. 24, s. 63, 70 - 12/12/2017

2018, c. 17, Sched. 8, s. 13 - 06/12/2018

**Order dismissing action, etc.**

**46** (1) Where a perfected lien that attaches to the premises has expired under section 37, the court, upon the motion of any person, shall declare that the lien has expired and shall make an order dismissing the action to enforce that lien and vacating the registration of a claim for lien and the certificate of action in respect of that action. R.S.O. 1990, c. C.30, s. 46 (1); 2017, c. 24, s. 63, 70; 2018, c. 17, Sched. 8, s. 14.

**Same**

(2) Where a perfected lien that does not attach to the premises has expired under section 37, the court, upon the motion of any person, shall declare that the lien has expired and shall make an order dismissing the action to realize upon that lien. R.S.O. 1990, c. C.30, s. 46 (2); 2017, c. 24, s. 70.

**Costs**

(3) A motion under subsection (1) or (2) may be brought without notice, but no order as to costs in the action may be made upon the motion unless notice of that motion was given to the person against whom the order for costs is sought. R.S.O. 1990, c. C.30, s. 46 (3).

**Order returning money paid into court or cancelling security**

- (4) Where an action is dismissed under subsection (1) or (2), the court shall order that,
  - (a) any amount that has been paid into court under section 44 in respect of that action be returned to the person who paid the amount into court; and
  - (b) any security that has been posted under section 44 in respect of that action be cancelled. R.S.O. 1990, c. C.30, s. 46 (4).

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

2017, c. 24, s. 63, 70 - 12/12/2017

2018, c. 17, Sched. 8, s. 14 - 06/12/2018

**General powers of the court**

**Power to discharge**

**47** (1) The court may, on motion, order the discharge of a lien,

- (a) on the basis that the claim for the lien is frivolous, vexatious or an abuse of process; or
- (b) on any other proper ground. 2017, c. 24, s. 37 (1).

**Power to vacate, etc.**

(1.1) The court may, on motion, make any of the following orders, on any proper ground:

1. An order that the registration of a claim for lien, a certificate of action or both be vacated.
2. If written notice of a lien has been given, a declaration that the lien has expired or that the written notice of the lien shall no longer bind the person to whom it was given.
3. An order dismissing an action. 2017, c. 24, s. 37 (1); 2018, c. 17, Sched. 8, s. 15 (1).

**Conditions**

(1.2) An order under subsection (1) or (1.1) may include any terms or conditions that the court considers appropriate in the circumstances. 2017, c. 24, s. 37 (1).

**Direction by court**

(2) Where a certificate of action is vacated under paragraph 1 of subsection (1.1), and there remain liens which may be enforced in the action to which that certificate relates, the court shall give any directions that are necessary in the circumstances in respect of the continuation of that action subject to paragraph 4 of subsection 44 (9). R.S.O. 1990, c. C.30, s. 47 (2); 2010, c. 16, Sched. 2, s. 2 (13); 2017, c. 24, s. 37 (2); 2018, c. 17, Sched. 8, s. 15 (2).

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

2010, c. 16, Sched. 2, s. 2 (13) - 01/07/2011

2017, c. 24, s. 37 (1, 2) - 01/07/2018; 2017, c. 24, s. 63 - 12/12/2017

2018, c. 17, Sched. 8, s. 15 (1, 2) - 06/12/2018

**Discharge irrevocable**

**48** A discharge of a lien under this Part is irrevocable and the discharged lien cannot be revived, but no discharge affects the right of the person whose lien was discharged to claim a lien in respect of services or materials supplied by the person subsequent to the preservation of the discharged lien. R.S.O. 1990, c. C.30, s. 48; 2017, c. 24, s. 68.

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

2017, c. 24, s. 68 - 12/12/2017

**Registration of orders**

**49** Where the lien attaches to the premises, an order declaring that a lien has expired, or discharging a lien, or vacating the registration of a claim for lien or a certificate of action, may be registered by registering on the title to the premises a certified copy of the order that includes a description of the premises sufficient for registration under the *Registry Act* or the *Land Titles Act*, as the case may be, and a reference to the registration number of every preserved or perfected claim for lien and certificate of action thereby affected. R.S.O. 1990, c. C.30, s. 49; 2017, c. 24, s. 38, 70, 71; 2018, c. 17, Sched. 8, s. 16.

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

2017, c. 24, s. 38, 70, 71 - 12/12/2017

2018, c. 17, Sched. 8, s. 16 - 06/12/2018

## PART VIII JURISDICTION AND PROCEDURE

**Lien claims and procedures**

**50** (1) A lien claim is enforceable in an action in the Superior Court of Justice. 2017, c. 24, s. 39 (2).

**Procedures**

(2) Except to the extent that they are inconsistent with this Act and the procedures prescribed for the purposes of this Part, the *Courts of Justice Act* and the rules of court apply to actions under this Part. 2017, c. 24, s. 39 (2).

**Summary procedure**

(3) The procedure in an action shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question. 2017, c. 24, s. 39 (2).

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

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2017, c. 24, s. 39 (1) - 12/12/2017; 2017, c. 24, s. 39 (2) - 01/07/2018

**Court to dispose completely of action**

**51** The court, whether the action is being tried by a judge or on a reference under section 58,

- (a) shall try the action, including any set-off, crossclaim, counterclaim and third party claim, and all questions that arise therein or that are necessary to be tried in order to dispose completely of the action and to adjust the rights and liabilities of the persons appearing before it or upon whom notice of trial has been served; and
- (b) shall take all accounts, make all inquiries, give all directions and do all things necessary to dispose finally of the action and all matters, questions and accounts arising therein or at the trial and to adjust the rights and liabilities of, and give

all necessary relief to, all parties to the action. R.S.O. 1990, c. C.30, s. 51; 1994, c. 27, s. 42 (4); 1996, c. 25, s. 4 (1); 2017, c. 24, s. 40.

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

1994, c. 27, s. 42 (4) - 09/12/1994; 1996, c. 25, s. 4 (1) - 31/10/1996.

2017, c. 24, s. 40 (1, 2) - 01/07/2018

**Where exclusive jurisdiction not acquired**

**52** A judge or associate judge does not acquire exclusive jurisdiction over the trial of an action or reference by reason only of appointing the time and place for the trial of the action or reference. R.S.O. 1990, c. C.30, s. 52; 1996, c. 25, s. 4 (2); 2017, c. 24, s. 41; 2020, c. 11, Sched. 5, s. 14 (1); 2021, c. 4, Sched. 3, s. 20 (1).

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

1996, c. 25, s. 4 (2) - 31/10/1996

2017, c. 24, s. 41 - 01/07/2018

2020, c. 11, Sched. 5, s. 14 (1) - 08/01/2021

2021, c. 4, Sched. 3, s. 20 (1) - 01/09/2021

**53** REPEALED: 2017, c. 24, s. 42 (2).

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

2017, c. 24, s. 42 (2) - 01/07/2018; 2017, c. 24, s. 71 - 12/12/2017

**54** REPEALED: 2017, c. 24, s. 42 (2).

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

2017, c. 24, s. 42 (2) - 01/07/2018

**55** REPEALED: 2017, c. 24, s. 42 (2).

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

2017, c. 24, s. 42 (1) - 12/12/2017; 2017, c. 24, s. 42 (2) - 01/07/2018

**56, 57** REPEALED: 2017, c. 24, s. 42 (2).

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

2017, c. 24, s. 42 (2) - 01/07/2018

**Referral of reference**

**58** (1) On motion made after the delivery of all statements of defence, or the statement of defence to all crossclaims, counterclaims or third party claims, if any, or after the time for their delivery has expired, a judge may refer the whole action or any part of it for trial,

- (a) to an associate judge;
- (b) to a person agreed on by the parties; or
- (c) if the action is for an amount that is within the monetary jurisdiction of the Small Claims Court, as set out under section 23 of the *Courts of Justice Act*, to a deputy judge of that Court or to the Small Claims Court Administrative Judge. 2020, c. 11, Sched. 5, s. 14 (2); 2021, c. 4, Sched. 3, s. 20 (2).

**Notice**

(1.1) Notice of a motion for a reference under clause (1) (b) or (c) shall be given to every person specified by the procedures prescribed for the purposes of this Part. 2017, c. 24, s. 43 (2).

**Requirement for consent**

(1.2) A reference under clause (1) (b) shall not be made unless the persons entitled to notice under subsection (1.1) consent to the reference. 1994, c. 27, s. 42 (5).

**Deemed consent**

(1.3) A person given notice under subsection (1.1) who does not oppose the motion or does not appear at the hearing of the motion shall be deemed to consent to the reference under clause (1) (b). 1994, c. 27, s. 42 (5).

**Associate judge not to hear motion to refer**

(2) An associate judge shall not hear or dispose of a motion made under subsection (1). 2020, c. 11, Sched. 5, s. 14 (3); 2021, c. 4, Sched. 3, s. 20 (2).

**Reference directed**

(3) At the trial, a judge may direct a reference to an associate judge, to a person agreed on by the parties or, if the action is for an amount that is within the monetary jurisdiction of the Small Claims Court, as set out under section 23 of the *Courts of Justice Act*, to a deputy judge of that Court or to the Small Claims Court Administrative Judge. 2020, c. 11, Sched. 5, s. 14 (3); 2021, c. 4, Sched. 3, s. 20 (2).

**Powers on reference**

(4) An associate judge to whom a reference has been directed has all the jurisdiction, powers and authority of the court to try and completely dispose of the action and all matters and questions arising in connection with the action, including the giving of leave to amend any pleading and the giving of directions to a receiver or trustee appointed by the court. 2020, c. 11, Sched. 5, s. 14 (3); 2021, c. 4, Sched. 3, s. 20 (2).

**Powers of person agreed on by parties**

(4.1) Subsection (4) also applies to a person who is agreed on by the parties and to whom a reference has been directed. 1994, c. 27, s. 42 (7); 2018, c. 17, Sched. 8, s. 17 (1).

**Powers of Small Claims Court judge**

(4.2) Subsection (4) also applies to a deputy judge of the Small Claims Court or to the Small Claims Court Administrative Judge, if a reference is directed to him or her. 2017, c. 24, s. 43 (4); 2018, c. 17, Sched. 8, s. 17 (2).

**Application to set aside order of reference**

(5) If all or part of an action is referred for trial under subsection (1), any person who subsequently becomes a party to the action may, within seven days after becoming a party to the action, make a motion to a judge of the court that directed the reference to set aside the judgment directing the reference. 1996, c. 25, s. 4 (7); 2017, c. 24, s. 43 (5).

**Effect on subsequent party to action**

(6) Where no motion is made under subsection (5), or where the motion is refused, the person who subsequently became a party to the action is bound by the judgment directing the reference as if the person had been a party to the action at the time the reference was directed. R.S.O. 1990, c. C.30, s. 58 (6).

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

1994, c. 27, s. 42 (5, 7) - 09/12/1994; 1996, c. 25, s. 4 (3-7) - 31/10/1996

2017, c. 24, s. 43 (1-5) - 01/07/2018; 2017, c. 24, s. 73 - 12/12/2017

2018, c. 17, Sched. 8, s. 17 (1, 2) - 06/12/2018

2020, c. 11, Sched. 5, s. 14 (2, 3) - 08/01/2021

2021, c. 4, Sched. 3, s. 20 (2) - 01/09/2021

**59 REPEALED:** 2017, c. 24, s. 44 (3).

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

2017, c. 24, s. 44 (3) - 01/07/2018

**60 REPEALED:** 2017, c. 24, s. 44 (3).

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

2017, c. 24, s. 44 (1), 70 - 12/12/2017; 2017, c. 24, s. 44 (3) - 01/07/2018

**61 REPEALED:** 2017, c. 24, s. 44 (3).

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

2017, c. 24, s. 44 (2) - 12/12/2017; 2017, c. 24, s. 44 (3) - 01/07/2018

**Judgment or report**

**62** (1) The results of the trial shall be embodied,

- (a) in a judgment in the prescribed form, where the trial is conducted by a judge of the court; or
- (b) in a report in the prescribed form, where the trial is conducted on a reference under section 58. R.S.O. 1990, c. C.30, s. 62 (1); 1994, c. 27, s. 42 (9); 1996, c. 25, s. 4 (8); 2017, c. 24, s. 45 (1), 65.

**Varying form**

(2) The prescribed form of judgment or report may be varied by the court in order to meet the circumstances of the case so as to afford to any party to the action any right or remedy in the judgment or report to which the party is entitled. R.S.O. 1990, c. C.30, s. 62 (2); 2017, c. 24, s. 65.

(3) REPEALED: 1999, c. 12, Sched. B, s. 3.

**Issue of execution**

(4) The judgment or report may direct any party found liable to make a payment, to make such payment forthwith, and execution may be issued,

- (a) immediately, in the case of a judgment; or
- (b) after confirmation, in the case of a report. R.S.O. 1990, c. C.30, s. 62 (4).

**Order for sale**

(5) The court may order that the interest in the premises be sold and may direct the sale to take place at any time after the judgment or confirmation of the report, allowing a reasonable time for advertising the sale. R.S.O. 1990, c. C.30, s. 62 (5); 2017, c. 24, s. 70.

**Persons who may be let in**

(6) The court may allow any person with a perfected lien,

- (a) who was not served with a notice of trial; or
- (b) whose action was stayed by reason of an order under the *Arbitration Act, 1991*,

to be let in to prove the claim at any time before the amount realized in the action for the satisfaction of the lien has been distributed, and where the claim is allowed, the judgment or report shall be amended to include the claim. R.S.O. 1990, c. C.30, s. 62 (6); 2017, c. 24, s. 45 (2).

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

1994, c. 27, s. 42 (9) - 09/12/1994; 1996, c. 25, s. 4 (8) - 31/10/1996; 1999, c. 12, Sched. B, s. 3 - 22/12/1999

2017, c. 24, 45 (1) - 01/07/2018; 2017, c. 24, s. 45 (2), 65, 70 - 12/12/2017

**Personal judgment**

**63** Subject to paragraph 3 of subsection 36 (4) (sheltering), the court may award any lien claimant a personal judgment, whether the claimant proves the lien or not, upon any ground relating to the claim that is disclosed by the evidence against any party to the action for any amount that may be due to the claimant and that the claimant might have recovered in a proceeding against that party. R.S.O. 1990, c. C.30, s. 63.

**Right to share in proceeds**

**64** Where an interest in the premises is sold under court order, or by a trustee appointed under Part IX, a person with a perfected lien is entitled to share in the proceeds of sale in respect of the amount owing to the person, although that amount or part thereof was not payable at the time of the commencement of the action or at the time of the distribution of the proceeds. R.S.O. 1990, c. C.30, s. 64; 2017, c. 24, s. 70.

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

2017, c. 24, s. 70 - 12/12/2017

**Orders for completion of sale**

**65** (1) The court may make all orders necessary for the completion of a sale and for vesting an interest in the premises in the purchaser. R.S.O. 1990, c. C.30, s. 65 (1); 2017, c. 24, s. 70.

**Payment into court of proceeds**

(2) Where an interest in the premises is sold under court order, or by a trustee appointed under Part IX, the proceeds of the sale shall be paid into court to the credit of the action. R.S.O. 1990, c. C.30, s. 65 (2); 2017, c. 24, s. 70.

**Fees and disbursements**

(3) The court may add to the claim of the party having carriage of the action the fees and actual disbursements of the party in connection with the sale. R.S.O. 1990, c. C.30, s. 65 (3).

**To whom proceeds paid**

(4) The court shall direct to whom the proceeds shall be paid in accordance with the priorities established by this Act. R.S.O. 1990, c. C.30, s. 65 (4).

**Where proceeds insufficient to satisfy judgment**

(5) Where the proceeds of the sale are not sufficient to satisfy the judgment and costs, the court shall certify the amount of the deficiency and give personal judgment in the appropriate amount to each party whose judgment is not satisfied out of the proceeds against each person who has been found liable to the party. R.S.O. 1990, c. C.30, s. 65 (5).

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

2017, c. 24, s. 70 - 12/12/2017

**66** REPEALED: 2017, c. 24, s. 46.

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

2017, c. 24, s. 46 - 01/07/2018

**67** REPEALED: 2017, c. 24, s. 46.

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

2006, c. 21, Sched. C, s. 102 (2) - 01/05/2007

2017, c. 24, s. 46 - 01/07/2018

## PART IX APPOINTMENT OF TRUSTEE

**Application for appointment of trustee**

**68** (1) Any person having a lien, or any other person having an interest in the premises, may apply to the court for the appointment of a trustee and the court may appoint a trustee upon such terms as to the giving of security or otherwise as the court considers appropriate. R.S.O. 1990, c. C.30, s. 68 (1); 2017, c. 24, s. 70.

**Powers of trustee**

- (2) Subject to the supervision and direction of the court, a trustee appointed under subsection (1) may,
- (a) act as a receiver and manager and, subject to the *Planning Act* and the approval of the court, mortgage, sell or lease the premises or any part thereof;
  - (b) complete or partially complete the improvement;
  - (c) take appropriate steps for the preservation of the premises; and
  - (d) subject to the approval of the court, take such other steps as are appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 68 (2); 2017, c. 24, s. 70, 71.

**Liens a charge on amounts recovered**

(3) Subject to subsection 78 (7), all liens shall be a charge upon any amount recovered by the trustee after payment of the reasonable business expenses and management costs incurred by the trustee in the exercise of any power under subsection (2). R.S.O. 1990, c. C.30, s. 68 (3).

**Sale subject to encumbrances**

(4) Any interest in the premises that is to be sold may be offered for sale subject to any mortgage, interest or other encumbrance that the court directs. R.S.O. 1990, c. C.30, s. 68 (4); 2017, c. 24, s. 47 (2), 70.



**Orders for completion of sale, etc.**

(5) The court may make all orders necessary for the completion of any mortgage, lease or sale by a trustee under this section. R.S.O. 1990, c. C.30, s. 68 (5).

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

2017, c. 24, s. 47 (2), 70, 71 - 12/12/2017

**69 REPEALED:** 2017, c. 24, s. 48.

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

2017, c. 24, s. 48 - 01/07/2018

## PART X APPEALS

**Stated case**

**70** (1) Where in the course of an action a question of law arises, the court may state the question in the form of a stated case for the opinion of the Divisional Court, and the stated case shall thereupon be set down to be heard before the Divisional Court and notice of hearing shall be served by the party setting down the matter upon all parties concerned. R.S.O. 1990, c. C.30, s. 70 (1).

**Facts to be set out**

(2) The stated case shall set forth those facts material to the determination of the question raised. R.S.O. 1990, c. C.30, s. 70 (2).

**Appeal to Divisional Court**

**71** (1) Except as otherwise provided in this section, an appeal lies to the Divisional Court from a judgment or an order on a motion to oppose confirmation of a report under this Act. R.S.O. 1990, c. C.30, s. 71 (1); 2017, c. 24, s. 49 (1).

**Notice of appeal**

(2) A party wishing to appeal shall file and serve a notice of appeal within fifteen days of the date of the judgment or order, but the time for filing or serving the notice of appeal may be extended by the written consent of all parties, or by a single judge of the Divisional Court where an appropriate case is made out for doing so. R.S.O. 1990, c. C.30, s. 71 (2).

**No appeal without leave**

(3) No appeal lies from an interlocutory order made by the court, except with leave of the Divisional Court. 2017, c. 24, s. 49 (2).

**No appeal**

(4) No appeal lies from a judgment or an order on a motion to oppose confirmation of a report under this Act, if the amount claimed is \$10,000 or less. 2017, c. 24, s. 49 (2).

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

2017, c. 24, s. 49 (1, 2) - 01/07/2018

## PART XI PRIORITIES

**Enforcement of lien despite default**

**72** A person who has supplied services or materials in respect of an improvement may enforce a lien despite the non-completion, abandonment or termination of the contract or a subcontract by any other person. R.S.O. 1990, c. C.30, s. 72; 2017, c. 24, s. 50, 66.

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

2017, c. 24, s. 50 - 01/07/2018; 2017, c. 24, s. 66 - 12/12/2017

**Assignment of lien rights**

**73** The rights of a person having a lien may be assigned by an instrument in writing and, if not assigned, upon the death of the person pass to the person's personal representative. R.S.O. 1990, c. C.30, s. 73.

**Continuation of general lien**

**74** (1) Subject to section 82, where one or more premises that are subject to an unreserved general lien are sold, the general lien continues for the full amount of the lien against those premises that are subject to the lien, that were not sold. R.S.O. 1990, c. C.30, s. 74 (1); 2017, c. 24, s. 72.

**Same**

(2) Where a person having a preserved or perfected general lien discharges the lien against one or more of the premises subject to the lien, the lien continues for the full amount of the lien against those premises that were not discharged. R.S.O. 1990, c. C.30, s. 74 (2); 2017, c. 24, s. 72; 2018, c. 17, Sched. 8, s. 18.

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

2017, c. 24, s. 72 - 12/12/2017

2018, c. 17, Sched. 8, s. 18 - 06/12/2018

**Effect of taking security**

**75** (1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of, or the giving of time for the payment of, or the taking of proceedings for the recovery of, or the obtaining of a personal judgment for, the claim, does not in itself merge, waive, pay, satisfy, prejudice or destroy a lien. R.S.O. 1990, c. C.30, s. 75 (1).

**Where note or bill negotiated**

(2) Where any promissory note or bill of exchange has been negotiated, the person having the lien may still enforce the lien if the person is the holder of the promissory note or bill of exchange at the time when the person proves the claim for lien. R.S.O. 1990, c. C.30, s. 75 (2); 2017, c. 24, s. 51.

**Time not extended**

(3) Nothing in this section extends the time for, or dispenses with the requirement for, the preservation or perfection of a lien. R.S.O. 1990, c. C.30, s. 75 (3).

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

2017, c. 24, s. 51 - 12/12/2017

**Lien claimant deemed purchaser**

**76** Where a lien is preserved by registration of a claim for lien, the lien claimant shall be deemed to be a purchaser to the extent of his lien within the provisions of the *Registry Act* and *Land Titles Act*, but except as otherwise provided in this Act, those Acts do not apply to any lien arising under this Act. R.S.O. 1990, c. C.30, s. 76; 2017, c. 24, s. 52.

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

2017, c. 24, s. 52 - 12/12/2017

**Priority of liens over executions, etc.**

**77** The liens arising from an improvement have priority over all judgments, executions, assignments, attachments, garnishments and receiving orders except those executed or recovered upon before the time when the first lien arose in respect of the improvement. R.S.O. 1990, c. C.30, s. 77.

**Priority over mortgages, etc.**

**78** (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner's interest in the premises. R.S.O. 1990, c. C.30, s. 78 (1); 2017, c. 24, s. 70.

**Building mortgage**

(2) Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered. R.S.O. 1990, c. C.30, s. 78 (2).

**Prior mortgages, prior advances**

(3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

- (a) the actual value of the premises at the time when the first lien arose; and
- (b) the total of all amounts that prior to that time were,
  - (i) advanced in the case of a mortgage, and
  - (ii) advanced or secured in the case of a conveyance or other agreement. R.S.O. 1990, c. C.30, s. 78 (3); 2017, c. 24, s. 70, 71.

**Prior mortgages, subsequent advances**

(4) Subject to subsection (2), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that was registered prior to the time when the first lien arose in respect of an improvement, has priority, in addition to the priority to which it is entitled under subsection (3), over the liens arising from the improvement, to the extent of any advance made in respect of that conveyance, mortgage or other agreement after the time when the first lien arose, unless,

- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or
- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (4); 2017, c. 24, s. 53 (1), 70.

**Special priority against subsequent mortgages**

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV. R.S.O. 1990, c. C.30, s. 78 (5); 2017, c. 24, s. 70.

**General priority against subsequent mortgages**

(6) Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that is registered after the time when the first lien arose in respect of the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or
- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (6); 2017, c. 24, s. 53 (1), 70.

**Advances to trustee under Part IX**

(7) Despite anything in this Act, where an amount is advanced to a trustee appointed under Part IX as a result of the exercise of any powers conferred upon the trustee under that Part,

- (a) the interest in the premises acquired by the person making the advance takes priority, to the extent of the advance, over every lien existing at the date of the trustee's appointment; and
- (b) the amount received is not subject to any lien existing at the date of the trustee's appointment. R.S.O. 1990, c. C.30, s. 78 (7); 2017, c. 24, s. 70.

**Where postponement**

(8) Despite subsections (4) and (6), where a preserved or perfected lien is postponed in favour of the interest of some other person in the premises, that person shall enjoy priority in accordance with the postponement over,

- (a) the postponed lien; and
- (b) where an advance is made, any unperfected lien in respect of which no written notice has been received by the person in whose favour the postponement is made at the time of the advance,

but nothing in this subsection affects the priority of the liens under subsections (2) and (5). R.S.O. 1990, c. C.30, s. 78 (8); 2017, c. 24, s. 70.

**Saving**

(9) Subsections (2) and (5) do not apply in respect of a mortgage that was registered prior to the 2nd day of April, 1983. R.S.O. 1990, c. C.30, s. 78 (9).

**Financial guarantee bond**

(10) A purchaser who takes title from a mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5) where,

- (a) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance; or
- (b) a letter of credit or a guarantee from a bank listed in Schedule I or II to the *Bank Act* (Canada),

in the prescribed form is registered on the title to the premises, and, upon registration, the security of the bond, letter of credit or the guarantee takes the place of the priority created by those subsections, and persons who have proved liens have a right of action against the surety on the bond or guarantee or the issuer of the letter of credit. R.S.O. 1990, c. C.30, s. 78 (10); 1997, c. 19, s. 30; 2017, c. 24, s. 53 (2), 70.

**Home buyer's mortgage**

(11) Subsections (2) and (5) do not apply to a mortgage given or assumed by a home buyer. R.S.O. 1990, c. C.30, s. 78 (11).

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

1997, c. 19, s. 30 - 10/10/1997

2017, c. 24, s. 53 (1, 2), 70, 71 - 12/12/2017

**Persons who comprise class**

**79** All persons having a lien who have supplied services or materials to the same payer comprise a class, and a person who has supplied services or materials to more than one payer is a member of every class to the extent to which the person's lien relates to that class. R.S.O. 1990, c. C.30, s. 79.

**Priority between and within class**

**80** (1) Except where it is otherwise provided by this Act,

- (a) no person having a lien is entitled to any priority over another member of the same class;
- (b) all amounts available to satisfy the liens in respect of an improvement shall be distributed rateably among the members of each class according to their respective rights; and
- (c) the lien of every member of a class has priority over the lien of the payer of that class. R.S.O. 1990, c. C.30, s. 80 (1).

**Where conveyance or mortgage void**

(2) Any conveyance or mortgage in respect of the premises to any person entitled to a lien on the premises, in payment of or as security for that claim, whether given before or after that lien arises, is void against all other persons entitled to a lien on the premises. R.S.O. 1990, c. C.30, s. 80 (2); 2017, c. 24, s. 70, 71.

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

2017, c. 24, s. 70, 71 - 12/12/2017

**Worker's priority**

**81** (1) The lien of a worker has priority over the lien of any other person belonging to the same class to the extent of the amount of forty regular-time working days' wages. R.S.O. 1990, c. C.30, s. 81 (1).

**Workers' trust fund**

(2) Where monetary supplementary benefits are payable to a workers' trust fund instead of to a worker, the trustee of the workers' trust fund is subrogated to the rights of the worker under this Act with respect to those benefits. R.S.O. 1990, c. C.30, s. 81 (2).

**Device to defeat workers' priority void**

(3) Every device to defeat the priority given to workers by this section is void. R.S.O. 1990, c. C.30, s. 81 (3).

**Subordination of general lien claims**

**82** Where a general lien is realized against a premises in an action in which other liens are also realized against the premises,

- (a) the general lien shall rank with the other liens according to the rules of priority set out in section 80 only to the extent of,
- (i) the total value of the general lien,
- divided by,
- (ii) the total number of premises to which the person having the general lien supplied services or materials under contract or subcontract; and
- (b) in respect of the balance of the general lien, it shall rank next in priority to all other liens against the premises, whether or not of the same class. R.S.O. 1990, c. C.30, s. 82; 2017, c. 24, s. 54, 69, 71, 72.

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

2017, c. 24, s. 54, 69, 71, 72 - 12/12/2017

**Application of insurance proceeds**

**83** Where a premises that is subject to a lien is destroyed in whole or in part, any amount received by the owner or a mortgagee by reason of any insurance on the premises shall take the place of the premises so destroyed and shall be distributed in accordance with the priorities set out in this Part. R.S.O. 1990, c. C.30, s. 83; 2017, c. 24, s. 55.

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

2017, c. 24, s. 55 - 12/12/2017

**Distribution of proceeds of sale**

**84** Where an interest in the premises is sold or leased under an order of the court or by a trustee appointed under Part IX, the proceeds received as a result of that disposition, together with any amount paid into court under subsection 65 (2), shall be distributed in accordance with the priorities set out in this Part. R.S.O. 1990, c. C.30, s. 84; 2017, c. 24, s. 70.

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

2017, c. 24, s. 70 - 12/12/2017

**Priorities on insolvency**

**85 (1)** Where a payer becomes insolvent, the trust fund of which that payer is trustee shall be distributed so that priority over all others is given to a beneficiary of that trust who has proved a lien and a beneficiary of a trust created by section 8 that is derived from that trust, who has proved a lien. R.S.O. 1990, c. C.30, s. 85 (1).

**Same**

(2) Priority in the distribution of trust funds among those who have proved liens shall be in accordance with the respective priorities of their liens as set out in this Part. R.S.O. 1990, c. C.30, s. 85 (2).

**Same**

(3) The remaining trust funds shall be distributed among the beneficiaries of that trust and the beneficiaries of trusts created by section 8 that are derived from that trust, whose liens have not been proved, in accordance with the respective priorities to which those liens would have been entitled as set out in this Part, had those liens been proved. R.S.O. 1990, c. C.30, s. 85 (3).

**PART XI.1  
SURETY BONDS**

**Bonds and public contracts**

**Definition**

**85.1 (1)** In this section,

“public contract” means a contract between an owner and a contractor respecting an improvement, if the owner is the Crown, a municipality or a broader public sector organization. 2017, c. 24, s. 56.

**Application**

(2) Subject to the regulations, this section applies to a public contract if the contract price exceeds the amount prescribed for the applicable owner. 2017, c. 24, s. 56.

**Exception**

(3) This section does not apply in the case of a contractor who is an architect or an engineer. 2017, c. 24, s. 56.

**Requirement for labour and material payment bond**

(4) On entering into a public contract, a contractor shall furnish the owner with a labour and material payment bond, in the prescribed form, that,

- (a) is of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (b) has a coverage limit of at least 50 per cent of the contract price, or such other percentage of the contract price as may be prescribed; and
- (c) extends protection to subcontractors and persons supplying labour or materials to the improvement. 2017, c. 24, s. 56.

**Requirement for performance bond**

(5) On entering into a public contract, a contractor shall furnish the owner with a performance bond, in the prescribed form, that,

- (a) is of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance; and
- (b) has a coverage limit of at least 50 per cent of the contract price, or such other percentage of the contract price as may be prescribed. 2017, c. 24, s. 56.

**Claims process**

(6) A bond form prescribed for the purposes of subsection (4) or (5) may set out the claims process applicable in respect of the bond. 2017, c. 24, s. 56.

**No limitation on other bonds or security**

(7) For greater certainty, this section does not limit the ability of the owner to require the contractor to provide other types of bonds or security. 2017, c. 24, s. 56.

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

2017, c. 24, s. 56 - 01/07/2018

**Rights of action****Default, labour and material payment bond**

**85.2** (1) If a labour and material payment bond is in effect in respect of an improvement and the principal on the bond defaults in making a payment guaranteed by the bond, any person to whom the payment is guaranteed has a right of action to recover the amount of the person's claim, in accordance with the terms and conditions of the bond, against the surety and the principal. 2017, c. 24, s. 56.

**Default, performance bond**

(2) If a performance bond is in effect in respect of an improvement and the contractor defaults in performing the contract guaranteed by the bond, the owner has a right of action to enforce the bond, in accordance with its terms and conditions, against the surety and the contractor. 2017, c. 24, s. 56.

**Saving**

(3) Nothing in this section makes the surety liable for an amount in excess of the amount that the surety undertakes to pay under a bond, and the surety's liability under the bond shall be reduced by and to the extent of any payment made in good faith by the surety either before or after judgment is obtained against the surety. 2017, c. 24, s. 56.

**Same**

(4) Nothing in this section makes the surety liable as the principal under a bond, or makes the surety a party to any contract. 2017, c. 24, s. 56.

**Subrogation**

(5) On satisfaction of its obligation to any person under a bond to which this section applies, the surety shall be subrogated to all the rights of that person. 2017, c. 24, s. 56.

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

2017, c. 24, s. 56 - 01/07/2018

**PART XII  
MISCELLANEOUS RULES**

**Costs**

**86** (1) Subject to subsection (2), any order as to the costs in an action, application, motion or any other step in a proceeding under this Act is in the discretion of the court, and an order as to costs may be made against,

- (a) a party to the action or motion; or
- (b) a person who represented a party to the action, application or motion, where the person,
  - (i) knowingly participated in the preservation or perfection of a lien, or represented a party at the trial of an action, where it is clear that the claim for a lien is without foundation, is frivolous, vexatious or an abuse of process, or is for a wilfully exaggerated amount, or that the lien has expired, or
  - (ii) prejudiced or delayed the conduct of the action,

and the order may be made on a substantial indemnity basis, including where the motion is heard by a person other than a judge or the action has been referred under section 58. 2006, c. 21, Sched. C, s. 102 (3); 2017, c. 24, s. 57, 63.

**Where least expensive course not taken**

(2) Where the least expensive course is not taken by a party, the costs allowed to the party shall not exceed what would have been incurred had the least expensive course been taken. R.S.O. 1990, c. C.30, s. 86 (2).

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

1996, c. 25, s. 4 (10) - 31/10/1996

2006, c. 21, Sched. C, s. 102 (3) - 01/05/2007

2017, c. 24, s. 57 (1-3) - 01/07/2018; 2017, c. 24, s. 63 - 12/12/2017

**How documents may be given**

**87** (1) Except where otherwise ordered by the court, all documents and notices required to be given or that may be given under this Act, may be served in any manner permitted under the rules of court or, in the alternative, may be sent by certified or registered mail addressed to the intended recipient at the recipient's last known mailing address,

- (a) according to the records of the person sending the document; or
- (b) as stated on the most recently registered instrument identifying the recipient as a person having an interest in the premises. R.S.O. 1990, c. C.30, s. 87 (1); 2017, c. 24, s. 70.

**Exception, written notice of lien**

(1.1) Despite subsection (1), a written notice of lien shall be served in a manner permitted under the rules of court for service of an originating process. 2017, c. 24, s. 58.

**Claim for lien to municipality**

(1.2) If the regulations so provide, a copy of a claim for lien shall, despite subsection (1), be given to the clerk of a municipality under subsection 34 (3.1) electronically in accordance with the regulations. 2017, c. 24, s. 58.

**When document deemed received**

(2) In the absence of evidence to the contrary, a document or notice sent to a person by certified or registered mail shall be deemed to have been received by the person on the fifth day following the date on which it was mailed, exclusive of Saturdays and holidays. R.S.O. 1990, c. C.30, s. 87 (2).

**Date of mailing**

(3) Where a document or notice is sent by registered mail, the date appearing on the postal registration receipt shall be deemed conclusively to be the date of mailing. R.S.O. 1990, c. C.30, s. 87 (3).

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

2017, c. 24, s. 58 - 01/07/2018; 2017, c. 24, s. 70 - 12/12/2017

### ***Financial Administration Act***

**87.1** If a ministry or specified public entity, as defined in the *Financial Administration Act*, is liable to pay interest under this Act, the payment of the interest is deemed to have been authorized and directed by the Treasury Board under section 11.4.1 of that Act. 2017, c. 24, s. 59.

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

2017, c. 24, s. 59 - 01/07/2018

### ***Courts of Justice Act***

**87.2** In the event of a conflict between this Act and the *Courts of Justice Act*, this Act prevails to the extent of the conflict. 2017, c. 24, s. 60.

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

2017, c. 24, s. 60 - 01/07/2018

### **Transition**

#### **Continued application of *Construction Lien Act* and regulations**

**87.3** (1) This Act and the regulations, as they read on June 29, 2018, continue to apply with respect to an improvement if,

- a contract for the improvement was entered into before July 1, 2018;
- a procurement process for the improvement was commenced before July 1, 2018 by the owner of the premises; or
- in the case of a premises that is subject to a leasehold interest that was first entered into before July 1, 2018, a contract for the improvement was entered into or a procurement process for the improvement was commenced on or after July 1, 2018 and before the day subsection 19 (1) of Schedule 8 to the *Restoring Trust, Transparency and Accountability Act, 2018* came into force. 2018, c. 17, Sched. 8, s. 19 (1).

### **Same**

(2) For greater certainty, clauses (1) (a) and (c) apply regardless of when any subcontract under the contract was entered into. 2018, c. 17, Sched. 8, s. 19 (1).

#### **Exception, municipal interest in premises**

(3) Despite subsection (1), the amendments made to this Act by subsections 13 (4), 14 (4) and 29 (2) and (4) of the *Construction Lien Amendment Act, 2017* apply with respect to an improvement to a premises in which a municipality has an interest, even if a contract for the improvement was entered into or a procurement process for the improvement was commenced before July 1, 2018. 2018, c. 17, Sched. 8, s. 19 (2).

#### **Non-application of Parts I.1 and II.1**

(4) Parts I.1 and II.1 do not apply with respect to the following contracts and subcontracts:

- A contract entered into before the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* came into force.
- A contract entered into on or after the day subsection 11 (1) of the *Construction Lien Amendment Act, 2017* came into force, if a procurement process for the improvement that is the subject of the contract was commenced before that day by the owner of the premises.
- A subcontract made under a contract referred to in paragraph 1 or 2. 2018, c. 17, Sched. 8, s. 19 (3).

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

2017, c. 24, s. 61 (1) - 01/07/2018; 2017, c. 24, s. 61 (2) - no effect - see 2018, c. 17, Sched. 8, s. 19 (1) - 06/12/2018

2018, c. 17, Sched. 8, s. 19 (1) - 06/12/2018; 2018, c. 17, Sched. 8, s. 19 (2, 3) - 01/10/2019

### **Regulations**

**88** (1) The Lieutenant Governor in Council may make regulations respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act, including regulations,

- respecting anything that, under this Act, may or must be prescribed or done by regulation;
- prescribing forms and providing for their use;



- (c) for the purposes of subsection 1.1 (5), providing for modifications in the application of portions, provisions or regulations listed in that subsection;
- (d) governing the registry required to be established under clause 13.3 (1) (c);
- (e) governing the setting of fees, costs and charges by the Authorized Nominating Authority under clause 13.3 (2) (a);
- (f) for the purposes of section 13.4, prescribing fees for the training and qualification of persons as adjudicators and for the appointment of adjudicators, and requiring their payment;
- (g) establishing procedures for the making of complaints against the Authorized Nominating Authority;
- (h) governing adjudication procedures;
- (i) governing the procedures for requiring a consolidated adjudication under subsection 13.8 (2);
- (i.1) governing the determination of fees by the Authorized Nominating Authority under clause 13.10 (2) (b);
- (i.2) governing responses for the purposes of section 13.11.1, including specifying the time and manner in which responses must be provided and setting out information they must contain or any other requirements they must meet;
- (j) governing procedures that apply if an adjudicator fails to complete an adjudication under Part II.1;
- (k) providing that Parts I.1 and II.1 do not apply with respect to the classes of contracts and subcontracts for improvements to land used in connection with a facility referred to in the definition of “nuclear facility” in the *Nuclear Safety and Control Act* (Canada) that are specified by the regulations.
- (l) for the purposes of Part VIII, governing procedures that apply to actions;
- (m) exempting public contracts from the application of section 85.1. 2017, c. 24, s. 62 (1-3, 4); 2018, c. 17, Sched. 8, s. 20.

#### **Conflict**

(1.1) In the event of a conflict between a regulation made under clause 88 (1) (l) and the *Courts of Justice Act* or the rules of court, the regulation prevails to the extent of the conflict. 2017, c. 24, s. 62 (5).

#### **Same, transitional matters**

(2) The Lieutenant Governor in Council may make regulations providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the *Construction Lien Amendment Act, 2017*. 2017, c. 24, s. 62 (1).

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

2017, c. 24, s. 62 (1) - 12/12/2017; 2017, c. 24, s. 62 (2) - 01/10/2019; 2017, c. 24, s. 62 (3-5) - 01/07/2018

2018, c. 17, Sched. 8, s. 20 (1-3) - 01/10/2019

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# Consumer Protection Act, 2002

## S.O. 2002, CHAPTER 30 Schedule A

**Consolidation Period:** From June 3, 2021 to the [e-Laws currency date](#).

Last amendment: 2021, c. 26, Sched. 3, s. 65.

Legislative History: 2004, c. 19, s. 7; 2006, c. 17, s. 249; 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 29, s. 60; 2006, c. 34, s. 8; 2007, c. 4, s. 26; 2008, c. 9, s. 79; 2010, c. 8, s. 36; 2013, c. 13, Sched. 2; 2014, c. 9, Sched. 1; 2016, c. 34; 2017, c. 2, Sched. 12, s. 3; 2017, c. 5, Sched. 2, s. 13-20; 2018, c. 3, Sched. 5, s. 14 (see: 2019, c. 1, Sched. 3, s. 5); 2019, c. 1, Sched. 4, s. 12; 2019, c. 14, Sched. 10, s. 4; 2020, c. 14, Schedule 3; 2020, c. 36, Sched. 7, s. 303; 2021, c. 26, Sched. 3, s. 65.

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**PART I**  
**INTERPRETATION AND APPLICATION**

**Interpretation**

**1** In this Act,

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 1 of the Act is amended by adding the following definition: (See: 2020, c. 14, Sched. 3, s. 1)

“administrative penalty” means an administrative penalty imposed under section 104.0.1; (“pénalité administrative”)

“consumer” means an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes; (“consommateur”)

“consumer agreement” means an agreement between a supplier and a consumer in which,

- (a) the supplier agrees to supply goods or services for payment, or
- (b) the supplier agrees to provide rewards points to the consumer, on the supplier’s own behalf or on behalf of another supplier, when the consumer purchases goods or services or otherwise acts in a manner specified in the agreement; (“convention de consommation”)

“consumer transaction” means any act or instance of conducting business or other dealings with a consumer, including a consumer agreement; (“opération de consommation”)

“credit card” means a card or device under which a borrower can obtain advances under a credit agreement, as defined in Part VII, for open credit; (“carte de crédit”)

“Director” means the person designated as the Director under the *Ministry of Consumer and Business Services Act*; (“directeur”)

“future performance agreement” means a consumer agreement in respect of which delivery, performance or payment in full is not made when the parties enter the agreement; (“convention à exécution différée”)

“goods” means any type of property; (“marchandises”)

“initiation fee” means a fee in addition to an annual membership fee; (“droit d’entrée”)

“internet” means the decentralized global network connecting networks of computers and similar devices to each other for the electronic exchange of information using standardized communication protocols; (“Internet”)

“internet gaming site” means an internet site that accepts or offers to accept wagers or bets over the internet,

(a) as part of the playing of or participation in any game of chance or mixed chance and skill that is to take place inside or outside of Canada, or

(b) on any contingency or on any event that may or is to take place inside or outside of Canada,

including, without restricting the generality of the foregoing, a casino game, card game, horse race, fight, match, sporting event or contest; (“site de jeux en ligne”)

“loan broker” means,

(a) a supplier of loan brokering, or

(b) a person who holds themselves out to be a person described in clause (a); (“courtier en prêts”)

“loan brokering” means services or goods that are intended to assist a consumer in obtaining credit or a loan of money, including obtaining credit or a loan of money from the loan broker who is providing the services or goods to the consumer; (“courtage en prêts”)

“Minister” means the Minister of Consumer and Business Services or such other member of the Executive Council to whom the administration of this Act may be assigned under the *Executive Council Act*; (“ministre”)

“Ministry” means the Ministry of Consumer and Business Services; (“ministère”)

“officer” includes the chair and any vice-chair of the board of directors, the president and any vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager and assistant general manager of the corporation or a partner or general manager and assistant general manager of a partnership, any other individual designated as an officer by by-law or resolution or any other individual who performs functions normally performed by an individual occupying such office; (“dirigeant”)

“open credit” means credit or a loan of money under a credit agreement, as defined in Part VII, that,

(a) anticipates multiple advances to be made as requested by the borrower in accordance with the agreement, and

(b) does not define the total amount to be advanced to the borrower under the agreement, although it may impose a credit limit; (“crédit en blanc”)

“payment” means consideration of any kind, including an initiation fee; (“paiement”)

“prescribed” means prescribed by regulations made under this Act; (“prescrit”)

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

“representation” means a representation, claim, statement, offer, request or proposal that is or purports to be,

(a) made respecting or with a view to the supplying of goods or services to consumers, or

(b) made for the purpose of receiving payment for goods or services supplied or purporting to be supplied to consumers; (“assertion”)

“rewards points” means, subject to the regulations, points provided to a consumer under a consumer agreement that can be exchanged for money, goods or services; (“points de récompense”)

“services” means anything other than goods, including any service, right, entitlement or benefit; (“services”)

“supplier” means a person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services, including the supply of rewards points, and includes an agent of the supplier and a person who holds themselves out to be a supplier or an agent of the supplier; (“fournisseur”)

“trade-in allowance” means the greater of,

- (a) the price or value of the consumer’s goods or services as set out in a trade-in arrangement, and
- (b) the market value of the consumer’s goods or services when taken in trade under a trade-in arrangement; (“valeur de reprise”)

“trade-in arrangement” means an arrangement under which a consumer agrees to sell his or her own goods or services to the supplier and the supplier accepts the goods or services as all or part of the consideration for supplying goods or services; (“convention de reprise”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or such other tribunal as may be prescribed. (“Tribunal”) 2002, c. 30, Sched. A, s. 1; 2004, c. 19, s. 7 (1-4); 2006, c. 34, s. 8 (1); 2008, c. 9, s. 79 (1); 2013, c. 13, Sched. 2, s. 1; 2016, c. 34, s. 1; 2017, c. 5, Sched. 2, s. 13.

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

2004, c. 19, s. 7 (1-4) - 30/07/2005

2006, c. 34, s. 8 (1) - 01/01/2008

2008, c. 9, s. 79 (1) - 01/07/2009

2013, c. 13, Sched. 2, s. 1 - 12/12/2013

2016, c. 34, s. 1 (1-3) - 01/01/2018

2017, c. 5, Sched. 2, s. 13 - 13/04/2017

2020, c. 14, Sched. 3, s. 1 - not in force

#### Application

2 (1) Subject to this section, this Act applies in respect of all consumer transactions if the consumer or the person engaging in the transaction with the consumer is located in Ontario when the transaction takes place. 2002, c. 30, Sched. A, s. 2 (1).

#### Exceptions

(2) This Act does not apply in respect of,

- (a) consumer transactions regulated under the *Securities Act*;
- (b) financial services related to investment products or income securities;
- (c) financial products or services regulated under the *Insurance Act*, the *Credit Unions and Caisses Populaires Act, 1994*, the *Loan and Trust Corporations Act* or the *Mortgage Brokerages, Lenders and Administrators Act, 2006*;

**Note: On March 1, 2022, the day named by proclamation of the Lieutenant Governor, clause 2 (2) (c) of the Act is amended by striking out “*Credit Unions and Caisses Populaires Act, 1994*” and substituting “*Credit Unions and Caisses Populaires Act, 2020*”. (See: 2020, c. 36, Sched. 7, s. 303 (1))**

- (d) consumer transactions regulated under the *Commodity Futures Act*;
- (e) prescribed professional services that are regulated under a statute of Ontario;
- (f) consumer transactions for the purchase, sale or lease of real property, except transactions with respect to time share agreements as defined in section 20; and
- (g) consumer transactions regulated under the *Residential Tenancies Act, 2006*. 2002, c. 30, Sched. A, s. 2 (2); 2006, c. 17, s. 249; 2006, c. 29, s. 60.

#### Same

(3) This Act does not apply to the supply of a public utility or to any charge for the transmission, distribution or storage of gas as defined in the *Ontario Energy Board Act, 1998* if such charge has been approved by the Ontario Energy Board. 2002, c. 30, Sched. A, s. 2 (3).

(4) REPEALED: 2010, c. 8, s. 36 (1).



**Definition**

(5) In this section,

“public utility” means water, artificial or natural gas, electrical power or energy, steam or hot water. (“service public”) 2002, c. 30, Sched. A, s. 2 (5); 2010, c. 8, s. 36 (2).

**Agreement for supply of appliances**

(6) For greater certainty, despite clause (2) (f), this Act applies to a consumer agreement under which a supplier supplies goods to a consumer that are not part of real property at the time the parties enter into the agreement but that subsequently become so under the agreement. 2017, c. 5, Sched. 2, s. 14.

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

2006, c. 17, s. 249 - 31/01/2007; 2006, c. 29, s. 60 - 1/07/2008

2010, c. 8, s. 36 - 01/01/2011

2017, c. 5, Sched. 2, s. 14 - 01/03/2018

2020, c. 36, Sched. 7, s. 303 (1) - 01/03/2022

**Anti-avoidance**

3 In determining whether this Act applies to an entity or transaction, a court or other tribunal shall consider the real substance of the entity or transaction and in so doing may disregard the outward form. 2002, c. 30, Sched. A, s. 3; 2008, c. 9, s. 79 (2).

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

2008, c. 9, s. 79 (2) - 01/07/2009

**Consumer agreements**

4 A consumer agreement that meets the criteria of more than one type of agreement to which this Act applies shall comply with the provisions of this Act and of the regulations that apply to each type of agreement for which it meets the criteria, except where the application of the provisions is excluded by the regulations. 2004, c. 19, s. 7 (5).

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

2004, c. 19, s. 7 (5) - 30/07/2005

**Disclosure of information**

5 (1) If a supplier is required to disclose information under this Act, the disclosure must be clear, comprehensible and prominent. 2002, c. 30, Sched. A, s. 5 (1).

**Delivery of information**

(2) If a supplier is required to deliver information to a consumer under this Act, the information must, in addition to satisfying the requirements in subsection (1), be delivered in a form in which it can be retained by the consumer. 2002, c. 30, Sched. A, s. 5 (2).

## PART II CONSUMER RIGHTS AND WARRANTIES

**Rights reserved**

6 Nothing in this Act shall be interpreted to limit any right or remedy that a consumer may have in law. 2002, c. 30, Sched. A, s. 6.

**No waiver of substantive and procedural rights**

7 (1) The substantive and procedural rights given under this Act apply despite any agreement or waiver to the contrary. 2002, c. 30, Sched. A, s. 7 (1).

**Limitation on effect of term requiring arbitration**

(2) Without limiting the generality of subsection (1), any term or acknowledgment in a consumer agreement or a related agreement that requires or has the effect of requiring that disputes arising out of the consumer agreement be submitted to arbitration is invalid insofar as it prevents a consumer from exercising a right to commence an action in the Superior Court of Justice given under this Act. 2002, c. 30, Sched. A, s. 7 (2).

**Procedure to resolve dispute**

(3) Despite subsections (1) and (2), after a dispute over which a consumer may commence an action in the Superior Court of Justice arises, the consumer, the supplier and any other person involved in the dispute may agree to resolve the dispute using any procedure that is available in law. 2002, c. 30, Sched. A, s. 7 (3).

**Settlements or decisions**

(4) A settlement or decision that results from the procedure agreed to under subsection (3) is as binding on the parties as such a settlement or decision would be if it were reached in respect of a dispute concerning an agreement to which this Act does not apply. 2002, c. 30, Sched. A, s. 7 (4).

**Non-application of *Arbitration Act, 1991***

(5) Subsection 7 (1) of the *Arbitration Act, 1991* does not apply in respect of any proceeding to which subsection (2) applies unless, after the dispute arises, the consumer agrees to submit the dispute to arbitration. 2002, c. 30, Sched. A, s. 7 (5).

**Class proceedings**

**8** (1) A consumer may commence a proceeding on behalf of members of a class under the *Class Proceedings Act, 1992* or may become a member of a class in such a proceeding in respect of a dispute arising out of a consumer agreement despite any term or acknowledgment in the consumer agreement or a related agreement that purports to prevent or has the effect of preventing the consumer from commencing or becoming a member of a class proceeding. 2002, c. 30, Sched. A, s. 8 (1).

**Procedure to resolve dispute**

(2) After a dispute that may result in a class proceeding arises, the consumer, the supplier and any other person involved in it may agree to resolve the dispute using any procedure that is available in law. 2002, c. 30, Sched. A, s. 8 (2).

**Settlements or decisions**

(3) A settlement or decision that results from the procedure agreed to under subsection (2) is as binding on the parties as such a settlement or decision would be if it were reached in respect of a dispute concerning an agreement to which this Act does not apply. 2002, c. 30, Sched. A, s. 8 (3); 2008, c. 9, s. 79 (3).

**Non-application of *Arbitration Act, 1991***

(4) Subsection 7 (1) of the *Arbitration Act, 1991* does not apply in respect of any proceeding to which subsection (1) applies unless, after the dispute arises, the consumer agrees to submit the dispute to arbitration. 2002, c. 30, Sched. A, s. 8 (4); 2008, c. 9, s. 79 (4).

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

2008, c. 9, s. 79 (3, 4) - 01/07/2009

**Quality of services**

**9** (1) The supplier is deemed to warrant that the services supplied under a consumer agreement are of a reasonably acceptable quality. 2002, c. 30, Sched. A, s. 9 (1).

**Quality of goods**

(2) The implied conditions and warranties applying to the sale of goods by virtue of the *Sale of Goods Act* are deemed to apply with necessary modifications to goods that are leased or traded or otherwise supplied under a consumer agreement. 2002, c. 30, Sched. A, s. 9 (2).

**Same**

(3) Any term or acknowledgement, whether part of the consumer agreement or not, that purports to negate or vary any implied condition or warranty under the *Sale of Goods Act* or any deemed condition or warranty under this Act is void. 2002, c. 30, Sched. A, s. 9 (3).

**Same**

(4) If a term or acknowledgement referenced in subsection (3) is a term of the agreement, it is severable from the agreement and shall not be evidence of circumstances showing an intent that the deemed or implied warranty or condition does not apply. 2002, c. 30, Sched. A, s. 9 (4).

**Estimates**

**10** (1) If a consumer agreement includes an estimate, the supplier shall not charge the consumer an amount that exceeds the estimate by more than 10 per cent. 2002, c. 30, Sched. A, s. 10 (1).

**Performance of consumer agreement**

(2) If a supplier charges an amount that exceeds the estimate by more than 10 per cent, the consumer may require that the supplier provide the goods or services at the estimated price. 2002, c. 30, Sched. A, s. 10 (2).

**Subsequent agreement**

(3) Nothing in this section prevents a consumer and a supplier from agreeing to amend the estimate or price in a consumer agreement, if the consumer requires additional or different goods or services. 2002, c. 30, Sched. A, s. 10 (3).

**Ambiguities to benefit consumer**

11 Any ambiguity that allows for more than one reasonable interpretation of a consumer agreement provided by the supplier to the consumer or of any information that must be disclosed under this Act shall be interpreted to the benefit of the consumer. 2002, c. 30, Sched. A, s. 11.

**Charging consumers for assistance**

12 No person shall charge a consumer for assisting the consumer to obtain any benefit, right or protection to which the consumer is entitled under this Act, unless, before the consumer agrees to pay the charge, the person discloses the entitlement's existence and direct availability to the consumer and the cost, if any, the consumer would be required to pay for the entitlement if the consumer obtained the entitlement directly. 2002, c. 30, Sched. A, s. 12.

**Unsolicited goods or services: relief from legal obligations**

13 (1) Except as provided in this section, a recipient of unsolicited goods or services has no legal obligation in respect of their use or disposal. 2002, c. 30, Sched. A, s. 13 (1).

**No payment for unsolicited goods or services**

(2) No supplier shall demand payment or make any representation that suggests that a consumer is required to make payment in respect of any unsolicited goods or services despite their use, receipt, misuse, loss, damage or theft. 2002, c. 30, Sched. A, s. 13 (2).

**Request not inferred**

(3) A request for goods or services shall not be inferred solely on the basis of payment, inaction or the passing of time. 2002, c. 30, Sched. A, s. 13 (3).

**Material change deemed unsolicited**

(4) If a consumer is receiving goods or services on an ongoing or periodic basis and there is a material change in such goods or services, the goods or services shall be deemed to be unsolicited from the time of the material change forward unless the supplier is able to establish that the consumer consented to the material change. 2002, c. 30, Sched. A, s. 13 (4).

**Form of consent**

(5) A supplier may rely on a consumer's consent to a material change that is made orally, in writing or by other affirmative action but the supplier shall bear the onus of proving the consumer's consent. 2002, c. 30, Sched. A, s. 13 (5).

**Demand**

(6) If a supplier has received a payment in respect of unsolicited goods or services, the consumer who made the payment may demand a refund of the payment in accordance with section 92 within one year after having made the payment. 2002, c. 30, Sched. A, s. 13 (6).

**Refund**

(7) A supplier who receives a demand for a refund under subsection (6) shall refund the payment within the prescribed period of time. 2002, c. 30, Sched. A, s. 13 (7).

**Consumer may commence action**

(8) The consumer who made the payment may commence an action to recover the payment in accordance with section 100. 2002, c. 30, Sched. A, s. 13 (8).

**Definition**

(9) In this section,

“unsolicited goods or services” means,

- (a) goods that are supplied to a consumer who did not request them but does not include,

- (i) goods that the recipient knows or ought to know are intended for another person,
  - (ii) a change to periodically supplied goods, if the change in goods is not a material change, or
  - (iii) goods supplied under a written future performance agreement that provides for the periodic supply of goods to the recipient without further solicitation, or
- (b) services that are supplied to a consumer who did not request them but does not include,
- (i) services that were intended for another person from the time the recipient knew or ought to have known that they were so intended,
  - (ii) a change to ongoing or periodic services that are being supplied, if the change in the services is not a material change,
  - (iii) services supplied under a written future performance agreement that provides for the ongoing or periodic supply of services to the recipient without further solicitation, or
  - (iv) any prescribed tow and storage services regulated under Part VI.1, Tow and Storage Services, including services provided under prescribed circumstances. 2002, c. 30, Sched. A, s. 13 (9); 2014, c. 9, Sched. 1, s. 1.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subclause (b) (iv) of the definition of “unsolicited goods or services” in subsection 13 (9) of the Act is amended by striking out “tow and storage services regulated under Part VI.1, Tow and Storage Services” and substituting “towing services or vehicle storage services regulated under the *Towing and Storage Safety and Enforcement Act, 2021*”. (See: 2021, c. 26, Sched. 3, s. 65 (1))

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

2014, c. 9, Sched. 1, s. 1 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (1) - not in force

#### Advertising illegal site

**13.1** (1) No person shall advertise an internet gaming site that is operated contrary to the *Criminal Code* (Canada). 2006, c. 34, s. 8 (2).

#### Facilitating

(2) No person, other than an internet service provider, shall arrange for or otherwise facilitate advertising prohibited under subsection (1) on behalf of another person. 2006, c. 34, s. 8 (2).

#### Meaning of “advertise”

(3) For the purpose of subsection (1), a person advertises an internet gaming site only if the advertising originates in Ontario or is primarily intended for Ontario residents. 2006, c. 34, s. 8 (2).

#### Same

(4) For the purpose of subsection (1), “advertise” includes,

- (a) providing, by print, publication, broadcast, telecommunication or distribution by any means, information for the purpose of promoting the use of an internet gaming site;
- (b) providing a link in a website for the purpose of promoting the use of an internet gaming site, but does not include a link generated as the result of a search carried out by means of an internet search engine; and
- (c) entering into a sponsorship relationship for the purpose of promoting the use of an internet gaming site. 2006, c. 34, s. 8 (2).

#### Application

(5) This section applies despite subsection 2 (1). 2006, c. 34, s. 8 (2).

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

2006, c. 34, s. 8 (2) - 01/01/2008

### PART III UNFAIR PRACTICES

#### **False, misleading or deceptive representation**

**14** (1) It is an unfair practice for a person to make a false, misleading or deceptive representation. 2002, c. 30, Sched. A, s. 14 (1).

#### **Examples of false, misleading or deceptive representations**

(2) Without limiting the generality of what constitutes a false, misleading or deceptive representation, the following are included as false, misleading or deceptive representations:

1. A representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities they do not have.
2. A representation that the person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection the person does not have.
3. A representation that the goods or services are of a particular standard, quality, grade, style or model, if they are not.
4. A representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, but the reasonable use of goods to enable the person to service, prepare, test and deliver the goods does not result in the goods being deemed to be used for the purposes of this paragraph.
5. A representation that the goods have been used to an extent that is materially different from the fact.
6. A representation that the goods or services are available for a reason that does not exist.
7. A representation that the goods or services have been supplied in accordance with a previous representation, if they have not.
8. A representation that the goods or services or any part of them are available or can be delivered or performed when the person making the representation knows or ought to know they are not available or cannot be delivered or performed.
9. A representation that the goods or services or any part of them will be available or can be delivered or performed by a specified time when the person making the representation knows or ought to know they will not be available or cannot be delivered or performed by the specified time.
10. A representation that a service, part, replacement or repair is needed or advisable, if it is not.
11. A representation that a specific price advantage exists, if it does not.
12. A representation that misrepresents the authority of a salesperson, representative, employee or agent to negotiate the final terms of the agreement.
13. A representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive.
14. A representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.
15. A representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer.
16. A representation that misrepresents the purpose of any charge or proposed charge.
17. A representation that misrepresents or exaggerates the benefits that are likely to flow to a consumer if the consumer helps a person obtain new or potential customers. 2002, c. 30, Sched. A, s. 14 (2).

#### **Unconscionable representation**

**15** (1) It is an unfair practice to make an unconscionable representation. 2002, c. 30, Sched. A, s. 15 (1).

#### **Same**

(2) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person's employer or principal knows or ought to know,

- (a) that the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;

- (b) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
- (c) that the consumer is unable to receive a substantial benefit from the subject-matter of the representation;
- (d) that there is no reasonable probability of payment of the obligation in full by the consumer;
- (e) that the consumer transaction is excessively one-sided in favour of someone other than the consumer;
- (f) that the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
- (g) that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; or
- (h) that the consumer is being subjected to undue pressure to enter into a consumer transaction. 2002, c. 30, Sched. A, s. 15 (2).

### **Renegotiation of price**

**16** It is an unfair practice for a person to use his, her or its custody or control of a consumer's goods to pressure the consumer into renegotiating the terms of a consumer transaction. 2002, c. 30, Sched. A, s. 16.

### **Unfair practices prohibited**

**17** (1) No person shall engage in an unfair practice. 2002, c. 30, Sched. A, s. 17 (1).

#### **One act deemed practice**

(2) A person who performs one act referred to in section 14, 15 or 16 shall be deemed to be engaging in an unfair practice. 2002, c. 30, Sched. A, s. 17 (2).

#### **Advertising excepted**

(3) It is not an unfair practice for a person, on behalf of another person, to print, publish, distribute, broadcast or telecast a representation that the person accepted in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of business. 2002, c. 30, Sched. A, s. 17 (3).

#### **Rescinding agreement**

**18** (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages. 2002, c. 30, Sched. A, s. 18 (1).

#### **Remedy if rescission not possible**

(2) A consumer is entitled to recover the amount by which the consumer's payment under the agreement exceeds the value that the goods or services have to the consumer or to recover damages, or both, if rescission of the agreement under subsection (1) is not possible,

- (a) because the return or restitution of the goods or services is no longer possible; or
- (b) because rescission would deprive a third party of a right in the subject-matter of the agreement that the third party has acquired in good faith and for value. 2002, c. 30, Sched. A, s. 18 (2); 2004, c. 19, s. 7 (6).

#### **Notice**

- (3) A consumer must give notice within one year after entering into the agreement if,
  - (a) the consumer seeks to rescind an agreement under subsection (1); or
  - (b) the consumer seeks recovery under subsection (2), if rescission is not possible. 2002, c. 30, Sched. A, s. 18 (3).

#### **Form of notice**

(4) The consumer may express notice in any way as long as it indicates the intention of the consumer to rescind the agreement or to seek recovery where rescission is not possible and the reasons for so doing and the notice meets any requirements that may be prescribed. 2002, c. 30, Sched. A, s. 18 (4).

#### **Delivery of notice**

(5) Notice may be delivered by any means. 2002, c. 30, Sched. A, s. 18 (5).

#### **When notice given**

(6) If notice is delivered other than by personal service, the notice shall be deemed to have been given when sent. 2002, c. 30, Sched. A, s. 18 (6).

**Address**

(7) The consumer may send or deliver the notice to the person with whom the consumer contracted at the address set out in the agreement or, if the consumer did not receive a written copy of the agreement or the address of the person was not set out in the agreement, the consumer may send or deliver the notice,

- (a) to any address of the person on record with the Government of Ontario or the Government of Canada; or
- (b) to an address of the person known by the consumer. 2002, c. 30, Sched. A, s. 18 (7).

**Commencement of an action**

(8) If a consumer has delivered notice and has not received a satisfactory response within the prescribed period, the consumer may commence an action. 2002, c. 30, Sched. A, s. 18 (8).

**Same**

(9) If a consumer has a right to commence an action under this section, the consumer may commence the action in the Superior Court of Justice. 2002, c. 30, Sched. A, s. 18 (9).

**Evidence**

(10) In the trial of an issue under this section, oral evidence respecting an unfair practice is admissible despite the existence of a written agreement and despite the fact that the evidence pertains to a representation in respect of a term, condition or undertaking that is or is not provided for in the agreement. 2002, c. 30, Sched. A, s. 18 (10).

**Exemplary damages**

(11) A court may award exemplary or punitive damages in addition to any other remedy in an action commenced under this section. 2002, c. 30, Sched. A, s. 18 (11).

**Liability**

(12) Each person who engaged in an unfair practice is liable jointly and severally with the person who entered into the agreement with the consumer for any amount to which the consumer is entitled under this section. 2002, c. 30, Sched. A, s. 18 (12).

**Limited liability of assignee**

(13) If an agreement to which subsection (1) or (2) applies has been assigned or if any right to payment under such an agreement has been assigned, the liability of the person to whom it has been assigned is limited to the amount paid to that person by the consumer. 2002, c. 30, Sched. A, s. 18 (13).

**Effect of rescission**

(14) When a consumer rescinds an agreement under subsection (1), such rescission operates to cancel, as if they never existed,

- (a) the agreement;
- (b) all related agreements;
- (c) all guarantees given in respect of money payable under the agreement;
- (d) all security given by the consumer or a guarantor in respect of money payable under the agreement; and
- (e) all credit agreements, as defined in Part VII, and other payment instruments, including promissory notes,
  - (i) extended, arranged or facilitated by the person with whom the consumer reached the agreement, or
  - (ii) otherwise related to the agreement. 2002, c. 30, Sched. A, s. 18 (14).

**Waiver of notice**

(15) If a consumer is required to give notice under this Part in order to obtain a remedy, a court may disregard the requirement to give the notice or any requirement relating to the notice if it is in the interest of justice to do so. 2002, c. 30, Sched. A, s. 18 (15); 2008, c. 9, s. 79 (5).

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

2004, c. 19, s. 7 (6) - 30/07/2005

2008, c. 9, s. 79 (5) - 01/07/2009

## Transition

19 (1) This Part applies to consumer transactions that occur on or after the day this section is proclaimed in force. 2002, c. 30, Sched. A, s. 19 (1).

## Same

(2) The *Business Practices Act*, as it existed immediately before its repeal by the *Consumer Protection Statute Law Amendment Act, 2002*, continues to apply to consumer transactions that occurred before its repeal. 2002, c. 30, Sched. A, s. 19 (2).

## PART IV RIGHTS AND OBLIGATIONS RESPECTING SPECIFIC CONSUMER AGREEMENTS

### DEFINITIONS AND APPLICATION

#### Interpretation

20 (1) In this Part,

“direct agreement” means a consumer agreement that is negotiated or concluded in person at a place other than,

- (a) at the supplier’s place of business, or
- (b) at a market place, an auction, trade fair, agricultural fair or exhibition; (“convention directe”)

“internet agreement” means a consumer agreement formed by text-based internet communications; (“convention électronique”)

“membership fee” means the amount payable by a consumer for personal development services; (“droit d’adhésion”)

“personal development services” means,

- (a) services provided for,
  - (i) health, fitness, diet or matters of a similar nature,
  - (ii) modelling and talent, including photo shoots relating to modelling and talent, or matters of a similar nature,
  - (iii) martial arts, sports, dance or similar activities, and
  - (iv) other matters as may be prescribed, and
- (b) facilities provided for or instruction on the services referred to in clause (a) and any goods that are incidentally provided in addition to the provision of the services; (“services de perfectionnement personnel”)

“remote agreement” means a consumer agreement entered into when the consumer and supplier are not present together; (“convention à distance”)

“time share agreement” means a consumer agreement by which a consumer,

- (a) acquires the right to use property as part of a plan that provides for the use of the property to circulate periodically among persons participating in the plan, whether or not the property is located in Ontario, or
- (b) is provided with access to discounts or benefits for the future provision of transportation, accommodation or other goods or services related to travel. (“convention de multipropriété”) 2002, c. 30, Sched. A, s. 20 (1); 2006, c. 34, s. 8 (3).

#### Limitations on cancellation

(2) Despite sections 95 and 96, in the prescribed circumstances, the effect of cancellation of a consumer agreement to which this Part applies by a consumer and the obligations arising as a result of the cancellation of the agreement may be subject to such limitations as may be prescribed. 2002, c. 30, Sched. A, s. 20 (2).

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

2006, c. 34, s. 8 (3) - 01/01/2008

### FUTURE PERFORMANCE AGREEMENTS

#### Application of sections

21 (1) Sections 22 to 26 apply to future performance agreements if the consumer’s total potential payment obligation under the agreement, excluding the cost of borrowing, exceeds a prescribed amount. 2002, c. 30, Sched. A, s. 21 (1).



**Exception**

(2) Sections 22 to 26 do not apply to agreements that are future performance agreements solely because of an open credit arrangement. 2002, c. 30, Sched. A, s. 21 (2).

**Transition**

(3) Sections 22 to 26 apply to future performance agreements entered into on or after the day this section is proclaimed in force. 2002, c. 30, Sched. A, s. 21 (3).

**Same**

(4) The *Consumer Protection Act*, as it existed immediately before its repeal under the *Consumer Protection Statute Law Amendment Act, 2002*, continues to apply to executory contracts entered into before its repeal. 2002, c. 30, Sched. A, s. 21 (4).

**Requirements for future performance agreements**

**22** Every future performance agreement shall be in writing, shall be delivered to the consumer and shall be made in accordance with the prescribed requirements. 2002, c. 30, Sched. A, s. 22.

**Cancelling future performance agreements**

**23** A consumer may cancel a future performance agreement within one year after the date of entering into the agreement if the consumer does not receive a copy of the agreement that meets the requirements required by section 22. 2002, c. 30, Sched. A, s. 23.

**Rights in other goods not enforceable**

**24** Any provision in any future performance agreement or in any security agreement incidental to such an agreement under which the supplier may acquire title to, possession of or any rights in any goods of the consumer, other than the goods passing to the consumer under the agreement, is not enforceable. 2002, c. 30, Sched. A, s. 24.

**No repossession after two-thirds paid except by leave of court**

**25** (1) Where a consumer under a future performance agreement has paid two-thirds or more of his or her payment obligation as fixed by the agreement, any provision in the agreement, or in any security agreement incidental to the agreement, under which the supplier may retake possession of or resell the goods or services upon default in payment by the consumer is not enforceable except by leave obtained from the Superior Court of Justice. 2002, c. 30, Sched. A, s. 25 (1).

**Powers of court**

(2) Upon an application for leave under subsection (1), the court may, in its discretion, grant leave to the supplier or refuse leave or grant leave upon such terms and conditions as the court considers advisable. 2002, c. 30, Sched. A, s. 25 (2).

**Late delivery**

**26** (1) A consumer may cancel a future performance agreement at any time before delivery under the agreement or the commencement of performance under the agreement if the supplier,

- (a) does not make delivery within 30 days after the delivery date specified in the agreement or an amended delivery date agreed to by the consumer in writing; or
- (b) does not begin performance of his, her or its obligations within 30 days after the commencement date specified in the agreement or an amended commencement date agreed to by the consumer in writing. 2002, c. 30, Sched. A, s. 26 (1).

**Delivery or commencement date not specified**

(2) If the delivery date or commencement date is not specified in the future performance agreement, a consumer may cancel the agreement at any time before delivery or commencement if the supplier does not deliver or commence performance within 30 days after the date the agreement is entered into. 2002, c. 30, Sched. A, s. 26 (2).

**Forgiveness of failure**

(3) If, after the period in subsection (1) or (2) has expired, the consumer agrees to accept delivery or authorize commencement, the consumer may not cancel the agreement under this section. 2002, c. 30, Sched. A, s. 26 (3).

**Deemed delivery or performance**

(4) For the purposes of subsections (1) and (2), a supplier is considered to have delivered or commenced performance under a future performance agreement if,

- (a) delivery was attempted but was refused by the consumer at the time that delivery was attempted or delivery was attempted but not made because no person was available to accept delivery for the consumer on the day for which reasonable notice was given to the consumer that there was to be delivery; or
- (b) commencement was attempted but was refused by the consumer at the time that commencement was attempted or commencement was attempted but did not occur because no person was available to enable commencement on the day for which reasonable notice was given to the consumer that commencement was to occur. 2002, c. 30, Sched. A, s. 26 (4).

## TIME SHARE AGREEMENTS

### Requirements for time share agreements

**27** Every time share agreement shall be in writing, shall be delivered to the consumer and shall be made in accordance with the prescribed requirements. 2002, c. 30, Sched. A, s. 27.

#### Cancellation: cooling-off period

**28 (1)** A consumer may, without any reason, cancel a time share agreement at any time from the date of entering into the agreement until 10 days after receiving the written copy of the agreement. 2002, c. 30, Sched. A, s. 28 (1); 2013, c. 13, Sched. 2, s. 2.

#### Cancellation: failure to meet requirements

(2) In addition to the right under subsection (1), a consumer may cancel a time share agreement within one year after the date of entering into the agreement if the consumer does not receive a copy of the agreement that meets the requirements under section 27. 2002, c. 30, Sched. A, s. 28 (2).

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

2013, c. 13, Sched. 2, s. 2 - 12/12/2013

## PERSONAL DEVELOPMENT SERVICES

### Application

**29 (1)** Sections 30 to 36 apply in respect of personal development services or proposed personal development services for which,

- (a) payment in advance is required; and
- (b) the consumer's total potential payment obligation, excluding cost of borrowing, exceeds a prescribed amount. 2002, c. 30, Sched. A, s. 29 (1).

### Exceptions

(2) Sections 30 to 36 do not apply to personal development services that are provided,

- (a) on a non-profit or co-operative basis;
- (b) by a private club primarily owned by its members;
- (c) as an incidental part of the goods or services that are being supplied to the consumer;
- (d) by a supplier funded or run by a charitable or municipal organization or by the Province of Ontario or any of its agencies; or
- (e) by a golf club. 2002, c. 30, Sched. A, s. 29 (2).

### Transition

(3) Sections 30 to 36 do not apply to a personal development services agreement in existence before this section is proclaimed in force but do apply if a pre-existing agreement is extended or renewed after this section is proclaimed in force. 2002, c. 30, Sched. A, s. 29 (3).

### Same

(4) Agreements that are in existence before sections 30 to 36 are proclaimed in force are governed by the *Prepaid Services Act* as it existed immediately before its repeal by the *Consumer Protection Statute Law Amendment Act, 2002*. 2002, c. 30, Sched. A, s. 29 (4).

**Requirements for personal development services agreements**

**30** (1) Every personal development services agreement shall be in writing, shall be delivered to the consumer and shall be made in accordance with the prescribed requirements. 2002, c. 30, Sched. A, s. 30 (1).

**Payments not required or accepted**

(2) No supplier shall require or accept payment for personal development services from a consumer with whom the supplier does not have an agreement that meets the requirements established under subsection (1). 2002, c. 30, Sched. A, s. 30 (2).

**Agreements for one year only**

**31** (1) No personal development services agreement may be made for a term longer than one year after the day that all the services are made available to the consumer. 2002, c. 30, Sched. A, s. 31 (1).

**Deemed separate agreement**

(2) Any personal development services agreement that provides for a renewal or an extension of the agreement beyond one year shall be deemed to create a separate agreement for each renewal or extension of one year or less. 2002, c. 30, Sched. A, s. 31 (2).

**Renewal provision**

(3) A personal development services agreement that provides for the renewal or extension of the agreement is not valid unless the supplier complies with the prescribed requirements. 2002, c. 30, Sched. A, s. 31 (3).

**Deemed non-renewal of agreement**

(4) A personal development services agreement that provides for a renewal or extension of the agreement shall be deemed not to be renewed or extended if the consumer notifies the supplier, before the time for renewal or extension, that the consumer does not want to renew or extend. 2002, c. 30, Sched. A, s. 31 (4).

**Monthly renewals**

(5) Subsections (2) and (3) do not apply to an agreement providing for successive monthly renewals if the consumer has the option of terminating on one month's notice or less. 2002, c. 30, Sched. A, s. 31 (5).

**Only one agreement**

**32** (1) No supplier shall enter into a new agreement for personal development services with a consumer with whom the supplier has an existing agreement for personal development services unless the new agreement is for personal development services that are distinctly different from the services provided under the existing agreement. 2002, c. 30, Sched. A, s. 32 (1).

**New agreement void**

(2) Any new agreement entered into in contravention of subsection (1) is void. 2002, c. 30, Sched. A, s. 32 (2).

**Same**

(3) For the purposes of subsection (1), a different term or a different commencement date does not constitute a distinct difference in the personal development services to be provided. 2002, c. 30, Sched. A, s. 32 (3).

**Renewals exempted**

(4) Nothing in this section prevents a personal development services agreement from being renewed during the term of the agreement provided that the renewal meets the requirements under section 31. 2002, c. 30, Sched. A, s. 32 (4).

**Initiation fee**

**33** No supplier of personal development services shall,

- (a) charge a consumer more than one initiation fee; or
- (b) charge an initiation fee that is greater than twice the annual membership fee. 2002, c. 30, Sched. A, s. 33.

**Instalment plans**

**34** (1) Every supplier of personal development services shall make available to consumers at least one plan for instalment payments of membership fees and initiation fees, if applicable, that allow consumers to make equal monthly payments over the term of the personal development services agreement. 2002, c. 30, Sched. A, s. 34 (1).

**Same**

(2) No supplier shall provide an instalment payment plan through which the total amount paid by instalments exceeds the membership or initiation fee, if applicable, by more than 25 per cent. 2002, c. 30, Sched. A, s. 34 (2).

### **Cancellation: cooling-off period**

**35** (1) A consumer may, without any reason, cancel a personal development services agreement at any time within 10 days after the later of receiving the written copy of the agreement and the day all the services are available. 2002, c. 30, Sched. A, s. 35 (1); 2013, c. 13, Sched. 2, s. 2.

### **Cancellation: failure to meet requirements**

(2) In addition to the right under subsection (1), a consumer may cancel a personal development services agreement within one year after the date of entering into the agreement if the consumer does not receive a copy of the agreement that meets the requirements under section 30. 2002, c. 30, Sched. A, s. 35 (2).

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

2013, c. 13, Sched. 2, s. 2 - 12/12/2013

### **Trustee for payment for unavailable services**

**36** (1) No supplier shall receive payment from a consumer for personal development services that are not available at the time the payment is made except if the payment is made through a trust corporation registered under the *Loan and Trust Corporations Act* that has agreed to act as a trustee for the payment. 2002, c. 30, Sched. A, s. 36 (1).

### **Exception**

(2) Subsection (1) does not apply when one of the services that is not available is the use of a facility and the consumer has agreed in writing to use another facility provided by the supplier until the facility contracted for is available. 2002, c. 30, Sched. A, s. 36 (2).

### **Facility not available**

(3) If a facility is not available for use on the day specified in the agreement, the trustee shall refund all payment received from the consumer unless the consumer agrees in writing to permit the trustee to retain the payment. 2002, c. 30, Sched. A, s. 36 (3).

### **Extension**

(4) No permission given under subsection (3) applies for longer than 90 days but a subsequent permission may be given on the expiration of a permission. 2002, c. 30, Sched. A, s. 36 (4).

### **Duties of trustee**

(5) Where a supplier has a trustee under subsection (1),

- (a) any notice to the trustee shall be deemed to be notice to the supplier; and
- (b) any money payable by the supplier is payable by the trustee to the extent that the trustee holds sufficient trust funds for that purpose. 2002, c. 30, Sched. A, s. 36 (5).

### **Same**

(6) Every trustee under subsection (1) shall, upon receiving any payment from a consumer, provide the consumer with written confirmation of receipt of the payment and of the fact that the payment will be dealt with in accordance with sections 30 to 35 and with this section. 2002, c. 30, Sched. A, s. 36 (6).

### **Same**

(7) No trustee shall release to a supplier funds received from a consumer until the personal development services are available. 2002, c. 30, Sched. A, s. 36 (7).

### **Same**

(8) The trustee shall release the funds held under this section to the consumer if the consumer cancels the personal development services agreement in accordance with this Act. 2002, c. 30, Sched. A, s. 36 (8).

## INTERNET AGREEMENTS

### **Application**

**37** Sections 38 to 40 apply to an internet agreement if the consumer's total potential payment obligation under the agreement, excluding the cost of borrowing, exceeds a prescribed amount. 2002, c. 30, Sched. A, s. 37.

**Disclosure of information**

**38** (1) Before a consumer enters into an internet agreement, the supplier shall disclose the prescribed information to the consumer. 2002, c. 30, Sched. A, s. 38 (1).

**Express opportunity to accept or decline agreement**

(2) The supplier shall provide the consumer with an express opportunity to accept or decline the agreement and to correct errors immediately before entering into it. 2002, c. 30, Sched. A, s. 38 (2).

**Manner of disclosure**

(3) In addition to the requirements set out in section 5, disclosure under this section shall be accessible and shall be available in a manner that ensures that,

- (a) the consumer has accessed the information; and
- (b) the consumer is able to retain and print the information. 2002, c. 30, Sched. A, s. 38 (3).

**Copy of internet agreement**

**39** (1) A supplier shall deliver to a consumer who enters into an internet agreement a copy of the agreement in writing within the prescribed period after the consumer enters into the agreement. 2002, c. 30, Sched. A, s. 39 (1).

**Content of internet agreement**

(2) The copy of the internet agreement shall include such information as may be prescribed. 2002, c. 30, Sched. A, s. 39 (2).

**Deemed supply of internet agreement**

(3) For the purposes of subsection (1), a supplier is considered to have delivered a copy of the internet agreement to the consumer if the copy is delivered in the prescribed manner. 2002, c. 30, Sched. A, s. 39 (3).

**Cancellation of internet agreement**

**40** (1) A consumer may cancel an internet agreement at any time from the date the agreement is entered into until seven days after the consumer receives a copy of the agreement if,

- (a) the supplier did not disclose to the consumer the information required under subsection 38 (1); or
- (b) the supplier did not provide to the consumer an express opportunity to accept or decline the agreement or to correct errors immediately before entering into it. 2002, c. 30, Sched. A, s. 40 (1).

**Same**

(2) A consumer may cancel an internet agreement within 30 days after the date the agreement is entered into, if the supplier does not comply with a requirement under section 39. 2004, c. 19, s. 7 (7).

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

2004, c. 19, s. 7 (7) - 30/07/2005

**DIRECT AGREEMENTS****Application**

**41** (1) Sections 42 and 43 apply to direct agreements if the consumer's total potential payment obligations under the agreement, excluding the cost of borrowing, exceeds a prescribed amount. 2002, c. 30, Sched. A, s. 41 (1).

**Transition**

(2) Sections 42 and 43 apply to direct agreements entered into on or after the day this section is proclaimed in force. 2002, c. 30, Sched. A, s. 41 (2).

**Same**

(3) The *Consumer Protection Act*, as it existed immediately before its repeal by the *Consumer Protection Statute Law Amendment Act, 2002*, continues to apply to direct sales contracts entered into before its repeal. 2002, c. 30, Sched. A, s. 41 (3).

**Requirements for direct agreements**

**42** (1) Every direct agreement shall be in writing, shall be delivered to the consumer and shall be made in accordance with the prescribed requirements. 2002, c. 30, Sched. A, s. 42.

### **Minister's regulations**

(2) In addition to the power of the Lieutenant Governor in Council to make regulations under section 123, the Minister may make regulations,

- (a) governing contents of direct agreements and requirements for making, renewing, amending or extending direct agreements;
- (b) requiring a supplier under a direct agreement to disclose to the consumer the information specified in the regulation, governing the content of the disclosure and requiring the supplier to take the other measures specified in the regulation to ensure that the consumer has received the disclosure. 2013, c. 13, Sched. 2, s. 3.

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

2013, c. 13, Sched. 2, s. 3 - 01/04/2015

### **Cancellation: cooling-off period**

**43** (1) A consumer may, without any reason, cancel a direct agreement at any time from the date of entering into the agreement until 10 days after the consumer has received the written copy of the agreement. 2017, c. 5, Sched. 2, s. 15.

### **Transition**

(1.1) Despite subsection (1), that subsection, as it read immediately before the day section 15 of Schedule 2 to the *Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017* comes into force, continues to apply to a direct agreement that requires the supplier to supply to the consumer a water heater or other goods or services that are prescribed if the parties entered into the agreement before that day. 2017, c. 5, Sched. 2, s. 15.

### **Cancellation: failure to meet requirements**

(2) In addition to the right under subsection (1), a consumer may cancel a direct agreement within one year after the date of entering into the agreement if the consumer does not receive a copy of the agreement that meets the requirements under section 42. 2002, c. 30, Sched. A, s. 43 (2).

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

2013, c. 13, Sched. 2, s. 4 (1) - 12/12/2013; 2013, c. 13, Sched. 2, s. 4 (2) - 01/04/2015

2017, c. 5, Sched. 2, s. 15 - 01/03/2018

### **Restriction on entering into certain direct agreements**

**43.1** (1) No supplier shall, while at a consumer's dwelling or at any other prescribed place, solicit the consumer to enter into a direct agreement for the supply of prescribed goods or services or enter into such an agreement unless the consumer has initiated contact with the supplier and has specifically requested that the supplier attend at the consumer's dwelling or the other prescribed place for the purpose of entering into such an agreement. 2017, c. 5, Sched. 2, s. 16.

### **Same**

(2) The following activities do not constitute solicitation for the purpose of subsection (1):

1. Leaving marketing materials at a consumer's dwelling or any other place prescribed for the purpose of that subsection without attempting to contact the consumer with respect to any prescribed direct agreement.
2. Such other activities that are prescribed. 2017, c. 5, Sched. 2, s. 16.

### **Agreement void**

(3) A direct agreement that the parties enter into in contravention of subsection (1) is void. 2017, c. 5, Sched. 2, s. 16.

### **Related agreements void**

(4) Any agreement, including the following, that is related to the consumer's obligations under the direct agreement is void:

1. A guarantee or security given by a guarantor for the purpose of securing the performance of those obligations.
2. An agreement under which the consumer gives security for the purpose of securing the performance of those obligations.
3. A credit agreement within the meaning of Part VII that the consumer enters into as a borrower in respect of money that the consumer is required to pay under the direct agreement and any other payment instrument that the consumer enters into in that respect. 2017, c. 5, Sched. 2, s. 16.

**Unsolicited goods or services**

(5) If a supplier supplies goods or services to a consumer under a direct agreement that is void, the goods or services are deemed to be unsolicited and subsections 13 (1), (2), (3), (6), (7) and (8) apply to them. 2017, c. 5, Sched. 2, s. 16.

**Third party charges**

(6) If a supplier supplies goods or services to a consumer under a direct agreement that is void and the consumer incurs charges from a third party that are related to the agreement, including, but not limited to, charges in respect of the removal or return of any goods that the consumer is liable to return to the third party, the supplier is liable to reimburse the consumer for the amount of all those charges. 2017, c. 5, Sched. 2, s. 16.

**Recovery of amount**

(7) The consumer may commence an action, in accordance with section 100, to recover the amount described in subsection (6) and may set off the amount against any amount owing to the supplier under any consumer agreement between the consumer and the supplier, other than the direct agreement described in subsection (1). 2017, c. 5, Sched. 2, s. 16.

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

2013, c. 13, Sched. 2, s. 5 - 01/04/2015

2017, c. 5, Sched. 2, s. 16 - 01/03/2018

**REMOTE AGREEMENTS****Application**

44 Sections 45 to 47 apply to remote agreements if the consumer's total potential payment obligation under the agreement, excluding the cost of borrowing, exceeds a prescribed amount. 2002, c. 30, Sched. A, s. 44.

**Disclosure of information**

45 Before a consumer enters into a remote agreement, the supplier shall disclose the prescribed information to the consumer and shall satisfy the prescribed requirements. 2002, c. 30, Sched. A, s. 45.

**Copy of remote agreement**

46 (1) A supplier shall deliver to a consumer who enters into a remote agreement a copy of the agreement in writing within the prescribed period after the consumer enters into the agreement. 2002, c. 30, Sched. A, s. 46 (1).

**Content of remote agreement**

(2) The copy of the remote agreement shall include such information as may be prescribed. 2002, c. 30, Sched. A, s. 46 (2).

**Deemed supply of remote agreement**

(3) For the purposes of subsection (1), a supplier is considered to have delivered a copy of the remote agreement to the consumer if the copy is delivered in the prescribed manner. 2002, c. 30, Sched. A, s. 46 (3).

**Cancellation of remote agreement**

47 (1) A consumer may cancel a remote agreement at any time from the date the agreement is entered into until seven days after the consumer receives a copy of the agreement if the supplier fails to comply with section 45. 2002, c. 30, Sched. A, s. 47 (1).

**Same**

(2) A consumer may cancel a remote agreement within one year after the date the agreement is entered into, if the supplier does not comply with a requirement under section 46. 2004, c. 19, s. 7 (8).

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

2004, c. 19, s. 7 (8) - 30/07/2005

**REWARDS POINTS****No expiry of rewards points**

47.1 (1) Subject to the other provisions of this section, no supplier shall enter into or amend a consumer agreement under which rewards points are provided to provide for the expiry of rewards points due to the passage of time alone. 2016, c. 34, s. 2 (1).

### Application and transition

- (2) This section applies to all consumer agreements under which rewards points are provided,
- (a) that existed on October 1, 2016;
  - (b) that were entered into after October 1, 2016, but before the day this section came into force; or
  - (c) that are entered into on or after the date this section comes into force. 2016, c. 34, s. 2 (1).

### Effect of termination

- (3) Subject to any prescribed exceptions, on and after the day this section comes into force, and upon providing notice to the other party, the supplier or the consumer may terminate the consumer agreement under which rewards points are provided, and if the consumer agreement so provided, the consumer's accumulated rewards points may expire. 2016, c. 34, s. 2 (1).

### Term of consumer agreement not enforceable

- (4) Any provision or part of a provision of a consumer agreement that contravenes this section or that fails to comply with the regulations with respect to rewards points is not enforceable, but such unenforceability shall not invalidate the remaining provisions in the consumer agreement. 2016, c. 34, s. 2 (1).

### Retroactive effect on expiry of rewards points

- (5) Subject to any prescribed exceptions, within 15 days of this section coming into force, a supplier shall credit back to a consumer any rewards points that expired on or after October 1, 2016 and before the day this section comes into force. 2016, c. 34, s. 2 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 47.1 (5) of the Act is repealed. (See: 2016, c. 34, s. 2 (2))**

### Transition: crediting back, supplier termination of consumer agreement

- (6) If a supplier terminated a consumer agreement under which rewards points were provided on or after October 1, 2016 and before the date this section came into force, the previously terminated agreement shall be deemed to not have been terminated and the supplier shall, within 15 days of this section coming into force, credit back to the consumer all rewards points that expired upon that termination. 2016, c. 34, s. 2 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 47.1 (6) of the Act is repealed. (See: 2016, c. 34, s. 2 (2))**

### No cause of action for retroactivity

- (7) No cause of action arises against the Crown as a direct or indirect result of the retroactive application of this section or any regulations respecting rewards points, and no costs, compensation or damages are owing or payable by the Crown to any supplier, consumer or person as a result of such retroactive application. 2016, c. 34, s. 2 (1).

### Evidence

- (8) In any proceeding under this Act about the crediting back of rewards points mentioned in subsection (5) or (6), despite any contractual provision to the contrary, a court or tribunal may consider records presented by the consumer, determine those records' admissibility and may give those records whatever weight it sees fit. 2016, c. 34, s. 2 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 47.1 (8) of the Act is repealed. (See: 2016, c. 34, s. 2 (2))**

### Other expiry allowed

- (9) Consumer agreements under which rewards points are provided may provide for expiry due to reasons other than the passage of time alone, subject to any limits that may be prescribed. 2016, c. 34, s. 2 (1).

### No retroactive offences

- (10) Nothing in this section creates a retroactive offence. 2016, c. 34, s. 2 (1).

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

2016, c. 34, s. 2 (1) - 01/01/2018; 2016, c. 34, s. 2 (2) - not in force

## PART V SECTORS WHERE ADVANCE FEE PROHIBITED

### Definitions

48 In this Part,



“consumer report”, “credit information”, “file” and “personal information” each have the same meaning as in section 1 of the *Consumer Reporting Act*; (“rapport sur le consommateur”, “renseignements sur la solvabilité”, “dossier”, “renseignements personnels”)

“credit repair” means services or goods that are intended to improve a consumer report, credit information, file or personal information, including a credit record, credit history or credit rating; (“redressement de crédit”)

“credit repairer” means,

- (a) a supplier of credit repair, or
- (b) a person who holds themselves out as a person described in clause (a); (“redresseur de crédit”)

“operator” means,

- (a) a person who is a credit repairer or a loan broker, or
- (b) a supplier who supplies such goods or services as may be prescribed or a person who holds themselves out as a supplier of such goods or services. (“exploitant”) 2002, c. 30, Sched. A, s. 48; 2004, c. 19, s. 7 (9).

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

2004, c. 19, s. 7 (9) - 30/07/2005

#### **Requirements for consumer agreements**

**49** Every consumer agreement for loan brokering, credit repair or for the supply of such other goods or services as may be prescribed shall be in writing, shall be delivered to the consumer and shall be made in accordance with the prescribed requirements. 2002, c. 30, Sched. A, s. 49.

#### **Advance payments prohibited**

**50** (1) No operator shall require or accept any payment or any security for a payment, directly or indirectly, from or on behalf of a consumer unless and until,

- (a) in respect of loan brokering, the consumer receives the credit or loan of money that the loan broker has assisted the consumer to obtain;
- (b) in respect of credit repair, the credit repairer causes a material improvement to the consumer report, credit information, file, personal information, credit record, credit history or credit rating of the consumer; or
- (c) in respect of the supply of such other goods or services as may be prescribed, the prescribed requirements are met. 2002, c. 30, Sched. A, s. 50 (1); 2004, c. 19, s. 7 (10, 11).

#### **Security arrangement void**

(2) Every arrangement by which an operator takes security in contravention of subsection (1) is void. 2002, c. 30, Sched. A, s. 50 (2); 2004, c. 19, s. 7 (12).

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

2004, c. 19, s. 7 (10-12) - 30/07/2005

#### **Cancellation: cooling-off period**

**51** (1) A consumer who is a party to an agreement for loan brokering, credit repair or the supply of such goods and services as may be prescribed may, without any reason, cancel the agreement at any time from the date of entering into the agreement until 10 days after receiving the written copy of the agreement. 2002, c. 30, Sched. A, s. 51 (1); 2013, c. 13, Sched. 2, s. 6.

#### **Cancellation: failure to meet requirements**

(2) In addition to the right under subsection (1), a consumer who is a party to an agreement for loan brokering, credit repair or the supply of such goods and services as may be prescribed may cancel the agreement within one year after the date of entering into it if the consumer does not receive a copy of the agreement that meets the requirements under section 49. 2002, c. 30, Sched. A, s. 51 (2).

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

2013, c. 13, Sched. 2, s. 6 - 12/12/2013

### **Officers, directors**

**52** The officers and directors of an operator are jointly and severally liable for any remedy in respect of which a person is entitled to commence a proceeding against the operator. 2002, c. 30, Sched. A, s. 52; 2004, c. 19, s. 7 (13).

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

2004, c. 19, s. 7 (13) - 30/07/2005

### **Prohibited representations**

**53** An operator shall not communicate or cause to be communicated any representation that is prescribed as a prohibited representation. 2002, c. 30, Sched. A, s. 53; 2004, c. 19, s. 7 (14).

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

2004, c. 19, s. 7 (14) - 30/07/2005

### **Transition**

**54** (1) Sections 48 to 53 apply to consumer transactions that occur on or after the day this section is proclaimed in force. 2002, c. 30, Sched. A, s. 54 (1).

### **Same**

(2) The *Loan Brokers Act, 1994*, as it existed immediately before its repeal by the *Consumer Protection Statute Law Amendment Act, 2002*, continues to apply to all agreements to assist a consumer in obtaining a loan of money entered into before its repeal. 2002, c. 30, Sched. A, s. 54 (2).

### **Same**

(3) Sections 13.1 to 13.8 of the *Consumer Reporting Act*, as they existed immediately before their repeal by the *Consumer Protection Statute Law Amendment Act, 2002*, continue to apply to all consumer transactions that occurred before their repeal. 2002, c. 30, Sched. A, s. 54 (3).

## **PART VI REPAIRS TO MOTOR VEHICLES AND OTHER GOODS**

### **Definitions**

**55** In this Part,

“estimate” means an estimate of the total cost of work on and repairs to the goods being repaired; (“devis”)

“repairer” means a supplier who works on or repairs vehicles or other prescribed goods; (“réparateur”)

“vehicle” means a motor vehicle as defined in the *Highway Traffic Act*. (“véhicule”) 2002, c. 30, Sched. A, s. 55.

### **Estimates**

**56** (1) No repairer shall charge a consumer for any work or repairs unless the repairer first gives the consumer an estimate that meets the prescribed requirements. 2002, c. 30, Sched. A, s. 56 (1).

### **Same**

(2) Despite subsection (1), a repairer may charge for work or repairs without giving an estimate if,

- (a) the repairer offers to give the consumer an estimate and the consumer declines the offer of an estimate;
- (b) the consumer specifically authorizes the maximum amount that he or she will pay the repairer to make the repairs or do the work; and
- (c) the cost charged for the work or repairs does not exceed the maximum amount authorized by the consumer. 2002, c. 30, Sched. A, s. 56 (2).

### **Estimate fee**

**57** (1) Subject to subsection (3), no repairer shall charge a fee for an estimate unless the consumer is told in advance that a fee will be charged and the amount of the fee. 2002, c. 30, Sched. A, s. 57 (1).

### **Same**

(2) A fee for an estimate shall be deemed to include the cost of diagnostic time, the cost of reassembling the goods and the cost of parts that will be damaged and must be replaced when reassembling if the work or repairs are not authorized by the consumer. 2002, c. 30, Sched. A, s. 57 (2).

**Same**

(3) A repairer shall not charge a fee for an estimate if the work or repairs in question are authorized and carried out. 2002, c. 30, Sched. A, s. 57 (3).

**Same**

(4) Despite subsection (3), a repairer may charge a fee for an estimate if the repairer is unable to obtain, without unreasonable delay, authorization to proceed with the work or repairs and the goods are reassembled before being worked on or repaired so that the goods can be moved in order to free repair space. 2002, c. 30, Sched. A, s. 57 (4).

**Authorization required**

**58** (1) No repairer shall charge for any work or repairs unless the consumer authorizes the work or repairs. 2002, c. 30, Sched. A, s. 58 (1).

**Exceeding estimate prohibited**

(2) No repairer shall charge, for work or repairs for which an estimate was given, an amount that exceeds the estimate by more than 10 per cent. 2002, c. 30, Sched. A, s. 58 (2).

**Authorization not in writing**

**59** If an authorization required by section 56, 57 or 58 is not given in writing, the authorization is not effective unless it is recorded in a manner that meets the prescribed requirements. 2002, c. 30, Sched. A, s. 59.

**Posting signs**

**60** A repairer shall post the prescribed signs in accordance with the prescribed requirements. 2002, c. 30, Sched. A, s. 60.

**Return of parts**

**61** (1) Every repairer shall offer to return to the consumer all parts removed in the course of work or repairs and shall return all such parts unless advised when the work or repairs are authorized that the consumer does not require their return. 2002, c. 30, Sched. A, s. 61 (1).

**Parts kept separate**

(2) Every repairer shall keep parts removed from goods being repaired separate from the parts removed from any other goods and, if their return is requested by the consumer, shall return the parts in a clean container. 2002, c. 30, Sched. A, s. 61 (2).

**Exception**

(3) Subsections (1) and (2) do not apply to,

- (a) parts for which there has been no charge for the part or for work on or repair to the part; or
- (b) parts replaced under warranty whose return to the manufacturer or distributor is required. 2002, c. 30, Sched. A, s. 61 (3).

**Invoice**

**62** The repairer shall, on completion of work or repairs, deliver to the consumer an invoice containing the prescribed information in the prescribed manner. 2002, c. 30, Sched. A, s. 62.

**Warranty for vehicles**

**63** (1) On the repair of a vehicle, every repairer shall be deemed to warrant all new or reconditioned parts installed and the labour required to install them for a minimum of 90 days or 5,000 kilometres, whichever comes first, or for such greater minimum as may be prescribed. 2002, c. 30, Sched. A, s. 63 (1).

**Same**

(2) The warranty in subsection (1) is in addition to the deemed and implied conditions and warranties set out in section 9. 2002, c. 30, Sched. A, s. 63 (2).

**Failure of work or repairs under warranty**

(3) The person having charge of a vehicle that becomes inoperable or unsafe to drive because of the failure or inadequacy of work or repairs to which a warranty under this section applies may, when it is not reasonable to return the vehicle to the original repairer, have the failure or inadequacy repaired at the closest facility available for the work or repairs. 2002, c. 30, Sched. A, s. 63 (3).

### Recovery of cost of failed work or repairs

(4) When work or repairs are made under subsection (3), the person entitled to a warranty under this section is entitled to recover from the original repairer the original cost of the work or repairs and reasonable towing charges. 2002, c. 30, Sched. A, s. 63 (4).

### Loss of warranty

(5) A consumer who subjects any vehicle part to misuse or abuse is not entitled to the benefit of the warranty on that part. 2002, c. 30, Sched. A, s. 63 (5).

### Same

(6) No repairer shall refuse to reimburse a consumer because of the operation of subsection (5) unless the repairer has reasonable grounds to believe that the part under warranty was subjected to misuse or abuse. 2002, c. 30, Sched. A, s. 63 (6).

### Return of parts

(7) A consumer who is seeking reimbursement under this section shall return, upon the request and at the expense of the original repairer, the defective parts to the original repairer unless, in the circumstances, it is not reasonably possible for the consumer to do so. 2002, c. 30, Sched. A, s. 63 (7).

### Reimbursement

(8) An original repairer who is required to make a payment under this section is entitled to recover from the supplier of a defective part any amount paid to the consumer under subsection (4). 2002, c. 30, Sched. A, s. 63 (8).

### Consistent cost

**64** No repairer shall give an estimate or charge an amount for work or repairs that is greater than that usually given or charged by that repairer for the same work or repairs merely because the cost is to be paid, directly or indirectly, by an insurance company licensed under the *Insurance Act*. 2002, c. 30, Sched. A, s. 64.

### Transition

**65** (1) Sections 55 to 64 apply to all consumer agreements for work or repair that are entered into on or after the day this section is proclaimed in force. 2002, c. 30, Sched. A, s. 65 (1).

### Same

(2) The *Motor Vehicle Repair Act*, as it existed immediately before its repeal by the *Consumer Protection Statute Law Amendment Act, 2002*, applies to agreements for work or repair to a vehicle entered into before its repeal. 2002, c. 30, Sched. A, s. 65 (2).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, Part VI.1 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

## PART VI.1 TOW AND STORAGE SERVICES

### Definitions

**65.1** In this Part,

“tow and storage provider” means any of the following:

1. A tow and storage services operator.
2. A tow truck broker.
3. A tow truck driver; (“fournisseur de services de remorquage et d’entreposage”)

“tow and storage services operator” has the meaning provided for in the regulations; (“exploitant de services de remorquage et d’entreposage”)

“tow truck” has the meaning provided for in the regulations; (“dépanneuse”)

“tow truck broker” has the meaning provided for in the regulations; (“courtier en dépanneuses”)

“tow truck driver” means, subject to the regulations,

- (a) an individual who drives or has the care and control of a tow truck for the purpose of providing tow services to a consumer, and
- (b) any other prescribed person; (“conducteur de dépanneuse”)

“vehicle” means a motor vehicle as defined in the *Highway Traffic Act*. (“véhicule”) 2014, c. 9, Sched. 1, s. 2.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 65.1 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))**

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

**Application**

**65.2** (1) This Part applies to consumer transactions involving tow and storage services regardless of,

- (a) whether the authorization for tow and storage services is made by the owner or driver of a vehicle, a person acting on behalf of the owner or driver or a prescribed person; and
- (b) whether payment for the transaction is made or reimbursed by a third party, including a commercial or governmental entity. 2014, c. 9, Sched. 1, s. 2.

**Non-application**

(2) This Part or any provision of this Part does not apply in respect of prescribed persons or with respect to prescribed circumstances. 2014, c. 9, Sched. 1, s. 2.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 65.2 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))**

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

**Disclosure**

**65.3** No tow and storage provider shall charge a consumer or a prescribed person acting on behalf of a consumer for any tow and storage services unless the consumer or prescribed person has first been given the prescribed information in the prescribed manner and within the prescribed time. 2014, c. 9, Sched. 1, s. 2.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 65.3 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))**

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

**Authorization required**

**65.4** (1) Subject to the regulations, no tow and storage provider shall charge a consumer for any tow and storage services unless the consumer or a prescribed person acting on behalf of the consumer, if the consumer is unable to give authorization in circumstances provided for in the regulations, authorizes the services. 2014, c. 9, Sched. 1, s. 2.

**Exceeding estimated amount**

(2) Subject to the regulations, where an authorization under subsection (1) includes an authorization in respect of an estimated amount that may be paid for the services or an estimate based on a method of computing an amount that may be paid for the services, no tow and storage provider shall charge for services an amount that exceeds by more than 10 per cent the authorized estimated amount or the amount computed in the authorized manner. 2014, c. 9, Sched. 1, s. 2.

**Authorization to be recorded**

(3) If an authorization required by this section is not given in writing, the authorization is not effective unless it is recorded in a manner that meets the prescribed requirements. 2014, c. 9, Sched. 1, s. 2.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 65.4 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))**

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

### Posting identifiers and other information

**65.5** A tow and storage provider shall post the prescribed price information and other prescribed information, which may include stickers, labels and other visual identifiers, in accordance with the prescribed requirements. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.5 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

### Invoice

**65.6** Unless the regulations provide otherwise, before demanding or receiving payment from a consumer or a prescribed person acting on behalf of the consumer, a tow and storage provider shall deliver to the consumer or the prescribed person an invoice detailing the tow and storage services provided, including an itemized list of the services and the cost for each as well as the total cost and such additional information as may be prescribed, in the prescribed manner. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.6 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

### Insurance

**65.7** (1) A tow and storage provider shall maintain insurance coverage for prescribed kinds of liability in the prescribed amounts. 2014, c. 9, Sched. 1, s. 2.

#### Failure to maintain required insurance

(2) If a tow and storage provider fails to maintain the prescribed insurance coverage, the provider shall not demand or receive payment from a consumer or a person acting on behalf of the consumer in respect of tow and storage services provided while failing to maintain the prescribed insurance coverage. 2014, c. 9, Sched. 1, s. 2.

#### Evidence of coverage

(3) A tow and storage provider shall produce evidence of insurance coverage in the prescribed circumstances and in the prescribed manner. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.7 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

### Publication of rates

**65.8** A tow and storage provider shall maintain a current statement of rates charged and shall make the statement available publicly and, where the regulations prescribe the form and manner of the statement and its publication, shall do so in the prescribed manner. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.8 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

### Consistent cost

**65.9** A tow and storage provider shall not charge an amount for tow and storage services that is greater than the amount usually charged by that provider for the same services merely because the cost is to be paid, directly or indirectly, by an insurer licensed under the *Insurance Act* or another third party. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.9 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

#### **Disclosure of interest**

**65.10** (1) A tow and storage provider who, directly or indirectly, has an interest in a location or facility to which a vehicle may be towed for repair, storage, appraisal or similar purposes shall disclose, to the consumer whose vehicle is being towed and to any other persons that may be prescribed, the nature and extent of the interest, in accordance with the prescribed requirements and in the prescribed form and manner. 2014, c. 9, Sched. 1, s. 2.

#### **Failure to make required disclosure**

(2) If a tow and storage provider fails to make the disclosure required under subsection (1), the provider shall not demand or receive payment from a consumer or a person acting on behalf of the consumer in respect of tow and storage services provided before disclosure is made. 2014, c. 9, Sched. 1, s. 2.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 65.10 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))**

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

#### **Consumers Bill of Rights**

**65.11** (1) A tow and storage provider shall provide a consumer with a copy of the Tow and Storage Consumers Bill of Rights in the manner required by the regulations made under subsection (2). 2014, c. 9, Sched. 1, s. 2.

#### **Regulations**

(2) The Minister may make regulations establishing a Tow and Storage Consumers Bill of Rights for the purposes of subsection (1) and governing how and when it is to be provided. 2014, c. 9, Sched. 1, s. 2.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 65.11 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))**

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

#### **Duty re contents of vehicle**

**65.12** (1) Unless the regulations provide otherwise or unless otherwise directed by a member of a police force, every tow and storage provider that provides tow and storage services to a consumer shall provide the consumer or a person acting on behalf of the consumer access to the vehicle that is the subject of the tow and storage services, in order to permit removal of all property contained in the vehicle, including money, valuables, documents and records in the vehicle belonging to or in the care of the consumer, upon request of the consumer or a person acting on behalf of the consumer. 2014, c. 9, Sched. 1, s. 2.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 65.12 (1) of the Act is amended by striking out “police force” and substituting “police service”. (See: 2019, c. 1, Sched. 4, s. 12)**

#### **Same**

(2) Access under subsection (1) shall be made in the prescribed manner and within the prescribed time. 2014, c. 9, Sched. 1, s. 2.

#### **No charge to consumer**

(3) A tow and storage provider shall not charge a fee for permitting access in accordance with subsection (1) unless the regulations provide otherwise. 2014, c. 9, Sched. 1, s. 2.

#### **No pressuring**

(4) No tow and storage provider shall retain anything that a consumer is entitled to remove under subsection (1) as a means of pressuring the consumer to make a payment under an agreement for tow and storage services. 2014, c. 9, Sched. 1, s. 2.

#### **Failure to comply with section**

(5) For greater certainty, and without limiting the application of Part III, failure to comply with this section is an unfair practice for purposes of section 18 and the rights and remedies of section 18 apply. 2014, c. 9, Sched. 1, s. 2.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 65.12 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))**

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2018, c. 3, Sched. 5, s. 14 - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 12 - not in force

2021, c. 26, Sched. 3, s. 65 (2) - not in force

#### False information

**65.13** (1) No tow and storage provider shall falsify, assist in falsifying or induce or counsel a consumer to falsify or assist in falsifying any information or document that the consumer is required to provide under this Act, the *Compulsory Automobile Insurance Act*, the *Highway Traffic Act*, the *Insurance Act* or any other prescribed Act. 2014, c. 9, Sched. 1, s. 2.

#### Furnishing false information and documents

(2) No tow and storage provider shall furnish, assist in furnishing or induce or counsel a consumer to furnish or assist in furnishing any information or documents that the consumer is required to provide under this Act, the *Compulsory Automobile Insurance Act*, the *Highway Traffic Act*, the *Insurance Act* or any other prescribed Act if the information or documents are false or deceptive. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.13 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

#### No counselling contraventions

**65.14** No tow and storage provider shall counsel, advise or knowingly assist a consumer to contravene this Act, the *Compulsory Automobile Insurance Act*, the *Highway Traffic Act*, the *Insurance Act* or any other prescribed Act. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.14 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

#### Payment options

**65.15** A tow and storage provider shall accept payment for tow and storage services by credit card, cash or any other prescribed payment method at the consumer's choice. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.15 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

#### Prohibitions

**65.16** A tow and storage provider shall not engage in practices that are prescribed as prohibited practices. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.16 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

#### Additional duties and obligations

**65.17** A tow and storage provider shall comply with all other prescribed duties and obligations. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.17 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))



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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

**Tow and storage rates**

**65.18** If the regulations provide for the manner in which charges are to be calculated or the maximum amount of charges that will apply with respect to one or more tow or storage services, a tow and storage provider shall not charge for the tow and storage services except as provided for in the regulations. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.18 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

**Record keeping and reporting**

**65.19** A tow and storage provider shall maintain such records as are prescribed and shall submit such reports as are prescribed to the prescribed persons and in the prescribed manner. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.19 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

**Qualifications**

**65.20** (1) Where the regulations provide for qualifications that must be met by a tow truck driver, a tow truck broker or a tow and storage services operator, no person who does not meet the relevant qualifications shall engage with a consumer or a prescribed person acting on behalf of a consumer as a tow truck driver, a tow truck broker or a tow and storage services operator. 2014, c. 9, Sched. 1, s. 2.

**Failure to meet qualifications**

(2) A tow truck driver, tow truck broker or tow and storage services operator who does not meet the relevant qualifications under subsection (1) shall not demand or receive payment from a consumer or a person acting on behalf of the consumer for tow and storage services provided while not meeting the qualifications. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.20 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

**Transition**

**65.21** (1) Sections 65.1 to 65.20 apply to consumer transactions for tow and storage services that are entered into on or after the day this section is proclaimed in force. 2014, c. 9, Sched. 1, s. 2.

**Same**

(2) Other than any provisions that may be prescribed, the provisions of this Part apply to consumer agreements for tow and storage services if the agreement was entered into before the day this section is proclaimed in force and the vehicle in respect of which tow and storage services have been provided is still in the possession or under the control of the tow and storage provider. 2014, c. 9, Sched. 1, s. 2.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 65.21 of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (2))

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

2014, c. 9, Sched. 1, s. 2 - 01/01/2017

2021, c. 26, Sched. 3, s. 65 (2) - not in force

**PART VII  
CREDIT AGREEMENTS**

GENERAL

**Definitions**

**66** In this Part,

“advance” means value, as prescribed, received by the borrower under a credit agreement; (“avance”)

“annual percentage rate” means the annual percentage rate in respect of a credit agreement that is determined in the prescribed manner; (“taux de crédit”)

“borrower” means a consumer who, as a party to a credit agreement, receives or may receive credit or a loan of money from the other party or who indicates an interest in becoming such a party, but does not include a guarantor; (“emprunteur”)

“brokerage fee” means the payment that a borrower makes or agrees to make to a loan broker who assists the borrower in arranging a credit agreement, and includes an amount deducted from an advance made to the borrower that is paid to the broker; (“frais de courtage”)

“cost of borrowing” means all amounts that a borrower is required to pay under or as a condition of entering into a credit agreement and all prescribed amounts other than,

- (a) a payment or repayment of a portion of the principal under the agreement as prescribed, and
- (b) prescribed charges; (“coût d’emprunt”)

“credit agreement” means a consumer agreement under which a lender extends credit or lends money to a borrower and includes a supplier credit agreement and a prospective consumer agreement under which an extension of credit, loan of money or supplier credit agreement may occur in the future, but does not include an agreement under which a lender extends credit or lends money on the security of a mortgage of real property or consumer agreements of a prescribed type; (“convention de crédit”)

“default charge” means a charge imposed on a borrower who does not make a payment as it comes due under a credit agreement or who does not comply with any other obligation under a credit agreement, but does not include interest on an overdue payment; (“frais de défaut”)

“fixed credit” means credit or a loan of money under a credit agreement that is not for open credit; (“crédit fixe”)

“floating rate” means a rate that bears a specified mathematical relationship to a public index that meets the prescribed requirements; (“taux variable”)

“lender” means a supplier who is or may become a party to a credit agreement and who extends or may extend credit or lends or may lend money to the borrower and includes a credit card issuer; (“prêteur”)

“optional service” means a service that is offered to a borrower in connection with a credit agreement and that the borrower does not have to accept in order to enter into the agreement; (“service facultatif”)

“supplier credit agreement” means a consumer agreement, other than a consumer agreement involving leases to which Part VIII applies, under which a supplier or an associate of the supplier, extends fixed credit to a consumer to assist the consumer in obtaining goods or services, other than credit or a loan of money, from the supplier; (“convention de crédit fournisseur”)

“supplier creditor” means the supplier or an associate of a supplier in a supplier credit agreement. (“créancier fournisseur”) 2002, c. 30, Sched. A, s. 66; 2004, c. 19, s. 7 (15); 2008, c. 9, s. 79 (6, 7).

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

2004, c. 19, s. 7 (15) - 30/07/2005

2008, c. 9, s. 79 (6, 7) - 01/07/2009

**Non-application of Part**

**67** (1) This Part and the regulations made under it do not apply to a payday loan agreement as defined in subsection 1 (1) of the *Payday Loans Act, 2008* and do not apply to a supplier credit agreement that,

- (a) requires the borrower to make payment in full in a single payment within a certain period after the supplier delivers a written invoice or statement of account to the borrower;

- (b) is unconditionally interest-free during the period for payment described in clause (a);
- (c) does not provide for any non-interest charges;
- (d) is unsecured apart from liens on the goods or services supplied through the agreement that may arise by operation of law; and
- (e) the supplier cannot assign in the ordinary course of business other than as security. 2002, c. 30, Sched. A, s. 67 (1); 2008, c. 9, s. 79 (8).

#### **Obligations of loan brokers**

(2) If a loan broker assists a consumer to obtain credit or a loan of money and the creditor is not in the business of extending credit or lending money, the obligations that this Part would impose on a lender shall be deemed to be obligations of the loan broker and not the creditor, except as prescribed. 2004, c. 19, s. 7 (16).

(3) REPEALED: 2004, c. 19, s. 7 (17).

(4) REPEALED: 2004, c. 19, s. 7 (17).

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

2004, c. 19, s. 7 (16, 17) - 30/07/2005

2008, c. 9, s. 79 (8) - 01/07/2009

#### **Agreement for credit card**

**68** (1) Despite section 13, a consumer who applies for a credit card without signing an application form or who receives a credit card from a credit card issuer without applying for it shall be deemed to have entered into a credit agreement with the issuer with respect to the card on first using the card. 2002, c. 30, Sched. A, s. 68 (1).

#### **Liability**

(2) A consumer described in subsection (1) is not liable to pay the lender any amount in respect of the credit card received in the circumstances described in that subsection until the consumer uses the card. 2002, c. 30, Sched. A, s. 68 (2).

#### **Limiting liability for unauthorized charges**

**69** A borrower is not liable for any amount that is greater than the prescribed maximum for unauthorized charges under a credit agreement for open credit. 2004, c. 19, s. 7 (18).

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

2004, c. 19, s. 7 (18) - 30/07/2005

#### **Consequence of non-disclosure**

**70** A borrower under a credit agreement is not liable to pay the lender,

- (a) the cost of borrowing under a credit agreement if the borrower receives no statements required by this Part; or
- (b) as part of the cost of borrowing, any amount in excess of the amounts specified in the statements that this Part requires to be delivered to the borrower in respect of the agreement. 2002, c. 30, Sched. A, s. 70.

#### **Correcting errors**

**71** If there is an error in a statement of account issued under a credit agreement for open credit, the lender shall correct the error in accordance with the prescribed requirements. 2002, c. 30, Sched. A, s. 71.

#### **Required insurance**

**72** (1) A borrower who is required under a credit agreement to purchase insurance may purchase it from any insurer who may lawfully provide that type of insurance, except that the lender may reserve the right to disapprove, on reasonable grounds, an insurer selected by the borrower. 2002, c. 30, Sched. A, s. 72 (1).

#### **Disclosure by lender**

(2) A lender who offers to provide or to arrange insurance required under a credit agreement shall at the same time disclose to the borrower in writing that the borrower may purchase the insurance through an agent or an insurer of the borrower's choice. 2002, c. 30, Sched. A, s. 72 (2).

### **Termination of optional services**

**73** (1) A borrower may terminate an optional service of a continuing nature provided by the lender or an associate of the lender on giving 30 days notice or such shorter period of notice as is specified in the agreement under which the service is provided. 2002, c. 30, Sched. A, s. 73 (1).

### **Liability of borrower**

(2) A borrower who terminates an optional service in accordance with subsection (1) is not liable for charges relating to any portion of the service that has not been provided at the time of termination and is entitled to a refund of amounts already paid for those charges. 2002, c. 30, Sched. A, s. 73 (2).

### **Notice**

(3) Notice under subsection (1) may be given in any way as long as it indicates the intention of the borrower to terminate the optional service and section 92 applies, with necessary modification, to such notice. 2002, c. 30, Sched. A, s. 73 (3).

### **Deferral of payments**

**74** (1) If the lender under a credit agreement invites the borrower to defer making a payment that would otherwise be due under the agreement, the invitation must disclose whether or not interest will accrue on the unpaid amount during the period of the deferral and, if interest will accrue, the invitation must also disclose the interest rate. 2002, c. 30, Sched. A, s. 74 (1).

### **Waiver of interest**

(2) If the lender does not comply with subsection (1), the lender shall be deemed to have waived the interest that would otherwise accrue during the period. 2002, c. 30, Sched. A, s. 74 (2).

### **Default charges**

**75** A lender is not entitled to impose on a borrower under a credit agreement default charges other than,

- (a) reasonable charges in respect of legal costs that the lender incurs in collecting or attempting to collect a required payment by the borrower under the agreement;
- (b) reasonable charges in respect of costs, including legal costs, that the lender incurs in realizing a security interest or protecting the subject-matter of a security interest after default under the agreement; or
- (c) reasonable charges reflecting the costs that the lender incurs because a cheque or other instrument of payment given by the borrower under the agreement has been dishonoured. 2002, c. 30, Sched. A, s. 75.

### **Prepayment**

**76** (1) A borrower is entitled to pay the full outstanding balance under a credit agreement at any time without any prepayment charge or penalty. 2002, c. 30, Sched. A, s. 76 (1); 2008, c. 9, s. 79 (9).

### **Refund or credit to borrower**

(2) If a borrower prepays the full outstanding balance under a credit agreement for fixed credit, the lender shall refund to the borrower or credit the borrower with the portion, determined in the prescribed manner, of the amounts that were paid by the borrower under the agreement or added to the balance under the agreement and that form part of the cost of borrowing, other than amounts paid on account of interest. 2004, c. 19, s. 7 (19); 2008, c. 9, s. 79 (9).

(3) REPEALED: 2004, c. 19, s. 7 (19).

### **Partial prepayment**

(4) A borrower is entitled to prepay a portion of the outstanding balance under a credit agreement for fixed credit on any scheduled date of the borrower's required payments under the agreement or once in any month without any prepayment charge or penalty. 2002, c. 30, Sched. A, s. 76 (4); 2008, c. 9, s. 79 (10).

### **No credit to borrower**

(5) A borrower who makes a payment under subsection (4) is not entitled to the refund or credit described in subsection (2). 2004, c. 19, s. 7 (20).

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

2004, c. 19, s. 7 (19, 20) - 30/07/2005

2008, c. 9, s. 79 (9, 10) - 01/07/2009

## DISCLOSURE

### Representations

77 No lender shall make representations or cause representations to be made with respect to a credit agreement, whether orally, in writing or in any other form, unless the representations comply with the prescribed requirements. 2002, c. 30, Sched. A, s. 77.

### Disclosure of brokerage fee

78 (1) If the borrower pays or is liable to pay a brokerage fee to a loan broker, either directly or through a deduction from an advance, the initial disclosure statement for the credit agreement must,

- (a) disclose the amount of the brokerage fee; and
- (b) account for the brokerage fee in the annual percentage rate and in the cost of borrowing. 2004, c. 19, s. 7 (21).

### Loan broker's statement

(2) If a loan broker takes an application from a borrower for a credit agreement and sends it to a lender, the loan broker shall deliver to the borrower an initial disclosure statement that includes the information required in the initial disclosure statement referred to in subsections (1) and 79 (1). 2004, c. 19, s. 7 (21).

### Lender adopting loan broker's statement

(3) If a loan broker has delivered an initial disclosure statement to the borrower, the lender may adopt it as his, her or its own initial disclosure statement or may elect to deliver a separate initial disclosure statement to the borrower. 2002, c. 30, Sched. A, s. 78 (3); 2004, c. 19, s. 7 (22).

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

2004, c. 19, s. 7 (21, 22) - 30/07/2005

### Initial disclosure statement

79 (1) Every lender shall deliver an initial disclosure statement for a credit agreement to the borrower at or before the time that the borrower enters into the agreement, unless the lender has adopted the loan broker's initial disclosure statement as his, her or its own. 2004, c. 19, s. 7 (23).

### Contents of statement, fixed credit

(2) The initial disclosure statement for a credit agreement for fixed credit shall disclose the prescribed information. 2002, c. 30, Sched. A, s. 79 (2).

### Contents of statement, open credit

(3) The initial disclosure statement for a credit agreement for open credit shall disclose the prescribed information. 2002, c. 30, Sched. A, s. 79 (3).

### Brokerage fee

(4) If a loan broker assists in arranging a credit agreement, the initial disclosure statement shall disclose the prescribed information. 2002, c. 30, Sched. A, s. 79 (4).

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

2004, c. 19, s. 7 (23) - 30/07/2005

### Subsequent disclosure: fixed credit

80 (1) If the interest rate in a credit agreement for fixed credit is a floating rate, the lender shall, at least once every 12 months after entering into the agreement, deliver to the borrower a disclosure statement for the period covered by the statement disclosing the prescribed information. 2002, c. 30, Sched. A, s. 80 (1).

### Increase in interest rate

(2) If the interest rate in a credit agreement for fixed credit is not a floating rate and the agreement allows the lender to change the interest rate, the lender shall, within 30 days after increasing the annual interest rate to a rate that is at least 1 per cent higher than the rate most recently disclosed to the borrower, deliver to the borrower a disclosure statement disclosing the prescribed information. 2002, c. 30, Sched. A, s. 80 (2).

### **Insufficient scheduled payments**

(3) The lender shall deliver to the borrower notice if the amount of the borrower's scheduled payments required by a credit agreement for fixed credit is no longer sufficient to cover the interest accrued under the agreement because the principal set out in the agreement has increased as a result of default charges or the failure of the borrower to make payments under the agreement. 2002, c. 30, Sched. A, s. 80 (3).

### **Notice**

(4) The notice under subsection (3) shall be in writing, shall disclose the situation and shall be delivered within 30 days after the point when the amount of the scheduled payments is no longer sufficient to cover the accrued interest. 2002, c. 30, Sched. A, s. 80 (4).

### **Amendments**

(5) Subject to subsection (6), if the parties have agreed to amend a credit agreement for fixed credit and the amendment changes any of the information prescribed under subsection 79 (2), the lender shall, within 30 days after the amendment is made, deliver to the borrower a supplementary disclosure statement setting out the changed information. 2004, c. 19, s. 7 (24).

### **Exception**

(6) If an amendment to a credit agreement consists only of a change in the schedule of required payments by the borrower, it is not necessary for the supplementary disclosure statement to disclose any change to the annual percentage rate or any decrease in the total required payments by the borrower or the total cost of borrowing under the agreement. 2002, c. 30, Sched. A, s. 80 (6).

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

2004, c. 19, s. 7 (24) - 30/07/2005

### **Subsequent disclosure: open credit**

**81** (1) Subject to subsection (2), the lender under a credit agreement for open credit shall deliver a statement of account to the borrower at least once monthly after entering into the agreement. 2002, c. 30, Sched. A, s. 81 (1).

### **Exception**

(2) The lender is not required to deliver a statement of account to the borrower at the end of any period when, since the most recent statement of account, the borrower has received no advances and made no payments under the agreement and,

- (a) at the end of the period the outstanding balance payable by the borrower under the agreement is zero; or
- (b) the borrower is in default and has been notified that the lender has cancelled or suspended his or her right to obtain advances under the agreement and has demanded payment of the outstanding balance. 2002, c. 30, Sched. A, s. 81 (2).

### **Information about account**

(3) The lender shall provide to the borrower a telephone number at which the borrower can make inquiries about the borrower's account during the lender's ordinary business hours without incurring any charges for the telephone call. 2002, c. 30, Sched. A, s. 81 (3).

### **Contents of statement of account**

(4) A statement of account for a credit agreement for open credit shall disclose the prescribed information. 2002, c. 30, Sched. A, s. 81 (4).

### **Change in interest rate**

(5) A lender under a credit agreement for open credit who, pursuant to the agreement, changes the interest rate under the agreement shall deliver a disclosure statement to the borrower disclosing the change,

- (a) in the next statement of account after the change, in the case of a credit agreement that is not for a credit card; and
- (b) at least 30 days before the change, in the case of a credit agreement that is for a credit card where the interest rate is not a floating rate. 2002, c. 30, Sched. A, s. 81 (5).

### **Other changes**

(6) Subject to subsection (7), if the parties have agreed to amend a credit agreement for open credit and the amendment changes any of the information prescribed under subsection 79 (3), the lender shall, within 30 days after the amendment is

made, deliver to the borrower a supplementary disclosure statement setting out the changed information. 2004, c. 19, s. 7 (25).

#### **Same**

(7) If the parties have agreed to amend a credit agreement for open credit in respect of a credit card and the amendment changes any of the information prescribed under subsection 79 (3), the lender shall deliver to the borrower a supplementary disclosure statement setting out the changed information,

- (a) within 30 days after the amendment is made, if the change is not a material change, as prescribed; and
- (b) at least 30 days before the amendment is made, if the change is a material change, as prescribed. 2004, c. 19, s. 7 (25).

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

2004, c. 19, s. 7 (25) - 30/07/2005

### ASSIGNMENT OF SECURITY FOR CREDIT

#### **Assignment of negotiable instrument**

**82** (1) If a person assigns a negotiable instrument given to secure credit or a loan of money, the person shall deliver to the assignee with the negotiable instrument a copy of the statement required by section 79 and, if the person is a supplier creditor, a copy of the consumer agreement for the goods or services that were obtained with the fixed credit. 2004, c. 19, s. 7 (26).

#### **Reassignment of negotiable instrument**

(2) Every assignee of a negotiable instrument who reassigns the instrument shall deliver to the person to whom the instrument is being reassigned the statement and the consumer agreement, if any, received by the assignee in respect of the instrument. 2002, c. 30, Sched. A, s. 82 (2).

#### **Indemnity**

(3) If an assignee of a negotiable instrument to which subsection (2) applies is entitled to recover on the instrument from the maker, the maker is entitled to be indemnified by any assignor of the instrument who has not complied with subsection (1) or (2), as the case may be. 2002, c. 30, Sched. A, s. 82 (3).

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

2004, c. 19, s. 7 (26) - 30/07/2005

#### **Obligations of assignee of lender**

**83** (1) If a lender assigns to a person the lender's rights in connection with the extension of credit or the lending of money to a borrower, the assignee has no greater rights than, and is subject to the same obligations, liabilities and duties as, the assignor in connection with the extension of the credit or the lending of the money, and the provisions of this Act apply equally to such assignee. 2004, c. 19, s. 7 (27).

#### **Same**

(2) Despite subsection (1), a borrower shall not recover from, or be entitled to set off against, an assignee of the lender an amount greater than the balance owing under the consumer agreement at the time of the assignment, and, if there have been two or more assignments, the borrower shall not recover from an assignee who no longer holds the benefit of the consumer agreement an amount that exceeds the payments made by the borrower to that assignee. 2004, c. 19, s. 7 (27).

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

2004, c. 19, s. 7 (27) - 30/07/2005

#### **Order to pay indemnity**

**84** (1) If an assignor of a negotiable instrument is convicted of a contravention of section 82, the Ontario Court of Justice making the conviction may order that the person convicted is liable to indemnify the maker under subsection 82 (3). 2002, c. 30, Sched. A, s. 84 (1).

#### **Filing indemnity order in court**

(2) If an indemnity order is made under subsection (1) in favour of a person who is or becomes liable under a judgment of a court to an assignee of the negotiable instrument in respect of which the indemnity order was made, the person entitled to the indemnity may file the indemnity order in the court office of the court in which the judgment was issued. 2002, c. 30, Sched. A, s. 84 (2).

### Default judgment

(3) Upon the filing of the indemnity order, the local registrar or clerk of the court shall issue a default judgment in favour of the person entitled to the indemnity and against the person required by the indemnity order to give the indemnity, and the amount of the default judgment shall be the amount of the judgment referred to in subsection (1) and costs together with the costs of issuing the default judgment, or such lesser amount as the person entitled to the indemnity by requisition requests. 2002, c. 30, Sched. A, s. 84 (3).

### Setting aside or variation of default judgment

(4) Upon application, the court in which the default judgment is issued may set aside the default judgment or may determine the amount of the indemnity or make an order of reference for the purpose and may vary the amount of the default judgment. 2002, c. 30, Sched. A, s. 84 (4).

### Allowance for trade-in subject to adjustment

**85** (1) If the amount to be paid by a consumer under a consumer agreement is determined after an allowance for a trade-in and is stated in the consumer agreement to be subject to adjustment after the existence or amount of liens against the trade-in is ascertained or confirmed, any statements of the terms of payment and the cost of borrowing, as required under this Act, shall be based upon the amount as determined upon the information provided by the consumer. 2002, c. 30, Sched. A, s. 85 (1).

### Further adjustments

(2) If there is an additional adjustment to the amount to be paid by a consumer under a consumer agreement to which subsection (1) applies after the adjustment under subsection (1), the consumer agreement shall not be adjusted to change,

- (a) the percentage rate by which the cost of borrowing is expressed;
- (b) the total number of instalments required to pay the total indebtedness; or
- (c) the price shown in the consumer agreement. 2002, c. 30, Sched. A, s. 85 (2).

## PART VII.1 AGREEMENTS FOR CASHING GOVERNMENT CHEQUES

### Definitions

**85.1** In this Part,

“bank” means a bank, authorized foreign bank or federal credit union as defined in section 2 of the *Bank Act* (Canada); (“banque”)

“credit union” has the same meaning as in the *Credit Unions and Caisses Populaires Act, 1994*; (“caisse”, “caisse populaire”)

**Note:** On March 1, 2022, the day named by proclamation of the Lieutenant Governor, the definition of “credit union” in section 85.1 of the Act is amended by striking out “*Credit Unions and Caisses Populaires Act, 1994*” and substituting “*Credit Unions and Caisses Populaires Act, 2020*”. (See: 2020, c. 36, Sched. 7, s. 303 (2))

“federal government” means the Government of Canada and any department, agency, board, commission, official or other body of the Government of Canada; (“gouvernement fédéral”)

“government agency” means the Crown in right of Ontario, an agency of the Crown in right of Ontario, a municipal government, a prescribed municipal agency or any other prescribed entity; (“organisme gouvernemental”)

“government cheque” means a cheque issued to a consumer by the Government of Ontario, a government agency or the federal government. (“chèque du gouvernement”) 2017, c. 5, Sched. 2, s. 17.

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

2017, c. 5, Sched. 2, s. 17 - 01/07/2018

2020, c. 36, Sched. 7, s. 303 (2) - 01/03/2022

### Application

**85.2** (1) This Part applies to a consumer agreement under which a supplier, other than a credit union, cashes a government cheque for a consumer. 2017, c. 5, Sched. 2, s. 17.

### Non-application to banks

(2) For greater certainty, this Part does not apply to a consumer agreement under which a bank cashes a government cheque for a consumer. 2017, c. 5, Sched. 2, s. 17.



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

2017, c. 5, Sched. 2, s. 17 - 01/07/2018

**Disclosure of information**

**85.3** A supplier under a consumer agreement to which this Part applies shall display the prescribed information in the prescribed manner and in accordance with the prescribed requirements. 2017, c. 5, Sched. 2, s. 17.

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

2017, c. 5, Sched. 2, s. 17 - 01/07/2018

**Limit on fee for cashing government cheques**

**85.4** (1) A supplier under a consumer agreement to which this Part applies shall not charge the consumer a fee for cashing a government cheque if the fee exceeds the prescribed amount. 2017, c. 5, Sched. 2, s. 17.

**Amount of fee**

(2) For the purposes of subsection (1), the prescribed amount of the fee for cashing a government cheque may be,

- (a) a fixed amount;
- (b) a percentage of the face value of the cheque or any other amount calculated on the basis of the face value of the cheque;
- (c) an amount that results from the application of any combination of clauses (a) and (b); or
- (d) any amount determined by any other prescribed means. 2017, c. 5, Sched. 2, s. 17.

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

2017, c. 5, Sched. 2, s. 17 - 01/07/2018

**Statement when cashing cheques**

**85.5** A supplier under a consumer agreement to which this Part applies who cashes a government cheque for the consumer shall provide the consumer, in accordance with the prescribed requirements, with a statement setting out the prescribed information with respect to the cashing of the cheque. 2017, c. 5, Sched. 2, s. 17.

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

2017, c. 5, Sched. 2, s. 17 - 01/07/2018

## PART VIII LEASING

**Definitions**

**86** In this Part,

“lease” means a consumer agreement for the lease of goods, other than a consumer agreement for the lease of goods in connection with a residential tenancy agreement, and “lessor” and “lessee” have a corresponding meaning; (“bail”, “bailleur”, “preneur”)

“lease term” means the period during which the lessee is entitled to retain possession of the leased goods; (“durée du bail”)

“residual obligation lease” means a lease under which the lessor may require the lessee at the end of the lease term to pay the lessor an amount based in whole or in part on the difference, if any, between,

- (a) the estimated wholesale value of the leased goods at the end of the lease term, and
- (b) the realizable value of the leased goods at the end of the lease term. (“bail à obligation résiduelle”) 2002, c. 30, Sched. A, s. 86; 2004, c. 19, s. 7 (28-30).

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

2004, c. 19, s. 7 (28-30) - 30/07/2005

**Application of Part**

**87** This Part applies to,

- (a) leases for a fixed term of four months or more;

- (b) leases for an indefinite term or that are renewed automatically until one of the parties takes positive steps to terminate them; and
- (c) residual obligation leases. 2002, c. 30, Sched. A, s. 87; 2004, c. 19, s. 7 (31, 32).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 87 of the Act is amended by striking out “and” at the end of clause (b), by adding “and” at the end of clause (c) and by adding the following clause: (See: 2017, c. 5, Sched. 2, s. 18)**

- (d) such other leases that are prescribed.

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

2004, c. 19, s. 7 (31, 32) - 30/07/2005

2017, c. 5, Sched. 2, s. 18 - not in force

**Representations**

**88** Any person who makes representations or causes representations to be made about the cost of a lease, whether orally, in writing or in any other form, shall do so in accordance with the prescribed requirements. 2002, c. 30, Sched. A, s. 88; 2004, c. 19, s. 7 (33).

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

2004, c. 19, s. 7 (33) - 30/07/2005

**Disclosure statement**

**89** (1) Every lessor shall deliver a disclosure statement for a lease to the lessee before the earlier of,

- (a) the time that the lessee enters into the lease; and
- (b) the time that the lessee makes any payment in connection with the lease. 2002, c. 30, Sched. A, s. 89 (1); 2004, c. 19, s. 7 (34).

**Contents of statement**

(2) The disclosure statement for a lease shall disclose the prescribed information. 2002, c. 30, Sched. A, s. 89 (2); 2004, c. 19, s. 7 (34).

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

2004, c. 19, s. 7 (34) - 30/07/2005

**Compensation re: termination of lease**

**90** (1) The maximum amount of compensation that may be charged to a lessee by a lessor for termination of a lease before the end of the lease term may be limited as prescribed. 2002, c. 30, Sched. A, s. 90 (1); 2004, c. 19, s. 7 (34).

**Residual obligation lease**

(2) The maximum liability of the lessee at the end of the term of a residual obligation lease after returning the leased goods to the lessor shall be the amount calculated in the prescribed manner. 2002, c. 30, Sched. A, s. 90 (2); 2004, c. 19, s. 7 (34).

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

2004, c. 19, s. 7 (34) - 30/07/2005

**PART IX  
PROCEDURES FOR CONSUMER REMEDIES**

**Application**

**91** This Part does not apply to remedies claimed in respect to unfair practices under Part III. 2002, c. 30, Sched. A, s. 91.

**Form of consumer notice**

**92** (1) If this Act requires a consumer to give notice to a supplier to request a remedy, the consumer may do so by giving notice in accordance with this section. 2002, c. 30, Sched. A, s. 92 (1).

**Same**

(2) The notice may be expressed in any way, as long as it indicates the intention of the consumer to seek the remedy being requested and complies with any requirements that may be prescribed. 2002, c. 30, Sched. A, s. 92 (2).

**Giving notice**

(3) Unless the regulations require otherwise, the notice may be oral or in writing and may be given by any means. 2004, c. 19, s. 7 (35).

**Notice given when sent**

(4) If notice in writing is given other than by personal service, the notice shall be deemed to be given when sent. 2004, c. 19, s. 7 (35).

**Address**

(5) The consumer may send or deliver the notice to the address set out in a consumer agreement or, if the consumer did not receive a written copy of a consumer agreement or the address was not set out in the written agreement, the consumer may send or deliver the notice,

- (a) to any address of the supplier on record with the Government of Ontario or the Government of Canada; or
- (b) to an address of the supplier known by the consumer. 2002, c. 30, Sched. A, s. 92 (5); 2013, c. 13, Sched. 2, s. 6.

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

2004, c. 19, s. 7 (34, 35) - 30/07/2005

2013, c. 13, Sched. 2, s. 6 - 12/12/2013.

**Consumer agreements not binding**

**93** (1) A consumer agreement is not binding on the consumer unless the agreement is made in accordance with this Act and the regulations. 2002, c. 30, Sched. A, s. 93.

**Court may order consumer bound**

(2) Despite subsection (1), a court may order that a consumer is bound by all or a portion or portions of a consumer agreement, even if the agreement has not been made in accordance with this Act or the regulations, if the court determines that it would be inequitable in the circumstances for the consumer not to be bound. 2004, c. 19, s. 7 (36).

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

2004, c. 19, s. 7 (36) - 30/07/2005

**Cancellation**

**94** (1) If a consumer has a right to cancel a consumer agreement under this Act, the consumer may cancel the agreement by giving notice in accordance with section 92. 2002, c. 30, Sched. A, s. 94 (1).

**Effective time**

(2) The cancellation takes effect when the consumer gives notice. 2002, c. 30, Sched. A, s. 94 (2).

**Effect of cancellation**

**95** The cancellation of a consumer agreement in accordance with this Act operates to cancel, as if they never existed,

- (a) the consumer agreement;
- (b) all related agreements;
- (c) all guarantees given in respect of money payable under the consumer agreement;
- (d) all security given by the consumer or a guarantor in respect of money payable under the consumer agreement; and
- (e) all credit agreements, as defined in Part VII, and other payment instruments, including promissory notes,
  - (i) extended, arranged or facilitated by the person with whom the consumer reached the consumer agreement, or
  - (ii) otherwise related to the consumer agreement. 2002, c. 30, Sched. A, s. 95.

**Obligations on cancellation**

**96** (1) If a consumer cancels a consumer agreement, the supplier shall, in accordance with the prescribed requirements,

- (a) refund to the consumer any payment made under the agreement or any related agreement; and

- (b) return to the consumer in a condition substantially similar to when they were delivered all goods delivered under a trade-in arrangement or refund to the consumer an amount equal to the trade-in allowance. 2002, c. 30, Sched. A, s. 96 (1).

### **Repossession or return of goods**

(2) Upon cancelling a consumer agreement, the consumer, in accordance with the prescribed requirements and in the prescribed manner, shall permit the goods that came into the consumer's possession under the agreement or a related agreement to be repossessed, shall return the goods or shall deal with them in such manner as may be prescribed. 2002, c. 30, Sched. A, s. 96 (2).

### **Reasonable care**

(3) If a consumer cancels a consumer agreement, the consumer shall take reasonable care of the goods that came into the possession of the consumer under the agreement or a related agreement for the prescribed period. 2004, c. 19, s. 7 (37).

### **To whom obligation owed**

(4) The consumer owes the obligation described in subsection (3) to the person entitled to possession of the goods at the time in question. 2002, c. 30, Sched. A, s. 96 (4).

### **No further obligation**

(5) Compliance with this section discharges the consumer from all obligations relating to the goods and the consumer is under no other obligation, whether arising by contract or otherwise, to take care of the goods. 2002, c. 30, Sched. A, s. 96 (5).

### **Right of action**

(6) If a consumer has cancelled a consumer agreement and the supplier has not met the supplier's obligations under subsection (1), the consumer may commence an action. 2002, c. 30, Sched. A, s. 96 (6).

### **Same**

(7) If a consumer has cancelled a consumer agreement and has not met the consumer's obligations under this section, the supplier or the person to whom the obligation is owed may commence an action. 2004, c. 19, s. 7 (38).

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

2004, c. 19, s. 7 (37, 38) - 30/07/2005

### **Title to goods under trade-in arrangement**

**97** If the consumer recovers an amount equal to the trade-in allowance under subsection 96 (1) and the title of the consumer to the goods delivered under the trade-in arrangement has not passed from the consumer, the title to the goods vests in the person entitled to the goods under the trade-in arrangement. 2002, c. 30, Sched. A, s. 97.

### **Illegal charges and payments**

**98** (1) If a supplier has charged a fee or an amount in contravention of this Act or received a payment in contravention of this Act, the consumer who paid the charge or made the payment may demand a refund by giving notice in accordance with section 92 within one year after paying the charge or making the payment. 2004, c. 19, s. 7 (39).

### **Supplier to provide refund**

(2) A supplier who receives a notice demanding a refund under subsection (1) shall provide the refund within the prescribed period of time. 2004, c. 19, s. 7 (39).

### **Right of action**

(3) The consumer may commence an action in accordance with section 100 to recover,

- (a) the payment of a fee or an amount that was charged by the supplier in contravention of this Act; or
- (b) a payment that was received by the supplier in contravention of this Act. 2004, c. 19, s. 7 (39).

### **Non-supplier**

(4) This section and section 92 apply, with the necessary modifications, to a person who is not a supplier, if the person has received a payment in contravention of section 12. 2004, c. 19, s. 7 (39).

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

2004, c. 19, s. 7 (39) - 30/07/2005

**Consumer's recourse re: credit card charges**

**99** (1) A consumer who has charged to a credit card account all or any part of a payment described in subsection (2) may request the credit card issuer to cancel or reverse the credit card charge and any associated interest or other charges. 2002, c. 30, Sched. A, s. 99 (1).

**Types of payment**

(2) Subsection (1) applies to,

- (a) a payment in respect of a consumer agreement that has been cancelled under this Act or in respect of any related agreement;
- (b) a payment that was received in contravention of this Act;
- (c) a payment in respect of a fee or an amount that was charged in contravention of this Act; and
- (d) a payment that was collected in respect of unsolicited goods or services for which payment is not required under section 13. 2004, c. 19, s. 7 (40).

**Timing of request**

(3) A consumer may make a request under subsection (1) if the consumer has cancelled a consumer agreement or demanded a refund in accordance with this Act, and the supplier has not refunded all of the payment within the required period. 2002, c. 30, Sched. A, s. 99 (3).

**Request**

(4) A request under subsection (1) shall be in writing, shall comply with the requirements, if any, that are prescribed under subsection 92 (2), and shall be given to the credit card issuer, in the prescribed period, in accordance with section 92. 2004, c. 19, s. 7 (40).

**Obligations of credit card issuer**

(5) The credit card issuer,

- (a) shall, within the prescribed period, acknowledge the consumer's request; and
- (b) if the request meets the requirements of subsection (4), shall, within the prescribed period,
  - (i) cancel or reverse the credit card charge and any associated interest or other charges, or
  - (ii) after having conducted an investigation, send a written notice to the consumer explaining the reasons why the credit card issuer is of the opinion that the consumer is not entitled to cancel the consumer agreement or to demand a refund under this Act. 2004, c. 19, s. 7 (40).

**Right of action**

(6) A consumer may commence an action against a credit card issuer to recover a payment and associated interest and other charges to which the consumer is entitled under this section. 2002, c. 30, Sched. A, s. 99 (6).

**Other prescribed payment systems**

(7) If a consumer charges all or part of a payment described in subsection (2) to a prescribed payment system, the consumer may request that the charge be cancelled or reversed and this section applies with necessary modifications to the cancellation or reversal of such a charge. 2002, c. 30, Sched. A, s. 99 (7).

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

2004, c. 19, s. 7 (40) - 30/07/2005

**Action in Superior Court of Justice**

**100** (1) If a consumer has a right to commence an action under this Act, the consumer may commence the action in the Superior Court of Justice. 2002, c. 30, Sched. A, s. 100 (1).

**Judgment**

(2) If a consumer is successful in an action, unless in the circumstances it would be inequitable to do so, the court shall order that the consumer recover,

- (a) the full payment to which he or she is entitled under this Act; and

- (b) all goods delivered under a trade-in arrangement or an amount equal to the trade-in allowance. 2002, c. 30, Sched. A, s. 100 (2).

**Same**

- (3) In addition to an order under subsection (2), the court may order exemplary or punitive damages or such other relief as the court considers proper. 2002, c. 30, Sched. A, s. 100 (3).

**Waiver of notice**

**101** If a consumer is required to give notice under this Act in order to obtain a remedy, a court may disregard the requirement to give the notice or any requirement relating to the notice if it is in the interest of justice to do so. 2002, c. 30, Sched. A, s. 101; 2008, c. 9, s. 79 (11).

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

2008, c. 9, s. 79 (11) - 01/07/2009

**PART X  
POWERS AND DUTIES OF MINISTER AND DIRECTOR**

**Powers of Minister**

**102** (1) The Minister may,

- (a) disseminate information for the purpose of educating and advising consumers;
- (b) provide information to consumers about the use of alternate dispute resolution techniques as a means of resolving disputes arising out of consumer transactions; and
- (c) enforce this Act and other legislation for the protection of consumers. 2002, c. 30, Sched. A, s. 102 (1).

**Delegation of powers and duties**

(2) The Minister may delegate in writing any of his or her powers or duties under subsection (1) to the Deputy Minister of Consumer and Business Services or to any persons employed in a specified capacity in the Ministry. 2002, c. 30, Sched. A, s. 102 (2).

**Same**

(3) The Deputy Minister of Consumer and Business Services may in writing delegate any of the powers or duties delegated to the Deputy Minister by the Minister under subsection (2) to any person employed in a specified capacity in the Ministry. 2002, c. 30, Sched. A, s. 102 (3).

**Enforcement agreements**

(4) For the purpose of enforcing this Act and other legislation for the protection of consumers, the Minister may,

- (a) enter into agreements with law enforcement agencies in Canada and other jurisdictions; and
- (b) for the purposes of clause (a), share and exchange information concerning breaches or possible breaches of this Act or other legislation for the protection of consumers. 2002, c. 30, Sched. A, s. 102 (4).

**Duties of Director**

**103** (1) The Director shall perform such duties and exercise such powers as are given to or conferred upon the Director under this or any other Act. 2002, c. 30, Sched. A, s. 103 (1).

**Same**

(2) The Director shall maintain, in accordance with the prescribed requirements, a public record of the following:

- 1. Undertakings of voluntary compliance entered into under this Act.
  - 1.1 Policies established under subsection (2.1).
  - 2. A failure by a supplier to provide a document or other evidence as required by the Ministry under subsection 105 (4).
  - 3. Orders made under section 109.
    - 3.1 Compliance orders issued under this Act.
  - 4. Any other prescribed document or information. 2002, c. 30, Sched. A, s. 103 (2); 2014, c. 9, Sched. 1, s. 3 (1); 2017, c. 2, Sched. 12, s. 3 (1, 2).

**Policies**

(2.1) The Director may establish policies regarding the interpretation, administration and enforcement of this Act. 2014, c. 9, Sched. 1, s. 3 (2).

**Additional information**

(2.2) If information is required to be made public with respect to a supplier under subsection (2) or the regulations, the Director shall include in the public record in respect of the supplier, all of the following information, if known to the Director:

1. All of the supplier's business names and business locations.
2. Any other prescribed information about the supplier's business. 2017, c. 2, Sched. 12, s. 3 (3).

**Agreements for shared information**

(2.3) The Director may enter into an agreement with any of the following entities for that entity to disclose information to the Ministry for the purpose of making the information publicly available for the purposes of this section:

1. Another ministry of the Government of Ontario, a corporation that administers legislation on behalf of that Government or an agency, board or commission established under an Act of Ontario.
2. A municipality in Ontario or one of its agencies, boards or commissions.
3. The Government of Canada or one of its ministries, departments, agencies, boards or commissions. 2017, c. 2, Sched. 12, s. 3 (3).

**Public record**

(2.4) If the Ministry receives information pursuant to an agreement described in subsection (2.3), the Director shall maintain a public record of the information in addition to the public record described in subsection (2). 2017, c. 2, Sched. 12, s. 3 (3).

**Freedom of information legislation**

(2.5) The disclosure of personal information in a public record under this section is deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*. 2017, c. 2, Sched. 12, s. 3 (3).

**Same**

(3) The Director shall publish such documents or information as are prescribed. 2002, c. 30, Sched. A, s. 103 (3).

**Transition**

(4) Records that the Director maintained available for public inspection as required by section 5 of the *Business Practices Act* before its repeal are deemed to be records that are to be maintained for purposes of subsection (2). 2002, c. 30, Sched. A, s. 103 (4).

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

2014, c. 9, Sched. 1, s. 3 (1, 2) - 01/04/2015

2017, c. 2, Sched. 12, s. 3 (1-3) - 22/03/2017

**Fees**

**104** (1) The Minister may by order require the payment of fees for the inspection of public records maintained under section 103 and may approve the amount of those fees. 2002, c. 30, Sched. A, s. 104 (1).

**Same**

(2) Orders made under subsection (1) are not regulations within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 2002, c. 30, Sched. A, s. 104 (2); 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

**Note:** On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following Part: (See: 2020, c. 14, Sched. 3, s. 2)

**PART X.1  
ADMINISTRATIVE PENALTIES**

**Order**

**104.0.1** (1) If the Director is satisfied that a person has contravened or is contravening a prescribed provision of this Act or the regulations, the Director may, by order, impose an administrative penalty against the person in accordance with this section and the regulations made by the Minister. 2020, c. 14, Sched. 3, s. 2.

**Purpose**

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

1. To ensure compliance with this Act and the regulations.
2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening a provision of this Act or the regulations. 2020, c. 14, Sched. 3, s. 2.

**Amount**

(3) The amount of an administrative penalty shall reflect the purposes of the penalty and shall be the amount prescribed by the Minister, which amount shall not exceed \$50,000. 2020, c. 14, Sched. 3, s. 2.

**Form of order**

(4) An order made under subsection (1) imposing an administrative penalty against a person shall be in the form that the Director determines. 2020, c. 14, Sched. 3, s. 2.

**Absolute liability**

(5) An order made under subsection (1) imposing an administrative penalty against a person applies even if,

- (a) the person took all reasonable steps to prevent the contravention on which the order is based; or
- (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent. 2020, c. 14, Sched. 3, s. 2.

**No effect on offences**

(6) For greater certainty, nothing in subsection (5) affects the prosecution of an offence. 2020, c. 14, Sched. 3, s. 2.

**Other measures**

(7) Subject to section 104.0.3, an administrative penalty may be imposed alone or in conjunction with the exercise of any measure against a person provided by this Act or the regulations. 2020, c. 14, Sched. 3, s. 2.

**Limitation**

(8) The Director shall not make an order under subsection (1) more than two years after the day the Director became aware of the person's contravention on which the order is based. 2020, c. 14, Sched. 3, s. 2.

**No hearing required**

(9) Subject to the regulations made by the Minister, the Director is not required to hold a hearing or to afford a person an opportunity for a hearing before making an order under subsection (1) against the person. 2020, c. 14, Sched. 3, s. 2.

**Non-application of other Act**

(10) The *Statutory Powers Procedure Act* does not apply to an order of the Director made under subsection (1) of this section. 2020, c. 14, Sched. 3, s. 2.

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

2020, c. 14, Sched. 3, s. 2 - not in force

**Appeal**

**104.0.2** (1) The person against whom an order made under subsection 104.0.1 (1) imposes an administrative penalty may appeal the order to the person designated under subsection (8) of this section by delivering a written notice of appeal to that person within 15 days after receiving the order. 2020, c. 14, Sched. 3, s. 2.

**Extension of time for appeal**

(2) The person designated under subsection (8) may extend the time period for appealing and may determine the circumstances in which extensions are given. 2020, c. 14, Sched. 3, s. 2.



**Form of notice**

(3) The notice of appeal shall be in the form that the person designated under subsection (8) determines. 2020, c. 14, Sched. 3, s. 2.

**Filing of notice**

(4) The person against whom the order imposing the administrative penalty is made shall file the notice of appeal in the manner that the person designated under subsection (8) determines. 2020, c. 14, Sched. 3, s. 2.

**Stay**

(5) An appeal commenced in accordance with subsection (1) operates as a stay of the order until disposition of the appeal. 2020, c. 14, Sched. 3, s. 2.

**Opportunity for submissions**

(6) Before disposing of an appeal, the person designated under subsection (8) shall give the person against whom the order imposing the administrative penalty is made a reasonable opportunity to make written submissions. 2020, c. 14, Sched. 3, s. 2.

**Powers on appeal**

(7) On an appeal, the person designated under subsection (8) may confirm, revoke or vary the order within the limits, if any, established by the regulations made by the Minister. 2020, c. 14, Sched. 3, s. 2.

**Designation of person to whom appeals made**

(8) The Minister shall designate a person to whom appeals may be made under this section. 2020, c. 14, Sched. 3, s. 2.

**Non-application of other Act**

(9) The *Statutory Powers Procedure Act* does not apply to an appeal made under this section. 2020, c. 14, Sched. 3, s. 2.

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

2020, c. 14, Sched. 3, s. 2 - not in force

**Effect of paying penalty**

**104.0.3** If a person against whom an order imposing an administrative penalty is made pays the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the person cannot be charged with an offence under this Act in respect of the same contravention on which the order is based and no other prescribed measure shall be taken against the person in respect of the same contravention on which the order is based. 2020, c. 14, Sched. 3, s. 2.

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

2020, c. 14, Sched. 3, s. 2 - not in force

**Enforcement**

**104.0.4** (1) If a person against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the order may be filed with the Superior Court of Justice and enforced as if it were an order of the court. 2020, c. 14, Sched. 3, s. 2.

**Date of order**

(2) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court shall be deemed to be the date of the order. 2020, c. 14, Sched. 3, s. 2.

**Debt due to Crown**

(3) An administrative penalty that is not paid in accordance with the terms of the order imposing it or, if the order is varied on appeal, in accordance with the terms of the varied order is a debt due to the Crown and is enforceable as such. 2020, c. 14, Sched. 3, s. 2.

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

2020, c. 14, Sched. 3, s. 2 - not in force

## PART XI GENERAL

### Definitions

**104.1** In this Part,

“inspector” means a person appointed or designated under section 105.1; (“inspecteur”)

“investigator” means an investigator appointed under subsection 106 (1). (“enquêteur”) 2006, c. 34, s. 8 (4); 2014, c. 9, Sched. 1, s. 4.

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

2006, c. 34, s. 8 (4) - 01/04/2007

2014, c. 9, Sched. 1, s. 4 - 01/04/2015

### Ministry receives complaints and makes inquiries

**105** (1) The Ministry may,

- (a) receive complaints concerning conduct that may be in contravention of this Act, of other legislation for the protection of consumers or of any other prescribed Act, whether the conduct constitutes an offence or not; and
- (b) make inquiries, gather information and attempt to mediate or resolve complaints, as appropriate, concerning any matter that comes to its attention that may be in contravention of this Act, of other legislation for the protection of consumers or of any other prescribed Act, whether the matter constitutes an offence or not. 2002, c. 30, Sched. A, s. 105.

### Mediation

(2) The Ministry may mediate a complaint if the parties to the complaint agree to mediation. 2017, c. 2, Sched. 12, s. 3 (4).

#### Agreement to mediate

(3) The agreement to mediate a complaint shall be signed by the parties to the complaint and be on a form approved by the Director that contains the terms and conditions of the mediation and the parties’ obligations regarding the mediation. 2017, c. 2, Sched. 12, s. 3 (4).

#### Documents and other evidence

(4) If the Ministry attempts to mediate or resolve a complaint involving a supplier and a consumer, the Ministry may request in writing that either party to the mediation provide, to the Ministry within the time specified by the Ministry, documents or other evidence that are relevant to the complaint. 2017, c. 2, Sched. 12, s. 3 (4).

#### Supplier’s failure to respond

(5) If a supplier fails to provide a document or other evidence as required by the Ministry under subsection (4), the Director shall include the supplier’s name and the record of the failure as part of the public record described in paragraph 2 of subsection 103 (2). 2017, c. 2, Sched. 12, s. 3 (4).

#### Consumer’s failure to respond

(6) If a consumer fails to provide a document or other evidence as required by the Ministry under subsection (4), the Ministry shall take no other action in relation to the mediation. 2017, c. 2, Sched. 12, s. 3 (4).

#### Director’s powers saved

(7) Nothing in a mediation or its results affects the authority of the Director to address the complaint even if the mediation results in a settlement. 2017, c. 2, Sched. 12, s. 3 (4).

#### Protection of settlement records

(8) None of the records, evidence or information that are disclosed in the course of attempting to effect a settlement and that are subject to mediation privilege shall be used or disclosed outside the attempted settlement. 2017, c. 2, Sched. 12, s. 3 (4).

#### Protection for mediator

(9) A person who conducts a mediation under this section shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting the mediation. 2017, c. 2, Sched. 12, s. 3 (4).

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

2017, c. 2, Sched. 12, s. 3 (4) - 22/03/2017

## **Inspectors**

**105.1** The Director may, in writing,

- (a) appoint persons as inspectors for the purposes of this Act; and
- (b) designate persons, including persons engaged as inspectors or investigators for the purposes of any other Act, as inspectors for the purposes of this Act or for any specific purposes under this Act provided for in the designation. 2014, c. 9, Sched. 1, s. 5.

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

2014, c. 9, Sched. 1, s. 5 - 01/04/2015

## **Inspection powers**

**105.2** (1) An inspector may, without a warrant, enter and inspect any place in order to perform an inspection to ensure this Act is being complied with. 2014, c. 9, Sched. 1, s. 5.

### **Time of entry**

(2) The power to enter and inspect a place without warrant may only be exercised during the place's regular business hours, or during other reasonable times. 2014, c. 9, Sched. 1, s. 5.

### **Dwellings**

(3) The power to enter and inspect a place without a warrant shall not be used to enter and inspect a place or a part of a place that is used as a dwelling. 2014, c. 9, Sched. 1, s. 5.

### **Use of force**

(4) An inspector is not entitled to use force to enter and inspect a place. 2014, c. 9, Sched. 1, s. 5.

### **Identification**

(5) An inspector shall, upon request, produce evidence of his or her appointment or designation. 2014, c. 9, Sched. 1, s. 5.

### **Powers of inspector**

- (6) An inspector conducting an inspection may,
- (a) examine a record or other thing that the inspector thinks may be relevant to the inspection;
  - (b) require the production of a record or other thing that the inspector thinks may be relevant to the inspection;
  - (c) remove for review and copying a record or other thing that the inspector thinks may be relevant to the 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 inspector thinks may be relevant to the inspection. 2014, c. 9, Sched. 1, s. 5.

### **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 other thing to be produced. 2014, c. 9, Sched. 1, s. 5.

### **Obligation to produce and assist**

(8) If an inspector 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. 2014, c. 9, Sched. 1, s. 5.

### **Records and things removed from place**

(9) An inspector 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. 2014, c. 9, Sched. 1, s. 5.

### **Copy admissible in evidence**

(10) A copy of a record that purports to be certified by an inspector 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. 2014, c. 9, Sched. 1, s. 5.

### **Additional contact**

(10.1) In addition to the power to enter a place under this section, an inspector may, by any means, contact any person who is in control of the operations of a supplier and may exercise the powers that he or she has to conduct an inspection under this section with respect to the supplier or person, without entering any place, if the inspector establishes that,

- (a) the supplier is subject to this Act; and
- (b) the person is in control of the operations of the supplier. 2017, c. 2, Sched. 12, s. 3 (5).

### **Identification**

(10.2) An inspector who establishes contact with a person under subsection (10.1) shall provide a written confirmation to the person of the inspector's authority to conduct the inspection, whether or not there is a request under subsection (5). 2017, c. 2, Sched. 12, s. 3 (5).

### **Time for production**

(10.3) If an inspector establishes contact with a person under subsection (10.1) and requires the person to produce a record or other thing under clause (6) (b), the person shall provide the record or other thing to the inspector in the manner specified by the inspector and within the time specified by the inspector, which shall not be less than 15 days from the day of the demand to produce. 2017, c. 2, Sched. 12, s. 3 (5).

### **Duty to assist**

(10.4) A person who is contacted by an inspector under subsection (10.1) shall assist the inspector in accordance with subsection (8), subject to the time period mentioned in subsection (10.3). 2017, c. 2, Sched. 12, s. 3 (5).

### **Obstruction**

- (11) No person shall,
- (a) hinder, obstruct or interfere with or attempt to hinder, obstruct or interfere with an inspector conducting an inspection;
  - (b) refuse to answer questions on matters that an inspector thinks may be relevant to an inspection;
  - (c) provide an inspector with information on matters the inspector thinks may be relevant to an inspection that the person knows to be false or misleading; or
  - (d) prevent or attempt to prevent an inspector from making inquiries of any person separate and apart from another person under clause (6) (e). 2014, c. 9, Sched. 1, s. 5.

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

2014, c. 9, Sched. 1, s. 5 - 01/04/2015

2017, c. 2, Sched. 12, s. 3 (5) - 22/03/2017

### **Delegation of order-making powers**

**105.3** (1) The Director may delegate to an inspector, subject to any conditions set out in the delegation, the power to make any proposal or order that the Director may make under the following sections and a proposal or order made by an inspector pursuant to such a delegation is, for all purposes, as effective as if it were made by the Director:

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 105.3 (1) of the Act is amended by adding the following paragraph: (See: 2020, c. 14, Sched. 3, s. 3)

0.1 Section 104.0.1.

1. Section 109.
2. Section 110.
3. Section 111.
4. Section 112.
5. Section 114.
6. Section 115.
7. Section 119. 2014, c. 9, Sched. 1, s. 5; 2017, c. 2, Sched. 12, s. 3 (6).

**In writing**

(2) A delegation under this section must be in writing. 2014, c. 9, Sched. 1, s. 5.

**References to Director**

(3) If an inspector has made a proposal or an order pursuant to a delegation under this section, every reference to the Director in or with respect to the section under which the proposal or order, as the case may be, was made and every reference to the Director in sections 121 and 122 is deemed to be a reference to that inspector. 2017, c. 2, Sched. 12, s. 3 (7).

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

2014, c. 9, Sched. 1, s. 5 - 01/04/2015

2017, c. 2, Sched. 12, s. 3 (6, 7) - 22/03/2017

2020, c. 14, Sched. 3, s. 3 - not in force

**Appointment of investigators**

**106** (1) The Director may appoint persons to be investigators for the purposes of conducting investigations. 2002, c. 30, Sched. A, s. 106 (1).

**Certificate of appointment**

(2) The Director shall issue to every investigator a certificate of appointment bearing his or her signature or a facsimile of the signature. 2002, c. 30, Sched. A, s. 106 (2).

**Production of certificate of appointment**

(3) Every investigator who is conducting an investigation, including under section 107, shall, upon request, produce the certificate of appointment as an investigator. 2006, c. 34, s. 8 (5).

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

2006, c. 34, s. 8 (5) - 01/04/2007

**Search warrant**

**107** (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if he or she is satisfied on information under oath that there are reasonable grounds for believing that,

- (a) an inspector is being prevented from doing anything the inspector is entitled to do under section 105.2; or
- (b) a person has contravened or is contravening this Act or the regulations, and there is,
  - (i) in any building, dwelling, receptacle or place anything relating to the contravention of this Act or the regulations, or
  - (ii) information or evidence relating to the contravention of this Act or the regulations that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant. 2014, c. 9, Sched. 1, s. 6.

**Powers under warrant**

- (2) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an investigator,
- (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and examine and seize anything described in the warrant;
  - (b) to make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the investigation;
  - (c) to require a person to produce the information or evidence described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the information or evidence described in the warrant;
  - (d) to use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form; and
  - (e) to use any investigative technique or procedure or do anything described in the warrant. 2004, c. 19, s. 7 (41); 2006, c. 34, s. 8 (7, 8); 2019, c. 14, Sched. 10, s. 4 (1, 2).

**Entry of dwelling**

(3) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,

- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice of the peace authorizes the entry into the dwelling. 2004, c. 19, s. 7 (41).

**Conditions on warrant**

(4) 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. 2004, c. 19, s. 7 (41).

**Expert help**

(5) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the investigator in respect of the execution of the warrant. 2004, c. 19, s. 7 (41); 2006, c. 34, s. 8 (9).

**Time of execution**

(6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2004, c. 19, s. 7 (41).

**Expiry of warrant**

(7) 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 an investigator. 2004, c. 19, s. 7 (41).

**Use of force**

(8) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant. 2004, c. 19, s. 7 (41).

**No obstruction**

(9) No person shall obstruct an investigator executing a warrant under this section or withhold from him or her or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant. 2004, c. 19, s. 7 (41).

**Compliance**

(10) If an investigator under clause (2) (c) requires a person to produce evidence or information or to provide assistance, the person shall produce the evidence or information or provide the assistance, as the case may be. 2019, c. 14, Sched. 10, s. 4 (3).

**Copies of seized items**

(11) An investigator who seizes any thing under this section or section 107.1 may make a copy of it. 2019, c. 14, Sched. 10, s. 4 (3).

**Admissibility**

(12) A copy of a document or record certified by an investigator 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. 2004, c. 19, s. 7 (41).

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

2004, c. 19, s. 7 (41) - 30/07/2005

2006, c. 34, s. 8 (6-10) - 01/04/2007

2014, c. 9, Sched. 1, s. 6 - 01/04/2015

2019, c. 14, Sched. 10, s. 4 (1-3) - 10/12/2019

**Seizure of things not specified**

**107.1** An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of his or her duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations. 2006, c. 34, s. 8 (11).

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

2004, c. 19, s. 7 (41) - 30/07/2005

2006, c. 34, s. 8 (11) - 01/04/2007

### **Searches in exigent circumstances**

**108** (1) An investigator may exercise any of the powers described in subsection 107 (2) 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. 2004, c. 19, s. 7 (42).

### **Dwellings**

(2) Subsection (1) does not apply to a building or part of a building that is being used as a dwelling. 2004, c. 19, s. 7 (42).

### **Use of force**

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary. 2004, c. 19, s. 7 (42).

### **Applicability of s. 107**

(4) Subsections 107 (5), (9), (10), (11) and (12) apply with necessary modifications to a search under this section. 2004, c. 19, s. 7 (42).

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

2004, c. 19, s. 7 (42) - 30/07/2005

### **Report when things seized**

**108.1** (1) An investigator who seizes any thing under the authority of section 107, 107.1 or 108 shall bring it before a justice of the peace or, if that is not reasonably possible, shall report the seizure to a justice of the peace. 2019, c. 14, Sched. 10, s. 4 (4).

### **Procedure**

(2) Sections 159 and 160 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized under the authority of section 107, 107.1 or 108 of this Act, reading the reference in subsection 160 (1) of that Act to a document that a person is about to examine or seize under a search warrant as a reference to a thing that an investigator is about to examine or seize under the authority of section 107, 107.1 or 108 of this Act. 2019, c. 14, Sched. 10, s. 4 (4).

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

2019, c. 14, Sched. 10, s. 4 (4) - 10/12/2019

### **False, misleading or deceptive representation**

**109** (1) If the Director believes on reasonable grounds that any person is making a false, misleading or deceptive representation in respect of any consumer transaction in an advertisement, circular, pamphlet or material published by any means, the Director may,

- (a) order the person to cease making the representation; and
- (b) order the person to retract the representation or publish a correction of equal prominence to the original publication. 2002, c. 30, Sched. A, s. 109 (1).

### **Real property**

(2) Despite clause 2 (2) (f), this section applies to any representations involving real property. 2002, c. 30, Sched. A, s. 109 (2).

### **Order effective**

(3) The order takes effect immediately upon being made. 2002, c. 30, Sched. A, s. 109 (3).

### **Service**

(4) The Director shall serve the order, together with written reasons for it, on the person named in it. 2002, c. 30, Sched. A, s. 109 (4).

### **Request for a hearing**

(5) The order shall inform the person named in it that the person may request a hearing before the Tribunal by mailing or delivering a written notice of request for a hearing to the Director and the Tribunal within 15 days after service of the order. 2002, c. 30, Sched. A, s. 109 (5).

**Hearing date**

(6) If the person gives a notice of request for a hearing within the allowed time, the Tribunal shall hold a hearing. 2002, c. 30, Sched. A, s. 109 (6).

**Stay of order**

(7) The Tribunal may stay the order until it confirms or sets aside the order under subsection (9). 2002, c. 30, Sched. A, s. 109 (7).

**Parties**

(8) The Director, the person who requested the hearing and the persons whom the Tribunal specifies are parties to the hearing. 2002, c. 30, Sched. A, s. 109 (8).

**Powers of Tribunal**

(9) After holding the hearing, the Tribunal may,

- (a) confirm the order with the amendments, if any, that the Tribunal considers proper to give effect to the purposes of this Act; or
- (b) set aside the order. 2002, c. 30, Sched. A, s. 109 (9).

**Same**

(10) In confirming or setting aside the order, the Tribunal may substitute its opinion for that of the Director. 2002, c. 30, Sched. A, s. 109 (10).

**Appeal**

(11) Even if the person named in an order made under this section appeals it under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal. 2002, c. 30, Sched. A, s. 109 (11).

**Freeze order**

**110** (1) If the conditions in subsection (2) are met, the Director may, in writing,

- (a) order any person having on deposit or controlling any assets or trust funds of a supplier or former supplier to hold those funds or assets;
- (b) order a supplier or former supplier to refrain from withdrawing any asset or trust fund from a person having them on deposit or controlling them; or
- (c) order a supplier or former supplier to hold any asset or trust fund of a consumer or other person in trust for the person entitled to it. 2002, c. 30, Sched. A, s. 110 (1).

**Conditions**

(2) The Director may make an order under subsection (1) if he or she believes that it is advisable for the protection of consumers and,

- (a) a search warrant has been issued under this Act;
- (b) an order has been made under section 111 or 112; or
- (c) there has been an undertaking of voluntary compliance under section 114. 2002, c. 30, Sched. A, s. 110 (2).

**Person engaged in unfair practice**

(3) Subsections (1) and (2) apply with necessary modifications to any person, whether or not the person is or was a supplier, if the person has engaged or is engaging in unfair practices under this Act. 2002, c. 30, Sched. A, s. 110 (3).

**Limitation**

(4) In the case of a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* or a loan or trust corporation, the order under subsection (1) applies only to the offices and branches named in the order. 2002, c. 30, Sched. A, s. 110 (4).

**Note:** On March 1, 2022, the day named by proclamation of the Lieutenant Governor, subsection 110 (4) of the Act is amended by striking out “*Credit Unions and Caisses Populaires Act, 1994*” and substituting “*Credit Unions and Caisses Populaires Act, 2020*”. (See: 2020, c. 36, Sched. 7, s. 303 (3))



**Release of assets**

(5) The Director may consent to the release of any particular asset or trust fund from the order or may wholly revoke the order. 2002, c. 30, Sched. A, s. 110 (5).

**Exception**

(6) Subsection (1) does not apply if the person files with the Director, in such manner and amount as the Director determines,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another prescribed form of security. 2002, c. 30, Sched. A, s. 110 (6).

**Application to court**

(7) An application may be made to the Superior Court of Justice for a determination in respect of the disposition of an asset or trust fund,

- (a) by a person in receipt of an order under subsection (1), if that person is in doubt as to whether the order applies to the asset or trust fund; or
- (b) by a person who claims an interest in the asset or trust fund subject to the order. 2002, c. 30, Sched. A, s. 110 (7).

**Notice**

(8) If an order is made under this section, the Director may register in the appropriate land registry office a notice that an order under subsection (1) has been issued and that the order may affect land belonging to the person referred to in the notice and the notice has the same effect as the registration of a certificate of pending litigation except that the Director may in writing revoke or modify the notice. 2002, c. 30, Sched. A, s. 110 (8).

**Cancellation or discharge application**

(9) A person in respect of whom an order has been made under subsection (1) or any person having an interest in land in respect of which a notice is registered under subsection (8) may apply to the Tribunal for cancellation in whole or in part of the order or for discharge in whole or in part of the registration. 2002, c. 30, Sched. A, s. 110 (9).

**Disposition by Tribunal**

(10) The Tribunal shall dispose of the application after a hearing and may cancel the order or discharge the registration in whole or in part, if the Tribunal finds,

- (a) that the order or registration is not required in whole or in part for the protection of consumers or of other persons having an interest in the land; or
- (b) that the interests of other persons are unduly prejudiced by the order or registration. 2002, c. 30, Sched. A, s. 110 (10).

**Parties**

(11) The applicant, the Director and such other persons as the Tribunal may specify are parties to the proceedings before the Tribunal. 2002, c. 30, Sched. A, s. 110 (11).

**Court application**

(12) If the Director has made an order under subsection (1) or registered a notice under subsection (8), he or she may apply to the Superior Court of Justice for directions or an order relating to the disposition of assets, trust funds or land affected by the order or notice. 2002, c. 30, Sched. A, s. 110 (12).

**Notice not required**

(13) An application by the Director under this section may be made without notice to any other person. 2002, c. 30, Sched. A, s. 110 (13).

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

2020, c. 36, Sched. 7, s. 303 (3) - 01/03/2022

### **Compliance order**

**111** (1) If the Director believes on reasonable grounds that a person has engaged or is engaging in any activity that contravenes any requirement under this Act, whether the activity constitutes an offence or not, the Director may propose to make an order directing the person to comply with the requirement. 2020, c. 14, Sched. 3, s. 4.

### **Order for refund**

(1.1) For greater certainty, if the Director proposes to make an order under subsection (1) that a person comply with clause 96 (1) (a), the proposed order may specify the amount of the refund described in that clause and include a direction to the person to pay that amount. 2020, c. 14, Sched. 3, s. 4.

### **Notice**

(2) If the Director proposes to make an order under subsection (1), the Director shall serve notice of the proposed order, together with written reasons, on the person. 2002, c. 30, Sched. A, s. 111 (2).

### **Request for hearing**

(3) The notice shall state that the person is entitled to a hearing by the Tribunal if the person mails or delivers, within 15 days after the notice under subsection (2) is served, notice in writing requiring a hearing to the Director and the Tribunal. 2002, c. 30, Sched. A, s. 111 (3).

### **No hearing required**

(4) If the person does not require a hearing in accordance with subsection (3), the Director may make the order. 2002, c. 30, Sched. A, s. 111 (4).

### **Hearing**

(5) If the person requires a hearing in accordance with subsection (3), the Tribunal shall hold the hearing and may order the Director to make the proposed order or to refrain from making the proposed order or may make an order of its own in substitution for that of the Director. 2002, c. 30, Sched. A, s. 111 (5).

### **Conditions**

(6) The Tribunal may attach such conditions to its order as it considers proper. 2002, c. 30, Sched. A, s. 111 (6).

### **Parties**

(7) The Director and the person who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. 2002, c. 30, Sched. A, s. 111 (7).

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

2020, c. 14, Sched. 3, s. 4 - 14/07/2020

### **Order for immediate compliance**

**112** (1) Despite section 111, the Director may make an order requiring immediate compliance with a requirement under this Act if, in the Director's opinion, it is the public interest to do so and subject to subsection (2), such an order takes effect immediately. 2002, c. 30, Sched. A, s. 112 (1); 2020, c. 14, Sched. 3, s. 5 (1).

### **Order for refund**

(1.1) For greater certainty, if the Director makes an order for immediate compliance requiring that a person comply with clause 96 (1) (a), the order may specify the amount of the refund described in that clause and include a direction to the person to pay that amount. 2020, c. 14, Sched. 3, s. 5 (2).

### **Notice of order**

(2) If the Director makes an order for immediate compliance, he or she shall serve on the person named in the order a notice that includes the order and the written reasons for making it and the information required in a notice referred to in subsection 111 (3). 2002, c. 30, Sched. A, s. 112 (2).

### **Hearing**

(3) When a person named in the order requires a hearing in accordance with the notice under subsection (2), the Tribunal shall hold the hearing and may confirm or set aside the order or exercise such other powers as may be exercised in a proceeding under section 111. 2002, c. 30, Sched. A, s. 112 (3).

### **Expiration of order**

(4) If a hearing by the Tribunal is required,

- (a) the order expires 15 days after the written request for a hearing is received by the Tribunal; or
- (b) the Tribunal may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period referred to in clause (a). 2002, c. 30, Sched. A, s. 112 (4).

#### Same

(5) Despite subsection (4), if it is satisfied that the conduct of the person named in the order has delayed the commencement of the hearing, the Tribunal may extend the time of the expiration for the order,

- (a) until the hearing commences; and
- (b) once the hearing commences, until the hearing is concluded. 2002, c. 30, Sched. A, s. 112 (5).

#### Parties

(6) The Director and the person who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. 2002, c. 30, Sched. A, s. 112 (6).

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

2020, c. 14, Sched. 3, s. 5 (1, 2) - 14/07/2020

#### Appeal

**113** Even if, under section 11 of the *Licence Appeal Tribunal Act, 1999*, a party to a proceeding before the Tribunal appeals an order of the Tribunal made under section 111 or 112, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal. 2002, c. 30, Sched. A, s. 113.

#### Undertaking of voluntary compliance

**114** (1) At any time before all rights of appeal are exhausted or the time for appeals has expired without an appeal being commenced, any person against whom the Director has made or is considering making an order to comply under section 111 or 112 may enter into a written undertaking of voluntary compliance,

- (a) to not engage in the specified act after the date of the undertaking;
- (a.1) to refund to a consumer who cancelled a consumer agreement any payment made under the agreement or any related agreement;
- (b) to provide compensation to any consumer who has suffered a loss;
- (c) to publicize the undertaking or the actions being undertaken as a result of the undertaking;
- (d) to pay any cost incurred in investigating the person's activities, any legal costs incurred in relation to the person's activities and any cost associated with the undertakings; and
- (e) to take any such action as the Director considers appropriate in the circumstances. 2002, c. 30, Sched. A, s. 114 (1); 2020, c. 14, Sched. 3, s. 6.

#### Undertaking deemed order

(2) When an undertaking of voluntary compliance is accepted by the Director, the undertaking has and shall be given for all purposes of this Act the force and effect of an order made by the Director. 2002, c. 30, Sched. A, s. 114 (2).

#### Security for any undertaking

(3) The Director may require any person who is giving an undertaking of voluntary compliance to provide, in such manner and amount as the Director determines, security in the form of,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another prescribed form of security. 2002, c. 30, Sched. A, s. 114 (3).

#### Release of security

(4) The bond and any collateral security required under subsection (3) shall not be released until the Director is satisfied that the person has fulfilled the undertaking. 2002, c. 30, Sched. A, s. 114 (4).

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

### Restraining orders

**115** (1) If it appears to the Director that a person is not complying with this Act or the regulations or an order made under this Act, the Director may apply to the Superior Court of Justice for an order directing that person to comply and, upon the application, the court may make such order as the court thinks fit. 2002, c. 30, Sched. A, s. 115 (1).

### Same

(2) Subsection (1) applies in addition to any other procedures that may be available to the Director, whether or not the Director has exercised his or her rights under such procedures. 2002, c. 30, Sched. A, s. 115 (2).

### Appeal

(3) An appeal lies to the Divisional Court from an order made under subsection (1). 2002, c. 30, Sched. A, s. 115 (3).

### Offences

**116** (1) A person is guilty of an offence if the person,

- (a) fails to comply with any order, direction or other requirement under this Act; or
- (b) contravenes or fails to comply with,
  - (i) in respect of Part II, Consumer Rights and Warranties, subsection 10 (1), section 12, subsections 13 (2) and (7) and subsections 13.1 (1) and (2),
  - (ii) in respect of Part III, Unfair Practices, subsection 17 (1),
  - (iii) in respect of Part IV, Rights and Obligations Respecting Specific Consumer Agreements, subsection 30 (2), clauses 33 (a) and (b), subsections 34 (1) and (2), 36 (1), 43.1 (1) and 47.1 (1), (5) and (6),

**Note: On a day to be named by proclamation of the Lieutenant Governor, subclause 116 (1) (b) (iii) of the Act is amended by striking out “(5) and (6)” at the end. (See: 2017, c. 5, Sched. 2, s. 19 (2))**

- (iv) in respect of Part V, Sectors Where Advance Fee Prohibited, section 49, subsection 50 (1) and section 53,
- (v) in respect of Part VI, Repairs to Motor Vehicles and Other Goods, subsections 56 (1), 57 (1) and (3), 58 (1) and (2), section 60, subsections 61 (1) and (2) and sections 62 and 64,
- (v.1) in respect of Part VI.1, (Tow and Storage Services), any provision of the Part,

**Note: On a day to be named by proclamation of the Lieutenant Governor, subclause 116 (1) (b) (v.1) of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (3))**

- (vi) in respect of Part VII, Credit Agreements, section 71, subsections 72 (2) and 76 (2), section 77 and subsections 78 (1) and (2), 79 (1), 80 (1), (2), (3) and (5), 81 (1), (3), (5), (6) and (7) and 82 (1) and (2),
- (vi.1) in respect of Part VII.1, Agreements for Cashing Government Cheques, section 85.3, subsection 85.4 (1) and section 85.5,
- (vii) in respect of Part VIII, Leasing, section 88 and subsection 89 (1),
- (viii) in respect of Part IX, Procedures for Consumer Remedies, subsections 96 (1), 98 (2) and 99 (5), and
- (ix) in respect of Part XI, General, subsection 105.2 (11). 2002, c. 30, Sched. A, s. 116 (1); 2004, c. 19, s. 7 (43); 2006, c. 34, s. 8 (12); 2014, c. 9, Sched. 1, s. 7 (1, 2); 2017, c. 5, Sched. 2, s. 19 (1, 3).

### Same

(2) A person who contravenes or fails to comply with a provision of a regulation made under this Act is guilty of an offence. 2002, c. 30, Sched. A, s. 116 (2).

### Corporation

(3) An officer or director of a corporation is guilty of an offence if he or she fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1) or (2). 2002, c. 30, Sched. A, s. 116 (3).

### Attempt

(4) Any person who attempts to commit any offence referred to in subsection (1) or (2) is guilty of an offence. 2002, c. 30, Sched. A, s. 116 (4).

## Penalties

(5) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both, and a corporation that is convicted of an offence under this Act is liable to a fine of not more than \$250,000. 2002, c. 30, Sched. A, s. 116 (5).

## Limitation

(6) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the Director. 2002, c. 30, Sched. A, s. 116 (6).

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

2004, c. 19, s. 7 (43) - 30/07/2005

2006, c. 34, s. 8 (12) - 01/01/2008

2014, c. 9, Sched. 1, s. 7 (2) - 01/04/2015; 2014, c. 9, Sched. 1, s. 7 (1) - 01/01/2017

2017, c. 5, Sched. 2, s. 19 (1) - 01/03/2018; 2017, c. 5, Sched. 2, s. 19 (2) - not in force; 2017, c. 5, Sched. 2, s. 19 (3) - 01/07/2018

2021, c. 26, Sched. 3, s. 65 (3) - not in force

## Orders for compensation, restitution

117 If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or make restitution. 2002, c. 30, Sched. A, s. 117.

## Default in payment of fines

118 (1) If a fine payable as a result of a conviction for an offence under this Act is in default for at least 60 days, the Director may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default. 2002, c. 30, Sched. A, s. 118 (1).

## Where payment made

(2) Within 10 days after the Director has notice that the fine has been paid in full, the Director shall inform the consumer reporting agency of the payment. 2002, c. 30, Sched. A, s. 118 (2).

## Transition

(3) If a fine is payable as a result of a conviction under the *Business Practices Act*, the *Consumer Protection Act*, the *Loan Brokers Act, 1994*, the *Motor Vehicle Repair Act* or the *Prepaid Services Act* despite the repeal of the Act, the Director may treat the fine as if it is payable as a result of a conviction under this Act, and subsections (1) and (2) apply to such a fine in like manner as they apply to a fine payable for a conviction under this Act. 2002, c. 30, Sched. A, s. 118 (3).

## Liens and charges

119 (1) If a fine payable as a result of a conviction for an offence under this Act is in default for at least 60 days, the Director may by order create a lien against the property of the person who is liable to pay the fine. 2002, c. 30, Sched. A, s. 119 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 119 (1) of the Act is repealed and the following substituted: (See: 2020, c. 14, Sched. 3, s. 7 (1))**

## Liens and charges — administrative penalties and offences

(1) If a fine payable as a result of a conviction for an offence under this Act or an administrative penalty is in default for at least 60 days, the Director may by order create a lien against the property of the person who is liable to pay the fine or administrative penalty. 2020, c. 14, Sched. 3, s. 7 (1).

## Liens on personal property

(2) If the lien created by the Director under subsection (1) relates to personal property,

- (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act;
- (b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
- (c) the Director may perfect the security interest referred to in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act. 2002, c. 30, Sched. A, s. 119 (2).

## Liens and charges on real property

(3) If the lien created by the Director under subsection (1) relates to real property, the Director may register the lien against the property of the person liable to pay the fine in the proper land registry office and on registration, the obligation under the lien becomes a charge on the property. 2002, c. 30, Sched. A, s. 119 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 119 (3) of the Act is amended by adding “or administrative penalty” after “fine”. (See: 2020, c. 14, Sched. 3, s. 7 (2))**

## Initiation of sale proceedings prohibited

(4) The Director shall not initiate sale proceedings in respect of any real property against which he or she has registered a lien under subsection (3). 2002, c. 30, Sched. A, s. 119 (4).

## Proceeds of sale

(5) If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the Director shall ensure the funds he or she receives as result of the sale are used to pay the fine. 2002, c. 30, Sched. A, s. 119 (5).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 119 (5) of the Act is amended by adding “or administrative penalty” at the end. (See: 2020, c. 14, Sched. 3, s. 7 (3))**

## Discharge of lien

(6) Within 10 days after the Director has knowledge of the payment in full of the fine, the Director shall,

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 119 (6) of the Act is amended by adding “or administrative penalty” after “fine” in the portion before clause (a). (See: 2020, c. 14, Sched. 3, s. 7 (4))**

- (a) discharge the registration of any financing statement registered under clause (2) (c); and
- (b) register a discharge of a charge created on registration of a lien under subsection (3). 2002, c. 30, Sched. A, s. 119 (6).

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

2020, c. 14, Sched. 3, s. 7 (1-4) - not in force

## Confidentiality

**120** (1) A person who obtains information in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations shall preserve secrecy with respect to the information and shall not communicate the information to any person except,

- (a) as may be required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;
- (b) to a ministry, department or agency of a government engaged in the administration of legislation that protects consumers or to any other entity to which the administration of legislation that protects consumers has been assigned;
- (b.1) as authorized under the *Regulatory Modernization Act, 2007*;
- (c) to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- (d) to a law enforcement agency;
- (e) to his, her or its counsel; or
- (f) with the consent of the person to whom the information relates. 2004, c. 19, s. 7 (44); 2007, c. 4, s. 26.

## Testimony

(2) Except in a proceeding under this Act, no person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations. 2004, c. 19, s. 7 (44).

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

2004, c. 19, s. 7 (44) - 30/07/2005

2007, c. 4, s. 26 - 17/01/2008

## Service by the Director of notice or order

**121** (1) Any notice or order required to be given or served by the Director under this Act is sufficiently given or served if,

- (a) delivered personally;
- (b) sent by registered mail; or
- (c) sent by another manner if the Director can prove receipt of the notice or order. 2002, c. 30, Sched. A, s. 121 (1).

#### **Deemed service**

(2) Where service is made by registered mail, the service shall be deemed to be made on the third 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. 2002, c. 30, Sched. A, s. 121 (2).

#### **Exception**

(3) Despite subsection (1), the Tribunal may order any other method of service. 2002, c. 30, Sched. A, s. 121 (3).

#### **Certificate as evidence**

**122** (1) For all purposes in any proceeding, a statement purporting to be certified by the Director is, without proof of the office or signature of the Director, admissible in evidence as proof in the absence of evidence to the contrary, of the facts stated in it in relation to,

- (a) the filing or non-filing of any document or material required or permitted to be filed; or
- (b) the time when the facts upon which the proceedings are based first came to the knowledge of the Director. 2002, c. 30, Sched. A, s. 122 (1).

#### **Same**

(2) A statement purporting to be certified by an official acting under legislation that protects consumers in another jurisdiction, as prescribed, shall have the same force and effect as a certificate of the Director issued under subsection (1). 2002, c. 30, Sched. A, s. 122 (2).

#### **Proof of document**

(3) Any document made under this Act that purports to be signed by the Director or a certified copy of the document is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, that the document is signed by the Director without proof of the office or signature of the Director. 2002, c. 30, Sched. A, s. 122 (3).

#### **Lieutenant Governor in Council regulations: general**

**123** (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing anything in this Act that is referred to as being prescribed;

**Note:** On a day to be named by proclamation of the Lieutenant Governor, clause 123 (1) (a) of the Act is repealed and the following substituted: (See: 2020, c. 14, Sched. 3, s. 8)

- (a) prescribing anything in this Act that is described as being prescribed, done in accordance with the regulations or provided for in the regulations, other than a matter that this Act describes as being prescribed by the Minister or provided for in regulations made by the Minister;
- (b) prescribing the form and content of consumer agreements, notices, invoices or any documents required under this Act;
- (c) exempting any supplier, consumer transaction, goods or services, any combination of any of them or any class of any of them from any provision of this Act or the regulations, and prescribing conditions or restrictions that apply in respect of an exemption;
- (d) governing trade-ins and trade-in arrangements made under consumer agreements or arising from consumer agreements;
- (e) respecting what constitutes a material change in the periodic supply or ongoing supply of goods or services;
- (f) requiring suppliers to make returns and furnish information to the Director as is prescribed;
- (g) requiring information that is required or permitted to be furnished to the Director or that is contained in any form or return to be verified by affidavit;
- (h) governing the application of the *Electronic Commerce Act, 2000* or any part of that Act to this Act;
- (i) providing for any transitional matter necessary for the effective implementation of this Act or the regulations;

- (j) defining, for the purposes of this Act and the regulations, any word or expression that is used in this Act but not defined in this Act;
- (k) clarifying the definition of “rewards points” in section 1 and specifying things that do or do not constitute rewards points for the purposes of this Act. 2002, c. 30, Sched. A, s. 123 (1); 2004, c. 19, s. 7 (45); 2016, c. 34, s. 3 (1).

**Lieutenant Governor in Council regulations: Part I**

- (2) The Lieutenant Governor in Council may make regulations,
  - (a) prescribing a tribunal for the purposes of this Act;
  - (b) prescribing professional services that are exempted from the application of this Act;
  - (c) for the purposes of section 4, excluding the application of provisions of this Act or of the regulations to consumer agreements that meet the criteria of more than one type of agreement to which this Act applies. 2002, c. 30, Sched. A, s. 123 (2); 2004, c. 19, s. 7 (46).

**Lieutenant Governor in Council regulations: Part II**

- (3) The Lieutenant Governor in Council may make regulations prescribing the period in which a supplier is to refund a payment to a consumer who has demanded a refund. 2002, c. 30, Sched. A, s. 123 (3).

**Lieutenant Governor in Council regulations: Part III**

- (4) The Lieutenant Governor in Council may make regulations,
  - (a) prescribing requirements for the notice to rescind an agreement or the notice to seek recovery under Part III;
  - (b) prescribing the period in which to respond to a consumer who has given notice to rescind an agreement or notice to seek recovery. 2002, c. 30, Sched. A, s. 123 (4).

**Lieutenant Governor in Council regulations: Part IV**

- (5) The Lieutenant Governor in Council may make regulations,
  - (a) prescribing the total potential payment obligations, excluding the cost of borrowing, that must be exceeded for Part IV to apply to consumer agreements included in that Part;
  - (b) prescribing the circumstances under which the effect of the cancellation of a consumer agreement to which Part IV applies and the obligations arising as a result of the cancellation of the agreement will be limited and prescribing the nature of the limitations;
  - (c) for consumer agreements to which Part IV applies, governing disclosure, contents of consumer agreements and requirements for making, renewing, amending or extending consumer agreements;
  - (d) prescribing matters as being personal development services;
  - (e) for the purposes of Part IV, governing future performance agreements including gift card agreements, and governing time share agreements, personal development services agreements, internet agreements, direct agreements and remote agreements;
  - (f) imposing restrictions, including prohibiting expiry dates, on future performance agreements, including gift card agreements;
  - (g) governing the fees, other than the payment under a future performance agreement, including a gift card agreement, for supplying goods or services under the agreement, that the supplier under the agreement may charge or is prohibited from charging to the consumer;
  - (h) allowing the consumer under a future performance agreement, including a gift card agreement, to cancel the agreement if the supplier does not disclose the matters with respect to the agreement that the regulations specify and governing the cancellation of the agreement;
  - (i) providing that any provision of this Act or the regulations applies to future performance agreements, including gift card agreements, with the modifications specified in the regulations;
  - (j) governing the transfer of rewards points among consumers, including upon death;
  - (k) governing the inactivity of consumer agreements under which rewards points are provided and of the rewards points themselves;



- (l) governing the termination of consumer agreements under which rewards points are provided and of the rewards points themselves;
- (m) governing the application of section 47.1 with respect to rewards points and, without restricting the generality of the foregoing, providing for and prescribing anything that that section refers to as being prescribed or provided for in the regulations and governing transitional matters. 2002, c. 30, Sched. A, s. 123 (5); 2004, c. 19, s. 7 (47); 2006, c. 34, s. 8 (13, 14); 2016, c. 34, s. 3 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 123 (5) of the Act is amended by adding the following clause: (See: 2017, c. 5, Sched. 2, s. 20 (1))**

- (n) prohibiting suppliers from entering into any class of consumer agreement to which Part IV applies and that is specified in the regulations if it creates a lien or other security interest in any real or personal property owned by the consumer or in the goods or services under the agreement and governing the rights and obligations of the parties under such an agreement.

#### **Lieutenant Governor in Council regulations: Part V**

- (6) The Lieutenant Governor in Council may make regulations,
  - (a) prescribing goods and services for the purposes of Part V;
  - (b) prescribing conditions that must be met to permit payment for the supply of prescribed goods and services;
  - (c) prescribing requirements for making an agreement to which Part V applies;
  - (d) prescribing prohibited representations for the purposes of Part V;
  - (e) for the purposes of Part V, governing consumer agreements for loan brokering, consumer agreements for credit repair and other consumer agreements to which Part V applies. 2002, c. 30, Sched. A, s. 123 (6); 2004, c. 19, s. 7 (48).

#### **Lieutenant Governor in Council regulations: Part VI**

- (7) The Lieutenant Governor in Council may make regulations,
  - (a) prescribing goods for the purposes of Part VI;
  - (b) governing estimates for the purposes of Part VI, including prescribing requirements with which estimates must comply;
  - (c) governing authorizations for the purposes of Part VI, including prescribing requirements that must be met in recording an authorization;
  - (d) prescribing signs that a repairer must post, prescribing requirements for posting the signs and prescribing the contents of the signs and the manner in which the contents are to be presented;
  - (e) governing invoices for the purposes of Part VI, including prescribing the information to be contained in an invoice and the manner in which the information is to be presented;
  - (f) prescribing the minimum warranty for new and reconditioned parts and for labour for the purposes of subsection 63 (1). 2002, c. 30, Sched. A, s. 123 (7); 2004, c. 19, s. 7 (49).

#### **Lieutenant Governor in Council regulations: Part VI.1**

- (7.1) The Lieutenant Governor in Council may make regulations,
  - (a) respecting any matters that are described in Part VI.1 as being prescribed or provided for in the regulations;
  - (b) governing the meaning of “tow and storage services operator” for the purposes of Part VI.1 or any provision of that Part, including providing for different classes of tow and storage services operator and providing for application of the term to persons or entities who only operate with respect to tow services, who only operate with respect to storage services or who operate with respect to both;
  - (c) defining or clarifying “tow and storage services” for the purposes of Part VI.1 or any provision of that Part, including providing for the application of the term to include services that only involve towing, that only involve storage or that involve both and defining or clarifying “tow”, “storage” and related terms;
  - (d) providing for different classes of tow and storage provider for the purposes of Part VI.1 and providing for different obligations under that Part with respect to different classes;
  - (e) governing the meaning of “tow truck” for the purposes of Part VI.1;

- (f) excluding persons from the definition of “tow truck driver” for the purposes of Part VI.1;
- (g) for the purposes of subsection 65.4 (1), providing for persons who may authorize the services on behalf of the consumer and governing circumstances under which the consumer is unable to give authorization, and governing the circumstances, if any, under which a tow and storage provider may charge a consumer for services without the authorization that would otherwise apply under that subsection;
- (h) for the purposes of subsection 65.4 (2), providing for and governing the circumstances, if any, under which a tow and storage provider may charge a consumer an amount that exceeds the amount that would otherwise apply under that subsection;
- (i) for the purposes of section 65.6, providing for and governing the circumstances, if any, under which a tow and storage provider is not required to provide an invoice;
- (j) prescribing one or more forms and manners in which the statement of rates charged may be made publicly available for the purposes of section 65.8;
- (k) for the purposes of section 65.12, governing,
  - (i) the circumstances under which a tow and storage provider is not required to provide access to a vehicle,
  - (ii) when and how access is to be provided, and
  - (iii) under what circumstances, if any, a fee may be charged for permitting access, and where a fee may be charged, requiring that the amount of the fee be reasonable;
- (l) respecting and governing anything that may be provided for with respect to section 65.18, including, but without limiting the generality of the foregoing, referring to, or incorporating, with or without modification, the provisions of one or more municipal by-laws as they may exist from time to time;
- (m) providing for additional qualifications for the purposes of section 65.20;
- (n) governing transitional matters for the purposes of Part VI.1. 2014, c. 9, Sched. 1, s. 8; 2017, c. 5, Sched. 2, s. 20 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 123 (7.1) of the Act is repealed. (See: 2021, c. 26, Sched. 3, s. 65 (4))**

#### **Lieutenant Governor in Council regulations: Part VII**

(8) The Lieutenant Governor in Council may make regulations,

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 123 (8) of the Act is amended by adding the following clauses: (See: 2017, c. 5, Sched. 2, s. 20 (3))**

- (0.a.1) governing the factors that a lender is required to take into account with respect to a borrower before entering into a credit agreement with the borrower;
- (0.a.2) prohibiting lenders from entering into a credit agreement with a borrower if the amount of the credit to be extended or money to be lent under the agreement exceeds the prescribed amounts or the amounts calculated according to the prescribed manner;
- (0.a.3) requiring a lender under a credit agreement to provide to the borrower in writing, before entering into the agreement, a copy of the lender’s assessment of the factors prescribed under clause (0.a.1) with respect to the borrower, and requiring that such information be given in accordance with the prescribed requirements;
- (0.a.4) specifying that if a lender under a credit agreement does not comply with a regulation made under clause (0.a.3), the borrower is not liable to pay the lender the cost of borrowing under the agreement;
- (0.a.5) prohibiting a lender from initiating contact with a borrower for the purpose of offering to refinance a credit agreement;
  - (a) prescribing what constitutes value received by a borrower under a credit agreement;
  - (b) prescribing the manner in which to determine the annual percentage rate;
  - (c) prescribing payments and repayments and charges that are not included in the cost of borrowing;

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 123 (8) of the Act is amended by adding the following clause: (See: 2017, c. 5, Sched. 2, s. 20 (3))**

- (c.1) prescribing maximum amounts for charges that are not included in the cost of borrowing under a credit agreement, or a method of setting maximum amounts;
- (d) excluding types of consumer agreements from credit agreements;

- (e) prescribing requirements that must be met by an index for the index to qualify as a public index;
- (f) exempting obligations of a lender from application to a loan broker if the loan broker assists a consumer to obtain credit or a loan of money and the creditor is not in the business of extending credit or lending money;
- (g) prescribing requirements for correcting errors in statements of account issued under credit agreements for open credit;
- (h) for the purpose of subsection 76 (2), prescribing the manner of determining the portion to be refunded or credited to a borrower, in respect of each amount that forms part of the cost of borrowing, other than amounts paid on account of interest;
- (i) prescribing requirements for representations made in respect of credit agreements;
- (j) prescribing information that is to be included in a loan broker's statement to a borrower;
- (j.1) governing applications for credit cards;
- (k) governing disclosure statements under Part VII;
- (l) prescribing the information to be included in a statement of account for a credit agreement for open credit;
- (l.1) governing information and statements, other than disclosure statements under Part VII, that a lender must provide to a borrower;
- (m) prescribing whether or not a change is a material change;
- (n) prescribing the maximum liability of a borrower under a credit agreement for open credit in cases where the borrower has not authorized the charges imposed;
- (o) governing credit agreements for the purposes of Part VII. 2002, c. 30, Sched. A, s. 123 (8); 2004, c. 19, s. 7 (50-53).

**Lieutenant Governor in Council regulations: Part VIII**

(9) The Lieutenant Governor in Council may make regulations,

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 123 (9) of the Act is amended by striking out the portion before clause (a) and substituting the following: (See: 2017, c. 5, Sched. 2, s. 20 (4))**

**Lieutenant Governor in Council regulations: Part VIII**

(9) The Lieutenant Governor in Council may make regulations for the purposes of Part VIII,

(a) in respect of representations made about the cost of a lease;

(a.1) prescribing the manner of determining the annual percentage rate in respect of a lease;

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 123 (9) of the Act is amended by adding the following clause: (See: 2017, c. 5, Sched. 2, s. 20 (5))**

(a.2) governing and requiring the use of tags or other markers attached to or displayed around a good that is to be leased and the use of statements included in a display relating to a good that is to be leased, and governing the content of such tags, markers, statements or displays and the manner and form in which they are used;

(b) governing disclosure statements under Part VIII, including requiring the disclosure of the annual percentage rate in respect of a lease and prescribing other information that the disclosure statement must disclose;

(b.1) prescribing and governing remedies that a consumer may exercise if the consumer does not receive a disclosure statement for a lease as required under subsection 89 (1) or if the disclosure statement received by the consumer does not comply with certain requirements of subsection 89 (2) or the regulations;

(b.2) governing leases for the purposes of Part VIII;

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 123 (9) of the Act is amended by adding the following clause: (See: 2017, c. 5, Sched. 2, s. 20 (5))**

(b.3) governing penalties to which a lessee is subject for making late payments under a lease, including,

(i) prescribing a grace period during which a lessor is prohibited from exercising the rights and remedies that are specified in the regulation with respect to late payments under a lease despite anything that is specified in the lease,

(ii) restricting the rights of a lessor despite anything specified in a lease if a lessee makes a late payment under a lease, including prohibiting a lessor from seizing the leased goods or terminating the lease,

(iii) prescribing the maximum amounts of penalties that a lessor can require a lessee to pay to the lessor for making a late payment under a lease or a method of setting those amounts and prescribing the circumstances in which a lessor can require a lessee to pay those amounts and the circumstances in which a lessor is not entitled to require a lessee to pay those amounts, and

(iv) specifying whether or not a lessor may apply the amounts described in subclause (iii) to any security deposit that a lessee has paid to a lessor under a lease;

(c) prescribing the manner of determining the maximum liability of a lessee at the end of a term of a residual obligation lease;

(d) limiting the amount of compensation that a lessor may charge the lessee for termination of the lease before the end of the lease term. 2002, c. 30, Sched. A, s. 123 (9); 2004, c. 19, s. 7 (54-58).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 123 (9) of the Act is amended by adding the following clauses: (See: 2017, c. 5, Sched. 2, s. 20 (5))**

(e) governing the right of a lessor under a lease to terminate the lease, including,

(i) prescribing the circumstances in which a lessor is entitled to exercise the right of termination or is not entitled to exercise that right, and

(ii) prescribing the requirements that a lessor must fulfil to exercise the right of termination, including requiring a lessor to give notice to the lessee and governing the notice;

(f) governing obligations of lessors and lessees arising as the result of the termination of a lease;

(g) permitting a lessee under a lease that the lessor has terminated for default in payments required under the lease to re-instate the lease, subject to any regulation made under clause (i), provided that the specified conditions, if any, are met;

(h) permitting a lessee under a lease who has terminated the lease for any reason to re-instate the lease, subject to any regulation made under clause (i), provided that the specified conditions, if any, are met;

(i) governing obligations of lessors and lessees arising as the result of the re-instatement of a lease as described in clause (g) or (h).

#### **Lieutenant Governor in Council regulations: Part IX**

(10) The Lieutenant Governor in Council may make regulations,

(a) prescribing requirements for a consumer notice cancelling a consumer agreement or requesting a remedy from a supplier;

(b) governing obligations of suppliers and consumers arising as the result of the cancellation of a consumer agreement;

(c) for the purpose of subsections 98 (2) and (4), prescribing the period of time within which a supplier or other person must refund to a consumer a fee or an amount that was charged in contravention of this Act or a payment that was received in contravention of this Act;

(d) in respect of cancelling or reversing credit card charges;

(e) prescribing other payment systems for the purposes of section 99. 2002, c. 30, Sched. A, s. 123 (10); 2004, c. 19, s. 7 (59).

#### **Lieutenant Governor in Council regulations: Part X**

(11) The Lieutenant Governor in Council may make regulations,

(a) prescribing requirements for the public record that must be maintained by the Director and prescribing documents and information that must be kept in such a record;

(b) prescribing information that shall be published by the Director. 2002, c. 30, Sched. A, s. 123 (11).

#### **Lieutenant Governor in Council regulations: Part XI**

(12) The Lieutenant Governor in Council may make regulations,

(a) prescribing Acts under which the Ministry may receive complaints and make inquiries;

(b) prescribing other jurisdictions from which statements may be certified;

(c) prescribing forms of security;

- (d) prescribing entities or organizations to which confidential matters may be disclosed;
- (e) authorizing the Director to conduct quality assurance programs in relation to the administration of this Act or the regulations and to use information collected under this Act for the purposes of those programs. 2002, c. 30, Sched. A, s. 123 (12); 2004, c. 19, s. 7 (60).

**Retroactive**

(13) A regulation under this section may, if it so provides, be effective to a period before it is filed so long as that period commences no earlier than the day this section is proclaimed in force. 2002, c. 30, Sched. A, s. 123 (13).

**General or particular**

(14) A regulation under this section may be general or particular in its application. 2002, c. 30, Sched. A, s. 123 (14).

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

2004, c. 19, s. 7 (45-60) - 30/07/2005

2006, c. 34, s. 8 (13, 14) - 01/10/2007

2014, c. 9, Sched. 1, s. 8 - 01/01/2017

2016, c. 34, s. 3 (1, 2) - 01/01/2018

2017, c. 5, Sched. 2, s. 20 (1, 3-5) - not in force; 2017, c. 5, Sched. 2, s. 20 (2) - 13/04/2017

2020, c. 14, Sched. 3, s. 8 - not in force

2021, c. 26, Sched. 3, s. 65 (4) - not in force

**124 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).** 2002, c. 30, Sched. A, s. 124.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 124 of the Act is repealed and the following substituted: (See: 2020, c. 14, Sched. 3, s. 9)**

**Minister’s regulations**

**124** The Minister may make regulations,

- (a) governing any matter that this Act describes as being prescribed by the Minister or provided for in regulations made by the Minister;
- (b) specifying different administrative penalties for the contravention of different prescribed provisions of this Act or the regulations, different portions of those prescribed provisions or different prescribed requirements in those prescribed provisions;
- (c) governing the procedure for making an order under section 104.0.1 for an administrative penalty and the rights of the parties affected by the procedure, including the time at which the order is deemed to be served on the person against whom the order is made;
- (d) providing that the prescribed amount of an administrative penalty mentioned in subsection 104.0.1 (3) shall be calculated on the basis specified in the regulation, including an amount reflecting the number of transactions involved in the contravention on which an order for the administrative penalty is based. 2020, c. 14, Sched. 3, s. 9.

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

2020, c. 14, Sched. 3, s. 9 - not in force

**125 OMITTED (ENACTS SHORT TITLE OF THIS ACT).** 2002, c. 30, Sched. A, s. 125.

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# Consumer Protection Act, 2002

## ONTARIO REGULATION 17/05 GENERAL

**Consolidation Period:** From July 1, 2018 to the [e-Laws currency date](#).

Last amendment: 202/18.

Legislative History: 200/05, 168/07, 187/07, 202/08, 96/09, 56/14, 4/15, 426/15, 388/17, 487/17, 488/17, 202/18.

*This is the English version of a bilingual regulation.*

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##### Professional services regulated by statute

1. A professional service provided by a person governed by, or subject to, any of the following Acts is exempt from the application of the *Consumer Protection Act, 2002*:

1. The *Architects Act*.
2. The *Certified General Accountants Act, 2010*.

3. The *Chartered Accountants Act, 2010*.
4. The *Drugless Practitioners Act*.
5. The *Law Society Act*.
6. The *Ontario College of Teachers Act, 1996*.
7. The *Professional Engineers Act*.
8. The *Professional Foresters Act, 2000*.
9. The *Professional Geoscientists Act, 2000*.
10. The *Public Accounting Act, 2004*.
11. The *Regulated Health Professions Act, 1991* and any Act named in Schedule 1 to the *Regulated Health Professions Act, 1991*.
12. The *Social Work and Social Service Work Act, 1998*.
13. The *Society of Management Accountants of Ontario Act, 1941*.
14. The *Surveyors Act*.
15. The *Veterinarians Act*. O. Reg. 17/05, s. 1; O. Reg. 426/15, s. 1.

#### OTHER EXEMPTIONS — CLAUSE 123 (1) (C) OF THE ACT

##### **Professional services at facilities**

2. A professional service provided at any of the following facilities is exempt from the application of the *Consumer Protection Act, 2002*:

1. An institution under the *Mental Hospitals Act*.
2. A hospital under the *Public Hospitals Act*.
3. A pharmacy under Part VI of the *Drug and Pharmacies Regulation Act*. O. Reg. 17/05, s. 2.

##### **Services at an independent health facility**

3. A service provided at an independent health facility pursuant to a licence issued under the *Independent Health Facilities Act* is exempt from the application of the *Consumer Protection Act, 2002*. O. Reg. 17/05, s. 3.

##### **Accommodation**

4. The supply of accommodation, other than time share accommodation, is exempt from the application of sections 21 to 26, 37 to 40 and 44 to 47 of the Act. O. Reg. 17/05, s. 4.

##### **Public auction**

5. (1) The supply by public auction of goods or services, other than personal development services and other than time shares, is exempt from the application of sections 21 to 26 and 37 to 47 of the Act. O. Reg. 17/05, s. 5 (1).

(2) Subsection (1) applies regardless of whether the goods or services being auctioned are owned by the person operating the auction or by another supplier. O. Reg. 17/05, s. 5 (2).

##### **Supply to one person at the request of another**

6. (1) The supply of goods or services to one person at the request of another is exempt from the application of sections 22, 23, 26, 37 to 40 and 44 to 47 of the Act, if,

- (a) the goods or services are to be supplied on a single occasion and not on an ongoing basis; and
- (b) the person requesting the supply of the goods or services pays the price in full at the time of the request. O. Reg. 17/05, s. 6 (1).

(2) The exemption from the application of sections 22, 23 and 26 of the Act is effective even if section 21 of the Act states that sections 22 to 26 of the Act do apply in the circumstances. O. Reg. 17/05, s. 6 (2).

##### **Perishable food**

7. The supply of perishable food or a perishable food product is exempt from the application of sections 21 to 26 and 37 to 47 of the Act, if the food or food product is to be delivered to the consumer within 24 hours after it is ordered from the supplier. O. Reg. 17/05, s. 7.

##### **Lottery scheme**

8. The supply of a lottery ticket or a good or service in the nature of a lottery ticket is exempt from the application of sections 21 to 26 and 41 to 47 of the Act, if the supplier is a charitable or religious organization licensed under the authority of paragraph 207 (1) (b) of the *Criminal Code* (Canada) to conduct or manage the lottery scheme and the proceeds from the lottery scheme are to be used for a charitable or religious object or purpose. O. Reg. 17/05, s. 8.

#### Agreements subject to other Acts

9. (1) The supply of goods or services pursuant to an agreement that is subject to any of the following Acts is exempt from the application of sections 22, 23, 26 and 37 to 47 of the Act:

1. The *Motor Vehicle Dealers Act* or the *Motor Vehicle Dealers Act, 2002*.
2. The *Real Estate and Business Brokers Act* or the *Real Estate and Business Brokers Act, 2002*.
3. The *Travel Industry Act* or the *Travel Industry Act, 2002*.
4. The *Cemeteries Act (Revised)*, the *Funeral Directors and Establishments Act* or the *Funeral, Burial and Cremation Services Act, 2002*. O. Reg. 17/05, s. 9 (1).

(2) The exemption from the application of sections 22, 23 and 26 of the Act is effective even if section 21 of the Act states that sections 22 to 26 of the Act do apply in the circumstances. O. Reg. 17/05, s. 9 (2).

(3) Sections 21 to 47 of the Act do not apply to a payday loan agreement as defined in subsection 1 (1) of the *Payday Loans Act, 2008*. O. Reg. 96/09, s. 1.

#### PROVISIONS NOT APPLYING WHEN AGREEMENT IS OF MORE THAN ONE TYPE — SECTION 4 OF THE ACT

##### Exceptions to rule in s. 4 of the Act

10. (1) Sections 11 to 19 of this Regulation set out the exceptions to the rule in section 4 of the Act that a consumer agreement that meets the criteria of more than one type of agreement to which the Act applies shall comply with the provisions of the Act and of the regulations that apply to each type of agreement for which it meets the criteria. O. Reg. 17/05, s. 10 (1).

(2) If any of sections 11 to 19 of this Regulation exclude the application of section 22, 23, 25 or 26 of the Act, the exclusion is effective even if section 21 of the Act states that sections 22 to 26 of the Act do apply in the circumstances. O. Reg. 17/05, s. 10 (2).

(3) A word or expression that is used in sections 11 to 19 of this Regulation has the same meaning as in the part of the Act that defines it. O. Reg. 17/05, s. 10 (3).

##### Credit agreement

11. (1) If a credit agreement, other than a supplier credit agreement, is also a future performance agreement, a direct agreement, an internet agreement or a remote agreement, Part IV of the Act does not apply to the agreement. O. Reg. 17/05, s. 11 (1).

(2) If a supplier credit agreement is also a future performance agreement, a time share agreement, a personal development services agreement, a direct agreement, an internet agreement or a remote agreement,

- (a) Part IV of the Act does not apply to the part of the agreement under which the supplier or an associate of the supplier extends fixed credit to the consumer to assist the consumer in obtaining goods or services, other than credit or a loan of money, from the supplier;
- (b) Part IV of the Act applies to the part of the agreement under which the supplier supplies the goods or services, other than credit or a loan of money, to the consumer. O. Reg. 17/05, s. 11 (2).

##### Lease

12. Sections 22, 23, 25, 26, 29 to 40 and 44 to 47 of the Act do not apply to a lease that is also a future performance agreement, a personal development services agreement, an internet agreement or a remote agreement, if Part VIII of the Act applies to the lease. O. Reg. 17/05, s. 12; O. Reg. 4/15, s. 1.

##### Agreement for work on or repairs to vehicle

13. Sections 22, 23 and 27 to 47 of the Act do not apply to a consumer agreement for work to be done on or repairs to be made to a vehicle, if the agreement is also a future performance agreement, a time share agreement, a personal development services agreement, a direct agreement, an internet agreement or a remote agreement. O. Reg. 17/05, s. 13.

##### Agreement for tow and storage services

13.1 Sections 22, 23 and 27 to 47 of the Act do not apply to a consumer agreement for tow and storage services, if the agreement is also a future performance agreement, a time share agreement, a personal development services agreement, a direct agreement, an internet agreement or a remote agreement. O. Reg. 426/15, s. 2.

##### Agreement for loan brokering or credit repair

14. Sections 22, 23 and 27 to 47 of the Act do not apply to a consumer agreement for loan brokering or credit repair that is also a future performance agreement, a time share agreement, a personal development services agreement, a direct agreement, an internet agreement or a remote agreement. O. Reg. 17/05, s. 14.

**Time share agreement**

15. Sections 22, 23 and 29 to 47 of the Act do not apply to a time share agreement that is also a future performance agreement, a personal development services agreement, a direct agreement, an internet agreement or a remote agreement. O. Reg. 17/05, s. 15.

**Personal development services agreement**

16. Sections 22, 23 and 37 to 47 of the Act do not apply to a personal development services agreement that is also a future performance agreement, a direct agreement, an internet agreement or a remote agreement but is not a time share agreement. O. Reg. 17/05, s. 16.

**Direct agreement**

17. Sections 22, 23, 37 to 40 and 44 to 47 of the Act do not apply to a direct agreement that is also a future performance agreement, an internet agreement or a remote agreement but is not a time share agreement or a personal development services agreement. O. Reg. 17/05, s. 17.

**Internet agreement**

18. Sections 22, 23 and 44 to 47 of the Act do not apply to an internet agreement that is also a future performance agreement or a remote agreement but is not a time share agreement, a personal development services agreement or a direct agreement. O. Reg. 17/05, s. 18.

**Remote agreement**

19. Sections 22 and 23 of the Act do not apply to a remote agreement that is also a future performance agreement but is not a time share agreement, a personal development services agreement, a direct agreement or an internet agreement. O. Reg. 17/05, s. 19.

**PART II  
UNSOLICITED GOODS OR SERVICES — SECTION 13 OF THE ACT**

**Material change**

20. For the purpose of subsection 13 (4) of the Act, a change or a series of changes is a material change if it is of such nature or quality that it could reasonably be expected to influence a reasonable person's decision as to whether to enter into the agreement for the supply of the goods or services. O. Reg. 17/05, s. 20.

**Time for refund**

21. For the purpose of subsection 13 (7) of the Act, a supplier shall refund a payment received from a consumer in respect of unsolicited goods or services within 15 days after the day the consumer demands the refund under subsection 13 (6) of the Act. O. Reg. 17/05, s. 21.

**PART III  
UNFAIR PRACTICES — SECTION 18 OF THE ACT**

**Period for responding to consumer notice**

22. For the purpose of subsection 18 (8) of the Act, a consumer may commence an action if the consumer does not receive a satisfactory response within 30 days after the day the consumer gives notice under section 18 of the Act. O. Reg. 17/05, s. 22.

**PART IV  
SPECIFIC CONSUMER AGREEMENTS — PART IV OF THE ACT**

**FUTURE PERFORMANCE AGREEMENTS**

**Definitions**

23. In the Act and this Part,

“gift card” means a voucher in any form, including an electronic credit or written certificate, that is issued by a supplier under a gift card agreement and that the holder is entitled to apply towards purchasing goods or services covered by the voucher; (“carte-cadeau”)

“gift card agreement” means a future performance agreement under which the supplier issues a gift card to the consumer and under which,

(a) if the card is not reloadable, the consumer makes payment in full when entering into the agreement, or

- (b) if the card is reloadable, the consumer makes payment in an amount equal to the initial value of the card when entering into the agreement; (“convention de carte-cadeau”)

“open loop gift card agreement” means a gift card agreement that entitles the holder of a gift card to apply it towards purchasing goods or services from multiple unaffiliated sellers. (“convention de carte-cadeau universelle”)

“reloadable gift card” means a gift card to which the holder can add value after the initial purchase of the card. (“carte-cadeau rechargeable”) O. Reg. 187/07, s. 1; O. Reg. 202/08, s. 1; O. Reg. 212/18, s. 1.

#### **Prescribed amount**

**23.1** The prescribed amount for the purpose of subsection 21 (1) of the Act is \$50 if the future performance agreement mentioned in that subsection is not a gift card agreement to which sections 25.2 to 25.5 apply. O. Reg. 187/07, s. 1.

#### **Requirements for future performance agreements**

**24.** For the purpose of section 22 of the Act, a future performance agreement that is not a gift card agreement to which sections 25.2 to 25.5 apply shall set out the following information:

1. The name of the consumer.
2. The name of the supplier and, if different, the name under which the supplier carries on business.
3. The telephone number of the supplier, the address of the premises from which the supplier conducts business, and information respecting other ways, if any, in which the supplier can be contacted by the consumer, such as the fax number and e-mail address of the supplier.
4. A fair and accurate description of the goods and services to be supplied to the consumer, including the technical requirements, if any, related to the use of the goods or services.
5. An itemized list of the prices at which the goods and services are to be supplied to the consumer, including taxes and shipping charges.
6. A description of each additional charge that applies or may apply, such as customs duties or brokerage fees, and the amount of the charge if the supplier can reasonably determine it.
7. The total amount that the supplier knows is payable by the consumer under the agreement, including amounts that are required to be disclosed under paragraph 6, or, if the goods and services are to be supplied during an indefinite period, the amount and frequency of periodic payments.
8. The terms and methods of payment.
9. As applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance are to occur.
10. For goods and services that are to be delivered,
  - i. the place to which they are to be delivered, and
  - ii. if the supplier holds out a specific manner of delivery and will charge the consumer for delivery, the manner in which the goods and services are to be delivered, including the name of the carrier, if any, and including the method of transportation to be used.
11. For services that are to be performed, the place where they are to be performed, the person for whom they are to be performed, the supplier’s method of performing them and, if the supplier holds out that a specific person other than the supplier will perform any of the services on the supplier’s behalf, the name of that person.
12. The rights, if any, that the supplier agrees the consumer will have in addition to the rights under the Act and the obligations, if any, by which the supplier agrees to be bound in addition to the obligations under the Act, in relation to cancellations, returns, exchanges and refunds.
13. If the agreement includes a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.
14. The currency in which amounts are expressed, if it is not Canadian currency.
15. Any other restrictions, limitations and conditions that are imposed by the supplier.
16. The date on which the agreement is entered into. O. Reg. 17/05, s. 24; O. Reg. 187/07, s. 2.

#### **Express opportunity to accept or decline agreement**

**25.** In the case of a future performance agreement to which sections 22 to 26 of the Act apply, the supplier shall provide the consumer with an express opportunity to accept or decline the agreement and to correct errors immediately before entering into it. O. Reg. 17/05, s. 25.

## GIFT CARD AGREEMENTS

### Application of sections

**25.1** (1) Sections 25.2 to 25.5 apply to every gift card agreement entered into on or after the day this section comes into force and to every gift card issued under that agreement, but do not apply to,

- (a) a gift card that a supplier issues for a charitable purpose;
  - (b) a gift card that covers only one specific good or service;
  - (c) a gift card issued by a financial institution; or
  - (d) the gift card agreement under which a gift card described in clause (a), (b) or (c) is issued. O. Reg. 187/07, s. 3; O. Reg. 202/18, s. 2 (1).
- (2) In subsection (1),

“financial institution” means,

- (a) a bank, authorized foreign bank or federal credit union as defined in section 2 of the *Bank Act* (Canada),
  - (b) a credit union or a league as defined in section 1 of the *Credit Unions and Caisses Populaires Act, 1994*, or
  - (c) a trust corporation or loan corporation registered under the *Loan and Trust Corporations Act*. O. Reg. 202/18, s. 2 (2).
- (3) For greater certainty, subject to subsection (1), sections 25.2 to 25.5 apply to a gift card agreement and a gift card issued under it if the holder of the card purchased it for themselves or received it from another person. O. Reg. 202/18, s. 2 (2).

### Exemption

**25.2** A gift card agreement is exempt from subsection 21 (1), section 26 and subsection 96 (2) of the Act. O. Reg. 187/07, s. 3.

### No expiry dates

**25.3** (1) No supplier shall enter into a gift card agreement that has an expiry date on the future performance of the agreement. O. Reg. 187/07, s. 3.

(2) A gift card agreement with an expiry date on its future performance shall be effective as if it had no expiry date if the agreement is otherwise valid. O. Reg. 187/07, s. 3.

### Limit on fees

**25.4** (1) No supplier under a gift card agreement that is not an open loop gift card agreement shall,

- (a) issue a gift card for less than the value of the payment made by the consumer when entering into the agreement or hold out that the supplier can provide such a gift card;
- (a.1) add value to a reloadable gift card if the value added is less than the value of the payment made by the holder of the card to reload the card; or
- (b) charge a fee to the holder of a gift card for anything in relation to the card, other than a fee for replacing a lost or stolen gift card or a fee to customize a gift card. O. Reg. 202/08, s. 2 (2); O. Reg. 202/18, s. 3 (1, 2).
- (2) No supplier under an open loop gift card agreement shall,
- (a) issue a gift card for less than the value of the payment made by the consumer when entering into the agreement less \$1.50 or hold out that the supplier can provide such a gift card;
- (a.1) add value to a reloadable gift card if the value added is less than the value of the payment made by the holder of the card to reload the card; or
- (b) charge a fee to the holder of a gift card for anything in relation to the card, other than a fee for replacing a lost or stolen gift card, a fee to customize a gift card or a dormancy fee in accordance with subsection (2.1). O. Reg. 202/08, s. 2 (2); O. Reg. 202/18, s. 3 (3, 4).
- (2.1) The supplier under an open loop gift card agreement may charge a dormancy fee to the holder of the gift card if,
- (a) the fee is charged no earlier than,
    - (i) 15 months after the end of the month that the consumer entered into the agreement, if the holder does not request the supplier for an extension in that 15th month, or
    - (ii) 18 months after the end of the month that the consumer entered into the agreement, if the holder requests the supplier for an extension in the 15th month after the end of the month that the consumer entered into the agreement;

- (b) the fee does not exceed \$2.50 per month;
  - (c) the card has a notice on the front of the card in 10 point font indicating that there is fee information on the back of the card;
  - (d) the card has a notice on the back of the card setting out, clearly and prominently, the information mentioned in clauses (a) and (b); and
  - (e) the supplier discloses the information mentioned in clauses (a) and (b) to the consumer at the time that the consumer enters into the agreement. O. Reg. 202/08, s. 2 (2).
- (3) If a supplier or a seller has charged a fee or an amount in contravention of subsection (2), the consumer or the holder of a gift card who paid the fee or the amount may demand a refund by giving notice to the supplier in accordance with section 92 of the Act within one year after making the payment. O. Reg. 187/07, s. 3.
- (4) A supplier who receives a notice demanding a refund under subsection (3) shall provide the refund within 15 days of receiving the notice. O. Reg. 187/07, s. 3.

**Requirements for agreements**

**25.5** For the purpose of section 22 of the Act, a future performance agreement that is a gift card agreement shall set out the following information:

- 1. The fees that the supplier may charge under clause 25.4 (2) (b).
- 2. All restrictions, limitations and conditions that the supplier imposes on the use of the gift card. O. Reg. 187/07, s. 3.

**TIME SHARE AGREEMENTS**

**Requirements for time share agreements**

**26.** (1) For the purpose of section 27 of the Act, a time share agreement shall be signed by the consumer and the supplier and shall set out the following information:

- 1. The name of the consumer.
- 2. The name of the supplier and, if different, the name under which the supplier carries on business.
- 3. The telephone number of the supplier, the address of the premises from which the supplier conducts business, and information respecting other ways, if any, in which the supplier can be contacted by the consumer, such as the fax number and e-mail address of the supplier.
- 4. The names of,
  - i. the person, if any, who solicited the consumer in connection with the agreement,
  - ii. the person, if any, who negotiated the agreement with the consumer, and
  - iii. the person who concluded the agreement with the consumer.
- 5. If the supplier has contracted with a property manager, other than an employee of the supplier, to manage the property that is the subject of the agreement, the name and telephone number of the property manager and information respecting other ways, if any, in which the property manager can be contacted by the consumer, such as the fax number and e-mail address of the property manager.
- 6. The date on which and the place where the agreement is entered into.
- 7. The commencement date and the term of the agreement including, if that is the case, that the term is indefinite.
- 8. A statement containing the text set out in subsection (2) and, if applicable, the additional text set out in subsection (3),
  - i. which shall be in at least 10 point type, except for the heading which shall be in at least 12 point bold type, and
  - ii. which shall appear on the first page of the agreement, unless there is a notice on the first page of the agreement in at least 12 point bold type indicating where in the agreement the statement appears.
- 9. A fair and accurate description of the consumer's rights in respect of the use of the property that is the subject of the agreement, including,
  - i. the precise location of the property,
  - ii. the precise suite or the type of suite that the consumer will have the right to occupy,
  - iii. the periods during or the dates on which the consumer will have the right to use the property,

- iv. the goods and services, including facilities, that will be provided to the consumer or to which the consumer will have access, together with any conditions attached to, and any restrictions and limitations on, the use of or access to these goods and services, and
  - v. any conditions attached to, and any restrictions and limitations on, the consumer's right to dispose of the time share the consumer is acquiring under the agreement.
10. The details respecting the consumer's right, if any, to use a different property in substitution for the property that is the subject of the agreement, including,
    - i. the times at which the right may be exercised,
    - ii. the method by which the right is to be exercised,
    - iii. the amounts payable by the consumer in connection with exercising the right, and
    - iv. the name of the individual or entity responsible for co-ordinating the substitution and information respecting the various ways in which the individual or entity can be contacted by the consumer, such as the telephone number, fax number and e-mail address of the individual or entity.
  11. The details respecting the consumer's right, if any, to exchange his or her right to occupy a precise suite or a type of suite for a right to occupy a different suite or type of suite, including,
    - i. the times at which the right may be exercised,
    - ii. the method by which the right is to be exercised,
    - iii. the amounts payable by the consumer in connection with exercising the right, and
    - iv. the name of the individual or entity responsible for co-ordinating the exchange and information respecting the various ways in which the individual or entity can be contacted by the consumer, such as the telephone number, fax number and e-mail address of the individual or entity.
  12. A fair and accurate description of the access to be provided to the consumer with respect to discounts or benefits for the future provision of transportation, accommodation or other goods or services related to travel.
  13. An itemized list setting out,
    - i. the amount of the one-time payment payable by the consumer upon entering into the agreement and the goods or services for which it is payable,
    - ii. the amount of each additional one-time payment payable by the consumer and the good or service for which it is payable, and
    - iii. the amount and frequency of the periodic payments payable by the consumer and the good or service for which each payment is payable.
  14. An itemized list setting out,
    - i. each optional good and service, including a facility and a membership, that the supplier represents will be available to the consumer by virtue of the consumer entering into the agreement, and
    - ii. the amount that the consumer would have to pay for such good or service if the consumer decided to avail himself or herself of it.
  15. If any of the amounts set out in the agreement is subject to change or if the consumer may be required to make a payment in addition to the payments set out in the agreement,
    - i. a statement to that effect,
    - ii. a description of the circumstances in which the amount may change or the additional payment may be required, and
    - iii. either,
      - A. what the changed amount or the additional payment will be, or
      - B. the objective standard that will be applied to determine the changed amount or the additional payment.
  16. If the agreement includes a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.
  17. The currency in which amounts are expressed, if it is not Canadian currency.
  18. With respect to every amount that is or may be payable by the consumer, as referred to in paragraphs 10, 11, 13, 14 and 15, the terms and methods of payment.



19. The consequences of non-payment of any amount that is payable by the consumer. O. Reg. 17/05, s. 26 (1).

(2) The statement mentioned in paragraph 8 of subsection (1) shall set out the following:

**Your Rights under the *Consumer Protection Act, 2002***

You may cancel this agreement at any time during the period that ends ten (10) days after the day you receive a written copy of the agreement. You do not need to give the supplier a reason for cancelling during this 10-day period.

If the supplier does not make delivery within 30 days after the delivery date specified in this agreement or if the supplier does not begin performance of his, her or its obligations within 30 days after the commencement date specified in this agreement, you may cancel this agreement at any time before delivery or commencement of performance. You lose the right to cancel if, after the 30-day period has expired, you agree to accept delivery or authorize commencement of performance.

If the delivery date or commencement date is not specified in this agreement and the supplier does not deliver or commence performance within 30 days after the date this agreement is entered into, you may cancel this agreement at any time before delivery or commencement of performance. You lose the right to cancel if, after the 30-day period has expired, you agree to accept delivery or authorize commencement of performance.

In addition, there are other grounds that allow you to cancel this agreement. You may also have other rights, duties and remedies at law. For more information, you may contact the Ministry of Consumer and Business Services.

To cancel this agreement, you must give notice of cancellation to the supplier, at the address set out in the agreement, by any means that allows you to prove the date on which you gave notice. If no address is set out in the agreement, use any address of the supplier that is on record with the Government of Ontario or the Government of Canada or is known by you.

If you cancel this agreement, the supplier has fifteen (15) days to refund any payment you have made and return to you all goods delivered under a trade-in arrangement (or refund an amount equal to the trade-in allowance).

O. Reg. 17/05, s. 26 (2).

(3) If the consumer is to receive goods under the agreement, the statement mentioned in paragraph 8 of subsection (1) shall also set out the following:

If the supplier requests in writing repossession of any goods that came into your possession under the agreement, you must return the goods to the supplier's address or allow one of the following persons to repossess the goods at your address:

The supplier.

A person designated in writing by the supplier.

If you cancel this agreement, you must take reasonable care of any goods that came into your possession under the agreement until one of the following happens:

The supplier repossesses the goods.

The supplier has been given a reasonable opportunity to repossess the goods and twenty-one (21) days have passed since the agreement was cancelled.

You return the goods.

The supplier directs you in writing to destroy the goods and you do so in accordance with the supplier's instructions.

O. Reg. 17/05, s. 26 (3).

**PERSONAL DEVELOPMENT SERVICES**

**Prescribed amount**

27. The prescribed amount for the purpose of clause 29 (1) (b) of the Act is \$50. O. Reg. 17/05, s. 27.

**Requirements for agreement where no alternate facility**

28. (1) This section applies to a personal development services agreement,

(a) for a facility that is available; or

(b) for a facility that is not available, if the agreement does not provide for the consumer to use an alternate facility until the primary facility becomes available. O. Reg. 17/05, s. 28 (1).

(2) For the purpose of subsection 30 (1) of the Act, a personal development services agreement described in subsection (1) shall be signed by the consumer and the supplier and shall set out the following information:

1. The name of the consumer.

2. The name of the supplier and, if different, the name under which the supplier carries on business.

3. The telephone number of the supplier, the address of the premises from which the supplier conducts business, and information respecting other ways, if any, in which the supplier can be contacted by the consumer, such as the fax number and e-mail address of the supplier.
  4. The names of,
    - i. the person, if any, who solicited the consumer in connection with the agreement,
    - ii. the person, if any, who negotiated the agreement with the consumer, and
    - iii. the person who concluded the agreement with the consumer.
  5. The address of the facility at which the personal development services will be available.
  6. An itemized list of the personal development services that the supplier is to make available to the consumer, that fairly and accurately describes each service.
  7. For each personal development service contracted for, the date on or as of which it will be available to the consumer.
  8. The reduction, if any, in the price payable by the consumer if a personal development service is not available on the date specified under paragraph 7.
  9. If a personal development service will not be available at the time the consumer is to make a payment in respect of it,
    - i. a statement that, if a personal development service is not available at the time the consumer is to make a payment in respect of it, the consumer shall make the payment through the trust corporation whose name and address are set out in the agreement, and
    - ii. the name and address of the trust corporation.
  10. A statement containing the text set out in subsection (3) and, if applicable, the additional text set out in subsection (4),
    - i. which shall be in at least 10 point type, except for the heading which shall be in at least 12 point bold type, and
    - ii. which shall appear on the first page of the agreement, unless there is a notice on the first page of the agreement in at least 12 point bold type indicating where in the agreement the statement appears.
  11. If the agreement includes a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.
  12. The total amount payable by the consumer and the terms and methods of payment.
  13. The currency in which amounts are expressed, if it is not Canadian currency.
  14. The date on which the agreement is entered into.
  15. The commencement date of the agreement and the date on which the agreement expires.
  16. If the agreement provides for the renewal or extension of the agreement,
    - i. the requirements for renewal or extension of the agreement, as set out in section 30,
    - ii. the manner in which the supplier shall deliver a notice about renewal and extension to the consumer, and the agreement may require the supplier to use one of the following methods or may permit the supplier to choose one method from among one or more of the following methods:
      - A. by mail or personal delivery to an address specified by the consumer in the agreement,
      - B. by e-mail to an e-mail address specified by the consumer in the agreement,
      - C. by fax to a fax number specified by the consumer in the agreement, or
      - D. in some other manner specified by the consumer in the agreement, and
    - iii. that the agreement shall be deemed not to be renewed or extended if the consumer notifies the supplier, before the time for renewal or extension, that the consumer does not want to renew or extend. O. Reg. 17/05, s. 28 (2).
- (3) The statement mentioned in paragraph 10 of subsection (2) shall set out the following:

**Your Rights under the *Consumer Protection Act, 2002***

You may cancel this agreement at any time during the period that ends ten (10) days after the later of the day you receive a written copy of the agreement and the day all the services are available. You do not need to give the supplier a reason for cancelling during this 10-day period.

In addition, there are grounds that allow you to cancel this agreement. You may also have other rights, duties and remedies at law. For more information, you may contact the Ministry of Consumer and Business Services.

To cancel this agreement, you must give notice of cancellation to the supplier, at the address set out in the agreement, by any means that allows you to prove the date on which you gave notice. If no address is set out in the agreement, use any address of the supplier that is on record with the Government of Ontario or the Government of Canada or is known by you.

If you cancel this agreement, the supplier has fifteen (15) days to refund any payment you have made and return to you all goods delivered under a trade-in arrangement (or refund an amount equal to the trade-in allowance).

O. Reg. 17/05, s. 28 (3).

(4) If the consumer is to receive goods under the agreement, the statement mentioned in paragraph 10 of subsection (2) shall also set out the following:

If the supplier requests in writing repossession of any goods that came into your possession under the agreement, you must return the goods to the supplier's address or allow one of the following persons to repossess the goods at your address:

The supplier.

A person designated in writing by the supplier.

If you cancel this agreement, you must take reasonable care of any goods that came into your possession under the agreement until one of the following happens:

The supplier repossesses the goods.

The supplier has been given a reasonable opportunity to repossess the goods and twenty-one (21) days have passed since the agreement was cancelled.

You return the goods.

The supplier directs you in writing to destroy the goods and you do so in accordance with the supplier's instructions.

O. Reg. 17/05, s. 28 (4).

#### **Requirements for agreement where alternate facility to be used**

**29.** (1) This section applies to a personal development services agreement for a facility that is not available, if the consumer agrees in writing to use an alternate facility until the primary facility becomes available. O. Reg. 17/05, s. 29 (1).

(2) For the purpose of subsection 30 (1) of the Act, a personal development services agreement described in subsection (1) shall be signed by the consumer and the supplier, shall set out the information referred to in paragraphs 1, 2, 3, 4, 10, 11, 12, 13, 14, 15 and 16 of subsection 28 (2) and shall set out the following information:

1. The address of the primary facility and the address of the alternate facility.
  2. An itemized list of the personal development services that the supplier is to make available to the consumer at the alternate facility, that fairly and accurately describes each service and that sets out the price payable for the services on a monthly basis.
  3. An itemized list of the personal development services that the supplier is to make available to the consumer at the primary facility, that fairly and accurately describes each service.
  4. For each personal development service that the supplier is to make available to the consumer at the alternate facility, the date on which it will be available, and for each personal development service that the supplier is to make available to the consumer at the primary facility, the date on which it will be available.
  5. The reduction, if any, in the price payable by the consumer if a personal development service is not available at the facility at which it is supposed to be available on the date on which it is supposed to be available at that facility.
- O. Reg. 17/05, s. 29 (2).

#### **Supplier obligations for renewal or extension**

**30.** (1) For the purpose of subsection 31 (3) of the Act, a personal development services agreement that provides for the renewal or extension of the agreement is not valid unless the supplier complies with the requirements of subsection (2). O. Reg. 17/05, s. 30 (1).

(2) At least 30 days but not more than 90 days before the agreement expires, the supplier shall deliver to the consumer, in the manner specified in the agreement pursuant to subparagraph 16 ii of subsection 28 (2),

- (a) a written notice about renewal or extension,
  - (i) setting out the date of the proposed renewal or extension of the agreement,
  - (ii) stating that under the *Consumer Protection Act, 2002*, the supplier is required to deliver the notice to the consumer, in the manner specified in the agreement, at least 30 days but not more than 90 days before the agreement expires,

- (iii) setting out the address of the premises from which the supplier conducts business and information respecting other ways, if any, in which the supplier can be contacted by the consumer, such as the fax number and e-mail address of the supplier, and
  - (iv) stating that the agreement will not be renewed or extended if, before the date set out under subclause (i), the consumer notifies the supplier, at the address set out under subclause (iii) or by contacting the supplier in some other way as set out under that subclause, that the consumer does not want to renew or extend the agreement; and
- (b) a copy of the agreement that clearly notes all changes that the supplier has made to the agreement. O. Reg. 17/05, s. 30 (2).
- (3) A notice under clause (2) (a) that is sent to the consumer by registered mail shall be deemed to be delivered on the third day after the day of mailing. O. Reg. 17/05, s. 30 (3).

## INTERNET AGREEMENTS

### Prescribed amount

**31.** The prescribed amount for the purpose of section 37 of the Act is \$50. O. Reg. 17/05, s. 31.

### Disclosure of information

**32.** For the purpose of subsection 38 (1) of the Act, the information that the supplier shall disclose to the consumer before the consumer enters into an internet agreement is:

1. The name of the supplier and, if different, the name under which the supplier carries on business.
2. The telephone number of the supplier, the address of the premises from which the supplier conducts business, and information respecting other ways, if any, in which the supplier can be contacted by the consumer, such as the fax number and e-mail address of the supplier.
3. A fair and accurate description of the goods and services proposed to be supplied to the consumer, including the technical requirements, if any, related to the use of the goods or services.
4. An itemized list of the prices at which the goods and services are proposed to be supplied to the consumer, including taxes and shipping charges.
5. A description of each additional charge that applies or may apply, such as customs duties or brokerage fees, and the amount of the charge if the supplier can reasonably determine it.
6. The total amount that the supplier knows would be payable by the consumer under the agreement, including amounts that are required to be disclosed under paragraph 5, or, if the goods and services are proposed to be supplied during an indefinite period, the amount and frequency of periodic payments.
7. The terms and methods of payment.
8. As applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance would occur.
9. For goods and services that would be delivered,
  - i. the place to which they would be delivered, and
  - ii. if the supplier holds out a specific manner of delivery and intends to charge the consumer for delivery, the manner in which the goods and services would be delivered, including the name of the carrier, if any, and including the method of transportation that would be used.
10. For services that would be performed, the place where they would be performed, the person for whom they would be performed, the supplier's method of performing them and, if the supplier holds out that a specific person other than the supplier would perform any of the services on the supplier's behalf, the name of that person.
11. The rights, if any, that the supplier agrees the consumer will have in addition to the rights under the Act and the obligations, if any, by which the supplier agrees to be bound in addition to the obligations under the Act, in relation to cancellations, returns, exchanges and refunds.
12. If the agreement is to include a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.
13. The currency in which amounts are expressed, if it is not Canadian currency.
14. Any other restrictions, limitations and conditions that would be imposed by the supplier. O. Reg. 17/05, s. 32.

### Copy of internet agreement

**33.** (1) For the purpose of subsection 39 (1) of the Act, the supplier shall deliver a copy of the internet agreement in writing to the consumer within 15 days after the consumer enters into the agreement. O. Reg. 17/05, s. 33 (1).

(2) For the purpose of subsection 39 (2) of the Act, the following information shall be included in the copy of the internet agreement:

1. The information listed in section 32 of this Regulation.
2. The name of the consumer.
3. The date on which the agreement is entered into. O. Reg. 17/05, s. 33 (2).

(3) For the purpose of subsection 39 (3) of the Act, the manner in which the copy of the internet agreement shall be delivered is any one of the following:

1. Transmitting it in a manner that ensures that the consumer is able to retain, print and access it for future reference, such as sending it by e-mail to an e-mail address that the consumer has given the supplier for providing information related to the agreement.
2. Transmitting it by fax to the fax number that the consumer has given the supplier for providing information related to the agreement.
3. Mailing or delivering it to an address that the consumer has given the supplier for providing information related to the agreement.
4. Providing it to the consumer in any other manner that allows the supplier to prove that the consumer has received it. O. Reg. 17/05, s. 33 (3).

#### DIRECT AGREEMENTS

##### Prescribed amount

**34.** The prescribed amount for the purpose of subsection 41 (1) of the Act is \$50. O. Reg. 17/05, s. 34.

##### Requirements for direct agreements

**35. (1)** For the purpose of subsection 42 (1) of the Act, a direct agreement that is not for a good or service prescribed by subsection 35.1 (1) shall be signed by the consumer and the supplier and shall set out the following information:

1. The name and address of the consumer.
2. The name of the supplier and, if different, the name under which the supplier carries on business.
3. The telephone number of the supplier, the address of the premises from which the supplier conducts business, and information respecting other ways, if any, in which the supplier can be contacted by the consumer, such as the fax number and e-mail address of the supplier.
4. The names of,
  - i. the person, if any, who solicited the consumer in connection with the agreement,
  - ii. the person, if any, who negotiated the agreement with the consumer, and
  - iii. the person who concluded the agreement with the consumer.
5. The date on which and the place where the agreement is entered into.
6. A fair and accurate description of the goods and services to be supplied to the consumer, including the technical requirements, if any, related to the use of the goods or services.
7. The total amount payable by the consumer under the agreement or, if the goods and services are to be supplied during an indefinite period, the amount and frequency of periodic payments.
8. The terms of payment.
9. An itemized list of the prices at which the goods and services are to be supplied to the consumer, including taxes and shipping charges.
10. If the agreement includes a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.
11. A statement containing the text set out in subsection (2) and, if applicable, the additional text set out in subsection (3),
  - i. which shall be in at least 10 point type, except for the heading which shall be in at least 12 point bold type, and
  - ii. which shall appear on the first page of the agreement, unless there is a notice on the first page of the agreement in at least 12 point bold type indicating where in the agreement the statement appears.
12. As applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance are to occur.

13. The rights, if any, that the supplier agrees the consumer will have in addition to the rights under the Act and the obligations, if any, by which the supplier agrees to be bound in addition to the obligations under the Act, in relation to cancellations, returns, exchanges and refunds.
  14. The currency in which amounts are expressed, if it is not Canadian currency.
  15. Any other restrictions, limitations and conditions that are imposed by the supplier. O. Reg. 17/05, s. 35 (1); O. Reg. 4/15, s. 2; O. Reg. 487/17, s. 1.
- (2) The statement mentioned in paragraph 11 of subsection (1) shall set out the following:

**Your Rights under the *Consumer Protection Act, 2002***

You may cancel this agreement at any time during the period that ends ten (10) days after the day you receive a written copy of the agreement. You do not need to give the supplier a reason for cancelling during this 10-day period.

If the supplier does not make delivery within 30 days after the delivery date specified in this agreement or if the supplier does not begin performance of his, her or its obligations within 30 days after the commencement date specified in this agreement, you may cancel this agreement at any time before delivery or commencement of performance. You lose the right to cancel if, after the 30-day period has expired, you agree to accept delivery or authorize commencement of performance.

If the delivery date or commencement date is not specified in this agreement and the supplier does not deliver or commence performance within 30 days after the date this agreement is entered into, you may cancel this agreement at any time before delivery or commencement of performance. You lose the right to cancel if, after the 30-day period has expired, you agree to accept delivery or authorize commencement of performance.

In addition, there are other grounds that allow you to cancel this agreement. You may also have other rights, duties and remedies at law. For more information, you may contact the Ministry of Consumer and Business Services.

To cancel this agreement, you must give notice of cancellation to the supplier, at the address set out in the agreement, by any means that allows you to prove the date on which you gave notice. If no address is set out in the agreement, use any address of the supplier that is on record with the Government of Ontario or the Government of Canada or is known by you.

If you cancel this agreement, the supplier has fifteen (15) days to refund any payment you have made and return to you all goods delivered under a trade-in arrangement (or refund an amount equal to the trade-in allowance).

However, if you cancel this agreement after having solicited the goods or services from the supplier and having requested that delivery be made or performance be commenced within ten (10) days after the date this agreement is entered into, the supplier is entitled to reasonable compensation for the goods and services that you received before the earlier of the 11th day after the date this agreement was entered into and the date on which you gave notice of cancellation to the supplier, except goods that can be repossessed by or returned to the supplier.

O. Reg. 17/05, s. 35 (2).

(3) If the consumer is to receive goods under the agreement, the statement mentioned in paragraph 11 of subsection (1) shall also set out the following:

If the supplier requests in writing repossession of any goods that came into your possession under the agreement, you must return the goods to the supplier's address, or allow one of the following persons to repossess the goods at your address:

The supplier.

A person designated in writing by the supplier.

If you cancel this agreement, you must take reasonable care of any goods that came into your possession under the agreement until one of the following happens:

The supplier repossesses the goods.

The supplier has been given a reasonable opportunity to repossess the goods and twenty-one (21) days have passed since the agreement was cancelled.

You return the goods.

The supplier directs you in writing to destroy the goods and you do so in accordance with the supplier's instructions.

O. Reg. 17/05, s. 35 (3).

(4) The supplier may meet the requirements of paragraph 11 of subsection (1) by providing a statement that is required under legislation of another province or territory of Canada that is enacted for the protection of consumers, if,

- (a) the statement is required in connection with agreements that are substantially equivalent to direct agreements; and
- (b) the statement is substantially equivalent to the statement requirement by paragraph 11. O. Reg. 17/05, s. 35 (4).

**Direct agreements subject to s. 43.1 of Act**

**35.1** (1) For the purpose of subsection 43.1 (1) of the Act, the following goods and services are prescribed:

1. Furnaces.
2. Air conditioners.
3. Air cleaners.
4. Air purifiers.
5. Water heaters.
6. Water treatment devices.
7. Water purifiers.
8. Water filters.
9. Water softeners.
10. Duct cleaning services.
11. Any goods or services that are a combination of or that perform the functions of the goods or services listed in any of paragraphs 1 to 10. O. Reg. 487/17, s. 2.

(2) For the purpose of subsection 43.1 (1) of the Act, a consumer has initiated contact with a supplier and has specifically requested that the supplier attend at the consumer's dwelling for the purpose of entering into a direct agreement for the supply of prescribed goods or services if,

(a) the consumer has initiated communications with a supplier and has specifically requested that the supplier attend at the consumer's dwelling for the purpose of entering into a direct agreement for the supply of prescribed goods or services,

- (i) by mail, fax, phone or electronic communication, or
- (ii) in person at the supplier's place of business or at a market place, auction, trade fair, agricultural fair or exhibition;

(b) the consumer has,

- (i) responded to a communication initiated by the supplier, other than,
  - (A) a communication made in person at the consumer's dwelling, or
  - (B) a communication made during a supplier-initiated phone call, and
- (ii) specifically requested that the supplier attend at the consumer's dwelling for the purpose of entering into a direct agreement for the supply of prescribed goods or services; or

(c) the following conditions are met:

- (i) a written consumer agreement between the consumer and the supplier for a prescribed good or service is in effect,
- (ii) the consumer has initiated contact with the supplier for any purpose by any means of communication and has invited the supplier to attend at the consumer's dwelling, and
- (iii) during the communication referred to in subsection (ii), the supplier asked the consumer if the supplier could, while at the consumer's dwelling, solicit the consumer to enter into a direct agreement for the supply of prescribed goods or services and the consumer agreed. O. Reg. 487/17, s. 2.

(3) For the purpose of subsection 43.1 (1) of the Act, a consumer has not initiated contact with a supplier and has not specifically requested that the supplier attend at the consumer's dwelling for the purpose of entering into a direct agreement for the supply of prescribed goods or services if the supplier has received data, whether directly or indirectly, from measuring or monitoring devices in the consumer's dwelling, unless subsection (2) or (4) applies. O. Reg. 487/17, s. 2.

(4) A supplier is exempt from subsection 43.1 (1) of the Act if,

- (a) a written consumer agreement between the consumer and the supplier for a prescribed good or service is in effect;
- (b) the supplier has initiated contact with the consumer for any purpose by any means of communication, other than communication in person at the consumer's dwelling, and the consumer has invited the supplier to attend at the consumer's dwelling; and
- (c) during the communication referred to in clause (b), the supplier asked the consumer if the supplier could, while at the consumer's dwelling, solicit the consumer to enter into a direct agreement for the supply of prescribed goods or services and the consumer agreed. O. Reg. 487/17, s. 2.

**Direct agreements subject to s. 43.1 of Act — records**

**35.2** (1) A supplier who enters into a direct agreement with a consumer for the supply of prescribed goods or services after the consumer has initiated contact with the supplier as described in subsection 35.1 (2) shall maintain records of that contact for three years from the date of entering into the agreement. O. Reg. 487/17, s. 2.

(2) A supplier to whom subsection 35.1 (4) applies and who enters into a direct agreement with a consumer for the supply of prescribed goods or services after initiating contact with the consumer shall maintain records of that contact for three years from the date of entering into the agreement. O. Reg. 487/17, s. 2.

**Direct agreements subject to s. 43.1 of Act — misrepresentative marketing**

**35.3** Despite paragraph 1 of subsection 43.1 (2) of the Act, leaving marketing materials at a consumer's dwelling without attempting to contact the consumer with respect to any prescribed direct agreement constitutes solicitation if the materials contain a false, misleading, deceptive or unconscionable representation for the purposes of sections 14 and 15 of the Act. O. Reg. 487/17, s. 2.

**35.4** REVOKED: O. Reg. 487/17, s. 2.

**REMOTE AGREEMENTS**

**Prescribed amount**

**36.** The prescribed amount for the purpose of section 44 of the Act is \$50. O. Reg. 17/05, s. 36.

**Disclosure of information**

**37.** (1) For the purpose of section 45 of the Act, the information that the supplier shall disclose to the consumer before the consumer enters into a remote agreement is:

1. The name of the supplier and, if different, the name under which the supplier carries on business.
2. The telephone number of the supplier and, if the consumer is required to deal with the supplier at particular premises, the address of the premises at which the consumer is required to deal with the supplier.
3. A fair and accurate description of the goods and services proposed to be supplied to the consumer, including the technical requirements, if any, related to the use of the goods or services.
4. An itemized list of the prices at which the goods and services are proposed to be supplied to the consumer, including taxes and shipping charges.
5. A description of each additional charge that applies or may apply, such as customs duties or brokerage fees, and the amount of the charge if the supplier can reasonably determine it.
6. The total amount that the supplier knows would be payable by the consumer under the agreement, including amounts that are required to be disclosed under paragraph 5, or, if the goods and services are proposed to be supplied during an indefinite period, the amount and frequency of periodic payments.
7. The terms and methods of payment.
8. As applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance would occur.
9. For goods and services that would be delivered,
  - i. the place to which they would be delivered, and
  - ii. if the supplier holds out a specific manner of delivery and intends to charge the consumer for delivery, the manner in which the goods and services would be delivered, including the name of the carrier, if any, and including the method of transportation that would be used.
10. For services that would be performed, the place where they would be performed, the person for whom they would be performed, the supplier's method of performing them and, if the supplier holds out that a specific person other than the supplier would perform any of the services on the supplier's behalf, the name of that person.
11. The rights, if any, that the supplier agrees the consumer will have in addition to the rights under the Act and the obligations, if any, by which the supplier agrees to be bound in addition to the obligations under the Act, in relation to cancellations, returns, exchanges and refunds.
12. If the agreement is to include a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.
13. The currency in which amounts are expressed, if it is not Canadian currency.
14. Any other restrictions, limitations and conditions that would be imposed by the supplier. O. Reg. 17/05, s. 37 (1).



(2) The disclosure required under section 45 of the Act and subsection (1) of this section may be made orally or in writing, and may be made by referring the consumer to a pre-existing publication setting out the information required to be disclosed. O. Reg. 17/05, s. 37 (2).

#### **Express opportunity to accept or decline agreement**

**38.** For the purpose of section 45 of the Act, before a consumer enters into a remote agreement, the supplier shall provide the consumer with an express opportunity to accept or decline the agreement and to correct errors. O. Reg. 17/05, s. 38.

#### **Copy of remote agreement**

**39.** (1) For the purpose of subsection 46 (1) of the Act, the period within which the supplier shall deliver a copy of the remote agreement in writing to the consumer is the period that begins on the day the consumer enters into the agreement and ends on the earlier of,

- (a) the day that is 30 days after the supplier bills the consumer for the goods or services; and
- (b) the day that is 60 days after the day the consumer enters into the agreement. O. Reg. 17/05, s. 39 (1).

(2) For the purpose of subsection 46 (2) of the Act, the following information shall be included in the copy of the remote agreement:

1. The information listed in paragraphs 1 and 3 to 14 of subsection 37 (1) of this Regulation.
2. The telephone number of the supplier, the address of the premises from which the supplier conducts business, and information respecting other ways, if any, in which the supplier can be contacted by the consumer, such as the fax number and e-mail address of the supplier.
3. The name of the consumer.
4. The date on which the agreement is entered into. O. Reg. 17/05, s. 39 (2).

(3) For the purpose of subsection 46 (3) of the Act, the manner in which the copy of the remote agreement shall be delivered is any one of the following:

1. Transmitting it in a manner that ensures that the consumer is able to retain, print and access it for future reference, such as sending it by e-mail to an e-mail address that the consumer has given the supplier for providing information related to the agreement.
2. Transmitting it by fax to the fax number that the consumer has given the supplier for providing information related to the agreement.
3. Mailing or delivering it to an address that the consumer has given the supplier for providing information related to the agreement.
4. Providing it to the consumer in any other manner that allows the supplier to prove that the consumer has received it. O. Reg. 17/05, s. 39 (3).

#### **LEASES TO WHICH PART VIII OF THE ACT DOES NOT APPLY**

##### **Requirements for certain leases**

**40.** (1) Subject to subsection (1.1), this section applies to a lease, as defined in Part VIII of the Act, if,

- (a) Part IV of the Act applies to it; and
- (b) Part VIII of the Act does not apply to it by virtue of section 87 of the Act or section 77 of this Regulation. O. Reg. 17/05, s. 40 (1); O. Reg. 4/15, s. 4 (1).

(1.1) This section does not apply to a lease if the lease is for a good or service prescribed by subsection 35.1 (1). O. Reg. 4/15, s. 4 (2); O. Reg. 487/17, s. 3.

(2) In addition to any other requirements that apply to it under Part IV of the Act, a lease described in subsection (1) shall set out the following:

1. That the lease does not transfer title to the leased goods to the lessee.
2. The penalties, or the manner of determining the penalties, that may be imposed on the lessee for unreasonable or excessive wear or use of the leased goods and the standards that will be applied to determine whether unreasonable or excessive wear or use of the leased goods has occurred.
3. In the case of an option lease, as defined in subsection 72 (1),
  - i. when and how the option may be exercised,
  - ii. the amount of the additional payment that the lessee is required to make in order to exercise the option at the end of the lease term, and

- iii. the manner of determining the amount of the additional payment that the lessee is required to make in order to exercise the option before the end of the lease term.
- 4. That on early termination of the lease by the lessee, the lessee is not liable for more than the sum of the following amounts:
  - i. The periodic payments due on or before the day the lease is terminated that have not already been paid.
  - ii. The expenses incurred by the lessor for the removal of the leased goods from the possession of the lessee.
  - iii. The penalties, if any, imposed on the lessee in accordance with the lease for unreasonable or excessive wear or use of the leased goods. O. Reg. 17/05, s. 40 (2).

(3) In this section,

“lease term” has the same meaning as in section 86 of the Act. O. Reg. 17/05, s. 40 (3).

#### AMENDMENT, RENEWAL AND EXTENSION OF CERTAIN CONSUMER AGREEMENTS

##### **Amendment, renewal or extension by explicit agreement to proposal**

**41.** (1) This section applies only to the following consumer agreements:

1. Future performance agreements to which sections 22 to 26 of the Act apply.
2. Time share agreements to which sections 27 and 28 of the Act apply.
3. Internet agreements to which sections 38 to 40 of the Act apply.
4. Direct agreements to which sections 42 and 43 of the Act apply.
5. Remote agreements to which sections 45 to 47 of the Act apply. O. Reg. 17/05, s. 41 (1).

(2) A consumer agreement mentioned in subsection (1), whether it provides for amendment, renewal or extension or not, may be amended, renewed or extended if,

- (a) the supplier or the consumer makes a proposal for amendment, renewal or extension;
- (b) the supplier provides to the consumer an update of all of the information that was required by the Act or this Regulation to be set out in the agreement when it was first entered into and the update reflects the effect of the proposal to amend, renew or extend; and
- (c) the party who receives the proposal agrees, explicitly and not merely by implication, to the proposal. O. Reg. 17/05, s. 41 (2).

(3) For the purpose of clause (2) (c), an acknowledgement that the proposal has been received does not in itself constitute agreement to the proposal. O. Reg. 17/05, s. 41 (3).

(4) If the events described in clauses (2) (a), (b) and (c) occur, the amendment, renewal or extension is effective on the date specified in the proposal, but only if the supplier provides a written copy of an updated version of the agreement to the consumer within 45 days after the party who receives the proposal agrees to it. O. Reg. 17/05, s. 41 (4).

(5) The amendment, renewal or extension does not retroactively affect rights and obligations acquired by the consumer before the effective date of the amendment, renewal or extension. O. Reg. 17/05, s. 41 (5).

(6) On the day on which an amendment, renewal or extension of a time share agreement or a direct agreement is effective under this section, the supplier and the consumer shall be deemed to have entered into the updated version of the agreement for the purposes of subsections 28 (1) and 43 (1) of the Act. O. Reg. 17/05, s. 41 (6).

##### **Amendment, renewal or extension in accordance with consumer agreement**

**42.** (1) This section applies only to the following consumer agreements:

1. Future performance agreements to which sections 22 to 26 of the Act apply.
2. Internet agreements to which sections 38 to 40 of the Act apply.
3. Remote agreements to which sections 45 to 47 of the Act apply. O. Reg. 17/05, s. 42 (1).

(2) A consumer agreement mentioned in subsection (1) that provides for amendment, renewal or extension may, in addition to being amendable, renewable or extendable under section 41, be amended, renewed or extended if the following conditions are satisfied:

1. The agreement indicates what elements of the agreement the supplier may propose to amend, renew or extend and at what intervals the supplier may propose an amendment, renewal or extension.
2. The agreement gives the consumer at least one of the following alternatives to accepting the supplier’s proposal to amend, renew or extend:

- i. terminating the agreement, or
  - ii. retaining the existing agreement unchanged.
3. The agreement requires the supplier to give the consumer advance notice of a proposal to amend, renew or extend. O. Reg. 17/05, s. 42 (2).
- (3) The amendment, renewal or extension takes effect on the later of,
- (a) the date specified in the notice; and
  - (b) the date that is 30 days after the day on which the consumer receives the notice. O. Reg. 17/05, s. 42 (3).
- (4) The amendment, renewal or extension does not retroactively affect rights and obligations acquired by the consumer before the effective date of the amendment, renewal or extension. O. Reg. 17/05, s. 42 (4).
- (5) The supplier's notice of a proposal to amend, renew or extend shall,
- (a) provide an update of all of the information that was required by the Act or this Regulation to be set out in the agreement when it was first entered into and ensure that the update reflects the effect of the proposal to amend, renew or extend;
  - (b) disclose all changes proposed to be made to the agreement, including, for each provision that is to be changed, the text of the provision as it would read after the change;
  - (c) be consistent with those aspects of the agreement mentioned in paragraphs 1 and 2 of subsection (2);
  - (d) specify the date on which the amendment, renewal or extension would become effective;
  - (e) specify a means that complies with subsection (6) for the consumer to respond to the notice;
  - (f) state what the effect will be if the consumer does not respond to the notice;
  - (g) be provided to the consumer in such a way that it is likely to come to his or her attention; and
  - (h) be provided to the consumer at least 30 days but not more than 90 days before the date on which it is proposed that the amendment, renewal or extension would take effect. O. Reg. 17/05, s. 42 (5).
- (6) The means for the consumer to respond to the notice shall involve no cost to the consumer and shall be easy for the consumer to use. O. Reg. 17/05, s. 42 (6).
- (7) A purported amendment, renewal or extension under this section that does not comply with subsections (5) and (6) is not effective. O. Reg. 17/05, s. 42 (7).

**Agreement type continues**

43. A time share agreement, an internet agreement, a direct agreement or a remote agreement that has been amended, renewed or extended under section 41 or 42 shall continue to be considered a time share agreement, an internet agreement, a direct agreement or a remote agreement, as the case may be, even if the method by which the amendment, renewal or extension occurred would result in the agreement no longer being within the definition of "time share agreement", "internet agreement", "direct agreement" or "remote agreement", as the case may be, under subsection 20 (1) of the Act. O. Reg. 17/05, s. 43.

**CONSUMER AGREEMENTS FOR REWARDS POINTS**

**Definition of rewards points**

43.1 (1) For the purpose of the definition of rewards points in section 1 of the Act, the consumer must earn the points across multiple transactions and accumulate them before being able to exchange them for money, goods or services and the points may be described as points, dollars spent or any other unit or similar term. O. Reg. 388/17, s. 1.

(2) Rewards points do not include rewards offers that propose to provide a consumer with one specific good or service or one specific set of goods or services after the consumer achieves a certain amount of progress if the goods or services are identified at the outset of the offer and they are not a gift card, voucher or similar item. O. Reg. 388/17, s. 1.

**Non-application of Part IV of Act**

43.2 In respect of a consumer agreement under which rewards points are provided, Part IV of the Act, except for section 47.1 of the Act, and the regulations made for the purpose of those provisions,

- (a) do not apply to the portion of the consumer agreement that relates to the provision of rewards points; and
- (b) apply to any portion of the consumer agreement that does not relate to the provision of rewards points. O. Reg. 388/17, s. 1.

**Non-application of s. 47.1 of the Act, low value of reward**

**43.3** (1) Section 47.1 of the Act does not apply to consumer agreements under which rewards points are provided if no one good, one service or single set of goods or services that the consumer may receive in exchange for redeeming the points has a value of more than \$50. O. Reg. 388/17, s. 1.

(2) The \$50 limit on value described in subsection (1) is not exceeded if,

- (a) the consumer can redeem points for more than one good, one service or a single set of goods or services; and
- (b) none of the goods, services or single sets of goods or services that the consumer may receive has a value of more than \$50 but the combined value of the goods, services and single sets of goods or services that the consumer may receive is more than \$50. O. Reg. 388/17, s. 1.

(3) The \$50 limit on value described in subsection (1) is exceeded if,

- (a) a good or service that the consumer may receive in exchange for redeeming points is a gift card, voucher or similar item that can be combined with other gift cards, vouchers or similar items; and
- (b) the consumer can redeem any combination of the gift cards, vouchers and similar items described in clause (a) to pay in whole or in part for a single good, service or set of goods or services with a value of more than \$50. O. Reg. 388/17, s. 1.

(4) Nothing in this section prevents sections 23 and 25.1 to 25.5 of this Regulation from applying to a consumer agreement to which section 47.1 of the Act applies. O. Reg. 388/17, s. 1.

**Non-application of s. 47.1 of the Act, no purchase required**

**43.4** (1) Section 47.1 of the Act does not apply to a consumer agreement under which the consumer is not required to purchase goods or services from the supplier with whom the consumer has entered into the agreement or from a third party, either upon entering into the agreement or during the entire term of the agreement, including to earn rewards points. O. Reg. 388/17, s. 1.

(2) Despite subsection (1), section 47.1 of the Act applies to a consumer agreement if,

- (a) rewards points are provided to the consumer under the agreement, either directly by the supplier with whom the consumer has entered into the agreement or indirectly by a third party; and
- (b) the supplier or third party described in clause (a) has entered into at least one other consumer agreement with any consumer that requires the consumer to purchase goods or services to earn rewards points. O. Reg. 388/17, s. 1.

**Non-application of s. 47.1 of the Act, no control of rewards points**

**43.5** (1) Section 47.1 of the Act does not apply to a consumer agreement under which rewards points are provided if the supplier under the agreement does not direct or control the expiry of the rewards points. O. Reg. 388/17, s. 1.

(2) Despite subsection (1), section 47.1 of the Act applies to a consumer agreement under which rewards points are provided if the supplier under the agreement has entered into an agreement with another person who directs or controls the expiry of the rewards points for the supplier. O. Reg. 388/17, s. 1.

**Expiry of rewards points due to the passage of time alone**

**43.6** (1) For the purposes of subsection 47.1 (1) of the Act, the expiry of rewards points due to the passage of time alone means that the points expire based solely on when a certain point in time is reached or when a certain amount of time has elapsed. O. Reg. 388/17, s. 1.

(2) Despite subsection 47.1 (1) of the Act, a consumer agreement under which rewards points are provided may provide that the points expire in accordance with the agreement if the consumer has not earned or redeemed points during a specified period of time. O. Reg. 388/17, s. 1.

(3) Despite subsection 47.1 (1) of the Act, if the consumer under a consumer agreement under which rewards points are provided is required to purchase goods or services from either the supplier with whom the consumer has entered into the agreement or from a third party in order to earn rewards points and if the supplier or third party, as the case may be, gratuitously issues or offers to issue rewards points to the consumer unrelated to any purchase of goods or services by the consumer, the agreement may provide that the gratuitous points expire due to the passage of time alone if,

- (a) the supplier gives notice to the consumer when issuing or offering the points that the points or offer of points will expire due to the passage of time alone; and
- (b) the expiry occurs no later than 30 days after the date on which the points were issued or offered. O. Reg. 388/17, s. 1.

(4) Subject to this section, a consumer agreement under which rewards points are provided contravenes subsection 47.1 (1) of the Act if it provides that points expire due to the passage of time alone unless the consumer actively requests that the points not expire or that they be reinstated. O. Reg. 388/17, s. 1.

**Termination of consumer agreement**

**43.7** For the purposes of section 47.1 of the Act, if the supplier under a consumer agreement under which rewards points are provided terminates the portions of the agreement that relate to rewards points, but not the portions of the agreement that do not relate to rewards points, such a termination constitutes a termination for the purpose of the section. O. Reg. 388/17, s. 1.

#### **Credit back of rewards points**

**43.8** (1) The credit back obligation in subsection 47.1 (5) of the Act applies only to rewards points that expired in the time period described in that subsection due to the passage of time alone. O. Reg. 388/17, s. 1.

(2) Subsection 47.1 (6) of the Act does not apply to a consumer agreement described in that subsection if,

- (a) the consumer under the agreement has requested that the supplier terminate the agreement and the supplier has done so;
- (b) before October 1, 2016, the supplier under the agreement gave notice to the consumer that the agreement was going to terminate and the agreement terminated before that subsection came into force; or
- (c) the agreement has been terminated in accordance with its terms and the terms relating to rewards points have not been amended after October 1, 2016. O. Reg. 388/17, s. 1.

(3) For greater certainty, subsection 47.1 (6) of the Act only applies to those provisions of a consumer agreement relating to rewards points. O. Reg. 388/17, s. 1.

(4) Subsections 47.1 (5) and (6) of the Act do not apply to a consumer agreement under which rewards points are provided if the supplier providing points gave notice, before December 8, 2016, to the consumers that the entire program for providing rewards points that is associated with the consumer agreement was being wound up. O. Reg. 388/17, s. 1.

#### **Reinstated or recreated consumer agreement**

**43.9** (1) Subsection (2) applies if a supplier terminates a consumer agreement under which rewards points are provided and, within 12 months,

- (a) the supplier purports to reinstate the agreement or enter into a new consumer agreement with the consumer that is substantially similar to any previously terminated consumer agreement between them under which rewards points were provided; and
- (b) the supplier purports to enter into the reinstated or new agreement described in clause (a) without the consumer's explicit consent at the time the supplier purports to enter into the reinstated or new agreement. O. Reg. 388/17, s. 1.

(2) The supplier shall credit back the consumer with at least the same number of rewards points the consumer had upon the termination of the consumer agreement that the supplier terminated under subsection (1). O. Reg. 388/17, s. 1.

(3) For greater certainty, if the supplier receives the consumer's explicit consent to enter into the reinstated or new agreement described in clause (1) (a) at the time described in clause (1) (b), the supplier is not required to comply with subsection (2) and the rewards points that the consumer had upon the termination of the consumer agreement expire if the terminated agreement so provided. O. Reg. 388/17, s. 1.

## **PART V LOAN BROKERING AND CREDIT REPAIR — PART V OF THE ACT**

#### **Requirements for loan brokering agreements**

**44.** (1) For the purpose of section 49 of the Act, a consumer agreement for loan brokering shall be signed by the consumer and the loan broker and shall set out the following information:

1. The name of the consumer.
2. The name of the loan broker and, if different, the name under which the loan broker carries on business.
3. The telephone number of the loan broker, the address of the premises from which the loan broker conducts business, and information respecting other ways, if any, in which the loan broker can be contacted by the consumer, such as the fax number and e-mail address of the loan broker.
4. The names of,
  - i. the person, if any, who solicited the consumer in connection with the agreement,
  - ii. the person, if any, who negotiated the agreement with the consumer, and
  - iii. the person who concluded the agreement with the consumer.
5. An itemized list of the services and goods that the loan broker is to supply to the consumer, that fairly and accurately describes each service and good and that includes,

- i. if known, the names of the persons from whom the loan broker will attempt to obtain credit or a loan of money for the consumer, and
  - ii. the amount of the credit or loan of money that the loan broker will attempt to obtain for the consumer.
6. As applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance are to occur.
  7. The date by which the consumer is to receive the credit or the loan of money.
  8. The total amount payable by the consumer to the loan broker and the terms and methods of payment.
  9. The portion, expressed in dollars and cents, of the total amount payable that is attributable to each service or good to be supplied under the agreement.
  10. The statement set out in subsection (2),
    - i. which shall be in at least 10 point type, except for the heading which shall be in at least 12 point bold type, and
    - ii. which shall appear on the first page of the agreement, unless there is a notice on the first page of the agreement in at least 12 point bold type indicating where in the agreement the statement appears.
  11. The date on which the agreement is entered into.
  12. If the agreement includes a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.
  13. The currency in which amounts are expressed, if it is not Canadian currency.
  14. Any other restrictions, limitations and conditions that are imposed by the loan broker. O. Reg. 17/05, s. 44 (1).
- (2) The statement mentioned in paragraph 10 of subsection (1) is as follows:

**Your Rights under the *Consumer Protection Act, 2002***

You may cancel this agreement at any time during the period that ends ten (10) days after the day you receive a written copy of the agreement. You do not need to give the loan broker a reason for cancelling during this 10-day period.

In addition, there are grounds that allow you to cancel this agreement. You may also have other rights, duties and remedies at law. For more information, you may contact the Ministry of Consumer and Business Services.

To cancel this agreement, you must give notice of cancellation to the loan broker, at the address set out in the agreement, by any means that allows you to prove the date on which you gave notice. If no address is set out in the agreement, use any address of the loan broker that is on record with the Government of Ontario or the Government of Canada or is known by you.

It is an offence for the loan broker to require or accept payment or security for payment before you receive the credit or the loan of money that the loan broker is assisting you to obtain. If, before you receive the credit or the loan of money, the loan broker requires or accepts payment, or security for payment, from you, you may, within one (1) year after the date of providing the payment or security, demand that it be returned.

If you cancel this agreement, the loan broker has fifteen (15) days to refund any payment you have made and return to you all goods delivered under a trade-in arrangement (or refund an amount equal to the trade-in allowance).

O. Reg. 17/05, s. 44 (2).

**Prohibited representations, loan broker**

- 45.** For the purpose of section 53 of the Act, the following are prohibited representations in the case of a loan broker:
1. An express or implied representation that the loan broker is approved, licensed or registered by the Government of Canada, the Government of Ontario or the government of any other province or territory of Canada.
  2. An express or implied representation that the operations of the loan broker are regulated by the Government of Canada, the Government of Ontario or the government of any other province or territory of Canada. O. Reg. 17/05, s. 45.

**Requirements for credit repair agreements**

**46.** (1) For the purpose of section 49 of the Act, a consumer agreement for credit repair shall be signed by the consumer and the credit repairer and shall set out the following information:

1. The name of the consumer.
2. The name of the credit repairer and, if different, the name under which the credit repairer carries on business.

3. The telephone number of the credit repairer, the address of the premises from which the credit repairer conducts business, and information respecting other ways, if any, in which the credit repairer can be contacted by the consumer, such as the fax number and e-mail address of the credit repairer.
  4. The names of,
    - i. the person, if any, who solicited the consumer in connection with the agreement,
    - ii. the person, if any, who negotiated the agreement with the consumer, and
    - iii. the person who concluded the agreement with the consumer.
  5. An itemized list of the services and goods that the credit repairer is to supply to the consumer, that fairly and accurately describes each service and good.
  6. As applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance are to occur.
  7. The date by which the credit repairer is to cause a material improvement to the consumer report, credit information, file, personal information, credit record, credit history or credit rating of the consumer.
  8. The total amount payable by the consumer to the credit repairer and the terms and methods of payment.
  9. The portion, expressed in dollars and cents, of the total amount payable that is attributable to each service or good to be supplied under the agreement.
  10. The statement set out in subsection (2),
    - i. which shall be in at least 10 point type, except for the heading which shall be in at least 12 point bold type, and
    - ii. which shall appear on the first page of the agreement.
  11. The statement set out in subsection (3),
    - i. which shall be in at least 10 point type, except for the heading which shall be in at least 12 point bold type, and
    - ii. which shall appear on the first page of the agreement, unless there is a notice on the first page of the agreement in at least 12 point bold type indicating where in the agreement the statement appears.
  12. The date on which the agreement is entered into.
  13. If the agreement includes a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.
  14. The currency in which amounts are expressed, if it is not Canadian currency.
  15. Any other restrictions, limitations and conditions that are imposed by the credit repairer. O. Reg. 17/05, s. 46 (1).
- (2) The statement mentioned in paragraph 10 of subsection (1) is as follows:

**Your Rights under the *Consumer Reporting Act***

If a consumer reporting agency maintains a credit file with respect to you, you have the right to dispute with the agency, at no cost to you, the accuracy or completeness of the information about you in its file. You do not need to hire a credit repairer, or anyone else, to exercise this right. If the file contains inaccurate or incomplete information, the consumer reporting agency must correct it within a reasonable period of time.

However, you do not have the right to have negative information that is accurate removed from your credit file. The consumer reporting agency generally removes negative information after seven (7) years.

You may also file a complaint with the Ministry of Consumer and Business Services regarding the information about you in a credit file maintained by a consumer reporting agency.

O. Reg. 17/05, s. 46 (2).

- (3) The statement mentioned in paragraph 11 of subsection (1) is as follows:

**Your Rights under the *Consumer Protection Act, 2002***

You may cancel this agreement at any time during the period that ends ten (10) days after the day you receive a written copy of the agreement. You do not need to give the credit repairer a reason for cancelling during this 10-day period.

In addition, there are grounds that allow you to cancel this agreement. You may also have other rights, duties and remedies at law. For more information, you may contact the Ministry of Consumer and Business Services.

To cancel this agreement, you must give notice of cancellation to the credit repairer, at the address set out in the agreement, by any means that allows you to prove the date on which you gave notice. If no address is set out in the agreement, use any address of the credit repairer that is on record with the Government of Ontario or the Government of Canada or is known by you.

It is an offence for the credit repairer to require or accept payment or security for payment in advance of causing a material improvement to your credit file. If, before causing a material improvement to your credit file, the credit repairer requires or accepts payment, or security for payment, from you, you may, within one (1) year from the date of providing the payment or security, demand that it be returned.

If you cancel this agreement, the credit repairer has fifteen (15) days to refund any payment you have made and return to you all goods delivered under a trade-in arrangement (or refund an amount equal to the trade-in allowance).

O. Reg. 17/05, s. 46 (3).

#### **Prohibited representations, credit repairer**

**47.** (1) For the purpose of section 53 of the Act, the following are prohibited representations in the case of a credit repairer:

1. An express or implied representation that the credit repairer is approved, licensed or registered by the Government of Canada, the Government of Ontario or the government of any other province or territory of Canada.
2. An express or implied representation that the operations of the credit repairer are regulated by the Government of Canada, the Government of Ontario or the government of any other province or territory of Canada.
3. Subject to subsection (2), an express or implied representation that the credit repairer will be able to cause a material improvement to the consumer report, credit information, file, personal information, credit record, credit history or credit rating of a consumer. O. Reg. 17/05, s. 47 (1); O. Reg. 426/15, s. 3.

(2) The representation described in paragraph 3 of subsection (1) is not a prohibited representation if the credit repairer makes the representation after,

- (a) examining the consumer's consumer report, credit information, file, personal information, credit record, credit history or credit rating; and
- (b) reasonably concluding that the consumer's consumer report, credit information, file, personal information, credit record, credit history or credit rating is inaccurate or incomplete and correcting, supplementing or deleting any item of information would cause a material improvement to the consumer's consumer report, credit information, file, personal information, credit record, credit history or credit rating. O. Reg. 17/05, s. 47 (2).

## **PART VI REPAIRS TO MOTOR VEHICLES — PART VI OF THE ACT**

#### **Estimates**

**48.** For the purpose of subsection 56 (1) of the Act, an estimate of the total cost of work on and repairs to a vehicle shall be in writing and shall set out the following information:

1. The name of the consumer.
2. The name of the repairer and, if different, the name under which the repairer carries on business.
3. The telephone number of the repairer, the address of the premises from which the repairer conducts business, and information respecting other ways, if any, in which the repairer can be contacted by the consumer, such as the fax number and e-mail address of the repairer.
4. The make, model, vehicle identification number and licence number of the vehicle.
5. The odometer reading of the vehicle at the time of the estimate.
6. An exact description of the work to be done on and the repairs to be made to the vehicle.
7. An itemized list of the parts to be installed and a statement as to whether each part is a new part provided by the original equipment manufacturer, a new part not provided by the original equipment manufacturer, a used part or a reconditioned part.
8. The amount that the consumer will be charged for each part listed under paragraph 7.
9. The number of hours to be billed for doing the work and making the repairs, the hourly rate to be charged, any flat rate that will be applied in respect of any of the work or repairs and the total charge for labour.
10. An itemized list of all other goods and services, such as storing the vehicle, picking up or delivering the vehicle or providing the consumer with another vehicle on a temporary basis other than services to which Part VI.1 of the Act



applies, that are to be provided to the consumer in connection with the transaction and for which the consumer will be charged, and the amount to be charged for each such good or service.

11. If the consumer has declined the return of any parts to be removed in the course of work on or repairs to the vehicle,
  - i. a statement to that effect, and
  - ii. the resulting reduction, if any, in price.
12. The total amount to be billed to the consumer.
13. The date on which the estimate is given and the date after which it ceases to apply.
14. The date by which the work and repairs will be completed.
15. That the repairer will not charge the consumer an amount that exceeds the amount estimated under paragraph 12 by more than 10 per cent. O. Reg. 17/05, s. 48; O. Reg. 426/15, s. 4.

#### Authorization not in writing

**49.** For the purpose of section 59 of the Act, if an authorization that is not in writing is given to a repairer who works on or repairs vehicles, the following is required to be recorded in order for the authorization to be effective:

1. The name of the person giving the authorization.
2. The date and time of the authorization.
3. If the non-written authorization is given by telephone, the telephone number of the person giving the authorization, and if the non-written authorization is given by a method other than telephone, information regarding how the person giving the authorization can be contacted using the other method. O. Reg. 17/05, s. 49.

#### Posting signs

**50.** For the purpose of section 60 of the Act, a repairer who works on or repairs vehicles shall post the following information on one or more signs, in such a manner that the disclosure of the information is clear, comprehensible and prominent:

1. That the repairer is required to provide a written estimate unless,
  - i. the repairer offers to give the consumer an estimate and the consumer declines the offer of an estimate,
  - ii. the consumer specifically authorizes a maximum amount that the consumer will pay the repairer to do the work and make the repairs, and
  - iii. the cost charged for the work and repairs does not exceed the maximum amount authorized by the consumer.
2. Whether there is a fee for an estimate and, if so,
  - i. the amount of the fee, and
  - ii. that if the work and repairs are authorized and carried out, the fee for the estimate will not be charged unless the authorization is unreasonably delayed and the vehicle is reassembled before being worked on or repaired so that it can be moved in order to free repair space.
3. A description of the method that will be used to compute labour charges, including,
  - i. the hourly rate that will be charged,
  - ii. whether a flat rate will be applied in respect of any of the work or repairs and, if so, the flat rate and the work or repairs to which it will be applied, and
  - iii. whether there will be a charge for diagnostic time and, if so, the manner of determining the amount that will be charged.
4. Whether the repairer or any of the persons doing the work or making the repairs on the repairer's behalf receive any commissions for parts sold and, if so, the manner of determining the commission and the parts to which it applies.
5. An itemized list of all goods and services, other than parts, shop supplies and labour, for which the consumer may be charged, such as storing the vehicle, picking up or delivering the vehicle or providing the consumer with another vehicle on a temporary basis other than services to which Part VI.1 of the Act applies, and the amount that will be charged for each such good or service.
6. That each part removed in the course of work or repairs will be available to the consumer after the work and repairs are completed, unless,
  - i. the repairer is advised, at the time the work and repairs are authorized, that the consumer does not require the return of the part,

- ii. the part is replaced under a warranty that requires the return of the part to the manufacturer or distributor, or
- iii. the consumer is not charged for the replacement part or for work on or repair to the part. O. Reg. 17/05, s. 50; O. Reg. 426/15, s. 5.

#### Invoices

**51.** For the purpose of section 62 of the Act, an invoice with respect to work on or repairs to a vehicle shall be in writing and shall set out the following information:

1. The name of the consumer.
2. The name of the repairer and, if different, the name under which the repairer carries on business.
3. The telephone number of the repairer, the address of the premises from which the repairer conducts business, and information respecting other ways, if any, in which the repairer can be contacted by the consumer, such as the fax number and e-mail address of the repairer.
4. The make, model, vehicle identification number and licence number of the vehicle.
5. The date on which the consumer authorized the work and repairs.
6. The date on which the work and repairs were completed.
7. The date on which the vehicle is returned to the consumer.
8. The odometer reading of the vehicle at the time the consumer authorized the work or repairs and the odometer reading of the vehicle at the time it is returned to the consumer.
9. An exact description of the work done on and the repairs made to the vehicle.
10. An itemized list of the parts installed and a statement as to whether each part is a new part provided by the original equipment manufacturer, a new part not provided by the original equipment manufacturer, a used part or a reconditioned part.
11. The amount that the consumer is being charged for each part listed under paragraph 10.
12. An itemized list of the shop supplies used and for which the consumer is being charged, and the amount charged for each of the supplies.
13. The total charge for labour and the method used to compute it, including,
  - i. the number of hours billed for doing the work and making the repairs and the hourly rate charged,
  - ii. if a flat rate was applied in respect of any of the work or repairs, the flat rate and the work or repairs to which it was applied, and
  - iii. the amount, if any, charged for diagnostic time.
14. An itemized list of all other goods and services, such as storing the vehicle, picking up or delivering the vehicle or providing the consumer with another vehicle on a temporary basis other than services to which Part VI.1 of the Act applies, that were provided to the consumer in connection with the transaction and for which the consumer is being charged, and the amount charged for each good or service.
15. If the consumer has declined the return of any parts removed in the course of work on or repairs to the vehicle,
  - i. a statement to that effect, and
  - ii. the resulting reduction, if any, in price.
16. The total amount billed to the consumer and the terms and methods of payment.
17. If the repairer gave the consumer an estimate, the amount set out in the estimate as the estimated total amount to be billed to the consumer.
18. If the repairer did not give the consumer an estimate, the maximum amount that the consumer specifically authorized under subsection 56 (2) of the Act.
19. The terms of the warranty given by the repairer for each new part provided by the original equipment manufacturer, each new part not provided by the original equipment manufacturer and each reconditioned part, and for the labour required to install each such part, if the repairer's warranty provides, in terms of time and distance, coverage equal to or greater than the coverage provided by the warranty under section 63 of the Act, which is subject to clauses 52 (a) and (b) of this Regulation.
20. For each new or reconditioned part or the labour required to install it, for which the repairer does not give a warranty described in paragraph 19,

- i. that the repairer warrants it for a minimum of 90 days or 5,000 kilometres, whichever comes first,
  - ii. that the warranty set out in subparagraph i is provided under the Act and may not be waived by the consumer, and
  - iii. that the warranty set out in subparagraph i does not apply to,
    - A. fluids, filters, lights, tires or batteries, or
    - B. a part that was not warranted by the manufacturer of the vehicle when the vehicle was sold as new.
21. The currency in which amounts are expressed, if it is not Canadian currency.
22. Any other restrictions, limitations and conditions that are imposed by the repairer.
23. The following statement:

The *Consumer Protection Act, 2002* provides you with rights in relation to having a motor vehicle repaired. Among other things, you have a right to a written estimate. A repairer may not charge an amount that is more than ten (10) per cent above that estimate. If you waived your right to an estimate, the repairer must have your authorization of the maximum amount that you will pay for the repairs. The repairer may not charge more than the maximum amount you authorized. In either case, the repairer may not charge for any work you did not authorize.

If you have concerns about the work or repairs performed by the repairer or about your rights or duties under the *Consumer Protection Act, 2002*, you should contact the Ministry of Consumer and Business Services.

O. Reg. 17/05, s. 51; O. Reg. 426/15, s. 6.

#### Exemption from vehicle warranty

- 52.** Section 63 of the Act does not apply to,
- (a) fluids, filters, lights, tires or batteries;
  - (b) a part that was not warranted by the manufacturer of the vehicle when the vehicle was sold as new;
  - (c) a part installed or the labour required to install it under a warranty that provides, in terms of time and distance, coverage equal to or greater than the coverage provided by the warranty under section 63 of the Act. O. Reg. 17/05, s. 52.

## PART VI.1 TOW AND STORAGE SERVICES

#### Definitions and interpretation

**52.1** (1) In this Part,

“address” means a municipal address or, if one is not available, such geographic and other information sufficient to identify the relevant location; (“adresse”)

“tow and storage services operator” means,

- (a) with respect to tow services, a supplier who, as the owner, operator or driver of a commercial motor vehicle that is used to provide tow services,
  - (i) is required under section 16 of the Highway Traffic Act to hold or to carry a valid CVOR certificate, or
  - (ii) is exempt, under section 1.1 of Ontario Regulation 424/97 (CVOR Certificates) made under that Act, from the requirements of section 16 of that Act, or
- (b) with respect to storage services, a supplier who provides storage services, in respect of a tow service that is subject to this Part, for vehicles towed or transported to the premises from which the supplier conducts business by or on behalf of a supplier described in clause (a); (“exploitant de services de remorquage et d’entreposage”)

“tow truck” has the same meaning as in clause (b) of the definition of commercial motor vehicle in subsection 3 (1) of Ontario Regulation 419/15 (Definitions of Commercial Motor Vehicle and Tow Truck) made under the *Highway Traffic Act*; (“dépanneuse”)

“tow truck broker” means a supplier who, in the course of business, arranges for the hiring of tow services that are provided by using a tow truck not owned or operated by the supplier. (“courtier en dépanneuses”) O. Reg. 426/15, s. 7.

(2) For the purposes of clause (a) of the definition of “tow and storage services operator” in subsection (1),

“commercial motor vehicle” has the same meaning as in section 3 of Ontario Regulation 419/15 (Definitions of Commercial Motor Vehicle and Tow Truck) made under the *Highway Traffic Act*;

“CVOR certificate” has the same meaning as in the *Highway Traffic Act*;

“operator” has the same meaning as in subsection 16 (1) of the *Highway Traffic Act*;

“owner” has the same meaning as in section 207 of the *Highway Traffic Act*. O. Reg. 426/15, s. 7.

(3) For the purposes of Part VI.1 of the Act, a tow truck driver is a supplier. O. Reg. 426/15, s. 7.

#### Non-application of Act and Regulation

**52.2** (1) For the purposes of subsection 65.2 (2) of the Act, the following do not apply in respect of tow and storage services arising as a result of a vehicle being impounded or otherwise detained under the authority of any other Act or regulation of Ontario or Canada or any municipal by-law, or pursuant to a lawful power of seizure with respect to the vehicle:

1. Part VI.1 of the Act, except for sections 65.5 (posting identifiers and other information), 65.8 (publication of rates), 65.15 (payment options), 65.16 (prohibitions) and 65.17 (additional duties and obligations).
2. This Part of this Regulation, except for sections 52.5 (posting identifiers and other information), 52.8 (publication of rates), 52.11 (prohibitions) and 52.12 (additional duties and obligations). O. Reg. 426/15, s. 7.

(2) For the purposes of subsection 65.2 (2) of the Act, the following do not apply to tow truck brokers:

1. Sections 65.7 (insurance) and 65.12 (duty re contents of vehicle) of the Act.
2. Paragraph 3 of subsection 52.5 (1) and subsection 52.5 (2) (posting identifiers and other information), section 52.7 (insurance), section 52.10 (duty re contents of vehicle) and paragraph 4 of subsection 52.13 (1) (record keeping and reporting) of this Regulation. O. Reg. 426/15, s. 7.

(3) For the purposes of subsection 65.2 (2) of the Act, the following do not apply in respect of tow and storage services when a consumer is not charged for the specific service being provided because the service is provided under a pre-paid agreement or membership in an association or in connection with the purchase or lease of a vehicle:

1. Sections 65.3 (disclosure), 65.4 (authorization) and 65.6 (invoice) of the Act.
2. Sections 52.3 (disclosure), 52.4 (authorization), 52.6 (invoice) and paragraphs 1, 2 and 3 of subsection 52.13 (1) (record keeping and reporting) of this Regulation. O. Reg. 426/15, s. 7.

#### Disclosure

**52.3** (1) The following information is prescribed information for the purposes of section 65.3 of the Act:

1. The name of the tow and storage provider and, if different, the name under which the provider carries on business.
2. The telephone number of the tow and storage provider, the address of the principal place of business of the provider and information respecting other ways, if any, in which the consumer can contact the provider, such as the fax number and e-mail address of the provider.
3. A statement of rates that complies with section 65.8 of the Act and that the tow and storage provider charges for the tow and storage services that the provider provides, which statement shall include the amount of the fee described in subsection 52.10 (2).
4. The address of the location to which the tow and storage provider will have the vehicle that is the subject of the tow and storage services towed, and the address of the location of any anticipated stops before that destination.
5. A statement that the tow and storage provider must, before demanding or receiving payment, deliver a written invoice to the consumer detailing the tow and storage services provided.
6. A statement that the tow and storage provider must accept payment for tow and storage services by credit card or cash at the consumer’s choice.
7. The Tow and Storage Consumers Bill of Rights if a Minister’s regulation has established it under subsection 65.11 (2) of the Act. O. Reg. 426/15, s. 7.

(2) For the purposes of section 65.3 of the Act, a tow and storage provider shall give the information required by that section to the consumer or the prescribed person acting on behalf of the consumer under subsection 65.4 (1) of the Act before the consumer or the person, as the case may be, gives the authorization required by section 65.4 of the Act. O. Reg. 426/15, s. 7.

(3) If the information required by section 65.3 of the Act is not given in writing, the tow and storage provider shall,

(a) make a written record of the disclosure of the information that includes the following:

- (i) the name and contact information of the person to whom the information is given,
- (ii) the date and time at which the information is given,
- (iii) if the information is given by telephone, the telephone number of the tow and storage provider, and

- (iv) if the information is given by a method other than telephone, information about how the tow and storage provider can be contacted; and
- (b) give a copy of the written record of the disclosure of the information and of the information in writing to the person described in subclause (a) (i) as soon as is practicable. O. Reg. 426/15, s. 7.

#### Authorization required

**52.4** (1) For the purposes of subsection 65.4 (1) of the Act, a prescribed person means a person acting on behalf of the consumer. O. Reg. 426/15, s. 7.

(2) For the purposes of subsection 65.4 (1) of the Act, a consumer is unable to give the authorization required by section 65.4 of the Act if the consumer is unable to give the authorization as a result of the circumstances that gave rise to the need for the tow and storage services or has been removed from the scene of an accident or apparent accident. O. Reg. 426/15, s. 7.

(3) An authorization required by section 65.4 of the Act shall include,

- (a) the name and contact information of the consumer, if the consumer gave the authorization, or of the person acting on behalf of the consumer, if the consumer is unable to give the authorization; and
- (b) the date and time at which the authorization is given. O. Reg. 426/15, s. 7.

(4) An authorization required by section 65.4 of the Act is not effective unless it is given by the consumer or a person acting on behalf of the consumer before any services are commenced. O. Reg. 426/15, s. 7.

(5) Upon receiving an authorization required by section 65.4 of the Act from a person, a tow and storage provider shall provide a copy of the authorization to the person. O. Reg. 426/15, s. 7.

(6) If an authorization required by section 65.4 of the Act is not given in writing, the authorization is not effective unless the tow and storage provider makes a written record of the information described in subsection (3) that includes,

- (a) if the authorization is given by telephone, the telephone number of the person giving the authorization; or
- (b) if the authorization is given by a method other than telephone, information about how the person giving the authorization can be contacted. O. Reg. 426/15, s. 7.

(7) The tow and storage provider shall give a copy of the written record referred to in subsection (6) to the person giving the authorization as soon as is practicable. O. Reg. 426/15, s. 7.

(8) Subsection 65.4 (2) of the Act does not prevent a consumer or a person acting on behalf of the consumer from agreeing to amend the estimated amount that may be paid for services authorized or the estimate based on a method of computing an amount that may be paid for services authorized, if the consumer or the person acting on behalf of the consumer requires additional or different services. O. Reg. 426/15, s. 7.

#### Posting identifiers and other information

**52.5** (1) The information that section 65.5 of the Act requires a tow and storage provider to post is the following:

1. The provider's name, and if different, the name under which the provider carries on business.
2. The provider's telephone number.
3. If the provider operates more than one tow truck, a unique number identifying each tow truck.
4. The provider's municipal business licence number, if applicable. O. Reg. 426/15, s. 7.

(2) The tow and storage provider shall post the information described in subsection (1) on both sides of each tow truck that the provider operates, if any, by attaching it to or having it painted on the body of the tow truck in letters and figures not less than eight centimetres, which is approximately three inches, in height. O. Reg. 426/15, s. 7.

(3) The tow and storage provider shall post the information described in paragraphs 1, 2 and 4 of subsection (1) on one or more signs so that it is clear, comprehensible and prominent at all premises from which the provider conducts business. O. Reg. 426/15, s. 7.

(4) If the tow and storage provider maintains a website, the website shall include the information described in paragraphs 1, 2 and 4 of subsection (1) in a form that can be reproduced. O. Reg. 426/15, s. 7.

#### Invoice

**52.6** (1) The invoice that section 65.6 of the Act requires a tow and storage provider to deliver before demanding or receiving payment shall be in writing. O. Reg. 426/15, s. 7.

(2) The additional information that section 65.6 of the Act requires a tow and storage provider to include in the invoice is the following:

1. The name of the consumer.

2. The provider's name, and if different, the name under which the provider carries on business.
3. The provider's telephone number, the address of the principal place of business of the provider and information respecting other ways, if any, in which the consumer can contact the provider, such as the fax number and e-mail address of the provider.
4. If the provider operates more than one tow truck, the unique number identifying the tow truck providing the services.
5. The provider's municipal business licence number, if applicable.
6. The make, model, vehicle identification number and licence number of the vehicle.
7. The date and time when the services commenced or are to commence.
8. The address of the location where the services commenced or are to commence, the address of the location to which the vehicle was towed or is to be towed, the address of the location of any stops that are anticipated or have occurred in between, and, if applicable, the business name of each of those locations.
9. A unique invoice number.
10. The name of the tow truck driver.
11. A statement that the provider must accept payment for tow and storage services by credit card or cash at the consumer's choice. O. Reg. 426/15, s. 7.

#### Insurance

**52.7** For the purposes of subsection 65.7 (1) of the Act, a tow and storage services operator shall maintain insurance coverage for the following kinds of liability in the following amounts in respect of any one claim:

1. Coverage against liability resulting from bodily injury to or the death of one or more persons and loss or damage to property, in the amount of at least \$2,000,000 exclusive of interest and costs.
2. Coverage against liability for damage to a vehicle of the consumer while in the provider's care, custody or control, in the amount of at least \$100,000.
3. Cargo liability insurance in the amount of at least \$50,000. O. Reg. 426/15, s. 7.

#### Publication of rates

**52.8** (1) A tow and storage provider shall make available a copy of the current statement of rates required by section 65.8 of the Act at all premises from which the provider conducts business, and shall provide a copy to any person upon request. O. Reg. 426/15, s. 7.

(2) If a tow and storage provider maintains a website, the website shall include the information described in subsection (1) in a form that can be reproduced. O. Reg. 426/15, s. 7.

#### Disclosure of interest

**52.9** (1) For the purposes of subsection 65.10 (1) of the Act, a prescribed person means a person acting on behalf of the consumer. O. Reg. 426/15, s. 7.

(2) A tow and storage provider shall make the disclosure of interest required by section 65.10 of the Act to the consumer or a person acting on behalf of the consumer,

- (a) before the consumer or the person, as the case may be, gives the authorization required by section 65.4 of the Act, in circumstances where such authorization is required; or
  - (b) before the tow and storage services are commenced, in circumstances where such authorization is not required. O. Reg. 426/15, s. 7.
- (3) If the disclosure of interest required by section 65.10 of the Act is not given in writing, the tow and storage provider shall,
- (a) make a written record of the disclosure that includes the following:
    - (i) the name and contact information of the person to whom the disclosure is given,
    - (ii) the date and time at which the disclosure is given,
    - (iii) if the disclosure is given by telephone, the telephone number of the tow and storage provider, and
    - (iv) if the disclosure is given by a method other than telephone, information about how the tow and storage provider can be contacted; and
  - (b) give a copy of the written record of the disclosure and of the disclosure in writing to the person described in subclause (a) (i) as soon as is practicable. O. Reg. 426/15, s. 7.

#### Duty re contents of vehicle

**52.10** (1) A tow and storage provider shall provide the access required by subsection 65.12 (1) of the Act by,

- (a) having the location where the vehicle is stored be open to the public from 8:00 a.m. to 5:00 p.m. on all business days; and
- (b) providing a telephone number that the consumer or a person acting on behalf of the consumer can call to gain access to the vehicle at other times. O. Reg. 426/15, s. 7.

(2) A tow and storage provider may charge a reasonable fee for permitting access to the consumer or a person acting on behalf of the consumer at a time other than the times specified in clause (1) (a). O. Reg. 426/15, s. 7.

(3) In this section,

“business day” means a day that is not,

- (a) Saturday, or
- (b) a holiday within the meaning of section 88 of the *Legislation Act, 2006*, other than Easter Monday and Remembrance Day. O. Reg. 426/15, s. 7.

#### Prohibitions

**52.11** (1) A tow and storage provider shall not recommend to a consumer or a person acting on behalf of the consumer any of the following, unless the consumer or the person specifically requests such a recommendation or the provider offers to make such a recommendation and the consumer or the person accepts the offer:

1. The towing or transportation of any vehicle in respect of which the provider’s services are to be provided to any particular salvage yard, repairer, storage yard, garage, building or place.
2. The legal services provided by any person, corporation, partnership, sole proprietor, association or other entity authorized under the *Law Society Act* to practise law or provide legal services in Ontario.
3. A health care service provided by any member of a College as defined in the *Regulated Health Professions Act, 1991* or at a facility at which any member of a College as defined in that Act practises his or her profession. O. Reg. 426/15, s. 7.

(2) Subject to subsection (3), a tow and storage provider shall not charge an amount for tow and storage services that is greater than the amount that the provider usually charges for those services merely because the provider provides them as a result of a vehicle having been impounded or otherwise detained under the authority of any other Act or regulation of Ontario or Canada or any municipal by-law. O. Reg. 426/15, s. 7.

(3) Subsection (2) does not apply where there is an agreement that contains terms of payment for tow and storage services in respect of the impoundment or other detention of a vehicle authorized under any other Act or regulation of Ontario or Canada or any municipal by-law. O. Reg. 426/15, s. 7.

#### Additional duties and obligations

**52.12** (1) If a tow and storage provider makes a recommendation described in subsection 52.11 (1) upon the request or acceptance of a consumer or a person acting on behalf of the consumer, the provider shall disclose to the consumer or the person,

- (a) the benefits and consideration that are due to the provider or another person as a result of making the recommendation; or
- (b) that there are no benefits or consideration due to the provider or to another person, if that is the case. O. Reg. 426/15, s. 7.

(2) A tow and storage provider shall make the disclosure required by subsection (1) to the consumer or a person acting on behalf of the consumer,

- (a) before the consumer or the person, as the case may be, gives the authorization required by section 65.4 of the Act, in circumstances where such authorization is required; or
- (b) before the tow and storage services are commenced, in circumstances where such authorization is not required. O. Reg. 426/15, s. 7.

(3) If the disclosure required by subsection (1) is not given in writing, the tow and storage provider shall,

- (a) make a written record of the disclosure that includes the following:
  - (i) the name and contact information of the person to whom the disclosure is given,
  - (ii) the date and time at which the disclosure is given,
  - (iii) if the disclosure is given by telephone, the telephone number of the tow and storage provider, and

- (iv) if the disclosure is given by a method other than telephone, information about how the tow and storage provider can be contacted; and
- (b) give a copy of the written record of the disclosure and of the disclosure in writing to the person described in subclause (a) (i) as soon as is practicable. O. Reg. 426/15, s. 7.

**Record keeping and reporting**

**52.13** (1) The following are prescribed records that section 65.19 of the Act requires a tow and storage provider to maintain:

1. A copy of the disclosure of information that the provider gives and a copy of the written records of the disclosure where the disclosure is not given in writing, as required under section 65.3 of the Act.
2. A copy of the authorizations that the provider obtains and a copy of the written records of the authorizations where the authorization is not given in writing, as required under section 65.4 of the Act.
3. A copy of the invoices that section 65.6 of the Act requires the provider to deliver.
4. A copy of the insurance policy that section 65.7 of the Act requires the provider to maintain.
5. The current statement of rates that section 65.8 of the Act requires the provider to maintain.
6. A copy of the disclosure of interest that the provider gives and a copy of the written records of the disclosure where the disclosure is not given in writing, as required under section 65.10 of the Act.
7. A copy of the disclosure that the provider gives and a copy of the written records of the disclosure where the disclosure is not given in writing, as required under section 52.12 of this Regulation. O. Reg. 426/15, s. 7.

(2) A tow and storage provider shall maintain the records described in subsection (1) at the provider's principal place of business for a period of no less than three years. O. Reg. 426/15, s. 7.

**Transition**

**52.14** The following provisions of the Act are prescribed provisions for the purposes of subsection 65.21 (2) of the Act:

1. Section 65.3 (disclosure).
2. Section 65.4 (authorization).
3. Section 65.5 (posting identifiers and other information).
4. Section 65.6 (invoice), if a tow and storage provider under a consumer agreement for tow and storage services has delivered an invoice to the consumer before the day that section comes into force.
5. Section 65.7 (insurance).
6. Section 65.10 (disclosure of interest).
7. Section 65.16 (prohibitions).
8. Section 65.17 (additional duties and obligations).
9. Section 65.19 (record keeping and reporting). O. Reg. 426/15, s. 7.

**PART VII  
CREDIT AGREEMENTS — PART VII OF THE ACT**

**Definitions**

**53.** In this Part,

“grace period” means a period for which charges specified in the credit agreement that accrue during the period will be forgiven if the borrower satisfies conditions specified in the credit agreement. O. Reg. 17/05, s. 53; O. Reg. 168/07, s. 1; O. Reg. 96/09, s. 2.

**Advance**

**54.** (1) For the purpose of the definition of “advance” in section 66 of the Act, each of the following constitutes value received by a borrower under a credit agreement:

1. Money transferred to or to the order of the borrower in accordance with the credit agreement.
2. In the case of a supplier credit agreement under which the borrower obtains goods or services from the supplier,
  - i. the price of the goods or services, had they been sold for cash rather than on credit, subject to subparagraph ii,



- ii. if, in order to enter into the supplier credit agreement at a particular interest rate, the borrower is required to decline a rebate or a portion of a rebate or is required to pay a higher price for the goods or services, the lowest price, less any applicable rebate, at which the goods and services are available from the supplier.
- 3. The amount of a pre-existing monetary obligation of the borrower that the lender pays, discharges or consolidates in connection with the credit agreement, whether or not the pre-existing monetary obligation is itself connected to the credit agreement.
- 4. Money obtained by the borrower, or the cash price of a good or service obtained by the borrower, through the use of a credit card issued under the credit agreement.
- 5. The expense incurred by the lender in paying all or any part of the following in connection with the credit agreement, if the borrower is required to repay the expense:
  - i. The cost of searching vehicle records under the *Highway Traffic Act* in order to confirm the ownership or vehicle identification number of a vehicle.
  - ii. The cost of obtaining a statement, or a certified copy of a statement, containing information from the vehicle records.
- 6. If the borrower gives a security interest in personal property to secure the borrower's indebtedness under the credit agreement, the expense incurred by the lender in paying all or any part of the following, if the borrower is required to repay the expense:
  - i. The cost of professional services obtained for the purpose of confirming the value, condition, location or conformity to law of the property that is subject to the security interest, if the borrower receives a report signed by the person providing the professional services and is entitled to give the report to others.
  - ii. The cost of insurance for the property that is subject to the security interest, if the borrower is the beneficiary of the insurance and the insured amount is the full insurable value of the property.
  - iii. The cost of registering a financing statement or financing change statement in a public registry of security interests in personal property, and the cost of searching or obtaining information from the registry, in relation to the security interest given by the borrower.
  - iv. The cost of registering in the land titles or registry system a notice of security interest under clause 54 (1) (a) of the *Personal Property Security Act*, an extension notice under subsection 54 (3) of that Act or a certificate to discharge or partially discharge a notice of security interest under subsection 54 (4) of that Act, and the cost of searching or obtaining information from the system, in relation to the security interest given by the borrower. O. Reg. 17/05, s. 54 (1); O. Reg. 168/07, s. 2; O. Reg. 96/09, s. 3.

(2) "Cost" means,

- (a) in subparagraphs 5 i and ii of subsection (1), the fees paid for the search or statement and the service fees paid to an agent, if any; and
- (b) in subparagraphs 6 iii and iv of subsection (1), the fees paid for the registration, search or information and the service fees paid to an agent, if any. O. Reg. 17/05, s. 54 (2).

**Annual percentage rate for credit agreement**

**55.** (1) For the purpose of the definition of "annual percentage rate" in section 66 of the Act,

- (a) the annual percentage rate for a credit agreement is the annual interest rate set out in the credit agreement, if,
  - (i) the credit agreement does not provide for interest to be calculated more frequently than the frequency with which scheduled payments are required to be made by the borrower, and
  - (ii) there is no cost of borrowing, other than interest, in connection with the credit agreement; and
- (b) the annual percentage rate for any other credit agreement is the amount determined using the formula,

$$[C \div (T \times A)] \times 100$$

in which,

"C" is the cost of borrowing,

"T" is the length of the term of the credit agreement, in years, and

"A" is the average of the principal balances outstanding at the end of each interest calculation period during the term of the credit agreement before applying any payment due by the borrower, with all interest calculation periods under the credit agreement being of equal length.

O. Reg. 17/05, s. 55 (1).

- (2) In calculating “A” in clause (1) (b),
- the principal outstanding at the beginning of the term of the credit agreement is the result obtained by subtracting the total of all payments made by the borrower at or before the beginning of the term from the total of all advances received by the borrower at or before the beginning of the term;
  - principal does not include any portion of the cost of borrowing, and no portion of the accumulated cost of borrowing shall be included in the principal balance outstanding at any time;
  - each payment by the borrower in connection with the credit agreement shall be considered to be applied first against the accumulated cost of borrowing and then, to the extent that the payment exceeds the accumulated cost of borrowing, against the outstanding principal balance; and
  - applying the following formula in respect of each interest calculation period shall yield a result that is equal to the cost of borrowing for that period,

$$\text{APR}/100 \times L \times P$$

in which,

“APR” is the annual percentage rate,

“L” is the length of the interest calculation period as a fraction of a year, and

“P” is the principal balance outstanding at the end of the interest calculation period before applying any payment due by the borrower.

O. Reg. 17/05, s. 55 (2).

(3) In calculating the annual percentage rate for a credit agreement, a year shall be considered to have 365 days. O. Reg. 96/09, s. 4.

(4) If a credit agreement provides for payments to be made at intervals measured by reference to weeks or months, the annual percentage rate for the credit agreement may be calculated on the assumption that each week is 1/52 of a year long and each month is 1/12 of a year long. O. Reg. 17/05, s. 55 (4).

(5) If the annual percentage rate for a credit agreement is required to be calculated when the interest rate for any period during the term of the credit agreement is unknown, the annual percentage rate for the credit agreement shall be calculated as if the interest rate for that period was to be determined on the basis of circumstances existing at the time of the calculation. O. Reg. 17/05, s. 55 (5).

(6) The annual percentage rate for a credit agreement for fixed credit that does not provide for scheduled payments by the borrower shall be calculated on the assumption that the outstanding balance will be repaid in full in a single payment at the end of the term of the credit agreement. O. Reg. 17/05, s. 55 (6).

(7) The annual percentage rate for a renewed credit agreement shall be calculated on the assumption that the borrower receives, on the renewal date, an advance equal to the outstanding balance at the end of the term of the credit agreement being renewed. O. Reg. 17/05, s. 55 (7).

(8) In subsections (3) to (7), the references to the calculation of the annual percentage rate include the calculation of any amount that is required to be calculated in order to calculate the annual percentage rate. O. Reg. 17/05, s. 55 (8).

(9) A disclosure of an annual percentage rate for a credit agreement shall be considered to be accurate if it is within one-eighth of one per cent of the annual percentage rate calculated in accordance with this section. O. Reg. 17/05, s. 55 (9).

#### Cost of borrowing

**56.** (0.1) For the purpose of the definition of “cost of borrowing” in section 66 of the Act, the following amounts are prescribed as included in the cost of borrowing with respect to a credit agreement as defined in that section:

- Any amount payable by the borrower, upon entering into the agreement, to process a payment provided by the borrower under the agreement.
- Any other amount payable by the borrower, upon entering into the agreement, in connection with the agreement. O. Reg. 96/09, s. 5.

(1) For the purpose of clause (a) of the definition of “cost of borrowing” in section 66 of the Act, the cost of borrowing does not include a payment or repayment by the borrower of any portion of the total of the advances received by the borrower. O. Reg. 17/05, s. 56 (1).

(2) For the purpose of clause (b) of the definition of “cost of borrowing” in section 66 of the Act, the following are prescribed as charges that are not included in the cost of borrowing:

- If the borrower gives a security interest in personal property to secure the borrower’s indebtedness under the credit agreement,

- i. the cost of professional services obtained for the purpose of confirming the value, condition, location or conformity to law of the property that is subject to the security interest, if the borrower receives a report signed by the person providing the professional services and is entitled to give the report to others,
  - ii. the cost of insurance for the property that is subject to the security interest, if the borrower is the beneficiary of the insurance and the insured amount is the full insurable value of the property,
  - iii. the cost of registering a financing statement or financing change statement in a public registry of security interests in personal property, and the cost of searching or obtaining information from the registry, in relation to the security interest given by the borrower, and
  - iv. the cost of registering in the land titles or registry system a notice of security interest under clause 54 (1) (a) of the *Personal Property Security Act*, an extension notice under subsection 54 (3) of that Act or a certificate to discharge or partially discharge a notice of security interest under subsection 54 (4) of that Act, and the cost of searching or obtaining information from the system, in relation to the security interest given by the borrower.
2. The cost of searching vehicle records under the *Highway Traffic Act* in order to confirm the ownership or vehicle identification number of a vehicle and the cost of obtaining a statement, or a certified copy of a statement, containing information from the vehicle records.
  3. Default charges.
  4. Prepayment charges and penalties.
  5. Charges for optional services accepted by the borrower. O. Reg. 17/05, s. 56 (2).
- (3) “Cost” means,
- (a) in subparagraphs 1 iii and iv of subsection (2), the fees paid for the registration, search or information and the service fees paid to an agent, if any; and
  - (b) in paragraph 2 of subsection (2), the fees paid for the search or statement and the service fees paid to an agent, if any. O. Reg. 17/05, s. 56 (3).

**Floating rate**

**57.** In order for an index to qualify as a public index for the purpose of the definition of “floating rate” in section 66 of the Act, the index shall be one that is made public at least weekly in a publication that has general circulation in Ontario. O. Reg. 17/05, s. 57.

**Maximum liability for unauthorized charges**

**58.** (1) This section applies to charges that are incurred without the authorization of the borrower under a credit agreement for a credit card when the credit card is used after having been lost or stolen. O. Reg. 17/05, s. 58 (1).

(2) For the purpose of section 69 of the Act,

- (a) the borrower is not liable for charges that are incurred after the borrower gives the lender oral or written notice of the loss or theft of the credit card; and
- (b) the maximum liability of the borrower for charges that are incurred before the borrower gives the lender oral or written notice of the loss or theft of the credit card is the lesser of,
  - (i) \$50, and
  - (ii) the amount fixed or agreed to by the lender as the maximum amount for which the borrower will be liable in such cases. O. Reg. 17/05, s. 58 (2).

**Transition, liability for cost of borrowing**

**59.** In applying section 70 of the *Consumer Protection Act, 2002* to a credit agreement that was entered into before the day the section was proclaimed in force, a statement that was required to be furnished to the borrower in respect of the credit agreement under section 24 or 25 of the *Consumer Protection Act* before its repeal by the *Consumer Protection Statute Law Amendment Act, 2002* shall be deemed to be a statement required to be delivered to the borrower by Part VII of the *Consumer Protection Act, 2002*. O. Reg. 17/05, s. 59.

**Refund or credit to borrower on prepayment**

**60.** (1) For the purpose of subsection 76 (2) of the Act, if a borrower prepays the full outstanding balance under a credit agreement for fixed credit, the lender shall refund to the borrower or credit the borrower with the portion, determined under subsection (2), of each charge that was paid by the borrower under the agreement or added to the balance under the agreement and that forms part of the cost of borrowing, other than a charge for interest. O. Reg. 17/05, s. 60 (1).

(2) For each charge, other than interest, that was paid by the borrower under the agreement or added to the balance under the agreement and that forms part of the cost of borrowing, the portion of the charge that is to be refunded or credited to the borrower is the amount determined using the formula,

$$C \times [(N - M) \div N]$$

in which,

“C” is the amount of the charge,

“N” is the length of the period between the time the charge was imposed and the scheduled end of the term of the credit agreement, and

“M” is the length of the period between the time the charge was imposed and the time of the prepayment.

O. Reg. 17/05, s. 60 (2).

(3) If a loan broker assists a consumer to obtain credit or a loan of money and the creditor is not in the business of extending credit or lending money, the obligation that subsection 76 (2) of the Act would impose on a lender shall, for the purpose of subsection 67 (2) of the Act, be deemed to be an obligation of the creditor and not the loan broker. O. Reg. 17/05, s. 60 (3).

#### Advertising

**61.** (1) Any person who makes representations in respect of a credit agreement, or causes representations to be made in respect of a credit agreement, in an advertisement shall do so in accordance with this section, regardless of whether the representations are made orally, in writing or in any other form. O. Reg. 17/05, s. 61 (1).

(2) An advertisement that offers fixed credit and discloses the interest rate payable by the borrower under the credit agreement or the amount of a payment to be made by the borrower to the lender in connection with the credit agreement shall also disclose the following information:

1. The annual percentage rate for the credit agreement.
2. The length of the term of the credit agreement.
3. If the advertisement is for a supplier credit agreement and applies to a specifically identified good or service,
  - i. the cash price of the good or service, and
  - ii. the cost of borrowing, unless
    - A. the only element of the cost of borrowing is interest, or
    - B. the advertisement is broadcast on radio or television, displayed on a billboard or bus board or made through any other medium with similar time or space limitations.
4. If the advertisement is for a supplier credit agreement, applies to a range of goods or services and uses a representative credit agreement, the cash price of the good or service represented in the representative credit agreement. O. Reg. 17/05, s. 61 (2).

(3) Subsection (2) applies even if the advertisement discloses that the interest rate payable by the borrower or the amount of a payment to be made by the borrower to the lender is zero. O. Reg. 17/05, s. 61 (3).

(4) The annual percentage rate referred to in paragraph 1 of subsection (2) shall be disclosed as prominently as the most prominently disclosed of,

- (a) the interest rate payable by the borrower under the credit agreement; and
- (b) the amount of a payment to be made by the borrower to the lender in connection with the credit agreement. O. Reg. 17/05, s. 61 (4).

(5) If the advertisement applies to a range of credit agreements for fixed credit and the information required to be disclosed under paragraph 1 or 2 of subsection (2) would not be the same for all credit agreements to which the advertisement applies, the advertisement shall disclose that information for a representative credit agreement and shall state that the information is for a representative credit agreement. O. Reg. 17/05, s. 61 (5).

(6) An advertisement that offers open credit and that discloses the amount of any element of the cost of borrowing shall also disclose the following information:

1. The annual interest rate payable under the credit agreement at the time of the advertisement.
2. The amount or, if the amount cannot be determined at the time of the disclosure, the manner of determining the amount, of each element of the cost of borrowing, other than interest, that a borrower is required to pay at the time the borrower enters into the agreement or on a periodic basis. O. Reg. 17/05, s. 61 (6).

(7) All disclosures with respect to an element of the cost of borrowing in an advertisement referred to in subsection (6) shall be of equal prominence. O. Reg. 17/05, s. 61 (7).

(8) In addition to any other information that it is required to disclose under this section, an advertisement stating or implying that no interest is payable for a definite or indefinite period under a credit agreement shall disclose the following information:

1. Whether,
  - i. the credit agreement is unconditionally interest-free during the period, or
  - ii. interest accrues during the period but will be forgiven if certain conditions are met.
2. In the situation described in subparagraph 1 ii,
  - i. the conditions that are required to be met in order for the interest to be forgiven,
  - ii. in the case of an advertisement for fixed credit, what the annual percentage rate for the credit agreement would be if the conditions for forgiveness of the interest were not met, and
  - iii. in the case of an advertisement for open credit, what the annual interest rate for the period would be if the conditions for forgiveness of the interest were not met, assuming that the annual interest rate payable under the credit agreement at the time of the advertisement applied to the period. O. Reg. 17/05, s. 61 (8).

(9) In this section,

“representative credit agreement”, in relation to an advertisement, means an example of a credit agreement that fairly depicts the credit agreements to which the advertisement applies and is identified as a representative of those credit agreements. O. Reg. 17/05, s. 61 (9).

**61.1** REVOKED: O. Reg. 96/09, s. 6.

#### **Disclosure, credit card applications**

**62.** (1) A credit card issuer shall disclose, in the credit card application form that the issuer requires borrowers to complete or in a document accompanying the credit card application form,

(a) the following information:

- (i) the annual interest rate payable by the borrower under the credit agreement, if it is not a floating rate,
- (ii) if the annual interest rate payable by the borrower under the credit agreement is a floating rate, the public index to which the floating rate bears a mathematical relationship and a statement of the mathematical relationship,
- (iii) for each element of the cost of borrowing, other than interest, the nature of the element and,
  - (A) the amount payable by the borrower, or
  - (B) if the amount payable by the borrower cannot be determined at the time of the disclosure, the manner of determining the amount payable by the borrower,
- (iv) the details with respect to grace periods under the credit agreement, and
- (v) the date as of which the information disclosed under this clause is current; or

(b) a telephone number at which the borrower can obtain the information described in subclauses (a) (i) to (iv) during ordinary business hours without incurring any charges for the telephone call. O. Reg. 17/05, s. 62 (1).

(2) If a borrower applies for a credit card by telephone, the credit card issuer shall disclose the information described in subclauses (1) (a) (i) to (iv) when the borrower makes the application. O. Reg. 17/05, s. 62 (2).

(3) A credit card issuer who solicits a borrower directly to apply for a credit card shall disclose the following information at the time of the solicitation, regardless of whether the solicitation is made in person, by mail, by telephone or by other means, including electronic means:

1. The annual interest rate in effect under the credit agreement at the time of the solicitation.
2. If the annual interest rate payable by the borrower under the credit agreement is a floating rate, the public index to which the floating rate bears a mathematical relationship and a statement of the mathematical relationship.
3. For each element of the cost of borrowing, other than interest, the nature of the element and,
  - i. the amount payable by the borrower, or
  - ii. if the amount payable by the borrower cannot be determined at the time of the solicitation, the manner of determining the amount payable by the borrower.
4. The details with respect to grace periods under the credit agreement. O. Reg. 17/05, s. 62 (3).

**62.1 REVOKED:** O. Reg. 96/09, s. 7.

**Initial disclosure statement, fixed credit agreement**

**63.** (1) The initial disclosure statement for a credit agreement for fixed credit shall be in writing and, for the purpose of subsection 79 (2) of the Act, shall disclose the following information, in addition to the information required under subsection 78 (1) of the Act:

- 0.1 The outstanding principal balance as at the beginning of the term of the credit agreement.
  1. The total of the advances to be made to the borrower.
  2. If more than one advance is to be made to the borrower, the nature, timing and amount of each advance.
  3. The length of the term of the credit agreement.
  4. The cost of borrowing.
  5. The length of the term of the amortization period, if different from the length of the term of the credit agreement.
  6. The interest rate payable by the borrower under the credit agreement, if the rate will not change during the term of the credit agreement.
  7. If the interest rate payable by the borrower under the credit agreement may change during the term of the credit agreement,
    - i. the initial interest rate payable by the borrower under the credit agreement,
    - ii. the manner of determining the annual interest rate at any time during the term of the credit agreement, and
    - iii. unless the amount of the scheduled payments is adjusted to account for changes in the interest rate, the lowest interest rate at which the scheduled payments would not cover the interest that would accrue between consecutive scheduled payments based on the outstanding principal balance as at the beginning of the term of the credit agreement.
  8. The date on which interest begins to accrue under the credit agreement.
  9. The circumstances under which interest is compounded under the credit agreement.
10. For each element of the cost of borrowing, other than interest, the nature of the element and amount payable by the borrower.
11. The details with respect to grace periods under the credit agreement.
12. The annual percentage rate for the credit agreement.
13. Subject to subsection (2), the optional services accepted by the borrower, the charge for each optional service, the borrower's right to terminate any optional service of a continuing nature and the manner of exercising that right.
14. The total of all payments the borrower is required to make in connection with the credit agreement and the timing and amount of each payment, including, without limitation, any down payment, trade-in allowance, balloon payment and final payment.
15. If the credit agreement does not require the borrower to make scheduled payments,
  - i. the circumstances under which the outstanding balance or a portion of it is required to be paid by the borrower, or
  - ii. the provisions of the credit agreement that set out those circumstances.
16. The method used to apply each payment by the borrower against the accumulated cost of borrowing and against the outstanding principal balance.
17. The prepayment rights, charges and penalties that apply to the credit agreement.
18. The method of calculating the amount that the lender is required to refund or credit to the borrower under subsection 76 (2) of the Act and section 60 of this Regulation, if the borrower prepays the full outstanding balance under the credit agreement.
19. The default charges under the credit agreement.
20. If the borrower is giving a security interest in personal property to secure the borrower's indebtedness under the credit agreement, a description of the property that will be subject to the security interest.
21. If the credit agreement requires the borrower to purchase insurance,
  - i. that the borrower may purchase the insurance from any insurer who may lawfully provide that type of insurance and may purchase the insurance directly from the insurer or through an agent of the borrower's choice, and

- ii. if the credit agreement gives the lender the following right, that despite subparagraph i, the lender has the right to disapprove, on reasonable grounds, an insurer selected by the borrower. O. Reg. 17/05, s. 63 (1); O. Reg. 200/05, s. 1.

(2) The information referred to in paragraph 13 of subsection (1) need not be disclosed in the initial disclosure statement if it is disclosed in a separate statement delivered to the borrower before the optional services are provided to the borrower. O. Reg. 17/05, s. 63 (2).

(3) If the interest rate payable by the borrower under the credit agreement may change during the term of the credit agreement, the information required under paragraphs 4 and 14 of subsection (1) shall be based on the initial interest rate disclosed under subparagraph 7 i of subsection (1). O. Reg. 17/05, s. 63 (3).

**Initial disclosure statement, open credit agreement**

**64.** (1) The initial disclosure statement for a credit agreement for open credit shall be in writing and, for the purpose of subsection 79 (3) of the Act, shall disclose the following information, in addition to the information required under subsection 78 (1) of the Act:

1. Subject to subsection (2), the initial credit limit.
2. The annual interest rate payable by the borrower under the credit agreement, if the rate will not change during the term of the credit agreement.
3. If the annual interest rate payable by the borrower under the credit agreement may change during the term of the credit agreement,
  - i. the initial annual interest rate payable by the borrower under the credit agreement, and
  - ii. the manner of determining the annual interest rate at any time during the term of the credit agreement.
4. In the case of a credit agreement for a credit card, the manner in which interest is calculated.
5. The date on which interest begins to accrue under the credit agreement.
6. For each element of the cost of borrowing, other than interest, the nature of the element and,
  - i. the amount payable by the borrower, or
  - ii. if the amount payable by the borrower cannot be determined at the time of the disclosure, the manner of determining the amount payable by the borrower.
7. The details with respect to grace periods under the credit agreement.
8. Subject to subsection (3), the optional services accepted by the borrower, the charge for each optional service, the borrower's right to terminate any optional service of a continuing nature and the manner of exercising that right.
9. Each period for which a statement of account will be delivered to the borrower.
10. The minimum payment or, if the minimum payment cannot be determined at the time of the disclosure, the manner of determining the minimum payment, that the borrower is required to make for each period.
11. In the case of a credit agreement for a credit card, if the credit agreement requires the borrower to pay the outstanding balance in full on receiving a statement of account,
  - i. that requirement,
  - ii. the period after receipt of a statement of account within which the borrower is required to pay the outstanding balance in full in order to avoid being in default under the credit agreement, and
  - iii. the annual interest rate charged on any outstanding balance that is not paid when due.
12. The default charges under the credit agreement.
13. In the case of a credit agreement for a credit card, the maximum liability of the borrower for charges that are incurred without the authorization of the borrower when the credit card is used after having been lost or stolen.
14. A telephone number at which the borrower can make inquiries about the borrower's account during ordinary business hours without incurring any charges for the telephone call.
15. If the borrower is giving a security interest in personal property to secure the borrower's indebtedness under the credit agreement,
  - i. a description of the property that will be subject to the security interest, and
  - ii. the amounts, determined as at the time the disclosure statement is delivered, that the borrower will be charged in respect of,

- A. the cost of professional services obtained for the purpose of confirming the value, condition, location or conformity to law of the property,
- B. the cost of insurance for the property,
- C. the cost of registering a financing statement or financing change statement in a public registry of security interests in personal property and the cost of searching or obtaining information from the registry, in relation to the security interest given by the borrower, and
- D. the cost of registering in the land titles or registry system a notice of security interest under clause 54 (1) (a) of the *Personal Property Security Act*, an extension notice under subsection 54 (3) of that Act or a certificate to discharge or partially discharge a notice of security interest under subsection 54 (4) of that Act, and the cost of searching or obtaining information from the system, in relation to the security interest given by the borrower.

16. The amounts, determined as at the time the disclosure statement is delivered, that the borrower will be charged in connection with the credit agreement in respect of,
- i. the cost of searching vehicle records under the *Highway Traffic Act* in order to confirm the ownership or vehicle identification number of a vehicle, and
  - ii. the cost of obtaining a statement, or a certified copy of a statement, containing information from the vehicle records.
17. If the credit agreement requires the borrower to purchase insurance,
- i. that the borrower may purchase the insurance from any insurer who may lawfully provide that type of insurance and may purchase the insurance directly from the insurer or through an agent of the borrower's choice, and
  - ii. if the credit agreement gives the lender the following right, that despite subparagraph i, the lender has the right to disapprove, on reasonable grounds, an insurer selected by the borrower. O. Reg. 17/05, s. 64 (1).

(2) The initial credit limit referred to in paragraph 1 of subsection (1) need not be disclosed in the initial disclosure statement if it is disclosed in the first statement of account delivered under section 81 of the Act or in a separate statement delivered to the borrower on or before the day the first statement of account is delivered to the borrower. O. Reg. 17/05, s. 64 (2).

(3) The information referred to in paragraph 8 of subsection (1) need not be disclosed in the initial disclosure statement if it is disclosed in a separate statement delivered to the borrower before the optional services are provided to the borrower. O. Reg. 17/05, s. 64 (3).

(4) Any information referred to in subsection (1) that would be relevant to the borrower only if a particular consumer transaction occurred need not be disclosed in the initial disclosure statement if it is disclosed in a separate statement delivered to the borrower before the particular consumer transaction occurs. O. Reg. 17/05, s. 64 (4).

(5) "Cost" means,

- (a) in sub-subparagraphs 15 ii C and D of subsection (1), the fees paid for the registration, search or information and the service fees paid to an agent, if any; and
- (b) in subparagraphs 16 i and ii of subsection (1), the fees paid for the search or statement and the service fees paid to an agent, if any. O. Reg. 17/05, s. 64 (5).

**Subsequent disclosure, fixed credit agreement with floating rate**

**65.** A disclosure statement required to be delivered under subsection 80 (1) of the Act shall be in writing and shall disclose the following information:

- 1. The period covered by the disclosure statement.
- 2. The annual interest rate at the beginning of the period covered by the disclosure statement and the annual interest rate at the end of that period.
- 3. The outstanding balance at the beginning of the period covered by the disclosure statement and the outstanding balance at the end of that period.
- 4. If the credit agreement requires the borrower to make scheduled payments, the timing and amount of each remaining payment and, if the credit agreement provides for the amount of the scheduled payments to be adjusted to account for changes in the interest rate and the annual interest rate is different at the end of the period covered by the disclosure statement than it was at the beginning of that period, the adjusted amount of the remaining payments based on the annual interest rate at the end of the period covered by the disclosure statement. O. Reg. 17/05, s. 65.

**Subsequent disclosure, fixed credit agreement with changeable rate**



**66.** A disclosure statement required to be delivered under subsection 80 (2) of the Act shall be in writing and shall disclose the following information:

1. The new annual interest rate.
2. The date the new annual interest rate takes effect.
3. How the change in the annual interest rate affects the timing or amount of any payment the borrower is required to make under the credit agreement. O. Reg. 17/05, s. 66.

**Transition, open credit subsequent disclosure**

**67.** In applying subsection 81 (1) of the Act to a credit agreement for open credit that was entered into before the day the subsection was proclaimed in force, the monthly period begins to run on the day the subsection was proclaimed in force. O. Reg. 17/05, s. 67.

**Statement of account, open credit agreement**

**68.** (1) A statement of account for a credit agreement for open credit shall be in writing and, for the purpose of subsection 81 (4) of the Act, shall disclose the following information:

1. The period covered by the statement of account.
2. The outstanding balance at the beginning of the period covered by the statement of account.
3. For each charge added to the outstanding balance during the period covered by the statement of account,
  - i. a description of the consumer transaction that resulted in the charge,
  - ii. the amount of the charge, and
  - iii. the date the charge was posted.
4. For each payment or credit subtracted from the outstanding balance during the period covered by the statement of account,
  - i. the amount of the payment or credit, and
  - ii. the date the payment or credit was posted.
5. The annual interest rates in effect during the period covered by the statement of account and the part of that period during which each interest rate was in effect.
6. The total amount of interest charged to the borrower during the period covered by the statement of account.
7. The total amount added to the outstanding balance during the period covered by the statement of account.
8. The total amount subtracted from the outstanding balance during the period covered by the statement of account.
9. The outstanding balance at the end of the period covered by the statement of account.
10. The credit limit.
11. The minimum payment due by the borrower.
12. The date on which payment by the borrower is due.
13. The conditions that the borrower is required to satisfy in order to take advantage of a grace period under the credit agreement.
14. The rights and obligations of the borrower with respect to the correction of billing errors.
15. A telephone number at which the borrower can make inquiries about the borrower's account during ordinary business hours without incurring any charges for the telephone call. O. Reg. 17/05, s. 68 (1).

(2) For the purpose of subparagraph 3 i of subsection (1), a description of a consumer transaction shall be considered to be sufficient if the description, along with the transaction record included with the statement of account or made available to the borrower at the time of the transaction, can reasonably be expected to enable the borrower to verify the transaction. O. Reg. 17/05, s. 68 (2).

**Material and non-material changes**

**69.** (1) For the purpose of clause 81 (7) (a) of the Act, the following are not material changes:

1. A change in the credit limit.
2. A decrease in the annual interest rate payable by the borrower.

3. A change in the manner of determining the annual interest rate payable by the borrower, if the change can result only in a decrease in the annual interest rate payable by the borrower.
4. A decrease in the amount payable by the borrower for an element of the cost of borrowing, other than interest.
5. A change in the manner of determining an amount payable by the borrower for an element of the cost of borrowing, other than interest, if the change can result only in a decrease in the amount payable by the borrower.
6. A decrease in any other charge payable by the borrower that is referred to in subsection 64 (1).
7. An increase in the length of a grace period. O. Reg. 17/05, s. 69 (1).

(2) For the purpose of clause 81 (7) (b) of the Act, a change in any of the matters prescribed under subsection 79 (3) of the Act, other than a change mentioned in subsection (1) of this section, is a material change. O. Reg. 17/05, s. 69 (2).

**Disclosures under Part VII of the Act, general**

**70.** (1) A disclosure statement under Part VII of the Act may be a separate document or part of another document. O. Reg. 17/05, s. 70 (1).

(2) Subject to subsections 55 (3) to (8), a disclosure made under Part VII of the Act may be based on an estimate or assumption if,

- (a) the information is not ascertainable at the time the disclosure is made;
- (b) the estimate or assumption is reasonable; and
- (c) the estimate or assumption is clearly identified as an estimate or assumption. O. Reg. 17/05, s. 70 (2).

(3) If a disclosure made under Part VII of the Act discloses a monetary amount that is not in Canadian currency, it shall disclose the currency in which the amount is expressed. O. Reg. 17/05, s. 70 (3).

**Exemptions from Part VII**

**71.** (1) Subsection 67 (2) of the Act does not apply if all of the assistance by the loan broker occurred before the day the subsection was proclaimed in force. O. Reg. 17/05, s. 71 (1).

(2) Section 68 of the Act does not apply if the credit card was first used before the day the section was proclaimed in force. O. Reg. 17/05, s. 71 (2).

(3) Although section 69 of the Act applies regardless of whether the credit agreement for the credit card has been entered into before or is entered into after the section is proclaimed in force, the section does not apply to unauthorized charges that were incurred before the section was proclaimed in force. O. Reg. 17/05, s. 71 (3).

(4) Section 75 of the Act does not apply to,

- (a) a credit agreement for open credit that was entered into before the day the section was proclaimed in force;
- (b) a credit agreement for fixed credit that was entered into before the day the section was proclaimed in force, unless the credit agreement is amended, extended or renewed on or after that day;
- (c) default charges that were imposed before the day the section was proclaimed in force. O. Reg. 17/05, s. 71 (4).

(5) If a credit agreement was entered into before the day section 76 of the Act was proclaimed in force, section 76 of the Act does not apply to the credit agreement and section 28 of the *Consumer Protection Act*, as it read immediately before its repeal by the *Consumer Protection Statute Law Amendment Act, 2002*, continues to apply to the credit agreement. O. Reg. 17/05, s. 71 (5).

(6) Subsection 78 (2) of the Act does not apply if the loan broker took the application from the borrower and sent it to a lender before the day the subsection was proclaimed in force. O. Reg. 17/05, s. 71 (6).

(7) Subsection 80 (1) of the Act does not apply to a credit agreement for fixed credit that was entered into before the day the subsection was proclaimed in force, unless the credit agreement is amended, extended or renewed on or after that day and, in that case, the 12-month period begins to run on the day the agreement is amended, extended or renewed. O. Reg. 17/05, s. 71 (7).

(8) Subsection 80 (2) of the Act does not apply to a credit agreement for fixed credit that was entered into before the day the subsection was proclaimed in force, unless,

- (a) the credit agreement is amended, extended or renewed on or after that day; and
- (b) the lender's increase of the annual interest rate occurs on or after that day. O. Reg. 17/05, s. 71 (8).

(9) Subsections 80 (3) and (4) of the Act do not apply to a credit agreement for fixed credit that was entered into before the day subsection 80 (3) of the Act was proclaimed in force, unless,

- (a) the credit agreement is amended, extended or renewed on or after that day; and

(b) the point when the amount of the borrower's scheduled payments required by the agreement is no longer sufficient to cover the interest accrued under the agreement occurs on or after that day. O. Reg. 17/05, s. 71 (9).

(10) Subsection 80 (5) of the Act does not apply to a credit agreement for fixed credit that was entered into before the day the subsection was proclaimed in force, unless the amendment referred to in the subsection is made on or after that day. O. Reg. 17/05, s. 71 (10).

(11) Subsection 81 (5) of the Act does not apply to a credit agreement for open credit that was entered into before the day the subsection was proclaimed in force, unless the change referred to in the subsection occurs on or after that day. O. Reg. 17/05, s. 71 (11).

(12) In the case of a credit agreement for a credit card where the interest rate is not a floating rate, if the lender decreases the interest rate under the agreement pursuant to the agreement, the lender,

(a) is exempt from the requirement in subsection 81 (5) of the Act to deliver a disclosure statement disclosing the decrease to the borrower at least 30 days before the decrease; and

(b) shall deliver a disclosure statement disclosing the decrease to the borrower in the next statement of account. O. Reg. 17/05, s. 71 (12).

(13) Subsection 81 (6) of the Act does not apply to a credit agreement for open credit that was entered into before the day the subsection was proclaimed in force, unless the amendment referred to in the subsection is made on or after that day. O. Reg. 17/05, s. 71 (13).

(14) Subsection 81 (7) of the Act does not apply to a credit agreement for a credit card that was entered into before the day the subsection was proclaimed in force, unless the amendment referred to in the subsection is made on or after that day. O. Reg. 17/05, s. 71 (14).

#### **PART VII.1**

#### **AGREEMENTS FOR CASHING GOVERNMENT CHEQUES — PART VII.1 OF THE ACT**

##### **Limit on fee for cashing government cheques**

**71.1** (1) The prescribed amount for the purposes of subsection 85.4 (1) of the Act is the lesser of,

(a) the sum of \$2 plus 1 per cent of the face value of the cheque; and

(b) \$10. O. Reg. 488/17, s. 1.

(2) A supplier who requires a consumer to purchase goods or services as a condition for the supplier cashing a government cheque is required to include the purchase price of the goods or services in the fee that the supplier charges the consumer for cashing the cheque. O. Reg. 488/17, s. 1.

##### **Statement when cashing government cheques**

**71.2** (1) A supplier under a consumer agreement to which Part VII.1 of the Act applies who cashes a government cheque for the consumer under the agreement shall provide the consumer with a receipt for cashing the cheque. O. Reg. 488/17, s. 1.

(2) The receipt shall set out,

(a) a statement that the cheque was a government cheque;

(b) the face value of the cheque;

(c) the amount of the fee that the supplier charged the consumer for cashing the cheque;

(d) a description of the other services or goods in relation to cashing the cheque that the supplier has provided to the consumer;

(e) the balance that the supplier paid to the consumer on cashing the cheque;

(f) the date on which the supplier cashed the cheque;

(g) the name, address and telephone number of the supplier and information respecting other ways, if any, in which the consumer can contact the supplier, such as the supplier's fax number and e-mail address; and

(h) information for contacting the Ministry, as the Ministry specifies. O. Reg. 488/17, s. 1.

#### **PART VIII**

#### **LEASING — PART VIII OF THE ACT**

##### **Interpretation**

**72.** (1) In this Part,

“advance”, to a lessee in connection with a lease, includes,

- (a) the amount of a pre-existing monetary obligation of the lessee that the lessor pays, discharges or consolidates in connection with the lease, whether or not the pre-existing monetary obligation is itself connected to the lease, and
- (b) the expense incurred by the lessor in paying all or any part of the following in connection with the lease, if the lessee is required to repay the expense:
  - (i) the cost of insurance for the leased goods, if the lessee is the beneficiary of the insurance and the insured amount is the full insurable value of the leased goods,
  - (ii) the cost of searching vehicle records under the *Highway Traffic Act* in order to confirm the ownership or vehicle identification number of a vehicle and the cost of obtaining a statement, or a certified copy of a statement, containing information from the vehicle records,
  - (iii) the cost of registering a financing statement or financing change statement in a public registry of security interests in personal property, and the cost of searching or obtaining information from the registry, in relation to the leased goods,
  - (iv) the cost of registering in the land titles or registry system a notice of security interest under clause 54 (1) (a) of the *Personal Property Security Act*, an extension notice under subsection 54 (3) of that Act or a certificate to discharge or partially discharge a notice of security interest under subsection 54 (4) of that Act, and the cost of searching or obtaining information from the system, in relation to the leased goods; (“avance”)

“annual percentage rate”, in relation to a lease, means the amount determined using the formula,

$$(M \times I) \times 100$$

in which,

“M” is the number of payment periods in a year under the lease, and

“I” is the periodic interest rate, as determined under this section; (“taux de crédit”)

“assumed residual payment” means,

- (a) in the case of a lease that is neither an option lease nor a residual obligation lease, the sum of the estimated residual value of the leased goods and the payment, if any, that the lessee is required to make in the ordinary course of events at the end of the lease term,
- (b) in the case of an option lease, the lesser of,
  - (i) the sum of the estimated residual value of the leased goods and the payment, if any, that the lessee is required to make in the ordinary course of events at the end of the lease term, and
  - (ii) the additional payment that the lessee is required to make in order to exercise the option at the end of the lease term,
- (c) in the case of a residual obligation lease, the sum of,
  - (i) the amount that the lessee is required to pay to the lessor at the end of the lease term if the realizable value of the leased goods at the end of the lease term equals the estimated residual value of the lease goods, and
  - (ii) the estimated residual value of the leased goods; (“versement résiduel présumé”)

“capitalized amount” means the amount determined by,

- (a) adding,
  - (i) the lease value of the leased goods, and
  - (ii) the sum of the advances to be made to the lessee in connection with the lease before or at the beginning of the lease term, and
- (b) subtracting, from the amount determined under clause (a), the sum of the payments to be made by the lessee in connection with the lease before or at the beginning of the lease term, excluding,
  - (i) payments that the lease expressly requires the lessor to hold as security for any of the obligations of the lessee to the lessor, and
  - (ii) periodic payments under the lease; (“somme capitalisée”)

“estimated residual value”, in relation to leased goods, means the lessor’s reasonable estimate of the wholesale value of the leased goods at the end of the lease term; (“valeur résiduelle estimative”)

“implicit finance charge”, in relation to a lease, means the amount determined by,

- (a) adding,

- (i) the sum of all non-refundable payments to be made by the lessee in connection with the lease,
  - (A) excluding charges for an optional service accepted by the lessee, unless,
    - (1) the optional service is to be made available before or at the beginning of the lease term and the value of the optional service is an advance that is added under subclause (a) (ii) of the definition of “capitalized amount” in this subsection, and
    - (2) the payments to be made by the lessee for the optional service are not payments that are required to be subtracted under clause (b) of the definition of “capitalized amount” in this subsection,
  - (B) excluding termination charges and penalties,
  - (C) excluding taxes in connection with the lease, and
  - (D) excluding payments that are required to be subtracted under clause (b) of the definition of “capitalized amount” in this subsection, and
- (ii) the assumed residual payment, and
- (b) subtracting the capitalized amount from the amount determined under clause (a); (“frais financiers implicites”)

“lease value of the leased goods” means,

- (a) for the purposes of a disclosure statement for a lease,
  - (i) if the lessor sells such goods to cash consumers in the ordinary course of business, the lesser of,
    - (A) an amount that fairly represents the price at which the lessor sells such goods to cash consumers in the ordinary course of business, and
    - (B) the price agreed to by the lessor and the lessee in the lease, or
  - (ii) if the lessor does not sell such goods to cash consumers in the ordinary course of business, a reasonable estimate of the retail price of the goods, or
- (b) for the purposes of an advertisement for a lease,
  - (i) if the lessor sells such goods to cash consumers in the ordinary course of business, an amount that fairly represents the price at which the lessor sells such goods to cash consumers in the ordinary course of business, or
  - (ii) if the lessor does not sell such goods to cash consumers in the ordinary course of business, a reasonable estimate of the retail price of the goods; (“valeur de location des marchandises louées”)

“option lease” means a lease that gives the lessee the option of acquiring title to the leased goods by making a payment in addition to the periodic payments required under the lease; (“bail avec option”)

“periodic interest rate” means the value of “I” in the equation,

$$PMT = (PV - FV(1 + I)^{-N}) \div [((1 - (1 + I)^{-N}) \div I) + A]$$

in which,

- “PMT” is the amount of each periodic payment under the lease,
- “A” is the number of periodic payments to be made under the lease before or at the beginning of the lease term,
- “PV” is the capitalized amount,
- “FV” is the assumed residual payment, and
- “N” is the number of payment periods under the lease; (“taux d’intérêt périodique”)

“total lease cost” means the total of the payments that are required to be made by the lessee in connection with the lease in the ordinary course of events, excluding payments that the lease expressly requires the lessor to hold as security for any of the obligations of the lessee to the lessor. (“coût total du bail”) O. Reg. 17/05, s. 72 (1); O. Reg. 200/05, s. 2.

(2) In calculating the annual percentage rate for a lease, a year shall be considered to have 365 days. O. Reg. 96/09, s. 8.

(3) If a lease provides for payments to be made at intervals measured by reference to weeks or months, the annual percentage rate for the lease may be calculated on the assumption that each week is 1/52 of a year long and each month is 1/12 of a year long. O. Reg. 17/05, s. 72 (3).

(4) In subsections (2) and (3), the references to the calculation of the annual percentage rate include the calculation of any amount that is required to be calculated in order to calculate the annual percentage rate. O. Reg. 17/05, s. 72 (4).

(5) “Cost” in the definition of “advance” in subsection (1) means,

- (a) in subclause (b) (ii) of the definition, the fees paid for the search or statement and the service fees paid to an agent, if any; and
  - (b) in subclauses (b) (iii) and (iv) of the definition, the fees paid for the registration, search or information and the service fees paid to an agent, if any. O. Reg. 17/05, s. 72 (5).
- (6) In subsection (1), for the purposes of the definitions of “assumed residual payment”, “estimated residual value” and “total lease cost” and for the purposes of subclause (a) (i) of the definition of “implicit finance charge” and “N” in the definition of “periodic interest rate”,
- (a) if the lease term is indefinite, the lease term shall be considered to be one year long; and
  - (b) if the lease term is the length of the useful life of the leased goods, the lease term shall be considered to be a reasonable estimate of the length of the useful life of the leased goods, and the same estimated length shall be used for the purpose of all of those definitions with respect to the same lease. O. Reg. 17/05, s. 72 (6).
- (7) An amount payable by the lessee, before or at the beginning of the lease term, in respect of a tax in connection with the lease shall be excluded from the sum of the payments to be made by the lessee, calculated under clause (b) of the definition of “capitalized amount” in subsection (1), if it was not included in the sum of the advances to be made to the lessee, calculated under subclause (a) (ii) of that definition. O. Reg. 17/05, s. 72 (7).
- (8) If a lease provides for the servicing of the leased goods and the lessee did not have the option of excluding the servicing provisions from the lease, a reference to the goods shall be interpreted as a reference to the goods and the servicing of the goods in,
- (a) the expressions “estimated residual value of the leased goods”, “lease value of the leased goods” and “realizable value of the leased goods” in this Part; and
  - (b) the definitions of “estimated residual value” and “lease value of the leased goods” in subsection (1). O. Reg. 17/05, s. 72 (8).
- (9) If there is any irregularity in the amount or timing of payments required during the lease term, the equation in the definition of “periodic interest rate” in subsection (1) shall be modified as necessary to calculate the value of “I” in accordance with actuarial principles. O. Reg. 17/05, s. 72 (9).
- (10) A disclosure of an annual percentage rate for a lease shall be considered to be accurate if it is within one-eighth of one per cent of the annual percentage rate calculated in accordance with this section. O. Reg. 17/05, s. 72 (10).

#### Advertising

**73.** (1) This section prescribes, for the purpose of section 88 of the Act, the requirements with which a person shall comply in making representations about the cost of a lease, or causing representations to be made about the cost of a lease, in an advertisement. O. Reg. 17/05, s. 73 (1).

(2) An advertisement described in subsection (1), other than an advertisement to which subsection (3) applies, shall disclose the following information:

1. That the consumer agreement is a lease.
2. The length of the lease term or that the lease term is indefinite.
3. The amount of each payment to be made by the lessee in connection with the lease before or at the beginning of the lease term, other than a periodic payment.
4. The timing of the periodic payments to be made by the lessee under the lease and the amount of each payment.
5. For every other payment that the lessee is required to make in connection with the lease in the ordinary course of events, the amount or, if the amount cannot be determined at the time of the disclosure, the manner of determining the amount, of the payment.
6. For a motor vehicle lease with an allowance of less than 20,000 kilometres a year, the amount or, if the amount cannot be determined at the time of the disclosure, the manner of determining the amount, that the lessee will be charged for exceeding the kilometre allowance.
7. The annual percentage rate for the lease.
8. The currency in which amounts are expressed, if it is not Canadian currency. O. Reg. 17/05, s. 73 (2).

(3) An advertisement described in subsection (1) that is broadcast on radio or television, displayed on a billboard or bus board or made through any other medium with similar time or space limitations shall disclose the information referred to in paragraphs 1, 3, 4 and 8 of subsection (2) and shall,

- (a) disclose the information referred to in paragraphs 2 and 7 of subsection (2);

(b) disclose a telephone number that can be called to obtain the information referred to in paragraphs 2 and 7 of subsection (2), without incurring any charge for the call; or

(c) refer to an advertisement that contains the information referred to in paragraphs 2 and 7 of subsection (2) and that is published in a publication having general circulation in the area of the radio or television broadcast, the area of the billboard or bus board display or the area covered by the other medium, as the case may be. O. Reg. 17/05, s. 73 (3).

(4) When the annual percentage rate for a lease is disclosed under subsection (2) or (3), it shall be disclosed as prominently as the most prominently disclosed amount of a payment that forms part of the total lease cost. O. Reg. 17/05, s. 73 (4).

(5) If the advertisement applies to a range of leases and any of the information required to be disclosed under this section would not be the same for all leases to which the advertisement applies, the advertisement shall disclose that information for a representative lease and shall state that the information is for a representative lease. O. Reg. 17/05, s. 73 (5).

(6) In this section,

“representative lease”, in relation to an advertisement, means an example of a lease that fairly depicts the leases to which the advertisement applies and is identified as a representative of those leases. O. Reg. 17/05, s. 73 (6).

#### Disclosure statement for a lease

74. (1) A disclosure statement for a lease shall be in writing and may be a separate document or part of another document. O. Reg. 17/05, s. 74 (1).

(2) For the purpose of subsection 89 (2) of the Act, a disclosure statement for a lease shall disclose the following information:

1. That the consumer agreement is a lease.
2. The length of the lease term or that the lease term is indefinite.
3. A fair and accurate description of the leased goods.
4. The lease value of the leased goods.
5. The nature and amount of each advance to be made to the lessee in connection with the lease before or at the beginning of the lease term, including, without limitation, an advance for an expense to be incurred by the lessee in connection with the lease before or at the beginning of the lease term, even if the expense is not payable until after the beginning of the lease term.
6. The nature and amount of each payment to be made by the lessee in connection with the lease before or at the beginning of the lease term, other than a periodic payment.
7. The timing and number of the periodic payments to be made by the lessee under the lease and the amount of each payment.
8. The capitalized amount.
9. The estimated residual value of the leased goods.
10. In the case of an option lease,
  - i. when and how the option may be exercised,
  - ii. the amount of the additional payment that the lessee is required to make in order to exercise the option at the end of the lease term, and
  - iii. the manner of determining the amount of the additional payment that the lessee is required to make in order to exercise the option before the end of the lease term.
11. In the case of a residual obligation lease,
  - i. the amount that the lessee is required to pay to the lessor under the lease at the end of the lease term if the realizable value of the leased goods at the end of the lease term equals the estimated residual value of the lease goods, and
  - ii. a statement that the lessee’s maximum liability at the end of the lease term is the sum of,
    - A. the amount that the lessee is required to pay to the lessor under the lease at the end of the lease term if the realizable value of the leased goods at the end of the lease term equals the estimated residual value of the leased goods, and
    - B. the difference, if any, between the estimated residual value of the leased goods and the realizable value of the leased goods at the end of the lease term.

12. The circumstances, if any, in which the lessor may terminate the lease before the end of the lease term.
  13. The circumstances, if any, in which the lessee may terminate the lease before the end of the lease term.
  14. The amount or, if the amount cannot be determined at the time of the disclosure, the manner of determining the amount, of the payments, if any, that the lessee is required to make on early termination of the lease.
  15. The circumstances, if any, in which the lessee is required to make a payment in connection with the lease that is not disclosed under the preceding paragraphs and the amount or, if the amount cannot be determined at the time of the disclosure, the manner of determining the amount, of the payment.
  16. The implicit finance charge for the lease.
  17. The annual percentage rate for the lease.
  18. The total lease cost.
  19. The currency in which amounts are expressed, if it is not Canadian currency. O. Reg. 17/05, s. 74 (2).
- (3) The circumstances referred to in paragraph 15 of subsection (2) include, without limitation, unreasonable or excessive wear or use. O. Reg. 17/05, s. 74 (3).

**Consequence of non-disclosure**

- 75.** A lessee is not liable to pay the lessor,
- (a) the implicit finance charge for the lease, if the lessee does not receive a disclosure statement for the lease as required under subsection 89 (1) of the Act; or
  - (b) any amount in excess of the amount specified as the implicit finance charge for the lease in the disclosure statement received by the lessee. O. Reg. 17/05, s. 75.

**Maximum liability under residual obligation lease**

**76.** (1) For the purpose of subsection 90 (2) of the Act, the maximum liability of the lessee at the end of the lease term of a residual obligation lease, after returning the leased goods to the lessor, is the amount determined using the formula,

$$P + (V - R)$$

in which,

“P” is the amount that the lessee is required to pay to the lessor under the lease at the end of the lease term if the realizable value of the leased goods at the end of the lease term equals the estimated residual value of the lease goods,

“V” is the estimated residual value of the leased goods, and

“R” is the realizable value of the leased goods at the end of the lease term, as determined under subsections (2), (3) and (4).

O. Reg. 17/05, s. 76 (1).

(2) Subject to subsections (3) and (4), the realizable value of leased goods at the end of the lease term is the greatest of,

- (a) the price, exclusive of taxes, at which the lessor disposes of the leased goods;
- (b) 80 per cent of the estimated residual value of the leased goods; and
- (c) the amount determined by subtracting, from the estimated residual value of the leased goods, the product obtained by multiplying the average monthly payment under the lease by three. O. Reg. 17/05, s. 76 (2).

(3) If the amount determined under clause (2) (b) is the greatest of the three amounts, the realizable value of leased goods at the end of the lease term is the amount obtained by subtracting, from the amount determined under clause (2) (b), that part of the difference between the amount determined under clause (2) (b) and the amount determined under clause (2) (a) that is attributable to unreasonable or excessive wear or use of the leased goods or to damage to the leased goods for which the lessee is responsible under the lease. O. Reg. 17/05, s. 76 (3).

(4) If the amount determined under clause (2) (c) is the greatest of the three amounts, the realizable value of leased goods at the end of the lease term is the amount obtained by subtracting, from the amount determined under clause (2) (c), that part of the difference between the amount determined under clause (2) (c) and the amount determined under clause (2) (a) that is attributable to unreasonable or excessive wear or use of the leased goods or to damage to the leased goods for which the lessee is responsible under the lease. O. Reg. 17/05, s. 76 (4).

(5) Subsection 90 (2) of the Act does not apply to a lease that was entered into before the day the subsection was proclaimed in force. O. Reg. 17/05, s. 76 (5).

**Exemption from Part VIII**

**77.** A lease is exempt from the application of Part VIII of the Act,



- (a) if the leased goods are required in order for the lessor to provide a service to the lessee; or
- (b) if the periodic payments required under the lease may change during the lease term in such a way that it is not possible to determine, at the time the lessee enters into the lease, the amount of every periodic payment required under the lease or if, for any other reason, it is not possible to determine, at the time the lessee enters into the lease, the amount of every periodic payment required under the lease. O. Reg. 17/05, s. 77.

**PART IX  
PROCEDURES FOR CONSUMER REMEDIES — PART IX OF THE ACT**

**Definitions**

**78.** In this Part,

“consumer’s address” means,

- (a) subject to clause (b), the address of the consumer that is set out in the consumer agreement or, if the address of the consumer is not set out in the consumer agreement, the place where the consumer resided at the time the consumer agreement was entered into,
- (b) if the supplier knows that the address of the consumer that would be required under clause (a) has changed and knows the consumer’s current address, the consumer’s current address; (“adresse du consommateur”)

“supplier’s address” means the address of the supplier that is set out in the consumer agreement or, if the address of the supplier is not set out in the consumer agreement or the consumer did not receive a written copy of the consumer agreement,

- (a) any address of the supplier on record with the Government of Ontario or the Government of Canada, or
- (b) an address of the supplier known by the consumer. (“adresse du fournisseur”) O. Reg. 17/05, s. 78.

**Supplier obligations on cancellation**

**79.** (1) A supplier who is required to comply with subsection 96 (1) of the Act shall do so within 15 days after the day the consumer gives notice to the supplier in accordance with section 92 of the Act that the consumer is cancelling the consumer agreement. O. Reg. 17/05, s. 79 (1).

(2) A supplier who is required to return goods to a consumer under clause 96 (1) (b) of the Act shall return the goods to the consumer’s address. O. Reg. 17/05, s. 79 (2).

**Consumer obligations on cancellation of certain agreements**

**80.** (1) This section applies with respect to subsection 96 (2) of the Act, if the consumer agreement that has been cancelled is one of the following:

1. A direct agreement to which sections 42 and 43 of the Act apply.
2. A time share agreement.
3. A personal development services agreement to which sections 30 to 36 of the Act apply.
4. A consumer agreement to which section 49 of the Act applies. O. Reg. 17/05, s. 80 (1).

(2) A consumer who receives from the supplier a written request for repossession of the goods shall,

- (a) give the supplier, or a person designated by the supplier in writing, a reasonable opportunity to repossess the goods at the consumer’s address; or
- (b) return the goods to the supplier’s address. O. Reg. 17/05, s. 80 (2).

(3) In the case of goods that are created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means, a consumer who receives from the supplier a written direction to destroy the goods shall destroy the goods in accordance with such instructions as may be set out in the direction. O. Reg. 17/05, s. 80 (3).

(4) The consumer shall comply with subsection (2) or (3), as the case may be,

- (a) forthwith after the supplier complies with subsection 96 (1) of the Act; or
- (b) forthwith after receiving the written request for repossession of the goods mentioned in subsection (2) or the written direction to destroy the goods mentioned in subsection (3), as the case may be, if subsection 96 (1) of the Act does not apply because the consumer has not made any payment under the agreement or a related agreement and has not delivered any goods to the supplier under a trade-in arrangement. O. Reg. 17/05, s. 80 (4).

(5) A consumer who has not received a written request for repossession of the goods under subsection (2) or a written direction to destroy the goods under subsection (3) may return the goods to the supplier’s address. O. Reg. 17/05, s. 80 (5).

(6) The supplier shall be deemed to consent to a return of goods under clause (2) (b) or subsection (5) and is responsible for the reasonable cost of returning the goods. O. Reg. 17/05, s. 80 (6).

**Consumer obligations on cancellation of other agreements**

**81.** (1) This section applies with respect to subsection 96 (2) of the Act, if the consumer agreement that has been cancelled is one of the following:

1. An internet agreement to which sections 38 to 40 of the Act apply.
2. A remote agreement to which sections 45 to 47 of the Act apply.
3. A future performance agreement to which sections 22 to 26 of the Act apply. O. Reg. 17/05, s. 81 (1).

(2) A consumer who has not received a written direction to destroy the goods under subsection (5) shall return the goods to the supplier's address, by any method that provides the consumer with confirmation of delivery, and shall do so within 15 days after the later of,

- (a) the day the consumer gives notice to the supplier in accordance with section 92 of the Act that the consumer is cancelling the consumer agreement; and
- (b) the day the goods come into the consumer's possession. O. Reg. 17/05, s. 81 (2).

(3) Goods that are returned under subsection (2) other than by personal delivery shall be deemed to have been returned when sent by the consumer to the supplier. O. Reg. 17/05, s. 81 (3).

(4) The supplier shall be deemed to consent to a return of goods under subsection (2) and is responsible for the reasonable cost of returning the goods. O. Reg. 17/05, s. 81 (4).

(5) In the case of goods that are created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means, a consumer who receives from the supplier a written direction to destroy the goods shall destroy the goods forthwith in accordance with such instructions as may be set out in the direction. O. Reg. 17/05, s. 81 (5).

**Period of reasonable care**

**82.** For the purpose of subsection 96 (3) of the Act, the period for which a consumer who cancels a consumer agreement shall take reasonable care of the goods that came into the possession of the consumer under the agreement or a related agreement begins when the consumer gives notice to the supplier in accordance with section 92 of the Act that the consumer is cancelling the consumer agreement and ends at the earliest of the following:

1. The time the goods are destroyed under subsection 80 (3) or 81 (5).
2. The time the goods are returned under clause 80 (2) (b) or subsection 80 (5) or 81 (2).
3. The time the goods are repossessed, in the case of a consumer agreement to which section 80 applies.
4. The end of the 21st day after the day the consumer gives notice to the supplier in accordance with section 92 of the Act that the consumer is cancelling the consumer agreement if, in the case of a consumer agreement to which section 80 applies,
  - i. the consumer has received from the supplier a written request for repossession of the goods, has provided the reasonable opportunity to repossess required by clause 80 (2) (a), and the goods have not been repossessed, or
  - ii. the consumer has not received from the supplier a written request for repossession of the goods. O. Reg. 17/05, s. 82.

**Limitations on cancellation of direct agreement**

**83.** (1) This section applies upon the cancellation by a consumer of a direct agreement under section 43 of the Act, if the consumer,

- (a) solicited the goods or services from the supplier; and
- (b) requested that, within 10 days after the day the direct agreement is entered into, the supplier make delivery or commence performance under the direct agreement. O. Reg. 17/05, s. 83 (1).

(2) In the circumstances described in subsection (1), the supplier is entitled to reasonable compensation for,

- (a) goods,
  - (i) that were received by the consumer under the direct agreement before the earlier of,
    - (A) the 11th day after the day the direct agreement was entered into, and
    - (B) the time the consumer gives notice to the supplier in accordance with section 92 of the Act that the consumer is cancelling the direct agreement, and

- (ii) that cannot be repossessed by or returned to the supplier because they,
  - (A) have been used up,
  - (B) have perished, or
  - (C) have become such an integral part of other property that it would be impractical to remove them from the other property; and
- (b) services that were received by the consumer under the direct agreement before the earlier of,
  - (i) the 11th day after the day the direct agreement was entered into, and
  - (ii) the time the consumer gives notice to the supplier in accordance with section 92 of the Act that the consumer is cancelling the direct agreement. O. Reg. 17/05, s. 83 (2).
- (3) If a supplier is entitled to reasonable compensation under this section with respect to goods described in sub-subclause (2) (a) (ii) (C) or with respect to services, the obligations owed to the consumer by any person with respect to those goods or services, under the direct agreement, under a related agreement or at law, continue despite the cancellation of the direct agreement and the related agreement. O. Reg. 17/05, s. 83 (3).
- (4) A supplier who is entitled to reasonable compensation under this section may,
  - (a) deduct the amount of the reasonable compensation to which the supplier is entitled from the refund, if any, that the supplier is required to give the consumer under clause 96 (1) (a) of the Act;
  - (b) recover the amount of the reasonable compensation to which the supplier is entitled from the consumer; or
  - (c) deduct part of the amount of the reasonable compensation to which the supplier is entitled from the refund, if any, that the supplier is required to give the consumer under clause 96 (1) (a) of the Act and recover the balance from the consumer. O. Reg. 17/05, s. 83 (4).
- (5) This section applies pursuant to subsection 20 (2) of the Act. O. Reg. 17/05, s. 83 (5).

**Time for refund of illegal payment**

**84.** For the purposes of subsections 98 (2) and (4) of the Act, the refund shall be provided within 15 days after the day the consumer demands it under subsection 98 (1) of the Act. O. Reg. 17/05, s. 84.

**Cancellation or reversal of credit card charges, etc.**

**85.** (1) For the purpose of subsection 99 (4) of the Act, a request by a consumer under subsection 99 (1) of the Act shall be given to the credit card issuer within 60 days after the end of the period within which the supplier was required under the Act to refund the payment. O. Reg. 17/05, s. 85 (1).

(2) For the purpose of subsection 92 (2) of the Act, a request by a consumer to a credit card issuer under subsection 99 (1) of the Act shall be signed by the consumer and shall set out the following information:

1. The name of the consumer.
2. The number of the consumer's credit card account.
3. The expiry date set out on the consumer's credit card.
4. The name of the supplier who was required to make the refund.
5. If known, the date of the consumer agreement, if any, between the consumer and the supplier.
6. Each charge to the consumer's credit card account that the consumer is requesting the credit card issuer to cancel or reverse, including,
  - i. the amount of the charge,
  - ii. the date the charge was posted, and
  - iii. a description of the consumer transaction that resulted in the charge.
7. If the charge to be cancelled or reversed relates to a payment in respect of a consumer agreement that has been cancelled under the Act,
  - i. a statement to that effect,
  - ii. the date the agreement was cancelled, and
  - iii. the method used by the consumer to give the supplier notice of cancellation.
8. If the charge to be cancelled or reversed relates to a payment that was received in contravention of the Act,
  - i. a statement to that effect,

- ii. the date the consumer demanded the refund, and
  - iii. the method used by the consumer to give the supplier notice demanding the refund.
9. If the charge to be cancelled or reversed relates to a payment that was collected in respect of unsolicited goods or services for which payment is not required under section 13 of the Act,
- i. a statement to that effect,
  - ii. the date the consumer demanded the refund, and
  - iii. the method used by the consumer to give the supplier notice demanding the refund. O. Reg. 17/05, s. 85 (2).

(3) For the purpose of clause 99 (5) (a) of the Act, the credit card issuer shall acknowledge the consumer's request within 30 days after the day the consumer's request is given to the credit card issuer in accordance with section 92 of the Act. O. Reg. 17/05, s. 85 (3).

(4) For the purpose of clause 99 (5) (b) of the Act, the prescribed period begins when the consumer's request is given to the credit card issuer in accordance with section 92 of the Act and ends on the date of the second statement of account that the credit card issuer delivers to the consumer after the consumer's request was given to the credit card issuer. O. Reg. 17/05, s. 85 (4).

## PART X PUBLIC RECORD — SUBSECTION 103 (2) OF THE ACT

### Requirements for maintenance of public record

**86.** The following requirements for the maintenance of the public record are prescribed for the purpose of subsection 103 (2) of the Act:

1. The Director shall make the material described in paragraphs 1 to 4 of subsection 103 (2) of the Act available to the public, from time to time,
  - i. by posting it on a Government of Ontario website,
  - ii. by orally disclosing it to telephone callers who request it, and
  - iii. in printed form.
2. The Director shall ensure that the material remains available to the public, as described in subparagraphs 1 i, ii and iii, for a period of at least 21 months and not more than 27 months.
3. If the material made available under paragraph 1 is information in respect of a charge described in section 88 and if the person charged is no longer charged and has not been found guilty of the charge, then paragraph 2 does not apply to the material and the Director shall immediately cease to make the material available.
4. Despite paragraph 2, the Director may make the policies established under subsection 103 (2.1) of the Act available to the public indefinitely. O. Reg. 17/05, s. 86; O. Reg. 96/09, s. 9; O. Reg. 488/17, s. 2.

### Orders made

**87.** Orders made under sections 110, 111, 112, 115 and 119 of the Act are prescribed for the purpose of paragraph 4 of subsection 103 (2) of the Act. O. Reg. 17/05, s. 87.

### Charges laid

**88.** For the purpose of paragraph 4 of subsection 103 (2) of the Act, the following information is prescribed in respect of each person who is currently charged with a charge that has been laid, on or after the day this section comes into force, under section 116 of the Act or under the *Bailiffs Act*, the *Collection and Debt Settlement Services Act*, the *Consumer Reporting Act*, the *Payday Loans Act, 2008* or the *Wireless Services Agreements Act, 2013* or who has been found guilty of such a charge:

1. The name of the person against whom the charge was laid, as known to the Ministry.
2. Any business names used by the person, as known to the Ministry.
3. The person's business address, business telephone number, business fax number and business e-mail address, if known to the Ministry.
4. With respect to each charge laid against the person,
  - i. the Act under which the charge was laid and a description of the charge,
  - ii. the date on which the charge was laid, and

- iii. if the person is found guilty of the charge, a description of the disposition of the charge, including any sentence that was imposed and any order to pay compensation or make restitution that was made. O. Reg. 17/05, s. 88; O. Reg. 96/09, s. 10; O. Reg. 56/14, s. 1; O. Reg. 488/17, s. 3.

#### Actions taken

**89.** For the purpose of paragraph 4 of subsection 103 (2) of the Act, the following information is prescribed in respect of each person who is required to hold a permit or to be appointed, licensed or registered under the *Bailiffs Act*, the *Collection and Debt Settlement Services Act*, the *Consumer Reporting Act*, the *Payday Loans Act, 2008* or the *Wireless Services Agreements Act, 2013* and against whom action, other than laying a charge, has been taken under that Act on or after the day this section comes into force:

1. The name of the person against whom the action was taken, as known to the Ministry.
2. Any business names used by the person, as known to the Ministry.
3. The person's business address, business telephone number, business fax number and business e-mail address, if known to the Ministry.
4. With respect to each action taken against the person,
  - i. the Act under which the action was taken and a description of the action taken,
  - ii. the ground for taking the action,
  - iii. the date on which the action was taken, and
  - iv. the final result of the action, including the revocation or suspension of an appointment, a licence or a registration, if any. O. Reg. 17/05, s. 89; O. Reg. 96/09, s. 11; O. Reg. 56/14, s. 2; O. Reg. 488/17, s. 3.

#### Complaints received

**90.** (1) If all of the conditions set out in subsection (2) are met, the following information is prescribed for the purpose of paragraph 4 of subsection 103 (2) of the Act, in respect of each person about whom the Director receives, on or after the day this section comes into force, a complaint dealing with conduct that may be in contravention of the Act or in contravention of the *Bailiffs Act*, the *Collection and Debt Settlement Services Act*, the *Consumer Reporting Act*, the *Payday Loans Act, 2008* or the *Wireless Services Agreements Act, 2013*, whether the conduct constitutes an offence or not:

1. The name of the person to whom the complaint relates, as known to the Ministry.
2. Any business names used by the person, as known to the Ministry.
3. The person's business address, business telephone number, business fax number and business e-mail address, if known to the Ministry.
4. The number of complaints received by the Director about the person.
5. The substance and disposition of each complaint.
6. With respect to each complaint, whether a charge was laid against the person as described in section 88 and whether any action was taken against the person as described in section 89, and,
  - i. if a charge was laid, the information required by paragraph 4 of section 88, and
  - ii. if action was taken, the information required by paragraph 4 of section 89. O. Reg. 17/05, s. 90 (1); O. Reg. 96/09, s. 12 (1); O. Reg. 56/14, s. 3; O. Reg. 488/17, s. 4 (1).

(2) The information described in subsection (1) is prescribed for the purpose of paragraph 4 of subsection 103 (2) of the Act, only if all of the following conditions are met:

1. The complaint received by the Director is in writing, identifies the complainant as a consumer and asserts that the complainant gave or attempted to give notice of the substance of the complaint to the person about whom the complaint is made.
2. At least one of the following applies,
  - 0.i the complaint is made with respect to the *Collection and Debt Settlement Services Act* or the *Consumer Reporting Act*,
  - i. the complainant's total potential payment obligation under the consumer transaction to which the complaint relates, excluding the cost of borrowing, exceeds \$100 if the transaction is not governed by the *Payday Loans Act, 2008*, or
  - ii. the amount of the advance under a payday loan agreement, as defined in subsection 1 (1) of the *Payday Loans Act, 2008*, to which the complaint relates exceeds \$100.

3. Either,

- i. Ministry staff gave notice of the substance of the complaint by mail, telephone discussion, telephone message, fax or e-mail on two separate occasions no more than 20 days apart to the person about whom the complaint was made, and,
  - A. within 20 days after the day the second notice was given, the person did not remedy the situation to the satisfaction of the complainant or otherwise respond to the substance of the complaint and did not request an additional 10 days to do so, or
  - B. within 20 days after the day the second notice was given, the person requested an additional 10 days to remedy the situation or otherwise respond to the substance of the complaint, but within the additional 10 days, the person did not remedy the situation to the satisfaction of the complainant or otherwise respond to the substance of the complaint, or
- ii. Ministry staff made at least two attempts to give notice of the substance of the complaint to the person about whom the complaint was made by any combination of mail, telephone, fax or e-mail, but the mail was returned or Ministry staff were unable to have a telephone discussion with the person, leave a telephone message, send a fax or send an e-mail. O. Reg. 17/05, s. 90 (2); O. Reg. 96/09, s. 12 (2); O. Reg. 488/17, s. 4 (2, 3).

(3) Information that is prescribed under this section ceases to be so prescribed if the person about whom the complaint was made proves, to the satisfaction of the Director, that,

- (a) the person did not receive notice of the complaint from Ministry staff; and
- (b) the person has remedied the situation to the satisfaction of the complainant or otherwise responded to the substance of the complaint. O. Reg. 17/05, s. 90 (3).

**Notice of contravention issued by inspector**

**91.** (1) Subsection (2) applies only if,

- (a) an inspector has conducted an inspection under the Act, the *Collection and Debt Settlement Services Act* or the *Payday Loans Act, 2008* with respect to a person;
- (b) the inspector has issued a notice to the person mentioned in clause (a) that the person appears to be contravening the Act, the *Collection and Debt Settlement Services Act* or the *Payday Loans Act, 2008*, as the case may be; and
- (c) the person mentioned in clause (a) has failed to correct contraventions identified in the notice to the satisfaction of the Director by the date that the Ministry determines and of which the person has been advised. O. Reg. 488/17, s. 5.

(2) The following information is prescribed for the purpose of paragraph 4 of subsection 103 (2) of the Act in respect of each person to whom an inspector, in conducting an inspection under the Act, the *Collection and Debt Settlement Services Act* or the *Payday Loans Act, 2008* has issued a notice described in subsection (1):

1. The name of the person, as known to the Ministry.
2. Any business names used by the person, as known to the Ministry.
3. The person's business address, business telephone number, business fax number and business e-mail address, if known to the Ministry.
4. The number of such notices that an inspector has issued to the person in respect of which the person has failed to correct contraventions, as required by clause (1) (c). O. Reg. 488/17, s. 5.

**PART XI**  
**PRESCRIBED JURISDICTIONS — PART XI OF THE ACT**

**Prescribed jurisdictions**

**92.** The following jurisdictions are prescribed for the purpose of subsection 122 (2) of the Act:

1. Canada.
2. Every province and territory of Canada other than Ontario. O. Reg. 17/05, s. 92.

**93.** OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 17/05, s. 93.

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# Electricity Act, 1998

## S.O. 1998, CHAPTER 15 Schedule A

**Consolidation Period:** From January 1, 2022 to the [e-Laws currency date](#).

Last amendment: 2021, c. 34, Sched. 9.

### PART VIII ELECTRICAL SAFETY

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## Definitions

**112.1** In this Part,

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 112.1 of the Act is amended by adding the following definition: (See: 2021, c. 34, Sched. 9, s. 3)

“administrative penalty” means an administrative penalty imposed under subsection 113.18.1 (1); (“pénalité administrative”)

“Authority” means the Electrical Safety Authority; (“Office”)

“authorization” means a licence, certificate or registration issued under this Part, despite the definition of “licence” in subsection 2 (1); (“autorisation”)

“Director” means a person appointed as a Director under this Part; (“directeur”)

“inspector” means an inspector appointed under this Part; (“inspecteur”)

“investigator” means an investigator appointed under this Part; (“enquêteur”)

“person” means an individual, a corporation, an association, a partnership or any other entity; (“personne”)

“regulations” means the regulations made under this Part, despite the definition of “regulations” in subsection 2 (1). (“règlements”) 2004, c. 19, s. 12 (2); 2006, c. 34, s. 12 (1).

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

2004, c. 19, s. 12 (1, 2) - 30/11/2005

2006, c. 34, s. 12 (1) - 01/01/2008

2021, c. 34, Sched. 9, s. 3 - not in force

## Electrical Safety

### Regulations, LG in C

**113 (1)** The Lieutenant Governor in Council may make regulations,

- prescribing the design, construction, installation, protection, use, maintenance, repair, extension, alteration, connection and disconnection of all works, matters and things used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario;
- prohibiting the use, advertising, display, offering for sale, or other disposal, and the sale or other disposal, publicly or privately, in Ontario, of any such works, matters and things unless and until they have been inspected and approved, or deemed approved;
- prescribing the precautions to be taken in the sale or other disposal of such works, matters and things and the warnings and instructions to be given to purchasers and others in advertisements, by circular, labelling, including by tag, seal or other form of labelling, or otherwise, to prevent their use in such manner or under such conditions as may be likely to result in undue hazard to persons or property;
- providing for the inspection, test and approval of such works, matters and things before being used in the generation, transmission, distribution, retail or use of electricity in Ontario, and for a process for granting, renewing, suspending, revoking and reinstating approvals for the works, matters and things before they are used for any of those purposes;
- requiring compliance with any code, standard, guideline or procedure under a rule of a person retailing electricity to such works, matters and things. 2006, c. 34, s. 12 (2).

### Regulations, Minister

(2) The Minister may make regulations,



- (a) adopting by reference, in whole or in part, with such changes as the Minister considers necessary or advisable, any code or standard that governs any matter set out in subsection (1) and requiring compliance with any code or standard that is so adopted;
- (b) establishing a code of ethics and a committee for the purpose of governing the conduct of authorization holders. 2006, c. 34, s. 12 (2).

**Rolling incorporation**

(3) If a regulation under clause (2) (a) so provides, a code or standard adopted by reference shall be a reference to it, as amended from time to time, whether before or after the regulation is made. 2006, c. 34, s. 12 (2); 2009, c. 33, Sched. 10, s. 6.

**Delegation**

(4) Despite subsection 3 (4) of the *Safety and Consumer Statutes Administration Act, 1996*, the Minister may, by regulation, delegate to the Authority the power to make some or all of the regulations under clause (2) (a) or (b). 2006, c. 34, s. 12 (2).

**Temporary codes, testing organizations, variations**

- (5) A director may, in writing,
  - (a) authorize, subject to such conditions as may be specified and for a limited time, the use of codes, standards, guidelines, plans, specifications and procedures or changes to codes, standards, guidelines, plans, specifications and procedures necessary to accommodate new developments or technological advances and require compliance with them and permit, subject to such conditions as may be specified, variances from them;
  - (b) designate organizations to test any thing for which standards, plans or specifications are established under this Part and provide for and require the placing of the organization's label on the thing or any parts of the thing that conform to the standards, plans or specifications;
  - (c) subject to such conditions as he or she may specify, allow a variance from any regulation made by the Minister under clause (2) (a) if, in his or her opinion, the variance would not detrimentally affect the safe use of the thing to which the regulation applies or the health or safety of any person. 2006, c. 34, s. 12 (2).

**Legislation Act, 2006, Part III**

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to subsection (5). 2006, c. 34, s. 12 (2, 19).

**Issuing of plans and specifications**

(7) The Authority may, in accordance with the regulations, prepare and issue plans and specifications governing the design, construction and test of works, matters and things used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario, and may alter such plans and specifications. 2006, c. 34, s. 12 (2).

**Appointment of persons to inspect and test**

(8) The Authority may appoint persons, associations or organizations having, in the opinion of the Authority, special knowledge and facilities to inspect, test and report on any works, matters and things mentioned in subsection (1). 2006, c. 34, s. 12 (2).

**Prohibition on holding out**

(9) No person shall hold himself out as a person who has been appointed under subsection (8) if the person has not been so appointed. 2006, c. 34, s. 12 (2).

**Approval by adoption of report**

(10) The Authority may approve any work, matter and thing mentioned in subsection (1) by adopting a report made under subsection (8), or otherwise, as the Authority considers advisable. 2006, c. 34, s. 12 (2).

**Orders relating to installations, alterations, etc.**

(11) The Authority may issue such orders relating to work to be done, or the removal of things used, in the installation, removal, alteration, repair, protection, connection or disconnection of any of the works, matters and things mentioned in subsection (1) as the Authority considers necessary or advisable for the safety of persons or the protection of property and, in any such order or after having made it, the Authority may order any person to cease and desist from doing anything intended or likely to interfere with the terms of the order. 2006, c. 34, s. 12 (2).

**Offences**

(12) Every person,

- (a) disturbing or interfering with an inspector or other officer in the performance of the inspector's or officer's duty under this section is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both;
- (b) refusing or neglecting to comply with this section, or with any regulation, plan or specification made under its authority, is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both;
- (c) refusing or neglecting to comply with an order issued by the Authority under subsection (11) is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than \$5,000 for each day upon which such refusal or neglect is repeated or continued. 2006, c. 34, s. 12 (2).

#### **Same, corporation**

(13) A corporation that is guilty of an offence described in subsection (12) is liable, on conviction, to a fine of not more than \$1,000,000. 2006, c. 34, s. 12 (2).

#### **Section not to apply to mines**

(14) This section does not apply to a mine as defined in the *Mining Act*, save only as regards any dwelling house or other building not connected with or required for mining operations or purposes or used for the treatment of ore or mineral. 2006, c. 34, s. 12 (2).

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

2004, c. 19, s. 12 (3, 4) - 30/11/2005

2005, c. 33, s. 6 (1, 2) - 15/12/2005

2006, c. 34, s. 12 (2, 19) - 15/08/2007

2009, c. 33, Sched. 10, s. 6 - 15/12/2009

2012, c. 8, Sched. 11, s. 46 (1) - no effect - see 2020, c. 14, Sched. 8, s. 21 - 14/07/2020

#### **Prohibitions**

##### **Causing damage**

**113.0.1** (1) No person shall damage or cause any damage to any work, matter or thing used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario. 2006, c. 34, s. 12 (3).

##### **Interference**

(2) No person shall interfere with any work, matter or thing used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario in the course of alterations or repairs to non-electrical equipment or structures except where it is necessary to disconnect or move components of an electrical installation, in which event it shall be the responsibility of the person carrying out the alterations or repairs to ensure that the electrical installation is restored to a safe operating condition as soon as the progress of the alterations or repairs permits. 2006, c. 34, s. 12 (3).

##### **Removal of labels**

(3) No person shall, without the consent of the Director, remove any label, tag, seal or warning, as prescribed by the regulations, applied by the Authority to any work, matter or thing used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario. 2006, c. 34, s. 12 (3).

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

2006, c. 34, s. 12 (3) - 01/10/2007

#### **Director**

**113.1** (1) The Authority may appoint one or more Directors for the purposes of this Part. 2004, c. 19, s. 12 (5).

#### **Restrictions**

(2) An appointment is subject to the restrictions, limitations and conditions that the Authority sets out in it. 2004, c. 19, s. 12 (5).

#### **Powers**

(3) Unless otherwise stated in the appointment, a Director,

- (a) may supervise and direct inspectors and other persons responsible for administering or enforcing this Part, the regulations or an order of the Authority; and
- (b) is an inspector and may exercise any of the powers and perform any of the duties of an inspector. 2004, c. 19, s. 12 (5).

### **Delegation**

(4) A Director may delegate in writing any of his or her powers or duties to any person, subject to the restrictions, limitations and conditions that the Director sets out in the delegation. 2004, c. 19, s. 12 (5).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 113.1 of the Act is amended by adding the following subsection: (See: 2021, c. 34, Sched. 9, s. 4)**

### **Exception**

(4.1) Despite subsection (4), a Director shall not delegate the power to impose an administrative penalty under subsection 113.18.1 (1). 2021, c. 34, Sched. 9, s. 4.

### **Document of appointment**

(5) The Authority shall issue to each Director a document establishing his or her appointment, and the Director shall produce it on request. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

2021, c. 34, Sched. 9, s. 4 - not in force

### **Authorization**

**113.2** (1) Except as provided in the regulations, no person shall carry out or propose to carry out, or permit or employ another person to carry out, an activity referred to in the regulations as requiring an authorization without first obtaining an authorization in accordance with this Part and the regulations. 2006, c. 34, s. 12 (4).

### **Refusal, suspension, etc.**

(2) A Director may refuse to grant an applicant an authorization for the carrying out of activities or may refuse to renew, may suspend or may revoke an authorization holder's authorization for the carrying out of activities, if the Director has reason to believe that,

- (a) the applicant or authorization holder will not carry out the activities in accordance with the law;
- (b) the applicant or authorization holder will not carry out the activities safely;
- (c) the applicant or authorization holder lacks the basic resources necessary to carry out the activities;
- (d) the applicant or authorization holder will not conduct himself or herself with honesty and integrity or in accordance with the principle of protecting consumers;
- (e) the applicant or authorization holder lacks the training, experience, qualifications or skills prescribed by the regulations;
- (f) the applicant or authorization holder failed to comply with or to meet a requirement of this Part, the regulations or an order of the Authority;
- (g) the authorization holder failed to comply with a restriction, limitation or condition of the authorization;
- (h) the authorization holder obtained the authorization through misrepresentation or fraud; or
- (i) the authorization holder permitted an unauthorized person to carry out the activities. 2004, c. 19, s. 12 (5).

### **Conditions**

(3) An authorization is subject to,

- (a) the restrictions, limitations and conditions that are prescribed by the regulations; and
- (b) the restrictions, limitations and conditions that are imposed by a Director. 2004, c. 19, s. 12 (5).

### **Compliance with regulations**

(4) In imposing a restriction, limitation or condition on an authorization, a Director shall comply with the rules prescribed by the regulations. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

2006, c. 34, s. 12 (4) - 15/08/2007

### **Notice of proposal**

**113.3** (1) Subject to subsection (2), a Director who proposes any of the following shall serve notice of the proposal, together with written reasons, on the applicant or authorization holder:

1. To grant an authorization subject to restrictions, limitations or conditions imposed on it by the Director.
2. To renew an authorization subject to restrictions, limitations or conditions imposed on it by the Director.
3. To refuse to grant an authorization.
4. To refuse to renew an authorization.
5. To suspend an authorization.
6. To revoke an authorization. 2004, c. 19, s. 12 (5).

### **Exceptions**

(2) A notice of proposal is not required,

- (a) in the case of a provisional suspension of an authorization, or a provisional refusal to renew an authorization, under section 113.5;
- (b) in the case of a refusal to grant or renew an authorization, or a suspension of an authorization, under section 113.6. 2004, c. 19, s. 12 (5).

### **Service of notice**

(3) The Director may serve the notice of proposal personally or by registered mail addressed to the applicant or authorization holder at the last address known to the Director, by fax or by any other form of electronic transmission if there is a record that the notice has been sent. 2004, c. 19, s. 12 (5).

### **Deemed service, registered mail**

(4) If registered mail is used, the notice shall be deemed to have been served on the third day after the day of mailing, unless the person on whom notice is being served satisfies the Director that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date. 2004, c. 19, s. 12 (5).

### **Deemed service, electronic transmission**

(5) If a fax or any other form of electronic transmission is used, the notice shall be deemed to have been served on the day after the fax was sent or the other transmission was made, unless the person on whom notice is being served satisfies the Director that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

### **Hearing**

**113.4** (1) A notice of proposal shall inform the applicant or authorization holder that the applicant or holder has a right to a hearing before the Director if the applicant or holder applies to the Director for the hearing within 15 days after being served with the notice. 2004, c. 19, s. 12 (5).

### **Extension of time**

(2) The Director may extend the time for applying for a hearing, either before or after the 15-day period expires, if he or she is satisfied that,

- (a) there are reasonable grounds for granting the extension; and
- (b) there are apparent grounds for granting to the applicant or authorization holder the relief sought at the hearing. 2004, c. 19, s. 12 (5).

### **Directions**

(3) In granting an extension, the Director may give any directions he or she considers appropriate. 2004, c. 19, s. 12 (5).

**If no hearing requested**

(4) If the applicant or authorization holder does not apply for a hearing in accordance with this section, the Director may carry out the proposal stated in the notice of proposal. 2004, c. 19, s. 12 (5).

**If hearing requested**

(5) If the applicant or authorization holder applies for a hearing in accordance with this section, the Director shall set a time for and hold the hearing, after issuing a notice of hearing to the applicant or authorization holder. 2004, c. 19, s. 12 (5).

**Findings of fact**

(6) The findings of fact made by the Director upon the hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*. 2004, c. 19, s. 12 (5).

**Decision**

- (7) After the hearing, the Director may carry out the proposal stated in the notice of proposal if,
- (a) in the case of a proposal mentioned in paragraph 3, 4, 5 or 6 of subsection 113.3 (1), the Director is satisfied that any of the grounds set out in subsection 113.2 (2) exists; or
  - (b) in the case of a proposal mentioned in paragraph 1 or 2 of subsection 113.3 (1), the Director is satisfied that the imposition of the restrictions, limitations and conditions complies with the rules mentioned in subsection 113.2 (4). 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

**Provisional suspension or refusal to renew if safety involved**

**113.5** (1) A Director may, by serving notice on an authorization holder and without a hearing, provisionally suspend or provisionally refuse to renew the holder's authorization if, in the Director's opinion, the carrying on of the activities under the authorization is an immediate threat to public safety or the safety of any person. 2004, c. 19, s. 12 (5).

**Notice**

(2) A notice under subsection (1) shall state the Director's reasons for the decision to provisionally suspend or provisionally refuse to renew the authorization and shall inform the authorization holder that the holder has a right to a hearing before the Director if the holder applies to the Director for the hearing within 15 days after being served with the notice. 2004, c. 19, s. 12 (5).

**Application of provisions**

(3) Subsections 113.3 (3), (4) and (5) apply with respect to a notice under this section and subsections 113.4 (2), (3), (5) and (6) apply for the purposes of a hearing under this section. 2004, c. 19, s. 12 (5).

**Decision**

- (4) After the hearing,
- (a) if the Director is satisfied that a ground set out in subsection 113.2 (2) exists, the Director may suspend, revoke or refuse to renew the authorization;
  - (b) if the Director is satisfied that no ground set out in subsection 113.2 (2) exists, the Director,
    - (i) shall reinstate the suspended authorization, or
    - (ii) shall renew the authorization and may impose restrictions, limitations or conditions on the authorization in accordance with subsection 113.2 (4). 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

**Default in payment**

- 113.6** (1) A Director may refuse to grant or to renew an authorization or may suspend an authorization, if,
- (a) the applicant or authorization holder is in default of the payment of a fee, an administrative penalty, a cost or another charge owing to the Authority; or

(b) the applicant or authorization holder is in default of the payment of a fine imposed on conviction for an offence under this Part. 2004, c. 19, s. 12 (5).

#### **Notice and hearing not required**

(2) A Director is not required to give notice or to hold a hearing before acting under subsection (1). 2004, c. 19, s. 12 (5).

#### **Granting of authorization or renewal**

(3) If an application for an authorization or for the renewal of an authorization is refused under subsection (1), the applicant is entitled to the authorization or renewal on providing proof to the Director that the applicant is no longer in default. 2004, c. 19, s. 12 (5).

#### **Reinstatement of suspended authorization**

(4) If an authorization is suspended under subsection (1), the authorization holder is entitled to have the authorization reinstated on providing proof to the Director that the authorization holder is no longer in default. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

#### **Opportunities before hearing**

**113.7** (1) A notice of hearing issued by a Director under this Part shall afford to the applicant or authorization holder a reasonable opportunity to show or to achieve, before the hearing, compliance with all lawful requirements for the granting, retention or renewal of the authorization. 2004, c. 19, s. 12 (5).

#### **Examination of documentary evidence**

(2) The applicant or authorization holder shall be given an opportunity to examine, before a hearing by a Director under this Part, any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

#### **Recording of evidence**

**113.8** (1) The oral evidence taken before a Director at a hearing under this Part shall be recorded at the request of the applicant, the authorization holder or the Director, and the recording shall be at the cost of the person making the request. 2004, c. 19, s. 12 (5).

#### **Transcript**

(2) If copies of the transcript are requested, they shall be provided at the cost of the person making the request. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

#### **Conflict**

**113.9** If, under the *Safety and Consumer Statutes Administration Act, 1996*, this Part is designated legislation to be administered by a designated administrative authority, and if a regulation made under clause 15 (1) (c) of that Act requires that, before an appeal to the Divisional Court is made under section 113.10 of this Act, a review panel must review the decision made by a Director after a hearing under this Act, that regulation prevails over this Part to the extent of any conflict. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

2012, c. 8, Sched. 11, s. 46 (2) - no effect - see 2020, c. 14, Sched. 8, s. 21 - 14/07/2020

#### **Appeal after hearing**

**113.10** (1) An applicant or authorization holder may appeal to the Divisional Court if, after a hearing, a Director does any of the following:

1. Grants the authorization subject to restrictions, limitations or conditions imposed on it by the Director.

2. Renews the authorization subject to restrictions, limitations or conditions imposed on it by the Director.
3. Refuses to grant the authorization.
4. Refuses to renew the authorization.
5. Suspends the authorization.
6. Revokes the authorization. 2004, c. 19, s. 12 (5).

### **How to appeal**

(2) To appeal under this section, the applicant or authorization holder must file a notice of appeal with the court within 30 days after receiving notice of the Director's decision. 2004, c. 19, s. 12 (5).

### **Director is party**

(3) The Director is a party to the appeal. 2004, c. 19, s. 12 (5).

### **Decision**

(4) In deciding the appeal, the court may order the Director to take such action as the court considers proper. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

### **Continuation of authorization**

#### **Continuation upon renewal application**

**113.11** (1) If, within the time prescribed by the regulations, or, if no time is prescribed, before the expiry of the authorization, an authorization holder applies to a Director for renewal of the authorization, the authorization continues to be valid,

- (a) until the Director renews the authorization, unless clause (b), (c) or (d) applies;
- (b) until the Director provisionally refuses to renew the authorization under subsection 113.5 (1);
- (c) until the Director refuses to renew the authorization under subsection 113.6 (1);
- (d) subject to subsection (3), if the authorization holder is served with a notice under section 113.3 that the Director proposes to refuse to renew the authorization, or if the Director refuses to renew the authorization under subsection 113.5 (4),
  - (i) until the time for applying for a hearing by the Director under section 113.4 or 113.5 expires, unless subclause (ii) applies,
  - (ii) if the holder applies for a hearing in accordance with section 113.4 or 113.5,
    - (A) until the Director renews the authorization following the hearing, or
    - (B) if the Director refuses to renew the authorization following the hearing,
      - (1) until the time for filing a notice of appeal with the Divisional Court under section 113.10 expires, unless sub-sub-subclause 2 applies,
      - (2) if the holder files a notice of appeal with the Divisional Court in accordance with section 113.10, until the final disposition of the appeal. 2004, c. 19, s. 12 (5).

#### **Continuation after suspension, revocation**

(2) Subject to subsection (3), if a Director suspends or revokes an authorization under subsection 113.4 (7) or 113.5 (4), the suspension or revocation does not take effect,

- (a) until the time for filing a notice of appeal with the Divisional Court under section 113.10 expires, unless clause (b) applies;
- (b) if a notice of appeal is filed with the Divisional Court in accordance with section 113.10, until the final disposition of the appeal. 2004, c. 19, s. 12 (5).

### **Threat to safety**

(3) If, in a Director's opinion, there is or may be a threat to public safety or to the safety of any person, the Director may specify that,

- (a) the authorization in respect of which the renewal application has been made ceases to be valid earlier than the time specified in clause (1) (d); or
- (b) the suspension or revocation referred to in subsection (2) takes effect earlier than the time specified in subsection (2). 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

### **Compliance order**

**113.12** (1) If it appears to a Director that a person is not complying with subsection 113.2 (1), with a regulation made under the authority of clause 113.22 (1) (e) or with a restriction, limitation or condition of an authorization, the Director may apply to a judge of the Superior Court of Justice for an order directing compliance. 2004, c. 19, s. 12 (5).

### **Same**

(2) The judge may make any order he or she considers just. 2004, c. 19, s. 12 (5).

### **Clarification**

(3) A Director may make an application under subsection (1) even if a penalty or another sanction has been applied against the person in respect of the failure to comply and regardless of any other rights the person may have. 2004, c. 19, s. 12 (5).

### **Appeal**

(4) An appeal lies to the Divisional Court from an order made under subsection (2). 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

### **Definition**

**113.12.1** In sections 113.13 to 113.14.3,

“electrical product or device” means any thing used or to be used in the generation, transmission, distribution, retail or use of electricity. 2006, c. 34, s. 12 (5).

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

2006, c. 34, s. 12 (5) - 01/01/2008

### **Inspections**

**113.13** (1) The Authority or a person appointed as an inspector in writing by the Authority may conduct an inspection and may, as part of that inspection, enter and inspect at any reasonable time any land or premises, including the business premises of an authorization holder, for the purpose of,

- (a) ensuring compliance with this Act and the regulations; or
- (b) determining that the authorization holder remains entitled to the authorization. 2006, c. 34, s. 12 (6).

### **Limitations on power to enter**

(2) An inspector shall not,

- (a) use force to enter and inspect land and premises under this section; or
- (b) enter any part of premises that are being used as a dwelling, except with the consent of the owner or occupier. 2006, c. 34, s. 12 (6).

### **Identification**

(3) An inspector shall produce, on request, evidence of his or her appointment as an inspector. 2006, c. 34, s. 12 (6).

### **Powers on inspection**

(4) An inspector conducting an inspection on any land or in any premises, including premises of an authorization holder, may,



- (a) examine all documents, records, electrical products, devices and other things that are relevant to the inspection;
- (b) require a person on the premises being inspected to produce a document, record or other thing that is relevant to the inspection;
- (c) use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or a record that is relevant to the inspection and that is in any form; and
- (d) subject to subsection (5), on giving a receipt for it, remove any thing relevant to the inspection, including a document, a record, a data storage disk or a retrieval device needed to produce information. 2006, c. 34, s. 12 (6).

**Electrical product not included**

(5) An electrical product or device may not be removed under clause (4) (d). 2006, c. 34, s. 12 (6).

**Obligation to produce and assist**

(6) A person who is required to produce a document, record, electrical product or device, or other thing under clause (4) (b) 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 information or a record that is relevant to the inspection and that is in any form. 2006, c. 34, s. 12 (6).

**Obstruction prohibited**

(7) No person shall obstruct an inspector executing his or her duties or withhold from him or her or conceal, alter or destroy any document, record, electrical product or device or other thing that is relevant to the inspection. 2006, c. 34, s. 12 (6).

**Copy and return of removed things**

(8) An inspector who removes any document, record or other thing under clause (4) (d) may make a copy of it and shall promptly return it to the person being inspected. 2006, c. 34, s. 12 (6).

**Admissibility of copies**

(9) 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. 2006, c. 34, s. 12 (6).

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

2004, c. 19, s. 12 (5) - 30/11/2005

2006, c. 34, s. 12 (6) - 01/01/2008

**Order to turn over or retain electrical product or device**

**113.13.1** (1) An inspector who is lawfully present in a place and who believes on reasonable grounds that an electrical product or device in the place is being sold or offered for sale in contravention of this Part or the regulations may order, orally or in writing, a person in the place,

- (a) to turn the electrical product or device over to the inspector; or
- (b) to retain and preserve the electrical product or device in accordance with the regulations. 2006, c. 34, s. 12 (6).

**Obligation to retain electrical product or device**

(2) A person who fails to immediately comply with an order to turn over the electrical product or device issued under subsection (1) shall retain and preserve the electrical product or device that was the subject of the order in accordance with the regulations. 2006, c. 34, s. 12 (6).

**Inspector to inform director**

(3) When an inspector issues an order under subsection (1), he or she shall promptly inform the director and, where the order is in writing, provide him or her with a copy of the order. 2006, c. 34, s. 12 (6).

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

2006, c. 34, s. 12 (6) - 01/01/2008

**Warrant to seize electrical product or device**

**113.13.2** (1) On application made without notice by an inspector appointed under subsection 113.13 (1), a justice of the peace may issue a warrant if he or she is satisfied on information under oath that there is reasonable ground for believing that,

- (a) an inspector issued an order to turn over an electrical product or device or to retain and preserve such a product or device under subsection 113.13.1 (1);
- (b) the person who was issued the order failed to comply with it; and
- (c) the electrical product or device was being sold or offered for sale in contravention of this Part or the regulations. 2006, c. 34, s. 12 (6).

#### **Powers under warrant**

(2) Subject to any conditions contained in the warrant, a warrant issued under subsection (1) authorizes an inspector appointed under subsection 113.13 (1) to,

- (a) enter or access the place in which a person is required to retain and preserve the electrical product or device under clause 113.13.1 (1) (b) and subsection 113.13.1 (2);
- (b) require a person to produce the electrical product or device in question; and
- (c) seize the electrical product or device in question. 2006, c. 34, s. 12 (6).

#### **Obligation to produce and assist**

(3) A person who is required to do so by an inspector under clause (2) (b) shall produce the electrical product or device in question. 2006, c. 34, s. 12 (6).

#### **Entry of dwelling**

(4) Despite subsection (2), an inspector shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling unless,

- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice of the peace authorizes the entry into the dwelling. 2006, c. 34, s. 12 (6).

#### **Conditions on search warrant**

(5) A warrant shall contain such conditions as the justice of the peace considers advisable to ensure that any entry and seizure authorized by the warrant is reasonable in the circumstances. 2006, c. 34, s. 12 (6).

#### **Assistance**

(6) A warrant may authorize persons who have special, expert or professional knowledge, and such other persons as may be necessary, to accompany and assist the inspector in respect of the execution of the warrant. 2006, c. 34, s. 12 (6).

#### **Time of execution**

(7) An entry or access under a warrant shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2006, c. 34, s. 12 (6).

#### **Expiry of warrant**

(8) A warrant 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, on application without notice by the inspector, extend the date of expiry for an additional period of no more than 30 days. 2006, c. 34, s. 12 (6).

#### **Use of force**

(9) An inspector may call upon police officers for assistance in executing a warrant and the inspector may use whatever force is reasonably necessary to execute the warrant. 2006, c. 34, s. 12 (6).

#### **Obstruction**

(10) No person shall obstruct an inspector executing a warrant. 2006, c. 34, s. 12 (6).

#### **Inspector to inform director**

(11) When an inspector seizes an electrical product or device under this section, he or she shall promptly inform the director. 2006, c. 34, s. 12 (6).

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

2006, c. 34, s. 12 (6) - 01/01/2008

### **Release or forfeiture of electrical product or device**

**113.13.3** (1) This section applies in respect of an electrical product or device that,

- (a) was turned over to an inspector in response to an order issued under subsection 113.13.1 (1);
- (b) was retained and preserved in response to an order issued under subsection 113.13.1 (1), or in accordance with subsection 113.13.1 (2); or
- (c) was seized by an inspector in accordance with the regulations under a warrant issued under subsection 113.13.2 (1). 2006, c. 34, s. 12 (6).

### **Application for release of electrical product or device**

(2) Within 10 days of an electrical product or device being turned over or seized or ordered to be retained and preserved, a person who claims an interest in the electrical product or device may apply to the director for the release of the electrical product or device. 2006, c. 34, s. 12 (6).

### **Hearing**

(3) Subject to subsection (4), a person who applies for the release of the electrical product or device within the time permitted under subsection (2) is entitled to a hearing before the Director. 2006, c. 34, s. 12 (6).

### **Director may refuse hearing**

(4) The director may refuse to hold a hearing if the person who applies for the release of the electrical product or device is not the person who turned over the electrical product or device, who retained and preserved it or from whom it was seized and the director is not satisfied that the person has an interest in the electrical product or device. 2006, c. 34, s. 12 (6).

### **Director's determination**

- (5) After a hearing, the director may,
- (a) release to the person the electrical product or device that he or she determines was not sold or offered for sale in contravention of this Part or the regulations; or
  - (b) direct that the electrical product or device that he or she determines was sold or offered for sale in contravention of this Part or the regulations is forfeited to the Crown. 2006, c. 34, s. 12 (6).

### **Forfeiture in other circumstances**

- (6) The director may direct that the electrical product or device is forfeited to the Crown if,
- (a) no person applies for the release of the electrical product or device within the time permitted under subsection (2);
  - (b) the director refuses to hold a hearing under subsection (4); or
  - (c) the person who applied for the release of the electrical product or device does not appear at the hearing. 2006, c. 34, s. 12 (6).

### **Decision final**

(7) Any determination or direction made by the director under this section is final. 2006, c. 34, s. 12 (6).

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

2006, c. 34, s. 12 (6) - 01/01/2008

### **Appointment of investigators**

**113.14** (1) The Authority may appoint persons to be investigators for the purpose of conducting investigations. 2006, c. 34, s. 12 (6).

### **Identification**

(2) An investigator shall produce, on request, evidence of his or her appointment as an investigator. 2006, c. 34, s. 12 (6).

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

2004, c. 19, s. 12 (5) - 30/11/2005

2006, c. 34, s. 12 (6) - 01/01/2008

## **Search warrant**

**113.14.1** (1) On application made without notice by an investigator, a justice of the peace may issue a warrant, if he or she is satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Part or the regulations or has committed an offence that is relevant to the person's fitness for holding an authorization under this Part; and
- (b) there is,
  - (i) on any land or in any building, dwelling, container or place any thing relating to the contravention of this Part or the regulations or to the person's fitness for holding an authorization, or
  - (ii) information or evidence relating to the contravention of this Part or the regulations or the person's fitness for holding an authorization that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant. 2006, c. 34, s. 12 (6).

## **Powers under warrant**

- (2) Subject to any conditions contained in the warrant, a warrant issued under subsection (1) authorizes an investigator to,
- (a) enter or access the land, building, dwelling, container or place specified in the warrant, and examine and seize any thing described in the warrant;
  - (a.1) make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the investigation;
  - (b) use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form;
  - (c) require a person to produce the information or evidence described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the information or evidence described in the warrant; and
  - (d) use any investigative technique or procedure described in the warrant or do anything described in the warrant. 2006, c. 34, s. 12 (6); 2019, c. 14, Sched. 10, s. 6 (1).

## **Obligation to produce and assist**

(3) A person who is required to do so by an investigator under clause (2) (c) shall produce information or evidence described in the warrant and shall provide whatever assistance is reasonably necessary to produce the information or evidence in any form. 2006, c. 34, s. 12 (6).

## **Entry of dwelling**

(4) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling unless,

- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice of the peace authorizes the entry into the dwelling. 2006, c. 34, s. 12 (6).

## **Conditions on search warrant**

(5) A warrant 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. 34, s. 12 (6).

## **Assistance**

(6) A warrant may authorize persons who have special, expert or professional knowledge, and such other persons as may be necessary, to accompany and assist the investigator in respect of the execution of the warrant. 2006, c. 34, s. 12 (6).

## **Time of execution**

(7) An entry or access under a warrant shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2006, c. 34, s. 12 (6).

## **Expiry of warrant**

(8) A warrant 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, on application without notice by the investigator, extend the date of expiry for an additional period of no more than 30 days. 2006, c. 34, s. 12 (6).

### **Use of force**

(9) An investigator may call upon police officers for assistance in executing a warrant and the investigator may use whatever force is reasonably necessary to execute the warrant. 2006, c. 34, s. 12 (6).

### **No Obstruction**

(10) No person shall obstruct an investigator executing a warrant or withhold from him or her or conceal, alter or destroy anything relevant to the investigation. 2006, c. 34, s. 12 (6).

### **Copies of seized items**

(11) An investigator who seizes any thing under this section or section 113.14.3 may make a copy of it. 2019, c. 14, Sched. 10, s. 6 (2).

(12) REPEALED: 2019, c. 14, Sched. 10, s. 6 (2).

### **Admissibility of copies**

(13) A copy of a document or record certified by an investigator 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. 34, s. 12 (6); 2019, c. 14, Sched. 10, s. 6 (3).

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

2006, c. 34, s. 12 (6) - 01/01/2008

2019, c. 14, Sched. 10, s. 6 (1-3) - 10/12/2019

### **No warrant required in exigent circumstances**

**113.14.2** (1) Although a warrant issued under subsection 113.14.1 (1) would otherwise be required, an investigator may exercise any of the powers described in subsection 113.14.1 (2) without a warrant if the conditions for obtaining the warrant exist but because of exigent circumstances it would be impracticable to obtain the warrant. 2006, c. 34, s. 12 (6).

### **Dwellings**

(2) Subsection (1) does not apply to any part of a building that is being used as a dwelling. 2006, c. 34, s. 12 (6).

### **Use of force**

(3) An investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary. 2006, c. 34, s. 12 (6).

### **Application of other provisions**

(4) Subsections 113.14.1 (3), (6), (10), (11) and (13) apply, with necessary modifications, to the exercise of powers under this section. 2006, c. 34, s. 12 (6); 2019, c. 14, Sched. 10, s. 6 (4).

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

2006, c. 34, s. 12 (6) - 01/01/2008

2019, c. 14, Sched. 10, s. 6 (4) - 10/12/2019

### **Seizure of things in plain view**

**113.14.3** (1) An investigator who is lawfully present in a place under a warrant may seize any thing that is in plain view if the investigator believes on reasonable grounds that the thing will afford evidence of a contravention of this Part or the regulations. 2006, c. 34, s. 12 (6).

(2) REPEALED: 2019, c. 14, Sched. 10, s. 6 (5).

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

2006, c. 34, s. 12 (6) - 01/01/2008

2019, c. 14, Sched. 10, s. 6 (5) - 10/12/2019

### **Report when things seized**

**113.14.4** (1) An investigator who seizes any thing under the authority of section 113.14.1, 113.14.2 or 113.14.3 shall bring it before a justice of the peace or, if that is not reasonably possible, shall report the seizure to a justice of the peace. 2019, c. 14, Sched. 10, s. 6 (6).

## **Procedure**

(2) Sections 159 and 160 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized under the authority of section 113.14.1, 113.14.2 or 113.14.3 of this Act, reading the reference in subsection 160 (1) of that Act to a document that a person is about to examine or seize under a search warrant as a reference to a thing that an investigator is about to examine or seize under the authority of section 113.14.1, 113.14.2 or 113.14.3 of this Act. 2019, c. 14, Sched. 10, s. 6 (6).

## **Exception**

(3) Despite subsection (2), a justice of the peace shall order that an electrical product or device seized under the authority of section 113.14.1, 113.14.2 or 113.14.3 is not to be returned if the justice of the peace is satisfied on reasonable grounds that the electrical product or device was sold or offered for sale in contravention of this Part or the regulations. 2019, c. 14, Sched. 10, s. 6 (6).

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

2019, c. 14, Sched. 10, s. 6 (6) - 10/12/2019

## **Information confidential**

**113.15** (1) This section applies to a document or information obtained in the course of an inspection conducted for a purpose set out in clause 113.13 (1) (a) or (b). 2004, c. 19, s. 12 (5); 2006, c. 34, s. 12 (7).

## **Disclosure prohibited**

(2) Subject to subsection (3), an inspector shall not disclose any document or information obtained in the course of an inspection except,

- (a) for the purposes of carrying out his or her duties under this Act; or
- (b) as authorized under the *Regulatory Modernization Act, 2007*. 2007, c. 4, s. 29.

## **Compellability in civil proceeding**

(3) Subject to subsection (4), an inspector is a compellable witness in a civil proceeding respecting any document or information obtained in the course of an inspection. 2004, c. 19, s. 12 (5).

## **Refusal or conditional permission**

(4) A Director may,

- (a) on reasonable grounds, refuse to permit an inspector to attend as a witness; or
- (b) require that an inspector's attendance as a witness be subject to such conditions as are reasonable and necessary for the proper administration of this Part and the regulations. 2004, c. 19, s. 12 (5).

## **Limitation**

(5) Subsection (4) does not apply if,

- (a) the court orders that the inspector attend as a witness;
- (b) the proceeding is a proceeding under the *Provincial Offences Act*; or
- (c) the Authority is a party to the proceeding. 2004, c. 19, s. 12 (5).

## **Written decision**

(6) A Director who makes a decision referred to in subsection (4) shall issue the decision in writing. 2004, c. 19, s. 12 (5).

## **Disclosure by Director**

(7) A Director may publish or otherwise disclose documents or information obtained under the powers conferred on the Director under this Part. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

2006, c. 34, s. 12 (7) - 01/01/2008

2007, c. 4, s. 29 - 17/01/2008

### **Director's confirmation**

**113.16** (1) A Director may issue a written confirmation with respect to,

- (a) the granting or non-granting of an authorization, the renewal or non-renewal of an authorization, or the revocation or suspension of an authorization;
- (b) the restrictions, limitations and conditions to which an authorization is subject;
- (c) the filing or non-filing of any document or material required or permitted to be filed with the Director; or
- (d) any other matter prescribed by the regulations. 2004, c. 19, s. 12 (5).

### **Effect of confirmation**

(2) A confirmation that purports to have been issued by a Director is proof, in the absence of evidence to the contrary, of the facts stated in it, without any proof of appointment or signature. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

### **Fees, etc.**

**113.17** (1) If the Authority does so in accordance with the process and criteria that it establishes and that the Minister responsible for the administration of this Part has approved, the Authority may establish fees, administrative penalties, costs or other charges related to the administration of this Part and may require that such fees, administrative penalties, costs and other charges be paid at the times and in the manner directed by it. 2004, c. 19, s. 12 (5).

### **Collection and application of fees**

(2) The Authority shall collect the fees, administrative penalties, costs and other charges that it requires to be paid under this section and shall apply them to the expenses incurred by the Authority in administering this Part. 2004, c. 19, s. 12 (5).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 113.17 of the Act is amended by striking out “administrative penalties” wherever it appears. (See: 2021, c. 34, Sched. 9, s. 5)**

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

2004, c. 19, s. 12 (5) - 30/11/2005

2021, c. 34, Sched. 9, s. 5 - not in force

### **Agreement to exercise Authority's powers**

**113.18** The Authority may enter into agreements with any person or body prescribed by the regulations authorizing the person or body to exercise and perform any of the powers and duties of the Authority under subsection 113 (11) or section 113.13 or 113.17 and, for that purpose, a reference in section 113.19 or 113.20 to the Authority shall be deemed to be a reference to the person or body. 2004, c. 19, s. 12 (5); 2006, c. 34, s. 12 (8).

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

2004, c. 19, s. 12 (5) - 30/11/2005

2006, c. 34, s. 12 (8) - 15/08/2007

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2021, c. 34, Sched. 9, s. 6)**

### **Administrative penalty**

**113.18.1** (1) A Director may, by order, impose an administrative penalty against a person in accordance with this section and the regulations made by the Minister if the Director is satisfied that the person has contravened or is contravening,

- (a) a prescribed provision of this Part or the regulations;
- (b) a restriction, limitation or condition imposed by a Director in respect of a prescribed authorization; or
- (c) a prescribed order of the Authority. 2021, c. 34, Sched. 9, s. 6.

### **To whom payable**

(2) An administrative penalty is payable to the Authority. 2021, c. 34, Sched. 9, s. 6.

**Purpose**

- (3) An administrative penalty may be imposed under this section for one or more of the following purposes:
1. To ensure compliance with this Part or the regulations.
  2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of a contravention described in subsection (1). 2021, c. 34, Sched. 9, s. 6.

**Amount**

(4) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be determined in accordance with the regulations made by the Minister, but the amount of the penalty shall not exceed \$10,000. 2021, c. 34, Sched. 9, s. 6.

**Form of order**

(5) An order made under subsection (1) imposing an administrative penalty against a person shall be in the form that the Authority determines. 2021, c. 34, Sched. 9, s. 6.

**Service of order**

(6) The order shall be served on the person against whom the administrative penalty is imposed in accordance with the regulations made by the Minister. 2021, c. 34, Sched. 9, s. 6.

**Absolute liability**

- (7) An order made under subsection (1) imposing an administrative penalty against a person applies even if,
- (a) the person took all reasonable steps to prevent the contravention on which the order is based; or
  - (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent. 2021, c. 34, Sched. 9, s. 6.

**No effect on offences**

(8) For greater certainty, nothing in subsection (7) affects the prosecution of an offence. 2021, c. 34, Sched. 9, s. 6.

**Other measures**

(9) Subject to subsection (16), an administrative penalty may be imposed alone or in conjunction with the exercise of any measure against a person provided by this Part or the regulations, including the application of restrictions, limitations or conditions to an authorization by a Director, the suspension or revocation of an authorization or the refusal to renew an authorization. 2021, c. 34, Sched. 9, s. 6.

**Limitation**

(10) A Director shall not make an order under subsection (1) more than two years after the day the Director became aware of the person's contravention on which the order is based. 2021, c. 34, Sched. 9, s. 6.

**No hearing required**

(11) Subject to the regulations made by the Minister, a Director is not required to hold a hearing or to afford a person an opportunity for a hearing before making an order under subsection (1) against the person. 2021, c. 34, Sched. 9, s. 6.

**Non-application of other Act**

(12) The *Statutory Powers Procedure Act* does not apply to an order made under subsection (1). 2021, c. 34, Sched. 9, s. 6.

**Appeal**

(13) For greater certainty, a person on whom an order imposing an administrative penalty is made may appeal the order in accordance with the regulations made under clause 15 (1) (c) of the *Safety and Consumer Statutes Administration Act, 1996*. 2021, c. 34, Sched. 9, s. 6.

**Enforcement**

(14) If a person against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the order may be filed with the Superior Court of Justice and enforced as if it were an order of the court. 2021, c. 34, Sched. 9, s. 6.

**Date of order**

(15) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court is deemed to be the date of the order. 2021, c. 34, Sched. 9, s. 6.



### **Effect of paying penalty**

(16) If a person against whom an order imposing an administrative penalty is made pays the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the person cannot be charged with an offence under this Part in respect of the same contravention on which the order is based and no other prescribed measure shall be taken against the person in respect of the same contravention on which the order is based. 2021, c. 34, Sched. 9, s. 6.

### **Publication of orders**

(17) The Authority may publish any orders made under subsection (1), or if varied on appeal, any varied orders, on its website. 2021, c. 34, Sched. 9, s. 6.

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

2021, c. 34, Sched. 9, s. 6 - not in force

### **Liability**

**113.19** (1) No action or other civil proceeding shall be commenced against a director, an officer, an employee or an agent of the Authority, or a Director, an inspector or an officer appointed under this Part, for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Part, or for any neglect or default in the exercise or performance in good faith of such a power or duty. 2004, c. 19, s. 12 (5).

### **Same**

(2) Subsection (1) does not relieve the Authority of any liability to which it would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in subsection (1). 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

### **Offences**

**113.20** (1) Every person,

- (a) that refuses or neglects to comply with section 113 or with any regulation, plan or specification made under its authority is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both;
- (b) that refuses or neglects to comply with an order issued by the Authority under subsection 113 (11) is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than \$5,000 for each day upon which the refusal or neglect is repeated or continued;
- (c) that refuses or neglects to comply with subsection 113.13 (6), 113.13.1 (2), 113.13.2 (3) or 113.14.1 (3) or (10) or disturbs or interferes with an inspector, investigator or other officer in the performance of a duty the inspector, investigator or officer was appointed to perform under this Part is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both;
- (c.1) that contravenes or fails to comply with section 113.0.1 is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both;
- (d) that contravenes or fails to comply with subsection 113.2 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than \$5,000 for each day upon which the offence is repeated or continued;
- (e) that contravenes or fails to comply with any regulation made under the authority of clause 113.22 (1) (a), (e), (e.1) or (j) is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than \$5,000 for each day upon which the offence is repeated or continued;
- (f) that contravenes or fails to comply with a restriction, limitation or condition of an authorization is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than \$5,000 for each day upon which the offence is repeated or continued;
- (g) that knowingly makes a false statement or furnishes false information to a Director under this Part is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both;

- (h) that knowingly holds out as genuine any document, certificate, identification card or any other document issued under this Part or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both;
- (i) that holds themselves out as a holder of an authorization, an inspector, investigator or other official under this Part is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both. 2005, c. 33, s. 7 (3); 2006, c. 34, s. 12 (9-13).

#### **Same, corporations**

(2) A corporation that is guilty of an offence described in subsection (1) is liable, on conviction, to a fine of not more than \$1,000,000. 2005, c. 33, s. 7 (3).

#### **Duty of director or officer**

(3) Every director or officer of a corporation has a duty to take all reasonable care to prevent it from committing an offence under subsection (2). 2006, c. 34, s. 12 (14).

#### **Offence**

(4) Every director or officer who has a duty under subsection (3) and 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 or to imprisonment for a term of not more than one year, or to both. 2006, c. 34, s. 12 (14).

#### **Separate offence**

(5) Where a person contravenes any of the provisions of this Part, the regulations or any notice or order made under them on more than one day, the continuance of the contravention on each day shall be deemed to constitute a separate offence. 2006, c. 34, s. 12 (14).

#### **Administrative penalty**

(6) A person against whom an administrative penalty has been levied by a designated administrative authority or, in the absence of such authority, by the Minister does not preclude a person from being charged with, and convicted of, an offence under this Part for the same matter. 2006, c. 34, s. 12 (14).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 113.20 (6) of the Act is repealed. (See: 2021, c. 34, Sched. 9, s. 7)

#### **Time limit**

(7) No proceeding in respect of an alleged offence under this Part may be commenced after two years following the date on which the facts that gave rise to the alleged offence first came to the attention of the Director. 2006, c. 34, s. 12 (14).

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

2004, c. 19, s. 12 (5) - 30/11/2005

2005, c. 33, s. 7 (3) - 15/12/2005

2006, c. 34, s. 12 (9) - 15/08/2007; 2006, c. 34, s. 12 (10-14) - 01/10/2007

2012, c. 8, Sched. 11, s. 46 (3) - no effect - see 2020, c. 14, Sched. 8, s. 21 - 14/07/2020

2021, c. 34, Sched. 9, s. 7 - not in force

#### **Conflict**

**113.21** This Part and the regulations prevail over any municipal by-law. 2004, c. 19, s. 12 (5).

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

2004, c. 19, s. 12 (5) - 30/11/2005

#### **Regulations**

**113.22** (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing activities that require an authorization, classifying the activities, the persons who carry out the activities and the authorizations, and prescribing the classes of authorizations that are required for different classes of activities or for different classes of persons;
- (b) prescribing the training, experience, qualifications or skills that persons must have and the other requirements that persons must meet in order to obtain and retain a class of authorization;

- (c) prescribing the period, or the manner of determining the period, for which a class of authorization is valid;
- (d) governing applications for authorization and applications for renewal of authorization, including prescribing procedures and timing requirements for making such applications;
- (e) prescribing duties, powers and prohibitions that apply to holders of an authorization;
- (e.1) governing the documents and records that must be kept by holders of authorizations, including the manner and location in which they are kept and the time periods for retaining such information and authorizing the Director to specify the location at which they must be kept;
- (f) prescribing rules with which a Director must comply in imposing a restriction, limitation or condition on an authorization;
- (g) prescribing anything that must or may by this Part be done in accordance with the regulations or that is referred to in this Part as prescribed by, required by, provided in or referred to in the regulations;
- (h) exempting any person, work, matter or thing from any provision of this Part or the regulations;
- (i) defining electrical incidents or accidents and classes of incidents or accidents;
- (j) providing for the reporting to the Authority of the electrical incidents or accidents referred to in clause (i), including the manner and time for reporting, and prescribing classes of persons who are required to make such reports;
- (k) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Part. 2004, c. 19, s. 12 (5); 2006, c. 34, s. 12 (15, 16).

**General or particular**

(2) A regulation made under subsection (1) may be general or particular in its application. 2004, c. 19, s. 12 (5).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 113.22 (2) of the Act is repealed and the following substituted: (See: 2021, c. 34, Sched. 9, s. 8)

**Regulations, Minister**

(2) The Minister may make regulations,

- (a) governing administrative penalties that a Director may order under this Part and all matters necessary and incidental to the administration of a system of administrative penalties, including,
  - (i) prescribing provisions, authorizations and orders for the purpose of subsection 113.18.1 (1),
  - (ii) specifying the amount of an administrative penalty or providing for the determination of the amount of an administrative penalty by specifying the method of calculating the amount and the criteria to be considered in determining the amount,
  - (iii) providing 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,
  - (iv) specifying information that must be included in an order for payment of an administrative penalty,
  - (v) governing the rules for serving an order for an administrative penalty and the rights of the parties affected by the rules, including the time at which the order is deemed to be served on the person against whom the order is made,
  - (vi) respecting hearings for the purpose of subsection 113.18.1 (11),
  - (vii) respecting measures for the purpose of subsection 113.18.1 (16);
- (b) specifying the purposes for which the Authority may use the funds that it collects as administrative penalties. 2021, c. 34, Sched. 9, s. 8.

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

2004, c. 19, s. 12 (5) - 30/11/2005

2006, c. 34, s. 12 (15, 16) - 01/10/2007

2021, c. 34, Sched. 9, s. 8 - not in force



# Electricity Act, 1998

## ONTARIO REGULATION 570/05

### LICENSING OF ELECTRICAL CONTRACTORS AND MASTER ELECTRICIANS

**Consolidation Period:** From December 22, 2021 to the [e-Laws currency date](#).

Last amendment: 896/21.

Legislative History: 187/11, 439/12, 221/17, 196/19, 896/21.

*This is the English version of a bilingual regulation.*

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#### INTERPRETATION AND APPLICATION

##### Definitions

1. (1) In this Regulation,

“certificate of qualification” means a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*; (“certificat de qualification”)

**Note:** On January 1, 2022, the day section 1 of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, the definition of “certificate of qualification” in subsection 1 (1) of the Regulation is amended by striking out “*Ontario College of Trades and Apprenticeship Act, 2009*” at the end and substituting “*Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 896/21, s. 1 (1))

“electrical contracting business” means a business that is engaged in the carrying out of electrical work; (“entreprise d’électricité”)

“electrical contractor” means a person who is licensed to operate an electrical contracting business under this Regulation; (“entrepreneur en électricité”)

“electrical equipment” means any apparatus, appliance, device, instrument, fitting, fixture, machinery, material or thing used in or for, or capable of being used in or for, the generation, transformation, transmission, distribution, supply or utilization of electric power or energy, and, without restricting the generality of the foregoing, includes any assemblage or combination of materials or things which is used, or is capable of being used or adapted, to serve or perform any particular purpose or function when connected to an electrical installation, notwithstanding that any of such materials or things may be mechanical, metallic or non-electric in origin; (“matériel électrique”)

“electrical installation” means the installation of any wiring in or upon any land, building or premises from the point or points where electric power or energy can be supplied from any source to the point or points where such power or energy can be used in or on the land, building or premises by any electrical equipment, including the connection of any such wiring with any of that equipment, and any part of the wiring, and the maintenance, alteration, extension and repair of such wiring; (“installation électrique”)

“Electrical Safety Code” means the Electrical Safety Code adopted by reference in section 1 of Ontario Regulation 164/99 (Electrical Safety Code) made under the Act; (“code de sécurité relatif aux installations électriques”)

“electrical work” means work within the scope of the Electrical Safety Code that consists of constructing, installing, protecting, maintaining, repairing, extending, altering, connecting or disconnecting any electrical installation or electrical equipment; (“travaux d’électricité”)

“industrial establishment” means an office building, factory, arena, shop or office, and any land, buildings and structures appertaining thereto; (“établissement industriel”)

“master electrician” means an individual who is licensed under this Regulation to assume the responsibilities set out in section 6 for the carrying out of electrical work on behalf of an electrical contractor; (“maître-électricien”)

“professional engineer” means a holder of licence, a limited licence or a temporary licence issued under the *Professional Engineers Act*. (“ingénieur”) O. Reg. 570/05, s. 1 (1); O. Reg. 439/12, s. 1; O. Reg. 221/17, s. 1.

**Note: On January 1, 2022, the day section 1 of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, subsection 1 (1) of the Regulation is amended by adding the following definition: (See: O. Reg. 896/21, s. 1 (2))**

“provisional certificate of qualification” means a provisional certificate of qualification issued under the *Building Opportunities in the Skilled Trades Act, 2021*. (“certificat de qualification temporaire”)

(2) The use in this Regulation of “employ” and “employee” refers to the employer-employee relationship and not to an arrangement whereby a person engages an independent contractor to work on the person’s behalf. O. Reg. 570/05, s. 1 (2).

#### Non-application of regulation

2. This Regulation does not apply to a person engaged in the following types of electrical work:

1. Work done on original equipment of a manufacturer if done by an employee or agent of the original electrical equipment manufacturer who has been trained by the manufacturer to perform maintenance, service or repair on the equipment and if the work being done does not include extending or altering the equipment or installing, extending, altering or repairing any electrical wiring connected to that equipment.
2. Work done on electrical equipment or electrical installations within an industrial establishment or on a farm if done by an owner, an operator or an employee of the owner or operator.
3. Work done on electrical equipment or electrical installations within a residential dwelling if done by an owner or occupant of the dwelling.
4. Work done within the scope of practice for the trade of refrigeration and air conditioning systems mechanic or residential air conditioning systems mechanic by a person authorized under the *Ontario College of Trades and Apprenticeship Act, 2009* to practise the applicable trade.

**Note: On January 1, 2022, the day section 1 of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, paragraph 4 of section 2 of the Regulation is amended by striking out “*Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “*Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 896/21, s. 2)**

5. Work done within the scope of practice for the trade of sprinkler and fire protection installer by a person authorized under the *Ontario College of Trades and Apprenticeship Act, 2009* to practise that trade.

**Note: On January 1, 2022, the day section 1 of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, paragraph 5 of section 2 of the Regulation is amended by striking out “*Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “*Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 896/21, s. 2)**

6. Work done on elevators and escalators by a person authorized to do such work under Ontario Regulation 209/01 (Elevating Devices) made under the *Technical Standards and Safety Act, 2000*.

7. Work done on electrical components of appliances by a person authorized to do such work under Ontario Regulation 210/01 (Oil and Gas Pipeline Systems), Ontario Regulation 211/01 (Propane Storage and Handling) and Ontario Regulation 215/01 (Fuel Industry Certificates) made under the *Technical Standards and Safety Act, 2000*.
8. Work done on electrical equipment that plugs into an electrical source if the work being done constitutes maintenance, service or repair of the equipment that does not include extending or altering the equipment or installing, extending, altering or repairing any electrical wiring connected to that equipment.
9. Work done that falls within the scope of Ontario Regulation 22/04 (Electrical Distribution Safety) made under the *Electricity Act, 1998*.
10. Work done on any electrical equipment or electrical installation that is specifically excluded by Rule 2-000 of the Electrical Safety Code. O. Reg. 570/05, s. 2; O. Reg. 439/12, s. 2; O. Reg. 196/19, s. 1.

## LICENCES

### Licence required, electrical contractor

3. No person shall operate an electrical contracting business without an electrical contractor licence issued under this Regulation. O. Reg. 570/05, s. 3.

### Duties of electrical contractor

4. (1) An electrical contractor shall ensure that all electrical work carried out on the electrical contractor's behalf is carried out in accordance with all applicable laws, including the Electrical Safety Code and the laws relating to health and safety, employment standards, consumer protection, business tax and business practices. O. Reg. 570/05, s. 4 (1).

(2) An electrical contractor shall designate one or more master electricians to assume the responsibilities set out in section 6 for the carrying out of electrical work on the contractor's behalf. O. Reg. 570/05, s. 4 (2).

(3) An electrical contractor shall not designate a master electrician under subsection (2) if the designation will result in the master electrician acting as a designated master electrician on behalf of more than one electrical contractor at the same time. O. Reg. 570/05, s. 4 (3).

### Licence required, master electrician

5. No person shall assume the responsibilities set out in section 6 for the carrying out of electrical work on behalf of an electrical contractor without a master electrician licence issued under this Regulation. O. Reg. 570/05, s. 5.

### Responsibilities of designated master electrician

6. A master electrician designated by an electrical contractor is, within the scope of the designation, responsible,
- (a) for the personal planning and direct supervision of electrical work carried out on behalf of the electrical contractor;
  - (b) for ensuring that the electrical work is carried out in accordance with applicable law, including the Electrical Safety Code and the laws relating to health and safety and consumer protection, on behalf of the electrical contractor; and
  - (c) for other matters of a similar nature. O. Reg. 570/05, s. 6.

### Prohibitions, master electrician

7. (1) A master electrician shall not accept a designation from an electrical contractor unless the master electrician is actively employed by the designating electrical contractor. O. Reg. 570/05, s. 7 (1).

(2) A master electrician designated by an electrical contractor shall not accept a designation from another electrical contractor if accepting the second designation will result in the master electrician acting in this capacity on behalf of more than one electrical contractor at the same time. O. Reg. 570/05, s. 7 (2).

(3) A master electrician shall not carry out electrical work unless he or she holds a certificate of qualification that is not suspended and that authorizes the carrying out of the electrical work. O. Reg. 439/12, s. 3.

### Electrical contractor licence: requirements

8. A person who applies for an electrical contractor licence shall not be issued the licence unless the applicant,
- (a) in the case of an individual, is at least 18 years old;
  - (b) is a master electrician or, if the applicant is not a master electrician, the applicant employs at least one master electrician whom the applicant has designated as having the responsibilities set out in section 6 for the carrying out of electrical work on the applicant's behalf;
  - (c) has an address for service in Ontario;
  - (d) has public liability and property damage insurance coverage of at least \$2,000,000;

- (e) has registered with the Workplace Safety and Insurance Board, if the applicant is required to register under the *Workplace Safety and Insurance Act, 1997*;
- (f) is not in default of filing a return with the Minister of Finance or the Canada Revenue Agency or of paying any tax, penalty or interest assessed under the *Excise Tax Act* (Canada), the *Retail Sales Tax Act* or the *Corporations Tax Act*, if applicable, for which payment arrangements have not been made; and
- (g) does not owe the Authority any money for which payment arrangements have not been made. O. Reg. 570/05, s. 8; O. Reg. 221/17, s. 2.

#### Application for electrical contractor licence

- 9.** An application for an electrical contractor licence shall,
- (a) be in the form established by the Authority under clause 12 (1) (a) of the *Safety and Consumer Statutes Administration Act, 1996* and be completed in full;
  - (b) be accompanied by the fee set by and payable to the Authority;
  - (c) include a certificate of insurance for public liability and property damage insurance coverage of at least \$2,000,000;
  - (d) include the applicant's employer account number issued by the Workplace Safety and Insurance Board if the applicant is required to have one. O. Reg. 570/05, s. 9.
- 10., 10.1** REVOKED: O. Reg. 221/17, s. 3.

#### Master electrician licence: requirements

- 11.** An individual who applies for a master electrician licence shall not be issued the licence unless the applicant,
- (a) is at least 18 years old;
  - (b) demonstrates at least three years experience,
    - (i) practising the trade of electrician — construction and maintenance, electrician — domestic and rural or industrial electrician under a certificate of qualification in the applicable trade that is not suspended,

**Note:** On January 1, 2022, the day section 1 of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, subclause 11 (b) (i) of the Regulation is amended by striking out "a certificate of qualification" and substituting "a certificate of qualification or a provisional certificate of qualification". (See: O. Reg. 896/21, s. 3)

- (ii) working for an electrical contractor as a licensed professional engineer registered with the Professional Engineers of Ontario,
- (iii) working for an electrical contractor in the capacity of a certified engineering technician or a certified engineering technologist registered with the Ontario Association of Certified Engineering Technicians and Technologists, or
- (iv) practising the trade of powerline technician under a certificate of qualification in that trade that is not suspended;

**Note:** On January 1, 2022, the day section 1 of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, subclause 11 (b) (iv) of the Regulation is amended by striking out "a certificate of qualification" and substituting "a certificate of qualification or a provisional certificate of qualification". (See: O. Reg. 896/21, s. 3)

- (c) has passed the master electrician qualifying examination within the 12-month period preceding the date of the application; and
- (d) does not owe the Authority any money for which payment arrangements have not been made. O. Reg. 570/05, s. 11; O. Reg. 187/11, s. 3; O. Reg. 439/12, s. 4.

#### Application for master electrician licence

- 12.** An application for a master electrician licence shall,
- (a) be in a form established by the Authority under clause 12 (1) (a) of the *Safety and Consumer Statutes Administration Act, 1996* and be completed in full;
  - (b) be accompanied by the fee set by and payable to the Authority;
  - (c) include proof that the applicant passed the master electrician qualifying examination within the 12-month period preceding the date of the application;
  - (d) if the applicant practises the trade of electrician — construction and maintenance, electrician — domestic and rural, industrial electrician or powerline technician, include a copy of a certificate of qualification in the applicable trade that is not suspended and proof of at least three years experience in practising that trade;
  - (e) if the applicant is a licensed professional engineer, include a copy of a valid licence issued under the *Professional Engineers Act* and proof of at least three years experience working for an electrical contractor as a professional engineer; and



- (f) if the applicant is a certified engineering technician or a certified engineering technologist, include a copy of a valid certificate indicating that the applicant is a certified engineering technician or a certified engineering technologist, a copy of a valid registration with the Ontario Association of Certified Engineering Technicians and Technologists and proof of at least three years experience working for an electrical contractor as a certified engineering technician or a certified engineering technologist. O. Reg. 570/05, s. 12; O. Reg. 439/12, s. 5.

#### Licences

**13.** (1) An electrical contractor licence shall be in the form of a certificate that includes the following information:

1. REVOKED: O. Reg. 221/17, s. 4 (2).
2. The legal name of the business and the name under which it operates.
3. The number of the licence.
4. The date the licence takes effect and its expiry date. O. Reg. 570/05, s. 13 (1); O. Reg. 221/17, s. 4 (1-3).

(2) A master electrician licence shall be in the form of a card bearing a recent photograph of the licence holder, that includes the following information:

1. The name of the licence holder.
2. The type of certificate or licence relied upon by the licence holder to obtain the licence under this Regulation.
3. The number of the licence.
4. The date the licence takes effect and its expiry date. O. Reg. 570/05, s. 13 (2).

(3) A licence is valid throughout Ontario. O. Reg. 570/05, s. 13 (3).

(4) A licence is not transferable. O. Reg. 570/05, s. 13 (4).

(5) REVOKED: O. Reg. 221/17, s. 4 (4).

#### Contractor failure to continue to meet requirements for licence

**14.** (1) The holder of an electrical contractor licence shall immediately cease to operate the electrical contracting business in respect of which the licence is issued if any of the requirements for obtaining the licence, as set out in section 8, or a restriction, limitation or condition of the licence that is imposed by a Director or specified in sections 17 to 24 ceases to be met during the currency of the licence. O. Reg. 221/17, s. 5 (1).

(2) Subsection (1) does not apply to the holder of an electrical contractor licence who ceases to meet the requirement to employ at least one designated master electrician, as set out in clause 8 (b) if the electrical contractor notifies the Director of the loss of the last designated master electrician within five days of the occurrence, in which case the electrical contractor may continue to operate for a period of 60 days after the occurrence. O. Reg. 570/05, s. 14 (2); O. Reg. 221/17, s. 5 (2).

(3) Despite subsection (2), if the expiry date indicated on the licence falls within the 60-day period and the electrical contractor has been unable to employ and designate a master electrician before the expiry date indicated on the licence, the licence expires on the expiry date. O. Reg. 570/05, s. 14 (3).

(4) If, within the 60-day period, the electrical contractor employs and designates a master electrician and notifies the Director of the designation, the electrical contractor may continue to operate beyond the end of the 60-day period. O. Reg. 570/05, s. 14 (4).

(5) If, within the 60-day period, the electrical contractor fails to employ and designate a master electrician, the electrical contractor shall cease to operate at the end of that period unless, at the request of the electrical contractor made at any time within the 60-day period, the Director permits the electrical contractor to continue to operate for up to 60 further days on being satisfied that,

- (a) the electrical contractor has made all reasonable efforts to employ and designate a master electrician during the first 60-day period; and
- (b) it is likely that the electrical contractor will be able to employ and designate a master electrician within the period of the extension. O. Reg. 570/05, s. 14 (5).

(6) If the period of operation is extended under subsection (5) and the electrical contractor fails to employ and designate a new master electrician within the extension period, the electrical contractor shall cease immediately to operate until a master electrician has again been employed and designated and the Director is notified of the designation. O. Reg. 570/05, s. 14 (6).

#### Expiry and renewal of licences

**15.** (1) An electrical contractor licence expires on the date indicated on the licence. O. Reg. 570/05, s. 15 (1); O. Reg. 221/17, s. 6 (1).

(2) Despite subsection (1), the licence expires on the date the electrical contractor ceases to operate the business for which the licence was issued if that date is earlier than the expiry date indicated on the licence. O. Reg. 570/05, s. 15 (2).

(3) A master electrician licence expires on the date indicated on the licence. O. Reg. 570/05, s. 15 (3).

(4) An application for the renewal of an electrical contractor licence or a master electrician licence shall be made no later than 30 days before the expiry date of the licence, shall be in the form established by the Authority and be accompanied by the fee set by and payable to the Authority. O. Reg. 570/05, s. 15 (4); O. Reg. 221/17, s. 6 (2).

(5) An applicant for the renewal of an electrical contractor licence shall meet the requirements set out in clauses 8 (b) to (g) and, for that purpose, shall provide the information and proof required by clauses 9 (c) and (d). O. Reg. 570/05, s. 15 (5); O. Reg. 221/17, s. 6 (3).

(6) REVOKED: O. Reg. 221/17, s. 6 (4).

(7) An applicant for the renewal of a master electrician licence shall meet the requirement set out in clause 11 (d) and provide a copy of a certificate of qualification in the trade of electrician — construction and maintenance, electrician — domestic and rural, industrial electrician or powerline technician under clause 12 (d), a valid licence under clause 12 (e) or a valid certificate and valid registration under clause 12 (f). O. Reg. 439/12, s. 6.

(8) If the licence holder applies for a renewal less than thirty days before the expiry date but no later than 14 days after that date, the licence holder shall submit the information or documents described in subsection (5) or (7), as applicable, and pay the renewal fee, calculated from the date of expiry of the expired licence. O. Reg. 570/05, s. 15 (8); O. Reg. 221/17, s. 6 (5).

(9) If the licence holder applies for a renewal more than 14 days but less than one year after the expiry date, the holder shall submit the information or documents described in subsection (5) or (7), as applicable, pay the renewal fee, calculated from the date of expiry of the expired licence, and the late filing fee established by the Authority. O. Reg. 570/05, s. 15 (9); O. Reg. 221/17, s. 6 (5).

(10) Subject to subsection (10.1), an application for a renewal of a master electrician licence submitted one year or more after the expiry date of the expired licence shall be treated as a new application and all requirements relating to new applications apply, including the requirement to pass the master electrician qualifying examination within the 12-month period preceding the date of the application. O. Reg. 570/05, s. 15 (10); O. Reg. 221/17, s. 6 (6); O. Reg. 196/19, s. 2 (1).

(10.1) If the licence holder applies for the renewal of a master electrician licence one year or more after the expiry date of the expired licence and a Director has reason to believe that the licence holder did not make the application before that expiry date because of extenuating circumstances that created undue hardship for the licence holder, the Director may accept the application if it contains the information or documents described in subsection (7) and the licence holder pays the fee that would have been payable if the licence holder had made the application in accordance with subsection (4). O. Reg. 196/19, s. 2 (2).

(10.2) If a Director grants an application for the renewal of a master electrician licence under subsection (10.1), the Director may impose terms, conditions and limitations on the renewal as the Director sees fit if they relate to eligibility of the applicant for the original licence. O. Reg. 196/19, s. 2 (2).

(11) An application for a renewal of an electrical contractor licence submitted one year or more after the expiry date of the expired licence shall be treated as a new application and all requirements relating to new applications apply. O. Reg. 570/05, s. 15 (11).

(12), (13) REVOKED: O. Reg. 221/17, s. 6 (7).

## CONDITIONS OF LICENCES

### Conditions of electrical contractor licences

16. Sections 17 to 24 state conditions of an electrical contractor licence. O. Reg. 570/05, s. 16; O. Reg. 221/17, s. 7.

#### Posting of licence

17. (1) An electrical contractor shall post the licence in a prominent location at the contractor's principal place of business in a manner that the public is likely to see it. O. Reg. 570/05, s. 17 (1).

(2) An electrical contractor shall post a copy of the licence in a prominent location at any other place of business at or from which the contractor carries on business. O. Reg. 570/05, s. 17 (2).

#### Business name

18. An electrical contractor shall not carry on business in a name other than the name indicated on the licence. O. Reg. 570/05, s. 18.

#### Display of licence number

19. An electrical contractor shall prominently display the licence number in all correspondence, contracts and advertisements, on business vehicles and, generally, in all situations where they are communicating with the public. O. Reg. 570/05, s. 19.

**Retention of application information**

20. An electrical contractor shall retain every document provided in the application for the licence or a renewal of the licence until the expiry of the licence or renewal. O. Reg. 570/05, s. 20.

**Designations to be recorded**

21. (1) An electrical contractor shall keep a record of all designations of master electricians, irrespective of the number of designations made. O. Reg. 570/05, s. 21 (1).

(2) The record mentioned in subsection (1) shall include the name of the designated master electrician, the date on which the designation is made, the period of time for which the designation is effective and the scope of the designation. O. Reg. 570/05, s. 21 (2).

**Notice of changes to information**

22. An electrical contractor shall notify the Director in the form obtained from him or her of any change to the information provided in the licence application or renewal of licence application, including any change in the designated master electrician for the purpose of clause 8 (b), within five business days of the change. O. Reg. 570/05, s. 22; O. Reg. 221/17, s. 8.

**Notice of failure to meet licence requirements**

23. An electrical contractor shall notify the Director immediately of any failure to continue to meet the requirements for the relevant type of electrical contractor licence during the currency of the licence. O. Reg. 570/05, s. 23.

**Return of licence**

24. An electrical contractor shall return the electrical contractor licence to the Director within five business days of its suspension, revocation or expiry using a form of delivery that provides proof of delivery. O. Reg. 570/05, s. 24; O. Reg. 221/17, s. 9.

**Conditions of master electrician licence**

25. Sections 26 to 28 state conditions of a master electrician licence. O. Reg. 570/05, s. 25.

**Carrying of licence**

26. A master electrician shall carry the licence while engaged in activities requiring the licence. O. Reg. 570/05, s. 26.

**Retention of application information**

27. A master electrician shall retain every document provided in the application for the licence or a renewal of the licence until the expiry of the licence or renewal. O. Reg. 570/05, s. 27.

**Notice of changes to information**

28. A master electrician shall notify the Director in the form obtained from him or her of any change to the information provided in the licence application or renewal of licence application, including the fact of ceasing to act as a designated master electrician for an electrical contractor, within five business days of the change. O. Reg. 570/05, s. 28; O. Reg. 221/17, s. 10.

**Notice of failure to meet licence requirements**

29. A master electrician shall notify the Director immediately of any failure to continue to meet the requirements for the licence during the currency of the licence. O. Reg. 570/05, s. 29.

**Return of licence**

30. A master electrician shall return the master electrician licence to the Director within five business days of its suspension, revocation or expiry, using a form of delivery that provides proof of delivery. O. Reg. 221/17, s. 11.

31., 32. REVOKED: O. Reg. 221/17, s. 12.

33. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 570/05, s. 33.

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# Employment Standards Act, 2000

## S.O. 2000, CHAPTER 41

**Consolidation Period:** From January 1, 2022 to the [e-Laws currency date](#).

Last amendment: 2021, c. 40, Sched. 9.

Legislative History: 2001, c. 9, Sched. I, s. 1; 2002, c. 18, Sched. J, s. 3; 2004, c. 15; 2004, c. 21; 2005, c. 5, s. 23; 2006, c. 13, s. 3; 2006, c. 19, Sched. D, s. 7; 2006, c. 19, Sched. M, s. 1; 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 34, Sched. C, s. 23; 2006, c. 35, Sched. C, s. 33; 2007, c. 16, Sched. A; 2008, c. 15, s. 85; 2009, c. 9; 2009, c. 16; 2009, c. 32, s. 51; 2009, c. 33, Sched. 20, s. 1; 2010, c. 15, s. 224; 2010, c. 16, Sched. 9, s. 1; 2011, c. 1, Sched. 7, s. 1; 2013, c. 13, Sched. 1, s. 12; 2014, c. 5, s. 48; 2014, c. 6; 2014, c. 10, Sched. 2; 2015, c. 27, Sched. 4, s. 1; 2015, c. 32; 2016, c. 23, s. 46; 2016, c. 30, s. 36; 2017, c. 22, Sched. 1, s. 1-69 (But see 2018, c. 14, Sched. 1, s. 27); 2018, c. 3, Sched. 5, s. 19 (see: 2019, c. 1, Sched. 3, s. 5); 2018, c. 6, Sched. 3, s. 8; 2018, c. 14, Sched. 1, s. 1-27; 2019, c. 1, Sched. 4, s. 17; 2019, c. 4, Sched. 9, s. 1-11; 2019, c. 5, Sched. 3, s. 6, 2019, c. 12, s. 42; 2019, c. 15, Sched. 22, s. 92; 2020, c. 3, s. 1-5; 2021, c. 4, Sched. 11, s. 9; 2021, c. 9; 2021, c. 25, Sched. 6; 2021, c. 35, Sched. 2; 2021, c. 40, Sched. 9.

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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”)

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 1 (1) of the Act is amended by adding the following definition: (See: 2021, c. 35, Sched. 2, s. 1)**

“foreign national” has the same meaning as in the *Employment Protection for Foreign Nationals Act, 2009*; (“étranger”)

“homeworker” 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”)

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 1 (1) of the Act is amended by adding the following definition: (See: 2021, c. 35, Sched. 2, s. 1)**

“licence” means a licence issued under Part XVIII.1; (“permis”)

“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”)

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 1 (1) of the Act is amended by adding the following definition: (See: 2021, c. 35, Sched. 2, s. 1)**

“recruiter” has the meaning set out in the regulations; (“recruteur”)

“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; 2021, c. 35, Sched. 2, s. 1 - not in force

## 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 employer 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 homeworker may be deleted from the register three years after the homeworker 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 disconnecting from work policies**

- (8.1) An employer shall retain or arrange for some other person to retain copies of every written policy on disconnecting from work required under Part VII.0.1 for three years after the policy ceases to be in effect. 2021, c. 35, Sched. 2, 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

2021, c. 35, Sched. 2, s. 2 - 02/12/2021

### **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

2019, c. 4, Sched. 9, s. 7 - 03/04/2019

**PART VII.0.1  
WRITTEN POLICY ON DISCONNECTING FROM WORK**

**Interpretation**

**21.1.1** In this Part,

“disconnecting from work” means not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work. 2021, c. 35, Sched. 2, s. 3.

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

2021, c. 35, Sched. 2, s. 3 - 02/12/2021

**Written policy on disconnecting from work**

**21.1.2** (1) An employer that, on January 1 of any year, employs 25 or more employees shall, before March 1 of that year, ensure it has a written policy in place for all employees with respect to disconnecting from work that includes the date the policy was prepared and the date any changes were made to the policy. 2021, c. 35, Sched. 2, s. 3.

**Copy of policy**

(2) An employer shall provide a copy of the written policy with respect to disconnecting from work to each of the employer’s employees within 30 days of preparing the policy or, if an existing written policy is changed, within 30 days of the changes being made. 2021, c. 35, Sched. 2, s. 3.

**Same**

(3) An employer shall provide a copy of the written policy with respect to disconnecting from work that applies to a new employee within 30 days of the day the employee becomes an employee of the employer. 2021, c. 35, Sched. 2, s. 3.

**Prescribed information**

(4) A written policy required under subsection (1) shall contain such information as may be prescribed. 2021, c. 35, Sched. 2, s. 3.

**Transition**

- (5) Despite subsection (1), an employer shall,
- (a) have until the date that is six months after the day the *Working for Workers Act, 2021* receives Royal Assent instead of March 1 to comply with the requirements of subsection (1); and
  - (b) determine whether it employs 25 employees or more as of the January 1 immediately preceding the date described in clause (a). 2021, c. 35, Sched. 2, s. 3.

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

2021, c. 35, Sched. 2, s. 3 - 02/12/2021

**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, 2022 but before October 1, 2022, 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, \$14.10 per hour.
  - ii. For the services of hunting and fishing guides, \$75.00 for less than five consecutive hours in a day and \$150.05 for five or more hours in a day, whether or not the hours are consecutive.
  - iii. For employees who are homeworkers, \$16.50 per hour.
  - iv. For any other employees not listed in subparagraphs i to iii, \$15.00 per hour.
2. From October 1, 2022 onward, the amount determined under subsection (4). 2021, c. 40, Sched. 9, s. 1 (1).

### Student homemaker

(1.1) If an employee falls within both subparagraphs 1 i and iii of subsection (1), the employer shall pay the employee not less than the minimum wage for a homemaker. 2017, c. 22, Sched. 1, s. 15 (1); 2018, c. 14, Sched. 1, s. 6 (4); 2021, c. 40, Sched. 9, s. 1 (2).

### Exception

(2) If a class of employees that would otherwise be in the class described in subparagraph 1 iv 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); 2021, c. 40, Sched. 9, s. 1 (3).

#### 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 2022, 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); 2021, c. 40, Sched. 9, s. 1 (4).

#### 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 2021, 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); 2021, c. 40, Sched. 9, s. 1 (5).

- (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,

$3 \times A \times$  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,
- 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
  - 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,
- there is a permanent discontinuance of all or part of an employer's business at the location;
  - the location is part of an establishment consisting of two or more locations; and
  - 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,
- the number of years of employment the employee has completed; and
  - 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 XV.1 NON-COMPETE AGREEMENTS

**Definitions**

**67.1** In this Part, and for the 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) and Part XXVII (Regulations) insofar as matters concerning this Part are concerned,

“employee” means an employee as defined in subsection 1 (1) and includes an applicant for employment; (“employé”)

“employer” means an employer as defined in subsection 1 (1) and includes a prospective employer; (“employeur”)

“non-compete agreement” means an agreement, or any part of an agreement, between an employer and an employee that prohibits the employee from engaging in any business, work, occupation, profession, project or other activity that is in competition with the employer’s business after the employment relationship between the employee and the employer ends. (“clause de non-concurrence”) 2021, c. 35, Sched. 2, s. 4.

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

2021, c. 35, Sched. 2, s. 4 - 25/10/2021

**Prohibition**

**67.2** (1) No employer shall enter into an employment contract or other agreement with an employee that is, or that includes, a non-compete agreement. 2021, c. 35, Sched. 2, s. 4.

**Same**

(2) For greater certainty, subsection 5 (1) applies and if an employer contravenes subsection (1), the non-compete agreement is void. 2021, c. 35, Sched. 2, s. 4.



**Exception — sale, etc., of business**

(3) If there is a sale of a business or a part of a business and, as a part of the sale, the purchaser and seller enter into an agreement that prohibits the seller from engaging in any business, work, occupation, profession, project or other activity that is in competition with the purchaser's business after the sale and, immediately following the sale, the seller becomes an employee of the purchaser, subsection (1) does not apply with respect to that agreement. 2021, c. 35, Sched. 2, s. 4.

**Exception — executives**

(4) Subsection (1) does not apply with respect to an employee who is an executive. 2021, c. 35, Sched. 2, s. 4.

**Definitions**

(5) In this section,

“executive” means any person who holds the office of chief executive officer, president, chief administrative officer, chief operating officer, chief financial officer, chief information officer, chief legal officer, chief human resources officer or chief corporate development officer, or holds any other chief executive position; (“cadre supérieur”)

“sale” includes a lease. (“vente”) 2021, c. 35, Sched. 2, s. 4.

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

2021, c. 35, Sched. 2, s. 4 - 25/10/2021

## 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

**Note:** On a day to be named by proclamation of the Lieutenant Governor, clause 74 (1) (a) of the Act is amended by striking out "or" at the end of subclause (viii) and by adding the following subclause: (See: 2021, c. 35, Sched. 2, s. 5)

- (ix) makes inquiries about whether a person holds a licence to operate as a temporary help agency or a licence to act as a recruiter as required under Part XVIII.1; 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

2021, c. 35, Sched. 2, s. 5 - not in force

### **PART XVIII.1 TEMPORARY HELP AGENCIES**

**Note:** On a day to be named by proclamation of the Lieutenant Governor, the heading to Part XVIII.1 of Act is amended by adding "AND RECRUITERS" at the end. (See: 2021, c. 35, Sched. 2, s. 6)

#### **INTERPRETATION AND APPLICATION**

**Note:** On a day to be named by proclamation of the Lieutenant Governor, Part XVIII.1 of the Act is amended by striking out the heading "Interpretation and Application". (See: 2021, c. 35, Sched. 2, s. 7)

**74.1** REPEALED: 2017, c. 22, Sched. 1, s. 42.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2021, c. 35, Sched. 2, s. 8)

#### **LICENSING**

##### **Types of licences**

**74.1** The following are the types of licences that may be issued under this Part:

1. A licence to operate as a temporary help agency.
2. A licence to act as a recruiter. 2021, c. 35, Sched. 2, s. 8.

#### **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

2021, c. 35, Sched. 2, s. 8 - not in force

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following sections: (See: 2021, c. 35, Sched. 2, s. 9)**

#### **Licence to operate as temporary help agency**

**74.1.1** (1) No person shall operate as a temporary help agency unless the person holds a licence for that purpose. 2021, c. 35, Sched. 2, s. 9.

#### **Same**

(2) No client shall knowingly engage or use the services of a temporary help agency unless the person who operates the temporary help agency holds a licence for that purpose as required under subsection (1). 2021, c. 35, Sched. 2, s. 9.

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

2021, c. 35, Sched. 2, s. 9 - not in force

#### **Licence to act as recruiter**

**74.1.2** (1) No person shall act as a recruiter unless the person holds a licence for that purpose. 2021, c. 35, Sched. 2, s. 9.

#### **Same**

(2) No recruiter, employer or prospective employer shall knowingly engage or use the services of a recruiter unless the recruiter holds a licence for that purpose as required under subsection (1). 2021, c. 35, Sched. 2, s. 9.

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

2021, c. 35, Sched. 2, s. 9 - not in force

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following sections: (See: 2021, c. 35, Sched. 2, s. 10)**

#### **Application for licence**

**74.1.3** (1) A person may apply to the Director for a licence or a renewal of a licence by,

- (a) submitting to the Director, in a written or electronic form approved by the Director,
  - (i) the legal name of the applicant, as well as any operating or business name of the applicant, if different from the legal name,
  - (ii) the address of every location where the applicant carries on business,
  - (iii) if the applicant is a corporation, the name and address of each officer or director of the corporation,
  - (iv) if the applicant is a partnership, the name and address of each partner in the partnership,
  - (v) if the applicant is applying for a licence to act as a recruiter,
    - (A) a statement that the applicant is aware that subsection 7 (1) of the *Employment Protection for Foreign Nationals Act, 2009* prohibits a person who acts as a recruiter in connection with the employment of a foreign national from directly or indirectly charging the foreign national a fee for any service, good or benefit provided to the foreign national,
    - (B) a statement that the applicant is aware that subsection 24 (2) of the *Employment Protection for Foreign Nationals Act, 2009* provides that if an employment standards officer finds that a recruiter has contravened section 7 of that Act, the officer may order the recruiter to pay the amount of the fees to the foreign national or to the Director of Employment Standards in trust,
    - (C) a statement that the applicant is aware that subsection 27 (1) of the *Employment Protection for Foreign Nationals Act, 2009* provides that if an employment standards officer believes that a person has contravened a provision of that 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,
    - (D) a statement that the applicant is aware that the Director shall refuse to issue a licence or revoke or suspend a licence if the applicant has charged fees to a foreign national in contravention of subsection 7 (1) of the *Employment Protection for Foreign Nationals Act, 2009*, and
    - (E) a statement confirming that the applicant has not charged fees to a foreign national in contravention of subsection 7 (1) of the *Employment Protection for Foreign Nationals Act, 2009*,

- (vi) if the applicant engages or uses the services of any person, other than an employee of the applicant, in connection with the recruitment or employment of foreign nationals,
  - (A) the name and address of each person so engaged or used,
  - (B) a description of the person's business,
  - (C) a statement confirming that the applicant has made reasonable inquiries about the person's business practices with respect to foreign nationals and is satisfied that the person did not charge fees or collect a fee charged to a foreign national in contravention of subsection 7 (1) of the *Employment Protection for Foreign Nationals Act, 2009*,
  - (D) a statement that the applicant is aware that subsection 18.1 (1) of the *Employment Protection for Foreign Nationals Act, 2009* provides that a recruiter who uses the services of another recruiter in connection with the recruitment or employment of a foreign national is jointly and severally liable with the other recruiter to repay fees charged to the foreign national by the other recruiter in contravention of subsection 7 (1) of that Act, and
  - (E) a statement that the applicant is aware that the Director shall refuse to issue a licence or revoke or suspend a licence if the applicant engages or uses the services of a recruiter that charges fees to a foreign national in contravention of subsection 7 (1) of the *Employment Protection for Foreign Nationals Act, 2009*, and
- (vii) such other information or statements as may be prescribed;
- (b) paying the prescribed fee;
- (c) providing the Director with the prescribed security; and
- (d) complying with any additional prescribed requirements. 2021, c. 35, Sched. 2, s. 10.

#### **Request for information**

(2) The Director may request that an applicant provide to the Director, in the form and within the time period specified by the Director, such information as may be specified by the Director that is relevant to the decision as to whether or not to issue a licence or renewal. 2021, c. 35, Sched. 2, s. 10.

#### **False or misleading information**

(3) No person shall provide false or misleading information under this section. 2021, c. 35, Sched. 2, s. 10.

#### **Addresses**

(4) For greater certainty, a requirement to submit an address to the Director under subsection (1) includes addresses in Ontario and outside of Ontario, including outside of Canada. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

#### **Issuance of licence**

**74.1.4** The Director shall issue a licence to an applicant or renew an applicant's licence if the Director,

- (a) receives an application under section 74.1.3; and
- (b) is satisfied that the applicant,
  - (i) has complied with any orders issued under this Act or the *Employment Protection for Foreign Nationals Act, 2009*, and
  - (ii) meets the requirements set out in this Act and the regulations for the licence. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

#### **Refusal to issue or renew licence**

**74.1.5** (1) On receipt of an application under section 74.1.3, the Director shall, in accordance with the prescribed processes, if any, refuse to issue or renew a licence if,

- (a) the applicant has not complied with an order issued under this Act or the *Employment Protection for Foreign Nationals Act, 2009*;

- (b) the applicant has ever charged a fee to a foreign national in contravention of subsection 7 (1) of the *Employment Protection for Foreign Nationals Act, 2009* or the applicant engages or uses the services of any person, other than an employee of the applicant, that has ever charged a fee or collected a fee charged to a foreign national in contravention of subsection 7 (1) of that Act;
- (c) the applicant fails to meet the requirements set out in this Act and the regulations for the licence; or
- (d) any other prescribed circumstances exist. 2021, c. 35, Sched. 2, s. 10.

**Same**

(2) On receipt of an application under section 74.1.3, the Director may, in accordance with the prescribed processes, if any, refuse to issue or renew a licence if,

- (a) the Director has reasonable grounds to believe that,
  - (i) based on the past or present conduct of the applicant, or any officers, directors or representatives of the applicant, the applicant will not carry on business with honesty and integrity and in accordance with the law, or
  - (ii) the applicant has made a false or misleading statement or provided false or misleading information in an application for a licence or a renewal of a licence; or
- (b) any other prescribed circumstances exist. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Revocation or suspension of licence**

**74.1.6** (1) The Director may, in accordance with the prescribed processes, if any, revoke or suspend a licence on any ground on which the Director might have refused to issue or renew the licence under subsection 74.1.5 (1) or (2). 2021, c. 35, Sched. 2, s. 10.

**Reinstatement**

(2) If the Director considers it appropriate to do so, the Director may reinstate a licence that has been suspended. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Notice requirements re: licences****Director**

**74.1.7** (1) If the Director refuses to issue or renew a licence, or revokes or suspends a licence, the Director shall serve notice of the refusal, revocation or suspension on the applicant and shall provide the applicant with written reasons for the refusal, revocation or suspension. 2021, c. 35, Sched. 2, s. 10.

**Temporary help agency**

(2) A person whose licence to operate a temporary help agency is refused, revoked or suspended shall give written notice of the refusal, revocation or suspension to every client and assignment employee of the agency within 30 days after the day on which the notice of refusal, revocation or suspension is served. 2021, c. 35, Sched. 2, s. 10.

**Recruiter**

(3) A person whose licence to act as a recruiter is refused, revoked or suspended shall give written notice of the refusal, revocation or suspension to every employer, prospective employer or prospective employee who has engaged or used the services of the recruiter within 30 days after the day on which the notice of refusal, revocation or suspension is served. 2021, c. 35, Sched. 2, s. 10.

**Applicant for review**

(4) If a person applies for an application for review under subsection 74.1.13 (1), the person shall include that information in the notice required under subsection (2) or (3) of this section. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Terms and conditions of licence**

**74.1.8** A licence is subject to such terms and conditions as are prescribed. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Licence not transferable**

**74.1.9** A licence is not transferable. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Expiry of licence**

**74.1.10** (1) Subject to subsection (2), a licence expires one year after the date it was issued or renewed or on the expiration of such longer period as may be prescribed. 2021, c. 35, Sched. 2, s. 10.

**Same, renewal application**

(2) If, before a person's licence expires, the person applies for a licence renewal in accordance with section 74.1.3, the licence remains valid until the licence is renewed or notice of the refusal to renew the licence is served. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Voluntary cancellation**

**74.1.11** (1) The Director may cancel a licence upon the request, in writing, of the licensee. 2021, c. 35, Sched. 2, s. 10.

**Same, notice**

(2) Subsections 74.1.7 (2) and (3) apply with necessary modifications if a licence is cancelled under this section. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Public record**

**74.1.12** (1) The Director shall publish and maintain, in accordance with such requirements as may be prescribed, a public record of the following on a website of the Government of Ontario:

1. The name of every person licensed under this Act, the date the person's licence was issued or renewed and the date the person's licence expires.
2. The name of every person whose licence has been revoked or suspended under this Act and the date of the revocation or suspension.
3. Any other prescribed information. 2021, c. 35, Sched. 2, s. 10.

**Freedom of information legislation**

(2) The disclosure of personal information in a public record under this section is deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Application for review**

**74.1.13** (1) A person whose application for a licence has been refused under section 74.1.5 or whose licence has been revoked or suspended under section 74.1.6 is entitled to a review of the refusal, revocation or suspension by the Board if the person applies to the Board, in writing, for a review within the period set out in subsection (2). 2021, c. 35, Sched. 2, s. 10.

**Period for applying for review**

(2) An application for a review under subsection (1) shall be made within 30 days after the day on which notice of the refusal, revocation or suspension is served. 2021, c. 35, Sched. 2, s. 10.

**Hearing**

(3) Subject to subsection 118 (2), the Board shall hold a hearing for the purposes of the review. 2021, c. 35, Sched. 2, s. 10.

**Same, timelines**

(4) A review hearing shall be conducted in accordance with any timelines prescribed. 2021, c. 35, Sched. 2, s. 10.

**Parties**

(5) The parties to the review are the applicant for review and the Director. 2021, c. 35, Sched. 2, s. 10.

**Powers of Board**

(6) The Board may, with necessary modifications, exercise the powers conferred on the Director under this Part and may substitute its findings for those of the Director. 2021, c. 35, Sched. 2, s. 10.

**Same**

(7) Without limiting the generality of subsection (6), on a review under this section, the Board may uphold the Director's decision, vary or set aside the Director's decision or issue, renew or reinstate a licence. 2021, c. 35, Sched. 2, s. 10.

**Notice of decision**

(8) If the Board upholds the Director's decision to refuse to issue or renew, or to revoke or suspend, a person's licence to operate a temporary help agency, the person shall give written notice of the refusal, revocation or suspension to every client and assignment employee of the agency within 30 days after the Board issues its decision. 2021, c. 35, Sched. 2, s. 10.

**Same**

(9) If the Board upholds the Director's decision to refuse to issue or renew, or to revoke or suspend, a person's licence to act as a recruiter, the person shall give written notice of the refusal, revocation or suspension to every employer, prospective employer and prospective employee who has engaged or used the services of the recruiter within 30 days after the Board issues its decision. 2021, c. 35, Sched. 2, s. 10.

**Certain review provisions applicable**

(10) Subsections 116 (8) and (9), section 118 and subsections 119 (3), (4), (5), (13) and (14) apply, with necessary modifications, to a review under this section. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Further application**

**74.1.14** No applicant who is refused a licence or renewal of a licence or whose licence is revoked may apply to the Director for a licence unless,

- (a) at least two years have passed since the refusal or revocation; or
- (b) the applicant satisfies the Director that new evidence is available. 2021, c. 35, Sched. 2, s. 10.

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

2021, c. 35, Sched. 2, s. 10 - not in force

**Director's authorization**

**74.1.15** (1) The Director may authorize an individual employed in the Ministry to exercise a power conferred on the Director under sections 74.1 to 74.1.14, either orally or in writing. 2021, c. 35, Sched. 2, s. 10.

**Residual power**

(2) The Director may exercise a power conferred on the Director under sections 74.1 to 74.1.14 even if the Director has delegated it to an individual under subsection (1). 2021, c. 35, Sched. 2, s. 10.

**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). 2021, c. 35, Sched. 2, s. 10.

**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

2021, c. 35, Sched. 2, s. 10 - not in force

**74.2** REPEALED: 2016, c. 30, s. 36 (2).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2021, c. 35, Sched. 2, s. 11)

#### INTERPRETATION AND APPLICATION

##### Definitions

**74.2** For the purposes of sections 5, 102 and 102.1, Part XXVII (Regulations) and such other sections of this Act as may be prescribed insofar as matters concerning this Part are concerned,

“employee” means an employee as defined in subsection 1 (1) and includes a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario; (“employé”)

“employer” means an employer as defined in subsection 1 (1) and includes a client of a temporary help agency, a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee. (“employeur”) 2021, c. 35, Sched. 2, s. 11.

##### 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

2021, c. 35, Sched. 2, s. 11 - not in force

##### 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)

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 74.2.1 of the Act is amended by adding “. nless otherwise prescribed” at the beginning. (See: 2021, c. 35, Sched. 2, s. 12)

##### 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

2021, c. 35, Sched. 2, s. 12 - 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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 74.4.2 (1) of the Act is repealed and the following substituted: (See: 2021, c. 35, Sched. 2, s. 13)**

**Client to keep records re: work for client**

- (1) A client of a temporary help agency shall record the following information:
1. The name of each assignment employee assigned to perform work for the client.
  2. The number of hours worked by each assignment employee assigned to perform work for the client in each day and each week. 2021, c. 35, Sched. 2, s. 13.

**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

2021, c. 35, Sched. 2, s. 13 - not in force

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2021, c. 35, Sched. 2, s. 14)**

**Recruiters to keep records**

**74.4.3** (1) A recruiter shall record the following information:

1. The name of each prospective employee who uses the recruiter to find or attempt to find employment.
2. The name and address of each employer or prospective employer who has engaged or used the services of the recruiter.
3. Such other information as may be prescribed. 2021, c. 35, Sched. 2, s. 14.

**Records retention**

(2) The recruiter shall retain or arrange for some other person to retain the records required under subsection (1) for three years after the recruiter ceases to provide services to the prospective employee, employer or prospective employer. 2021, c. 35, Sched. 2, s. 14.

**Availability for inspection**

(3) The recruiter 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 recruiter has arranged for another person to retain them. 2021, c. 35, Sched. 2, s. 14.

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

2021, c. 35, Sched. 2, s. 14 - not in force

**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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 74.8 of the Act is amended by adding the following subsection: (See: 2021, c. 35, Sched. 2, s. 15)**

#### **Same**

(3.1) Subsection (2) does not apply if the Director,

- (a) refuses to issue or renew a licence under section 74.1.5 and the client enters into an employment relationship with the employee after the refusal;
- (b) revokes the licence to operate the temporary help agency under section 74.1.6 and the client enters into an employment relationship with the assignment employee after the revocation;
- (c) suspends the licence to operate the temporary help agency under section 74.1.6 and the client enters into an employment relationship with the assignment employee while the licence is suspended; or
- (d) cancels the licence under section 74.1.11 and the client enters into an employment relationship with the assignment employee after the cancellation. 2021, c. 35, Sched. 2, s. 15.

#### **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

2021, c. 35, Sched. 2, s. 15 - not in force

#### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 74.10.1 of the Act is amended by adding the following subsection: (See: 2021, c. 35, Sched. 2, s. 16)**

**Same**

(5) For greater certainty, for the purposes of clause (4) (b), if an assignment is terminated because the Director has refused to issue or renew, or has revoked or suspended, a licence to operate a temporary help agency under section 74.1.5 or 74.1.6, the assignment has not become impossible to perform or been frustrated by a fortuitous or unforeseeable event or circumstance. 2021, c. 35, Sched. 2, s. 16.

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

2017, c. 22, Sched. 1, s. 44 - 01/01/2018

2021, c. 35, Sched. 2, s. 16 - not in force

## 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

**Note:** On a day to be named by proclamation of the Lieutenant Governor, clause 74.12 (1) (a) of the Act is amended by striking out “or” at the end of subclause (viii) and by adding the following subclause: (See: 2021, c. 35, Sched. 2, s. 17)

- (ix) makes inquiries about whether a person holds a licence to operate as a temporary help agency or a licence to act as a recruiter as required under Part XVIII.1; 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

2021, c. 35, Sched. 2, s. 17 - not in force

**Note:** On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section immediately before the heading “Enforcement”: (See: 2021, c. 35, Sched. 2, s. 18)

## REPRISAL BY RECRUITER

### Reprisal by recruiter prohibited

**74.12.1** (1) No recruiter or person acting on behalf of a recruiter shall intimidate or penalize, or attempt or threaten to intimidate or penalize, a prospective employee who engages or uses the services of the recruiter because the prospective employee,

- (a) asks the recruiter to comply with this Act and the regulations;
- (b) gives information to an employment standards officer;
- (c) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act; or
- (d) makes inquiries about whether a person holds a licence to operate as a temporary help agency or a licence to act as a recruiter as required under Part XVIII.1. 2021, c. 35, Sched. 2, s. 18.

### **Onus of proof**

(2) Subject to subsection 122 (4), in any proceeding under this Act, the burden of proof that a recruiter did not contravene a provision set out in this section lies upon the recruiter. 2021, c. 35, Sched. 2, s. 18.

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

2021, c. 35, Sched. 2, s. 18 - not in force

### **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

2017, c. 22, Sched. 1, s. 49 - 01/01/2018

**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

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2021, c. 35, Sched. 2, s. 19)**

**Order re: recruiter reprisal**

**74.19** (1) If an employment standards officer finds that section 74.12.1 has been contravened with respect to a prospective employee who engages or uses the services of a recruiter, the officer may order that the prospective employee be compensated for any loss incurred as a result of the contravention. 2021, c. 35, Sched. 2, s. 19.

**Terms of order**

(2) If an order issued under this section requires the recruiter to compensate a prospective employee that has engaged or used the services of the recruiter, it shall also require the recruiter 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 prospective employee. 2021, c. 35, Sched. 2, s. 19.

**Application of s. 103 (3) to (9)**

- (3) Subsections 103 (3) 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 recruiter.
  2. A reference to an employee is a reference to a prospective employee that has engaged or used the services of a recruiter. 2021, c. 35, Sched. 2, s. 19.

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

2021, c. 35, Sched. 2, s. 19 - not in force

**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).

(3) REPEALED: 2021, c. 35, Sched. 2, s. 20.

#### **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).

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



2021, c. 35, Sched. 2, s. 20 - 02/12/2021

### **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. REPEALED: 2021, c. 35, Sched. 2, s. 21.
  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).

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

2021, c. 35, Sched. 2, s. 21 - 02/12/2021

**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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 108 (3) of the Act is amended by adding “74.19” after “74.17”. (See: 2021, c. 35, Sched. 2, s. 22 (1))

**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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 of subsection 108 (4) of the Act is amended by adding “a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee” at the end. (See: 2021, c. 35, Sched. 2, s. 22 (2))

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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 of subsection 108 (4) of the Act is amended by striking out “or prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”. (See: 2021, c. 35, Sched. 2, s. 22 (3))

**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

2021, c. 35, Sched. 2, s. 22 (1-3) - not in force

**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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 109 (1) of the Act is amended by adding “74.19” after “74.17”. (See: 2021, c. 35, Sched. 2, s. 23)

**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

2021, c. 35, Sched. 2, s. 23 - not in force

**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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 110 (1) of the Act is amended by adding “74.19” after “74.17”. (See: 2021, c. 35, Sched. 2, s. 24)

**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

2021, c. 35, Sched. 2, s. 24 - not in force

**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).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 112 of the Act is amended by adding the following subsection: (See: 2021, c. 35, Sched. 2, s. 25 (1))**

#### **Same**

- (7.1) For greater certainty, no person shall enter into a settlement that would permit or require a temporary help agency or recruiter to operate or continue to operate without a licence in contravention of this Act. 2021, c. 35, Sched. 2, s. 25 (1).

#### **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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 of subsection 112 (9) of the Act is amended by adding "a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee" at the end. (See: 2021, c. 35, Sched. 2, s. 25 (2))**

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).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 of subsection 112 (9) of the Act is amended by striking out “or prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”. (See: 2021, c. 35, Sched. 2, s. 25 (3))

#### 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

2021, c. 35, Sched. 2, s. 25 (1-3) - not in force

### 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).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 113 (7) of the Act is amended by adding “74.19” after “74.17”. (See: 2021, c. 35, Sched. 2, s. 26)

**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

2021, c. 35, Sched. 2, s. 26 - not in force

**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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 of subsection 114 (6) of the Act is amended by adding “a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee” at the end. (See: 2021, c. 35, Sched. 2, s. 27 (1))

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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 of subsection 114 (6) of the Act is amended by striking out “or prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”. (See: 2021, c. 35, Sched. 2, s. 27 (2))

**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

2021, c. 35, Sched. 2, s. 27 (1, 2) - not in force

**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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 of subsection 115 (1.1) of the Act is amended by adding “a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee” at the end. (See: 2021, c. 35, Sched. 2, s. 28 (1))

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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 of subsection 115 (1.1) of the Act is amended by striking out “or prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”. (See: 2021, c. 35, Sched. 2, s. 28 (2))

**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

2021, c. 35, Sched. 2, s. 28 (1, 2) - not in force

**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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 115.1 of the Act is amended by striking out “or a prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”. (See: 2021, c. 35, Sched. 2, s. 29)

**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

2021, c. 35, Sched. 2, s. 29 - not in force

**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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 116 of the Act is amended by adding “74.19” after “74.17” wherever it appears. (See: 2021, c. 35, Sched. 2, s. 30)

**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

2021, c. 35, Sched. 2, s. 30 - not in force

**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).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 129 (3) of the Act is amended by adding "74.19" after "74.17". (See: 2021, c. 35, Sched. 2, s. 31)

**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)**

2009, c. 9, s. 24 (1, 2) - 6/11/2009

2021, c. 35, Sched. 2, s. 31 - not in force

## 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.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 133 (1) of the Act is repealed and the following substituted: (See: 2021, c. 35, Sched. 2, s. 32)

#### **Additional orders**

(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), if a client is convicted under section 132 of contravening section 74.12 or if a recruiter is convicted under section 132 of contravening section 74.12.1, the court shall, in addition to any fine or term of imprisonment that is imposed, order that the employer, client or recruiter, as the case may be, take specific action or refrain from taking specific action to remedy the contravention. 2021, c. 35, Sched. 2, s. 32.

**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

2021, c. 35, Sched. 2, s. 32 - not in force

**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 iv 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); 2021, c. 40, Sched. 9, s. 2.

### 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).

**Transitional regulations**

(2.0.3.5) 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 *Working for Workers Act, 2021*. 2021, c. 35, Sched. 2, s. 33 (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), (2.0.3.4) or (2.0.3.5), the regulation made under subsection (2.0.3), (2.0.3.1), (2.0.3.2), (2.0.3.3), (2.0.3.4) or (2.0.3.5) 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); 2021, c. 35, Sched. 2, s. 33 (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).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 141 of the Act is amended by adding the following subsections: (See: 2021, c. 35, Sched. 2, s. 33 (3))**

#### **Regulations re: Part XVIII.1**

(2.6) The Lieutenant Governor in Council may make regulations respecting the licensing of temporary help agencies and recruiters under Part XVIII.1 (Temporary Help Agencies and Recruiters), and without restricting the generality of the foregoing, may make regulations,

- (a) governing requirements for the issuance or renewal of a licence, including requirements relating to compliance with laws that apply to the applicant;
- (b) governing applications for the issuance or renewal of a licence including requiring information to be provided for different types of licences, which may include information about compliance with laws that apply to the applicant;
- (c) prescribing circumstances in which an application for the issuance or renewal of a licence may be refused, which may include non-compliance with laws that apply to the applicant;



- (d) prescribing circumstances in which a licence may be revoked or suspended, which may include non-compliance with laws that apply to the applicant;
- (e) prescribing the processes to be followed by the Director in refusing to issue or renew a licence under section 74.1.5, which shall include providing an applicant with an opportunity to show evidence of compliance with licensing requirements before the licence or renewal is refused;
- (f) prescribing the processes to be followed by the Director in revoking or suspending a licence under section 74.1.6, which shall include providing an applicant with an opportunity to show evidence of compliance with licensing requirements before the licence is revoked or suspended;
- (g) governing the terms and conditions of licences;
- (h) governing licensing fees, including prescribing the amount of fees or the manner of determining fees, and prescribing the manner in which and the period within which fees must be paid;
- (i) governing security for licensing, including prescribing the amount of security and prescribing the manner in which and the method by which security must be provided to the Director and the uses for which security may be used, including to satisfy obligations owing under this Act or under the *Employment Protection for Foreign Nationals Act, 2009*;
- (j) governing the public record that the Director is required to publish and maintain under section 74.1.12;
- (k) prescribing timelines for the purposes of review hearings held under section 74.1.13 and providing that the Board may grant extensions to those timelines;
- (l) governing the application of Part XVIII.1 for the purposes of section 74.2.1. 2021, c. 35, Sched. 2, s. 33 (3).

#### **Same, retroactive regulations**

(2.7) A regulation made under paragraph 3 of subsection (1) in respect of the application of Part XVIII.1 is, if it so provides, effective with reference to a period before it is filed. 2021, c. 35, Sched. 2, s. 33 (3).

#### **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; 2021, c. 35, Sched. 2, s. 33 (1, 2) - 02/12/2021; 2021, c. 35, Sched. 2, s. 33 (3) - not in force; 2021, c. 40, Sched. 9, s. 2 - 01/01/2022

**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.

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# Human Rights Code

## R.S.O. 1990, CHAPTER H.19

**Consolidation Period:** From November 29, 2021 to the [e-Laws currency date](#).

Last amendment: 2021, c. 4, Sched. 11, s. 16.

Legislative History: 1993, c. 27, Sched.; 1993, c. 35, s. 56; 1994, c. 10, s. 22; 1994, c. 27, s. 65; 1995, c. 4, s. 3; 1997, c. 16, s. 8; 1997, c. 24, s. 212; 1999, c. 6, s. 28; 2001, c. 13, s. 19; 2001, c. 32, s. 27; 2002, c. 18, Sched. C; 2005, c. 5, s. 32; 2005, c. 18, s. 17; 2005, c. 29, s. 1; 2006, c. 19, Sched. B, s. 10; 2006, c. 21, Sched. F, s. 136, 137; 2006, c. 30; 2006, c. 35, Sched. C, s. 54, 132; 2009, c. 33, Sched. 2, s. 35; 2012, c. 7; 2015, c. 7, Sched. 3, s. 17; 2016, c. 23, s. 54; 2017, c. 20, Sched. 8, s. 89; 2017, c. 26, Sched. 3, s. 26; 2017, c. 34, Sched. 46, s. 20; 2018, c. 3, Sched. 5, s. 27 (see: 2019, c. 1, Sched. 3, s. 5); 2019, c. 1, Sched. 4, s. 25; 2019, c. 15, Sched. 22, s. 95; 2020, c. 11, Sched. 5, s. 16; 2020, c. 11, Sched. 17, s. 6; 2021, c. 4, Sched. 3, s. 23; 2021, c. 4, Sched. 11, s. 16.

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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

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# Labour Relations Act, 1995

## S.O. 1995, CHAPTER 1 Schedule A

**Consolidation Period:** From June 3, 2021 to the [e-Laws currency date](#).

Last amendment: 2021, c. 25, Sched. 11.

Legislative History: 1997, c. 4, s. 83; 1997, c. 31, s. 151; 1998, c. 8, s. 1-23; 2000, c. 24; 2000, c. 38, s. 1-38; 2002, c. 16, s. 20; 2002, c. 18, Sched. J, s. 4; 2004, c. 8, s. 46, Table and s. 47 (1); 2004, c. 16, Sched. D, Table; 2005, c. 15, s. 1-12 (See also s. 14); 2006, c. 19, Sched. M, s. 3; 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 35, Sched. C, s. 57; 2009, c. 33, Sched. 20, s. 2; 2014, c. 5, s. 50; 2014, c. 10, Sched. 3; 2015, c. 11, s. 20; 2015, c. 38, Sched. 12; CTS 25 AU 10 - 1; 2017, c. 22, Sched. 2, s. 1-14; 2018, c. 3, Sched. 5, s. 30 (see: 2019, c. 1, Sched. 3, s. 5); 2018, c. 8, Sched. 14; 2018, c. 14, Sched. 2, s. 1-19; 2018, c. 18; 2019, c. 1, Sched. 4, s. 27; 2019, c. 4, Sched. 9, s. 12-14; 2019, c. 9, Sched. 8; 2019, c. 12, s. 41; 2020, c. 28, s. 3; 2020, c. 36, Sched. 38, s. 5; 2021, c. 25, Sched. 11.

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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

2005, c. 15, s. 9 - 01/05/2005

### **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 employees 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 (1).
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)**

2000, c. 24, s. 7 - 16/12/2000

### **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 nominates 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 subs. (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

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# **Criminal Liability of Organizations**

## **A Plain Language Guide to Bill C-45**





## A PLAIN LANGUAGE GUIDE

### BILL C-45 - AMENDMENTS TO THE CRIMINAL CODE AFFECTING THE CRIMINAL LIABILITY OF ORGANIZATIONS

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## BACKGROUND

The Government tabled Bill C-45 on June 12, 2003. If passed, it will amend the *Criminal Code* to modernize the law with respect to the criminal liability of corporations and the sentencing of corporations. The House of Commons Standing Committee on Justice and Human Rights held hearings into this subject in May 2002 and recommended that the Government table legislation. The Government Response ([www.canada.justice.gc.ca/en/dept/pub/ccl\\_rpm](http://www.canada.justice.gc.ca/en/dept/pub/ccl_rpm)) set out the principles that would be enacted in the *Criminal Code*. The passage of Bill C-45 will transform these principles into law.

Because the *Criminal Code* covers a wide range of crimes by all kinds of persons, the legislation employs more complex and specific language than that which was used in the Response. This Guide outlines how the law will apply in the most common situations. It is intended to assist the reader understand how the Government's proposed legislation may affect them or the corporation they work for.

**Section I** provides background information on Canada's current laws regarding corporate criminal liability.

**Section II** describes Bill C-45, by explaining who it applies to, which activities it pertains to, and what sentencing options exist under the proposed legislation.

### SECTION I: CURRENT CANADIAN LAW

#### Criminal liability generally

The *Criminal Code* requires various elements to be proven before a person can be convicted of a crime. The commission of a prohibited act by the accused – for example, causing bodily harm, counselling a person to commit an offence, driving while impaired, or touching a person for a sexual purpose, must first be proven.

The Crown must also prove that the accused had the requisite guilty state of mind in committing the offence. A person cannot be found guilty of a crime if, for example, the court concludes that the person was suffering from a mental disorder at the time the act was committed or did not know of certain facts that give the act its criminal quality.

Depending on the offence, that state of mind can differ. For example, the accused must:

- know a fact (e.g. that goods are stolen), or
- have a specified intent, either to achieve a certain outcome (e.g. to mislead) or to do a certain act (e.g. to intentionally apply force to another person).

Some offences, however, are based on negligence and judged “objectively” so that the person's conduct is itself proof of the necessary “criminal” fault. Some examples, as defined in the law, include:

- storing a firearm “in a careless manner”;
- operating a motor vehicle “in a manner that is dangerous to the public”; and
- showing “wanton and reckless disregard” for the lives or safety of others.

### **Criminal liability of corporations**

Corporations are already subject to the *Criminal Code*. The definition in section 2 of “every one”, “person”, “owner” includes “public bodies, bodies corporate, societies, companies”. However, determining whether a corporation has committed a prohibited act and whether a corporation has the requisite mental state is far more complicated than for an individual.

Corporations can only act through their employees and agents. For example, although we commonly consider that a bank makes a loan, in actuality it is the bank employees who gather information, check out security, authorize the loan and transfer money to the customer’s account. The question becomes whether a bank making a loan to a borrower who uses the money for a criminal purpose like importing drugs, is committing a crime? The bank has made a loan that is used for a crime, so clearly it committed a prohibited act. But did the bank know of the criminal purpose and intend to finance it?

Over the years, the courts have dealt with criminal charges against corporations and other groups of persons, such as trade unions, and case by case, they have elaborated rules for determining when a corporation should be convicted of a crime.

Basically, a corporation is guilty of a crime if its “directing mind” committed the prohibited act and had the necessary state of mind. To be a “directing mind”, a person must have so much authority in the corporation that the person can be considered the “alter ego” or “soul” of the corporation (terms used in recent case law). Determining who is a directing mind depends on the facts of each case, but generally the person must have authority to set policy rather than simply having authority to manage. As well, the directing mind has to be intending, at least in part, to benefit the corporation by the crime.

In the above example, it is highly unlikely that the bank president and the board of directors would be aware of the loan. The bank makes many loans every month. If the borrower deceived the bank and no one knew of the criminal intent of the borrower, no crime has been committed by the bank. But what if the bank manager or the regional manager knew? Currently, whether they would be a “directing mind” would depend on how much authority they had to develop loans policy. Moreover, they would have to be acting at least in part for the benefit of the bank and not for their personal benefit in order for the bank to be convicted.

### **Criminal liability of directors, officers and employees**

Under current Canadian law, officers and directors of a corporation cannot be convicted of a crime for acts of the corporation solely because of their status as directors or officers. If they are directing the corporation to commit crimes that will benefit the corporation, or

are otherwise participating in criminal activities within the corporate context, they may be held criminally responsible. In such circumstances, it is likely that the directors and officers would be charged with the offence jointly with the corporation.

## **SECTION II: CHANGING THE LAW UNDER BILL C-45**

The provisions of Bill C-45 are a compilation of the existing rules with new reforms, which will modernize the law to reflect the increasing complexity of corporate structures. Bill C-45 deals only with the criminal responsibility of the organization and makes no change in the current law dealing with the personal liability of directors, officers and employees. Directors and officers, like anyone else, are liable for all crimes that they commit *personally*, whatever the context.

### **Why does C-45 refer to an organization rather than a corporation?**

The Standing Committee hearings and the Government's Response both dealt with corporate criminal liability. However, the *Criminal Code* definition of "person" includes bodies in addition to corporations, and it is important to ensure that the same rules for attributing criminal liability apply to all forms of joint enterprises carried out by individuals, regardless of their structure.

In amendments to the *Criminal Code* in recent years, it has been necessary to develop new definitions because neither "person" nor "corporation" would cover all the "bodies" that may be involved in a crime. For example, in 1997, "criminal organization" was defined as "a group, however organized" of three or more persons for the commission of criminal offences. A biker gang would be an organization even if it were not a corporation or society. Similarly, in 2001, the terrorism offences defined an "entity" as a person, group, trust, partnership or fund or an unincorporated association or organization. A terrorist entity is not a corporation but it can have assets and its members commit crimes.

For this reason, Bill C-45 refers to an "organization" and then defines it to mean:

- "a public body, a body corporate, a society, a company" [This comes from the existing definition of "every one"]; and
- "a firm, a partnership, a trade union or an association of persons created for a common purpose." [This is new].

These new provisions that define an "organization" will also apply to other groups that have an operational structure and make themselves known to the public. This will ensure the law does not apply to an informal group that gets together regularly, for example, to discuss politics or to play bridge.

## Who are the “directing minds” of the organization?

In determining who is sufficiently important within the organization to be considered to be its directing mind, Bill C-45 refers to a “senior officer”. This is a more familiar expression than “directing mind”. The definition of “senior officer” includes everyone who has an important role in:

- setting policy (which is the current Canadian law); or
- managing an important part of the organization’s activities (which is new).

The definition therefore focuses on the function of the individual, rather than on any particular title. For example, the “executive assistant to the president” could have a great deal of authority and effectively speak for the president in one organization and have only minor administrative functions, like scheduling the president’s meetings, in another organization.

In addition, the new definition makes it clear that the directors, the chief executive officer and the chief financial officer of a corporation are, by virtue of the position they hold, automatically “senior officers”. A corporation charged with an offence cannot argue that the individuals occupying these positions actually had no real role in setting policy or managing the organization and therefore were not senior officers.

## What does it mean that an organization is a party to an offence?

The Bill refers to “a party to an offence”, and Section 21 of the *Criminal Code* provides that a person is a party to an offence if the person actually commits the offence or aids or abets another person to commit it. Section 22 of the *Criminal Code* makes a person who counsels another person to commit an offence also a party to that offence. Accordingly, the use of “a party to an offence” in Bill C-45 reflects both sections of the Code, providing a broader definition that will apply to more activities than only when an organization “commits an offence”.

## For whose physical acts is an organization responsible?

To obtain a conviction, the Crown must prove both the commission of the prohibited act and the requisite guilty mental state. Bill C-45 differentiates between crimes requiring the Crown to prove negligence (proposed s. 22.1) and crimes requiring the Crown to prove knowledge or intent (proposed s. 22.2), and establishes separate rules for each.

Currently, to prove the commission of the physical act by an organization, the Crown will usually show that the physical act was committed by employees of the organization. However, it has been found that the term “employee” is not broad enough to capture all the individuals who may act on behalf of an organization. Therefore Bill C-45 uses “representative,” which is defined under the proposed amendments to s. 2 to mean directors, partners, members, agents and contractors, as well as employees. These representatives must be acting within the scope of their employment at the time of the alleged crime.

## **How does an organization become a party to a crime of negligence?**

In offences based on negligence, the court must determine whether an individual acted so carelessly or with such reckless disregard for the safety of others as to deserve criminal punishment.

In general, for an organization to be found guilty of committing a crime of negligence, the Crown will have to show that employees of the organization committed the act and that a senior officer should have taken reasonable steps to prevent them from doing so. However, the complicated structure of organizations requires that this relatively straightforward idea be expressed in legal language that covers the many different ways that an organization acts.

With respect to the physical element of the crime, Bill C-45 (proposed s. 22.1 of the *Criminal Code*) provides that an organization is responsible for the negligent acts or omissions of its representative. The Bill provides that the conduct of two or more representatives can be combined to constitute the offence. It is not therefore necessary that a single representative commit the entire act.

For example, in a factory, an employee who turned off three separate safety systems would probably be prosecuted for causing death by criminal negligence if employees were killed as a result of an accident that the safety systems would have prevented. The employee acted negligently. On the other hand, if three employees each turned off one of the safety systems each thinking that it was not a problem because the other two systems would still be in place, they would probably not be subject to criminal prosecution because each one alone might not have shown reckless disregard for the lives of other employees. However, the fact that the individual employees might escape prosecution should not mean that their employer necessarily would not be prosecuted. After all, the organization, through its three employees, turned off the three systems.

As for the intent necessary to find the organization guilty, the proposed amendments under Bill C-45 would require that the senior officer responsible, or senior officers collectively, must have departed markedly from the standard of care that could be expected. The organization might be convicted if, for example, the director of safety systems failed to give the one negligent employee basic training necessary to perform the job.

Similarly, in the example of three employees engaging in the negligent conduct, the court would have to decide whether the organization should have had a system to prevent them acting independently in a dangerous way and whether the lack of such a system was a marked departure from the standard of care expected in the circumstances. The court would consider, under this example, the practices put in place by the person in charge of safety at the factory and the practices of other similar organizations.

## **How does an organization become a party to an offence where intent or knowledge has to be proven?**

The proposed reforms in Bill C-45, specifically the addition of section 22.2 of the *Criminal Code*, would set out three ways an organization can commit a crime requiring an awareness of a fact or a specified intent. In all cases, the focus is on a senior officer who must intend to benefit the organization at least to some degree. The most obvious way for an organization to be criminally responsible is if the senior officer actually committed the crime for the direct benefit of the organization. For example, if the CEO fudges financial reports and records, leading others to provide funds to the organization, both the organization and the CEO will be guilty of fraud.

However, senior officers may direct others to undertake such dishonest work. The Bill therefore makes it clear that the organization is guilty if the senior officer has the necessary intent, but subordinates carry out the actual physical act. For example, a senior officer may be benefiting the organization by instructing employees to deal in goods that are stolen. The senior officer may instruct employees to buy from the supplier offering the lowest price, knowing that the person who offers to sell the goods at the lowest price can only make such an offer because the goods are stolen. The employees themselves have no criminal intent but the senior officer and the organization could be found guilty.

Finally, an organization would be guilty of a crime if a senior officer knows employees are going to commit an offence but does not stop them because he wants the organization to benefit from the crime. Using the stolen goods example, the senior officer may become aware that an employee is going to get a kickback from the thieves for getting the organization to buy the stolen goods. The senior officer has done nothing to set up the transaction. But, if he does nothing to stop it because the organization will benefit from the lower price, the organization would be responsible.

## **Sentencing an Organization**

### **How are organizations punished for committing a crime?**

Corporations cannot be imprisoned so the *Criminal Code* provides for fines when corporations are convicted of crimes. In the case of a summary conviction offence (less serious offences that are punishable for individuals by up to six months in jail and/or a \$2,000 fine), the *Code* provides for a fine of up to \$25,000 for corporations. Bill C-45 would increase the maximum fine on an organization for a summary conviction offence to \$100,000. For the more serious, indictable offences, the *Code* already provides no limit on the fine that can be imposed on an organization.



## **At what level should the fine be set?**

Canadian law does not provide a mechanical process where the punishment is pre-determined. There are few minimum sentences and judges have a great deal of latitude to craft the appropriate sentence. Bill C-45 proposes factors that a court should consider in fining an organization, which are in addition to those factors already in the *Code* that are applicable to both individuals and corporations (such as an abuse of a position of trust). The gravity of the crime, including the extent of injury caused or whether death results, is already considered when determining sentencing. Under the proposed reforms in Bill C-45 to s. 718.21 of the *Criminal Code*, new factors would reflect for organizations the considerations that govern sentencing individuals. Judges already apply many of these factors but it is expected that providing a list will result in judges having a more complete picture of the organization. The factors are:

### ***Moral blameworthiness***

- The economic advantage gained by committing the crime - The more money the organization made, the higher the fine should be.
- The degree of planning involved - Careful planning shows a deliberate breaking of the law and should be punished more than a case where the senior officers took advantage of an unexpected opportunity to make a quick, illegal profit.

### ***Public interest***

- The need to keep the organization running and preserve employment - Just as individuals should not be fined so heavily that they will not be able to provide for their families, so an organization should not normally be so heavily fined that bankruptcy results and, as a result, employees are left without work.
- The cost of investigation and prosecution - Many corporate fraud offences require lengthy investigations and the cost to the public of detecting the crime and building a case should be considered by the judge.
- Any regulatory penalties, which are distinct from those under the *Criminal Code*, imposed on the organization for the offence - Courts consider whether individuals have been punished in other ways, for example, by losing their jobs. Similarly, a court would consider whether the public interest is served by adding a large fine to the penalties that may have already been imposed by a body such as a securities commission.

### ***Prospects of rehabilitation***

- Penalties imposed on managers and employees for their role in the crime - An organization shows how seriously it responds to criminal activity if, for example, it disciplines or fires employees who participated in the offence.
- Previous convictions or regulatory offences - Just as the criminal record of an individual is very important to determining the appropriate penalty, so it is important for a judge to consider whether the organization and its workers had been sanctioned for similar activities in the past, not just in the criminal courts but by regulators like occupational health and safety departments.

- Restitution – Compensating victims shows that the organization is trying to make up for the harm it caused.
- Attempts to hide assets to avoid paying a fine – An organization that tries to pretend it is poor, rather than being open with the court about its financial situation, is showing that it has not changed its ways.
- Measures taken to reduce the likelihood of further criminal activity - New policies and practices, like spot audits or changes in personnel, could indicate that the organization has learned its lesson.

### **What is corporate probation?**

Courts often place individual offenders on probation. The court imposes conditions on the offender, such as reporting to a probation officer, not drinking alcohol or taking drugs and performing community service and, in observing these conditions, the offender avoids going to jail. Probation is virtually unheard of for corporate offenders. But, there may be circumstances in which probation would be appropriate to ensure that the organization take steps to reduce the chances it will commit further crimes.

The Bill proposes to put in the *Code* a specific section dealing with probation orders for organizations (s. 732.1(3.1)). The list of conditions the judge can impose includes:

- providing restitution to victims of the offence to emphasize that their losses should be uppermost in the sentencing judge’s mind;
- requiring the corporation to inform the public of the offence, the sentence imposed and the remedial measures being undertaken by the organization. Having to run ads in the media admitting to criminal acts could have a serious effect on an organization’s business.

The new section also sets out conditions that may be imposed by the court to supervise the efforts of the organization to ensure it does not commit crimes in the future. A court can order an organization to:

- implement policies and procedures to reduce the likelihood of further criminal activity;
- communicate those policies and procedures to employees;
- name a senior officer to oversee their implementation; and
- report on progress.

Courts are not necessarily well equipped to supervise corporate activities and the organization may already be subject to extensive regulation by government bodies. There is no need for a court to get involved in overseeing changes in an organization’s safety practices, for example, if a provincial occupational health and safety department is already doing so. Such an agency has trained inspectors and expertise that the courts lack. Therefore, the section requires the court to consider whether another body would be more suitable to supervise the organization.

## **FOR MORE INFORMATION**

This Guide on Bill C-45 has addressed what the Department of Justice anticipates will be the most common questions about the Government's proposed legislation.

For further information, please contact the Department of Justice, online at **[www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)** or by telephone at **(613) 957-4222**

To access the latest online version of the Bill, please visit Canada's Parliamentary Web site at **[www.parl.gc.ca](http://www.parl.gc.ca)**



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# Occupational Health and Safety Act

R.S.O. 1990, CHAPTER O.1

**Consolidation Period:** From July 1, 2022 to the [e-Laws currency date](#).

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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”)

“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”)

“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”)
- “professional engineer of the Ministry” means a person employed by the Ministry and who is licensed as a professional engineer under the *Professional Engineers Act*; (“ingénieur du ministère”)
- “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; 2021, c. 34, Sched. 15, s. 1 (1-3).

#### **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, engineer or other person solely to oversee quality control at a project. R.S.O. 1990, c. O.1, s. 1 (3); 2021, c. 34, Sched. 15, s. 1 (4).

#### **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

2021, c. 34, Sched. 15, s. 1 (1-4) - 01/07/2022

## 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).

**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).

**Same**

(14.1) A health and safety representative may share with an inspector any of the findings made by the representative under subsection (14). 2021, c. 34, Sched. 15, s. 2.

**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 - See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2021

2021, c. 34, Sched. 15, s. 2 - 02/12/2021

**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).

**Same**

(31.1) A member of a committee who is designated to investigate cases under subsection (31) may share with an inspector any of the findings made by the member under subsection (31). 2021, c. 34, Sched. 15, s. 3.

**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

2021, c. 34, Sched. 15, s. 3 - 02/12/2021

**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,
- reduce or suspend grants to the entity while the non-compliance continues;
  - assume control of the entity and responsibility for its affairs and operations;
  - revoke the designation and cease to provide grants to the entity; or
  - 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,

- may require a designated entity to provide such information, records or accounts as the Chief Prevention Officer specifies; and
- 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.

#### **Same**

(4) Unless otherwise prescribed, clause (2) (j) does not apply with respect to a workplace at which five or fewer workers are regularly employed. 2021, c. 34, Sched. 15, s. 4.

#### **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

2021, c. 34, Sched. 15, s. 4 - 02/12/2021

#### **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

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2022, c. 7, Sched. 4, s. 1)**

### **Naloxone kits**

**25.2** (1) Where an employer becomes aware, or ought reasonably to be aware, that there may be a risk of a worker having an opioid overdose at a workplace where that worker performs work for the employer, or where the prescribed circumstances exist, the employer shall,

- (a) provide and maintain in good condition a naloxone kit in that workplace; and
- (b) comply with any other prescribed requirements respecting the provision and maintenance of naloxone kits and the training referred to in subsection (3). 2022, c. 7, Sched. 4, s. 1.

### **Location of kit**

(2) The employer shall ensure that, at any time there are workers in the workplace, the naloxone kit is in the charge of a worker who works in the vicinity of the kit and who has received the training described in subsection (3). 2022, c. 7, Sched. 4, s. 1.

### **Training**

(3) The training shall include training to recognize an opioid overdose, to administer naloxone and to acquaint the worker with any hazards related to the administration of naloxone, and shall meet such other requirements as may be prescribed. 2022, c. 7, Sched. 4, s. 1.

### **Limit on disclosure**

(4) No employer shall disclose to any person more personal information than is reasonably necessary to comply with this section. 2022, c. 7, Sched. 4, s. 1.

### **Employer duties**

(5) For greater certainty, the employer duties set out in section 25 apply, as appropriate, with respect to the administration of naloxone in the workplace. 2022, c. 7, Sched. 4, s. 1.

### **Definition**

(6) In this section,

“naloxone kit” means a kit that includes the prescribed contents. 2022, c. 7, Sched. 4, s. 1.

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

2022, c. 7, Sched. 4, s. 1 - not in force

### **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. R.S.O. 1990, c. O.1, s. 29 (1).

#### **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. R.S.O. 1990, c. O.1, s. 29 (2).

#### **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 a professional 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. R.S.O. 1990, c. O.1, s. 29 (3); 2021, c. 34, Sched. 15, s. 5.

#### **Additional information**

(4) A professional engineer of the Ministry may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information. R.S.O. 1990, c. O.1, s. 29 (4); 2021, c. 34, Sched. 15, s. 5.

#### **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 (5).

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

2021, c. 34, Sched. 15, s. 5 - 01/07/2022

#### **Duties of owners — washroom access**

**29.1** (1) Subject to subsection (2), the owner of a workplace shall ensure that access to a washroom is provided, on request, to a worker who is present at the workplace to deliver anything to the workplace, or to collect anything from the workplace for delivery elsewhere. 2021, c. 35, Sched. 5, s. 1.

#### **Exceptions**

- (2) Access to a washroom at a workplace is not required under subsection (1),
  - (a) if providing access would not be reasonable or practical for reasons relating to the health or safety of any person at the workplace, including the worker who requests to use a washroom;

- (b) if providing access would not be reasonable or practical having regard to all the circumstances, including, but not limited to, the nature of the workplace, the type of work at the workplace, the conditions of work at the workplace, the security of any person at the workplace and the location of the washroom within the workplace; or
- (c) if the washroom is in, or can only be accessed through, a dwelling. 2021, c. 35, Sched. 5, s. 1.

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

2021, c. 35, Sched. 5, s. 1 - 01/03/2022

**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. R.S.O. 1990, c. O.1, s. 31 (1).

**Architects and engineers**

(2) An architect, as defined in the *Architects Act*, or an engineer contravenes this Act if, as a result of the architect's or engineer's advice that is given or the architect's or engineer's certification required under this Act that is made negligently or incompetently, a worker is endangered. 2021, c. 34, Sched. 15, s. 6.

**Same**

(3) For greater certainty, a contravention described in subsection (2) continues for each day or part of a day that a worker is endangered. 2021, c. 34, Sched. 15, s. 6.

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

2021, c. 34, Sched. 15, s. 6 - 01/07/2022

**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 and to the committee, health and safety representative and trade union, if any 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); 2021, c. 34, Sched. 15, s. 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

2021, c. 34, Sched. 15, s. 7 - 02/12/2021

**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 an engineer and to provide, at the expense of the employer, a report bearing the seal and signature of the 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 an 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 an 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; 2021, c. 34, Sched. 15, s. 8.

### **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

2021, c. 34, Sched. 15, s. 8 (1-3) - 01/07/2022

### **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

#### **Order for written notices to Director under s. 52 (1)**

**55.4** For the purposes of subsection 52 (1), an inspector may, in writing, order an employer to give written notice to a Director during such period as may be specified by the inspector. 2021, c. 34, Sched. 15, s. 9.

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

2021, c. 34, Sched. 15, s. 9 - 02/12/2021

#### **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 a professional 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; 2021, c. 34, Sched. 15, s. 10.

**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

2021, c. 34, Sched. 15, s. 10 - 01/07/2022

## PART IX OFFENCES AND PENALTIES

**Penalties**

**66** (1) Subject to subsections (2) and (2.1), 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 \$500,000 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); 2022, c. 7, Sched. 4, s. 2 (1).

**Same**

(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. 2022, c. 7, Sched. 4, s. 2 (2).

**Same**

(2.1) A director or officer of a corporation who contravenes or fails to comply with section 32 is guilty of an offence and on conviction is liable to a fine of not more than \$1,500,000 or to imprisonment for a term of not more than twelve months, or to both. 2022, c. 7, Sched. 4, s. 2 (2).

**Aggravating factors**

(2.2) Each of the following circumstances shall be considered an aggravating factor for the purposes of determining a penalty under this section:

1. The offence resulted in the death, serious injury or illness of one or more workers.
2. The defendant committed the offence recklessly.
3. The defendant disregarded an order of an inspector.
4. The defendant was previously convicted of an offence under this or another Act.
5. The defendant has a record of prior non-compliance with this Act or the regulations.
6. The defendant lacks remorse.
7. There is an element of moral blameworthiness to the defendant's conduct.
8. In committing the offence, the defendant was motivated by a desire to increase revenue or decrease costs.
9. After the commission of the offence, the defendant,
  - i. attempted to conceal the commission of the offence from the Ministry or other public authorities, or
  - ii. failed to co-operate with the Ministry or other public authorities.
10. Any other circumstance that is prescribed as an aggravating factor. 2022, c. 7, Sched. 4, s. 2 (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).

**Additional orders**

(5) If a person is convicted of an offence under this section, the court may, in addition to any fine or imprisonment that is imposed, make any prescribed order. 2022, c. 7, Sched. 4, s. 2 (3).

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

2017, c. 34, Sched. 30, s. 4 (1, 2) - 14/12/2017

2022, c. 7, Sched. 4, s. 2 (1-3) - 01/07/2022

**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. R.S.O. 1990, c. O.1, s. 67 (1).

**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 an officer or director, or upon the manager or person in charge of the workplace; or
- (b) by registered letter addressed to an individual or corporation mentioned in clause (a) at the last known place of business of the individual or corporation,

and the same shall be deemed to be good and sufficient service thereof. R.S.O. 1990, c. O.1, s. 67 (2); 2022, c. 7, Sched. 4, s. 3.

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

2022, c. 7, Sched. 4, s. 3 (1, 2) - 01/07/2022

**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 two years 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; 2022, c. 7, Sched. 4, s. 4.

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

2017, c. 34, Sched. 30, s. 5 - 14/12/2017

2022, c. 7, Sched. 4, s. 4 - 01/07/2022

## 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;
14. exempting any class of workplaces from the requirement set out in subsection 9 (12);
15. prescribing elements that any policy or program required under this Act must contain and the format that the policy or program must be in;
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;

**Note:** On a day to be named by proclamation of the Lieutenant Governor, subsection 70 (2) of the Act is amended by adding the following paragraph: (See: 2022, c. 7, Sched. 4, s. 5)

- 43.1 governing the employer's obligations under section 25.2 respecting the provision and maintenance of naloxone kits and the training referred to in subsection 25.2 (3);

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; 2021, c. 34, Sched. 15, s. 11.

### 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) - See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2021; 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

2021, c. 34, Sched. 15, s. 11 - 02/12/2021

2022, c. 7, Sched. 4, s. 5 - not in force

### 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

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Français

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# Occupational Health and Safety Act

## R.R.O. 1990, REGULATION 860

### WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM (WHMIS)

**Consolidation Period:** From January 21, 2019 to the [e-Laws currency date](#).

Last amendment: 3/19.

Legislative History: 356/91, 36/93, 168/16, 342/18, 458/18, 3/19.

*This is the English version of a bilingual regulation.*

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#### DEFINITIONS

1. (1) In this Regulation,

“bulk shipment” means a shipment of a hazardous product that is contained without intermediate containment or intermediate packaging in,

- a vessel with a water capacity equal to or greater than 450 litres,
- a freight container, road vehicle, railway vehicle or portable tank,
- the hold of a ship, or
- a pipeline; (“expédition en vrac”)

“CAS registry number” means the identification number assigned to a chemical by the Chemical Abstracts Service, a division of the American Chemical Society; (“numéro d’enregistrement CAS”)

“container” includes a bag, barrel, bottle, box, can, cylinder, drum, storage tank or similar package or receptacle; (“contenant”)

“fugitive emission” means a gas, liquid, solid, vapour, fume, mist, fog or dust that meets the following conditions:

- The gas, liquid, solid, vapour, fume, mist, fog or dust escaped from process equipment, from emission control equipment or from a product.
- Workers may be readily exposed to the gas, liquid, solid, vapour, fume, mist, fog or dust; (“émission fugitive”)

“hazard information” means information on the proper and safe use, storage and handling of a hazardous product and includes information relating to the product’s health and physical hazards; (“renseignements sur les dangers”)

“hazardous product” means any product, mixture, material or substance that is classified in accordance with the *Hazardous Products Regulations* (Canada) in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada); (“produit dangereux”)

“*Hazardous Products Regulations* (Canada)” means the *Hazardous Products Regulations*, SOR/2015-17, made under the *Hazardous Products Act* (Canada); (“*Règlement sur les produits dangereux* (Canada)”)

“hazardous waste” means a hazardous product that is acquired or generated for recycling or recovery or is intended for disposal; (“résidu dangereux”)

“label” means a group of written, printed or graphic information elements that relate to a hazardous product, which is designed to be affixed to, printed on or attached to the hazardous product or the container in which the hazardous product is packaged; (“étiquette”)

“laboratory sample” means a sample of a hazardous product that is packaged in a container that contains less than 10 kg of hazardous product and that is intended solely to be tested in a laboratory but does not include a sample that is to be used,

- (a) by the laboratory for testing other products, mixtures, materials or substances, or
- (b) for educational or demonstration purposes; (“échantillon pour laboratoire”)

“manufactured article” means an article that is formed to a specific shape or design during manufacture, the intended use of which when in that form is dependent in whole or in part on its shape or design, and that, when being installed, if the intended use of the article requires it to be installed, and under normal conditions of use, will not release or otherwise cause an individual to be exposed to a hazardous product; (“article manufacturé”)

“medical professional” means a person who, under the laws of the province in which the person is practising,

- (a) is a legally-qualified medical practitioner, or
- (b) is registered as a registered nurse; (“membre d’une profession médicale”)

“product identifier” means, in respect of a hazardous product, the brand name, chemical name, common name, generic name or trade name; (“identificateur du produit”)

“research and development” means systematic investigation or search carried out in a field of science or technology by means of experiment or analysis, other than investigation or search in respect of market research, sales promotion, quality control or routine testing of hazardous products, and includes,

- (a) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view, and
- (b) development, namely, use of the results of applied research for the purpose of creating new, or improving existing, processes or hazardous products; (“recherche et développement”)

“safety data sheet” means,

- (a) a supplier safety data sheet, or
- (b) a safety data sheet prepared by an employer under subsection 18 (1) or (1.1) of this Regulation; (“fiche de données de sécurité”)

“significant new data” means new data regarding the hazard presented by a hazardous product that change its classification, in accordance with the *Hazardous Products Regulations* (Canada), in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada), or results in its classification in another hazard class, or change the ways to protect against the hazard presented by the hazardous product; (“nouvelles données importantes”)

“supplier label” means, in respect of a hazardous product, a label provided by a supplier that contains the information required by the *Hazardous Products Regulations* (Canada) for that hazardous product; (“étiquette du fournisseur”)

“supplier safety data sheet” means, in respect of a hazardous product, a safety data sheet provided by a supplier that complies with the requirements of the *Hazardous Products Regulations* (Canada) for a safety data sheet; (“fiche de données de sécurité du fournisseur”)

“workplace label” means, in respect of a hazardous product, a label that discloses,

- (a) a product identifier identical to that found on the safety data sheet for the hazardous product,
- (b) information for the safe handling of the hazardous product, and
- (c) that a safety data sheet, if supplied or produced, is available. (“étiquette du lieu de travail”) R.R.O. 1990, Reg. 860, s. 1 (1); O. Reg. 168/16, s. 2 (1-3), 3; O. Reg. 458/18, s. 1.

(2) In this Regulation, “produces” in relation to the production of a hazardous product does not include the production of a fugitive emission or of intermediate products undergoing reaction within a reaction vessel or process vessel. R.R.O. 1990, Reg. 860, s. 1 (2); O. Reg. 168/16, s. 2 (1).

#### DESIGNATION OF HAZARDOUS MATERIALS

2. Every hazardous product is designated as a hazardous material. R.R.O. 1990, Reg. 860, s. 2; O. Reg. 168/16, s. 2 (1).

## ASSESSMENT OF BIOLOGICAL AND CHEMICAL AGENTS

3. (1) An employer shall assess all biological and chemical agents produced in the workplace for use therein to determine if they are hazardous materials. R.R.O. 1990, Reg. 860, s. 3 (1).

(2) No employer is required to assess under subsection (1),

(a) wood or a product made of wood;

(b) tobacco or a tobacco product within the meaning of section 2 of the *Tobacco Act* (Canada); or

(c) a manufactured article. R.R.O. 1990, Reg. 860, s. 3 (2); O. Reg. 168/16, s. 4 (1, 2).

(3) An assessment under subsection (1) shall be performed in accordance with Parts 7 and 8 of the *Hazardous Products Regulations* (Canada). R.R.O. 1990, Reg. 860, s. 3 (3); O. Reg. 168/16, s. 2 (2), 4 (3).

## APPLICATION

4. (1) Sections 5 to 25 apply to employers and workers in respect of hazardous products used, stored and handled at a workplace. R.R.O. 1990, Reg. 860, s. 4 (1); O. Reg. 168/16, s. 2 (2).

(2) Section 8 (supplier labels), section 14 (laboratory samples) and sections 17 and 18 (safety data sheets) do not apply with respect to,

(a) an explosive within the meaning of section 2 of the *Explosives Act* (Canada);

(b) a cosmetic, device, drug or food within the meaning of section 2 of the *Food and Drugs Act* (Canada);

(c) a pest control product within the meaning of subsection 2 (1) of the *Pest Control Products Act* (Canada);

(d) a nuclear substance that is radioactive and that is within the meaning of a nuclear substance under section 2 of the *Nuclear Safety and Control Act* (Canada); or

(e) a consumer product within the meaning of section 2 of the *Canada Consumer Product Safety Act* (Canada). O. Reg. 168/16, s. 5 (1).

(3) Sections 5 to 25 do not apply with respect to a hazardous product that,

(a) is wood or a product made of wood;

(b) is tobacco or a tobacco product within the meaning of section 2 of the *Tobacco Act* (Canada);

(c) is a manufactured article; or

(d) is being transported or handled in accordance with the requirements of the *Dangerous Goods Transportation Act* (Ontario) or the *Transportation of Dangerous Goods Act, 1992* (Canada). R.R.O. 1990, Reg. 860, s. 4 (3); O. Reg. 168/16, s. 2 (1), 5 (2-4).

(4) Sections 5 to 25 do not apply with respect to hazardous waste except to the extent that an employer shall ensure the safe storage and handling of hazardous waste through a combination of identification and worker education. R.R.O. 1990, Reg. 860, s. 4 (4); O. Reg. 168/16, s. 5 (5).

## EXEMPTIONS FROM CLAUSES 37 (1) (A) AND (B) OF THE ACT

5. (1) An employer may store a hazardous product received from a supplier without having a label on it, without obtaining a safety data sheet for it and without conducting a program of worker education about it while the employer is actively seeking a supplier label and a supplier safety data sheet for it. R.R.O. 1990, Reg. 860, s. 5 (1); O. Reg. 168/16, s. 2 (1, 3).

(2) An employer may store an employer-produced hazardous product without applying a label to it or using other identification for it, without a safety data sheet for it and without conducting a program of worker education about it while the employer is actively seeking the information about it that is required to prepare a workplace label and a safety data sheet. R.R.O. 1990, Reg. 860, s. 5 (2); O. Reg. 168/16, s. 2 (1, 3).

## WORKER EDUCATION

6. (1) An employer shall ensure that a worker who works with or who may be exposed in the course of his or her work to a hazardous product received from a supplier is informed about all hazard information the employer receives from the supplier concerning the hazardous product and all further hazard information of which the employer is or ought to be aware concerning its use, storage and handling. R.R.O. 1990, Reg. 860, s. 6 (1); O. Reg. 168/16, s. 2 (1), 6.

(2) An employer who produces a hazardous product in a workplace shall ensure that every worker who works with or who may be exposed in the course of his or her work to the hazardous product is informed about all hazard information of which the employer is or ought to be aware concerning the hazardous product and its use, storage and handling. R.R.O. 1990, Reg. 860, s. 6 (2); O. Reg. 168/16, s. 2 (1), 6.

7. (1) An employer shall ensure that every worker who works with or who may be exposed in the course of his or her work to a hazardous product is instructed in,

- (a) the contents required on labels and the purpose and significance of the information contained on the labels;
- (b) the contents required on a safety data sheet and the purpose and significance of the information contained on a safety data sheet;
- (c) procedures for the safe use, storage, handling and disposal of a hazardous product;
- (d) procedures for the safe use, storage, handling and disposal of a hazardous product when it is contained or transferred in,
  - (i) a pipe,
  - (ii) a piping system including valves,
  - (iii) a process vessel,
  - (iv) a reaction vessel, or
  - (v) a tank car, a tank truck, an ore car, a conveyor belt or a similar conveyance;
- (e) procedures to be followed when fugitive emissions are present; and
- (f) procedures to be followed in case of an emergency involving a hazardous product. R.R.O. 1990, Reg. 860, s. 7 (1); O. Reg. 168/16, s. 2 (1, 3), 7; O. Reg. 458/18, s. 2.

(2) An employer shall ensure that the program of worker education required by subsection (1) is developed and implemented for the employer's workplace and is related to any other training, instruction and prevention programs at the workplace. R.R.O. 1990, Reg. 860, s. 7 (2).

(3) An employer shall ensure, so far as is reasonably practicable, that the program of worker instruction required by subsection (1) results in the workers being able to use the information to protect their health and safety. R.R.O. 1990, Reg. 860, s. 7 (3).

## LABELS

### SUPPLIER LABELS

**8.** (1) An employer shall ensure that every hazardous product not in a container, and every container of a hazardous product, received at a workplace from a supplier is labelled with a supplier label. R.R.O. 1990, Reg. 860, s. 8 (1); O. Reg. 168/16, s. 2 (1).

(2) No employer shall alter a supplier label on a container in which a hazardous product is received from a supplier while any of the hazardous product remains in the container. R.R.O. 1990, Reg. 860, s. 8 (2); O. Reg. 168/16, s. 2 (1).

(3) If a label applied to a hazardous product or a container of a hazardous product becomes illegible or is removed, an employer shall replace the label with either a supplier label or a workplace label. R.R.O. 1990, Reg. 860, s. 8 (3); O. Reg. 168/16, s. 2 (1).

(4) Despite subsections (2) and (3), a supplier label may be removed from a container with a capacity of 3 mL or less if the label interferes with the normal use of the hazardous product. O. Reg. 168/16, s. 8.

(5) If an employer receives significant new data from a supplier about a hazardous product, the employer shall, as soon as practicable, attach to every relevant supplier label required under this section, new information that reflects the significant new data. O. Reg. 168/16, s. 8.

(6) An employer who imports and receives, under the *Hazardous Products Regulations* (Canada), a hazardous product for use in the employer's own workplace, without a supplier label or with a supplier label that does not meet all the labelling requirements of the *Hazardous Products Regulations* (Canada), shall affix to the product a label that meets the *Hazardous Products Regulations* (Canada) labelling requirements for that hazardous product. O. Reg. 168/16, s. 8.

(7) An employer who receives at a workplace an unpackaged hazardous product without a supplier label or a hazardous product transported as a bulk shipment without a supplier label, shall affix to the product a label that meets the *Hazardous Products Regulations* (Canada) labelling requirements for that hazardous product. O. Reg. 168/16, s. 8.

(8) Despite subsection (1), an employer shall replace a WHMIS 1988 supplier label on a hazardous product, or container of a hazardous product, by affixing to the product or container a workplace label or a label that meets the *Hazardous Products Regulations* (Canada) labelling requirements for that hazardous product if,

- (a) the hazardous product or container was received at a workplace from a supplier on or before August 31, 2018;
- (b) the employer is unable to obtain a supplier label; and
- (c) the WHMIS 1988 supplier label would have complied with whichever of the following is applicable:
  - (i) the provisions of this Regulation relating to supplier labels for that hazardous product as they read immediately before July 1, 2016,
  - (ii) section 13 of this Regulation, as it read immediately before July 1, 2016,

(iii) section 14 of this Regulation, as it read immediately before July 1, 2016. O. Reg. 458/18, s. 3; O. Reg. 3/19, s. 1 (1).

(9) Despite subsection (8), an employer may replace a WHMIS 1988 supplier label provided by a supplier under section 14 of this Regulation, as it read immediately before July 1, 2016, with a label that includes the information required by section 14 of this Regulation, as it currently reads, if the conditions set out in section 14 are met. O. Reg. 458/18, s. 3.

(10) In this section,

“WHMIS 1988 supplier label” means,

- (a) a supplier label as defined by this Regulation, as it read immediately before July 1, 2016,
  - (b) a label provided by a supplier under section 13 of this Regulation, as it read immediately before July 1, 2016, or
  - (c) a label provided by a supplier under section 14 of this Regulation, as it read immediately before July 1, 2016. O. Reg. 3/19, s. 1 (2).
- (11) REVOKED: O. Reg. 3/19, s. 1 (2).

#### WORKPLACE LABELS FOR EMPLOYER-PRODUCED PRODUCTS

**9.** (1) An employer who produces a hazardous product in a workplace shall ensure that the hazardous product or the container of the hazardous product has a workplace label. R.R.O. 1990, Reg. 860, s. 9 (1); O. Reg. 168/16, s. 2 (1).

(2) Subsection (1) does not apply when the hazardous product is in a container that is intended to contain it for sale or disposition and the container is, or is about to be, appropriately labelled. R.R.O. 1990, Reg. 860, s. 9 (2); O. Reg. 168/16, s. 2 (1).

(3) An employer shall update a workplace label referred to in subsection (1) as soon as practicable after significant new data about the product becomes available to the employer. O. Reg. 168/16, s. 9.

#### WORKPLACE LABELS FOR DECANTED PRODUCTS

**10.** (1) If a hazardous product that an employer receives in a container from a supplier is transferred to another container, the employer shall ensure that the other container has a workplace label. R.R.O. 1990, Reg. 860, s. 10 (1); O. Reg. 168/16, s. 2 (1).

(2) No supplier label, workplace label or label affixed under subsection 8 (8) is required on a portable container that is filled directly from a container of a hazardous product with a supplier label, workplace label or label affixed under subsection 8 (8),

- (a) if,
  - (i) the hazardous product is under the control of and is used exclusively by the worker who filled the portable container,
  - (ii) the hazardous product is used only during the shift in which the portable container was filled, and
  - (iii) the contents of the portable container are clearly identified; or
- (b) if all of the hazardous product in the portable container is required for immediate use. R.R.O. 1990, Reg. 860, s. 10 (2); O. Reg. 168/16, s. 2 (1); O. Reg. 458/18, s. 4; O. Reg. 3/19, s. 2.

#### IDENTIFICATION OF A HAZARDOUS PRODUCT IN PIPING SYSTEMS AND VESSELS

**11.** An employer shall ensure the safe use, storage and handling of a hazardous product in a workplace through worker education and the use of colour coding, labels, placards or another mode of identification when the hazardous product is contained or transferred in,

- (a) a pipe;
- (b) a piping system including valves;
- (c) a process vessel;
- (d) a reaction vessel; or
- (e) a tank car, a tank truck, an ore car, a conveyor belt or a similar conveyance. R.R.O. 1990, Reg. 860, s. 11; O. Reg. 168/16, s. 2 (1).

#### PLACARD IDENTIFIERS

**12.** No label is required on a hazardous product,

- (a) if the hazardous product,
  - (i) is not in a container,

- (ii) is in a container or in a form intended for export, or
  - (iii) is in a container that is intended to contain it for sale or distribution and the container is not about to be appropriately labelled as referred to in subsection 9 (2) but is to be appropriately labelled within the normal course of the employer's business and without undue delay; and
- (b) if the employer posts a placard that discloses the information required on a workplace label for the hazardous product and is of such size and in such a location that the information is conspicuous and clearly legible to workers. R.R.O. 1990, Reg. 860, s. 12; O. Reg. 168/16, s. 2 (1).

**Transition, workplace labels**

**13.** (1) An employer shall replace a WHMIS 1988 workplace label on a hazardous product, or container of a hazardous product, by affixing to the product or container a workplace label if,

- (a) the WHMIS 1988 workplace label was affixed to the product or container on or before November 30, 2018;
- (b) the WHMIS 1988 workplace label would have complied with the provisions of this Regulation relating to workplace labels for that hazardous product as they read immediately before July 1, 2016; and
- (c) this Regulation requires that a workplace label be affixed to the product or container. O. Reg. 458/18, s. 5.

(2) In this section,

“WHMIS 1988 workplace label” means a workplace label as defined by this Regulation, as it read immediately before July 1, 2016. O. Reg. 3/19, s. 3.

(3) REVOKED: O. Reg. 3/19, s. 3.

**LABORATORY SAMPLES**

**14.** (1) No supplier label is required on a laboratory sample of a hazardous product if,

- (a) the laboratory sample is exempt from labelling requirements under subsection 5 (5) or (6) of the *Hazardous Products Regulations* (Canada); and
- (b) the supplier provides a label that is affixed to a container of the hazardous product and that discloses the information described in subsection (2). O. Reg. 168/16, s. 10.

(2) A label referred to in clause (1) (b) shall disclose the following information about the hazardous product:

1. The chemical name or generic chemical name, if known to the supplier, of every material or substance in the hazardous product where,
  - i. individually, the material or substance is classified in accordance with the *Hazardous Products Regulations* (Canada) in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada) and is present above the relevant concentration limit, and
  - ii. in a mixture, the material or substance is present at a concentration that results in the mixture being classified in a category or subcategory of a hazard class.
2. The statement “Hazardous Laboratory Sample, for hazard information or in an emergency call/Échantillon pour laboratoire de produit dangereux. Pour obtenir des renseignements sur les dangers ou en cas d’urgence, composez insert the number described in paragraph 3”.
3. An emergency telephone number for the purposes of obtaining the information that must be provided on the safety data sheet for the hazardous product. O. Reg. 168/16, s. 10.

**15.** (1) If an employer complies with subsection (2), no workplace label is required for a laboratory sample that,

- (a) is produced in the workplace or is in a container other than the container in which it was received from a supplier; and
- (b) is clearly identified through a combination of identification visible to workers at the workplace and worker education. O. Reg. 168/16, s. 10.

(2) For the purpose of subsection (1), the employer shall ensure that the identification and worker education for the laboratory sample enable the workers to readily identify and obtain either the information required on a safety data sheet, if one has been prepared, or the information described in subsection 14 (2) on a label. O. Reg. 168/16, s. 10.

**16.** (1) If an employer complies with subsection (2), no workplace label is required for a hazardous product that,

- (a) is produced in a laboratory;
- (b) is intended by the employer solely for evaluation, analysis or testing for research and development;
- (c) is not removed from the laboratory; and
- (d) is clearly identified through a combination of identification visible to workers at the workplace and worker education. R.R.O. 1990, Reg. 860, s. 16 (1); O. Reg. 168/16, s. 2 (1).

(2) For the purposes of subsection (1), the employer shall ensure that the identification and worker education for the hazardous product enables workers to readily identify and obtain either the information required on a safety data sheet, if one has been prepared, or such other information as is necessary to ensure the safe use, storage and handling of the hazardous product. R.R.O. 1990, Reg. 860, s. 16 (2); O. Reg. 168/16, s. 2 (1, 3).

## SAFETY DATA SHEETS

### SUPPLIER SAFETY DATA SHEETS

17. (1) An employer who receives a hazardous product from a supplier for use, storage or handling at a workplace shall obtain a supplier safety data sheet for the hazardous product from the supplier unless the supplier is exempted under the *Hazardous Products Regulations* (Canada) from providing a safety data sheet for the hazardous product. O. Reg. 168/16, s. 11.

(2) An employer shall update a supplier safety data sheet obtained under subsection (1) as soon as practicable after significant new data about the product is provided by the supplier or otherwise becomes available to the employer. O. Reg. 168/16, s. 11.

(3) An employer may provide a safety data sheet in a different format from that of the supplier safety data sheet for the hazardous product or containing additional hazard information if,

- (a) the safety data sheet provided by the employer, subject to subsection 40 (6) of the Act, contains no less content than the supplier safety data sheet; and
- (b) the supplier safety data sheet is available at the workplace and the employer-provided safety data sheet indicates that fact. O. Reg. 168/16, s. 11.

### EMPLOYER SAFETY DATA SHEETS

18. (1) An employer who produces a hazardous product at a workplace shall prepare a safety data sheet for the product that complies with the requirements of the *Hazardous Products Regulations* (Canada) for a safety data sheet. O. Reg. 168/16, s. 12.

(1.1) An employer who affixes a label under subsection 8 (8) or (9) or section 13, and who is unable to obtain a supplier safety data sheet for the hazardous product, shall prepare a safety data sheet for the product that complies with the requirements of the *Hazardous Products Regulations* (Canada) for a safety data sheet. O. Reg. 458/18, s. 6.

(2) No safety data sheet is required for a hazardous product that is a laboratory sample produced by the employer at the workplace. O. Reg. 168/16, s. 12.

(3) An employer shall update a safety data sheet referred to in subsection (1) as soon as practicable but not later than 90 days after significant new data about the hazardous product becomes available to the employer. O. Reg. 168/16, s. 12.

### CONFIDENTIAL BUSINESS INFORMATION

19. (1) A claim under subsection 40 (1) of the Act for exemption from disclosure shall be made only in respect of,

- (a) in the case of a material or substance that is a hazardous product,
  - (i) the chemical name of the material or substance,
  - (ii) the CAS registry number or any other unique identifier of the material or substance, and
  - (iii) the chemical name of any impurity, stabilizing solvent or stabilizing additive that is present in the material or substance, that is classified in accordance with the *Hazardous Products Regulations* (Canada) in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada) and that contributes to the classification of the material or substance in the hazard class under that Act;
- (b) in the case of an ingredient that is in a mixture that is a hazardous product,
  - (i) the chemical name of the ingredient,
  - (ii) the CAS registry number or any other unique identifier of the ingredient, and
  - (iii) the concentration or concentration range of the ingredient;
- (c) in the case of a material, substance or mixture that is a hazardous product, the name of any toxicological study that identifies the material or substance or any ingredient in the mixture;
- (d) the product identifier of a hazardous product, being its chemical name, common name, generic name, trade name or brand name;
- (e) information about a hazardous product, other than the product identifier, that constitutes a means of identification; and
- (f) information that could be used to identify a supplier of a hazardous product. O. Reg. 168/16, s. 12.

(2) If an employer excludes from a label or safety data sheet information in respect of which an exemption is claimed, the label or safety data sheet must contain all information otherwise required by this Regulation. O. Reg. 168/16, s. 12.

**20.** (1) An employer who files a claim under subsection 40 (1) of the Act for exemption from disclosure in respect of a hazardous product shall state on the safety data sheet and, if applicable, on the label for the hazardous product or container in which the hazardous product is packaged, the date that the claim for exemption was filed and the registry number assigned to the claim under the *Hazardous Materials Information Review Act* (Canada). O. Reg. 168/16, s. 12.

(2) The information described in subsection (1) shall remain on the safety data sheet or label until,

- (a) 30 days after the final disposition of the proceedings in relation to the claim for exemption; or
- (b) if an order is issued under the *Hazardous Materials Information Review Act* (Canada) in respect of the claim, the end of the period specified in the order. O. Reg. 168/16, s. 12.

**21.** If an employer files a claim under subsection 40 (1) of the Act for an exemption from disclosure in respect of a hazardous product that is produced in the employer's workplace and the employer excludes from the safety data sheet information in respect of which the exemption is claimed, the following rules apply with respect to the safety data sheet:

1. If the claim is being made in respect of information set out in clause 19 (1) (a) or subclauses 19 (1) (b) (i) or (ii) of this Regulation, the safety data sheet shall include:
  - i. in the case of a hazardous product that is a material or substance, the generic chemical name of the material or substance, or
  - ii. in the case of a hazardous product that is a mixture, the generic chemical name of each material or substance in the mixture that,
    - A. individually, is classified in accordance with the *Hazardous Products Regulations* (Canada) in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada), and is present above the relevant concentration limit, or
    - B. is present at a concentration that results in the mixture being classified in a category or subcategory of a hazard class.

2. If the claim is being made in relation to information set out in clause 19 (1) (d) of this Regulation, the safety data sheet shall include the code name or code number of the hazardous product. O. Reg. 168/16, s. 12.

**22.** REVOKED: O. Reg. 168/16, s. 12.

**23.** (1) An employer whose claim or a portion of whose claim under subsection 40 (1) of the Act for exemption from disclosure is determined to be valid shall disclose on the safety data sheet and, if applicable, on the label for the hazardous product or container in which the hazardous product is packaged,

- (a) a statement that an exemption has been granted;
- (b) the date of the decision granting the exemption; and
- (c) the registry number assigned to the claim under the *Hazardous Materials Information Review Act* (Canada). O. Reg. 168/16, s. 13.

(2) An employer shall disclose the information required under subsection (1) beginning not more than thirty days after the final disposition of the claim and ending on the last day of the exemption period. R.R.O. 1990, Reg. 860, s. 23 (2).

#### DISCLOSURE OF INFORMATION IN MEDICAL EMERGENCIES

**24.** For the purposes of clause 25 (2) (b) of the Act, an employer is required to provide information, including confidential business information, to a medical professional. R.R.O. 1990, Reg. 860, s. 24.

#### DISCLOSURE OF SOURCE OF TOXICOLOGICAL DATA

**25.** Subject to subsection 40 (6) of the Act, an employer who produces a hazardous product in a workplace shall disclose as quickly as possible under the circumstances the source of any toxicological data used by the employer to prepare a safety data sheet when the employer is requested to do so by,

- (a) an inspector;
- (b) a worker at the workplace;
- (c) a member of the committee, if any;
- (d) the health and safety representative, if any; or
- (e) in the absence of a committee or health and safety representative, a representative of the workers at the workplace. R.R.O. 1990, Reg. 860, s. 25; O. Reg. 168/16, s. 2 (1, 3), 14.

**25.1** REVOKED: O. Reg. 458/18, s. 7.



#### CITATION

26. This Regulation may be cited as the *Workplace Hazardous Materials Information System (WHMIS) Regulation*.  
R.R.O. 1990, Reg. 860, s. 26.

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## Occupational Health and Safety Act

### ONTARIO REGULATION 420/21

#### NOTICES AND REPORTS UNDER SECTIONS 51 TO 53.1 OF THE ACT — FATALITIES, CRITICAL INJURIES, OCCUPATIONAL ILLNESSES AND OTHER INCIDENTS

**Consolidation Period:** From July 1, 2021 to the [e-Laws currency date](#).

No amendments.

*This is the English version of a bilingual regulation.*

##### Interpretation

1. (1) For the purposes of the Act and the Regulations, “critically injured” means an injury of a serious nature that,
- places life in jeopardy,
  - produces unconsciousness,
  - results in substantial loss of blood,
  - involves the fracture of a leg or arm but not a finger or toe,
  - involves the amputation of a leg, arm, hand or foot but not a finger or toe,
  - consists of burns to a major portion of the body, or
  - causes the loss of sight in an eye; (“gravement blessé”)
- “medical attention” means treatment from a legally qualified medical practitioner or a registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991*. (“soins médicaux”)
- (2) In this Regulation,
- expressions relating to diving operations have the same meaning as in Ontario Regulation 629/94 (Diving Operations) made under the Act;
  - expressions relating to construction projects have the same meaning as in Ontario Regulation 213/91 (Construction Projects) made under the Act;
  - expressions relating to mines and mining plants have the same meaning as in Regulation 854 of the Revised Regulations of Ontario, 1990 (Mines and Mining Plants) made under the Act; and
  - expressions relating to X-ray safety have the same meaning as in Regulation 861 of the Revised Regulations of Ontario, 1990 (X-ray Safety) made under the Act.

##### Application

2. (1) Subject to subsection (2), this Regulation applies to all workplaces to which the Act applies.
- (2) Section 3 does not apply when a worker is killed, critically injured, disabled from performing his or her usual work or requires medical attention as a result of a collision involving a motor vehicle that occurs on a highway, as defined under the *Highway Traffic Act*, or on the private toll highway known as Highway 407, unless,
- the worker affected was working at a project; or
  - the worker affected was not travelling in the motor vehicle at the time of the collision.

##### Section 51 report and section 52 notice

3. (1) The information listed in subsection (2) is prescribed as information the employer must provide in a written report or written notice if,
- a worker is killed or critically injured from any cause at a workplace as described in subsection 51 (1) of the Act;
  - a worker 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 as described in subsection 52 (1) of the Act; or

- (c) the 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 as described in subsection 52 (2) of the Act.
- (2) The information referred to in subsection (1) is the following:
  1. The name, address and type of business of the employer.
  2. The name of the worker referred to in clause (1) (a), (b) or (c).
  3. The nature of the bodily injury or occupational illness.
  4. For a written report involving a worker referred to in clause (1) (a),
    - i. the name and address of the constructor if the occurrence is at a project,
    - ii. the address of the worker,
    - iii. the nature and circumstances of the occurrence, including a description of any machinery, equipment or procedure involved,
    - iv. the time, date and place of the occurrence, and
    - v. the name and address of the legally qualified medical practitioner, registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991* or medical facility that is attending to or attended to the worker.
  5. For a notice involving a worker referred to in clause (1) (b),
    - i. the nature and circumstances of the occurrence, including a description of any machinery, equipment or procedure involved, and
    - ii. the time, date and place of the occurrence.
  6. For a notice involving a worker referred to in clause (1) (c), a description of the cause or suspected cause of the occupational illness.
  7. The names and addresses or other contact information of any witnesses to the occurrence.
  8. The steps taken to prevent a recurrence or further illness.

**Section 53 notices**

- 4. (1) The information listed in subsection (2) is prescribed as information to be provided in a written notice if,
  - (a) an accident, premature or unexpected explosion, fire, flood or inrush of water, cave-in, subsidence or rockburst occurs at a project site, mine or mining plant as described in subsection 53 (1) of the Act;
  - (b) the failure of any equipment, machine, device, article or thing occurs at a project site, mine or mining plant as described in subsection 53 (1) of the Act that could have posed a risk to worker life, health or safety; or
  - (c) an incident prescribed under subsection (3) occurs.
- (2) The information referred to in subsection (1) is the following:
  1. The name, address and type of business of the employer.
  2. For an occurrence at a project, the name and address of the constructor.
  3. The time, date and place of the occurrence.
  4. The nature and circumstances of the occurrence, including a description of any machinery, equipment or procedure involved.
  5. The steps taken to prevent a recurrence.
- (3) The following incidents are prescribed as incidents where notice must be provided under subsection 53 (1) of the Act:
  1. Where Ontario Regulation 629/94 (Diving Operations) made under the Act applies,
    - i. a diver becomes trapped underwater,
    - ii. a diver fails to comply with the decompression requirements prescribed by Ontario Regulation 629/94 (Diving Operations),
    - iii. there is a failure of any diving equipment posing a risk to the health or safety of a diver,
    - iv. there is an emergency rescue of a diver in a submersible compression chamber or atmospheric diving system,

- v. there is an emergency use of a recompression chamber,
- vi. a person becomes unconscious, or
- vii. a diver suffers from decompression sickness.

2. Where Ontario Regulation 213/91 (Construction Projects) made under the Act applies,
  - i. a worker falls a vertical distance of three metres or more,
  - ii. a worker falls and the fall is arrested by a fall arrest system other than a fall restricting system,
  - iii. a worker becomes unconscious for any reason,
  - iv. there is accidental contact by a worker or by a worker's tool or equipment with energized electrical equipment, installations or conductors,
  - v. there is accidental contact by a crane, similar hoisting device, backhoe, power shovel or other vehicle or equipment or its load with an energized electrical conductor rated at more than 750 volts,
  - vi. there is a structural failure of all or part of falsework designed by, or required by Ontario Regulation 213/91 (Construction Projects) to be designed by, a professional engineer,
  - vii. there is a structural failure of a principal supporting member, including a column, beam, wall or truss, of a structure,
  - viii. there is a failure of all or part of the structural supports of a scaffold,
  - ix. there is a structural failure of all or part of an earth- or water-retaining structure, including a failure of the temporary or permanent supports for a shaft, tunnel, caisson, cofferdam or trench,
  - x. there is a failure of a wall of an excavation or of similar earthwork with respect to which a professional engineer has given a written opinion that the stability of the wall is such that no worker will be endangered by it, or
  - xi. there is an overturning or a structural failure of all or part of a crane or similar hoisting device.
3. Where Regulation 854 of the Revised Regulations of Ontario, 1990 (Mines and Mining Plants) made under the Act applies,
  - i. a failure occurs in or to a hoist, sheave, hoisting rope, shaft conveyance, shaft timbering or shaft lining,
  - ii. flammable gas is present in a workplace in an underground mine,
  - iii. spontaneous heating with evolution of gas occurs in a workplace,
  - iv. a major failure or major damage occurs or is caused to electrical equipment, standard gauge railroad equipment, a crane or a motor vehicle underground,
  - v. a rockburst occurs causing damage to equipment or the displacement of more than five tonnes of material,
  - vi. an uncontrolled fall of ground occurs causing damage to equipment or the displacement of more than 50 tonnes of material,
  - vii. a fuse, a detonator or an explosive is found to be defective,
  - viii. a structural failure occurs in any matter or thing for which a design by a professional engineer is prescribed by Regulation 854 of the Revised Regulations of Ontario, 1990 (Mines and Mining Plants), or
  - ix. an unexpected and uncontrolled run of material, water or slimes in excess of one cubic metre occurs that could have endangered a worker.
4. Where Regulation 861 of the Revised Regulations of Ontario, 1990 (X-ray Safety) made under the Act applies,
  - i. a worker has received, in a period of three months, a dose equivalent in excess of the annual limits set out in Column 4 of the Schedule to Regulation 861 of the Revised Regulations of Ontario, 1990 (X-ray Safety), or
  - ii. an accident, failure of any X-ray source or other incident may have resulted in a worker receiving a dose equivalent in excess of the annual limits set out in Column 3 of the Schedule to Regulation 861 of the Revised Regulations of Ontario, 1990 (X-ray Safety).

(4) The following persons are prescribed for the purposes of clause 53 (2) (c) of the Act as the persons required to give written notice for incidents occurring at the following locations:

1. For an incident that occurs at a diving operation, the employer of a worker who works at the diving operation.
2. For an incident described in paragraph 4 of subsection (3) that occurs at a workplace where Regulation 861 of the Revised Regulations of Ontario, 1990 (X-ray Safety) applies, the employer of the worker.

**Section 53.1 notices — additional notices**

5. (1) A constructor or employer who submits a written report to a Director under subsection 51 (1) of the Act or gives a written notice under section 52 or 53 of the Act shall also supplement the report or notice with a professional engineer's written opinion stating the cause of the occurrence if,

- (a) the incident occurs at a workplace where Ontario Regulation 213/91 (Construction Projects) made under the Act applies and involves a failure of all or part of,
    - (i) temporary or permanent works,
    - (ii) a structure,
    - (iii) a wall of an excavation or of similar earthwork for which a professional engineer has given written opinion that the stability of the wall is such that no worker will be endangered by it, or
    - (iv) a crane or similar hoisting device;
  - (b) the incident occurs at a workplace where Ontario Regulation 67/93 (Health Care and Residential Facilities) made under the Act applies and involves the collapse or failure of a temporary or permanent structure that was designed by a professional engineer or architect; or
  - (c) the incident occurs at a workplace where Regulation 859 of the Revised Regulations of Ontario, 1990 (Window Cleaning) made under the Act applies and involves the collapse or failure of a temporary or permanent support or structure that was designed by a professional engineer.
- (2) The professional engineer's written opinion shall be provided within 14 days after the occurrence.

**Records**

6. The employer or constructor shall retain a copy of a written notice or report required under sections 51 to 53.1 of the Act for at least three years after the date the notice or report is made.

**Electronic form**

7. For greater certainty,
- (a) a requirement under sections 51 to 53.1 of the Act to send a written report or to give written notice to a Director may be satisfied by submitting a form on a website of the Government of Ontario; and
  - (b) a requirement under sections 51 to 53.1 of the Act to send a written report or to give written notice to the committee, the health and safety representative and the trade union, if any, may be satisfied by providing the committee, the health and safety representative and the trade union with an electronic copy of the form referred to in clause (a).
8. OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).
9. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

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## Occupational Health and Safety Act

**ONTARIO REGULATION 213/91**  
**CONSTRUCTION PROJECTS**

**Consolidation Period:** From December 22, 2021 to the [e-Laws currency date](#).

Last amendment: 885/21.

Legislative History: 631/94, 143/99, 571/99, 145/00, 527/00, 85/04, 627/05, 628/05, 443/09, 96/11, 88/13, 252/14, 345/15, 242/16, 471/16, 142/17, 64/18, 190/19, 327/19, 426/21, 885/21.

*This is the English version of a bilingual regulation.*

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**PART I  
GENERAL**

INTERPRETATION AND APPLICATION

1. (1) In this Regulation,
- “adequate”, in relation to a procedure, plan, material, device, object or thing, means,
- (a) sufficient for both its intended and its actual use, and
  - (b) sufficient to protect a worker from occupational illness or occupational injury, and “adequately” has a corresponding meaning; (“adéquat”, “adéquatement”)
- “allowable unit stress”, in relation to a material, means,
- (a) the allowable unit stress assigned to a material by the standards required under the Building Code, or
  - (b) if no allowable unit stress is assigned under clause (a), the allowable unit stress for the material as determined by a professional engineer in accordance with good engineering practice; (“taux de contrainte admissible”)
- “approved”, in relation to a form, means approved by the Minister; (“approuvé”)
- “blocker truck” means a truck that weighs at least 6,800 kilograms and has four-way flashers and a mounted flashing arrowboard sign; (“camion-barrière”)
- “boom” means the projecting part of a backhoe, shovel, crane or similar lifting device from which a load is likely to be supported; (“flèche”)
- “caisson” means,
- (a) a casing below ground or water level whether or not it is designed to contain air at a pressure greater than atmospheric pressure,
  - (b) an excavation, including a waterwell but not a well within the meaning of the *Oil, Gas and Salt Resources Act*, drilled by an auger and into which a person may enter; (“caisson”)
- “cofferdam” means a structure constructed entirely or partially below water level or below the level of the groundwater table and intended to provide a work place that is free of water; (“batardeau”)



- “competent worker”, in relation to specific work, means a worker who,
- is qualified because of knowledge, training and experience to perform the work,
  - is familiar with the *Occupational Health and Safety Act* and with the provisions of the regulations that apply to the work, and
  - has knowledge of all potential or actual danger to health or safety in the work; (“travailleur compétent”)
- “conduit” means a sewer, a water main, a duct or cable for a telegraphic, telephonic, television or electrical service, a pipe or duct for the transportation of any solid, liquid or gas or any combination of these items and includes a service connection made or intended to be made thereto; (“canalisation”)
- “crash truck” means a blocker truck that is equipped with a crash-attenuating device; (“camion d’intervention”)
- “critical weld” means, in relation to a suspended work platform, a weld the failure of which could result in the complete or partial collapse of the suspended work platform; (“soudure essentielle”)
- “excavation” means the hole that is left in the ground, as a result of removing material; (“excavation”)
- “excavation depth” means the vertical dimension from the highest point of the excavation wall to a point level with the lowest point of the excavation; (“profondeur d’excavation”)
- “excavation width” means the least horizontal dimension between the two opposite walls of the excavation; (“largeur d’excavation”)
- “fall arrest system” means an assembly of components joined together so that when the assembly is connected to a fixed support, it is capable of arresting a worker’s fall; (“dispositif antichute”)
- “fall restricting system” means a type of fall arrest system that has been designed to limit a worker’s fall to a specified distance; (“limiteur de chute”)
- “falsework”, in relation to a form or structure, means the structural supports and bracing used to support all or part of the form or structure; (“ouvrage provisoire”)
- “fixed support” means a permanent or temporary structure or a component of such a structure that can withstand all loads and forces the structure or component is intended to support or resist and is sufficient to protect a worker’s health and safety, and includes equipment or devices that are securely fastened to the structure or component; (“support fixe”)
- “flammable liquid” means a liquid with a flash point below 37.8 degrees celsius and a vapour pressure not exceeding 275 kilopascals absolute at 37.8 degrees celsius; (“liquide inflammable”)
- “form” means the mould into which concrete or another material is to be placed; (“élément de coffrage”)
- “formwork” means a system of forms connected together; (“coffrage”)
- “freeway” means a controlled-access highway that has a continuous dividing median and a normal posted speed limit of 90 kilometres per hour or more; (“autoroute”)
- “full body harness” means a device that can arrest an accidental vertical or near vertical fall of a worker and which can guide and distribute the impact forces of the fall by means of leg and shoulder strap supports and an upper dorsal suspension assembly which, after the arrest, will not by itself permit the release or further lowering of the worker; (“harnais de sécurité”)
- “generic installation drawing” means a drawing and related documentation, if any, that,
- identifies components, configurations and load limitations of a suspended work platform system or powered boatswain’s chair,
  - is intended to be used at any location where all of the requirements in the drawing and documentation are satisfied, and
  - bears the seal and signature of a professional engineer confirming that a suspended work platform system or boatswain’s chair installed in accordance with the drawing would be in compliance with the requirements of this Regulation; (“dessin d’installation générique”)
- “guardrail system” means an assembly of components joined together to provide a barrier to prevent a worker from falling from the edge of a surface; (“garde-corps”)
- “highway” means a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles; (“voie publique”)
- “longitudinal buffer area” means the area of a project between the end of a lane closure taper and the start of a work area; (“zone tampon longitudinale”)
- “magazine” means a place in which explosives are stored or kept, whether above or below ground; (“dépôt d’explosifs”)

“multi-point suspended work platform” means a suspended work platform more than 750 millimetres in width or a system of suspended work platforms in which any one platform is more than 750 millimetres in width that is supported from an overhead fixed support system by at least three primary load-carrying means of suspension to maintain the stability of the work platform or system of work platforms; (“plateforme de travail suspendue multipoint”)

“non-destructive test” means one of the following methods of testing or examining a material, component or part to evaluate its condition without subjecting it to physical distortion, damage or destruction:

1. Eddy current testing.
2. Magnetic particle testing.
3. Liquid penetrant testing.
4. Radiographic testing.
5. Ultrasonic testing; (“essai non destructif”)

“professional engineer” means a person who is a professional engineer within the meaning of the *Professional Engineers Act*; (“ingénieur”)

“public way” means a highway or other street, avenue, parkway, driveway, square, place, bridge, viaduct, or other open space to which the public has access, as of right or by expressed or implied invitation; (“passage public”)

“rated platform capacity” means the combined weight of occupants, tools, equipment and other material that the manufacturer has indicated can be safely carried by a suspended work platform, work platform module or boatswain’s chair; (“capacité nominale de la plateforme”)

“roadway” means the travelled portion of a highway; (“chaussée”)

“rotary foundation drill rig” means a drill rig used for boring holes in soil for the placement of foundations or earth retention structures but does not include a drill rig that,

- (a) is used for geotechnical sampling,
- (b) is used for drilling water, oil or gas wells,
- (c) is a rock drill or a diamond drill,
- (d) is a digger derrick,
- (e) is used for digging holes for posts, concrete forming tubes, poles or light standards,
- (f) is a pile driver without an auger,
- (g) is a horizontal boring machine, or
- (h) is a tunnel boring machine; (“foreuse rotative pour fondations”)

“safety belt” means a belt worn around the waist of a worker and all the fittings for the belt appropriate for the use being made of it; (“ceinture de sécurité”)

“safety factor” means the ratio of the failure load to the specified load or rated load; (“coefficient de sécurité”)

“safety net” means a safety net that complies with section 26.8, and is located and supported in such a way that it arrests the fall of a worker who may fall into it without endangering the worker; (“filet de sécurité”)

“service shaft” means a shaft by which people or materials are passed into or out of a tunnel under construction; (“puits de service”)

“shaft” means an excavation with a longitudinal axis at an angle greater than 45 degrees from the horizontal that is used to pass people or materials into or out of a tunnel or that leads to a tunnel or that is used as an access to a boring or augering operation; (“puits”)

“sheathing” means the members of shoring that are placed up against the walls of an excavation to directly resist the pressure exerted from the walls of the excavation; (“blindage”)

“sign truck” means a vehicle that has,

- (a) four-way flashers and a mounted flashing arrowboard sign, or
- (b) a portable trailer with a mounted flashing arrowboard sign; (“camion de signalisation”)

“site-specific installation drawing” means a drawing and related documentation, if any, that identifies components, configurations and load limitations of a suspended work platform system or powered boatswain’s chair for use at a specific site; (“dessin d’installation propre au site”)

“strut” means a transverse member of shoring that directly resists pressure from a wale; (“étai”)

“suitable”, in relation to a procedure, material, device, object or thing, means sufficient to protect a worker from damage to the worker’s body or health; (“convenable”)

“suspended work platform system” means an access system comprising one or more overhead fixed supports, one or more suspension lines, hoisting devices, if any, and one or more work platforms that can be moved vertically, but it does not include a boatswain’s chair or a multi-point suspended work platform; (“système de plateformes de travail suspendues”)

“tower crane” means a travelling, fixed or climbing mechanical device or structure that has,

- (a) a boom, a jib or both,
- (b) a power-driven drum and wire rope to raise, lower or move material, and
- (c) a vertical mast; (“grue à tour”)

“travel restraint system” means an assembly of components capable of restricting a worker’s movement on a work surface and preventing the worker from reaching a location from which he or she could fall; (“limiteur de déplacement”)

“traverse”, when used in relation to a multi-point suspended work platform, means to move the platform horizontally, in a controlled manner, along the building or structure to which it is attached; (“déplacement horizontal”)

“trench” means an excavation where the excavation depth exceeds the excavation width; (“tranchée”)

“tunnel” means a subterranean passage into which a person may enter that is made by excavating beneath the overburden; (“tunnel”)

“underground”, in relation to work, means inside a shaft, tunnel or caisson; (“souterrain”)

“vehicle” means a vehicle propelled by mechanical power and includes a trailer, a traction engine and a road-building machine; (“véhicule”)

“wale” means a longitudinal member of the shoring that is placed against the sheathing to directly resist the pressure from the sheathing; (“raidisseur”)

“work belt” means a belt that has a back support pad and a connecting hook at the front and that is capable of supporting a worker. (“ceinture de travail”) O. Reg. 213/91, s. 1 (1); O. Reg. 631/94, s. 1; O. Reg. 145/00, s. 1 (1-13); O. Reg. 85/04, s. 1; O. Reg. 628/05, s. 1; O. Reg. 345/15, s. 1 (1-3); O. Reg. 242/16, s. 1 (1), 2 (1-4); O. Reg. 142/17, s. 1.

(1.1) Every non-destructive test required by this Regulation shall be carried out and interpreted by a person who has been certified by Natural Resources Canada to the appropriate level in accordance with CAN/CGSB Standard 48.9712-2014, Non-destructive Testing – Qualification and Certification of Personnel. O. Reg. 242/16, s. 2 (5).

(2) In this Regulation, a short form listed in Column 1 of the Table to this subsection has the same meaning as the term set out opposite to it in Column 2.

TABLE

Item	Column 1 Short forms	Column 2 Corresponding terms
1.	ANSI	American National Standards Institute
2.	CSA	Canadian Standards Association
3.	CAN	National Standards of Canada

O. Reg. 213/91, s. 1 (2); O. Reg. 145/00, s. 1 (4); O. Reg. 345/15, s. 1 (4).

**1.1** In this Regulation, a requirement that something be done in accordance with good engineering practice includes a requirement that it be done in a manner that protects the health and safety of all workers. O. Reg. 85/04, s. 2.

**1.2** In this Regulation, a requirement that a design, drawing, instruction, report, specification, opinion or other document be prepared by a professional engineer includes a requirement that he or she sign and seal it. O. Reg. 85/04, s. 2.

**2.** This Part applies with respect to all projects. O. Reg. 213/91, s. 2.

#### ALTERNATIVE METHODS AND MATERIALS

**3.** An employer, owner or constructor may vary a procedure required by this Regulation or the composition, design, size or arrangement of a material, object, device or thing as required by this Regulation,

- (a) if the procedure, composition, design, size or arrangement as varied affords protection for the health and safety of workers that is at least equal to the protection that would otherwise be given; and
- (b) if the employer, owner or constructor gives written notice of the varied procedure, composition, design, size or arrangement to the joint health and safety committee or the health and safety representative, if any, for the work place. O. Reg. 213/91, s. 3.

## DESIGNATION OF A PROJECT

4. A Director may designate in writing a part of a project as a project and the designated project is considered to be a project for the purposes of the Act and this Regulation. O. Reg. 213/91, s. 4; O. Reg. 145/00, s. 2.

## REGISTRATION AND NOTICES

5. (1) Before beginning work at a project, each constructor and employer engaged in construction shall complete an approved registration form. O. Reg. 145/00, s. 3.

(2) The constructor shall ensure that,

- (a) each employer at the project provides to the constructor a completed approved registration form; and
- (b) a copy of the employer's completed form is kept at the project while the employer is working there. O. Reg. 145/00, s. 3.

6. (1) This section applies with respect to a project if,

- (a) the total cost of labour and materials for the project is expected to exceed,
  - (i) \$50,000, or
  - (ii) in the case of a project that is confined to a factory that manufactures or assembles automobiles, \$250,000;
- (b) the work is the erection or structural alteration of a building more than two storeys or more than 7.5 metres high;
- (c) the work is the demolition of a building at least four metres high with a floor area of at least thirty square metres;
- (d) the work is the erection, structural alteration or structural repair of a bridge, an earth-retaining structure or a water-retaining structure more than three metres high or of a silo, chimney or a similar structure more than 7.5 metres high;
- (e) work in compressed air is to be done at the project;
- (f) a tunnel, caisson, cofferdam or well into which a person may enter is to be constructed at the project;
- (g) a trench into which a person may enter is to be excavated at the project and the trench is more than 300 metres long or more than 1.2 metres deep and over thirty metres long;
- (g.1) the work is the construction, over frozen water, slush or wetlands, of an ice road for vehicles, machinery or equipment; or
- (h) a part of the permanent or temporary work is required by this Regulation to be designed by a professional engineer. O. Reg. 213/91, s. 6 (1); O. Reg. 345/15, s. 2; O. Reg. 190/19, s. 1 (1).

(2) The constructor shall comply with subsection (3) or (4) before beginning work at the project. O. Reg. 145/00, s. 4.

(3) The constructor shall complete an approved notification form and file it at the Ministry office located nearest to the project or submit it electronically on a website of the government of Ontario. O. Reg. 145/00, s. 4; O. Reg. 242/16, s. 3.

(4) If the constructor believes that the work at the project will not take more than 14 days, the constructor may provide the relevant information to an inspector at the Ministry office located nearest to the project,

- (a) by faxing the completed form to the inspector; or
- (b) by providing the information that would be required to complete the form to the inspector by telephone. O. Reg. 145/00, s. 4.

(5) Despite subsection (2), the constructor may begin work at a project before complying with subsection (3) or (4) if the following conditions are met:

1. It is necessary to do the work immediately to prevent injury to people or damage to property.
2. Before beginning the work, the constructor gives an inspector notice of the information required in the form by telephone or fax. O. Reg. 145/00, s. 4.

(6) The constructor shall keep the completed notification form posted in a conspicuous place at the project or available at the project for review by an inspector. O. Reg. 145/00, s. 4.

(7) In this section,

“automobile” includes a van or truck with a gross vehicle weight rating of 14,000 pounds (6,350 kilograms) or less. O. Reg. 190/19, s. 1 (2).

7. If section 6 does not apply to a project but the project includes work on a trench more than 1.2 metres deep into which a worker may enter, the constructor shall, before any work at the project is begun, give notice in person, by telephone or by fax to the Ministry office located nearest to the project. O. Reg. 145/00, s. 5.

7.1 (1) This section applies with respect to a project at which a suspended work platform system is to be used. O. Reg. 242/16, s. 4.

(2) At least 48 hours before a suspended work platform system is used for the first time at a project, the constructor shall complete an approved notification form and provide it to the Ministry by faxing it or delivering it in person to the Ministry office located nearest to the project or submitting it electronically on a website of the government of Ontario. O. Reg. 242/16, s. 4.

(3) Despite subsection (2), the constructor may put a suspended work platform system into use before providing the approved notification form if the following conditions are met:

1. It is necessary to use the suspended work platform system immediately to prevent injury to people or damage to property.
2. Before using the suspended work platform system, the constructor gives an inspector at the Ministry office located nearest to the project oral notice, by telephone or in person, that the system will be used. O. Reg. 242/16, s. 4.

(4) If a constructor uses a suspended work platform system under subsection (3), the constructor shall, within 24 hours of beginning to use the suspended work platform system, provide a completed approved notification form to the Ministry in a manner described in subsection (2). O. Reg. 242/16, s. 4.

(5) The constructor shall keep a copy of the completed notification form in a conspicuous location at the project. O. Reg. 242/16, s. 4.

**8.-12. REVOKED:** O. Reg. 426/21, s. 1.

#### GENERAL REQUIREMENTS

**13.** (1) A constructor shall post in a conspicuous place at a project and keep posted while work is done at the project a notice setting out,

- (a) the constructor's name and if the constructor carries on business in a different name, the business name;
- (b) the address and telephone number of the constructor's head office or principal place of business in Ontario; and
- (c) the address and telephone number of the nearest office of the Ministry. O. Reg. 213/91, s. 13 (1); O. Reg. 145/00, s. 9.

(2) Within forty-eight hours after a health and safety representative or joint health and safety committee members are selected for a project, a constructor shall add to the notice the name, trade and employer of the health and safety representative or of each of the committee members. O. Reg. 213/91, s. 13 (2).

**14.** (1) A constructor shall appoint a supervisor for every project at which five or more workers will work at the same time. O. Reg. 213/91, s. 14 (1).

(2) The supervisor shall supervise the work at all times either personally or by having an assistant, who is a competent person, do so personally. O. Reg. 213/91, s. 14 (2).

(3) A supervisor or a competent person appointed by the supervisor shall inspect all machinery and equipment, including fire extinguishing equipment, magazines, electrical installations, communication systems, sanitation and medical facilities, buildings and other structures, temporary supports and means of access and egress at the project to ensure that they do not endanger any worker. O. Reg. 213/91, s. 14 (3).

(4) An inspection shall be made at least once a week or more frequently as the supervisor determines is necessary in order to ensure that the machinery and equipment referred to in subsection (3) do not endanger any worker. O. Reg. 213/91, s. 14 (4).

(5) A competent person shall perform tests and observations necessary for the detection of hazardous conditions on a project. O. Reg. 213/91, s. 14 (5).

**15.** (1) An employer of five or more workers on a project shall appoint a supervisor for the workers. O. Reg. 213/91, s. 15.

(2) The supervisor shall supervise the work at all times either personally or by having an assistant, who is a competent person, do so personally. O. Reg. 145/00, s. 10.

**16.** At a project, no person younger than 16 years of age shall,

- (a) be employed in or about the workplace; or
- (b) be permitted to be present in or about the workplace while work is being performed. O. Reg. 145/00, s. 11.

**17.** (1) A constructor shall establish for a project written procedures to be followed in the event of an emergency and shall ensure that the procedures are followed at the project. O. Reg. 145/00, s. 11.

(2) The constructor shall review the emergency procedures with the joint health and safety committee or the health and safety representative for the project, if any. O. Reg. 145/00, s. 11.

(3) The constructor shall ensure that the emergency procedures are posted in a conspicuous place at the project. O. Reg. 145/00, s. 11.

18. The constructor shall ensure that every worker at the project has ready access to a telephone, two-way radio or other system of two-way communication in the event of an emergency. O. Reg. 145/00, s. 11.

19. If, under this Regulation, a record is required to be kept available for inspection at a project, the constructor or employer, as the case may be, shall keep the record for at least one year after the project is finished. O. Reg. 213/91, s. 19.

## PART II GENERAL CONSTRUCTION

### APPLICATION

20. This Part applies with respect to all projects. O. Reg. 213/91, s. 20.

### PROTECTIVE CLOTHING, EQUIPMENT AND DEVICES

21. (1) A worker shall wear such protective clothing and use such personal protective equipment or devices as are necessary to protect the worker against the hazards to which the worker may be exposed. O. Reg. 213/91, s. 21 (1).

(2) A worker's employer shall require the worker to comply with subsection (1). O. Reg. 213/91, s. 21 (2).

(3) A worker required to wear protective clothing or use personal protective equipment or devices shall be adequately instructed and trained in the care and use of the clothing, equipment or device before wearing or using it. O. Reg. 213/91, s. 21 (3).

22. (1) Every worker shall wear protective headwear at all times when on a project. O. Reg. 213/91, s. 22 (1).

(2) Protective headwear shall be a safety hat that,

(a) consists of a shell and suspension that is adequate to protect a person's head against impact and against flying or falling small objects; and

(b) has a shell which can withstand a dielectric strength test at 20,000 volts phase to ground. O. Reg. 213/91, s. 22 (2).

23. (1) Every worker shall wear protective footwear at all times when on a project. O. Reg. 213/91, s. 23 (1).

(2) Protective footwear shall be a safety shoe or safety boot,

(a) with a box toe that is adequate to protect the wearer's toes against injury due to impact and is capable of resisting at least 125 joules impact; and

(b) with a sole or insole that is adequate to protect the wearer's feet against injury due to puncture and is capable of resisting a penetration load of 1.2 kilonewtons when tested with a Deutsche Industrie Norm standard pin. O. Reg. 213/91, s. 23 (2); O. Reg. 345/15, s. 3.

24. A worker shall use protection appropriate in the circumstances when there is a risk of eye injury to the worker. O. Reg. 213/91, s. 24.

25. A worker shall use protection appropriate in the circumstances when there is a risk of injury on a project from contact between the worker's skin and,

(a) a noxious gas, liquid, fume or dust;

(b) an object that may puncture, cut or abrade the skin;

(c) a hot object, hot liquid or molten metal; or

(d) radiant heat. O. Reg. 213/91, s. 25.

26. Sections 26.1 to 26.9 apply where a worker may be exposed to any of the following hazards:

1. Falling more than 3 metres.

2. Falling more than 1.2 metres, if the work area is used as a path for a wheelbarrow or similar equipment.

3. Falling into operating machinery.

4. Falling into water or another liquid.

5. Falling into or onto a hazardous substance or object.

6. Falling through an opening on a work surface. O. Reg. 145/00, s. 12; O. Reg. 85/04, s. 4; O. Reg. 345/15, s. 4.

26.1 (1) A worker shall be adequately protected by a guardrail system that meets the requirements of subsections 26.3 (2) to (8). O. Reg. 145/00, s. 12.

(2) Despite subsection (1), if it is not practicable to install a guardrail system as that subsection requires, a worker shall be adequately protected by the highest ranked method that is practicable from the following ranking of fall protection methods:

1. A travel restraint system that meets the requirements of section 26.4.

2. A fall restricting system that meets the requirements of section 26.5.
3. A fall arrest system, other than a fall restricting system designed for use in wood pole climbing, that meets the requirements of section 26.6.
4. A safety net that meets the requirements of section 26.8. O. Reg. 145/00, s. 12; O. Reg. 85/04, s. 5 (1); O. Reg. 345/15, s. 5 (1).

(3) The components of any system listed in subsection (2) shall be designed by a professional engineer in accordance with good engineering practice, and shall meet the requirements of any of the following National Standards of Canada standards that are applicable:

1. CAN/CSA-Z259.1-05: Body Belts and Saddles for Work Positioning and Travel Restraint.
2. CAN/CSA-Z259.2.5-12: Fall Arresters and Vertical Lifelines.
3. CAN/CSA-Z259.2.2-98 (R2004): Self-Retracting Devices for Personal Fall-Arrest Systems.
4. CAN/CSA-Z259.2.3-99 (R2004): Descent Control Devices.
5. CAN/CSA-Z259.10-06: Full Body Harnesses.
6. CAN/CSA-Z259.11-05: Energy Absorbers and Lanyards.
7. CAN/CSA-Z259.12-01 (R2006): Connecting Components for Personal Fall Arrest Systems (PFAS).
8. CAN/CSA-Z259.14-01 (R2007): Fall Restrict Equipment for Wood Pole Climbing. O. Reg. 85/04, s. 5 (2); O. Reg. 443/09, s. 1; O. Reg. 345/15, s. 5 (2).

(4) Before any use of a fall arrest system or a safety net by a worker at a project, the worker's employer shall develop written procedures for rescuing the worker after his or her fall has been arrested. O. Reg. 145/00, s. 12.

**26.2** (1) An employer shall ensure that a worker who may use a fall protection system is adequately trained in its use and given adequate oral and written instructions by a competent person. O. Reg. 145/00, s. 13.

(1.1) In addition to the requirements of subsection (1), an employer shall ensure that a worker who may use a fall protection system meets the working at heights training requirements of Ontario Regulation 297/13 (Occupational Health and Safety Awareness and Training). O. Reg. 252/14, s. 1.

(2) The employer shall ensure that the person who provides the training and instruction referred to in subsection (1) prepares a written training and instruction record for each worker and signs the record. O. Reg. 145/00, s. 13.

(3) The training and instruction record shall include the worker's name and the dates on which training and instruction took place. O. Reg. 145/00, s. 13.

(4) The employer shall make the training and instruction record for each worker available to an inspector on request. O. Reg. 145/00, s. 13.

**26.3** (1) Despite paragraph 1 of section 26, a guardrail system that meets the requirements of this section shall be used if a worker has access to the perimeter or an open side of any of the following work surfaces and may be exposed to a fall of 2.4 metres or more:

1. A floor, including the floor of a mezzanine or balcony.
2. The surface of a bridge.
3. A roof while formwork is in place.
4. A scaffold platform or other work platform, runway or ramp. O. Reg. 145/00, s. 14; O. Reg. 345/15, s. 6.

(2) One of the following precautions shall be used to prevent a worker from falling through an opening on a work surface:

1. A guardrail system that meets the requirements of this section.
2. A protective covering that,
  - i. completely covers the opening,
  - ii. is securely fastened,
  - iii. is adequately identified as covering an opening,
  - iv. is made from material adequate to support all loads to which the covering may be subjected, and
  - v. is capable of supporting a live load of at least 2.4 kilonewtons per square metre without exceeding the allowable unit stresses for the material used. O. Reg. 145/00, s. 14.

(3) The guardrail system or protective covering required under subsection (1) or (2) may be removed temporarily to perform work in or around the opening if a worker is adequately protected and signs are posted in accordance with subsections 44 (1) and (2). O. Reg. 145/00, s. 14.

- (4) The following are the specifications for a guardrail system:
1. It shall have a top rail, an intermediate rail and a toe board.
  2. The intermediate rail may be replaced by material that can withstand a point load of 450 newtons applied in a lateral or vertical downward direction.
  3. Subject to subsection 116 (8), the top of the guardrail system shall be located at least 0.9 metres but not more than 1.1 metres above the surface on which the system is installed.
  4. The intermediate rail shall be located midway between the top rail and the toe board.
- 4.1 The toe board shall extend from the surface to which the guardrail system is attached to a height of at least 89 millimetres.
5. If the guardrail system is located at the perimeter of a work surface, the distance between the edge of the surface and the guardrail system shall not be greater than 300 millimetres. O. Reg. 145/00, s. 14; O. Reg. 443/09, s. 2 (1).
- (5) A guardrail system shall be capable of resisting anywhere along the length of the system the following loads when applied separately, without exceeding the allowable unit stress for each material used:
1. A point load of 675 newtons applied in a lateral direction to the top rail.
  2. A point load of 450 newtons applied in a vertical downward direction to the top rail.
  3. A point load of 450 newtons applied in a lateral or vertical downward direction to the intermediate rail, or midway between the top rail and the toe board.
  4. A point load of 225 newtons applied in a lateral direction to the toe board. O. Reg. 145/00, s. 14.
- (6) The distance between any two adjacent posts of the guardrail system may be greater than 2.4 metres only if the system is capable of resisting the loads specified in subsection (5) increased in proportion to the greater distance between the posts. O. Reg. 443/09, s. 2 (2).
- (7) The following additional requirements apply to a guardrail system that is made of wood:
1. The wood shall be spruce, pine or fir (S-P-F) timber of construction grade quality or better and shall not have any visible defect affecting its load-carrying capacity.
  2. The wood shall be free of sharp objects such as splinters and protruding nails.
  3. The system shall have posts that are at least 38 millimetres by 89 millimetres, are securely fastened to the surface and are spaced at intervals of not more than 2.4 metres.
  4. The top rail and the intermediate rail shall each be at least 38 millimetres by 89 millimetres. O. Reg. 145/00, s. 14; O. Reg. 443/09, s. 2 (3).
- (7.1) If a guardrail system that is made of wood is constructed and installed so that it is capable of resisting all loads that it may be subjected to by a worker, the following do not apply:
1. The requirement in paragraph 2 of subsection (4) that the replacement material can withstand a point load of 450 newtons.
  2. Subsections (5) and (6). O. Reg. 443/09, s. 2 (4).
- (8) The following additional requirements apply to a guardrail system that is made of wire rope:
1. The top rail and intermediate rail shall be made of wire rope that is at least 10 millimetres in diameter, and the rope shall be kept taut by a turnbuckle or other device.
  2. The outward deflection of the top rail and intermediate rail resulting from the loads specified in subsection (5) shall not extend beyond the edge of a work surface.
  3. The system shall have vertical separators at intervals of not more than 2.4 metres and horizontal supports at intervals of not more than 9 metres.
  4. REVOKED: O. Reg. 443/09, s. 2 (6).

O. Reg. 145/00, s. 14; O. Reg. 443/09, s. 2 (5, 6).

**26.4** (1) A travel restraint system shall consist of a full body harness with adequate attachment points or a safety belt. O. Reg. 145/00, s. 14.

(2) The full body harness or safety belt shall be attached by a lifeline or lanyard to a fixed support that meets the requirements of section 26.7. O. Reg. 145/00, s. 14.

(3) The travel restraint system shall be inspected by a competent worker before each use. O. Reg. 145/00, s. 14.



(4) If a component of the travel restraint system is found to be defective on inspection, the defective component shall immediately be taken out of service. O. Reg. 145/00, s. 14.

**26.5** (1) A fall restricting system that is not designed for use in wood pole climbing shall consist of an assembly of components that is,

- (a) attached to an independent fixed support that meets the requirements of section 26.7; and
- (b) designed and arranged in accordance with the manufacturer's instructions and so that a worker's free fall distance does not exceed 0.6 metres. O. Reg. 85/04, s. 6.

(2) A fall restricting system that is designed for use in wood pole climbing,

- (a) shall consist of an assembly of components that is designed and arranged in accordance with the manufacturer's instructions; and
- (b) shall not allow pole slippage in excess of the distances set out in the applicable National Standards of Canada standard referred to in subsection 26.1 (3). O. Reg. 85/04, s. 6.

(3) A fall restricting system shall be inspected by a competent worker before each use. O. Reg. 85/04, s. 6.

(4) If a component of the fall restricting system is found to be defective on inspection, the component shall be taken out of service immediately. O. Reg. 85/04, s. 6.

(5) If a worker who is using the fall restricting system falls or slips more than the distance determined under clause (1) (b) or (2) (b), as the case may be, the system shall be taken out of service immediately and shall not be used again by a worker unless all components of the system have been certified by the manufacturer as being safe for reuse. O. Reg. 85/04, s. 6.

**26.6** (1) A fall arrest system shall consist of a full body harness with adequate attachment points and a lanyard equipped with a shock absorber or similar device. O. Reg. 145/00, s. 14.

(2) The fall arrest system shall be attached by a lifeline or by the lanyard to an independent fixed support that meets the requirements of section 26.7. O. Reg. 145/00, s. 14.

(3) The fall arrest system shall be arranged so that a worker cannot hit the ground or an object or level below the work. O. Reg. 145/00, s. 14.

(4) Despite subsection (1), the fall arrest system shall not include a shock absorber if wearing or using one could cause a worker to hit the ground or an object or level below the work. O. Reg. 145/00, s. 14.

(5) The fall arrest system shall not subject a worker who falls to a peak fall arrest force greater than 8 kilonewtons. O. Reg. 145/00, s. 14.

(6) The fall arrest system shall be inspected by a competent worker before each use. O. Reg. 145/00, s. 14.

(7) If a component of the fall arrest system is found to be defective on inspection, the defective component shall immediately be taken out of service. O. Reg. 145/00, s. 14.

(8) If a worker who is using the fall arrest system falls, the system shall be immediately removed from service and shall not be used again by a worker unless all components of the system have been certified by the manufacturer as being safe for re-use. O. Reg. 145/00, s. 14.

(9) Subsections (1) to (8) do not apply to fall restricting systems designed for use in wood pole climbing. O. Reg. 85/04, s. 7.

**26.7** (1) A permanent anchor system shall be used as the fixed support in a fall arrest system, fall restricting system or travel restraint system if the following conditions are met:

- 1. The anchor system has been installed according to the Building Code.
- 2. It is safe and practical to use the anchor system as the fixed support. O. Reg. 145/00, s. 14.

(2) If the conditions set out in subsection (1) are not met, a temporary fixed support shall be used that meets the following requirements:

- 1. Subject to paragraph 2, a support used in a fall arrest system shall be capable of supporting a static force of at least 8 kilonewtons without exceeding the allowable unit stress for each material used.
- 2. If a shock absorber is also used in the fall arrest system, the support shall be capable of supporting a static force of at least 6 kilonewtons without exceeding the allowable unit stress for each material used.
- 3. Subject to paragraph 4, a support used in a fall restricting system must be capable of supporting a static force of at least 6 kilonewtons without exceeding the allowable unit stress for each material used.
- 4. Paragraph 3 does not apply to a support that is used in accordance with the manufacturer's written instructions and is adequate to protect a worker.

5. A support used in a travel restraint system shall be capable of supporting a static force of at least 2 kilonewtons without exceeding the allowable unit stress for each material used. O. Reg. 145/00, s. 14.

(3) Despite the requirements listed in subsection (2), the support capacity of a temporary fixed support used in a fall protection system may be determined by dynamic testing in accordance with good engineering practice to ensure that the temporary fixed support has adequate capacity to arrest a worker's fall. O. Reg. 145/00, s. 14.

(4) A fixed support shall not have any sharp edges that could cut, chafe or abrade the connection between it and another component of the system. O. Reg. 145/00, s. 14.

(5) Subsections (1) to (4) do not apply to fall restricting systems designed for use in wood pole climbing. O. Reg. 85/04, s. 8.

**26.8** (1) A safety net shall be designed, tested and installed in accordance with ANSI/ASSE Standard A10.11-2010, Safety Requirements for Personnel and Debris Nets. O. Reg. 145/00, s. 14; O. Reg. 345/15, s. 7.

(2) The safety net shall be installed by a competent worker. O. Reg. 145/00, s. 14.

(3) A professional engineer or a competent person under the engineer's supervision shall inspect and test the installation of the safety net before it is put in service. O. Reg. 145/00, s. 14.

(4) The engineer shall document the inspection and testing of the safety net. O. Reg. 145/00, s. 14; O. Reg. 85/04, s. 9.

(5) A copy of the document shall be kept at the project while the safety net is in service. O. Reg. 145/00, s. 14.

**26.9** (1) This section applies to a lanyard or lifeline that is part of a travel restraint system or a fall arrest system. O. Reg. 145/00, s. 14.

(2) The following requirements apply to a lanyard or a lifeline:

1. It shall not be used in such a way that it is likely to be cut, chafed or abraded.

2. It shall not be subjected to extreme temperature, flame, abrasive or corrosive materials or other hazards that may damage it.

3. The free end of the lanyard or lifeline shall be kept clear of equipment and machinery. O. Reg. 145/00, s. 14.

(3) Only one person at a time may use a lanyard. O. Reg. 145/00, s. 14.

(4) The connecting ends of a lanyard shall be wrapped around a protective thimble and adequately fastened with a swaged fitting or eye splice supplied by the manufacturer of the lanyard. O. Reg. 145/00, s. 14; O. Reg. 242/16, s. 5.

(5) A horizontal or vertical lifeline shall be kept free from splices or knots, except knots used to connect it to a fixed support. O. Reg. 145/00, s. 14.

(6) Only one person at a time may use a vertical lifeline. O. Reg. 145/00, s. 14.

(7) A vertical lifeline shall,

(a) extend to the ground; or

(b) have a positive stop that prevents the rope grab or other similar device from running off the end of the lifeline. O. Reg. 145/00, s. 14.

(8) The following requirements apply to a horizontal lifeline system:

1. It shall be designed by a professional engineer in accordance with good engineering practice.

2. The design may be a standard design or a custom design.

3. The design shall,

i. show the arrangement of the system including the anchorage or fixed support system,

ii. indicate the components used,

iii. state the number of workers that can safely be attached to it,

iv. set out instructions for installation or erection, and

v. show the design loads for the system.

4. The system shall be installed or erected, and maintained, in accordance with the professional engineer's design.

5. Before each use, the system shall be inspected by a professional engineer or a competent worker designated by a supervisor.

6. The constructor shall keep the design at the project while the system is in use. O. Reg. 145/00, s. 14.

**26.10, 26.11** REVOKED: O. Reg. 85/04, s. 10.

27. (1) Despite subsections 26.1 (1) and (2), if the following conditions are met, a worker shall wear a lifejacket or other personal flotation device that is adequate:

1. The worker is exposed to a risk of drowning on a project.
  2. It is not reasonably possible to install a guardrail system as subsection 26.1 (1) requires.
  3. It is not reasonably possible to protect the worker adequately by means of a fall protection method as subsection 26.1 (2) requires. O. Reg. 443/09, s. 3 (1).
- (2) If a worker may drown at a project,
- (a) at least two workers trained to perform rescue operations shall be available to perform rescue operations;
  - (b) rescue equipment shall be provided in a suitable location on or near the project; and
  - (c) all workers on the project shall be advised of the rescue procedures to be followed and their role, if any, in carrying out a rescue. O. Reg. 213/91, s. 27 (2).
- (3) The rescue equipment shall include,
- (a) a seaworthy boat equipped with a lifebuoy attached to a buoyant heaving line not less than 15 metres in length and a boat hook; and
  - (b) REVOKED: O. Reg. 443/09, s. 3 (2).
  - (c) an alarm system capable of warning a worker of the necessity of carrying out a rescue operation. O. Reg. 213/91, s. 27 (3); O. Reg. 443/09, s. 3 (2).
- (4) The boat shall be power-driven if the water is likely to be rough or swift. O. Reg. 213/91, s. 27 (4).
- (5) The alarm system shall be activated when a rescue operation is necessary. O. Reg. 213/91, s. 27 (5).
- (6) REVOKED: O. Reg. 443/09, s. 3 (3).

#### HYGIENE

28. (1) A reasonable supply of potable drinking water shall be kept readily accessible at a project for the use of workers. O. Reg. 213/91, s. 28 (1).

(2) Drinking water shall be supplied from a piping system or from a clean, covered container with a drain faucet. O. Reg. 213/91, s. 28 (2).

- (3) Workers shall be given a sanitary means of drinking the drinking water. O. Reg. 213/91, s. 28 (3).
- (4) Workers shall not be required to share a common drinking cup to drink water. O. Reg. 213/91, s. 28 (4).

29. (1) In this section,

“facilities” means toilet, urinal and clean-up facilities; (“installations”)

“service”, when used as a verb, means to have waste pumped out and to have the facilities replenished where necessary. (“entretenir”) O. Reg. 527/00, s. 1.

(2) REVOKED: O. Reg. 527/00, s. 1.

(3) The constructor shall ensure,

- (a) that facilities are provided or arranged for workers before work has started at a project; and
- (b) that workers at the project have reasonable access to these facilities. O. Reg. 145/00, s. 15.

(4) Subject to subsections (5) and (6), the facilities shall be located not more than 180 metres, measured horizontally, from the project work area. O. Reg. 142/17, s. 6.

(5) If work is being performed in a tunnel, the facilities shall be located not more than 180 metres, measured horizontally, from the entrance to the tunnel. O. Reg. 142/17, s. 6.

(6) The facilities may be located not more than 3 kilometres from the work area if transportation to the facilities is provided for workers where reasonably required. O. Reg. 142/17, s. 6.

(7) If the project is the construction of a building, the facility shall be located not more than 9 metres, measured vertically, from the level at which work is being performed, in addition to meeting the requirement set out in subsection (4). O. Reg. 142/17, s. 6.

(8) The location of the facilities under subsection (7) may be varied if the arrangement affords reasonable accessibility for workers. O. Reg. 145/00, s. 15.

(9) If the location of the facilities is varied under subsection (8), the constructor shall document in writing the location and the reasons for the variance, and shall provide the document to,

- (a) the joint health and safety committee or the health and safety representative, if any, for the workplace; or
  - (b) the workers, if there is no committee or representative for the workers. O. Reg. 145/00, s. 15.
- (10) The constructor shall,
- (a) inform workers of the location of the facilities; and
  - (b) post the location of the facilities in a conspicuous place at the project if it is practical to do so. O. Reg. 145/00, s. 15.
- (11) The facilities shall be serviced, cleaned and sanitized as frequently as necessary to maintain them in a clean and sanitary condition. O. Reg. 145/00, s. 15.
- (12) The constructor shall keep at the project for the duration of the project,
- (a) a record of the servicing, cleaning and sanitizing of the facilities; and
  - (b) a copy of the document required under subsection (9), if any. O. Reg. 145/00, s. 15.
- (13) Facilities that are not under the constructor’s control satisfy the requirements of this section only if the constructor has received permission from the facilities’ owner for workers to use the facilities. O. Reg. 145/00, s. 15.

**29.1** (0.1) In this section,

“non-sewered flush toilet facilities” means water flush toilets or chemical flush toilets that have the features listed in subsection (0.2); (“installations de toilettes à chasse non raccordées à un réseau d’égouts”)

“sewered toilet facilities” means water flush toilets that are connected to a sanitary sewer system and equipped with a trap in accordance with the applicable provisions of the Building Code. (“installations de toilettes raccordées à un réseau d’égouts”) O. Reg. 527/00, s. 2 (1); O. Reg. 142/17, s. 7.

(0.2) The features referred to in the definition of “non-sewered flush toilet facilities” in subsection (0.1) are:

1. The toilets are not connected to a sanitary sewer system.
  2. They are equipped with a trap or a positive seal separating stored waste from the bowl.
  3. The waste is first flushed from the bowl with water or with water containing chemical additives. Then the waste is deposited into a container and chemically treated sufficiently for the container’s maximum capacity. O. Reg. 527/00, s. 2 (1).
- (1) Each toilet facility shall meet the following requirements:
1. There shall be a toilet with an open-front toilet seat.
  2. There shall be a toilet paper holder and an adequate supply of toilet paper. If the facility is intended for use by female workers, there shall be a disposal receptacle for sanitary napkins.
  3. The facility shall afford the user privacy and protection from weather and from falling objects. There shall be a self-closing door that can be locked from inside the facility.
  4. The facility shall be,
    - i. illuminated by natural or artificial light,
    - ii. adequately heated, if that is possible, and
    - iii. adequately ventilated.
  5. If the facility is intended for use by males only or by females only, it shall have a sign indicating that fact.
  6. The facility shall be kept in good repair at all times. O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (2, 3).
- (2) Separate toilet facilities shall be provided for male and female workers, unless the facilities are intended to be used by only one worker at a time. O. Reg. 145/00, s. 15.
- (3) Sewered toilet facilities or non-sewered flush toilet facilities shall be provided at a project, subject to subsection (4). O. Reg. 145/00, s. 15.
- (4) If a project is being carried out in a remote unpopulated area and it is not reasonably possible to provide the toilet facilities required under subsection (3), other types of toilet facilities that come as close as possible to having the features of non-sewered flush toilet facilities shall be provided instead. O. Reg. 527/00, s. 2 (4).
- (5) When water flush toilets or non-recirculating chemical flush toilets are provided, the minimum number of toilets required at the project is as follows:

TABLE

Item	Column 1 Minimum number of toilets	Column 2 Number of workers regularly employed at the project
1.	1	1-15

2.	2	16-30
3.	3	31-45
4.	4	46-60
5.	4, plus 1 additional toilet for each additional group of 15 or fewer workers	61 or more

O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (5); O. Reg. 345/15, s. 8 (1).

(6) If the toilets are located in a multiple water flush toilet facility and are intended to be used by male workers, water flush urinals may be substituted for a maximum of two-thirds of the number of toilets required by subsection (5). O. Reg. 145/00, s. 15.

(7) When toilets other than water flush toilets or non-recirculating chemical flush toilets are provided, the minimum number of toilets required at the project is as follows:

TABLE

Item	Column 1 Minimum number of toilets	Column 2 Number of workers regularly employed at the project
1.	1	1-10
2.	2	11-20
3.	3	21-30
4.	4	31-40
5.	4, plus 1 additional toilet for each additional group of 15 or fewer workers	41 or more

O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (6); O. Reg. 345/15, s. 8 (2).

(8) If the toilets are located in a portable single-unit toilet facility intended for use by male workers, there shall be at least one urinal for each toilet. O. Reg. 145/00, s. 15.

(9) Portable urinals equipped with clean-up facilities are permitted in addition to the requirements of this section. O. Reg. 145/00, s. 15.

**29.2** (1) Each single-toilet facility shall be provided with its own clean-up facility. O. Reg. 527/00, s. 3.

(1.1) In a multiple-toilet facility at a project, one clean-up facility shall be provided for every two toilets. O. Reg. 527/00, s. 3.

(2) Each clean-up facility shall meet the following requirements:

1. Subject to subsection (3), the facility shall have a wash basin with running water. Both hot and cold running water shall be available if reasonably possible.
2. Soap or hand cleanser shall be provided.
3. Paper towels or a hand dryer shall be provided. If paper towels are provided, there shall be a waste disposal receptacle nearby. O. Reg. 145/00, s. 15.

(3) If it is not reasonably possible to have a wash basin with running water at a clean-up facility, hand cleanser that can be used without water shall be provided instead. O. Reg. 145/00, s. 15.

**30.** Workers who handle or use corrosive, poisonous or other substances likely to endanger their health shall be provided with washing facilities with clean water, soap and individual towels. O. Reg. 213/91, s. 30.

#### GENERAL REQUIREMENTS

**31.** (1) Every part of a project, including a temporary structure,

- (a) shall be designed and constructed to support or resist all loads and forces to which it is likely to be subjected without exceeding the allowable unit stress for each material used; and
- (b) shall be adequately braced to prevent any movement that may affect its stability or cause its failure or collapse. O. Reg. 213/91, s. 31 (1).

(2) If two structural steel columns or structural steel beams are connected to a common column or common beam,

- (a) the connection shall be made using a clipped double connection; or
- (b) the first column or beam shall be secured in a seated connection. O. Reg. 213/91, s. 31 (2).

(3) No part of a project, including a temporary structure, shall be subjected to a load in excess of the load it is designed and constructed to bear. O. Reg. 213/91, s. 31 (3).

**32.** (1) During the construction of a building, temporary or permanent flooring shall be installed progressively as the building is erected. O. Reg. 213/91, s. 32 (1).

(2) Temporary flooring,

- (a) shall consist of material that, without exceeding the allowable unit stress for the material used, is capable of supporting,
    - (i) any load to which it is likely to be subjected, and
    - (ii) a load of at least 2.4 kilonewtons per square metre;
  - (b) shall be securely fastened to and supported on girders, beams or other structural members that are capable of supporting any load likely to be applied to the flooring without exceeding the allowable unit stress for the structural members; and
  - (c) shall extend over the whole area of the surface on or above which work is being carried out. O. Reg. 213/91, s. 32 (2).
- (3) Temporary flooring shall not be subjected to a load in excess of the load that it is designed and constructed to bear. O. Reg. 213/91, s. 32 (3).

**33.** (1) Subject to subsection (2), work on a building shall not be carried out at a distance higher than the higher of two storeys or the first column splice above the temporary or permanent flooring. O. Reg. 213/91, s. 33 (1).

(2) If the vertical distance between the tiers of column splices on a building exceeds two storeys, work shall not be carried out higher than three storeys above the temporary or permanent flooring. O. Reg. 213/91, s. 33 (2).

(3) This section does not apply to work carried out by a worker,

- (a) who is working from a scaffold;
- (b) whose fall would be arrested by means of a safety net without endangering the worker; or
- (c) who is using a fall arrest system attached to the project. O. Reg. 213/91, s. 33 (3).

**34.** (1) If material may fall on a worker, overhead protection shall be provided,

- (a) at every means of access to and egress from a building or other structure under construction; and
- (b) above every area where work is being carried out. O. Reg. 213/91, s. 34 (1).

(2) Overhead protection shall consist of material capable of supporting 2.4 kilonewtons per square metre without exceeding the allowable unit stress for the material used. O. Reg. 213/91, s. 34 (2).

#### HOUSEKEEPING

**35.** (1) Waste material and debris shall be removed to a disposal area and reusable material shall be removed to a storage area as often as is necessary to prevent a hazardous condition arising and, in any event, at least once daily. O. Reg. 213/91, s. 35 (1).

(2) Rubbish, debris and other materials shall not be permitted to fall freely from one level to another but shall be lowered by a chute, in a container or by a crane or hoist. O. Reg. 213/91, s. 35 (2).

(3) Despite subsection (2), rubbish, debris and other materials from demolition on a project may be permitted to fall or may be dropped into an enclosed designated area to which people do not have access. O. Reg. 213/91, s. 35 (3).

(4) A chute,

- (a) shall be adequately constructed and rigidly fastened in place;
- (b) if it has a slope exceeding a gradient of one in one, shall be enclosed on its four sides;
- (c) shall have a gate at the bottom end if one is necessary to control the flow of material; and
- (d) shall discharge into a container or an enclosed area surrounded by barriers. O. Reg. 213/91, s. 35 (4).

(5) The entrance to a chute,

- (a) shall be constructed to prevent spilling over when rubbish, debris and other materials are being deposited into the chute;
- (b) if it is at or below floor level, shall have a curb that is at least 100 millimetres high;
- (c) shall not be more than 1.2 metres high;
- (d) shall be kept closed when the chute is not in use; and
- (e) shall be designed so that any person will be discouraged from entering it. O. Reg. 213/91, s. 35 (5).

**36.** If a formwork tie, reinforcing steel, a nail or another object protruding from concrete or another surface may endanger a worker, the protrusion shall be removed, cut off at the surface or otherwise protected as soon as practicable. O. Reg. 213/91, s. 36.

**37.** (1) Material or equipment at a project shall be stored and moved in a manner that does not endanger a worker. O. Reg. 213/91, s. 37 (1).

(2) No material or equipment to be moved by a crane or similar hoisting device shall be stored under or in close proximity to an energized outdoor overhead electrical conductor. O. Reg. 213/91, s. 37 (2).

**38.** Blocking, support chains, metal bands, wire rope and rigging components shall be removed from material or equipment in a manner that does not endanger a worker. O. Reg. 213/91, s. 38.

**39.** Material and equipment at a project shall be piled or stacked in a manner that prevents it from tipping, collapsing or rolling. O. Reg. 213/91, s. 39.

**40.** (1) No material shall be stored, stacked or piled closer than 1.8 metres to,

- (a) an opening in a floor or roof;
- (b) the open edge of a floor, roof or balcony; or
- (c) an excavation. O. Reg. 213/91, s. 40 (1); O. Reg. 142/17, s. 8.

(2) Subsection (1) does not apply with respect to material in a building or a completely enclosed part of a building that is used solely for storing and distributing materials. O. Reg. 213/91, s. 40 (2).

(3) Subsection (1) does not apply with respect to small masonry units including bricks, blocks and similar objects,

- (a) that can be handled by one worker;
- (b) that are to be used at the edge of a floor, a roof, an excavation or an opening in a floor or roof; and
- (c) that are stacked in a pile whose height is less than the distance from the face of the pile to the edge of the floor, roof, excavation or opening in a floor or roof. O. Reg. 213/91, s. 40 (3).

**41.** A combustible, corrosive or toxic substance shall be stored in a suitable container. O. Reg. 213/91, s. 41.

**42.** (1) A storage cylinder for compressed gas shall be secured in an upright position. O. Reg. 213/91, s. 42 (1).

(2) The control valve of a storage cylinder for compressed gas, other than a cylinder connected to a regulator, supply line or hose, shall be covered by a protective cap that is secured in its proper position. O. Reg. 213/91, s. 42 (2).

(3) A spent storage cylinder shall not be stored inside a building. O. Reg. 213/91, s. 42 (3).

(4) No storage cylinder for propane shall be placed closer than three metres to a source of ignition or fire. O. Reg. 213/91, s. 42 (4).

(5) Subsection (4) does not apply to a storage cylinder,

- (a) that forms part of hand-held propane equipment;
- (b) that forms part of a lead pot used in plumbing or electrical work;
- (c) that forms part of a propane-powered or propane-heated vehicle; or
- (d) that is protected from a source of ignition by a barrier, wall or other means of separation. O. Reg. 213/91, s. 42 (5).

**43.** (1) A flammable liquid or gas shall be stored in a building or storage tank that is suitable for the purpose and, if practicable, not less than 100 metres from a magazine for explosives. O. Reg. 213/91, s. 43 (1).

(2) No more than one work day's normal supply of a flammable liquid shall be stored in a building or structure on a project unless it is stored,

- (a) in a container that is suitable for the particular hazards of the liquid; and
- (b) in a controlled access area or a room,
  - (i) that has sufficient window area to provide explosion relief to the outside, and
  - (ii) that is remote from the means of egress from the building or structure. O. Reg. 213/91, s. 43 (2).

(3) A portable container used to store or transport flammable liquids,

- (a) shall be approved for use for that liquid by a recognized testing laboratory; and
- (b) shall have a label stating the use for which the container is approved and the name of the testing laboratory which gave the approval required by clause (a). O. Reg. 213/91, s. 43 (3).

**44.** (1) Signs meeting the requirements of subsection (2) shall be posted in prominent locations and in sufficient numbers to warn workers of a hazard on a project. O. Reg. 213/91, s. 44 (1).

(2) A sign shall contain the word "DANGER" written in legible letters that are at least 150 millimetres in height and shall state that entry by any unauthorized person to the area where the hazard exists is forbidden. O. Reg. 213/91, s. 44 (2).

(3) Without limiting the generality of subsection (1), a sign shall be posted,

- (a) adjacent to a hoisting area;

- (b) under a boatswain's chair or a suspended work platform;
  - (c) at the outlet from a chute;
  - (d) at a means of access to a place where there may be a noxious gas, vapour, dust or fume, noxious substance or a lack of oxygen; and
  - (e) where there is a potential hazard from an energized overhead electrical conductor at more than 750 volts. O. Reg. 213/91, s. 44 (3); O. Reg. 242/16, s. 6; O. Reg. 142/17, s. 9.
- (4) No person shall enter an area in which a sign is posted other than a worker authorized to work in the area. O. Reg. 213/91, s. 44 (4).

**45.** (1) The areas in which a worker is present and the means of access to and egress from those areas shall be adequately lit. O. Reg. 213/91, s. 45 (1).

(2) A light bulb used in a temporary lighting system shall be enclosed by a mechanical protection device. O. Reg. 213/91, s. 45 (2).

**46.** (1) A project shall be adequately ventilated by natural or mechanical means,

- (a) if a worker may be injured by inhaling a noxious gas, vapour, dust or fume or from a lack of oxygen; or
  - (b) if a gas, vapour, dust or fume may be capable of forming an explosive mixture with air. O. Reg. 213/91, s. 46 (1).
- (2) If it is not practicable to provide natural or mechanical ventilation in the circumstances described in clause (1) (a), respiratory protective equipment suitable for the hazard shall be provided to and used by the workers. O. Reg. 213/91, s. 46 (2).

**47.** (1) This section does not apply to an internal combustion engine operated in a tunnel. O. Reg. 345/15, s. 9.

(2) No internal combustion engine shall be operated in an excavation or in a building or other enclosed structure unless there is an adequate supply of air for combustion and,

- (a) the exhaust gases and fumes from the engine are adequately discharged directly outside the excavation, building or other enclosed structure to a point sufficiently remote to prevent the return of the gases and fumes; or
  - (b) there is adequate natural or mechanical ventilation to ensure that exhaust gases and fumes from the engine will not accumulate in the excavation, building or other enclosed structure. O. Reg. 345/15, s. 9.
- (3) An excavation or a building or other enclosed structure in which an internal combustion engine is being operated shall be tested for airborne concentrations of carbon monoxide to ensure that the concentrations do not exceed the applicable limits as determined in accordance with section 4 of Regulation 833 of the Revised Regulations of Ontario, 1990 (Control of Exposure to Biological or Chemical Agents), made under the Act. O. Reg. 345/15, s. 9.

(4) The testing under subsection (3) shall be carried out by a competent worker in accordance with a written testing strategy, which shall be developed by the employer in consultation with the joint health and safety committee or a health and safety representative, if any. O. Reg. 345/15, s. 9.

(5) An internal combustion engine under this section shall be maintained and used in accordance with section 93. O. Reg. 345/15, s. 9.

**48.** (1) When a drum, tank, pipeline or other container is to be repaired or altered,

- (a) its internal pressures shall be adjusted to atmospheric pressure before any fastening is removed;
- (b) it shall be drained, cleaned and ventilated or otherwise rendered free from any explosive, flammable or harmful substance; and
- (c) it shall not be refilled during repair or alteration if the substance which is to be placed in it may vaporize or ignite. O. Reg. 213/91, s. 48 (1).

(2) Clauses (1) (a) and (b) do not apply with respect to a pipeline if hot-tapping and boxing-in are carried out by a competent worker under controlled conditions that provide for the protection of all persons. O. Reg. 213/91, s. 48 (2).

#### TEMPORARY HEAT

**49.** (1) A fuel-fired heating device shall be located, protected and used in such a way that there is no risk of igniting a tarpaulin or similar temporary enclosure or combustible materials adjacent to it. O. Reg. 213/91, s. 49 (1).

(2) No fuel-fired heating device shall be used in a confined or enclosed space unless there is an adequate supply of air for combustion and adequate general ventilation. O. Reg. 213/91, s. 49 (2).

(3) A fuel-fired heating device shall be protected from damage and from overturning. O. Reg. 213/91, s. 49 (3).

(4) No fuel-fired heating device shall be located so as to restrict any means of egress. O. Reg. 213/91, s. 49 (4).

(5) A fuel-fired heating device that generates noxious products of combustion shall discharge the products of combustion outside the building or structure in which it is located. O. Reg. 213/91, s. 49 (5).



**50.** All fuel supply lines shall be constructed, guarded or placed in such a way as to be protected from damage. O. Reg. 213/91, s. 50.

**51.** (1) Temporary steam-piping shall be installed and supported so as not to endanger a worker. O. Reg. 213/91, s. 51 (1).

(2) Temporary steam-piping shall be insulated or otherwise protected if a worker is likely to come into contact with it. O. Reg. 213/91, s. 51 (2).

#### FIRE SAFETY

**52.** (1) Fire extinguishing equipment shall be provided at readily accessible and adequately marked locations at a project. O. Reg. 213/91, s. 52 (1).

(1.1) Every worker who may be required to use fire extinguishing equipment shall be trained in its use. O. Reg. 145/00, s. 16.

(2) Without limiting subsection (1), at least one fire extinguisher shall be provided,

(a) where flammable liquids or combustible materials are stored, handled or used;

(b) where oil-fired or gas-fired equipment, other than permanent furnace equipment in a building, is used;

(c) where welding or open-flame operations are carried on; and

(d) on each storey of an enclosed building being constructed or altered. O. Reg. 213/91, s. 52 (2).

(3) At least one fire extinguisher shall be provided in a workshop for each 300 or fewer square metres of floor area. O. Reg. 213/91, s. 52 (3).

(4) Clause (2) (d) and subsection (3) do not apply to a building,

(a) that is to be used as a detached or semi-detached single-family dwelling;

(b) that has two storeys or less and is to be used as a multiple family dwelling; or

(c) that has one storey with no basement or cellar. O. Reg. 213/91, s. 52 (4).

**53.** (1) Fire extinguishing equipment shall be of a suitable type and size to permit the evacuation of workers during a fire. O. Reg. 213/91, s. 53 (1).

(2) Every fire extinguisher,

(a) shall be a type whose contents are discharged under pressure; and

(b) shall have an Underwriters' Laboratories of Canada rating of at least 4A40BC. O. Reg. 213/91, s. 53 (2); O. Reg. 345/15, s. 10.

**54.** (1) Fire extinguishing equipment shall be protected from physical damage and from freezing. O. Reg. 213/91, s. 54 (1).

(2) After a fire extinguisher is used, it shall be refilled or replaced immediately. O. Reg. 213/91, s. 54 (2).

**55.** Every fire extinguisher shall be inspected for defects or deterioration at least once a month by a competent worker who shall record the date of the inspection on a tag attached to it. O. Reg. 213/91, s. 55.

**56.** No work shall be carried out at a height of 84 metres or more in a building unless the building has temporary or permanent fire pumps that provide a minimum water flow of 1,890 litres per minute at a discharge pressure of at least 450 kilopascals at and above the 84-metre height. O. Reg. 145/00, s. 17.

**57.** (1) As construction proceeds in a building with two or more storeys, a permanent or temporary standpipe shall be installed such that the distance between the standpipe and the uppermost work level is no more than two storeys at any given time. O. Reg. 142/17, s. 10.

(2) Subsection (1) does not apply to work carried out in a building which is not required by the Building Code to have a permanent standpipe. O. Reg. 213/91, s. 57 (2).

(3) A permanent standpipe,

(a) shall have sufficient hose outlets to permit every part of the building to be protected by a hose not longer than twenty-three metres;

(b) shall have a connection for the use of the local fire department located on the street side of the building not more than 900 millimetres and not less than 300 millimetres above ground level and to which there is clear access at all times; and

(c) shall be maintained so as to be readily operable if required to be used. O. Reg. 213/91, s. 57 (3).

(4) Every hose outlet in a permanent standpipe shall have a valve. O. Reg. 213/91, s. 57 (4).

(5) Every hose used with a permanent standpipe,

- (a) shall be at least thirty-eight millimetres in diameter;
  - (b) shall have a combination straight stream and fog nozzle; and
  - (c) shall be stored on a rack in such a way as to protect it from damage and keep it available for immediate use. O. Reg. 213/91, s. 57 (5).
- (6) If a temporary standpipe has been installed, it shall not be disconnected until the permanent standpipe is connected, so that there is always a standpipe in service. O. Reg. 145/00, s. 18 (2).
- (7) A temporary standpipe shall be maintained so that it is readily operable. O. Reg. 145/00, s. 18 (2).
- (8) A temporary standpipe shall have at least one hose outlet per floor, with a valve and a hose attached to each hose outlet and a nozzle attached to each hose. O. Reg. 145/00, s. 18 (2).
- (9) In addition to the requirements of subsection (8), there shall be a connection to which there is clear access at all times, located between 30 and 90 centimetres above ground level on a side of the building that faces the street. O. Reg. 145/00, s. 18 (2).
- (10) A hose outlet on a temporary standpipe,
- (a) shall have a valve; and
  - (b) shall be capable of accepting a hose that is 38 millimetres in diameter. O. Reg. 145/00, s. 18 (2).
- (11) If a temporary standpipe is installed in a building under construction, the constructor shall post at the project, or have available for review, a floor plan of the building indicating,
- (a) the location of the hose outlets on each floor;
  - (b) the location of the point on the perimeter of each floor that is furthest from the hose outlet on that floor; and
  - (c) the location of each exit on each floor. O. Reg. 145/00, s. 18 (2).
- (12) The constructor shall give a copy of the floor plan to the fire department located nearest to the project. O. Reg. 145/00, s. 18 (2).
- 58.** No flammable liquid shall be transferred from one container to another by the direct application of air under pressure. O. Reg. 213/91, s. 58.

#### DUST CONTROL

- 59.** If the dissemination of dust is a hazard to a worker, the dust shall be adequately controlled or each worker who may be exposed to the hazard shall be provided with adequate personal protective equipment. O. Reg. 145/00, s. 19.
- 60.-63.** REVOKED: O. Reg. 628/05, s. 2.

#### PUBLIC WAY PROTECTION

- 64.** (1) No work shall be carried out on a building or structure located 4.5 metres or less from a public way unless a covered way is constructed over the part of the public way that is adjacent to the project. O. Reg. 213/91, s. 64 (1); O. Reg. 142/17, s. 11.
- (2) Subsection (1) does not apply with respect to a building or structure if the work being done is enclosed. O. Reg. 213/91, s. 64 (2).
- (3) A covered way,
- (a) shall have an unobstructed height of not less than 2.4 metres;
  - (b) shall have an unobstructed width of not less than 1.1 metres or, if it is over a sidewalk that is less than 1.1 metres wide, have a width equal to the width of the sidewalk;
  - (c) shall be capable of supporting any load likely to be applied to it and capable of supporting a load of at least 2.4 kilonewtons per square metre;
  - (d) shall have a weather-tight roof;
  - (e) shall have the side adjacent to the project covered with a partition that has a smooth surface on the public way side;
  - (f) shall have a railing one metre high from ground level on the street side; and
  - (g) shall have adequate lighting within the public way. O. Reg. 213/91, s. 64 (3).
- 65.** If work on a project may endanger a person using a public way, a sturdy fence at least 1.8 metres in height shall be constructed between the public way and the project. O. Reg. 213/91, s. 65.
- 66.** Machinery, equipment and material that is being used, left or stored where it may be a hazard to traffic on a public way shall be marked by flashing devices. O. Reg. 213/91, s. 66; O. Reg. 145/00, s. 20.

## TRAFFIC CONTROL

67. (1) In this section,

“barricade” means a device that provides a visual indicator of the path a motorist is supposed to take; (“repère”)

“barrier” means a device that provides a physical limitation through which a vehicle would not normally pass, and includes a concrete barrier; (“barrière”)

“mobile operation” means work, including a paving operation, that is done on a highway or the shoulder of a highway and moves along at speeds of less than 30 kilometres per hour. (“travaux mobiles”) O. Reg. 145/00, s. 21.

(2) If a worker at a project on a highway may be endangered by vehicular traffic unrelated to the project, the project shall make use of as many of the following measures as is necessary to adequately protect the worker:

1. Barriers.
2. Barricades.
3. Delineators.
4. Lane control devices.
5. Warning signs.
6. Flashing lights.
7. Flares.
8. Traffic control devices.
9. Blocker trucks.
10. Crash trucks.
11. Sign trucks.
12. Speed control devices.
13. Longitudinal buffer areas. O. Reg. 145/00, s. 21.

(3) In addition to the measures listed in subsection (2) but subject to section 68, a worker may be used to direct traffic. O. Reg. 145/00, s. 21.

(4) Every employer shall develop in writing and implement a traffic protection plan for the employers’ workers at a project if any of them may be exposed to a hazard from vehicular traffic. O. Reg. 145/00, s. 21.

(5) The traffic protection plan,

(a) shall specify the vehicular traffic hazards and the measures described in subsection (2) to be used to protect workers; and

(b) shall be kept at the project and made available to an inspector or a worker on request. O. Reg. 145/00, s. 21.

(6) A worker who is required to set up or remove measures described in subsection (2) on a roadway or a shoulder of a roadway,

(a) shall be a competent worker;

(b) shall not perform any other work while setting up or removing the measures; and

(c) shall be given adequate written and oral instructions, in a language that he or she understands, with respect to setting up or removing the measures. O. Reg. 145/00, s. 21.

(7) Adequate barriers shall be installed to protect workers at a project from vehicular traffic if the project,

(a) is on a freeway;

(b) is not a mobile operation; and

(c) is expected to require more than five days to complete. O. Reg. 145/00, s. 21; O. Reg. 345/15, s. 11 (1).

(8), (9) REVOKED: O. Reg. 345/15, s. 11 (2).

(10) If it is not practical to install barriers as subsection (7) requires, or if the project is expected to require five days or less to complete, crash trucks shall be adequately positioned to protect workers. O. Reg. 145/00, s. 21; O. Reg. 345/15, s. 11 (3).

(11) If work on a shoulder of a freeway is expected to take less than 30 minutes to complete, a vehicle with four-way flashers and a 360-degree beacon light shall be provided. O. Reg. 145/00, s. 21.

(12) The following measures shall be taken to protect a worker at a project if the project is on a freeway and involves a mobile operation:

1. An adequate number of crash trucks shall be adequately positioned between vehicular traffic and workers in order to adequately protect workers at the project.
2. If the operation involves intermittent stops averaging 30 minutes or less, an adequate number of barricades or delineators shall be adequately positioned between vehicular traffic and the worker.
3. If the operation involves intermittent stops averaging more than 30 minutes,
  - i. an adequate longitudinal buffer area shall be provided if physically possible,
  - ii. the lane on which work is being done shall be adequately identified with lane closure signs and a lane closure taper, and
  - iii. an adequate number of barricades or delineators shall be adequately positioned between vehicular traffic and the work area. O. Reg. 242/16, s. 7.

**68.** The following requirements apply with respect to a sign used by a worker to direct vehicular traffic:

1. It shall be octagonal in shape, measure 450 millimetres between opposite sides, and be mounted on a pole that is 1.2 metres long.
2. It shall be made of material with at least the rigidity of plywood that is six millimetres thick.
3. On one side it shall be high-intensity retro-reflective grade red in colour, with the word “STOP” written in legible high-intensity retro-reflective grade white letters 150 millimetres high in a central position on the sign.
4. On the other side it shall be high-intensity retro-reflective micro-prismatic fluorescent chartreuse in colour, with a black diamond-shaped border that is at least 317 millimetres by 317 millimetres, and with the word “SLOW” written in legible black letters 120 millimetres high in a central position on the sign.
5. It shall be maintained in a clean and legible condition. O. Reg. 145/00, s. 22; O. Reg. 142/17, s. 12.

**69.** (1) This section applies with respect to directing vehicular traffic that may be a hazard to workers on a public way. O. Reg. 145/00, s. 23.

(2) A worker shall not direct vehicular traffic for more than one lane in the same direction. O. Reg. 145/00, s. 23.

(3) A worker shall not direct vehicular traffic if the normal posted speed limit of the public way is more than 90 kilometres per hour. O. Reg. 145/00, s. 23.

(4) A worker who is required to direct vehicular traffic,

(a) shall be a competent worker;

(b) shall not perform any other work while directing vehicular traffic;

(c) shall be positioned in such a way that he or she is endangered as little as possible by vehicular traffic; and

(d) shall be given adequate written and oral instructions, in a language that he or she understands, with respect to directing vehicular traffic, and those instructions shall include a description of the signals that are to be used. O. Reg. 145/00, s. 23.

(5) The written instructions referred to in clause (4) (d) shall be kept at the project. O. Reg. 145/00, s. 23.

**69.1** (1) A worker who may be endangered by vehicular traffic shall wear a garment that covers at least his or her upper body and has the following features:

1. The garment shall be fluorescent blaze or international orange in colour.

2. On the front and the back, there shall be two yellow stripes that are 5 centimetres wide. The yellow area shall total at least 500 square centimetres on the front and at least 570 square centimetres on the back.

3. On the front, the stripes shall be arranged vertically and centred and shall be approximately 225 millimetres apart, measured from the centre of each stripe. On the back, they shall be arranged in a diagonal “X” pattern.

4. The stripes shall be retro-reflective and fluorescent. O. Reg. 145/00, s. 23.

(2) If the garment is a vest, it shall have adjustable fit. O. Reg. 145/00, s. 23.

(3) A nylon vest to which this section applies shall also have a side and front tear-away feature. O. Reg. 145/00, s. 23; O. Reg. 345/15, s. 12.

(4) In addition, a worker who may be endangered by vehicular traffic during night-time hours shall wear retro-reflective silver stripes encircling each arm and leg, or equivalent side visibility-enhancing stripes with a minimum area of 50 square centimetres per side. O. Reg. 145/00, s. 23.

## ACCESS TO AND EGRESS FROM WORK AREAS

**70.** (1) Access to and egress from a work area located above or below ground level shall be by stairs, runway, ramp or ladder. O. Reg. 213/91, s. 70 (1).

(2) Subsection (1) does not apply to a work platform within the meaning of section 136.1 that is able to be moved to give access to a floor, roof or platform or to ground level. O. Reg. 213/91, s. 70 (2); O. Reg. 242/16, s. 8.

**71.** Adequate means of egress shall be provided from a work area to permit the evacuation of workers during an emergency. O. Reg. 213/91, s. 71.

**72.** A work area, a route to and from a work area and a scaffold platform on which work is being performed shall be maintained at all times in a condition that does not endanger workers and, without limiting the generality of the foregoing,

- (a) shall be kept clear of obstructions;
- (b) shall be kept clear of snow, ice or other slippery material; and
- (c) shall be treated with sand or similar material when necessary to ensure a firm footing. O. Reg. 213/91, s. 72.

## PLATFORMS, RUNWAYS AND RAMPS

**73.** (1) Runways, ramps and platforms other than scaffold platforms shall meet the requirements of this section. O. Reg. 213/91, s. 73 (1).

(2) A runway, ramp or platform shall be designed, constructed and maintained to support or resist, without exceeding the allowable unit stresses for the materials of which it is made,

- (a) all loads and forces to which it is likely to be subjected; and
- (b) at least 2.4 kilonewtons per square metre. O. Reg. 213/91, s. 73 (2).

(3) No runway, ramp or platform shall be loaded in excess of the load that it is designed and constructed to bear. O. Reg. 213/91, s. 73 (3).

(4) A runway, ramp or platform shall be at least 460 millimetres wide and shall be securely fastened in place. O. Reg. 213/91, s. 73 (4).

**74.** (1) A ramp shall have,

- (a) a slope not exceeding a gradient of 1 in 3; and
- (b) if its slope exceeds a gradient of 1 in 8, cross cleats made from nineteen millimetres by thirty-eight millimetres boards that are securely nailed to the ramp and spaced at regular intervals not exceeding 500 millimetres. O. Reg. 213/91, s. 74 (1).

(2) Subsection (1) does not apply to a ramp installed in the stairwell of a building not exceeding two storeys in height if the ramp,

- (a) has a slope not exceeding a gradient of 1 in 1; and
- (b) has cross cleats made from thirty-eight millimetres by thirty-eight millimetres boards that are securely nailed to the ramp and spaced at regular intervals not exceeding 300 millimetres. O. Reg. 213/91, s. 74 (2).

## STAIRS AND LANDINGS

**75.** (1) No work shall be performed in a building or structure unless stairs are installed in accordance with this section. O. Reg. 213/91, s. 75 (1); O. Reg. 327/19, s. 1 (1).

(2) As the construction of a building or structure progresses, permanent or temporary stairs shall be installed from the lowest level, including the basement, up to,

- (a) the uppermost work level; or
  - (b) if stairs would interfere with work on the uppermost work level, no more than two storeys or nine metres below the uppermost work level, whichever distance is shorter. O. Reg. 213/91, s. 75 (2); O. Reg. 142/17, s. 13; O. Reg. 327/19, s. 1 (2).
- (3) Subsection (2) does not apply with respect to,
- (a) a part of a building or structure in which only the structural steel beams or columns are erected;
  - (b) a structure to which a permanent ladder is attached before the structure is raised into position; or
  - (c) a part of a building or structure in which formwork or falsework is erected to a suspended slab. O. Reg. 213/91, s. 75 (3); O. Reg. 327/19, s. 1 (3).

**76.** (1) Temporary stairs and landings shall be designed, constructed and maintained to support a live load of 4.8 kilonewtons per square metre without exceeding the allowable unit stresses for each material used. O. Reg. 213/91, s. 76 (1).

(2) No temporary stair or landing shall be loaded in excess of the load it is designed and constructed to bear. O. Reg. 213/91, s. 76 (2).

77. (1) No work shall be performed in a building or structure with stairs unless the stairs meet the requirements of this section. O. Reg. 213/91, s. 77 (1).

(2) Stairs shall have,

- (a) a clear width of at least 500 millimetres;
- (b) treads and risers of uniform width, length and height;
- (c) subject to subsection (3), stringers with a maximum slope of 50 degrees from the horizontal;
- (d) landings that are less than 4.5 metres apart measured vertically;
- (e) a securely fastened and supported wooden handrail on the open sides of each flight; and
- (f) a guardrail on the open side of each landing. O. Reg. 213/91, s. 77 (2).

(3) The stringers of prefabricated stairs erected inside a tower formed by scaffold frame sections shall have a maximum slope of 60 degrees from the horizontal. O. Reg. 213/91, s. 77 (3).

(4) A wooden handrail shall measure thirty-eight millimetres by eighty-nine millimetres and shall be free of loose knots, sharp edges, splinters and shakes. O. Reg. 213/91, s. 77 (4).

(5) Skeleton steel stairs shall have temporary wooden treads securely fastened in place that are made of suitable planking extending the full width and breadth of the stairs and landings. O. Reg. 213/91, s. 77 (5).

#### LADDERS

78. In sections 78 to 84,

“extension trestle ladder” means a self-supporting portable ladder that is adjustable in length, consisting of a trestle ladder base, a vertically adjustable extension section and an adequate means of locking the ladder base and extension section together; (“escabeau coulissant à chevalet”)

“platform ladder” means a self-supporting portable ladder that is not adjustable in length, where the highest standing level is a platform; (“escabeau à plateforme”)

“single ladder” means a non-self-supporting portable ladder that is not adjustable in length and having only one section; (“échelle simple”)

“step-ladder” means a self-supporting portable ladder that is not adjustable in length, having flat steps and a hinged back, and whose back section is either a single ladder or other supporting device, but does not include a step stool or platform ladder; (“escabeau”)

“step stool” means a self-supporting, portable, fixed or foldable ladder, not adjustable in length, and having,

- (a) a height of 800 millimetres or less, excluding side rails, if any, above the top cap,
- (b) flat steps, but no pail shelf, and
- (c) a ladder top cap that can be stood or stepped on; (“tabouret-escabeau”)

“top step” means the first step below the top cap of a step-ladder or, if there is no top cap, the first step below the top of the rails; (“échelon supérieur”)

“trestle ladder” means a self-supporting portable ladder, non-adjustable in length, having two sections and hinged at the top so as to be able to form equal angles with the base. (“escabeau à chevalet”) O. Reg. 345/15, s. 13.

79. A ladder shall be designed, constructed and maintained so as not to endanger a worker and shall be capable of withstanding all loads to which it may be subjected. O. Reg. 345/15, s. 13.

80. (1) A portable ladder at a project shall be manufactured and shall meet the design, performance, test and marking requirements of a Grade 1, Grade 1A or Grade 1AA ladder in the CSA Standard Z11-12, Portable Ladders. O. Reg. 345/15, s. 13.

(2) Despite subsection (1), a portable single ladder that is custom-built for use at a project may be used at the project if the ladder has,

- (a) rungs spaced at 300 millimetres on centres;
- (b) side rails at least 300 millimetres apart; and
- (c) a maximum length, measured along its side rail, of not more than nine metres. O. Reg. 345/15, s. 13.

(3) If a portable single ladder under subsection (2) is made of wood, the ladder shall also,

- (a) be made of wood that is straight-grained and free of loose knots, sharp edges, splinters and shakes; and

- (b) not be painted or coated with an opaque material that obscures the wood grain or interferes with inspections of the ladder. O. Reg. 345/15, s. 13.
- (4) If the rungs of a ladder under subsection (3) are of the cleat type, the ladder shall also,
  - (a) have side rails that are not less than 400 millimetres but not more than 610 millimetres apart;
  - (b) have side rails that measure not less than,
    - (i) 38 millimetres by 89 millimetres if the ladder is 5.8 metres long or less, or
    - (ii) 38 millimetres by 140 millimetres if the ladder is more than 5.8 metres long;
  - (c) have rungs that measure not less than,
    - (i) 19 millimetres by 64 millimetres if the side rails are 400 millimetres apart, or
    - (ii) 19 millimetres by 89 millimetres if the side rails are more than 400 millimetres apart; and
  - (d) have rungs braced by filler blocks that are at least 19 millimetres thick and located between the rungs. O. Reg. 345/15, s. 13.
- (5) If a ladder under subsection (3) is a double-width wooden ladder, the ladder shall also,
  - (a) have three evenly-spaced rails that measure at least 38 millimetres by 140 millimetres;
  - (b) have rungs that,
    - (i) measure at least 38 millimetres by 89 millimetres,
    - (ii) extend the full width of the ladder, and
    - (iii) are braced by filler blocks that are at least 19 millimetres thick; and
  - (c) be at least 1.5 metres wide but not more than 2 metres wide. O. Reg. 345/15, s. 13.

**81.** (1) A portable ladder,

- (a) shall be free from defective or loose rungs;
- (b) shall be placed on a firm and level footing or support surface; and
- (c) shall not be used in an elevator shaft or a similar hoisting area when the shaft or area is being used for hoisting. O. Reg. 345/15, s. 13.

(2) A non-self-supporting portable ladder shall be situated so that its base is not less than one-quarter, and not more than one-third, of the length of the ladder from a point directly below the top of the ladder and at the same level as the base of the ladder, if the ladder is not securely fastened to prevent its movement. O. Reg. 345/15, s. 13.

(3) A portable ladder or ladder section shall not be tied or fastened to another ladder or ladder section to increase its length unless the manufacturer's instructions allow for this. O. Reg. 345/15, s. 13.

(4) A manufactured portable ladder shall be used in accordance with the manufacturer's instructions. O. Reg. 345/15, s. 13.

**82.** (1) This section applies if a portable ladder is used as a means of access and egress between,

- (a) levels of a building or structure;
- (b) the ground or grade level to a building or structure; or
- (c) different work surface levels. O. Reg. 345/15, s. 13.

(2) The ladder,

- (a) shall extend at the upper level at least 900 millimetres above the landing surface;
- (b) shall, subject to subsection (3), have a clear space of at least 150 millimetres behind every rung;
- (c) shall be located so that an adequate landing surface that is clear of obstructions is available at the top and bottom of the ladder for access and egress; and
- (d) shall be secured at the top and bottom to prevent movement of the ladder. O. Reg. 345/15, s. 13.

(3) Clause (2) (b) does not apply to a ladder lying on an excavation wall that is sloped, as required by section 234. O. Reg. 345/15, s. 13.

**83.** (1) When a step-ladder is being used, its legs shall be fully spread open and its spreaders shall be locked. O. Reg. 345/15, s. 13.

- (2) No worker shall stand or step on,

- (a) the top cap, top step or pail shelf of a step-ladder;
- (b) the top cap or top step of a combination ladder when it is used as a step-ladder;
- (c) the top step of the extension section of an extension trestle ladder; or
- (d) the top step of a trestle ladder. O. Reg. 345/15, s. 13.

**84.** (1) Subject to subsection (2), an access ladder fixed in position,

- (a) shall be vertical;
- (b) shall have rest platforms at not more than nine metre intervals;
- (c) shall be offset at each rest platform;
- (d) where the ladder extends over five metres above grade, floor or landing, shall have a safety cage commencing not more than 2.2 metres above grade, floor or landing and continuing at least 90 centimetres above the top landing with openings to permit access by a worker to rest platforms or to the top landing;
- (e) shall have side rails that extend 90 centimetres above the landing;
- (f) shall have rungs that are at least 15 centimetres from the wall and spaced at regular intervals;
- (g) shall have an adequate landing surface that is clear of obstructions at the top and bottom of the ladder for access and egress;
- (h) shall be free from defective or loose rungs; and
- (i) shall not be used in an elevator shaft or a similar hoisting area when the shaft or area is being used for hoisting. O. Reg. 631/94, s. 2; O. Reg. 345/15, s. 14 (1, 2).

(2) Clauses (1) (b), (c) and (d) do not apply to any access ladder on a tower, water tank, chimney or similar structure that has a safety device that will provide protection should a worker using the ladder fall. O. Reg. 345/15, s. 14 (3).

**85., 86.** REVOKED: O. Reg. 145/00, s. 24.

#### FORMS, FORMWORK, FALSEWORK AND RE-SHORING

**87.** (1) Formwork, falsework and re-shoring shall be designed, constructed, supported and braced so that they are capable of withstanding all loads and forces likely to be applied to them,

- (a) without exceeding the allowable working loads established for any component of the structure; and
- (b) without causing uplift, sliding, overturning or lateral displacement of the system. O. Reg. 213/91, s. 87 (1).

(2) No formwork, falsework or re-shoring shall be loaded in excess of the load that it is designed and constructed to bear. O. Reg. 213/91, s. 87 (2).

(3) The allowable working load of the formwork, falsework or re-shoring shall be established,

- (a) by a professional engineer in accordance with good engineering practice; or
- (b) by testing the principal components to their ultimate strength in a manner that simulates the actual loading conditions to which the formwork, falsework or re-shoring is likely to be subjected and by applying a reduction factor, in accordance with good engineering practice, to the values of ultimate strength. O. Reg. 213/91, s. 87 (3).

(4) The results of the testing in clause (3) (b) shall be verified and certified by a professional engineer and made available to an inspector upon request. O. Reg. 213/91, s. 87 (4).

(5) If single post shores are placed more than one tier high, the junction of each tier shall be braced against a fixed support in at least two directions in order to prevent any lateral movement. O. Reg. 213/91, s. 87 (5).

**88.** Formwork and falsework shall not be removed unless,

- (a) the concrete is strong enough to support itself and any loads that may be applied to the structure; or
- (b) the concrete and the structure are adequately re-shored. O. Reg. 213/91, s. 88.

**89.** (1) This section applies with respect to formwork, falsework and re-shoring that includes,

- (a) a tubular metal frame;
- (b) a column whose effective length is dependent upon lateral restraints between the ends of the column;
- (c) shores placed one upon another to form a supporting system that is more than one tier in height;
- (d) shores which are three metres or more in height;
- (e) a truss;



- (f) members so connected to one another that a load applied to one member may alter or induce stress in another member; or
  - (g) a unitized modular formwork or falsework structure intended to be moved as a unit. O. Reg. 213/91, s. 89 (1).
- (2) Formwork and falsework shall be designed by a professional engineer in accordance with good engineering practice and be installed or erected in accordance with the design drawings. O. Reg. 213/91, s. 89 (2).
- (3) Formwork and falsework shall, before the placement of concrete, be inspected by a professional engineer or by a competent worker designated in writing by the professional engineer. O. Reg. 213/91, s. 89 (3).
- (4) The person carrying out the inspection shall state in writing whether the formwork and falsework is installed or erected in accordance with the design drawings for it. O. Reg. 213/91, s. 89 (4).
- (5) The constructor shall keep the design drawings and the statements on the project while the formwork or the falsework is in use. O. Reg. 213/91, s. 89 (5).

**90.** Re-shoring shall be designed by a professional engineer in accordance with good engineering practice and be erected in accordance with the design drawings. O. Reg. 213/91, s. 90.

**91.** Falsework and re-shoring,

- (a) shall have sound and rigid footings capable of carrying the maximum load to which the footings may be subjected without settlement or deformation of the soil or structure below the footings; and
- (b) shall be adequately protected to prevent deformation caused by frost heave. O. Reg. 213/91, s. 91.

**92.** (1) Design drawings by a professional engineer for the formwork, falsework or re-shoring,

- (a) if a manufactured system is used, shall identify the components;
- (b) if non-manufactured system components are used, shall show the size, grade and specifications of the non-manufactured system components;
- (c) shall show the design loads for the structure and shall detail the bracing and external ties required to adequately support the design loads;
- (d) if the structure is a unitized modular formwork or falsework structure intended to be lifted or moved as a unit, shall show the attachment points for rigging and hoisting; and
- (e) shall set out the erection instructions that are specified by the manufacturer or by the professional engineer.
- (f) REVOKED: O. Reg. 85/04, s. 11.

O. Reg. 213/91, s. 92 (1); O. Reg. 85/04, s. 11.

(2) The constructor shall keep the design drawings on the project while the formwork, falsework or re-shoring is in use. O. Reg. 213/91, s. 92 (2).

#### EQUIPMENT, GENERAL

**93.** (1) All vehicles, machinery, tools and equipment shall be maintained in a condition that does not endanger a worker. O. Reg. 213/91, s. 93 (1).

(2) No vehicle, machine, tool or equipment shall be used,

- (a) while it is defective or hazardous;
- (b) when the weather or other conditions are such that its use is likely to endanger a worker; or
- (c) while it is being repaired or serviced, unless the repair or servicing requires that it be operated. O. Reg. 213/91, s. 93 (2); O. Reg. 145/00, s. 25 (1).

(3) All vehicles, machines, tools and equipment shall be used in accordance with any operating manuals issued by the manufacturers. O. Reg. 145/00, s. 25 (2).

(4) For vehicles, machines, tools and equipment rated at greater than 10 horsepower, copies of any operating manuals issued by the manufacturers shall be kept readily available at the project. O. Reg. 145/00, s. 25 (2).

**94.** (1) All mechanically-powered vehicles, machines, tools and equipment rated at greater than 10 horsepower shall be inspected by a competent worker to determine whether they can handle their rated capacity and to identify any defects or hazardous conditions. O. Reg. 145/00, s. 26.

(2) The inspections shall be performed before the vehicles, machines, tools or equipment are first used at the project and thereafter at least once a year or more frequently as recommended by the manufacturer. O. Reg. 145/00, s. 26.

**95.** (1) Every replacement part for a vehicle, machine, tool or equipment shall have at least the same safety factor as the part it is replacing. O. Reg. 213/91, s. 95 (1).

(2) No modification to, extension to, repair to or replacement of a part of a vehicle, machine, tool or equipment shall result in a reduction of the safety factor of the vehicle, machine, tool or equipment. O. Reg. 213/91, s. 95 (2).

**96.** (1) No worker shall operate a vehicle or powered machine, tool or equipment at a project unless he or she is competent to do so. O. Reg. 145/00, s. 26; O. Reg. 345/15, s. 15 (1).

(2) However, a worker being trained in the operation of a vehicle or powered machine, tool or equipment may operate it while being instructed and supervised by a competent person. O. Reg. 145/00, s. 26; O. Reg. 345/15, s. 15 (2).

**97.** (1) Every vehicle other than a trailer shall be equipped with brakes and a seat or other place for the vehicle operator. O. Reg. 213/91, s. 97 (1).

(2) No person other than the operator shall ride on a vehicle unless a seat is provided for the use of, and is used by, the person. O. Reg. 213/91, s. 97 (2).

**98.** The means of access to any operator's station in a vehicle, machine or equipment shall not endanger the operator and shall have skid-resistant walking, climbing and work surfaces. O. Reg. 213/91, s. 98.

**99.** A cab or screen shall be provided to protect a worker who is exposed to an overhead hazard while operating a vehicle. O. Reg. 213/91, s. 99.

**100.** (1) No vehicle, machine or equipment shall be drawn or towed by another vehicle on a project unless there are two separate means of attachment to the vehicle drawing or towing it. O. Reg. 213/91, s. 100 (1).

(2) Subsection (1) does not apply with respect to a vehicle being drawn or towed in which there is an operator and that has brakes that are able to stop the vehicle with its load, if any. O. Reg. 213/91, s. 100 (2).

(3) Each means of attachment referred to in subsection (1) shall be constructed and attached in such a way that the failure of one means of attachment does not permit the vehicle, machine or equipment being drawn or towed to become detached from the other vehicle. O. Reg. 213/91, s. 100 (3).

**101.** (1) No worker shall remain on or in a vehicle, machine or equipment while it is being loaded or unloaded if the worker might be endangered by remaining there. O. Reg. 213/91, s. 101 (1).

(2) Such action as may be necessary to prevent an unattended vehicle, machine or equipment from being started or set in motion by an unauthorized person shall be taken. O. Reg. 213/91, s. 101 (2).

(3) An unattended vehicle, machine or equipment shall have its brakes applied and its wheels blocked to prevent movement when the vehicle, machine or equipment is on sloping ground or is adjacent to an excavation. O. Reg. 213/91, s. 101 (3).

**102.** No operator shall leave unattended the controls of,

- (a) a front-end loader, backhoe or other excavating machine with its bucket raised;
- (b) a bulldozer with its blade raised;
- (c) a fork-lift truck with its forks raised; or
- (d) a crane or other similar hoisting device with its load raised. O. Reg. 213/91, s. 102.

**103.** (1) No worker shall operate a shovel, backhoe or similar excavating machine in such a way that it or part of its load passes over a worker. O. Reg. 213/91, s. 103 (1).

(2) No worker shall operate a crane or similar hoisting device in such a way that part of its load passes over another worker unless the other worker is receiving the load or is engaged in sinking a shaft. O. Reg. 213/91, s. 103 (2).

(3) If practicable, a worker who is receiving a load or is engaged in sinking a shaft shall be positioned so that no load or part of a load carried by a crane or similar hoisting device passes over the worker. O. Reg. 213/91, s. 103 (3).

(4) Subsections (2) and (3) do not apply in respect of a multi-tiered load as defined in section 103.1 if written procedures have been developed and implemented for the particular project in accordance with that section. O. Reg. 627/05, s. 2.

**103.1** (1) In this section,

“move” includes raise and lower; (“déplacer”)

“multi-tiered load” means two or three individually rigged structural steel pieces that are,

- (a) suspended so that they remain horizontal,
- (b) aligned vertically, and
- (c) moved simultaneously by a crane; (“charge superposée”)

“multi-tiered load hoisting operation” means the moving of one or more multi-tiered loads by one crane at a project; (“opération de levage d’une charge superposée”)

“procedures” means the procedures prepared under subsection (7). (“procédures”) O. Reg. 627/05, s. 3.

- (2) A multi-tiered load,
- (a) shall not contain structural steel pieces that are bundled together;
  - (b) shall not contain more than three structural steel pieces;
  - (c) shall not use one structural steel piece to support another;
  - (d) shall have each structural steel piece independently slung back to the main load hook or master link;
  - (e) shall be lowered only by a crane using power-controlled lowering. O. Reg. 627/05, s. 3.
- (3) A crane shall be used to move only one multi-tiered load at a time. O. Reg. 627/05, s. 3.
- (4) A crane shall not be used for a multi-tiered load if it is contrary to the crane manufacturer's specifications or limitations to do so. O. Reg. 627/05, s. 3.
- (5) No worker shall be in an area where a multi-tiered load hoisting operation is taking place unless he or she is directly engaged in the operation. O. Reg. 627/05, s. 3.
- (6) Before a multi-tiered load hoisting operation is begun at a project, written procedures to ensure the safety of workers engaged in the operation shall be developed and implemented. O. Reg. 627/05, s. 3.
- (7) The procedures shall be prepared by a professional engineer in accordance with good engineering practice and shall,
- (a) include design drawings that illustrate the arrangement and dimensions of the structural steel pieces, the assembly of rigging components and devices, and all attachment points;
  - (b) identify the crane and its rated load-carrying capacity, and identify and specify its limitations and restrictions, if any;
  - (c) describe the method of determining the weight of the structural steel pieces;
  - (d) specify the maximum load per lift and the maximum reach of the crane per lift;
  - (e) identify all factors that could affect the safety of the multi-tiered load hoisting operation, such as wind speed, weather conditions, potential overlapping of cranes and other restrictions;
  - (f) state the measures to be taken to control and secure multi-tiered loads while they are being moved;
  - (g) specify any circumstances that would require additional work, including inspections, to be performed by a professional engineer to ensure the safety of any worker engaged in the multi-tiered load hoisting operation; and
  - (h) identify all critical parts of the rigging and of the rigged structural steel pieces that are to be inspected before each lift, and set out the inspection criteria to be followed. O. Reg. 627/05, s. 3; O. Reg. 142/17, s. 14.
- (8) The employer responsible for a multi-tiered load hoisting operation shall,
- (a) create a document that identifies the workers engaged in the multi-tiered load hoisting operation by name and job title and states their respective duties;
  - (b) ensure that, before the multi-tiered load hoisting operation is begun, a copy of the procedures is provided to and reviewed with each worker engaged in the operation;
  - (c) ensure that the procedures are implemented, and are followed throughout the multi-tiered load hoisting operation;
  - (d) ensure that any deviations from the procedures are approved by a professional engineer, in writing, before any multi-tiered load is moved; and
  - (e) unless the professional engineer who prepared the procedures specifies otherwise, appoint a competent worker to ensure that the procedures, including the inspections described in clause (7) (h), are followed before any multi-tiered load is moved. O. Reg. 627/05, s. 3.
- (9) The employer responsible for a multi-tiered load hoisting operation shall keep a copy of the following available for inspection at the project until the operation is completed:
1. The procedures.
  2. The document described in clause (8) (a).
  3. Any approvals given under clause (8) (d). O. Reg. 627/05, s. 3.
- (10) Before the first multi-tiered load hoisting operation is started at a project, the constructor shall give notice to the Ministry office located nearest the project, in person, by telephone, by fax or by electronic means. O. Reg. 627/05, s. 3.
- 104.** (1) Every project shall be planned and organized so that vehicles, machines and equipment are not operated in reverse or are operated in reverse as little as possible. O. Reg. 145/00, s. 27.
- (2) Vehicles, machines and equipment at a project shall not be operated in reverse unless there is no practical alternative to doing so. O. Reg. 145/00, s. 27.

- (3) Operators of vehicles, machines and equipment shall be assisted by signallers if either of the following applies:
1. The operator's view of the intended path of travel is obstructed.
  2. A person could be endangered by the vehicle, machine or equipment or by its load. O. Reg. 145/00, s. 27.
- (4) Subsection (3) also applies to shovels, backhoes and similar excavating machines and to cranes and similar hoisting devices. O. Reg. 145/00, s. 27.
- (5) The operator and the signaller shall,
- (a) jointly establish the procedures by which the signaller assists the operator; and
  - (b) follow those procedures. O. Reg. 145/00, s. 27.
- (6) If subsection (3) applies to the project and it is not possible to carry out the project without some operation of vehicles and equipment in reverse, signs shall be posted at the project in conspicuous places warning workers of the danger. O. Reg. 145/00, s. 27.

**105.** A dump truck shall be equipped with an automatic audible alarm that signals when the truck is being operated in reverse. O. Reg. 145/00, s. 27.

**106.** (1) A signaller shall be a competent worker and shall not perform other work while acting as a signaller. O. Reg. 213/91, s. 106 (1).

- (1.1) The signaller shall wear a garment that covers at least his or her upper body and has the following features:
1. The garment shall be fluorescent blaze or international orange in colour.
  2. On the front and the back, there shall be two yellow stripes that are 5 centimetres wide. The yellow area shall total at least 500 square centimetres on the front and at least 570 square centimetres on the back.
  3. On the front, the stripes shall be arranged vertically and centred and shall be approximately 225 millimetres apart, measured from the centre of each stripe. On the back, they shall be arranged in a diagonal "X" pattern.
  4. The stripes shall be retro-reflective and fluorescent. O. Reg. 145/00, s. 28.
- (1.2) If the garment is a vest, it shall have adjustable fit. O. Reg. 145/00, s. 28.
- (1.3) A nylon vest to which this section applies shall also have a side and front tear-away feature. O. Reg. 145/00, s. 28; O. Reg. 345/15, s. 16.
- (1.4) In addition, a signaller who may be endangered during night-time hours shall wear retro-reflective silver stripes encircling each arm and leg, or equivalent side visibility-enhancing stripes with a minimum area of 50 square centimetres per side. O. Reg. 145/00, s. 28.

- (1.5) The employer shall,
- (a) ensure that the signaller has received adequate oral training in his or her duties and has received adequate oral and written instructions in a language that he or she understands; and
  - (b) keep the written instructions at the project. O. Reg. 145/00, s. 28.
- (2) A signaller,
- (a) shall be clear of the intended path of travel of the vehicle, machine or equipment, crane or similar hoisting device, shovel, backhoe or similar excavating machine or its load;
  - (b) shall be in full view of the operator of the vehicle, machine or equipment, crane or similar hoisting device, shovel, backhoe or similar excavating machine;
  - (c) shall have a clear view of the intended path of travel of the vehicle, machine or equipment, crane or similar hoisting device, shovel, backhoe or similar excavating machine or its load; and
  - (d) shall watch the part of the vehicle, machine or equipment or crane or similar hoisting device, shovel, backhoe or similar excavating machine or its load whose path of travel the operator cannot see. O. Reg. 213/91, s. 106 (2).
- (3) The signaller shall communicate with the operator by means of a telecommunication system or, where visual signals are clearly visible to the operator, by means of prearranged visual signals. O. Reg. 213/91, s. 106 (3).

**107.** No worker shall use as a work place a platform, bucket, basket, load, hook or sling that is capable of moving and that is supported by a fork-lift truck, front-end loader or similar machine. O. Reg. 213/91, s. 107.

**108.** Blocking shall be installed to prevent the collapse or movement of part or all of a piece of equipment that is being dismantled, altered or repaired if its collapse or movement may endanger a worker. O. Reg. 213/91, s. 108.

**109.** Every gear, pulley, belt, chain, shaft, flywheel, saw and other mechanically-operated part of a machine to which a worker has access shall be guarded or fenced so that it will not endanger a worker. O. Reg. 213/91, s. 109.

**110.** (1) Safety chains, cages or other protection against blown-off side or lock rings shall be used when inflating a tire mounted on a rim. O. Reg. 213/91, s. 110 (1).

(2) If a cage is used, the tire shall be inflated by remote means. O. Reg. 213/91, s. 110 (2).

**111.** (1) A lifting jack shall have its rated capacity legibly cast or stamped on it in a place where it can be readily seen. O. Reg. 213/91, s. 111 (1).

(2) A lifting jack shall be equipped with a positive stop to prevent overtravel or, if a positive stop is not practicable, with an overtravel indicator. O. Reg. 213/91, s. 111 (2).

**112.** (1) Every chain-saw shall have a chain that minimizes kickback and a device to stop the chain in the event of a kickback. O. Reg. 213/91, s. 112 (1).

(1.1) No worker shall use a chain-saw unless he or she has been adequately trained in its use. O. Reg. 145/00, s. 29.

(1.2) No worker shall use a chain-saw unless he or she is wearing,

(a) adequate personal protective equipment and clothing, including gloves; and

(b) adequate eye protection and hearing protection. O. Reg. 145/00, s. 29.

(2) A worker shall hold a chain-saw firmly when starting it and firmly in both hands when using it. O. Reg. 213/91, s. 112 (2).

(3) The chain of a chain-saw shall be stopped when not cutting. O. Reg. 213/91, s. 112 (3).

**113.** No object or material shall be placed, left or stored in a location or manner that may endanger a worker. O. Reg. 213/91, s. 113.

**114.** A hose that may whip shall be attached to a rope or chain in order to prevent whipping. O. Reg. 213/91, s. 114.

**115.** No barrel, box or other loose object shall be used as a work place or as a support for a ladder, scaffold or work platform. O. Reg. 213/91, s. 115.

**116.** (1) No stilts shall be present at or used on a project except in accordance with this section. O. Reg. 443/09, s. 4.

(2) No leg extensions, other than stilts, shall be present at or used on a project. O. Reg. 443/09, s. 4.

(3) Subject to subsection (4), stilts may be used on a project for work in residential units and residential common areas only if they are used for the following purposes:

1. Drywall finishing work.

2. Installation of insulation.

3. Installation of vapour barriers. O. Reg. 443/09, s. 4.

(4) Stilts shall not be used on a scaffold or to climb up or down stairs. O. Reg. 443/09, s. 4.

(5) Stilts used in accordance with this section shall,

(a) be commercially manufactured;

(b) be made of unpainted metal;

(c) have a non-slip surface on the bottom of each base plate;

(d) be in good working condition; and

(e) be suitable for their intended use. O. Reg. 443/09, s. 4.

(6) Stilts may be used to a maximum height of 76 centimetres as measured from the work surface that the user of the stilts would otherwise stand on to the top of the foot plate. O. Reg. 443/09, s. 4.

(7) Stilts may be used on a work surface only if the work surface satisfies the following conditions:

1. It is made of rigid material.

2. It is either level or does not have a slope of more than three per cent.

3. All openings on the work surface are adequately covered or guarded.

4. All open sides of the work surface are adequately guarded.

5. It is free of debris or anything else that may be a hazard to a worker on stilts.

6. All obstructions that cannot be removed are adequately guarded, placed or secured to prevent a worker on stilts from being injured. O. Reg. 443/09, s. 4.

(8) If stilts are used in a work area for which sections 26.1 and 26.3 require a guardrail system, the guardrail system shall be modified by adding,

- (a) an additional top rail,
  - (i) 76 centimetres above the existing top rail, or
  - (ii) at a height above the existing top rail equal to the height of the stilts being used in the work area; and
- (b) an intermediate rail that is located midway between the additional top rail and the existing top rail. O. Reg. 443/09, s. 4.

(9) A modified guardrail system described in subsection (8) shall be capable of resisting any load it could be subjected to by a worker on stilts. O. Reg. 443/09, s. 4.

(10) An employer shall ensure that a worker who uses stilts is trained in their use by completing an adequate training program that,

- (a) enables the worker to demonstrate proficiency in the safe and proper use of stilts; and
- (b) provides instruction on the relevant requirements of this Regulation; and
- (c) provides instruction on,
  - (i) mounting and dismounting,
  - (ii) adjusting stilts to suit the individual worker and the work,
  - (iii) walking on and working with stilts while maintaining balance and stability,
  - (iv) inspecting stilts for damage and defects,
  - (v) maintaining, servicing and storing stilts,
  - (vi) conducting an inspection of the work area before commencing work to identify hazards for stilts use,
  - (vii) correcting any hazardous conditions identified under subclause (vi), and
  - (viii) setting up tools and materials to ensure they are adequately accessible when using stilts. O. Reg. 443/09, s. 4.

(11) No worker shall use stilts at a project unless he or she has successfully completed a program described in subsection (10) and carries proof of completing the program at all times when using the stilts. O. Reg. 443/09, s. 4.

(12) A worker using stilts at a project shall inspect the stilts for damage, wear, corrosion and other defects the first time each day that the worker uses the stilts. O. Reg. 443/09, s. 4.

(13) An employer shall ensure that a worker does not use stilts that are damaged, worn, corroded or defective and no worker shall use such stilts. O. Reg. 443/09, s. 4.

(14) Stilts shall be stored, serviced and maintained in accordance with the manufacturer's instructions. O. Reg. 443/09, s. 4.

#### EXPLOSIVE ACTUATED FASTENING TOOL

**117.** (1) No worker shall use an explosive actuated fastening tool unless he or she has been adequately trained in its use. O. Reg. 145/00, s. 30.

(2) When using an explosive actuated fastening tool, the worker shall carry proof of his or her training in its use. O. Reg. 145/00, s. 30.

- (3) No worker shall use an explosive actuated fastening tool unless he or she is wearing,
  - (a) adequate personal protective equipment; and
  - (b) adequate eye protection. O. Reg. 145/00, s. 30.

**118.** A worker using an explosive actuated fastening tool shall inspect it before using it to ensure,

- (a) that it is clean;
- (b) that all moving parts operate freely;
- (c) that its barrel is free from obstruction; and
- (d) that it is not defective. O. Reg. 213/91, s. 118.

**119.** (1) No worker shall use an explosive actuated fastening tool unless it has a suitable protective guard,

- (a) that is at least seventy-five millimetres in diameter;
  - (b) that is mounted at right angles to the barrel of the tool; and
  - (c) that is centred on the muzzle end of the tool, if practicable. O. Reg. 213/91, s. 119 (1).
- (2) An explosive actuated fastening tool shall be inoperable unless,

- (a) its muzzle end is held against a surface using a force at least 22 newtons greater than the force equivalent of the weight of the tool measured in newtons; and
  - (b) when a protective guard is centred on the muzzle end of the tool, the bearing surface of the guard is not tilted more than eight degrees from the work surface. O. Reg. 145/00, s. 31.
- (3) Subsection (1) and clause (2) (b) do not apply with respect to an explosive actuated fastening tool if the velocity of a fastener fired from it does not exceed 90 metres per second measured at a distance of two metres from its muzzle end when propelled by the maximum commercially-available explosive load it is chambered to accept. O. Reg. 213/91, s. 119 (3).
- (4) An explosive actuated fastening tool that is designed to require dismantling into separate parts for loading shall be inoperable unless the separate parts are locked together. O. Reg. 145/00, s. 31.
- (5) An explosive actuated fastening tool shall have a firing mechanism that prevents the tool from being fired if it is dropped or while it is being loaded or prepared for firing. O. Reg. 213/91, s. 119 (5); O. Reg. 142/17, s. 15.
- (6) The firing movement for an explosive actuated fastening tool shall be a separate action from the operation of bringing the tool into firing position. O. Reg. 145/00, s. 31.
- (7) An explosive actuated fastening tool shall not be capable of being fired until the operator performs the two separate actions described in subsection (6). O. Reg. 145/00, s. 31.

- 120.** (1) Every explosive actuated fastening tool shall be stored in a locked container when not in use. O. Reg. 213/91, s. 120 (1).
- (2) No explosive actuated fastening tool shall be left unattended when out of its container. O. Reg. 213/91, s. 120 (2).
- (3) No explosive actuated fastening tool shall be loaded unless it is being prepared for immediate use. O. Reg. 213/91, s. 120 (3).
- (4) No explosive actuated fastening tool, whether or not it is loaded, shall be pointed at a person. O. Reg. 213/91, s. 120 (4).

- 121.** (1) Every explosive load for an explosive actuated fastening tool,
- (a) shall be marked or labelled so that a worker can easily identify its strength; and
  - (b) shall be stored in a locked container unless it is required for immediate use. O. Reg. 213/91, s. 121 (1).
- (2) No explosive load for an explosive actuated fastening tool,
- (a) shall be stored in a container with explosive loads of other strengths; or
  - (b) shall be left unattended where it may be available to a worker who is not qualified to operate an explosive actuated fastening tool. O. Reg. 213/91, s. 121 (2).
- (3) A misfired explosive load removed from an explosive actuated fastening tool shall be placed in a water-filled container on the project until the misfired explosive load is removed from the project. O. Reg. 213/91, s. 121 (3).

**WELDING AND CUTTING**

- 122.** (1) Cylinders, piping and fittings used in welding and cutting shall be protected against damage. O. Reg. 213/91, s. 122 (1).
- (2) No cylinder of compressed gas used in welding and cutting shall be dropped, hoisted by slings or magnets or transported or stored in a horizontal position. O. Reg. 213/91, s. 122 (2).
- (3) The valve of a cylinder shall be closed when the cylinder is spent or is not being used. O. Reg. 213/91, s. 122 (3).
- 123.** Precautions to prevent a fire shall be taken when using a blow torch or welding or cutting equipment or a similar piece of equipment. O. Reg. 213/91, s. 123.
- 124.** (1) No arc welding electrode or ground lead shall be hung over a compressed gas cylinder. O. Reg. 213/91, s. 124 (1).
- (2) An area where electric welding is carried on shall be kept free of electrode stubs and metal scrap. O. Reg. 213/91, s. 124 (2).
- (3) Receptacles for electrode stubs shall be provided and used. O. Reg. 213/91, s. 124 (3).

**ACCESS AT HEIGHTS**

- 125.** (1) Where work cannot be done on or from the ground or from a building or other permanent structure without hazard to workers, a worker shall be provided with a scaffold, a suspended work platform, a boatswain's chair or a multi-point suspended work platform that meets the requirements of this Regulation. O. Reg. 242/16, s. 9.
- (2) A worker who is on or under a scaffold, a suspended work platform system or a multi-point suspended work platform while it is being erected, altered or dismantled shall be on a part of the scaffold, suspended work platform system or multi-point suspended work platform that meets the requirements of this Regulation. O. Reg. 242/16, s. 9.

## SCAFFOLDS AND WORK PLATFORMS

**126.** (1) Every scaffold shall be designed and constructed to support or resist,

- (a) two times the maximum load or force to which it is likely to be subjected, without exceeding the allowable unit stresses for the materials of which it is made; and

- (b) four times the maximum load or force to which it is likely to be subjected without overturning. O. Reg. 213/91, s. 126 (1).

(2) Despite clause (1) (a), a scaffold with structural components whose capacity can only be determined by testing shall be designed and constructed to support or resist three times the maximum load or force to which it is likely to be subjected without causing the failure of any component. O. Reg. 213/91, s. 126 (2).

(3) No scaffold shall be loaded in excess of the load that it is designed and constructed to bear. O. Reg. 213/91, s. 126 (3).

**127.** (1) The failure load of a scaffold which consists of structural components whose capacity cannot be determined by testing shall be established by testing the components in a manner that simulates the actual loading conditions for which each of the components is fabricated. O. Reg. 213/91, s. 127 (1).

(2) A professional engineer shall verify and certify the results of a test and the corresponding rated load of the scaffold. O. Reg. 213/91, s. 127 (2).

(3) The constructor shall make available to an inspector upon request a copy of the certification by the professional engineer. O. Reg. 213/91, s. 127 (3).

**128.** (1) Every scaffold,

- (a) shall have uprights braced diagonally in the horizontal and vertical planes to prevent lateral movement;

- (b) shall have horizontal members that are adequately secured to prevent lateral movement and that do not have splices between the points of support;

- (c) shall have footings, sills or supports that are sound, rigid and capable of supporting at least two times the maximum load to which the scaffold may be subjected without settlement or deformation that may affect the stability of the scaffold;

- (d) shall have all fittings and gear, including base plates or wheels, installed in accordance with the manufacturer's instructions;

- (e) shall have connecting devices between frames that provide positive engagement in tension and compression;

- (f) shall have safety catches on all hooks; and

- (g) shall be adequately secured at vertical intervals not exceeding three times the least lateral dimension of the scaffold, measured at the base, to prevent lateral movement. O. Reg. 213/91, s. 128 (1).

(2) A scaffold shall be constructed of suitable structural materials and, if lumber is used, it shall be construction grade or Number 1 Grade spruce. O. Reg. 213/91, s. 128 (2).

(3) A scaffold mounted on pneumatic tires shall not be supported by the pneumatic tires while the scaffold is being erected, used or dismantled. O. Reg. 213/91, s. 128 (3).

(4) If tubular metal frames are used to support masonry units on a scaffold platform, each frame leg shall have a minimum working load of,

- (a) twenty-two kilonewtons for standard frames; and

- (b) 16.7 kilonewtons for walk-through frames. O. Reg. 213/91, s. 128 (4).

**129.** (1) A scaffold mounted on castors or wheels,

- (a) shall be equipped with a suitable braking device on each castor or wheel; and

- (b) shall have the brakes applied when a worker is on the scaffold. O. Reg. 213/91, s. 129 (1).

(2) A scaffold mounted on castors or wheels shall be equipped with guy wires or outriggers to prevent its overturning if the height of the scaffold platform exceeds three times the least lateral dimension of the scaffold,

- (a) measured at the base of the scaffold; or

- (b) if outriggers are used, measured between the outriggers. O. Reg. 213/91, s. 129 (2).

(3) No scaffold mounted on castors or wheels that has a scaffold platform more than 2.4 metres above the base shall be moved when a worker is on it unless,

- (a) the worker is wearing a full body harness as part of a fall arrest system attached to a fixed support; and

- (b) the scaffold is being moved on a firm level surface. O. Reg. 213/91, s. 129 (3).



**130.** (1) A scaffold shall be designed by a professional engineer and shall be erected in accordance with the design if the scaffold exceeds,

- (a) fifteen metres in height above its base support; or
- (b) ten metres in height above its base support if the scaffold is constructed of a tube and clamp system. O. Reg. 213/91, s. 130 (1).

(2) Design drawings for a scaffold shall set out erection instructions and the rated loads for the scaffold. O. Reg. 85/04, s. 12.

(3) A professional engineer or a competent worker designated by the supervisor of the project shall inspect the scaffold before it is used to ensure that it is erected in accordance with the design drawings. O. Reg. 213/91, s. 130 (3).

(4) The person carrying out an inspection shall state in writing whether the scaffold is erected in accordance with the design drawings. O. Reg. 213/91, s. 130 (4).

(5) The constructor shall keep at a project the design drawings and the written statement for a scaffold while the scaffold is erected. O. Reg. 213/91, s. 130 (5).

**131.** Only a competent worker shall supervise the erection, alteration and dismantling of a scaffold. O. Reg. 213/91, s. 131.

**132.** (1) A professional engineer shall inspect and give a written opinion as to the structural adequacy of a centre pole scaffold used in silo construction when required by subsection (2). O. Reg. 213/91, s. 132 (1).

(2) An inspection shall be performed on the earlier of,

- (a) the twenty-fourth time the scaffold is erected following the most recent inspection; or
- (b) for a scaffold used in the construction of,

- (i) a monolithic silo, two years after the scaffold is erected or after the most recent inspection, and
- (ii) a stave silo, one year after the scaffold is erected or after the most recent inspection. O. Reg. 213/91, s. 132 (2).

(3) The employer responsible for constructing the silo shall keep with a scaffold every written opinion by a professional engineer concerning the scaffold while it is in use on a project. O. Reg. 213/91, s. 132 (3).

(4) The employer responsible for constructing the silo shall record information about the frequency of use of the scaffold in a log book which shall be kept with the scaffold while it is in use on a project. O. Reg. 213/91, s. 132 (4).

**133.** (1) This section applies with respect to a worker who is installing reinforcing steel on a vertical surface consisting of horizontal reinforcing steel bars. O. Reg. 213/91, s. 133 (1).

(2) A scaffold shall be provided for a worker who is working more than 3.7 metres above the ground or a floor. O. Reg. 213/91, s. 133 (2).

(3) If a scaffold cannot be erected, a worker shall use and wear a work belt. O. Reg. 213/91, s. 133 (3).

(4) No worker who is climbing the vertical surface shall carry reinforcing steel bars. O. Reg. 213/91, s. 133 (4).

**134.** (1) Every scaffold platform and other work platform shall be designed, constructed and maintained to support or resist, without exceeding the allowable unit stresses for the materials of which it is constructed,

- (a) all loads and forces to which it is likely to be subjected; and
- (b) at least 2.4 kilonewtons per square metre. O. Reg. 213/91, s. 134 (1).

(2) Each component of a scaffold platform or other work platform shall be capable of supporting a load of at least 2.2 kilonewtons without exceeding the allowable unit stress for each material used. O. Reg. 213/91, s. 134 (2).

(3) No scaffold platform or other work platform shall be loaded in excess of the load that it is designed and constructed to bear. O. Reg. 213/91, s. 134 (3).

**135.** (1) A scaffold platform or other work platform,

- (a) shall be at least 460 millimetres wide;
- (b) if it is 2.4 metres or more above a floor, roof or other surface, consist of planks laid tightly side by side for the full width of the scaffold;
- (c) shall be provided with a guardrail as required by section 26.3;
- (d) shall be provided with a means of access as required by section 70;
- (e) shall not have any unguarded openings; and
- (f) shall have each component secured against slipping from its supports. O. Reg. 213/91, s. 135 (1); O. Reg. 527/00, s. 4.

(2) A scaffold platform or other work platform made of sawn lumber planks shall have planks of number 1 grade spruce that do not have any defect affecting their load-carrying capacity and,

- (a) that bear a legible grade identification stamp or are permanently identified as being number 1 grade spruce;
- (b) that are at least forty-eight millimetres thick by 248 millimetres wide;
- (c) that are arranged so that their span does not exceed 2.1 metres;
- (d) that overhang their supports by not less than 150 millimetres and not more than 300 millimetres; and
- (e) that are cleated or otherwise secured against slipping. O. Reg. 213/91, s. 135 (2).

**136.** (1) Cubes of masonry units on a scaffold platform shall be placed directly over the scaffold frame. O. Reg. 213/91, s. 136 (1).

(2) If it is not practicable to comply with subsection (1), the masonry units shall be placed on the scaffold platform in a manner that conforms with the load capability provisions of the scaffold platform as set out in section 134. O. Reg. 213/91, s. 136 (2).

(3) The surface of an outrigger bracket platform used by a masonry worker shall be not more than one metre below the associated material storage platform. O. Reg. 213/91, s. 136 (3).

(4) Masonry units to be installed in a building or structure shall be distributed along the scaffold platform before being used. O. Reg. 213/91, s. 136 (4).

**136.0.1** (1) The distance between the platform of an outrigger scaffold and the wall beyond which the scaffold extends shall not exceed 75 millimetres. O. Reg. 242/16, s. 10.

(2) The outrigger beams of an outrigger scaffold shall be secured against horizontal and vertical movement. O. Reg. 242/16, s. 10.

## SUSPENDED WORK PLATFORMS AND BOATSWAIN'S CHAIRS

### INTERPRETATION AND APPLICATION

**136.1** In sections 137 to 142.06,

“allowable suspended load” means the combined weight of a suspended work platform or boatswain’s chair, the hoisting device or devices, the rated platform capacity and the suspended portion of the suspension line or lines; (charge suspendue admissible”)

“anchorage connector” means a component or a system of components of a fixed support that secures a suspended work platform or boatswain’s chair and its associated suspension lines and lifelines to the fixed support; (“connecteur d’ancrage”)

“CSA Standard Z271-10” means Canadian Standards Association (CSA) Standard Z271-10, Safety Code for Suspended Platforms; (“norme CSA Z271-10”)

“work platform” means a built or manufactured work surface that, as the context requires, is intended to be used as or is in use as the work area of a suspended work platform system, but does not include a boatswain’s chair. (“plateforme de travail”) O. Reg. 242/16, s. 11.

**136.2** Sections 137 to 142.06 do not apply to multi-point suspended work platforms. O. Reg. 242/16, s. 11.

### GENERAL REQUIREMENTS: DESIGN

**137.** (1) Every suspended work platform system or powered boatswain’s chair, including all components and connections of the suspended work platform system or boatswain’s chair, shall be designed by a professional engineer in accordance with,

- (a) good engineering practice;
- (b) CSA Standard Z271-10, with the exception of clauses 6.1.1 (b) and 6.1.2;
- (c) the requirements of this section; and
- (d) for a suspended work platform, the requirements of section 137.1. O. Reg. 242/16, s. 11.

(2) For the purposes of clause (1) (b), every reference to the National Building Code of Canada in CSA Standard Z271-10 shall be deemed to be a reference to the Building Code. O. Reg. 242/16, s. 11.

(3) Every suspended work platform system or powered boatswain’s chair shall be designed to be able to support or resist,

- (a) the rated platform capacity; and
- (b) any other loads likely to be applied to it, including the loads specified in clause 6.1.5 (Design loads from forces imposed on a platform) of CSA Standard Z271-10. O. Reg. 242/16, s. 11.

(4) The design of a suspended work platform system or powered boatswain's chair shall take into account the potential increased loads due to wind on all components of the suspended work platform system or powered boatswain's chair if shielding, tarpaulins, enclosures, signs, banners or other similar items were used or attached. O. Reg. 242/16, s. 11.

(5) The design of a work platform or boatswain's chair shall use the factored load combination calculated in accordance with subsection (6). O. Reg. 242/16, s. 11.

(6) The factored load combination shall be calculated as follows:

$$\rho(\alpha_D D + \gamma \alpha_L L)$$

where,

$\rho$  is an impact factor of 1.25,

$\alpha_D$  is a dead load factor 1.25,

$D$  is the dead load,

$\gamma$  is an importance factor of 1.9,

$\alpha_L$  is a live load factor of 1.5, and

$L$  is the live load. O. Reg. 242/16, s. 11.

**137.1** (1) In addition to the requirements set out in section 137, a suspended work platform shall be designed in accordance with the requirements of this section. O. Reg. 242/16, s. 11.

(2) A work platform shall not have a span of greater than 30 metres between adjacent points of suspension. O. Reg. 242/16, s. 11.

(3) The rated platform capacity for a suspended work platform shall use the relevant minimum live load determined as follows:

1. If the span of the work platform between adjacent points of suspension is 12 metres or less, the minimum live load shall be 340 kilograms.
2. If the span of the work platform between adjacent points of suspension is greater than 12 metres but not more than 15 metres, the minimum live load shall be 450 kilograms.
3. If the span of the work platform between adjacent points of suspension is greater than 15 metres but not more than 20 metres, the minimum live load shall be 680 kilograms.
4. If the span of the work platform between adjacent points of suspension is greater than 20 metres but not more than 25 metres, the minimum live load shall be 900 kilograms.
5. If the span of the work platform between adjacent points of suspension is greater than 25 metres but not more than 30 metres, the minimum live load shall be 1,130 kilograms. O. Reg. 242/16, s. 11.

(4) There shall be an additional load allowance for any construction debris or abrasive blasting grit to a depth of at least 25 millimetres and for other materials that may accumulate or be placed on the work platform as a result of the work. O. Reg. 242/16, s. 11.

(5) In the case of a modular suspended work platform system, all connections used to transfer a load from one module to another shall be designed to withstand at least the design loads as specified in this section, and any other external loads or forces. O. Reg. 242/16, s. 11.

(6) Despite section 26.3, a guardrail system on a work platform shall meet the requirements of clause 6.4 (Guardrail System) of CSA Standard Z271-10, with the exception of clause 6.4.1 (b). O. Reg. 242/16, s. 11.

**137.2** Design drawings for a work platform shall,

- (a) set out the size and specifications of all the components of the work platform, including the type and grade of all materials to be used;
- (b) state the maximum rated platform capacity of the work platform;
- (c) state welding specifications for all welds used on the work platform, including weld length, weld locations and welding fillers to be used; and
- (d) identify all critical welds used on the work platform. O. Reg. 242/16, s. 11.

**137.3** (1) A work platform shall not be used unless the requirements of this section have been satisfied. O. Reg. 242/16, s. 11.

(2) In the case of a work platform designed before January 1, 2017, a professional engineer shall prepare a report that confirms that the structural integrity of the work platform is at least equal to the structural integrity of a work platform designed in accordance with sections 137 and 137.1. O. Reg. 242/16, s. 11.

- (3) In the case of a work platform designed on or after January 1, 2017, a professional engineer shall prepare a report that,
  - (a) confirms that the work platform meets the requirements of sections 137 and 137.1;
  - (b) confirms that the suspended work platform's design and configuration have been tested to and meet the performance requirements set out in sections 7 to 11 of the ANSI/UL 1322-2004 Standard, "Fabricated Scaffold Planks and Stages", for the rated platform capacity and worst-case configurations;
  - (c) provides the results of the tests described in clause (b);
  - (d) subject to subsection (4), provides proof that the manufacturer of a suspended work platform or suspended work platform module has been certified to International Standard ISO 9001, Quality management systems – Requirements; and
  - (e) includes, if required under subsection (4), the quality assurance report described in clause (4) (c). O. Reg. 242/16, s. 11.
- (4) If there is no proof available that the manufacturer has been certified to ISO 9001, a professional engineer shall,
  - (a) ensure that every critical weld of the work platform is subjected to a non-destructive test;
  - (b) examine all components of the work platform to ensure they are manufactured in accordance with the design drawings referred to in section 137.2;
  - (c) prepare a written quality assurance report that,
    - (i) confirms that every critical weld and every structural component referred to in subsection 139.1 (2) is correctly manufactured and has no defects, and
    - (ii) includes the results of non-destructive tests described in clause (a) and the examination described in clause (b). O. Reg. 242/16, s. 11.
- (5) The work platform shall be assembled in accordance with the manufacturer's instructions for assembly. O. Reg. 242/16, s. 11.
- (6) While a work platform is in use at a project, the employer shall,
  - (a) make available to an inspector on request, the design drawings for the work platform; and
  - (b) keep at the project and make available to an inspector on request, the report prepared under subsection (2) or (3) and the manufacturer's instructions for assembly of the work platform. O. Reg. 242/16, s. 11.

#### GENERAL REQUIREMENTS: WORKER TRAINING

**138.** (1) An employer shall ensure that a worker successfully completes a training program that meets the requirements set out in subsection (2) at the following times:

1. Before the worker uses a suspended work platform system or boatswain's chair for the first time.
  2. As often as is necessary, but at least every three years, after the worker uses a suspended work platform system or boatswain's chair for the first time. O. Reg. 242/16, s. 11.
- (2) The training program referred to in subsection (1) shall,
- (a) consist of adequate oral and written instruction for using a suspended work platform system or boatswain's chair, including instruction on,
    - (i) the regulations under the Act that apply to the work,
    - (ii) fall hazards related to the use of the suspended work platform system or boatswain's chair,
    - (iii) selecting, putting on, using and inspecting personal protective equipment, and its components, that the worker is required to wear,
    - (iv) identifying and using fixed supports for a suspended work platform system or boatswain's chair and for the worker's fall arrest system,
    - (v) the components, functions and limitations of a suspended work platform system or boatswain's chair, tiebacks and operational controls,
    - (vi) reading and using roof plans and work plans,
    - (vii) the load limitations of the suspended work platform system or boatswain's chair, and
    - (viii) elements of emergency rescue from a suspended work platform system or boatswain's chair; and
  - (b) require the worker to demonstrate proficiency in,
    - (i) selecting, putting on, using and inspecting the personal protective equipment the worker is required to use,

- (ii) rigging procedures and tying adequate knots,
- (iii) locating fixed supports that are identified in a roof plan,
- (iv) safely operating the suspended work platform system or boatswain's chair, and
- (v) operating the controls of the suspended work platform system or boatswain's chair in accordance with the manufacturer's instructions. O. Reg. 242/16, s. 11.

(3) The employer shall ensure that the person who provides the training program referred to in subsection (1) prepares and signs a written record for every worker who successfully completes the program and shall provide such written proof to the worker. O. Reg. 242/16, s. 11.

(4) A worker shall have the written proof described in subsection (3) readily available at a project. O. Reg. 242/16, s. 11.

**138.1** (1) An employer shall designate a competent worker to be responsible for the installation and inspection of a suspended work platform system or boatswain's chair before it is put into service for the first time. O. Reg. 242/16, s. 11.

(2) The employer shall ensure that the competent worker successfully completes a training program that meets the requirements set out in subsection (3) at the following times:

1. Before the competent worker installs or inspects the installation of a suspended work platform or boatswain's chair for the first time.
2. As often as is necessary, but at least every three years, after the worker installs or inspects the installation of a suspended work platform or boatswain's chair for the first time. O. Reg. 242/16, s. 11.

(3) The training program referred to in subsection (2) shall,

(a) consist of adequate oral and written instruction on,

- (i) rigging,
- (ii) methods to secure beams and equipment,
- (iii) fixed supports,
- (iv) principles of suspension lines, hoisting devices and load limits,
- (v) manufacturers' instructions for assembling, installing and disassembling suspended work platform systems or boatswain's chairs,
- (vi) reading and using roof plans and work plans,
- (vii) securing suspended work platform systems or boatswain's chairs to the face of a building, and
- (viii) electrical systems; and

(b) require the competent worker to demonstrate proficiency in,

- (i) installing and torquing rigging hardware in accordance with the manufacturer's instructions,
- (ii) inspecting cable and terminations in accordance with the manufacturer's instructions,
- (iii) tying of adequate numbers of different knots,
- (iv) properly setting up a suspended work platform system or boatswain's chair in accordance with roof plans, work plans and the manufacturer's instructions, including,
  - (A) selection and use of fixed supports,
  - (B) set up of equipment,
  - (C) use of hoists, including reeving cables,
  - (D) use of descent controls and emergency controls,
  - (E) impact of different work plans on set up of equipment, and
  - (F) protection of public ways. O. Reg. 242/16, s. 11; O. Reg. 142/17, s. 16.

(4) The employer shall ensure that the person who provides the training program referred to in subsection (2) prepares and signs a written record for every competent worker who successfully completes the program and shall provide such written proof to the competent worker. O. Reg. 242/16, s. 11.

(5) A competent worker shall have the written proof described in subsection (4) readily available at a project. O. Reg. 242/16, s. 11.

GENERAL REQUIREMENTS: TESTING

**139.** (1) An employer shall ensure that, prior to the first use of a suspended work platform system at a project, the entire system, including its suspension lines, has been inspected, tested and maintained in accordance with this Regulation, the manufacturer's instructions, and clause 11 (Inspection and Testing) and Clause 12 (Maintenance) of CSA Standard Z271-10. O. Reg. 242/16, s. 11.

(2) The employer shall ensure that the inspection, testing and maintenance referred to in subsection (1) is completed by,

- (a) a competent worker; or
- (b) if the CSA Standard Z271-10 requires the inspection or test be performed by a person with specific qualifications, such person. O. Reg. 242/16, s. 11.

**139.1** (1) Every supplier of and every employer who owns or uses a work platform shall ensure that the testing requirements in this section are met. O. Reg. 242/16, s. 11.

(2) For the purposes of this section, the types of structural components of a work platform are categorized in the following groups:

- 1. Group 1, which is composed of trusses, corner or angled sections and platform modules.
- 2. Group 2, which is composed of stirrups, module connectors and end frames. O. Reg. 242/16, s. 11.

(3) At least annually, a representative sample of each type of structural component shall be randomly selected and subjected to non-destructive testing in accordance with the following:

- 1. For each type of Group 1 structural component, the representative sample shall be composed of the number set out in Column 2 of the Table to this subsection opposite the total number of that type of component, set out in Column 1, in the supplier's or employer's entire inventory or fleet of suspended work platforms.
- 2. For each type of Group 2 structural component, the representative sample shall be composed of the number set out in Column 3 of the Table to this subsection opposite the total number of that type of component, set out in Column 1, in the supplier's or employer's entire inventory or fleet of suspended work platforms.
- 3. Every critical weld on each structural component selected as part of the representative sample shall be subjected to non-destructive testing.

TABLE

Item	Column 1 Total number of the type of structural component in a supplier or employer's entire inventory or fleet of suspended work platforms	Column 2 Group 1: number of representative samples of the type of structural component to be tested	Column 3 Group 2: number of representative samples of the type of structural component to be tested
1.	2-15	2	2
2.	16-50	3	5
3.	51-150	5	8
4.	151-500	8	13
5.	500 or greater	13	20

O. Reg. 242/16, s. 11.

(4) If any defect is found as a result of the testing conducted under subsection (3), a professional engineer shall review the interpretation of the test results to determine,

- (a) whether the defect affects the structural integrity of the structural component; and
- (b) if the defect does affect the structural integrity of the structural component, whether the defective component is to be rejected from further use permanently or pending its repair. O. Reg. 242/16, s. 11; O. Reg. 142/17, s. 17 (1).

(5) The professional engineer shall prepare a written report of the review and determination made under subsection (4). O. Reg. 242/16, s. 11.

(6) If a defective structural component is rejected from further use, either permanently or pending repair, a representative sample that is composed of four times the number of each type of structural component that composed the original representative sample under subsection (3) shall be subjected to testing described in paragraph 3 of subsection (3). O. Reg. 242/16, s. 11.

(7) If any defect is found as a result of the testing conducted under subsection (6), subsections (4) to (6) apply, with necessary modifications. O. Reg. 242/16, s. 11; O. Reg. 142/17, s. 17 (2).

(8) All other parts of a suspended work platform not listed in subsection (2) shall be inspected for damage at least once within the 12-month period preceding its use on a project and at least once annually while in use on a project. O. Reg. 242/16, s. 11.

#### GENERAL REQUIREMENTS: EQUIPMENT

**140.** (1) An employer who uses a suspended work platform system shall ensure that there are permanent equipment logs respecting components of the suspended work platform system and that the logs,

- (a) comply with clause 13 (Equipment Log) of CSA Standard Z271-10; and
  - (b) include a record of the inspections, tests, repairs, modifications and maintenance performed on the components. O. Reg. 242/16, s. 11.
- (2) The employer shall make the permanent equipment logs available to an inspector on request. O. Reg. 242/16, s. 11.

#### PRE-USE REQUIREMENTS: FIXED SUPPORTS, ROOF PLANS, WORK PLANS AND INSTALLATION

**141.** (1) The supplier of or employer who owns a suspended work platform system shall ensure that all of its components are marked or labelled in accordance with clause 10.2 (Markings) of CSA Standard Z271-10. O. Reg. 242/16, s. 11.

(2) The supplier of or employer who owns a suspended work platform system shall ensure that each of the following structural components of every work platform is marked with a unique identifier:

1. A truss.
2. An end frame.
3. A stirrup.
4. A module connector.
5. A corner or angled section. O. Reg. 242/16, s. 11.

(3) Despite subsection (2), if a work platform module is manufactured as a single unit, it may be marked with a single unique identifier. O. Reg. 242/16, s. 11.

**141.1** (1) Every fixed support shall be designed by a professional engineer in accordance with the requirements of this section. O. Reg. 242/16, s. 11.

(2) A fixed support shall be designed and constructed to support all loads to which it may be subjected. O. Reg. 242/16, s. 11.

(3) The design of a fixed support shall use the factored loads calculated in accordance with subsection (4). O. Reg. 242/16, s. 11.

(4) The following values of load factors, as described in the provisions of the Building Code that address Limit States Design, shall be applied to calculate the factored loads for an outrigger and supporting structure, excluding anchorage connectors:

1. Live load factor = 3.0.
2. Dead load factor = 1.25. O. Reg. 242/16, s. 11; O. Reg. 142/17, s. 18.

(5) A component of a fixed support that may be subject to overturning shall be designed and constructed to support at least four times its allowable suspended load or force. O. Reg. 242/16, s. 11.

(6) Subject to subsection (7), an anchorage connector shall be designed to resist,

- (a) the application of 22.2 kilonewtons in any direction without fracture of any component or pullout from the fixed support; and
- (b) a test loading of 11.1 kilonewtons without permanent deformation of any component when subjected to the test loading in the direction or directions that generate the most critical effect on the fixed support with respect to stability and strength. O. Reg. 242/16, s. 11.

(7) For a suspended work platform system with a span between adjacent points of suspension of greater than 12 metres and up to 30 metres, the anchorage connectors for supporting the suspended work platform system shall be designed in accordance with good engineering practice to support the allowable suspended load and the minimum live loads for the length of the suspended work platform to be used, as set out in subsection 137.1 (3). O. Reg. 242/16, s. 11.

**141.2** (1) Every owner of a building or structure where a suspended work platform system or boatswain's chair is to be used shall ensure that there is a roof plan for the building or structure and ensure that the plan,

- (a) contains drawings and layout diagrams that show the positions of all fixed supports on the building or structure;
- (b) indicates whether the fixed supports are adequate for the purposes of attaching work platforms, boatswain's chairs and lifelines;
- (c) meets the requirements of clause 10.1.2 (Roof Plan) of CSA Standard Z271-10; and
- (d) has been approved in writing by a professional engineer. O. Reg. 242/16, s. 11.

(2) The owner shall post a legible copy of the roof plan near every entrance to the roof or top level of the building or structure where the suspended work platform system or boatswain's chair is to be used. O. Reg. 242/16, s. 11.

(3) The owner shall provide a copy of the roof plan to the constructor for a project at the building or structure. O. Reg. 242/16, s. 11.

(4) The constructor shall ensure that every employer whose workers are to use the suspended work platform system or boatswain's chair at the building or structure has received a copy of the roof plan. O. Reg. 242/16, s. 11.

(5) No employer or constructor shall permit a worker to use a suspended work platform system or boatswain's chair on a building or structure unless the employer or constructor has received a copy of the roof plan and, if required, the design drawings and written procedures prepared under subsection 141.3 (2). O. Reg. 242/16, s. 11.

**141.3** (1) If the roof plan required under section 141.2 indicates that the fixed supports on the building or structure are not adequate for the purposes of attaching a suspended work platform system or boatswain's chair and lifelines, if any, the owner shall provide the constructor for a project at the building or structure with any structural drawings for the building or structure that the owner has control over. O. Reg. 242/16, s. 11.

(2) The constructor shall ensure that a professional engineer prepares, using any structural drawings provided by the owner under subsection (1), design drawings and written procedures that indicate the manner in which the suspended work platform system or boatswain's chair and lifelines, if any, must be supported from the building or structure during the relevant project. O. Reg. 242/16, s. 11.

(3) The constructor shall ensure that every employer whose workers are to use the suspended work platform system or boatswain's chair and lifelines, if any, at the building or structure has received a copy of the design drawings and written procedures. O. Reg. 242/16, s. 11.

**141.4** (1) The owner of a building or structure shall ensure that all fixed supports identified in the roof plan are inspected, maintained and tested in accordance with clause 11 (Inspection and Testing) of CSA Standard Z271-10 and the manufacturer's instructions. O. Reg. 242/16, s. 11.

(2) Without limiting the generality of subsection (1), the owner shall ensure that a fixed support identified in the roof plan is inspected by a professional engineer,

- (a) before being used for the first time after it is installed and after every time that it is repaired or modified;
- (b) as often as necessary and at least as often as recommended by the manufacturer of the fixed support;
- (c) at least once within the 12-month period preceding its use; and
- (d) if a professional engineer, an employer, a supervisor or a worker advises the owner that there are reasonable grounds to believe the fixed support is defective or not adequate to support the suspended work platform, boatswain's chair or lifeline. O. Reg. 242/16, s. 11.

(3) An owner who has been advised under clause (2) (d) shall ensure that the fixed support in question is not used until the requirements in subsections (4) and (5) are met, as applicable. O. Reg. 242/16, s. 11.

- (4) The professional engineer who performs an inspection under subsection (2) shall prepare a written report that,
- (a) indicates whether the fixed support meets the requirements of section 141.1 and is adequate for the purposes of attaching a suspended work platform, boatswain's chair or lifeline; and
  - (b) if the fixed support is not adequate, indicates the defects and hazardous conditions of the fixed support. O. Reg. 242/16, s. 11.

(5) A fixed support that has been identified in the report of the professional engineer as having a defect or hazardous condition shall not be used until the owner of the building or structure ensures that,

- (a) the defect or hazardous condition of the fixed support has been repaired, modified or corrected; and
  - (b) the fixed support has been inspected and tested by a professional engineer in accordance with clause 11.3.3 (Anchorage connectors) of CSA Standard Z271-10 and the professional engineer has determined the fixed support to be adequate to support a suspended work platform, boatswain's chair or lifeline. O. Reg. 242/16, s. 11.
- (6) The owner of the building or structure shall, respecting a fixed support,
- (a) keep a permanent record, in accordance with clause 13 (Equipment Log) of CSA Standard Z271-10, of all inspections, tests, repairs, modifications and maintenance of the fixed support as long as the fixed support is used;
  - (b) make the record available, on request, to an inspector; and
  - (c) make the record available, on request, to a constructor of a project where workers are to use a suspended work platform system or boatswain's chair and lifelines, if any. O. Reg. 242/16, s. 11.

(7) No employer or constructor shall permit a worker to use a fixed support unless the employer or constructor has ensured that the fixed support has been inspected, maintained and tested as required by this section, and, if applicable, the requirements in subsections (4) and (5) are met. O. Reg. 242/16, s. 11.



- 141.5** (1) Before a suspended work platform system or boatswain's chair is put into service for the first time on a project, the employer shall ensure that a competent person,
- (a) prepares written procedures for the rescue of workers from a suspended work platform system or boatswain's chair in an emergency;
  - (b) conducts a risk assessment of the work to be undertaken to identify hazards that may arise from use of the suspended work platform system or boatswain's chair with reference to the nature of the workplace, the type of work and the conditions of work; and
  - (c) prepares a written, site-specific work plan that complies with subsection (2) and, if it is a work plan respecting a suspended work platform system, also complies with subsection (3). O. Reg. 242/16, s. 11.
- (2) A site-specific work plan for a suspended work platform system or boatswain's chair shall include, at a minimum,
- (a) measures and procedures to protect the health and safety of workers using the suspended work platform system or boatswain's chair;
  - (b) procedures to install, move and dismantle the suspended work platform system or boatswain's chair;
  - (c) an assessment as to whether the suspended work platform system or boatswain's chair can be installed according to a generic installation drawing or whether it must be installed according to a site-specific installation drawing;
  - (d) the rated platform capacity of the suspended work platform, suspended work platform module or boatswain's chair;
  - (e) the weight of all materials, tools and equipment allowed to be on the suspended work platform or boatswain's chair;
  - (f) how all suspension lines and lifelines are to be attached to the fixed supports shown in any roof plan required under section 141.2;
  - (g) an identification of the hazards related to material hoisting, cutting, grinding and sandblasting associated with the work;
  - (h) an identification of all electrical hazards, including minimum distances when approaching electrical conductors;
  - (i) protection for the public and workers who may be below the suspended work platform or boatswain's chair;
  - (j) overhead protection for workers on a suspended work platform or boatswain's chair from any work being conducted above the suspended work platform or boatswain's chair;
  - (k) measures to be taken to protect workers using a suspended work platform system or boatswain's chair from weather and other conditions that may endanger them;
  - (l) a copy of the written procedures for the emergency rescue of workers from a suspended work platform or boatswain's chair in an emergency established under clause (1) (a);
  - (m) the maximum number of workers allowed on a suspended work platform, suspended work platform module or boatswain's chair;
  - (n) information about methods of fall protection, including installation, that may be used for the protection of workers using a suspended work platform or boatswain's chair; and
  - (o) information about ready access to a two-way communication system, such as radio, telephone or other similar means, to be provided to a worker using a suspended work platform system or boatswain's chair. O. Reg. 242/16, s. 11.
- (3) In addition to the elements described in subsection (2), a site-specific plan for a suspended work platform system shall include, at a minimum,
- (a) how the work platform is to be arranged in any location at which the platform is to be used on the project;
  - (b) a weight distribution plan to ensure loading across the work platform or suspended work platform module surface does not exceed the design capacity;
  - (c) the maximum amount or weight of debris, grit and other materials allowed to accumulate on the suspended work platform, and their permissible locations on the work platform; and
  - (d) an assessment as to whether a device may be used to transfer material to and from the work platform and, if it may, directions on how it is to be used. O. Reg. 242/16, s. 11.
- (4) The employer shall keep at the project, and make available to an inspector on request, the site-specific work plan. O. Reg. 242/16, s. 11.
- (5) The employer shall,
- (a) ensure that the site-specific work plan is implemented at the project; and
  - (b) before a worker begins installing or using a suspended work platform system or boatswain's chair at the project, provide the worker with a copy of the site-specific work plan and review it with the worker. O. Reg. 242/16, s. 11.

**141.6** (1) Only a designated competent worker who has successfully completed the training program under section 138.1 shall install, alter or dismantle a suspended work platform system or boatswain's chair. O. Reg. 242/16, s. 11.

(2) A suspended work platform system or boatswain's chair, including all components and connections of the suspended work platform system or boatswain's chair, shall be erected, installed, used and dismantled in accordance with the manufacturer's instructions and,

- (a) a generic installation drawing; or
  - (b) in the case of a suspended work platform system, a site-specific drawing if not all of the requirements in the generic installation drawing can be satisfied or if one of the circumstances set out in subsection (3) applies. O. Reg. 242/16, s. 11.
- (3) The following are circumstances for the purposes of clause (2) (b):
1. There will be stacked or tiered work platforms.
  2. There will be a work platform that, including its components, weighs more than 525 kilograms.
  3. There will be a work platform that has a span greater than 12 metres between adjacent points of suspension.
  4. There will be a work platform that has more than two primary suspension lines.
  5. More than two hoisting devices will be used to move a work platform.
  6. There will be a work platform that has any shielding, tarpaulin, enclosure, sign or banner on it that may increase the wind loads on the components of the suspended work platform system.
  7. The vertical distance between the top of a suspension line and the lowest point on the street, ground or other horizontal surface under a work platform will exceed 150 metres. O. Reg. 242/16, s. 11.

**141.7** (1) This section applies if a generic installation drawing is used under clause 141.6 (2) (a). O. Reg. 242/16, s. 11.

(2) A designated competent worker who has successfully completed the training program under section 138.1 shall inspect a suspended work platform system or powered boatswain's chair to determine whether the installed suspended work platform system or installed powered boatswain's chair complies with the drawing,

- (a) before it is put into service after it has been installed for the first time on a project; and
  - (b) if it is relocated at the project, at the new location before it is put into service. O. Reg. 242/16, s. 11.
- (3) The designated competent worker shall provide a written report of the inspection indicating whether the installed suspended work platform system or installed powered boatswain's chair complies with the drawing. O. Reg. 242/16, s. 11.
- (4) The suspended work platform system or powered boatswain's chair shall not be put into service unless the designated competent worker's report indicates that the suspended work platform system or boatswain's chair has been installed in accordance with the drawing. O. Reg. 242/16, s. 11.
- (5) While the suspended work platform system or powered boatswain's chair is at the project, the employer shall keep at the project, and make available to an inspector on request, the generic installation drawing and every report prepared by a designated competent worker under subsection (3). O. Reg. 242/16, s. 11.

**141.8** (1) This section applies if a site-specific installation drawing is used under clause 141.6 (2) (b). O. Reg. 242/16, s. 11.

- (2) The site-specific installation drawing shall be prepared by a professional engineer. O. Reg. 242/16, s. 11.
- (3) A professional engineer shall inspect a suspended work platform system after it has been installed for the first time at a project and before it is put into service and shall prepare a written report indicating whether the suspended work platform system complies with the drawing. O. Reg. 64/18, s. 1.
- (4) A suspended work platform system shall not be put into service unless the professional engineer's report indicates it has been installed in accordance with the drawing. O. Reg. 64/18, s. 1.
- (5) If a suspended work platform system is relocated at a project, a deviation from the site-specific drawing is permitted if the deviation is approved by a professional engineer. O. Reg. 242/16, s. 11.
- (6) A suspended work platform system shall not be put into service at the new location unless,
  - (a) the suspended work platform system was inspected,
    - (i) if the installation at the new location was in accordance with the site-specific drawing, by either a professional engineer or by a designated competent worker who has successfully completed the training program under section 138.1, or
    - (ii) if the installation at the new location was in accordance with the site-specific installation drawing and a deviation from it was approved by a professional engineer, by a professional engineer; and

- (b) a report prepared under subsection (7) or (8) indicates that the suspended work platform system has been installed in accordance with the drawing and approved deviations, if any. O. Reg. 242/16, s. 11.
- (7) In the case of an inspection under subclause 6 (a) (i), the professional engineer or designated competent worker shall provide a written report of the inspection indicating whether the installed suspended work platform system complies with the drawing. O. Reg. 242/16, s. 11.
- (8) In the case of an inspection under subclause 6 (a) (ii), the professional engineer shall provide a written report of the inspection indicating whether the installed suspended work platform system complies with the drawing and approved deviations. O. Reg. 242/16, s. 11.
- (9) While the suspended work platform system is at the project, the employer shall keep at the project, and make available to an inspector on request, the site-specific installation drawing, any approved deviations and every report prepared under this section. O. Reg. 242/16, s. 11.

#### PROJECT-SPECIFIC USE REQUIREMENTS

**142.** The employer shall ensure that the rated platform capacity of a suspended work platform, work platform module or boatswain's chair is posted conspicuously on the suspended work platform, work platform module or boatswain's chair, as the case may be. O. Reg. 242/16, s. 11.

**142.01** (1) A suspended work platform system or boatswain's chair and the suspension lines of the suspended work platform system or boatswain's chair shall be attached to a fixed support in accordance with the manufacturer's instructions. O. Reg. 242/16, s. 11.

- (2) Every suspension line of a suspended work platform or boatswain's chair shall,
  - (a) be made of wire rope, subject to subsection 142.03 (1);
  - (b) be vertical from the fixed support, including the outrigger beam;
  - (c) be parallel to every other suspension line, if any;
  - (d) extend to the ground or have a positive stop that prevents the suspended work platform or boatswain's chair from running off the end of the suspension line or lines;
  - (e) have each connecting end wrapped around a protective thimble and adequately fastened;
  - (f) be capable, along with its attachment components, of supporting at least 10 times the maximum load to which it may be subjected; and
  - (g) have fastenings and terminations that are,
    - (i) corrosion-resistant,
    - (ii) capable of developing at least 80 per cent of the rated breaking strength of the suspension line itself,
    - (iii) recommended by the manufacturer for use with suspended work platforms or boatswain's chairs, and
    - (iv) installed in accordance with the manufacturer's instructions. O. Reg. 242/16, s. 11.
- (3) A U-type rope clamp shall not be used on a suspension line or tie-back. O. Reg. 242/16, s. 11.
- (4) A hoisting device on a suspended work platform system or boatswain's chair shall,
  - (a) have legible operating and safety instructions affixed to it in a conspicuous location; and
  - (b) meet the requirements of clause 8 (Hoisting) of CSA Standard Z271-10. O. Reg. 242/16, s. 11.
- (5) A suspended work platform system or boatswain's chair shall not be loaded in such a manner as to exceed the rated platform capacity for its work platform or individual platform module, or the rated hoist capacity. O. Reg. 242/16, s. 11.
- (6) A work platform or boatswain's chair shall not be suspended or used at any time the wind speed exceeds 40 kilometres per hour. O. Reg. 242/16, s. 11.
- (7) If an outrigger beam is to be used as a fixed support, it shall,
  - (a) be tied back and securely fastened to the building or structure, or a component of the building or structure, by a secondary cable or wire rope capable of supporting the allowable suspended load;
  - (b) be secured against horizontal and vertical movement;
  - (c) have securely attached counterweights that are designed and manufactured for the purpose; and
  - (d) have adequate legible instructions, provided by the manufacturer or a professional engineer, for the use of the counterweights affixed to the outrigger beam. O. Reg. 242/16, s. 11.

**142.02** (1) All wire rope terminations of the suspension line of a suspended work platform system or boatswain's chair, including swaged socket and poured socket terminations, spliced eye terminations and turnback eye terminations shall, after installation onto the wire rope and prior to being used for the first time, be tested,

- (a) in accordance with the recommendations of the manufacturer of the wire rope or termination; and
- (b) to no more than 50 per cent of the wire rope's nominal or minimum rated breaking strength. O. Reg. 242/16, s. 11.

(2) While the suspended work platform system or boatswain's chair is at the project and the termination remains in service, an employer shall keep at the project, and make available to an inspector on request, a record of the tests described in subsection (1). O. Reg. 242/16, s. 11.

(3) The wire rope termination of a suspension line shall be protected from contact with the line's hoisting device. O. Reg. 242/16, s. 11.

**142.03** (1) The suspension line of a boatswain's chair shall be made of wire rope unless the boatswain's chair is equipped with a descent control device. O. Reg. 242/16, s. 11.

(2) Every suspension line of a boatswain's chair shall be protected from abrasion. O. Reg. 242/16, s. 11.

(3) Every suspension line of a boatswain's chair that is made of organic or polymer fibres shall be,

- (a) permanently marked with the date on which it was first put into use;
- (b) doubled from the fixed support of the line to the ground or egress level;
- (c) tested by a recognized testing laboratory two years after the date on which it was first put into use and then once every 12 months thereafter to assess whether,
  - (i) it has experienced abrasion, and
  - (ii) is capable of developing at least 80 per cent of the rated breaking strength of the suspension line itself; and

(d) discarded,

- (i) if the test required under clause (c) determines that it does not have a breaking strength of at least 10 times the static load that the line is intended to support,

- (ii) in accordance with the manufacturer's recommendations, or

- (iii) when it is no longer safe for use. O. Reg. 242/16, s. 11.

(4) A boatswain's chair shall have a seat or seating area that is at least 600 millimetres long and 250 millimetres wide. O. Reg. 242/16, s. 11.

(5) If the seat or seating area is supported by a sling, the sling shall be constructed of wire rope at least nine millimetres in diameter which crosses under the seat or sitting area. O. Reg. 242/16, s. 11.

(6) If a boatswain's chair has a descent control device,

- (a) the distance between the boatswain's chair and the fixed support shall not exceed 90 metres; and

- (b) a worker on the boatswain's chair shall not use a corrosive substance, or mechanical grinding or flame-cutting equipment if the suspension line is not made of wire rope. O. Reg. 242/16, s. 11.

**142.04** (1) Before a suspended work platform system or boatswain's chair is used for the first time each day, a competent worker shall identify any defects or hazardous conditions and document them in writing. O. Reg. 242/16, s. 11.

(2) The suspended work platform system or boatswain's chair shall not be used until the defects or hazardous conditions have been corrected or removed. O. Reg. 242/16, s. 11.

(3) The employer shall keep a copy of each document prepared by a competent worker under subsection (1) and make it available to an inspector on request. O. Reg. 242/16, s. 11.

**142.05** (1) An employer shall ensure that a competent worker performs a functional test of a work platform or powered boatswain's chair to ensure that it is operating in accordance with the manufacturer's instructions,

- (a) before it is used for the first time after it is installed at the project;

- (b) if it is relocated at the project, at the new location before it is put into service; and

- (c) before it is used for the first time each day. O. Reg. 242/16, s. 11.

(2) If a functional test performed under subsection (1) reveals defects or hazardous conditions, the work platform or powered boatswain's chair shall not be used until the defects or hazardous conditions have been corrected or removed. O. Reg. 242/16, s. 11.

(3) The work platform or powered boatswain's chair shall not be raised more than 30 centimetres during the functional test unless it has a hoisting device equipped with a remote operating device. O. Reg. 242/16, s. 11.

**142.06** (1) A worker who is on or is getting on or off a suspended work platform or boatswain's chair shall wear a full body harness connected to a fall arrest system. O. Reg. 242/16, s. 11; O. Reg. 471/16, s. 1.

(2) Every worker on a suspended work platform or boatswain's chair shall have an effective means of summoning assistance in case of emergency. O. Reg. 242/16, s. 11.

(3) Every lifeline used with a suspended work platform or boatswain's chair shall,

(a) be suspended independently of the suspended work platform or boatswain's chair;

(b) be securely attached to a fixed support so that the failure of the suspended work platform or boatswain's chair will not cause the lifeline to fail;

(c) be protected from damage and abrasion; and

(d) if subject to wind conditions,

(i) not be suspended a vertical distance of more than 150 metres below the fixed support, and

(ii) if suspended a vertical distance of more than 100 metres below the fixed support, be restrained at or near the midpoint. O. Reg. 242/16, s. 11.

(4) Despite clauses (3) (a) and (b), the lifeline may be securely fastened to a work platform if,

(a) all or part of the suspended work platform has more than one means of suspension; and

(b) the suspended work platform is designed, assembled and maintained such that the failure of one means of suspension will not result in the complete or partial collapse of the suspended work platform. O. Reg. 242/16, s. 11.

(5) A suspended work platform shall have hangers located at least 150 millimetres but no more than 450 millimetres from the ends of the platform that are securely attached to it. O. Reg. 242/16, s. 11.

(6) If the suspension height of a suspended work platform is 15 metres or greater, the suspended work platform shall, if practicable, be restrained to the exterior face of the building or structure that it is suspended from unless the suspended work platform is being raised or lowered. O. Reg. 242/16, s. 11.

(7) If a suspended work platform is stationary and its guardrail adjacent to the face of the building or structure has been removed or lowered, the suspended work platform shall be restrained to the building or structure. O. Reg. 242/16, s. 11.

#### MULTI-POINT SUSPENDED WORK PLATFORMS

**142.1** Sections 142.2 to 142.8 apply to every multi-point suspended work platform. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

**142.2** (1) A multi-point suspended work platform and all its components shall be designed by a professional engineer in accordance with good engineering practice and with this section. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(2) A multi-point suspended work platform shall be designed to support, in addition to its dead load, live loads uniformly distributed over the platform surface of at least,

(a) 2.4 kilonewtons per square metre if the platform is to be used for masonry work;

(b) 3.6 kilonewtons per square metre if the platform is to be used for demolition work or for storage of masonry units or other related material or equipment; or

(c) 1.2 kilonewtons per square metre in any other case. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(3) In addition to the loads specified in subsection (2), a multi-point suspended work platform shall be able to support or resist,

(a) 1.1 kilonewtons concentrated on an area measuring 0.3 metres by 0.3 metres that is located on the platform at the position having the most adverse effect on the component under consideration;

(b) the wind load determined in accordance with the applicable provisions of the Building Code, based on a one in ten probability of being exceeded in any one year; and

(c) any other loads likely to be applied to it. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1); O. Reg. 142/17, s. 19 (1).

(4) The wind load referred to in clause (3) (b) may be reduced by 30 per cent if the professional engineer who designs the multi-point suspended work platform determines that it is appropriate to do so and indicates in writing that he or she has made the determination. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 12 (1).

(5) Subject to clause (2) (c) and subsections (3) and (4), the professional engineer who designs the multi-point suspended work platform shall determine the minimum specified loads for erecting, dismantling, traversing or otherwise moving the multi-point suspended work platform. O. Reg. 242/16, s. 12 (2).¶

(6) If a multi-point suspended work platform is to be used for abrasive blasting operations, there shall be an additional load allowance for the accumulation of grit on the platform to a depth of at least 25 millimetres. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(7) Subject to subsection (8), in designing a multi-point suspended work platform and its structural members, the following values of load factors, as described in the applicable provisions of the Building Code related to Limit States Design, shall be applied to the load requirements referred to in subsections (2) to (6):

1. Live load factor = 3.0.
2. Dead load factor = 1.5.
3. Wind load factor = 1.5. O. Reg. 142/17, s. 19 (2).

(8) In designing the suspension and anchorage system of a multi-point suspended work platform,

- (a) the value of the live load factor shall be 4.0;
- (b) the value of the dead load factor shall be 2.0; and
- (c) the value of the wind load factor shall be 2.0. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1); O. Reg. 142/17, s. 19 (3).

(9) Despite subsections (7) and (8), a multi-point suspended work platform and its components may be designed by working stress design if the safety factors for the multi-point suspended work platform and the structural members are at least equal to what would otherwise be provided under those subsections. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1), 12 (3).

(10) Despite subsections (7) and (8), if the failure load of a component has been determined by testing, the minimum safety factors shall be,

- (a) 3.0 for components of the multi-point suspended work platform;
- (b) 4.0 for components of the suspension and anchorage system; and
- (c) 10.0 for wire ropes, cables or chains used for hoisting, traversing or otherwise moving the multi-point suspended work platform. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(11) The failure load of a component referred to in subsection (10) shall be verified in writing by a professional engineer. O. Reg. 85/04, s. 15.

(12) A multi-point suspended work platform shall be designed, constructed and maintained in such a way that,

- (a) the failure of one means of support or suspension will not cause any part of the platform to collapse or fail, under the most adverse loading condition as determined by the professional engineer who designs the multi-point suspended work platform; and
- (b) compliance with subsections (7), (8), (9) and (10) is maintained in all fixed and moving conditions. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1), 12 (4).

(13) The design of a multi-point suspended work platform shall include adequate movement-limiting devices to be used when traversing or otherwise moving it. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(14) Before a multi-point suspended work platform is erected, the constructor shall ensure that the professional engineer responsible for the structural integrity of the permanent building or structure from which the multi-point suspended work platform is suspended provides a written report approving the design loads imposed on the building or structure by the multi-point suspended work platform. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1), 12 (5).

(15) Design drawings for a multi-point suspended work platform shall include,

- (a) a statement by the professional engineer that the design meets the requirements of this Regulation;
- (b) the size and specifications of all components, including the type and grade of all materials to be used;
- (c) the load factors and safety factors for the multi-point suspended work platform and all its components;
- (d) all the specified loads, including the loads during erection, dismantling, traversing and otherwise moving; and
- (e) the procedures for erection, dismantling, traversing and otherwise moving. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1), 12 (5).

(16) The design drawings shall be followed, subject to subsection (17). O. Reg. 85/04, s. 15.

(17) A deviation from the design drawings is permitted if the deviation,

- (a) is approved, in advance and in writing, by a professional engineer; and
- (b) complies with this Regulation. O. Reg. 85/04, s. 15.

**142.3** (1) Before erecting or dismantling a multi-point suspended work platform, the constructor shall give notice, in person, by telephone, by fax or by electronic means, to the Ministry office located nearest the project. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(2) A multi-point suspended work platform shall be inspected by a professional engineer to determine whether it complies with the design drawings, or the design drawings subject to any deviations approved under subsection 142.2 (17), as the case may be,

(a) after it is erected but before it is first used; and

(b) if the multi-point suspended work platform is moved to another anchorage position, before it is used there. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1), 13.

(3) The inspection under subsection (2) shall include a determination of whether all components are in adequate condition. O. Reg. 85/04, s. 15.

(4) The professional engineer who conducts the inspection under subsection (2) shall prepare a written report of the inspection. O. Reg. 85/04, s. 15.

(5) The written report is a positive report if it indicates that,

(a) the multi-point suspended work platform complies with the design drawings, or the design drawings subject to any deviations approved under subsection 142.2 (17), as the case may be; and

(b) all components are in adequate condition. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(6) Subsections (1), (2), (3), (4) and (5) do not apply to a multi-point suspended work platform whose platform area is six square metres or less. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(7) A competent worker shall inspect a multi-point suspended work platform each day before it is used. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

**142.4** The constructor shall keep at the project a copy of,

(a) the written report under subsection 142.2 (14);

(b) the design drawings under subsection 142.2 (15);

(c) any written approvals under subsection 142.2 (17); and

(d) the written reports under subsection 142.3 (4). O. Reg. 85/04, s. 15.

**142.5** (1) A multi-point suspended work platform shall be erected, dismantled, traversed or otherwise moved only by a competent worker under the supervision of a competent person and in accordance with the design drawings, or the design drawings subject to any deviations approved under subsection 142.2 (17), as the case may be. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(2) Before a worker is on a multi-point suspended work platform for the first time, the employer shall provide the worker with adequate oral and written instructions for using the multi-point suspended work platform, including,

(a) the manufacturer's instructions or a professional engineer's instructions;

(b) instructions on the load limitations;

(c) instructions in, and a hands-on demonstration of, the proper operation of the multi-point suspended work platform. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1), 13.

(3) A worker who is to erect, dismantle, traverse or otherwise move a multi-point suspended work platform shall, in addition to the instructions set out in subsection (2), be given instructions in the procedures described in clause 142.2 (15) (e). O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

(4) No person shall use a multi-point suspended work platform until the design drawings described in subsection 142.2 (15) have been given to the constructor and the following documents have been prepared and given to the constructor:

1. The report described in subsection 142.2 (14).

2. A positive report described in subsections 142.3 (4) and (5), if applicable.

3. Any approval described in subsection 142.2 (17), if applicable. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1).

**142.6** (1) A multi-point suspended work platform shall not be loaded in excess of the specified loads indicated on the design drawings for the multi-point suspended work platform. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1), 13.

(2) Signs indicating the specified live loads shall be posted in conspicuous places on the multi-point suspended work platform. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 13.

**142.7** (1) A worker who is on a multi-point suspended work platform while it is being erected, dismantled, traversed or otherwise moved shall use a fall arrest system that is,

- (a) connected to a fixed support independent from the multi-point suspended work platform; and
- (b) designed, constructed and maintained in accordance with this Regulation. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1), 13.

(2) Despite subsection (1), a worker is not required to use a fall arrest system while the multi-point suspended work platform is stationary if guardrails are installed in accordance with section 26.3. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 13.

**142.8** (1) The constructor of a project where a multi-point suspended work platform is used shall keep a written record of all inspections, tests, repairs, modifications and maintenance performed on the multi-point suspended work platform and make copies of the record available to an inspector upon request. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 1 (1), 13.

- (2) The record referred to in subsection (1) shall,
  - (a) be kept up to date;
  - (b) include the signature, name and business address of each person who performs an inspection, test, repair, modification or maintenance; and
  - (c) be kept at the project while the multi-point suspended work platform is there. O. Reg. 85/04, s. 15; O. Reg. 242/16, s. 13.

#### ELEVATING WORK PLATFORMS

**143.** (1) Subject to subsection (2), every elevating work platform, including elevating rolling work platforms, self-propelled elevating work platforms, boom-type elevating work platforms and vehicle-mounted aerial devices shall comply with section 144. O. Reg. 213/91, s. 143 (1).

- (2) Subsection (1) does not apply to,
  - (a) suspended scaffolds or suspended work platforms; and
  - (b) buckets or baskets suspended from or attached to the boom of a crane. O. Reg. 213/91, s. 143 (2).

**144.** (1) An elevating work platform shall be designed by a professional engineer in accordance with good engineering practice,

- (a) to meet the requirements of the applicable National Standards of Canada standard, set out in the Table to subsection (6); and
- (b) to support a minimum of 1.3 kilonewtons rated working load as determined in accordance with the applicable National Standards of Canada standard set out in the Table to subsection (6). O. Reg. 213/91, s. 144 (1).

(2) An elevating work platform shall be manufactured in accordance with the design referred to in subsection (1). O. Reg. 213/91, s. 144 (2).

- (3) An elevating work platform,
  - (a) shall be tested in accordance with the National Standards of Canada standard set out in the Table to subsection (6); and
  - (b) shall be inspected each day before use, in accordance with the manufacturer's instructions by a worker trained in accordance with section 147. O. Reg. 213/91, s. 144 (3).

(4) An elevating work platform shall only be used if a professional engineer has certified in writing that it complies with the National Standards of Canada standard set out in the Table to subsection (6). O. Reg. 213/91, s. 144 (4).

- (5) The certification required by subsection (4) shall include the details of testing. O. Reg. 213/91, s. 144 (5).

(6) The National Standards of Canada standard applicable to the type of elevating work platform listed in Column 1 of the Table to this subsection are the standards set out opposite it in Column 2:

TABLE

Item	Column 1 Type of elevating work platform	Column 2 National Standards of Canada standard
1.	Elevating Rolling Work Platform	CAN3-B354.1-M82
2.	Self-Propelled Elevating Work Platform	CAN3-B354.2-M82 and CAN3-B354.3-M82
3.	Boom-Type Elevating Work Platform	CAN3-B354.4-M82
4.	Vehicle-Mounted Aerial Device	CAN/CSA-C225-10

O. Reg. 213/91, s. 144 (6); O. Reg. 345/15, s. 17.

- (7) An elevating work platform shall be equipped with guardrails. O. Reg. 213/91, s. 144 (7).
- (8) An elevating work platform shall have signs that are clearly visible to an operator at its controls indicating,
  - (a) the rated working load;
  - (b) all limiting operating conditions including the use of outriggers, stabilizers and extendable axles;



- (c) the specific firm level surface conditions required for use in the elevated position;
- (d) such warnings as may be specified by the manufacturer;
- (e) other than for a boom-type elevating work platform, the direction of machine movement for each operating control;
- (f) the name and number of the National Standards of Canada standard to which it was designed; and
- (g) the name and address of the owner. O. Reg. 213/91, s. 144 (8).

**145.** (1) The owner of an elevating work platform shall maintain it such that the safety factors of the original design are maintained. O. Reg. 213/91, s. 145 (1).

(2) The owner of an elevating work platform shall keep a permanent record of all inspections, tests, repairs, modifications and maintenance performed on it. O. Reg. 213/91, s. 145 (2).

- (3) The permanent record required by subsection (2),
  - (a) shall be kept up-to-date;
  - (b) shall include complete records from the more recent of,
    - (i) the date of purchase, or
    - (ii) May 10, 1991; and
  - (c) shall include the signature and name of the person who performed the inspection, test, repair, modification or maintenance. O. Reg. 213/91, s. 145 (3); O. Reg. 142/17, s. 20.

**146.** A maintenance and inspection record tag,

- (a) shall be provided and attached to the elevating work platform near the operator's station; and
- (b) shall include,
  - (i) the date of the last maintenance and inspection,
  - (ii) the signature and name of the person who performed the maintenance and inspection, and
  - (iii) an indication that the maintenance has been carried out in accordance with the manufacturer's recommendations. O. Reg. 213/91, s. 146.

**147.** (1) A worker who operates an elevating work platform shall, before using it for the first time, be given oral and written instruction on the operation and be trained to operate that class of elevating work platform. O. Reg. 213/91, s. 147 (1).

- (2) The instruction and training required by subsection (1) shall include,
  - (a) the manufacturer's instruction;
  - (b) instruction in the load limitations;
  - (c) instruction in and a hands-on demonstration of the proper use of all controls; and
  - (d) instruction in the limitations on the kinds of surfaces on which it is designed to be used. O. Reg. 213/91, s. 147 (2).

**148.** (1) An elevating work platform,

- (a) shall not be loaded in excess of its rated working load;
- (b) shall be used and moved only in accordance with the manufacturer's written instructions;
- (c) shall not be loaded or used in such a manner as to affect its stability or endanger a worker;
- (d) shall not be moved unless all workers on it are protected from ejection by being attached to an adequate anchorage point on the elevating work platform by a method of fall protection; and
- (e) shall not be used, in the case of a self-propelled or vehicle-mounted boom-type elevating work platform or a vehicle-mounted aerial device, unless all workers on it are attached to an adequate anchorage point on the elevating work platform by a method of fall protection. O. Reg. 345/15, s. 18; O. Reg. 242/16, s. 14 (1); O. Reg. 142/17, s. 21.
- (2) Clause (1) (d) does not apply to,
  - (a) a mast climbing work platform or a mast climbing transport platform if the platform has guardrails protecting all open sides of the platform where a worker is exposed to a hazard of falling 2.4 metres or more; and
  - (b) a vehicle-mounted aerial device if the non-conductive requirements of the basket prevent the placement of an anchorage attachment inside the basket. O. Reg. 242/16, s. 14 (2).
- (3) REVOKED: O. Reg. 242/16, s. 14 (2).

**149.** An operator's manual for an elevating work platform shall be kept with it while it is on a project. O. Reg. 213/91, s. 149.

## CRANES, HOISTING AND RIGGING

**150.** (1) Subject to subsection (2), no worker shall operate a crane or similar hoisting device unless the worker holds a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*, that is not suspended, or the worker is an apprentice and is working pursuant to a training agreement registered under that Act, that is not suspended, in the trade of,

**Note:** On January 1, 2022, the day subsection 10 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, subsection 150 (1) of the Regulation is amended by striking out “a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “a certificate of qualification or a provisional certificate of qualification issued under the *Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 885/21, s. 1)

- (a) hoisting engineer — mobile crane operator 1, if the worker is operating a crane or similar hoisting device capable of raising, lowering or moving any material that weighs more than 30,000 pounds;
- (b) hoisting engineer — mobile crane operator 1 or hoisting engineer — mobile crane operator 2, if the worker is operating a crane or similar hoisting device capable of raising, lowering or moving only material that weighs more than 16,000 pounds but no more than 30,000 pounds; or
- (c) hoisting engineer — tower crane operator, if the worker is operating a tower crane. O. Reg. 88/13, s. 1.

(1.1) Subsection (1) does not apply when a worker is using excavation equipment to place pipes into a trench. O. Reg. 631/94, s. 3.

(2) No worker shall operate a crane or similar hoisting device, other than one described in subsection (1), unless,

- (a) the worker has written proof of training indicating that he or she is trained in the safe operation of the crane or similar hoisting device; or
- (b) the worker is being instructed in the operation of the crane or similar hoisting device and is accompanied by a person who meets the requirements of clause (a). O. Reg. 213/91, s. 150 (2).

(3) A worker shall carry his or her proof of training while operating a crane or similar hoisting device. O. Reg. 213/91, s. 150 (3).

**151.** (1) No crane or similar hoisting device shall be subjected to a load greater than its rated load-carrying capacity. O. Reg. 213/91, s. 151 (1).

(2) The manufacturer of a crane or similar hoisting device or a professional engineer shall determine its rated load-carrying capacity in accordance with,

- (a) for a mobile crane, Canadian Standards Association Standard Z150-1974 Safety Code for Mobile Cranes; and
- (b) for a tower crane, Canadian Standards Association Standard Z248-1976 Code for Tower Cranes. O. Reg. 213/91, s. 151 (2).

(3) Every crane or similar hoisting device shall have affixed to it a load rating plate,

(a) that the operator can read while at the controls; and

(b) that contains enough information for the operator to determine the load that can be lifted for each configuration of the crane. O. Reg. 213/91, s. 151 (3).

(4) A luffing boom crane, other than a tower crane, shall have affixed to it a boom angle indicator that the operator can read while at the controls. O. Reg. 213/91, s. 151 (4).

**152.** (1) The owner of a crane or similar hoisting device shall keep a permanent record of all inspections of, tests of, repairs to, modifications to and maintenance of the crane or similar hoisting device. O. Reg. 213/91, s. 152 (1).

(2) The owner of a crane or similar hoisting device shall prepare a log book for it for use at a project that shall include the record referred to in subsection (1) covering the period that is the greater of,

(a) the immediately preceding twelve months; and

(b) the period the crane or similar hoisting device is on the project. O. Reg. 213/91, s. 152 (2).

(3) The log book shall be kept with the crane or similar hoisting device. O. Reg. 213/91, s. 152 (3).

(4) The owner of a crane or similar hoisting device shall retain and make available to the constructor on request copies of all log books and records for the crane or similar hoisting device. O. Reg. 213/91, s. 152 (4).

**153.** (1) No worker shall use as a workplace a platform, bucket, basket, load, hook, sling or similar device that is capable of moving and is supported by a cable attached to the boom of a crane or similar hoisting device, except in accordance with this section. O. Reg. 631/94, s. 4.

(2) A crane may be used to raise, support or lower a worker only if,

(a) conventional access equipment cannot be used;

- (b) the platform that the worker is on,
    - (i) is designed by a professional engineer in accordance with good engineering practice,
    - (ii) is constructed in accordance with the design drawings,
    - (iii) is equipped with more than one means of suspension or support,
    - (iv) is equipped with anchor points for the attachment of the worker's fall arrest systems,
    - (v) is equipped with a guardrail in accordance with section 26.3,
    - (vi) is suspended from, or supported by, a direct attachment to the boom of the crane,
    - (vii) is designed, constructed and maintained so that the failure of one means of support or suspension will not cause the collapse of all or part of the platform, and
    - (viii) has its maximum rated load capacity legibly and permanently marked in a conspicuous place on it; and
  - (c) the crane,
    - (i) is equipped with fail-safe mechanisms that will prevent the boom and the suspended platform from free falling in the event of a power source or system failure or the inadvertent release of any operating controls,
    - (ii) is not used to hoist material while the platform is being used to support a worker,
    - (iii) is not loaded in excess of 25 per cent of its maximum rated load,
    - (iv) has a revised load rating chart prepared by a professional engineer in accordance with good engineering practice and affixed in a conspicuous place on the crane,
    - (v) has, on its hoist line, hooks equipped with self-closing safety catches at the point where the platform is suspended, and
    - (vi) is equipped with an automatic limit switch that prevents the platform and load from reaching beyond the highest permissible position specified by the crane manufacturer. O. Reg. 631/94, s. 4; O. Reg. 527/00, s. 5.
- (3) Any modifications or repairs to the boom of the crane shall be made in accordance with the instructions of the crane manufacturer or a professional engineer. O. Reg. 631/94, s. 4.
- (4) Every worker on the platform shall wear a full body harness connected independently to anchor points on the platform and used in conjunction with a lanyard fitted with a shock absorber. O. Reg. 631/94, s. 4.
- (5) The design drawings of the platform shall,
- (a) set out the size and specifications of all components of the platform, including the type and grade of materials used for it;
  - (b) state the maximum live load of the platform;
  - (c) specify the model and type of crane to be used in conjunction with the platform; and
  - (d) include a statement that, in the opinion of the professional engineer who designed the platform, the design meets the requirements of clauses (a), (b) and (c).
  - (e) REVOKED: O. Reg. 85/04, s. 16.
- O. Reg. 631/94, s. 4; O. Reg. 85/04, s. 16.
- (6) Before the platform is used, a competent worker shall inspect it and verify in writing that it has been constructed in accordance with the design drawings. O. Reg. 631/94, s. 4.
- (7) No person shall use the platform until the verification required under subsection (6) is given. O. Reg. 631/94, s. 4.
- (8) Before the crane is first used to lift persons, and at least once every 12 months after the first test, a professional engineer shall ensure that the crane be subjected to non-destructive testing to ensure the structural integrity of the crane. O. Reg. 242/16, s. 15.
- (9) A competent worker shall visually inspect the crane's structural elements and the rigging equipment for defects before each use of the crane. O. Reg. 631/94, s. 4.
- (10) The employer shall ensure that an adequate means of communication between the worker on the platform and the crane operator is established, maintained and used. O. Reg. 631/94, s. 4.
- (11) Before beginning any hoisting operation under this section, the constructor shall notify by telephone an inspector in the office of the Ministry of Labour nearest to the project. O. Reg. 631/94, s. 4.
- (12) The employer shall ensure that every worker involved with the hoisting operation receives adequate instructions about the requirements, restrictions and hazards associated with the hoisting operation. O. Reg. 631/94, s. 4.

(13) The employer shall develop adequate emergency rescue procedures and communicate these in writing to all workers involved with the hoisting operation. O. Reg. 631/94, s. 4.

(14) The constructor shall keep all design drawings, test reports, written statements and certification documents required under this section with the crane at all times during the hoisting operation. O. Reg. 631/94, s. 4.

(15) On request, the constructor shall provide an inspector with copies of any document described in subsection (14). O. Reg. 631/94, s. 4.

**154.** (1) A crane or similar hoisting device shall be set up, assembled, extended and dismantled only by a competent worker acting in accordance with the written instructions of the manufacturer and in such a manner as to not endanger any person or property. O. Reg. 213/91, s. 154 (1).

(2) No crane or similar hoisting device shall include sections that are not designed for it or that are damaged. O. Reg. 213/91, s. 154 (2).

(3) No crane or similar hoisting device shall include nuts, bolts, pins or fastenings that are not the size and quality specified by the manufacturer. O. Reg. 213/91, s. 154 (3).

**155.** Unless otherwise specified by its manufacturer, a crane or similar hoisting device,

(a) shall be equipped with a device to indicate whether its turntable is level; and

(b) shall be operated with its turntable level. O. Reg. 213/91, s. 155.

**156.** An outrigger or stabilizing device used on a crane or similar hoisting device,

(a) shall be extended to meet load capacity chart requirements; and

(b) shall rest on blocking able to support the crane or similar hoisting device and its maximum load without failure or without deformation or settlement which affects its stability. O. Reg. 213/91, s. 156.

#### ROTARY FOUNDATION DRILL RIGS

**156.1** (1) Before the start of any drilling operation on a project with a rotary foundation drill rig,

(a) an inspection of the work area shall be conducted to identify,

(i) potential hazards, including utilities, services, obstructions, structures and soil conditions that may endanger a worker engaged in, or in the vicinity of, the drilling operation, and

(ii) buildings and structures adjacent to, or in the vicinity of, the drilling operation that may be affected by it;

(b) any hazards identified under subclause (a) (i) shall be removed if practicable;

(c) if it is not practicable to remove the hazards identified under subclause (a) (i),

(i) if practicable, they shall be disconnected or inactivated so as not to endanger workers engaged in, or in the vicinity of, the drilling operation, and

(ii) they shall be located and marked by signs; and

(d) a written report shall be prepared that indicates,

(i) all of the hazards identified under subclause (a) (i),

(ii) which hazards have not been removed, and

(iii) which hazards have been disconnected or inactivated. O. Reg. 345/15, s. 19.

(2) The constructor shall keep a copy of the report mentioned under clause (1) (d) at the project until the drilling operation is completed, and make the report available, upon request, to an inspector and an employer responsible for the drilling operation. O. Reg. 345/15, s. 19.

**156.2** (1) Before a drilling operation begins, the employer responsible for it shall,

(a) develop written measures and procedures in accordance with subsection (2) to protect the health and safety of workers engaged in, or in the vicinity of, the drilling operation; and

(b) have a copy of these written measures and procedures provided to, and reviewed with, the workers engaged in the drilling operation. O. Reg. 345/15, s. 19.

(2) The written measures and procedures required under subsection (1) shall include, at a minimum, details of,

(a) the measures and procedures to be implemented to protect workers from all unremoved hazards;

(b) the procedures to be implemented for the assembly, erection, disassembly, alteration and operation of the drilling equipment;

(c) the safe work areas that have been designated for,

- (i) the drilling operation,
  - (ii) the staging, disassembly and alteration of the drilling equipment, and
  - (iii) the storage of any excavated soil and material;
- (d) the procedures to be implemented for removing excavated soil and material;
- (e) the restricted access zone that has been designated around the drilling operation to restrict or prevent access by persons or equipment;
- (f) the fall protection measures, in addition to those required under sections 26.1 to 26.9, to be implemented to prevent workers from falling into a drill hole or being engulfed by collapsing soil around a drill hole, while or after the hole is drilled; and
- (g) the communications system to be used among the drill rig operator, the drill rig front-end worker and other workers in the restricted access zone, or a system of prearranged visual signals to be used among them if those signals are clearly visible and understood by them. O. Reg. 345/15, s. 19.
- (3) Workers shall follow the written measures and procedures. O. Reg. 345/15, s. 19.

**156.3** Sections 156.4 and 156.5 apply when a drilling operation at a project uses a rotary foundation drill rig that can exert a ground pressure of 200 kiloPascals or more under its tires, crawlers or outrigger pads in any configuration, including during its operational activities. O. Reg. 345/15, s. 19.

**156.4** (1) Before a drilling operation described in section 156.3 begins, a professional engineer shall,

- (a) design a supporting surface for the drill rig in accordance with good engineering practice to adequately support the drill rig during all drilling and drill rig set-up activities;
  - (b) designate and design a path of travel for the drill rig to use on the project to ensure the path of travel safely supports the drill rig; and
  - (c) prepare a written report described in subsection (2). O. Reg. 345/15, s. 19.
- (2) The written report required under clause (1) (c) shall include, at a minimum, details of,
- (a) the project and its location;
  - (b) the designs and specifications for the supporting surface and path of travel;
  - (c) any operating restrictions imposed by the drill rig manufacturer's instructions, including the maximum safe ground slope for the drilling operation;
  - (d) the existing soil conditions, all associated hazards to workers' health and safety and the precautions to be taken to protect workers from the hazards associated with the soil conditions;
  - (e) the minimum load-bearing capacity of the supporting surface required for each activity to be undertaken by the drill rig;
  - (f) the surface preparation required for the supporting surface and path of travel to safely support the drill rig during its operation and travel;
  - (g) the parts of the drill rig and the attachments of the drill rig that are permitted on the supporting surface;
  - (h) the precautions to be taken to ensure that the drilling operation and movement of the drill rig on the path of travel,
    - (i) do not damage or affect the stability of any building, structure, property or public way adjacent to, or in the vicinity of, the drilling operation, and
    - (ii) do not endanger a person using any building, structure, property or public way adjacent to, or in the vicinity of, the drilling operation;
  - (i) the frequency of inspections of the supporting surface and the path of travel of the drill rig, and the type of inspection required, to ensure they remain stable, do not deteriorate and continue to function as designed by the professional engineer, and any specific weather or other conditions that could affect the supporting surface or path of travel that would require additional inspections to be conducted; and
  - (j) the qualifications of the person who conducts the inspections of the supporting surface and path of travel and whether the person needs to be a professional engineer, a person under the direction of a professional engineer, a competent worker or another person with specified qualifications. O. Reg. 345/15, s. 19.
- (3) The supporting surface and path of travel for the drill rig shall be prepared or constructed in accordance with the professional engineer's written report. O. Reg. 345/15, s. 19.
- (4) No deviation from the written report is permitted unless the deviation is approved, in advance and in a written report, by a professional engineer. O. Reg. 345/15, s. 19.

(5) The supporting surface and path of travel for the drill rig shall be inspected by a professional engineer after they are prepared or constructed and before the drill rig is assembled and erected on the supporting surface or uses the path of travel to confirm that they were prepared or constructed in accordance with the professional engineer's report. O. Reg. 345/15, s. 19.

(6) The professional engineer shall prepare a written report of the results of the inspection under subsection (5). O. Reg. 345/15, s. 19.

(7) While a rotary foundation drill rig is in service at a drilling operation described in section 156.3, the employer responsible for the drilling operation shall ensure that,

- (a) the supporting surface and path of travel are regularly inspected in accordance with, and by the person identified by, the report described in subsection (2); and
- (b) a written report of the inspections and results are kept at the project and made available to an inspector upon request. O. Reg. 345/15, s. 19.

(8) The constructor and employer responsible for the drilling operation shall keep at the project a copy of all reports described in this section and make them available to an inspector upon request until the drilling operation is completed. O. Reg. 345/15, s. 19.

**156.5** (1) Before a drilling operation described in section 156.3 begins, the employer responsible for it shall,

- (a) develop a drilling procedure for the drill rig in accordance with subsection (2) and have it approved by a professional engineer; and
- (b) have a copy of the drilling procedure provided to, and reviewed with, the workers engaged in the drilling operation. O. Reg. 345/15, s. 19.

(2) The drilling procedure shall be in writing and shall include, at a minimum, details of,

- (a) the sequence of activities of the drilling operation to be followed including, if applicable, the delivery of concrete, rebar, steel piles and other materials related to the drilling operation;
- (b) the procedures to be implemented for removing excavated soil and material from an auger or drilling tool and away from the supporting surface of the drill rig;
- (c) the location to be used for storing excavated soil and material so that it does not endanger workers;
- (d) the working area and designated path of travel to be used for any machinery or equipment used in the vicinity of the drilling operation so that the machinery or equipment does not affect the stability and integrity of the supporting surface of the drill rig;
- (e) the measures and procedures to be implemented during the drilling operation to ensure that unremoved hazards do not endanger workers; and
- (f) the areas that have been designated at, or in the vicinity of, the drilling operation where,
  - (i) only persons authorized by the employer are allowed to enter, and
  - (ii) no persons or equipment are allowed to enter. O. Reg. 345/15, s. 19.

(3) While a rotary foundation drill rig is in service at a drilling operation described in section 156.3, the employer responsible for the drilling operation shall ensure that,

- (a) the drilling procedure described in subsection (2) is implemented; and
- (b) the drilling procedure is followed by the workers engaged in, and in the vicinity of, the drilling operation. O. Reg. 345/15, s. 19.

**156.6** (1) An employer shall ensure that a worker who operates a rotary foundation drill rig,

- (a) is qualified in accordance with section 156.7;
- (b) has completed a training program that meets the requirements of section 156.9, or is participating in a training program that meets such requirements and is being instructed on the operation of the drill rig;
- (c) has demonstrated to the employer that the worker has adequate knowledge and proficiency in operating the drill rig to be used at the project; and
- (d) is authorized by the employer to operate the drill rig at the project. O. Reg. 345/15, s. 19.

(2) The employer shall maintain a record of the training program described in section 156.9 provided to the worker that includes,

- (a) the worker's name and the training dates; and
- (b) the name and signature of the training provider. O. Reg. 345/15, s. 19.

(3) The employer shall make the training record available to an inspector upon request. O. Reg. 345/15, s. 19.

**156.7** (1) No worker shall operate a rotary foundation drill rig except in accordance with this section. O. Reg. 345/15, s. 19.

(2) The worker shall,

- (a) have completed a training program that meets the requirements of section 156.9 and have written proof of training available at the project to an inspector upon request; or
- (b) be participating in a training program that meets the requirements of section 156.9 and is being instructed on the operation of the drill rig. O. Reg. 345/15, s. 19.

(3) If a worker is operating a drill rig with an effective torque equal to or greater than 50 kilonewton metres, the worker shall have a certificate of qualification or written proof of training as required by section 156.8 available at the project to an inspector upon request. O. Reg. 345/15, s. 19.

**156.8** (1) No worker shall operate a rotary foundation drill rig with an effective torque greater than 270 kilonewton metres unless the worker,

- (a) holds a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*, that is not suspended, in the trade of hoisting engineer – mobile crane operator 1; or

**Note:** On January 1, 2022, the day subsection 10 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, clause 156.8 (1) (a) of the Regulation is amended by striking out “a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “a certificate of qualification or a provisional certificate of qualification issued under the *Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 885/21, s. 1)

- (b) is an apprentice who is working pursuant to a training agreement registered under the *Ontario College of Trades and Apprenticeship Act, 2009*, that is not suspended, in the trade of hoisting engineer – mobile crane operator 1. O. Reg. 345/15, s. 19.

**Note:** On January 1, 2022, the day subsection 10 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, clause 156.8 (1) (b) of the Regulation is amended by striking out “*Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “*Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 885/21, s. 2)

(2) No worker shall operate a rotary foundation drill rig with an effective torque greater than 190 kilonewton metres but less than or equal to 270 kilonewton metres unless the worker,

- (a) holds a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*, that is not suspended, in the trade of hoisting engineer – mobile crane operator 1, or hoisting engineer – mobile crane operator 2; or

**Note:** On January 1, 2022, the day subsection 10 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, clause 156.8 (2) (a) of the Regulation is amended by striking out “a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “a certificate of qualification or a provisional certificate of qualification issued under the *Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 885/21, s. 1)

- (b) is an apprentice who is working pursuant to a training agreement registered under the *Ontario College of Trades and Apprenticeship Act, 2009*, that is not suspended, in the trade of hoisting engineer – mobile crane operator 1, or hoisting engineer – mobile crane operator 2. O. Reg. 345/15, s. 19.

**Note:** On January 1, 2022, the day subsection 10 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, clause 156.8 (2) (b) of the Regulation is amended by striking out “*Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “*Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 885/21, s. 2)

(3) No worker shall operate a rotary foundation drill rig with an effective torque equal to or greater than 50 kilonewton metres but less than or equal to 190 kilonewton metres unless the worker,

- (a) holds a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*, that is not suspended, in the trade of hoisting engineer – mobile crane operator 1, or hoisting engineer – mobile crane operator 2;

**Note:** On January 1, 2022, the day subsection 10 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, clause 156.8 (3) (a) of the Regulation is amended by striking out “a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “a certificate of qualification or a provisional certificate of qualification issued under the *Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 885/21, s. 1)

- (b) is an apprentice who is working pursuant to a training agreement registered under the *Ontario College of Trades and Apprenticeship Act, 2009*, that is not suspended, in the trade of hoisting engineer – mobile crane operator 1, or hoisting engineer – mobile crane operator 2; or

**Note:** On January 1, 2022, the day subsection 10 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, clause 156.8 (3) (b) of the Regulation is amended by striking out “*Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “*Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 885/21, s. 2)

(c) has written proof that the worker has completed a training program on the operation of a 0-8 ton mobile crane that included instruction on,

- (i) the relevant requirements of this Regulation,
- (ii) how to use the manufacturer’s operating manuals,

- (iii) minimum distances when approaching an overhead electrical conductor,
- (iv) communications and signals,
- (v) types of mobile cranes and their components, including wire and synthetic rope, hydraulics, rigging and rigging hardware,
- (vi) pre-operational inspections and checks, and
- (vii) safe work practices related to mobile cranes, including crane set-up, load charts, assembly and disassembly of manual boom extensions, basic crane operation and maintenance. O. Reg. 345/15, s. 19.

**156.9** A training program for the operation of a rotary foundation drill rig shall include instruction on,

- (a) the relevant requirements of this Regulation and the drill rig manufacturer's operating manual;
- (b) safe work practices;
- (c) communications and signals;
- (d) pre-operational inspections and checks;
- (e) site assessment;
- (f) drill rig set-up, securing and operation; and
- (g) equipment maintenance. O. Reg. 345/15, s. 19.

#### TOWER CRANES

**157.** (1) No tower crane shall be erected at a project except in accordance with this section. O. Reg. 213/91, s. 157 (1).

(2) The foundations supporting a tower crane shall be designed by a professional engineer in accordance with the crane manufacturer's specifications and shall be constructed in accordance with the design. O. Reg. 213/91, s. 157 (2).

(3) The shoring and bracing that support a tower crane or tie it in place shall be designed by a professional engineer in accordance with the crane manufacturer's specifications and shall be installed in accordance with the design. O. Reg. 213/91, s. 157 (3).

(4) The structural engineer responsible for the structural integrity of the building or structure shall review the design drawings for the foundation, shoring and bracing for a tower crane before the crane is erected at a project to ensure the structural integrity of the building or structure. O. Reg. 213/91, s. 157 (4).

(5) The structural engineer who reviews the design drawings shall sign the drawings upon approving them. O. Reg. 213/91, s. 157 (5).

(6) The constructor shall keep at the project while a tower crane is erected a copy of the signed design drawings for its foundation, shoring and bracing and any written opinion about the drawings by a structural engineer. O. Reg. 213/91, s. 157 (6).

**158.** (1) Before a tower crane is erected at a project, a professional engineer shall ensure that the structural elements and components of the crane be subjected to non-destructive testing to ensure the structural integrity of the crane. O. Reg. 242/16, s. 16.

(2) The professional engineer conducting an inspection or under whose direction an inspection is done shall prepare a written report of the test results. O. Reg. 213/91, s. 158 (2); O. Reg. 85/04, s. 17.

(3) The constructor shall keep the report at the project while the crane is erected. O. Reg. 213/91, s. 158 (3).

**159.** (1) A professional engineer or a competent worker designated by a professional engineer shall visually inspect for defects the structural elements and components of a tower crane,

- (a) after the crane is erected and before it is used; and
- (b) after the inspection under clause (a), at intervals not greater than twelve months. O. Reg. 213/91, s. 159 (1).

(2) No tower crane shall be used until any defects found during an inspection are repaired in accordance with the instructions of the crane's manufacturer or a professional engineer. O. Reg. 213/91, s. 159 (2).

(3) A professional engineer or a competent worker designated by a professional engineer shall inspect a tower crane that has been repaired to ensure that the defects are corrected. O. Reg. 213/91, s. 159 (3).

(4) The professional engineer conducting an inspection or under whose direction the inspection is done shall prepare a written report of the test results. O. Reg. 213/91, s. 159 (4); O. Reg. 85/04, s. 18.

(5) The constructor shall keep the report at a project while the crane is erected. O. Reg. 213/91, s. 159 (5).

**160.** (1) A tower crane shall have automatic limit switches and automatic overload limit devices that prevent,

- (a) overloading at relative radii;



- (b) a load on the crane from reaching beyond the highest permissible position specified by the manufacturer; and
  - (c) the trolley from reaching beyond the permissible travel limit specified by the manufacturer. O. Reg. 213/91, s. 160 (1).
- (2) In addition to automatic limit switches and overload limit devices, a tower crane shall have such other switches and devices as the manufacturer specifies. O. Reg. 213/91, s. 160 (2).

**161.** (1) A competent worker shall perform operational tests on a tower crane to ensure that its automatic limit switches and overload limit devices are installed and functioning in accordance with the manufacturer’s specifications, if any. O. Reg. 213/91, s. 161 (1).

- (2) Operational tests shall be done,
  - (a) after the tower crane is erected on the project and before it is used; and
  - (b) at one-week intervals after the test under clause (a) while the crane is erected on the project. O. Reg. 213/91, s. 161 (2).
- (3) Overload limit devices for a tower crane shall be tested using test blocks designed for the purpose that have their weight clearly marked on them. O. Reg. 213/91, s. 161 (3).
- (4) The test blocks shall be kept on the project while the crane is erected. O. Reg. 213/91, s. 161 (4).

**162.** (1) A tower crane boom shall be able to slew freely when the crane is unattended except when,

- (a) the boom may collide with another crane, a structure or another object; or
- (b) to slew freely would be contrary to the written procedures of the crane’s manufacturer. O. Reg. 213/91, s. 162 (1).

(2) When a tower crane boom is not permitted to slew freely it shall be secured in accordance with the written procedures of the crane’s manufacturer. O. Reg. 213/91, s. 162 (2).

**163.** (1) Subject to subsection (2), the operator’s cabin of a tower crane shall be located on and attached to or positioned on the crane in accordance with the instructions of the crane’s manufacturer for the specific model and configuration of the crane and in such a manner that in the event of a failure of the boom, the cabin will not be crushed against the mast. O. Reg. 213/91, s. 163 (1).

- (2) The operator’s cabin shall not be located on or attached to the boom unless,
  - (a) the cabin and its attachments have been specifically designed and fabricated for that purpose by the original manufacturer of the crane in accordance with good engineering practice;
  - (b) the boom of the crane cannot affect or be affected by the operation of another crane or make contact with a structure or equipment;
  - (c) the crane is not overlapped by any part of another crane;
  - (d) because of specific site conditions, the location of the cabin on the boom provides greater visibility for the operator than does the manufacturer’s standard cabin location;
  - (e) the means of access to the cabin or other locations on the boom is by a catwalk constructed of skid resistant expanded metal or similar material and fitted with solidly constructed guardrails and devices which provide fall protection for the operator;
  - (f) the structural, environmental and ergonomic design of the cabin is equal to or greater than that of the crane’s manufacturer’s standard cabin design; and
  - (g) the proposed location and attachment method provide a structural and mechanical safety factor equal to or greater than that of a cabin located on the crane mast or attached to the slewing ring. O. Reg. 213/91, s. 163 (2).

(3) If the crane manufacturer specifies the location of the operator’s cabin to be on the boom of a tower crane, the crane manufacturer shall provide to the owner of the crane a report for the specific model and specific configuration of crane on a project. O. Reg. 213/91, s. 163 (3).

- (4) The crane manufacturer’s report shall include,
  - (a) the crane load restrictions, reductions or modifications resulting from the effect of the cabin weight and its offset from the boom centreline;
  - (b) the crane configuration and operating restrictions resulting from the effect of the cabin location and attachment method; and
  - (c) engineering design drawings that include,
    - (i) the structural and ergonomic design of the cabin,
    - (ii) the location of the cabin on the boom,
    - (iii) the attachment method including all fittings and hardware, and

(iv) all means of access. O. Reg. 213/91, s. 163 (4).

**164.** A load block of an unattended tower crane shall be left empty, at the top position and located at minimum radius. O. Reg. 213/91, s. 164.

**165.** (1) The track bed of a rail-mounted tower crane shall have a sound and rigid base capable of carrying all loads to which it is likely to be subjected without deformation or settlement which affects the stability of the crane. O. Reg. 213/91, s. 165 (1).

(2) The undercarriage of a rail-mounted tower crane shall be fitted with rail clamps that can be firmly attached to the rails to lock the crane in position. O. Reg. 213/91, s. 165 (2).

(3) A rail-mounted tower crane shall be locked in position on the rails when not in use. O. Reg. 213/91, s. 165 (3).

(4) A rail-mounted tower crane shall have rail stops or bumpers that extend at least as high as the centre of the undercarriage wheels and that are securely attached to the rail at both ends. O. Reg. 213/91, s. 165 (4).

#### DERRICKS, STIFF-LEG DERRICKS AND SIMILAR HOISTING DEVICES

**166.** (1) No derrick, stiff-leg derrick or similar hoisting device shall be attached to a building or structure unless this section is complied with. O. Reg. 213/91, s. 166 (1).

(2) A professional engineer shall prepare design drawings and specifications for the attachment of a derrick, stiff-leg derrick or similar hoisting device to a building or structure. O. Reg. 213/91, s. 166 (2).

(3) The design drawings and specifications shall include,

(a) the location of the derrick, stiff-leg derrick or similar hoisting device on the building or structure;

(b) the location of anchor bolts, guy wires, supports and shoring for it;

(c) particulars of the weight of the loads and the radius at which the loads are to be lifted; and

(d) particulars of the loads and forces on the building or structure imposed by the derrick, stiff-leg derrick or similar hoisting device. O. Reg. 213/91, s. 166 (3).

(4) The constructor shall ensure that the structural engineer responsible for the structural integrity of a building or structure reviews and approves in writing the design drawings and specifications for a derrick, stiff-leg derrick or similar hoisting device before it is installed. O. Reg. 213/91, s. 166 (4).

(5) A professional engineer shall inspect a derrick, stiff-leg derrick or similar hoisting device before it is first used on a building or structure to ensure that it is installed in accordance with the design drawings and specifications. O. Reg. 213/91, s. 166 (5).

(6) The professional engineer conducting the inspection shall prepare a written report of the inspection. O. Reg. 213/91, s. 166 (6); O. Reg. 85/04, s. 19.

(7) The constructor shall keep a copy of the design drawings and specifications for a derrick, stiff-leg derrick or similar hoisting device and the report prepared under subsection (6) at a project while the derrick, stiff-leg derrick or similar hoisting device is on the project. O. Reg. 213/91, s. 166 (7).

**167.** (1) The pilot of a helicopter that is hoisting materials shall be competent to fly an externally-loaded helicopter. O. Reg. 213/91, s. 167 (1).

(2) The pilot shall be in charge of the hoisting operation and shall determine the size and weight of loads to be hoisted and the method by which they are attached to the helicopter. O. Reg. 213/91, s. 167 (2).

(3) Ground personnel including signallers for a helicopter being used to hoist materials shall be competent workers. O. Reg. 213/91, s. 167 (3).

(4) The constructor shall take precautions against hazards caused by helicopter rotor downwash. O. Reg. 213/91, s. 167 (4).

#### CABLES, SLINGS, RIGGING

**168.** (1) A cable used by a crane or similar hoisting device,

(a) shall be steel wire rope of the type, size, grade and construction recommended by the manufacturer of the crane or similar hoisting device;

(b) shall be compatible with the sheaves and the drum of the crane or similar hoisting device;

(c) shall be lubricated to prevent corrosion and wear;

(d) shall not be spliced; and

(e) shall have its end connections securely fastened and shall be kept with at least three full turns on the drum. O. Reg. 213/91, s. 168 (1).

- (2) No cable used by a crane or similar hoisting device,
  - (a) subject to subsection (3), shall contain six randomly-distributed wires that are broken in one rope lay or three or more wires that are broken in one strand in a rope lay;
  - (b) shall be smaller than its nominal rope diameter by more than,
    - (i) one millimetre for a diameter up to and including nineteen millimetres,
    - (ii) two millimetres for a diameter greater than nineteen millimetres up to and including twenty-nine millimetres, and
    - (iii) three millimetres for a diameter greater than twenty-nine millimetres;
  - (c) shall be worn by more than one-third of the original diameter of its outside individual wires;
  - (d) shall show evidence of kinking, bird-caging, corrosion or other damage resulting in distortion of the rope structure; or
  - (e) shall show evidence of possible rope failure including rope damage caused by contact with electricity. O. Reg. 213/91, s. 168 (2).
- (3) No cable that is static or is used for pendants,
  - (a) shall contain three or more broken wires in one lay or in a section between end connectors; or
  - (b) shall have more than one broken wire at an end connector. O. Reg. 213/91, s. 168 (3).
- (4) Rotation-resistant wire rope shall not be used for a cable for boom hoist reeving and pendants. O. Reg. 213/91, s. 168 (4).
- (5) Rotation-resistant wire rope shall not be used where an inner wire or strand for a cable is damaged or broken. O. Reg. 213/91, s. 168 (5).

**169.** A cable used by a crane or similar hoisting device shall be capable of supporting at least,

- (a) three and one-half times the maximum load to which it is likely to be subjected if it is used on a device other than a tower crane and it winds on a drum or passes over a sheave;
- (b) five times the maximum load to which it is likely to be subjected if it is used on a tower crane and it winds on a drum or passes over a sheave;
- (c) three times the maximum load to which it is likely to be subjected if it is a pendant or is not subject to winding or bending; and
- (d) ten times the maximum load to which it is likely to be subjected if the crane or similar hoisting device is used for supporting persons. O. Reg. 213/91, s. 169.

**170.** (1) All cable used by a crane or similar hoisting device shall be visually inspected by a competent worker at least once a week when the crane or similar hoisting device is being used. O. Reg. 213/91, s. 170 (1).

(2) The worker performing an inspection shall record the condition of the rope or cable inspected in the log book for the crane or similar hoisting device. O. Reg. 213/91, s. 170 (2).

**171.** (1) A cable used by a crane or similar hoisting device shall be securely attached,

- (a) by binding and fastening the cable around an oval thimble in a way that is strong enough to prevent the cable thimble from separating; or
- (b) by fastening the cable within either a tapered socket by means of virgin zinc or a wedge-type socket fitted with a wire rope clip at the dead end to prevent the accidental release or loosening of the wedge. O. Reg. 213/91, s. 171 (1).

(2) The dead end cable of a wedge socket assembly on a hoisting line shall extend between 100 millimetres and 300 millimetres out of the socket. O. Reg. 213/91, s. 171 (2).

**172.** (1) A container, sling or similar device for rigging or hoisting an object, including its fittings and attachments,

- (a) shall be suitable for its intended use;
- (b) shall be suitable for and capable of supporting the object being rigged or hoisted;
- (c) shall be so arranged as to prevent the object or any part of the object from slipping or falling;
- (d) shall be capable of supporting at least five times the maximum load to which it may be subjected; and
- (e) shall be capable of supporting at least ten times the load to which it may be subjected if it is to be used to support a person. O. Reg. 213/91, s. 172 (1).

(2) A sling or similar device made of web-type fabric or nylon shall be labelled to indicate its load rating capacity. O. Reg. 213/91, s. 172 (2).

(3) No sling or similar device for rigging or hoisting made of web-type fabric or nylon shall be used if it may be cut. O. Reg. 213/91, s. 172 (3).

**173.** (1) Every hoisting hook shall be equipped with a safety catch. O. Reg. 213/91, s. 173 (1).

(2) No safety catch is required on a hoisting hook used in placing structural members if the method of placing protects workers to the same standard as a safety catch does. O. Reg. 213/91, s. 173 (2).

(3) A hoisting hook shall have its load rating legibly cast or stamped on it in a location where the person using the hook can readily see it. O. Reg. 213/91, s. 173 (3).

(4) A hoisting hook shall not be used if it is cracked, has a throat opening that is greater than as manufactured or is twisted from the plane of the unbent hook. O. Reg. 213/91, s. 173 (4).

**174.** A hook block shall have its load rating and weight legibly cast or stamped on it in a conspicuous location. O. Reg. 213/91, s. 174.

**175.** (1) An overhauling weight used on the cable of a crane or similar hoisting device,

(a) shall be prevented from sliding up or down the cable; and

(b) shall be securely attached to the load hook and the cable. O. Reg. 213/91, s. 175 (1).

(2) No overhauling weight used on the cable of a crane or similar hoisting device shall be split. O. Reg. 213/91, s. 175 (2).

**176.** (1) Only an alloy steel chain or a chain manufactured for the purpose shall be used for hoisting. O. Reg. 213/91, s. 176.

(2) No alloy steel chain shall be annealed or welded. O. Reg. 345/15, s. 20.

(3) A chain used for hoisting shall,

(a) be labelled to indicate its load rating capacity;

(b) be repaired and reconditioned in accordance with the specifications of its manufacturer;

(c) after being repaired or reconditioned, be proof tested in accordance with the specifications of its manufacturer; and

(d) be visually inspected by a competent worker as frequently as recommended by its manufacturer and, in any case, at least once a week when the chain is in service. O. Reg. 345/15, s. 20.

**177.** REVOKED: O. Reg. 345/15, s. 21.

**178.** A friction-type clamp used in hoisting materials shall be constructed so that an accidental slackening of the hoisting cable does not release the clamp. O. Reg. 213/91, s. 178.

**179.** (1) If a worker may be endangered by the rotation or uncontrolled motion of a load being hoisted by a crane or similar hoisting device, one or more guide ropes or tag lines shall be used to prevent the rotation or uncontrolled motion. O. Reg. 213/91, s. 179 (1).

(2) No guide rope or tag line shall be removed from a load referred to in subsection (1) until the load is landed and there is no danger of it tipping, collapsing or rolling. O. Reg. 213/91, s. 179 (2).

**180.** (1) Piles and sheet-piling shall be adequately supported to prevent their uncontrolled movement while they are being hoisted, placed, removed or withdrawn. O. Reg. 213/91, s. 180 (1).

(2) No worker shall be in an area where piles or sheet-piling are being hoisted, placed, removed or withdrawn unless the worker is directly engaged in the operation. O. Reg. 213/91, s. 180 (2).

#### ELECTRICAL HAZARDS

**181.** (1) Except where otherwise required by this Regulation, electrical work performed on or near electrical transmission or distribution systems shall be performed in accordance with the document entitled “Electrical Utility Safety Rules” published by the Infrastructure Health and Safety Association and revised 2019. O. Reg. 627/05, s. 4; O. Reg. 443/09, s. 5; O. Reg. 345/15, s. 22; O. Reg. 327/19, s. 2.

(2) Sections 182, 187, 188, 189, 190, 191 and 193 do not apply to electrical work that is performed on or near electrical transmission or distribution systems if the work is performed in accordance with the document referred to in subsection (1). O. Reg. 627/05, s. 4.

**182.** (1) No worker shall connect, maintain or modify electrical equipment or installations unless,

(a) the worker holds a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*, that is not suspended, in the trade of,

(i) electrician — construction and maintenance, or

(ii) electrician — domestic and rural, if the worker is performing work that is limited to the scope of practice for that trade; or

**Note:** On January 1, 2022, the day subsection 10 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, clause 182 (1) (a) of the Regulation is amended by striking out “a certificate of qualification issued under the *Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “a certificate of qualification or a provisional certificate of qualification issued under the *Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 885/21, s. 1)

- (b) the worker is otherwise permitted to connect, maintain or modify electrical equipment or installations under the *Ontario College of Trades and Apprenticeship Act, 2009* or the *Technical Standards and Safety Act, 2000*. O. Reg. 627/05, s. 4; O. Reg. 88/13, s. 2.

**Note:** On January 1, 2022, the day subsection 10 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force, clause 182 (1) (b) of the Regulation is amended by striking out “*Ontario College of Trades and Apprenticeship Act, 2009*” and substituting “*Building Opportunities in the Skilled Trades Act, 2021*”. (See: O. Reg. 885/21, s. 2)

(2) A worker who does not meet the requirements of clause (1) (a) or (b) may insert an attachment plug cap on the cord of electrical equipment or an electrical tool into, or remove it from, a convenience receptacle. O. Reg. 627/05, s. 4.

**183.** Every reasonable precaution shall be taken to prevent hazards to workers from energized electrical equipment, installations and conductors. O. Reg. 627/05, s. 6.

**184.** (1) No person, other than a person authorized to do so by the supervisor in charge of the project, shall enter or be permitted to enter a room or other enclosure containing exposed energized electrical parts. O. Reg. 627/05, s. 7.

(2) The entrance to a room or other enclosure containing exposed energized electrical parts shall be marked by conspicuous warning signs stating that entry by unauthorized persons is prohibited. O. Reg. 627/05, s. 7.

**185.** (1) Electrical equipment, installations, conductors and insulating materials shall be suitable for their intended use and shall be installed, maintained, modified and operated so as not to pose a hazard to a worker. O. Reg. 627/05, s. 7.

(2) For greater certainty, the regulations made under section 113 of the *Electricity Act, 1998* apply to electrical equipment, installations, conductors and insulating materials and to temporary wiring installations on projects. O. Reg. 627/05, s. 7.

**186.** Electrical equipment, installations and conductors that are not to be used for the purpose for which they were designed shall be,

- (a) removed; or
- (b) left in an electrically non-hazardous condition by being disconnected, de-energized, tagged and,
  - (i) grounded, in the case of power lines,
  - (ii) locked out, in the case of electrical equipment. O. Reg. 627/05, s. 7.

**187.** Tools, ladders, scaffolding and other equipment or materials capable of conducting electricity shall not be stored or used so close to energized electrical equipment, installations or conductors that they can make electrical contact. O. Reg. 627/05, s. 7.

**188.** (1) This section applies unless the conditions set out in clauses 189 (a) and (b) are satisfied. O. Reg. 627/05, s. 7.

(2) No object shall be brought closer to an energized overhead electrical conductor with a nominal phase-to-phase voltage rating set out in Column 1 of the Table to this subsection than the distance specified opposite to it in Column 2.

TABLE

Item	Column 1 Nominal phase-to-phase voltage rating	Column 2 Minimum distance
1.	750 or more volts, but no more than 150,000 volts	3 m
2.	more than 150,000 volts, but no more than 250,000 volts	4.5 m
3.	more than 250,000 volts	6 m

O. Reg. 627/05, s. 7; O. Reg. 345/15, s. 23.

(3) Subsections (4) to (9) apply if a crane, similar hoisting device, backhoe, power shovel or other vehicle or equipment is operated near an energized overhead electrical conductor and it is possible for a part of the vehicle or equipment or its load to encroach on the minimum distance permitted under subsection (2). O. Reg. 627/05, s. 7.

- (4) A constructor shall,
  - (a) establish and implement written measures and procedures adequate to ensure that no part of a vehicle or equipment or its load encroaches on the minimum distance permitted by subsection (2); and
  - (b) make a copy of the written measures and procedures available to every employer on the project. O. Reg. 627/05, s. 7.
- (5) The written measures and procedures shall include taking the following precautions to protect workers:
  - 1. Adequate warning devices, visible to the operator and warning of the electrical hazard, shall be positioned in the vicinity of the hazard.
  - 2. The operator shall be provided with written notification of the electrical hazard before beginning the work.

3. A legible sign, visible to the operator and warning of the potential electrical hazard, shall be posted at the operator's station. O. Reg. 627/05, s. 7.

(6) Before a worker begins work that includes an activity described in subsection (3), the employer shall provide a copy of the written measures and procedures to the worker and explain them to him or her. O. Reg. 627/05, s. 7.

(7) The worker shall follow the written measures and procedures. O. Reg. 627/05, s. 7.

(8) A competent worker, designated as a signaller, shall be stationed so that he or she is in full view of the operator and has a clear view of the electrical conductor and of the vehicle or equipment, and shall warn the operator each time any part of the vehicle or equipment or its load may approach the minimum distance. O. Reg. 627/05, s. 7.

(9) Section 106 also applies with respect to the signaller designated under subsection (8). O. Reg. 627/05, s. 7.

**189.** Section 188 does not apply if,

(a) under the authority of the owner of the electrical conductor, protective devices and equipment are installed, and written measures and procedures are established and implemented, that are adequate to protect workers from electrical shock and burn; and

(b) the workers involved in the work use protective devices and equipment, including personal protective equipment, and follow written measures and procedures that are adequate to protect workers from electrical shock and burn. O. Reg. 627/05, s. 7.

**190.** (1) This section applies if work is to be done on or near energized exposed parts of electrical equipment or of an electrical installation or conductor. O. Reg. 627/05, s. 7.

(2) An employer shall,

(a) establish and implement written measures and procedures for complying with this section to ensure that workers are adequately protected from electrical shock and burn; and

(b) make a copy of the written measures and procedures available to every worker on the project. O. Reg. 627/05, s. 7.

(3) The worker shall follow the written measures and procedures. O. Reg. 627/05, s. 7.

(4) Subject to subsection (9), the power supply to the electrical equipment, installation or conductor shall be disconnected, locked out of service and tagged in accordance with subsection (6) before the work begins, and kept disconnected, locked out of service and tagged while the work continues. O. Reg. 627/05, s. 7.

(5) Hazardous stored electrical energy shall be adequately discharged or contained before the work begins and shall be kept discharged or contained while the work continues. O. Reg. 627/05, s. 7.

(6) The following rules apply to the tagging of the power supply under subsection (4):

1. The tag shall be made of non-conducting material and shall be installed so as not to become energized.

2. The tag shall be placed in a conspicuous location and shall be secured to prevent its inadvertent removal.

3. The tag shall indicate,

i. why the equipment, installation or conductor is disconnected,

ii. the name of the person who disconnected the equipment, installation or conductor,

iii. the name of the person's employer, and

iv. the date on which the equipment, installation or conductor was disconnected.

4. The tag shall not be removed unless it is safe to do so. O. Reg. 627/05, s. 7.

(7) A worker, before beginning work to which this section applies, shall verify that subsections (4) and (5) have been complied with. O. Reg. 627/05, s. 7.

(8) If more than one worker is involved in work to which this section applies, a means shall be provided to communicate the purpose and status of,

(a) the disconnecting, locking out and tagging of the electrical equipment, installation or conductor; and

(b) the discharging and containment of any hazardous stored electrical energy. O. Reg. 627/05, s. 7.

(9) Locking out is not required under subsection (4) if,

(a) in the case of a conductor, it is adequately grounded with a visible grounding mechanism;

(b) in the case of equipment or an installation,

(i) the power supply is less than 300 volts, the equipment or installation was not manufactured with provision for a locking device for the circuit breakers or fuses, and a written procedure has been implemented that is adequate to ensure that the circuit is not inadvertently energized, or

- (ii) the power supply is 300 or more volts but not more than 600 volts, the equipment or installation was not manufactured with provision for a locking device for the circuit breakers or fuses, a written procedure as to how work is to be done has been implemented and the work is supervised by a competent worker to ensure that the circuit is not inadvertently energized. O. Reg. 627/05, s. 7.

**191.** (1) This section applies instead of section 190 if work is to be done on or near energized exposed parts of electrical equipment or of an electrical installation or conductor and,

- (a) it is not reasonably possible to disconnect the equipment, installation or conductor from the power supply before working on or near the energized exposed parts;
- (b) the equipment, installation or conductor is rated at a nominal voltage of 600 volts or less, and disconnecting the equipment, installation or conductor would create a greater hazard to a worker than proceeding without disconnecting it; or
- (c) the work consists only of diagnostic testing of the equipment, installation or conductor. O. Reg. 627/05, s. 7.

(2) Subsection (10) applies, in addition to subsections (3) to (9), if the equipment, installation or conductor is nominally rated at,

- (a) greater than 400 amperes and greater than 200 volts; or
- (b) greater than 200 amperes and greater than 300 volts. O. Reg. 627/05, s. 7.

(3) Only a worker who meets the requirements of clause 182 (1) (a) or (b) shall perform the work. O. Reg. 627/05, s. 7.

(4) The constructor shall,

- (a) ensure that written measures and procedures for complying with this section are established and implemented, so that workers are adequately protected from electrical shock and burn; and
- (b) make a copy of the written measures and procedures available to every employer on the project. O. Reg. 627/05, s. 7.

(5) Before a worker begins work to which this section applies, the employer shall provide a copy of the written measures and procedures to the worker and explain them to him or her. O. Reg. 627/05, s. 7.

(6) The worker shall follow the written procedures. O. Reg. 627/05, s. 7.

(7) A worker shall use mats, shields or other protective devices or equipment, including personal protective equipment, adequate to protect the worker from electrical shock and burn. O. Reg. 627/05, s. 7.

(8) If the electrical equipment, installation or conductor is rated at a nominal voltage of 300 volts or more, an adequately equipped competent worker who can perform rescue operations, including cardiopulmonary resuscitation, shall be stationed so that he or she can see the worker who is performing the work. O. Reg. 627/05, s. 7.

(9) Subsection (8) does not apply if the work consists only of diagnostic testing of the equipment, installation or conductors. O. Reg. 627/05, s. 7.

(10) In the case of equipment or of an installation or conductor described in subsection (2), a worker shall not perform the work unless the following additional conditions are satisfied:

1. The owner of the equipment, installation or conductor has provided the employer and the constructor with a record showing that it has been maintained according to the manufacturer's specifications.
2. A copy of the maintenance record is readily available at the project.
3. The employer has determined from the maintenance record that the work on the equipment, installation or conductor can be performed safely without disconnecting it.
4. Before beginning the work, the worker has verified that paragraphs 1, 2 and 3 have been complied with. O. Reg. 627/05, s. 7.

**192.** All tools, devices and equipment, including personal protective equipment, that are used for working on or near energized exposed parts of electrical equipment, installations or conductors shall be designed, tested, maintained and used so as to provide adequate protection to workers. O. Reg. 627/05, s. 7.

**193.** (1) A worker who may be exposed to the hazard of electrical shock or burn while performing work shall use rubber gloves,

- (a) that are adequate to protect him or her against electrical shock and burn;
- (b) that have been tested and certified in accordance with subsection (2), if applicable; and
- (c) that have been air tested and visually inspected for damage and adequacy immediately before each use. O. Reg. 627/05, s. 7.

(2) Rubber gloves rated for use with voltages above 5,000 volts AC shall be tested and certified to ensure that they can withstand the voltages for which they are rated,

- (a) at least once every three months, if they are in service;
- (b) at least once every six months, if they are not in service. O. Reg. 627/05, s. 7.
- (3) Rubber gloves shall be worn with adequate leather protectors and shall not be worn inside out. O. Reg. 627/05, s. 7.
- (4) Leather protectors shall be visually inspected for damage and adequacy immediately before each use. O. Reg. 627/05, s. 7.
- (5) Rubber gloves or leather protectors that are damaged or not adequate to protect workers from electrical shock and burn shall not be used. O. Reg. 627/05, s. 7.
- (6) Workers shall be trained in the proper use, care and storage of rubber gloves and leather protectors. O. Reg. 627/05, s. 7.

**194.** (1) A switch and panel board controlling a service entrance, service feeder or branch circuit shall meet the requirements of this section. O. Reg. 627/05, s. 7.

(2) A switch and panel board shall be securely mounted on a soundly constructed vertical surface and shall have a cover over uninsulated parts carrying current. O. Reg. 627/05, s. 7.

(3) A switch and panel board shall be located,

- (a) in an area where water will not accumulate; and
- (b) within easy reach of workers and readily accessible to them. O. Reg. 627/05, s. 7.

(4) The area in front of a panel board shall be kept clear of obstructions. O. Reg. 627/05, s. 7.

(5) A switch that controls a service entrance, service feeder or branch circuit providing temporary power,

- (a) shall not be locked in the energized position; and
- (b) shall be housed in an enclosure that can be locked and is provided with a locking device. O. Reg. 627/05, s. 7.

**195.** All electrical extension cords used at a project shall have a grounding conductor and at least two other conductors. O. Reg. 627/05, s. 7.

**195.1** (1) Cord-connected electrical equipment or tools shall have a casing that is adequately grounded. O. Reg. 627/05, s. 7.

(2) All cord connections to electrical equipment or tools shall be polarized. O. Reg. 627/05, s. 7.

(3) Subsections (1) and (2) do not apply to cord-connected electrical equipment or tools that are adequately double-insulated and whose insulated casing shows no evidence of cracks or defects. O. Reg. 627/05, s. 7.

(4) Subsection (1) does not apply to a portable electrical generator in which the electrical equipment or tools are not exposed to an external electric power source if the casing of portable electrical equipment or tools connected to the generator is bonded to a non-current-carrying part of the generator. O. Reg. 627/05, s. 7.

**195.2** When a portable electrical tool is used outdoors or in a wet location,

- (a) if the source of power is an ungrounded portable generator having a maximum output of 1.8 kilowatts or less, a ground fault circuit interrupter of the Class A type shall be located in the cord feeding the tool, as close to the tool as possible;
- (b) in all other cases, the tool shall be plugged into a receptacle protected by a ground fault circuit interrupter of the Class A type. O. Reg. 627/05, s. 7.

**195.3** (1) Defective electrical equipment and tools that may pose a hazard shall be immediately disconnected, removed from service and tagged as being defective. O. Reg. 627/05, s. 7.

(2) The cause of a ground fault or the tripping of a ground fault circuit interrupter shall be immediately investigated to determine the hazard and corrective action shall be taken immediately. O. Reg. 627/05, s. 7.

#### EXPLOSIVES

**196.** (1) If explosives are to be used on a project, the employer responsible for blasting shall designate a competent worker to be in charge of blasting operations. O. Reg. 213/91, s. 196 (1).

(2) The employer shall post the name of the worker in charge of blasting operations for a project in a conspicuous place on the project and in every magazine. O. Reg. 213/91, s. 196 (2).

(3) The worker in charge of blasting operations for a project shall personally supervise blasting operations at the project, including the loading, priming and initiating of all charges. O. Reg. 213/91, s. 196 (3).

(4) The worker in charge of blasting operations for a project,

- (a) shall inspect for hazardous conditions explosives and the magazines in which they are stored,
  - (i) at least once a month, and



(ii) on the day they are to be used;

- (b) shall promptly report the results of inspections under clause (a) to the supervisor in charge of the project;
- (c) shall take immediate steps to correct any hazardous condition; and
- (d) shall dispose of all deteriorated explosives. O. Reg. 213/91, s. 196 (4).

(5) If an act of careless placing or handling of explosives on the project is discovered by, or reported to the worker in charge of blasting operations, the worker shall promptly investigate the circumstances and report the results of the investigation to the supervisor in charge of the project. O. Reg. 213/91, s. 196 (5).

**197.** Only a competent worker or a worker who is working under the direct personal supervision of a competent worker shall handle, transport, prepare and use explosives on a project. O. Reg. 213/91, s. 197.

**198.** (1) A magazine containing an explosive shall be securely locked at all times when the competent worker described in section 197 is not present. O. Reg. 213/91, s. 198 (1).

(2) No explosive shall be outside a magazine unless the explosive is required for immediate use. O. Reg. 213/91, s. 198 (2).

(3) An explosive outside a magazine shall be attended at all times. O. Reg. 213/91, s. 198 (3).

**199.** An explosive shall remain in its original wrapper unless it is manufactured and intended for use other than in its original wrapper. O. Reg. 213/91, s. 199.

**200.** (1) No fire or other naked flame shall be located in a magazine or eight metres or less from any explosive. O. Reg. 142/17, s. 22.

(2) No person shall smoke in a magazine or eight metres or less from any explosive. O. Reg. 142/17, s. 22.

**201.** Blasting mats shall be used to prevent flying objects caused by blasting operations from endangering persons and property located on or adjacent to a project. O. Reg. 213/91, s. 201.

**202.** (1) This section applies if electric blasting caps are used on a project. O. Reg. 213/91, s. 202 (1).

(2) The protective shunt shall not be removed from the leg wire until connections are made. O. Reg. 213/91, s. 202 (2).

(3) The firing circuit shall be short-circuited while the leads from the blasting caps are being connected to each other and to the firing cables. O. Reg. 213/91, s. 202 (3).

(4) The short circuit shall not be removed until immediately before blasting and until all workers have left the area affected by the blasting operations. O. Reg. 213/91, s. 202 (4).

(5) The source of energy for a blasting operation shall be disconnected from the firing circuit immediately after firing. O. Reg. 213/91, s. 202 (5).

**203.** (1) Before blasting begins, the worker in charge of blasting operations shall post workers at the approaches to the affected area in order to prevent access to it. O. Reg. 213/91, s. 203 (1).

(2) Before blasting begins, the worker in charge of blasting operations shall ensure,

- (a) that only workers required to carry out the blasting are located in the affected area;
- (b) that no workers remain in an area whose means of egress passes the affected area; and
- (c) that a warning that is clearly audible within a radius of one kilometre of the blast is given by siren. O. Reg. 213/91, s. 203 (2).

**204.** (1) Before a drill hole for loading explosives is drilled, the exposed surface shall be examined for drill holes or remnants of drill holes that may contain explosives and any explosive found shall be removed if practicable. O. Reg. 213/91, s. 204 (1).

(2) No drill hole shall be drilled,

- (a) 7.5 metres or less from another hole that is being loaded with or contains explosives; and
  - (b) 150 millimetres or less from another hole or remnant of a hole that has been charged or blasted unless adequate precautions have been taken to ensure that the other hole is free from explosives. O. Reg. 213/91, s. 204 (2); O. Reg. 142/17, s. 23 (1, 2).
- (3) Clause (2) (a) does not apply to a hole being drilled adjacent to another hole that is being loaded with explosives,
- (a) if a professional engineer prepares a specification showing the location of the drill hole and the adjacent hole and describing the precautions to be taken to prevent the accidental detonation by the drilling operation of the explosives in the adjacent hole; and
  - (b) if the drilling is done as described in the specification referred to in clause (a). O. Reg. 213/91, s. 204 (3).

(4) No drill hole permitted under subsection (3) shall be drilled one metre or less from another hole containing explosives. O. Reg. 213/91, s. 204 (4); O. Reg. 142/17, s. 23 (3).

(5) The professional engineer's specification shall be in writing. O. Reg. 213/91, s. 204 (5); O. Reg. 85/04, s. 20.

(6) The employer responsible for blasting shall keep a copy of the specification at the project until the blasting to which the specification refers is completed. O. Reg. 213/91, s. 204 (6).

**205.** (1) If cartridges of explosives are to be used in a drill hole, the hole shall be made large enough that a cartridge can be inserted easily to the bottom of the hole. O. Reg. 213/91, s. 205 (1).

(2) No drill hole shall be charged with explosives unless a properly prepared detonation agent is placed in the charge. O. Reg. 213/91, s. 205 (2).

(3) Drill holes charged with explosives in one loading operation shall be fired in one operation. O. Reg. 213/91, s. 205 (3).

(4) No drill hole that is charged with explosives shall be left unfired for any longer than is required in a continuing operation to complete the charging and blasting of adjacent holes. O. Reg. 213/91, s. 205 (4).

**206.** Only a non-sparking tool or rod shall be used in the charging of a drill hole or in a drill hole containing explosives. O. Reg. 213/91, s. 206.

#### ROOFING

**207.** (1) If a built-up roof is being constructed, repaired or resurfaced, a barrier shall be placed in the immediate work area at least two metres from the perimeter of the roof. O. Reg. 213/91, s. 207 (1).

(2) The barrier shall consist of portable weighted posts supporting a taut chain, cable or rope that is located 1.1 metres above the roof level. O. Reg. 213/91, s. 207 (2).

**208.** (1) A pipe that supplies hot tar or bitumen to a roof shall be securely fixed and supported to prevent its deflection. O. Reg. 213/91, s. 208 (1).

(2) If a pipe discharges hot tar or bitumen two metres or less from the edge of a roof, a guardrail shall be provided at the edge of the roof. O. Reg. 213/91, s. 208 (2); O. Reg. 142/17, s. 24.

**209.** (1) A hoist used on a roof,

(a) shall have a guardrail installed on both sides of the frame at the edge of the roof; and

(b) shall be positioned in such a way that the hoist cable is vertical at all times while a load is being hoisted. O. Reg. 213/91, s. 209 (1).

(2) Only a competent worker shall operate a hoist used on a roof. O. Reg. 213/91, s. 209 (2).

**210.** The counterweights on a roofer's hoist,

(a) shall be suitable for the purpose;

(b) shall not consist of roofing or other construction material;

(c) shall be securely attached to the hoist; and

(d) shall provide a safety factor against overturning of not less than three. O. Reg. 213/91, s. 210.

#### HOT TAR OR BITUMEN ROADTANKERS

**211.** (1) Only a competent worker shall operate a hot tar or bitumen roadtanker or kettle. O. Reg. 213/91, s. 211 (1).

(2) If a hot tar or bitumen roadtanker or kettle is fitted with a propane-fuelled heater,

(a) the storage cylinder for propane shall not be placed closer than three metres to a source of fire or ignition;

(b) the lines connecting the storage cylinder for propane to the heating device shall be located so that they do not come into contact with the hot tar or bitumen in the case of a spill or a failure of a component of the system; and

(c) a fire extinguisher with an Underwriters' Laboratories of Canada rating of at least 4A40BC shall be provided with the roadtanker or kettle. O. Reg. 213/91, s. 211 (2).

(3) A propane burner used on a bitumen roadtanker or kettle,

(a) shall have a thermal rating no greater than that recommended by the manufacturer of the roadtanker or kettle; and

(b) shall consist of components that are adequate for their intended use. O. Reg. 213/91, s. 211 (3).

(4) Hot tar or bitumen shall be transferred from a roadtanker to a kettle through enclosed piping. O. Reg. 213/91, s. 211 (4).

#### DEMOLITION AND DAMAGED STRUCTURES

**212.** (1) If a structure is so damaged that a worker is likely to be endangered by its partial or complete collapse,

(a) the structure shall be braced and shored; and

(b) safeguards appropriate in the circumstances shall be provided to prevent injury to a worker. O. Reg. 213/91, s. 212 (1).

(2) Safeguards shall be installed progressively from a safe area towards the hazard so that the workers installing the safeguards are not endangered. O. Reg. 213/91, s. 212 (2).

**213.** (1) Only a worker who is directly engaged in the demolition, dismantling or moving of a building or structure shall be in, on or near it. O. Reg. 213/91, s. 213 (1).

(2) If the demolition or dismantling of a building or structure is discontinued, barriers shall be erected to prevent access by people to the remaining part of the building or structure. O. Reg. 213/91, s. 213 (2).

(3) A worker shall enter only the part of a building or structure being demolished that will safely support the worker. O. Reg. 213/91, s. 213 (3).

**214.** (1) No building or structure shall be demolished, dismantled or moved until this section is complied with. O. Reg. 213/91, s. 214 (1).

(2) Precautions shall be taken to prevent injury to a person on or near the project or the adjoining property that may result from the demolition, dismantling or moving of a building or structure. O. Reg. 213/91, s. 214 (2).

(3) All gas, electrical and other services that may endanger persons who have access to a building or structure shall be shut off and disconnected before, and shall remain shut off and disconnected during, the demolition, dismantling or moving of the building or structure. O. Reg. 213/91, s. 214 (3).

(4) All toxic, flammable or explosive substances shall be removed from a building or structure that is to be demolished, dismantled or moved. O. Reg. 213/91, s. 214 (4).

**215.** (1) Sections 216, 217, 218 and 220 do not apply with respect to a building or structure that is being demolished by,

(a) a heavy weight suspended by cable from a crane or similar hoisting device;

(b) a power shovel, bulldozer or other vehicle;

(c) the use of explosives; or

(d) a combination of methods described in clauses (a) to (c). O. Reg. 213/91, s. 215 (1).

(2) The controls of a mechanical device used to demolish a building or structure shall be operated from a location that is as remote as is practicable from the building or structure. O. Reg. 213/91, s. 215 (2).

(3) If a swinging weight is used to demolish a building or structure, the supporting cable of the weight shall be short enough or shall be so restrained that the weight does not swing against another building or structure. O. Reg. 213/91, s. 215 (3).

**216.** (1) Demolition and dismantling of a building or structure shall proceed systematically and continuously from the highest to the lowest point unless a worker is endangered by this procedure. O. Reg. 213/91, s. 216 (1).

(2) Despite subsection (1), the skeleton structural frame in a skeleton structural frame building may be left in place during the demolition or dismantling of the masonry if the masonry and any loose material are removed from the frame systematically and continuously from the highest to the lowest point. O. Reg. 213/91, s. 216 (2).

(3) The work above a tier or floor of a building or structure shall be completed before the support of the tier or floor is affected by demolition or dismantling operations. O. Reg. 213/91, s. 216 (3).

**217.** No exterior wall of a building or structure shall be demolished until all glass is removed from windows, doors, interior partitions and components containing glass or is protected to prevent the glass from breaking during the demolition. O. Reg. 213/91, s. 217.

**218.** (1) Masonry walls of a building or structure being demolished or dismantled shall be removed in reasonably level courses. O. Reg. 213/91, s. 218 (1).

(2) No materials in a masonry wall of a building or structure being demolished or dismantled shall be loosened or permitted to fall in masses that are likely to endanger,

(a) a person; or

(b) the structural stability of a scaffold or of a floor or other support of the building or structure. O. Reg. 213/91, s. 218 (2).

**219.** No worker shall stand on top of a wall, pier or chimney to remove material from it unless flooring, scaffolding or staging is provided on all sides of it not more than 2.4 metres below the place where the worker is working. O. Reg. 213/91, s. 219.

**220.** No truss, girder or other structural member of a building or structure being demolished or dismantled shall be disconnected until,

- (a) it is relieved of all loads other than its own weight; and
- (b) it has temporary support. O. Reg. 213/91, s. 220.

**221.** (1) A basement, cellar or excavation left after a building or structure is demolished, dismantled or moved,

- (a) shall be backfilled to grade level; or
- (b) shall have fencing along its open sides. O. Reg. 213/91, s. 221 (1).

(2) Subsection (1) does not apply to a basement or cellar that is enclosed by a roof, floor or other solid covering if all openings in the roof, floor or covering are covered with securely fastened planks. O. Reg. 213/91, s. 221 (2).

**PART II.1** (ss. 221.1-221.19) REVOKED: O. Reg. 96/11, s. 1.

### **PART III EXCAVATIONS**

#### INTERPRETATION AND APPLICATION

**222.** In this Part,

“engineered support system” means an excavation or trench shoring system, designed for a specific project or location, assembled in place and which cannot be moved as a unit; (“système de soutien calculé”)

“hydraulic support system” means a system capable of being moved as a unit, designed to resist the pressure from the walls of an excavation by applying a hydraulic counterpressure through the struts; (“système de soutien hydraulique”)

“prefabricated support system” means a trench box, trench shield or similar structure, composed of members connected to each other and capable of being moved as a unit, and designed to resist the pressure from the walls of an excavation but does not include a hydraulic support system; (“système de soutien préfabriqué”)

“pressure”, in relation to a wall of an excavation, means the lateral pressure of the earth on the wall calculated in accordance with generally accepted engineering principles and includes hydrostatic pressure and pressure due to surcharge. (“pression”) O. Reg. 213/91, s. 222; O. Reg. 142/17, s. 25.

**223.** This Part applies to all excavating and trenching operations. O. Reg. 213/91, s. 223.

#### ENTRY AND WORKING ALONE

**224.** No person shall enter or be permitted to enter an excavation that does not comply with this Part. O. Reg. 213/91, s. 224.

**225.** Work shall not be performed in a trench unless another worker is working above ground in close proximity to the trench or to the means of access to it. O. Reg. 213/91, s. 225.

#### SOIL TYPES

**226.** (1) For the purposes of this Part, soil shall be classified as Type 1, 2, 3 or 4 in accordance with the descriptions set out in this section. O. Reg. 213/91, s. 226 (1).

(2) Type 1 soil,

- (a) is hard, very dense and only able to be penetrated with difficulty by a small sharp object;
- (b) has a low natural moisture content and a high degree of internal strength;
- (c) has no signs of water seepage; and
- (d) can be excavated only by mechanical equipment. O. Reg. 213/91, s. 226 (2).

(3) Type 2 soil,

- (a) is very stiff, dense and can be penetrated with moderate difficulty by a small sharp object;
- (b) has a low to medium natural moisture content and a medium degree of internal strength; and
- (c) has a damp appearance after it is excavated. O. Reg. 213/91, s. 226 (3).

(4) Type 3 soil is,

- (a) previously excavated soil; or
- (b) soil that is stiff to firm or compact to loose in consistency and has one or more of the following characteristics:
  - (i) It exhibits signs of surface cracking.
  - (ii) It exhibits signs of water seepage.
  - (iii) If it is dry, it may run easily into a well-defined conical pile.

(iv) It has a low degree of internal strength. O. Reg. 345/15, s. 24.

(5) Type 4 soil,

- (a) is soft to very soft and very loose in consistency, very sensitive and upon disturbance is significantly reduced in natural strength;
- (b) runs easily or flows, unless it is completely supported before excavating procedures;
- (c) has almost no internal strength;
- (d) is wet or muddy; and
- (e) exerts substantial fluid pressure on its supporting system. O. Reg. 213/91, s. 226 (5).

**227.** (1) The type of soil in which an excavation is made shall be determined by visual and physical examination of the soil,

- (a) at the walls of the excavation; and
- (b) within a horizontal distance from each wall equal to the depth of the excavation measured away from the excavation. O. Reg. 213/91, s. 227 (1).

(2) The soil in which an excavation is made shall be classified as the type described in section 226 that the soil most closely resembles. O. Reg. 213/91, s. 227 (2).

(3) If an excavation contains more than one type of soil, the soil shall be classified as the type with the highest number as described in section 226 among the types present. O. Reg. 213/91, s. 227 (3).

#### PRECAUTIONS CONCERNING SERVICES

**228.** (1) Before an excavation is begun,

- (a) the employer excavating shall ensure that all gas, electrical and other services in and near the area to be excavated are located and marked;
- (b) the employer and worker locating and marking the services described in clause (a) shall ensure that they are accurately located and marked; and
- (c) if a service may pose a hazard, the service shall be shut off and disconnected. O. Reg. 443/09, s. 6.

(2) If a service may pose a hazard and it cannot be shut off or disconnected, the owner of the service shall be requested to supervise the uncovering of the service during the excavation. O. Reg. 443/09, s. 6.

(3) Pipes, conduits and cables for gas, electrical and other services in an excavation shall be supported to prevent their failure or breakage. O. Reg. 443/09, s. 6.

#### PROTECTION OF ADJACENT STRUCTURES

**229.** (1) If an excavation may affect the stability of an adjacent building or structure, the constructor shall take precautions to prevent damage to the adjacent building or structure. O. Reg. 213/91, s. 229 (1).

(2) A professional engineer shall specify in writing the precautions required under subsection (1). O. Reg. 213/91, s. 229 (2).

(3) Such precautions as the professional engineer specifies shall be taken. O. Reg. 213/91, s. 229 (3).

#### GENERAL REQUIREMENTS

**230.** Every excavation that a worker may be required to enter shall be kept reasonably free of water. O. Reg. 213/91, s. 230.

**231.** An excavation in which a worker may work shall have a clear work space of at least 450 millimetres between the wall of the excavation and any formwork or masonry or similar wall. O. Reg. 213/91, s. 231.

**232.** (1) The walls of an excavation shall be stripped of loose rock or other material that may slide, roll or fall upon a worker. O. Reg. 213/91, s. 232 (1).

(2) The walls of an excavation cut in rock shall be supported by rock anchors or wire mesh if support is necessary to prevent the spalling of loose rock. O. Reg. 213/91, s. 232 (2).

**233.** (1) A level area extending at least one metre from the upper edge of each wall of an excavation shall be kept clear of equipment, excavated soil, rock and construction material. O. Reg. 213/91, s. 233 (1).

(2) The stability of a wall of an excavation shall be maintained where it may be affected by stockpiling excavated soil or rock or construction materials. O. Reg. 213/91, s. 233 (2).

(3) No person shall operate a vehicle or other machine and no vehicle or other machine shall be located in such a way as to affect the stability of a wall of an excavation. O. Reg. 213/91, s. 233 (3).

(4) If a person could fall into an excavation that is more than 2.4 metres deep, a barrier at least 1.1 metres high shall be provided at the top of every wall of the excavation that is not sloped as described in clauses 234 (2) (e), (f) and (g). O. Reg. 213/91, s. 233 (4).

#### SUPPORT SYSTEMS

**234.** (1) The walls of an excavation shall be supported by a support system that complies with sections 235, 236, 237, 238, 239 and 241. O. Reg. 213/91, s. 234 (1).

(2) Subsection (1) does not apply with respect to an excavation,

(a) that is less than 1.2 metres deep;

(b) that no worker is required to enter;

(c) that is not a trench and with respect to which no worker is required to be closer to a wall than the height of the wall;

(d) that is cut in sound and stable rock;

(e) made in Type 1 or Type 2 soil and whose walls are sloped to 1.2 metres or less from its bottom with a slope having a minimum gradient of one vertical to one horizontal;

(f) made in Type 3 soil and whose walls are sloped from its bottom with a slope having a minimum gradient of one vertical to one horizontal;

(g) made in Type 4 soil and whose walls are sloped from its bottom with a slope having a minimum gradient of one vertical to three horizontal; or

(h) that is not a trench and is not made in Type 4 soil and with respect to which a professional engineer has given a written opinion that the walls of the excavation are sufficiently stable that no worker will be endangered if no support system is used. O. Reg. 213/91, s. 234 (2); O. Reg. 142/17, s. 26.

(3) The opinion in clause (2) (h) shall include details of,

(a) the specific project and the location thereon;

(b) any specific condition for which the opinion applies; and

(c) the frequency of inspections. O. Reg. 213/91, s. 234 (3).

(4) The constructor shall keep on the project a copy of every opinion given by a professional engineer for the purpose of clause (2) (h) while the project is in progress. O. Reg. 213/91, s. 234 (4).

(5) The professional engineer who gives an opinion described in clause (2) (h), or a competent worker designated by him or her, shall inspect the excavation to which the opinion relates as frequently as the opinion specifies. O. Reg. 213/91, s. 234 (5).

**235.** (1) Subject to subsection (2), a support system shall consist of,

(a) timbering and shoring that meets the requirements of subsection 238 (2), if no hydrostatic pressure is present in the soil, and if the width and depth of the excavation are equal to or less than the width and depth indicated in the Table to section 238;

(b) a prefabricated support system that complies with sections 236 and 237;

(c) a hydraulic support system that complies with sections 236 and 237; or

(d) an engineered support system that complies with section 236. O. Reg. 213/91, s. 235 (1).

(2) Where the excavation is a trench and the depth exceeds six metres or the width exceeds 3.6 metres, the support system shall consist of an engineered support system designed for the specific location and project. O. Reg. 213/91, s. 235 (2); O. Reg. 631/94, s. 7.

**236.** (1) Every prefabricated, hydraulic or engineered support system shall be designed by a professional engineer. O. Reg. 213/91, s. 236 (1).

(2) Every prefabricated, hydraulic or engineered support system shall be constructed, installed, used and maintained in accordance with its design drawings and specifications. O. Reg. 213/91, s. 236 (2).

(3) The design drawings and specifications for a prefabricated, hydraulic or an engineered support system,

(a) shall indicate the size of the system and the type and grade of materials of which it is to be made;

(b) shall indicate the maximum depth and the types of soil for which it is designed;

(c) shall indicate the proper positioning of the system in the excavation, including the maximum allowable clearance between the walls of the support system and the walls of the excavation; and

(d) shall indicate how to install and remove the system.

(e) REVOKED: O. Reg. 85/04, s. 21.

O. Reg. 213/91, s. 236 (3); O. Reg. 85/04, s. 21.

(4) In addition to the requirements of subsection (3), the design drawings and specifications for a hydraulic support system,

(a) shall indicate the minimum working pressure required for the system; and

(b) shall require the use of a device to ensure the protection of workers if a loss of hydraulic pressure occurs in the system. O. Reg. 213/91, s. 236 (4).

(5) Before a variation from the design drawings and specifications for a prefabricated, hydraulic or an engineered support system is permitted, the variation shall be approved in writing by a professional engineer. O. Reg. 213/91, s. 236 (5).

(6) If the soil conditions on a project differ from those assumed by the professional engineer in designing a prefabricated, hydraulic or an engineered support system, a professional engineer shall modify the design drawings and specifications for the actual soil conditions or shall approve the support system for use in the actual soil conditions. O. Reg. 213/91, s. 236 (6).

(7) The constructor shall keep the design drawings and specifications for a prefabricated, hydraulic or an engineered support system at a project while the system is on the project. O. Reg. 213/91, s. 236 (7).

(8) REVOKED: O. Reg. 443/09, s. 7.

**237.** (1) Subject to subsection (2),

(a) no prefabricated or hydraulic support system shall be used in type 4 soil;

(b) the space between the walls of a prefabricated support system and the walls of the excavation shall be restricted to the minimum clearance required for the forward progression of the support system; and

(c) the walls of a hydraulic support system shall touch the walls of the excavation. O. Reg. 631/94, s. 8.

(2) A prefabricated or hydraulic support system may be used for repairing underground pipe breaks if the system,

(a) meets the requirements of section 236;

(b) has four side walls;

(c) is designed for a maximum depth of 3.6 metres;

(d) is not used at a greater depth than 3.6 metres;

(e) is designed to resist all hydrostatic and earth pressures found in type 3 and type 4 soils;

(f) is installed so as to extend to the bottom of the excavation;

(g) is installed so that the walls of the system touch the walls of the excavation; and

(h) is not pulled forward after being installed in the excavation. O. Reg. 631/94, s. 8.

(3) Before a support system is used as described in subsection (2), the constructor shall submit two copies of its design drawings and specifications to the office of the Ministry of Labour nearest to the project. O. Reg. 631/94, s. 8.

**238.** (1) In this section,

“cleat” means a member of shoring that directly resists the downward movement of a wale or strut; (“tasseau”)

“o/c” means the maximum distance measured from the centre of one member of sheathing, wale or strut to the centre of the adjacent member of sheathing, wale or strut; (“c. à c.”)

“post” means a vertical member of shoring that acts as a spacer between the wales; (“montant”)

“10 millimetres gap” means that the space between two adjacent members of sheathing is a maximum of ten millimetres. (“écart de 10 millimètres”) O. Reg. 213/91, s. 238 (1).

(2) Timbering and shoring referred to in clause 235 (1) (a) for the walls of an excavation with a depth described in Column 1 of the Table to this section and located in a soil type described in Column 2 of the Table shall meet the corresponding specifications set out in Columns 3 to 8 of the Table. O. Reg. 345/15, s. 25 (1).

(3) Every piece of sheathing referred to in the Table to this section shall be made of sound Number 1 Grade spruce and,

(a) shall be placed against the side of the excavation so that it is vertical;

(b) shall be secured in place by wales; and

(c) shall be driven into the soil and firmly secured in place if the excavation is made in Type 3 or 4 soil. O. Reg. 213/91, s. 238 (3).

(4) Every strut referred to in the Table to this section shall be made of sound number 1 structural grade spruce and,

- (a) shall be placed in the excavation so that it is horizontal and at right angles to the wales;
  - (b) shall be cut to the proper length and held in place by at least two wedges driven between the strut and the wales; and
  - (c) shall be cleated with cleats that extend over the top of the strut and rest on the wales or that are attached securely to the wales by spikes or bolts. O. Reg. 213/91, s. 238 (4).
- (5) Every wale referred to in the Table to this section shall be made of sound number 1 structural grade spruce and,
- (a) shall be placed in the excavation so that it is parallel to the bottom, or proposed bottom, of the excavation; and
  - (b) shall be supported by either cleats secured to the sheathing or posts set on the wale next below it or, if it is the lowest wale, on the bottom of the excavation. O. Reg. 213/91, s. 238 (5).

TABLE  
EXCAVATION SHORING AND TIMBERING

Item	Column 1 Excavation Depth	Column 2 Soil Type	Column 3 Sheathing	Column 4 Strut width where width of excavation at strut location is 1.8 to 3.6 metres	Column 5 Strut width where width of excavation at strut location is up to 1.8 metres	Column 6 Vertical strut spacing	Column 7 Horizontal strut spacing	Column 8 Wales
1.	3.0 m or less	1	50 mm × 200 mm at 1.2 m o/c	200 mm × 200 mm	150 mm × 150 mm	1.2 m	* 2.4 m	*200 mm × 200 mm
2.	3.0 m or less	2	50 mm × 200 mm at 1.2 m o/c	200 mm × 200 mm	150 mm × 150 mm	1.2 m	* 2.4 m	*200 mm × 200 mm
3.	3.0 m or less	3	50 mm × 200 mm at 10 mm gap	200 mm × 200 mm	200 mm × 200 mm	1.2 m	2.4 m	250 mm × 250 mm
4.	3.0 m or less	4	75 mm × 200 mm at 10 mm gap	250 mm × 250 mm	200 mm × 200 mm	1.2 m	2.4 m	300 mm × 300 mm
5.	Over 3.0 m to 4.5 m	1	50 mm × 200 mm with 10 mm gap	200 mm × 200 mm	150 mm × 150 mm	1.2 m	2.4 m	200 mm × 200 mm
6.	Over 3.0 m to 4.5 m	2	50 mm × 200 mm with 10 mm gap	200 mm × 200 mm	200 mm × 200 mm	1.2 m	2.4 m	250 mm × 250 mm
7.	Over 3.0 m to 4.5 m	3	50 mm × 200 mm with 10 mm gap	250 mm × 250 mm	250 mm × 250 mm	1.2 m	2.4 m	250 mm × 250 mm
8.	Over 3.0 m to 4.0 m	4	75 mm × 200 mm with 10 mm gap	300 mm × 300 mm	300 mm × 300 mm	1.2 m	2.4 m	300 mm × 300 mm
9.	Over 4.5 m to 6.0 m	1	50 mm × 200 mm with 10 mm gap	200 mm × 200 mm	200 mm × 200 mm	1.2 m	2.4 m	200 mm × 200 mm
10.	Over 4.5 m to 6.0 m	2	50 mm × 200 mm with 10 mm gap	250 mm × 250 mm	250 mm × 250 mm	1.2 m	2.4 m	250 mm × 250 mm
11.	Over 4.5 m to 6.0 m	3	50 mm × 200 mm with 10 mm gap	300 mm × 300 mm	300 mm × 300 mm	1.2 m	2.4 m	300 mm × 300 mm

\*Note: For excavations to 3 m deep in soil types 1 and 2, the wales can be omitted if the struts are used at 1.2 m horizontal spacings.

O. Reg. 213/91, s. 238, Table; O. Reg. 631/94, s. 9; O. Reg. 345/15, s. 25 (2).

**239.** (1) A support system for the walls of an excavation shall be installed,

- (a) progressively in an excavation in Type 1, 2 or 3 soil; and
- (b) in advance of an excavation in Type 4 soil, if practicable. O. Reg. 213/91, s. 239 (1).

(2) A support system for the walls of an excavation shall provide continuous support for it. O. Reg. 213/91, s. 239 (2).

(3) No support system for the walls of an excavation shall be removed until immediately before the excavation is backfilled. O. Reg. 213/91, s. 239 (3).



(4) A competent person shall supervise the removal of a support system for the walls of an excavation. O. Reg. 213/91, s. 239 (4).

**240.** If a support system is used for the walls of an excavation, a ladder for access to or egress from the excavation shall be placed within the area protected by the support system. O. Reg. 213/91, s. 240.

**241.** (1) A support system for the walls of an excavation shall extend at least 0.3 metres above the top of the excavation unless otherwise permitted or required by this section. O. Reg. 213/91, s. 241 (1).

(2) If an excavation is located where there is vehicular or pedestrian traffic and if the excavation will be covered when work on or in it is not in progress, the support system for the walls of the excavation shall extend at least to the top of the excavation. O. Reg. 213/91, s. 241 (2).

(3) If the upper portion of the walls of an excavation are sloped for the soil types as described in clauses 234 (2) (e), (f) and (g) and the lower portion of the walls are vertical or near vertical, the walls shall be supported by a support system which extends at least 0.5 metres above the vertical walls. O. Reg. 213/91, s. 241 (3).

**242.** (1) A metal trench-jack or trench-brace may be used in place of a timber strut,

(a) if the allowable working load of the trench-jack or trench-brace is equal to or greater than that of the timber strut; and

(b) if the size of the replaced timber strut is shown on the trench-jack or trench-brace. O. Reg. 213/91, s. 242 (1).

(2) The allowable working load of a metal trench-jack or trench-brace shall be determined by a professional engineer in accordance with good engineering practice and shall be legibly cast or stamped on the trench-jack or trench-brace. O. Reg. 213/91, s. 242 (2).

(3) No metal trench-jack or trench-brace shall be extended beyond the length used to establish its maximum allowable working load. O. Reg. 213/91, s. 242 (3).

(4) Every metal trench-jack or trench-brace, when it is used,

(a) shall be placed against the wales in such a way that the load from the wales is applied axially to the trench-jack or trench-brace; and

(b) shall be adequately supported so that it does not move out of position. O. Reg. 213/91, s. 242 (4).

#### **PART IV TUNNELS, SHAFTS, CAISSONS AND COFFERDAMS**

##### APPLICATION

**243.** This Part applies with respect to,

(a) tunnels and shafts other than those located at or used in connection with a mine; and

(b) caissons and cofferdams. O. Reg. 213/91, s. 243.

##### LAND REQUIREMENTS

**244.** A tunnel or shaft shall be commenced or started only where sufficient land space is available to permit compliance with Parts IV and V. O. Reg. 213/91, s. 244.

##### NOTICE

**245.** (1) An employer who will be constructing a tunnel, shaft, caisson or cofferdam shall file a notice with a Director before beginning work on a tunnel, shaft, caisson or cofferdam. O. Reg. 213/91, s. 245 (1); O. Reg. 145/00, s. 33 (1).

(2) The notice shall,

(a) describe the work;

(b) provide specifications and drawings showing profiles, transverse sections and plans for the tunnel, shaft, caisson or cofferdam signed and sealed by the professional engineer who designed the support system for the tunnel, shaft, caisson or cofferdam;

(c) provide complete details of all temporary and permanent ground support;

(d) state the name, mailing address, address for service and telephone number of the constructor, of the owner and of the employer in charge of the work;

(e) state the name of the supervisor in charge of the work and the supervisor's mailing address, address for service and telephone number;

(f) provide the municipal address of the work or include a description of its location relative to the nearest highway such that the Director is able to locate the work;

(g) state the starting date and the anticipated duration of the work;

- (h) state the estimated total cost for labour and materials for the work; and
- (i) list all designated substances that may be used, handled or disturbed by the work. O. Reg. 213/91, s. 245 (2); O. Reg. 145/00, s. 33 (2).

#### WORKING ALONE AND ENTRY

**246.** Work shall not be performed in a shaft, tunnel, caisson or cofferdam unless another worker is working above ground in close proximity to the shaft, tunnel, caisson or cofferdam or to the means of access to it. O. Reg. 213/91, s. 246.

**247.** (1) No worker shall enter a well or augered caisson where the excavation is deeper than 1.2 metres unless,

- (a) a steel liner of adequate capacity is installed in the well or caisson;
  - (b) the requirements of Ontario Regulation 632/05 (Confined Spaces) made under the Act are complied with; and
  - (c) the worker is inside the steel liner and is wearing a fall arrest system with a full body harness secured to a fixed support. O. Reg. 213/91, s. 247 (1); O. Reg. 628/05, s. 4; O. Reg. 96/11, s. 2; O. Reg. 142/17, s. 27 (1).
- (2) A steel liner,
- (a) shall extend sixty centimetres above ground level and to a point that is 1.2 metres or closer to the point in the well or caisson where work is being done;
  - (b) shall be supported on two sides by steel wire rope and steel beams; and
  - (c) shall have a diameter which is not less than 100 millimetres less than the diameter of the excavation. O. Reg. 213/91, s. 247 (2); O. Reg. 142/17, s. 27 (2).

#### FIRE PROTECTION

**248.** Notices describing how to sound a fire alarm shall be posted in conspicuous places on a project to which this Part applies. O. Reg. 213/91, s. 248.

**249.** (1) A means of extinguishing fire shall be provided,

- (a) at the top and bottom of every shaft;
  - (b) if a project consists of or includes a tunnel, at each panel board for electricity, on each electric-powered locomotive and at each battery charging station; and
  - (c) 30 metres or less from each work face of a tunnel and of each location where a fire hazard exists. O. Reg. 213/91, s. 249 (1); O. Reg. 142/17, s. 28.
- (2) The means of extinguishing fire shall be inspected at least once a week to ensure that it is in working order. O. Reg. 213/91, s. 249 (2).

**250.** (1) A fire suppression system for equipment that contains flammable hydraulic fluids shall be provided while the equipment is underground. O. Reg. 213/91, s. 250 (1).

(2) A fire suppression system shall include a dry chemical fire extinguisher with an Underwriters' Laboratories of Canada rating of at least 4A40BC. O. Reg. 345/15, s. 26.

**251.** (1) If the diameter of a tunnel will be equal to or greater than 1.5 metres when it is completed, a standpipe, a fire line and a hose shall be provided in the tunnel. O. Reg. 213/91, s. 251 (1).

(2) A siamese connection shall be provided on the fire line at the surface of the shaft. O. Reg. 213/91, s. 251 (2).

**252.** (1) Every standpipe in a shaft or tunnel,

- (a) shall be made of metal pipe that has at least a fifty-one millimetres inside diameter; and
- (b) shall have a connection for the use of the local fire department outside the shaft or tunnel to which there is clear and ready access at all times. O. Reg. 213/91, s. 252 (1); O. Reg. 142/17, s. 29.

(2) Every standpipe in a shaft shall be installed progressively as the shaft is excavated. O. Reg. 213/91, s. 252 (2).

**253.** (1) Every fire line in a tunnel,

- (a) shall be made of metal pipe that has at least a fifty-one millimetres inside diameter; and
- (b) shall have, at intervals of not more than forty-five metres along it, an outlet with a valve. O. Reg. 213/91, s. 253 (1).

(2) Every fire line in a tunnel shall be installed progressively as the tunnel is excavated. O. Reg. 213/91, s. 253 (2).

**254.** (1) Every hose in a tunnel,

- (a) shall have at least a thirty millimetres inside diameter;
- (b) shall have a combination straight stream and fog nozzle; and

- (c) shall be at least twenty-three metres long. O. Reg. 213/91, s. 254 (1).
  - (2) A hose shall be provided in a tunnel at forty-six metre intervals horizontally along it. O. Reg. 213/91, s. 254 (2).
  - (3) Every hose shall be stored on a rack when it is not in use so as to be readily available. O. Reg. 213/91, s. 254 (3).
- 255.** (1) No flammable liquid or gas shall be brought underground except as permitted by this section. O. Reg. 213/91, s. 255 (1).
- (2) A compressed gas storage cylinder to which gas welding or flame-cutting equipment is attached may be brought underground. O. Reg. 213/91, s. 255 (2).
  - (3) Fuel may be brought underground if,
    - (a) it is in a tank that is supplied with and that forms a part of an engine or heating device; or
    - (b) it is in a container and is intended for transfer into a tank described in clause (a). O. Reg. 213/91, s. 255 (3).
  - (4) The maximum amount of fuel that may be brought underground in a container referred to in clause (3) (b) is the amount required for eight hours use of the engine or heating device. O. Reg. 213/91, s. 255 (4).
- 256.** (1) A flammable liquid or gas shall be stored,
- (a) as far as is practicable from a shaft; and
  - (b) in a place from which it is impossible for spilled liquid to flow underground. O. Reg. 213/91, s. 256 (1).
- (2) Lubricating oil shall be stored in a suitable building or storage tank located in a place from which spilled liquid cannot run toward any shaft or tunnel. O. Reg. 213/91, s. 256 (2).
- 257.** Oil for use in hydraulic-powered equipment underground shall be of the type that,
- (a) is not readily flammable; and
  - (b) does not readily support combustion. O. Reg. 213/91, s. 257.
- 258.** (1) No combustible equipment, including welding cable and air-hoses, shall be stored underground unless the equipment is required for immediate use. O. Reg. 213/91, s. 258 (1).
- (2) No electrical cable or gas hose shall be taken or used underground unless,
    - (a) it has an armoured casing or jacket made of a material that is not readily flammable and that does not readily support combustion; and
    - (b) it is marked to indicate that it has the casing or jacket required by clause (a). O. Reg. 213/91, s. 258 (2).
- 259.** (1) No combustible rubbish, used or decayed timber, scrap wood or paper shall be accumulated underground. O. Reg. 213/91, s. 259 (1).
- (2) Material described in subsection (1) shall be promptly removed from underground. O. Reg. 213/91, s. 259 (2).

#### FACILITIES FOR WORKERS

- 260.** (1) A heated room shall be provided for the use of underground workers. O. Reg. 213/91, s. 260 (1).
- (2) The wet clothes of workers employed underground shall be dried using sanitary means in a change room on the project. O. Reg. 213/91, s. 260 (2).
  - (3) A change room,
    - (a) shall have an open floor area no smaller than the greater of,
      - (i) ten square metres, and
      - (ii) one square metre per worker on a shift;
    - (b) shall be equipped with mechanical ventilation that provides no less than six air changes per hour;
    - (c) shall have suitable drainage facilities;
    - (d) shall be kept at a temperature of at least 27 degrees celsius; and
    - (e) shall have, for every worker employed underground, a locker that locks. O. Reg. 213/91, s. 260 (3).
  - (4) Every change room shall be scrubbed once every twenty-four hours. O. Reg. 213/91, s. 260 (4).
  - (5) If workers are employed underground, a change room shall be provided with one shower and one washbasin for each group of ten or fewer workers. O. Reg. 213/91, s. 260 (5).
  - (6) Showers and washbasins provided in a change room shall be supplied with hot and cold water, soap or hand cleaner and paper towels or individual hand towels. O. Reg. 213/91, s. 260 (6).

## FIRST AID

**261.** The supervisor in charge of a project shall appoint at least one competent worker to be available to give first aid at a shaft or tunnel. O. Reg. 213/91, s. 261.

**262.** (1) A first aid kit shall be kept in the immediate vicinity of the above-ground entrance to every shaft, tunnel, caisson or cofferdam. O. Reg. 213/91, s. 262 (1).

(2) At least one first aid kit shall be kept underground in every shaft and tunnel. O. Reg. 213/91, s. 262 (2).

**263.** (1) At least one stretcher for each group of twenty-five or fewer workers who are underground shall be kept at every tunnel, shaft or cofferdam. O. Reg. 213/91, s. 263 (1).

(2) Every stretcher shall be a wire-basket type and shall be designed and equipped to permit the safe hoisting and transport of a worker. O. Reg. 213/91, s. 263 (2).

## RESCUE OF WORKERS

**264.** (1) Before a project begins, an employer shall establish in writing emergency procedures for the rescue of underground workers. O. Reg. 213/91, s. 264 (1).

(2) Copies of the rescue procedures signed by the employer and supervisor of the underground workers shall be posted in conspicuous places on the project. O. Reg. 213/91, s. 264 (2).

(3) The emergency procedures shall be practised in preparation for an emergency and shall be followed in an emergency. O. Reg. 213/91, s. 264 (3).

**265.** (1) At least four workers at a project or, if fewer than four workers work at the project, all workers shall be trained in and readily available to perform rescues of underground workers. O. Reg. 213/91, s. 265 (1).

(2) Rescue workers shall be provided with suitable equipment to perform rescues. O. Reg. 213/91, s. 265 (2).

(3) Rescue workers shall be trained by a competent person appointed by a Director. O. Reg. 213/91, s. 265 (3); O. Reg. 145/00, s. 34 (1).

(4) A Director who makes an appointment described in subsection (3) shall, in doing so, consider any recommendations of the representatives of labour and of management. O. Reg. 145/00, s. 34 (2).

(5) Rescue workers shall be trained within thirty days before tunnelling operations begin and retrained at least every thirty days after the initial training. O. Reg. 213/91, s. 265 (5).

(6) Before a project begins, the supervisor of the construction of a tunnel shall designate a rescue worker who shall inspect and test all rescue equipment every thirty days. O. Reg. 213/91, s. 265 (6).

**266.** (1) This section applies if, on a project, there is a tunnel and shaft whose combined length exceeds forty-five metres. O. Reg. 213/91, s. 266 (1).

(2) Every rescue worker shall be provided with a self-contained breathing apparatus that meets the requirements of subsection (5) and subsection (6), (7) or (8), as is appropriate to the length of the underground work place. O. Reg. 213/91, s. 266 (2).

(3) A competent person referred to in subsection 265 (3) shall train rescue workers in the proper operation of the self-contained breathing apparatus. O. Reg. 213/91, s. 266 (3).

(4) The training required by subsection (3) shall be repeated at least every thirty days. O. Reg. 213/91, s. 266 (4).

(5) The self-contained breathing apparatus shall have a full face mask. O. Reg. 213/91, s. 266 (5).

(6) For use in an underground work place that is less than 100 metres long, the minimum rated duration of use for a self-contained breathing apparatus shall be one-half hour. O. Reg. 213/91, s. 266 (6).

(7) For use in an underground work place that is 100 metres or more but less than 150 metres long, the minimum rated duration of use for a self-contained breathing apparatus shall be one hour. O. Reg. 213/91, s. 266 (7).

(8) For use in an underground work place that is 150 metres or more long, the minimum rated duration of use for a self-contained breathing apparatus shall be one and one-half hours. O. Reg. 213/91, s. 266 (8).

(9) All self-contained breathing apparatuses intended for rescue work on a project shall be the same model and made by the same manufacturer. O. Reg. 213/91, s. 266 (9).

(10) All self-contained breathing apparatuses shall be kept in close proximity to the means of access to an underground work place and shall be readily available. O. Reg. 213/91, s. 266 (10).

(11) A sufficient number, four as a minimum, of self-contained breathing apparatuses shall be available on the project to provide for all rescue work that may be required. O. Reg. 213/91, s. 266 (11).

(12) A competent person shall inspect every self-contained breathing apparatus at least once a month or as often as is required by the manufacturer to ensure it is in proper condition. O. Reg. 213/91, s. 266 (12).

**267.** Every worker who is in, or may be required to enter, a tunnel or a shaft leading to it shall be provided with a self-rescue respirator for the worker's exclusive use which is suitable for protection against hazardous gases. O. Reg. 631/94, s. 10.

**268.** (1) A worker's self-rescue respirator shall be kept in the vicinity of the worker while he or she is in a tunnel or shaft. O. Reg. 213/91, s. 268 (1).

(2) All workers on a tunnel project shall be instructed in the proper use, care, maintenance and limitations of the self-rescue respirator in accordance with the manufacturer's specifications. O. Reg. 213/91, s. 268 (2).

#### COMMUNICATIONS

**269.** (1) Subject to subsection (2), a telephone connected to a public telephone system shall be installed at a project that is to be over fourteen days duration. O. Reg. 213/91, s. 269 (1).

(2) If it is not practicable to install at a project a telephone connected to a public telephone system, a radio telephone shall be available that permits communication with an office of the constructor that has a telephone connected to a public telephone system. O. Reg. 213/91, s. 269 (2).

(3) At a project of fourteen or fewer days duration, before work is begun, a public telephone or a radio telephone shall be installed or shall be arranged for nearby if,

- (a) the services of a police or fire department or ambulance are reasonably available; and
- (b) prompt direct telephone communication is possible with the police or fire department or ambulance. O. Reg. 213/91, s. 269 (3).

**270.** (1) A telephone system shall be provided at a tunnel if the work at the face of the tunnel is or will be done twenty-three metres or more from,

- (a) the top of the service shaft; or
- (b) the opening into the tunnel, if the tunnel is not constructed from a service shaft. O. Reg. 213/91, s. 270 (1).

(2) A telephone system shall be installed before work on the tunnel is begun. O. Reg. 213/91, s. 270 (2).

(3) A telephone system shall consist of telephones that are located,

- (a) in the office of the supervisor in charge of the project;
- (b) at the top and bottom of the service shaft or at the opening into the tunnel, if the tunnel is not constructed from a service shaft;
- (c) at all other means of access to the service shaft, if any; and
- (d) at intervals not exceeding thirty metres in every area of the tunnel where work is being performed. O. Reg. 213/91, s. 270 (3).

(4) A notice shall be posted by each telephone,

- (a) indicating how to call every other telephone in the system;
- (b) describing the emergency signal to be used; and
- (c) stating that a worker who hears the emergency signal shall answer the telephone. O. Reg. 213/91, s. 270 (4).

(5) A telephone system shall be installed in such a way that a conversation can be carried on between any two telephones in the system. O. Reg. 213/91, s. 270 (5).

(6) The voice communication circuits used in a telephone system shall be independent from the circuits used to signal from one telephone to another. O. Reg. 213/91, s. 270 (6).

**271.** During the construction of a shaft, an effective means of communicating between the lowest point of the shaft and the surface shall be provided. O. Reg. 213/91, s. 271.

**272.** A completed service shaft more than six metres deep shall have a means, other than a telephone, of exchanging distinct and definite signals between the top and bottom of the shaft. O. Reg. 213/91, s. 272.

**273.** (1) If a person is about to be conveyed by a hoist in a shaft, the pit bottom worker shall notify the hoist operator before the person enters the conveyance. O. Reg. 213/91, s. 273 (1).

(2) A hoist operator shall acknowledge every signal received by repeating the signal. O. Reg. 213/91, s. 273 (2).

(3) A signal to a hoist operator to move a conveyance shall be given only from the landing from which the conveyance is being moved. O. Reg. 213/91, s. 273 (3).

(4) A signal set out in Column 1 of the Table shall be used to communicate the meaning set out opposite to it in Column 2 between a hoist operator, the top or bottom of a shaft and all landings in the shaft:

TABLE

Item	Column 1 Code of signals	Column 2 Meaning
1.	Where the conveyance is in motion – 1 signal	STOP
2.	Where the conveyance is stationary – 1 signal	HOIST
3.	Where the conveyance is stationary – 2 signals together	LOWER
4.	Where the conveyance is stationary – 3 signals together (to be given before any person enters the conveyance)	Person will be on conveyance. OPERATE CAREFULLY.

O. Reg. 345/15, s. 27.

(5) The supervisor in charge of a project may establish signals in addition to those set out in subsection (4) if required for the operation of a hoist on the project. O. Reg. 213/91, s. 273 (5).

(6) A notice setting out the signals used for a hoist shall be securely posted,

(a) where it is readily visible to the hoist operator; and

(b) at each landing of the hoistway. O. Reg. 213/91, s. 273 (6).

(7) The notice shall be on a board or a metal plate that is not less than 450 millimetres by 450 millimetres and shall be written in letters that are at least thirteen millimetres high. O. Reg. 213/91, s. 273 (7).

#### LIGHTING AND ELECTRICITY SUPPLY

**274.** All electrical circuits of 100 volts or more shall be in an insulated cable that consists of at least two conductors and a grounding conductor. O. Reg. 627/05, s. 8.

**275.** All electrical pumps and electrical tools shall be either adequately grounded or double-insulated. O. Reg. 213/91, s. 275.

**276.** (1) An area of a tunnel or shaft that is not adequately lit by natural light shall be electrically illuminated. O. Reg. 213/91, s. 276 (1).

(2) Flashlights shall be readily available at the top and bottom of every shaft and near the work face of a tunnel. O. Reg. 213/91, s. 276 (2).

(3) If electric lighting is used in a tunnel or shaft, an emergency lighting system shall be installed in the tunnel or shaft. O. Reg. 213/91, s. 276 (3).

(4) An emergency lighting system,

(a) shall be connected to the electrical supply so that in the event of the failure of the electrical supply, the system will automatically turn on;

(b) shall be provided with a testing switch, if the system is battery-powered; and

(c) shall be tested at least as frequently as is recommended by its manufacturer to ensure that the system will function in an emergency. O. Reg. 213/91, s. 276 (4).

**277.** REVOKED: O. Reg. 627/05, s. 9.

#### SHAFTS

**278.** (1) Every shaft shall be large enough that its walls can be adequately shored and shall have enough clear space for work to be done. O. Reg. 213/91, s. 278 (1).

(2) In a service shaft that is more than six metres deep or that serves a tunnel more than fifteen metres long,

(a) the minimum inside dimension of the shaft, measured between the wales or other wall supports, shall be 2.4 metres for a cylindrical shaft and 1.5 metres for a shaft that is not cylindrical; and

(b) the minimum transverse cross-sectional area of a shaft that is not cylindrical shall be 5.7 square metres. O. Reg. 213/91, s. 278 (2).

**279.** (1) The walls of a shaft shall be supported by shoring and bracing adequate to prevent their collapse. O. Reg. 213/91, s. 279 (1).

(2) Subsection (1) does not apply to the walls of a shaft that is less than 1.2 metres deep or is cut in sound rock. O. Reg. 213/91, s. 279 (2).

(3) If a shaft is to be cut in sound rock, the constructor shall obtain a written opinion from a professional engineer as to whether the walls of the shaft need to be supported by rock bolts or wire mesh to prevent the spalling of loose rock. O. Reg. 213/91, s. 279 (3).

(4) The walls of a shaft cut in sound rock shall be supported by rock bolts or wire mesh where necessary in the opinion of the professional engineer. O. Reg. 213/91, s. 279 (4).

**280.** (1) Shoring and bracing for a shaft that is more than 1.2 metres deep shall be capable of withstanding all loads likely to be applied to them. O. Reg. 213/91, s. 280 (1).

(2) The shoring and bracing,

(a) shall be designed by a professional engineer in accordance with good engineering practice; and

(b) shall be constructed in accordance with the professional engineer's design. O. Reg. 213/91, s. 280 (2).

(3) Design drawings by a professional engineer for the shoring and bracing shall show the size and specifications of the shoring and bracing including the type and grade of all materials to be used in their construction. O. Reg. 213/91, s. 280 (3).

(4) REVOKED: O. Reg. 443/09, s. 8.

(5) The constructor shall keep a copy of design drawings for the shoring and bracing at the project while the shoring and bracing are in use. O. Reg. 213/91, s. 280 (5).

**281.** (1) If a square or rectangular shaft is not more than six metres deep and has walls that are not more than 3.6 metres wide, the walls,

(a) shall be fully sheathed with Number 1 Grade spruce planks that are at least fifty-one millimetres thick by 152 millimetres wide and are placed side by side; and

(b) shall be supported by wales and struts. O. Reg. 213/91, s. 281 (1); O. Reg. 631/94, s. 11.

(2) Wales and struts,

(a) shall be made of number 1 structural grade spruce planks that are,

(i) at least 152 millimetres by 152 millimetres, for a shaft that is not more than 2.7 metres deep,

(ii) at least 203 millimetres by 203 millimetres, for a shaft that is more than 2.7 metres but not more than 4.3 metres deep, and

(iii) at least 254 millimetres by 254 millimetres, for a shaft that is more than 4.3 metres but not more than six metres deep;

(b) shall be spaced not more than 1.2 metres apart vertically; and

(c) shall be adequately supported by vertical posts that extend to the bottom of the shaft. O. Reg. 213/91, s. 281 (2).

**282.** (1) An adequate barrier that is at least 1.1 metres high shall be provided around the top of an uncovered shaft. O. Reg. 213/91, s. 282 (1).

(2) A barrier around the top of an uncovered shaft that is more than 2.4 metres deep,

(a) shall consist of a top rail, an intermediate rail and a toe-board; and

(b) shall be made of thirty-eight by 140 millimetres lumber securely fastened to vertical supports that are spaced at intervals of not more than 2.4 metres. O. Reg. 213/91, s. 282 (2).

(3) A barrier shall be kept free of splinters and protruding nails. O. Reg. 213/91, s. 282 (3).

(4) A gate in a barrier around the top of an uncovered shaft shall be kept closed and latched. O. Reg. 213/91, s. 282 (4).

(5) The ground adjacent to a barrier around the top of a shaft shall be sloped away from the barrier. O. Reg. 213/91, s. 282 (5).

**283.** A shaft shall be kept clear of ice and loose objects that may endanger a worker. O. Reg. 213/91, s. 283.

**284.** A shaft shall be kept reasonably free of water when a worker is required to be in the shaft. O. Reg. 213/91, s. 284.

**285.** Every shaft shall have a means of access and egress by stairway, ladder or ladderway for its full depth during its construction and when it is completed. O. Reg. 213/91, s. 285.

**286.** (1) A stairway, ladder or ladderway for a shaft that is more than six metres deep,

(a) shall have landings or rest platforms spaced at intervals not greater than 4.5 metres;

(b) shall be off-set at each landing or rest platform; and

(c) shall be located in a sheathed compartment that is constructed in such a way that a worker who falls while on the stairway, ladder or ladderway will land on the landing or rest platform below. O. Reg. 213/91, s. 286 (1).

(2) Every landing and rest platform shall be wide enough to permit at least two workers to pass on it safely. O. Reg. 213/91, s. 286 (2).

(3) Every opening and ladderway shall be wide enough to permit the passage of a worker wearing rescue equipment and shall be at least 750 mm by 750 mm. O. Reg. 631/94, s. 12; O. Reg. 345/15, s. 28.

**287.** (1) Every conveyance located in a service shaft that is more than six metres deep shall be separated from a stairway, ladder or ladderway in the shaft by a lining described in subsection (3). O. Reg. 213/91, s. 287 (1).

(2) Subsection (1) does not apply with respect to a conveyance located in a service shaft if the hoisting area is so remote from the stairway, ladder or ladderway that it is not possible for a load, bucket or device being hoisted or lowered to come into contact with the stairway, ladder or ladderway. O. Reg. 213/91, s. 287 (2).

(3) A lining shall consist of solid planks at least fifty-one millimetres thick and spaced not more than ten millimetres apart. O. Reg. 213/91, s. 287 (3).

## HOISTWAYS

**288.** (1) This section applies with respect to a hoistway that is more than six metres deep in which hoisting is carried out by mechanical power. O. Reg. 213/91, s. 288 (1).

(2) Every landing on a hoistway shall have a gate located 200 millimetres or less from the hoistway that,

(a) extends the full width of the hoistway from 50 millimetres or less from the floor level to a height of at least 1.8 metres;

(b) is constructed without any gaps that would permit the entry of a ball no more than thirty-eight millimetres in diameter; and

(c) is equipped with a light readily visible to the hoist operator indicating when the gate is closed. O. Reg. 213/91, s. 288 (2); O. Reg. 142/17, s. 30.

(3) Subsection (2) does not apply to a landing at the bottom of a hoistway if the landing has one or more red lights that,

(a) are located where a person approaching the hoistway from a tunnel or from the lower end of a stair or ladder can see at least one of them; and

(b) are controlled by a switch readily accessible to a shaft attendant. O. Reg. 213/91, s. 288 (3).

(4) A gate required by subsection (2) shall be kept closed unless a conveyance is stopped at the landing. O. Reg. 213/91, s. 288 (4).

(5) The red lights referred to in subsection (3) shall be continuously flashed off and on during a hoisting operation. O. Reg. 213/91, s. 288 (5).

**289.** (1) All parts of a hoisting apparatus used in a hoistway or shaft shall be able to be conveniently inspected. O. Reg. 213/91, s. 289 (1).

(2) Every hoist drum shall have a flange at each end to keep the hoist rope on the drum. O. Reg. 213/91, s. 289 (2).

**290.** (1) A hoist operator shall operate and watch over a hoist and all machinery associated with the hoist to detect any hazardous conditions. O. Reg. 213/91, s. 290 (1).

(2) A hoist operator shall report immediately to the supervisor in charge of the project any defects in the hoisting machinery and safety devices. O. Reg. 213/91, s. 290 (2); O. Reg. 142/17, s. 31.

(3) The hoist operator shall test all safety devices on a hoisting apparatus to ensure that they function and shall perform the tests,

(a) before a conveyance is first put into service on a project;

(b) at least once every three months after being put into service on the project; and

(c) daily, if the hoisting apparatus is used to hoist persons. O. Reg. 213/91, s. 290 (3).

(4) The hoist operator shall make a record of tests performed under subsection (3). O. Reg. 213/91, s. 290 (4).

(5) The hoist operator shall keep available for inspection at the project the record of tests performed under subsection (3). O. Reg. 213/91, s. 290 (5).

**291.** (1) No person other than a competent worker appointed by the supervisor in charge of a project shall operate a hoist in a hoistway or shaft. O. Reg. 213/91, s. 291 (1).

(2) No person, other than a worker required to do so as a part of the worker's job, shall enter or attend the machine room of a hoist. O. Reg. 213/91, s. 291 (2).

**292.** A hoist operator shall inspect the hoisting machinery and safety devices connected to it at least once a day and shall make a record of the inspection in a log book. O. Reg. 213/91, s. 292; O. Reg. 142/17, s. 32.

**293.** (1) A hoist operator and all shaft attendants shall understand the signal code established for the hoist. O. Reg. 213/91, s. 293 (1).

(2) No hoist operator shall converse with another person while the hoist is in motion or signals are being given. O. Reg. 213/91, s. 293 (2).



(3) No hoist operator shall turn over the controls of a hoist to another person while a conveyance is in motion. O. Reg. 213/91, s. 293 (3).

(4) No hoist operator shall operate a hoist,

(a) unless it is equipped with,

(i) indicators showing the position of the conveyance on the hoist, and

(ii) brakes and distance markers on the hoisting ropes and cables;

(b) in a compartment of a shaft in which work is being done unless the hoist is being operated for the purpose of work in the compartment. O. Reg. 213/91, s. 293 (4).

(5) After a hoist has been stopped for repairs, a hoist operator shall run an empty conveyance up and down the shaft at least once and shall determine that the hoist is in good working order before carrying a load in it. O. Reg. 213/91, s. 293 (5).

**294.** (1) The supervisor in charge of a project,

(a) shall establish the maximum speed for a conveyance transporting persons in a hoistway; and

(b) shall determine the maximum number of persons and the maximum weight of material that may be carried safely on a conveyance in a hoistway. O. Reg. 213/91, s. 294 (1).

(2) A notice setting out the maximums referred to in subsection (1) shall be conspicuously posted near each hoistway entrance. O. Reg. 213/91, s. 294 (2).

(3) No person shall load a conveyance in a hoistway beyond the maximum limits established under clause (1) (b). O. Reg. 213/91, s. 294 (3).

(4) A hoist operator shall operate a hoist in accordance with the notice posted under subsection (2). O. Reg. 213/91, s. 294 (4).

**295.** (1) The supervisor in charge of a project shall appoint shaft attendants for a shaft where a hoist is being used. O. Reg. 213/91, s. 295 (1).

(2) No shaft attendant shall be less than nineteen years of age. O. Reg. 213/91, s. 295 (2).

(3) At least one shaft attendant shall be on duty at the top of a shaft if a hoist, crane or similar hoisting device is being used or if a worker is present in the shaft or in a tunnel connected to the shaft. O. Reg. 213/91, s. 295 (3).

(4) A shaft attendant,

(a) shall give the hoist operator the signals for starting and stopping the hoist;

(b) shall warn workers of hazards in or near the shaft; and

(c) as far as is practicable, shall remove known hazards. O. Reg. 213/91, s. 295 (4).

**296.** (1) The supervisor in charge of a project shall, before a hoist is used on the project, establish a communication system of signals to be used between a hoist operator, shaft attendants and any other attendants working at a hoist. O. Reg. 213/91, s. 296 (1).

(2) The supervisor in charge of a project shall ensure that all hoist operators, shaft attendants and other attendants working at a hoist know and understand the signals. O. Reg. 213/91, s. 296 (2).

**297.** (1) The supervisor in charge of a project shall appoint workers to control the movement of materials to and from a conveyance on a hoist at every landing and at the bottom of a shaft. O. Reg. 213/91, s. 297 (1).

(2) A worker appointed under subsection (1) shall control and direct the movement of materials to and from a conveyance. O. Reg. 213/91, s. 297 (2).

**298.** No worker shall be transported in a conveyance or a hoist while it is being used to carry materials or equipment other than hand tools or similar small objects. O. Reg. 213/91, s. 298.

**299.** The path of travel of an object being hoisted from or lowered into a shaft by a crane shall not pass over a manway unless the manway has adequate overhead protection. O. Reg. 213/91, s. 299.

**300.** (1) A service shaft that will be over thirty metres deep when completed shall have a hoist with a conveyance consisting of a cage or car suitable for transporting workers. O. Reg. 213/91, s. 300 (1).

(2) A hoist shall be installed in the service shaft as soon as is practicable. O. Reg. 213/91, s. 300 (2).

(3) A hoist,

(a) shall have a headframe that is grounded for protection against lightning and is designed by a professional engineer;

(b) shall have guides to control the movement of the conveyance;

(c) shall have a device that automatically stops the conveyance when it runs beyond the normal limit of its travel; and

- (d) shall have a brake on the hoisting machine that automatically stops and holds the conveyance if the hoist fails or the power to the hoist is interrupted. O. Reg. 213/91, s. 300 (3); O. Reg. 142/17, s. 33.
- (4) A shaft in sound rock may be excavated to a depth of not more than thirty metres before the headframe and guides are installed on the hoist. O. Reg. 213/91, s. 300 (4).

**301.** (1) Every conveyance on a hoist used for transporting workers in a shaft shall have a suitable device that, if the cable breaks or becomes slack,

- (a) automatically prevents the conveyance from falling; and
  - (b) is capable of holding the conveyance stationary when it contains the maximum number of passengers it is permitted to carry. O. Reg. 213/91, s. 301 (1).
- (2) Subsection (1) does not apply with respect to a bucket or a skip operated in accordance with sections 303 and 305. O. Reg. 213/91, s. 301 (2).
- (3) A device shall be installed to warn the hoist operator when a conveyance transporting workers in a shaft has reached the normal limit of its travel. O. Reg. 213/91, s. 301 (3).

**302.** (1) A cage or car on a hoist used for transporting workers in a shaft,

- (a) shall be at least 1.8 metres high;
  - (b) shall be solidly enclosed, except for openings for access and egress;
  - (c) shall have a maximum of two openings for access and egress;
  - (d) shall have a gate at each opening for access and egress; and
  - (e) shall have a protective cover suitable to protect passengers from falling objects. O. Reg. 213/91, s. 302 (1).
- (2) A gate for access and egress,
- (a) shall be constructed without any gaps that would permit the entry of a ball no more than thirty-eight millimetres in diameter;
  - (b) shall extend the full width of the opening and from 50 millimetres or less from the floor of the cage or car to a height of at least 1.8 metres; and
  - (c) shall not open outward. O. Reg. 213/91, s. 302 (2); O. Reg. 142/17, s. 34.
- (3) A protective cover referred to in clause (1) (e) shall have a trap door for emergency access which measures not less than 600 millimetres by 600 millimetres. O. Reg. 213/91, s. 302 (3).

**303.** (1) Subject to subsection (2), a bucket or similar conveyance shall not be used to transport a worker in a shaft. O. Reg. 213/91, s. 303 (1).

(2) A bucket or similar conveyance may be used to transport a worker in a shaft for the purpose of inspecting the hoistway if no other method of access to the parts of the hoistway is available. O. Reg. 213/91, s. 303 (2).

- (3) A bucket referred to in subsection (2),
- (a) shall be at least 1.2 metres deep;
  - (b) shall have smoothly-contoured outer surfaces to prevent it from tipping or becoming snagged by an obstacle during hoisting or lowering; and
  - (c) shall not be self-opening. O. Reg. 213/91, s. 303 (3).
- (4) If a pivoted bucket that is manually-dumped and is not self-guided is being used to transport a worker, the bucket,
- (a) shall be equipped with a lock to prevent tipping; and
  - (b) shall be pivoted in such a way that it does not automatically invert when the lock is released. O. Reg. 213/91, s. 303 (4).
- (5) A bucket that is not controlled by a cross head running in vertical guides shall not be hoisted or lowered at a speed greater than 0.5 metres per second when it is transporting a worker. O. Reg. 213/91, s. 303 (5).

**304.** (1) A hinged door that opens upward shall be provided over the opening at the top of a shaft. O. Reg. 213/91, s. 304 (1).

(2) The door shall be closed while a worker is entering or leaving a bucket over the opening at the top of the shaft. O. Reg. 213/91, s. 304 (2).

**305.** A skip shall not be used to transport a worker unless,

- (a) the worker is inspecting guiderails or shaft supports; and

- (b) the skip is protected by an overwind device to prevent the skip from being hoisted to the dump position. O. Reg. 213/91, s. 305.

## TUNNELS

**306.** (1) A tunnel shall have enough clear space for the passage of vehicles and the movement of workers. O. Reg. 213/91, s. 306 (1).

(2) The diameter of a circular or elliptical tunnel and the width and height of a square or rectangular tunnel shall be at least 760 millimetres. O. Reg. 213/91, s. 306 (2).

(3) A clear space of at least 450 millimetres shall be left between the side of a tunnel and the nearer side of,

(a) all trackless haulage equipment being used; and

(b) all locomotives, haulage cars and machines operating on a track. O. Reg. 213/91, s. 306 (3).

(4) A circular or elliptical tunnel shall have safety platforms at sixty metre intervals along it. O. Reg. 213/91, s. 306 (4).

(5) A safety platform shall be long enough for a crew of workers to stand on, shall be constructed above the tunnel invert and shall be clear of passing equipment. O. Reg. 213/91, s. 306 (5).

**307.** (1) Except for a tunnel cut in sound rock, the sides and roof of a tunnel shall be supported by timbers set on ribs or beams or by an equivalent system of lining. O. Reg. 213/91, s. 307 (1).

(2) If a tunnel is to be cut in sound rock, the constructor shall obtain a written opinion from a professional engineer as to whether the sides and roof of the tunnel need to be supported by rock bolts or wire mesh to prevent the spalling of loose rock. O. Reg. 213/91, s. 307 (2).

(3) The sides and roof of a tunnel cut in sound rock,

(a) shall be supported, where necessary in the opinion of the professional engineer, by rock bolts or wire mesh;

(b) shall be inspected daily by a competent worker; and

(c) shall have all loose pieces of rock removed. O. Reg. 213/91, s. 307 (3).

(4) If the permanent lining of a tunnel will, when completed, consist of a primary lining and a secondary lining, the primary lining shall be strong enough to support the sides and roof of the tunnel until the secondary lining is installed. O. Reg. 213/91, s. 307 (4).

(5) If the permanent lining of a tunnel consists only of a concrete cast-in-place lining, the tunnel shall not be excavated beyond the leading edge of the permanent lining unless adequate temporary shoring is installed as soon as is practicable. O. Reg. 213/91, s. 307 (5).

(6) The primary supports of a tunnel,

(a) shall be designed by a professional engineer in accordance with good engineering practice to withstand all loads likely to be applied to them; and

(b) shall be constructed in accordance with the design. O. Reg. 213/91, s. 307 (6).

(7) The constructor shall keep available for inspection at a project the design drawings for the primary supports. O. Reg. 213/91, s. 307 (7); O. Reg. 85/04, s. 23.

**308.** A tunnel shall be kept reasonably free of water when a worker is required to be in the tunnel. O. Reg. 213/91, s. 308.

## TUNNEL EQUIPMENT

**309.** When a haulage locomotive, trackless haulage equipment or a hoist in a shaft or tunnel is left unattended,

(a) its controls shall be left in the neutral position; and

(b) its brakes shall be set or other measures, such as blocking, shall be taken to prevent its moving. O. Reg. 213/91, s. 309.

**310.** (1) A haulage locomotive shall have suitable brakes, an audible bell and controls that can be operated only by a worker at the driver's station. O. Reg. 213/91, s. 310 (1).

(2) A haulage locomotive shall be designed so that power for its driving mechanism is cut off unless the control regulating the power is continuously operated by a worker at the driver's station. O. Reg. 213/91, s. 310 (2).

(3) The driver of a haulage locomotive shall sound the bell when the locomotive is set in motion or is approaching someone. O. Reg. 213/91, s. 310 (3).

(4) No person other than the driver shall ride on a haulage locomotive. O. Reg. 213/91, s. 310 (4).

**311.** No worker shall ride on a haulage train except in a car provided to carry passengers. O. Reg. 213/91, s. 311.

**312.** A haulage car shall have a device to prevent uncontrolled travel by the car. O. Reg. 213/91, s. 312.

- 313.** (1) Track for haulage equipment shall be securely fastened to the ties on which it is laid. O. Reg. 213/91, s. 313 (1).
- (2) If the ties interfere with the use of the bottom of the tunnel as a walkway, a solid walkway that is at least 300 millimetres wide shall be provided. O. Reg. 213/91, s. 313 (2).
- 314.** (1) The air inlet to an air compressor shall be located in such a position that fumes or noxious contaminants are not drawn in with the air to be compressed. O. Reg. 213/91, s. 314 (1).
- (2) A valve connected to a vessel used for storing compressed air,
- (a) shall be connected at the lowest point of the vessel to permit the discharge of the compressed air; and
- (b) shall be opened at least once each shift for the purpose of ejecting oil, water and other matter from the vessel. O. Reg. 213/91, s. 314 (2).
- 315.** (1) A project shall have pumping equipment of sufficient capacity to handle the pumping requirements of the project. O. Reg. 213/91, s. 315 (1).
- (2) Pumping equipment shall be connected to an adequate source of energy. O. Reg. 213/91, s. 315 (2).
- (3) Sufficient spare pumping equipment and an alternative source of energy for it shall be readily available at the project in case of emergency. O. Reg. 213/91, s. 315 (3).
- 316.** No internal combustion engine shall be used in a tunnel on a project without the prior written consent of a Director. O. Reg. 213/91, s. 316; O. Reg. 145/00, s. 36.

#### EXPLOSIVES

- 317.** Before blasting begins in a shaft, tunnel, caisson or cofferdam that is located within the greater of 4.5 metres and twice the length of the longest drill rod used away from another shaft, tunnel, caisson or cofferdam, the worker in charge of the blasting operations shall determine whether work in the adjacent shaft, tunnel, caisson or cofferdam can safely continue during blasting operations. O. Reg. 213/91, s. 317.
- 318.** (1) No vehicle or conveyance being used to transport explosives or blasting agents shall carry any other cargo or any person other than the vehicle operator. O. Reg. 213/91, s. 318 (1).
- (2) No detonator shall be transported in a vehicle or conveyance while it is carrying explosives or blasting agents. O. Reg. 213/91, s. 318 (2); O. Reg. 142/17, s. 35.
- (3) Where mechanical track haulage is used in a tunnel, explosives or blasting agents shall not be transported on the locomotive or in the same car as the detonators. O. Reg. 213/91, s. 318 (3).
- 319.** (1) A vehicle or conveyance, including trackless equipment, that is transporting explosives or blasting agents in a tunnel by mechanical haulage,
- (a) shall be given an uninterrupted and a clear passage of travel;
- (b) shall be conspicuously marked by signs or red flags that are easily visible from the front and the rear;
- (c) shall not travel at a speed greater than six kilometres per hour; and
- (d) shall not be left unattended. O. Reg. 213/91, s. 319 (1).
- (2) Explosives and blasting agents referred to in subsection (1),
- (a) shall be in a box made of wood or be separated from every metal part of the vehicle or conveyance in which they are being transported by a lining made of wood; and
- (b) shall be arranged or secured so as to prevent any part of an explosive or blasting agent from being dislodged. O. Reg. 213/91, s. 319 (2).
- 320.** If explosives or blasting agents are to be transported in a shaft, the worker in charge of blasting operations shall notify the hoist operator and shaft attendants before the explosives or blasting agents are put in the conveyance. O. Reg. 213/91, s. 320.
- 321.** A flashlight shall be provided to every worker who is engaged in blasting operations in a tunnel or is in an area from which the means of egress passes a place where blasting is to be done. O. Reg. 213/91, s. 321.
- 322.** Drilling or charging operations in a shaft or tunnel shall not be done simultaneously,
- (a) above or below one another on the same face; or
- (b) 7.5 metres or less, measured horizontally, from one another. O. Reg. 213/91, s. 322; O. Reg. 142/17, s. 36.
- 323.** (1) Explosives and blasting agents shall be fired electrically. O. Reg. 213/91, s. 323 (1).
- (2) Despite subsection (1), tape fuse may be used to fire explosives and blasting agents if block holing is to be done. O. Reg. 213/91, s. 323 (2).

**324.** (1) If a portable direct current battery or a blasting machine is the source of current for blasting, the firing cables or wires,

- (a) shall not be connected to the source of current until immediately before the charges are fired; and
- (b) shall be disconnected immediately after the charges are fired. O. Reg. 213/91, s. 324 (1).

(2) All firing cables or wires leading to a face shall be short-circuited while the leads from the blasting caps are being connected to one another and to the firing cables. O. Reg. 213/91, s. 324 (2).

(3) No short-circuit of a firing cable or wire shall be removed until all workers have retreated from the face and are so located that, should a premature explosion occur, the workers are not endangered. O. Reg. 213/91, s. 324 (3).

(4) A short-circuit shall be replaced immediately after the firing cables or wires are disconnected from the blasting machine or the blasting switch is opened. O. Reg. 213/91, s. 324 (4).

(5) Separate firing cables or wires for firing charges shall be used for each work location. O. Reg. 213/91, s. 324 (5).

(6) Firing cables or wires,

- (a) shall be located as far as is practicable from every other electrical circuit; and
- (b) shall not be permitted to come in contact with power, lighting or communication cables, or pipes, rails or other continuous metal grounded surfaces. O. Reg. 213/91, s. 324 (6).

**325.** (1) Every device, other than a portable hand-operated device, used for firing a charge shall meet the requirements of this section. O. Reg. 213/91, s. 325 (1).

(2) No person other than a competent worker shall use a device used for firing a charge. O. Reg. 213/91, s. 325 (2).

(3) A device used for firing a charge shall have a switch mechanism that automatically returns by gravity to the open position. O. Reg. 213/91, s. 325 (3).

(4) The live side of a device used for firing a charge shall be installed in a fixed locked box which is accessible only to the worker doing the blasting. O. Reg. 213/91, s. 325 (4).

(5) The lock on the box referred to in subsection (4) shall be able to be closed only when the contacts of the device are open and a short-circuiting device is in place. O. Reg. 213/91, s. 325 (5).

(6) The leads to the face shall be short-circuited when the contacts of the device are in the open position. O. Reg. 213/91, s. 325 (6).

**326.** (1) A circuit used for blasting shall originate from an isolated ungrounded power source and shall be used only for blasting. O. Reg. 213/91, s. 326 (1).

(2) Subsection (1) does not apply with respect to blasting done with a portable hand-operated device. O. Reg. 213/91, s. 326 (2).

**327.** (1) When a charge is fired and after a shot is heard, every worker in a place of refuge from a blast shall remain there and not return to the blast area for at least ten minutes. O. Reg. 213/91, s. 327 (1).

(2) If a charge is fired and no shot is heard, before the circuit is repaired,

- (a) the blasting circuit shall be locked in the open position; and
- (b) the lead wires shall be short-circuited. O. Reg. 213/91, s. 327 (2).

(3) A worker who suspects a misfire of an explosive or a blasting agent shall report it to the supervisor in charge of the project. O. Reg. 213/91, s. 327 (3).

(4) A charge of an explosive or a blasting agent that has misfired shall be left in place and blasted as soon as it is discovered. O. Reg. 213/91, s. 327 (4).

**328.** When a blasting operation is completed, the blasting switch shall be locked in the open position, the lead wires short-circuited and the blasting box locked. O. Reg. 213/91, s. 328.

#### VENTILATION

**329.** An adequate supply of fresh air shall be provided and circulated throughout an underground work place. O. Reg. 213/91, s. 329.

**330.** (1) An underground work place shall be tested regularly for noxious or toxic gases, fumes or dust. O. Reg. 213/91, s. 330 (1).

(2) A competent worker shall regularly test the air and the mechanical ventilation for an underground work place to ensure that the mechanical ventilation is adequate. O. Reg. 213/91, s. 330 (2).

(3) When the results of the tests referred to in subsection (2) indicate there is a need for respiratory protective equipment, the employer shall provide respiratory protective equipment. O. Reg. 213/91, s. 330 (3).

**331.** (1) Mechanical ventilation shall be provided in a shaft in which an internal combustion engine or other device which emits a noxious gas or fume operates. O. Reg. 213/91, s. 331 (1).

(2) Subsection (1) does not apply if the noxious gas or fume is discharged outside the shaft in such a way that its return to the shaft is prevented. O. Reg. 213/91, s. 331 (2).

## **PART V WORK IN COMPRESSED AIR**

### INTERPRETATION AND APPLICATION

**332.** In this Part,

“air lock” means a chamber designed for the passage of persons or materials from one place to another place that has a different air pressure from the first; (“sas”)

“compressed air” means air whose pressure is mechanically raised to more than atmospheric pressure; (“air comprimé”)

“decompression sickness”, in relation to a worker, means a condition of bodily malfunction caused by a change from a higher to a lower air pressure and includes the condition commonly known as “the bends”; (“mal de décompression”)

“kilopascals”, except in section 376, means kilopascals relative to atmospheric pressure; (“kilopascals”)

“maximum air pressure”, in relation to a worker, means the greatest level of air pressure to which a worker is subjected for a period of more than five minutes; (“pression d’air maximale”)

“medical lock” means a chamber in which workers may be subjected to changes in air pressure for medical purposes; (“caisson de décompression”)

“superintendent” means the person appointed by a constructor to be supervisor over and in charge of work done in compressed air; (“surintendant”)

“work chamber” means a part of a project that is used for work in compressed air but does not include an air lock or a medical lock. (“chambre de travail”) O. Reg. 213/91, s. 332.

**333.** This Part applies with respect to work done in compressed air, other than work done in diving bells or work done by divers. O. Reg. 213/91, s. 333.

### GENERAL REQUIREMENTS

**334.** (1) No constructor or employer shall begin work at a project where a worker may be subjected to compressed air until the requirements of this section are met. O. Reg. 213/91, s. 334 (1).

(2) The employer of workers who may be subjected to compressed air at a project shall give a Director written notice of the intended use of compressed air on the project at least fourteen days before beginning work on the project. O. Reg. 213/91, s. 334 (2); O. Reg. 145/00, s. 37 (1).

(3) Before work is begun in compressed air, the employer shall obtain written permission from a Director. O. Reg. 213/91, s. 334 (3); O. Reg. 145/00, s. 37 (2).

**335.** (1) Before work is begun in compressed air at a project, a constructor shall give written notice,

- (a) to the local police department and the fire department and public hospital nearest to the project; and
- (b) to a Director, together with the names and addresses of those to whom notice is given under clause (a). O. Reg. 213/91, s. 335 (1); O. Reg. 145/00, s. 38.

(2) A notice shall set out,

- (a) the location of the project;
- (b) the name, address and telephone number of the project physician and the superintendent; and
- (c) the location of a medical lock for the project and of every other readily-available medical lock. O. Reg. 213/91, s. 335 (2).

(3) The employer shall give notice of the completion of work in compressed air at the project to those who were given notice under clause (1) (a). O. Reg. 213/91, s. 335 (3).

**336.** (1) The employer shall appoint a competent person as superintendent of all work in compressed air at a project. O. Reg. 213/91, s. 336 (1).

(2) The superintendent, before a worker is first subjected to compressed air,

- (a) shall ensure that the worker is fully instructed,
  - (i) in the hazards of working in compressed air, and
  - (ii) in the measures to be taken to safeguard the health and safety of the worker and other workers on the project; and

(b) shall obtain an acknowledgement signed by the worker who is receiving the instruction stating that the worker has been so instructed. O. Reg. 213/91, s. 336 (2).

**337.** (1) A superintendent at a project shall designate for each shift at least one competent worker as lock tender who shall attend to the controls of an air lock. O. Reg. 213/91, s. 337 (1).

(2) A lock tender must be able to speak, read and write English competently. O. Reg. 213/91, s. 337 (2).

(3) A superintendent at a project shall ensure that at least one competent worker in addition to the lock tender is available in an emergency to perform the duties of the lock tender while a worker is working in compressed air. O. Reg. 213/91, s. 337 (3).

**338.** (1) The superintendent shall keep available at a project for inspection by an inspector,

(a) a copy of each form described in clause 352 (1) (b) prepared by the project physician;

(b) all records required under section 373 of air pressure in air locks on the project; and

(c) all records required under section 394 to be kept by a lock tender. O. Reg. 213/91, s. 338 (1); O. Reg. 64/18, s. 2 (1).

(2) When work in compressed air at the project is finished, the superintendent shall promptly send to a Director a copy of each form described in clause 352 (1) (b) prepared by the project physician. O. Reg. 64/18, s. 2 (2).

**339.** (1) A worker who works in compressed air shall wear for at least twenty-four hours after working in compressed air a sturdy metal or plastic badge that meets the requirements of subsection (2). O. Reg. 213/91, s. 339 (1).

(2) A badge shall measure at least fifty millimetres in diameter and shall set out,

(a) the name of the constructor of the project;

(b) the name and telephone number of the project physician;

(c) the location of a medical lock at the project; and

(d) the words, “compressed air worker – in case of decompression sickness take immediately to a medical lock”. O. Reg. 213/91, s. 339 (2).

(3) The constructor at a project shall provide workers with the badge required under subsection (1). O. Reg. 213/91, s. 339 (3).

#### COMMUNICATIONS

**340.** (1) A telephone system for work in compressed air shall be provided at a project. O. Reg. 213/91, s. 340 (1).

(2) A telephone system shall consist of telephones located,

(a) at a location as close as is practicable to the work face;

(b) in every work chamber near a door that leads to an air lock;

(c) in every air lock;

(d) near every lock tender’s work position;

(e) adjacent to every compressor plant; and

(f) in the superintendent’s office. O. Reg. 213/91, s. 340 (2).

**341.** (1) An electric buzzer or bell system for work in compressed air shall be provided at a project. O. Reg. 213/91, s. 341 (1).

(2) An electric buzzer or bell system shall consist of a switch and a buzzer or bell located,

(a) in every work chamber near a door that leads to an air lock;

(b) in every air lock; and

(c) near every lock tender’s work position. O. Reg. 213/91, s. 341 (2).

(3) A signal set out in Column 1 of the Table shall be used to communicate the meaning set out opposite to it in Column 2 between a work chamber, an air lock and the lock tender’s work position.

TABLE

Item	Column 1 Code of signals	Column 2 Meaning
1.	1 signal	When no people are in the air lock, MATERIAL IS COMING OUT.
2.	2 signals	When people are in the air lock, STOP COMPRESSING.
3.	3 signals	PEOPLE ARE COMING OUT OF THE AIR LOCK.

O. Reg. 345/15, s. 29.

(4) A copy of the signal code shall be posted near every switch of an electric buzzer or bell system. O. Reg. 213/91, s. 341 (4).

(5) A lock tender shall acknowledge every signal received on an electric buzzer or bell system by returning the same signal. O. Reg. 213/91, s. 341 (5).

#### FIRE PREVENTION

**342.** (1) No person shall use acetylene while working in compressed air. O. Reg. 213/91, s. 342 (1).

(2) No person shall smoke or be permitted to smoke in an air lock or work chamber, other than in an area designated as a smoking area by the superintendent. O. Reg. 213/91, s. 342 (2).

**343.** Before a flame-cutting, gas-welding or similar source of ignition is introduced into a work chamber that is in the vicinity of a combustible material,

(a) a firewatch shall be established and maintained;

(b) a fire hose shall be prepared for use;

(c) the fire hose shall be tested to ensure there is an adequate supply of water and water pressure to extinguish a fire; and

(d) a fire extinguisher suitable for the hazard shall be provided nearby. O. Reg. 213/91, s. 343.

**344.** As far as practicable, no combustible material shall be installed in or stored in an air lock or work chamber. O. Reg. 213/91, s. 344.

**345.** (1) A standpipe connected to a source of water or connected to other pipes above ground shall be installed in every air lock and work chamber at a project. O. Reg. 213/91, s. 345 (1).

(2) A standpipe shall have,

(a) valves that isolate the standpipe from the rest of the fire prevention system;

(b) a fitting that is controlled by a valve installed on the standpipe on the work chamber side of the bulkhead and by a valve inside the material lock;

(c) a fitting and valve similar to that described in clause (b) installed at the end of the standpipe nearest to the work face; and

(d) the location of the fittings and valves clearly marked. O. Reg. 213/91, s. 345 (2).

(3) A fitting described in clause (2) (b) shall be such that a fire hose of the local fire department can be connected to it. O. Reg. 213/91, s. 345 (3).

#### LIGHTING AND ELECTRICAL SUPPLY

**346.** Electrical wiring passing through an air lock or the bulkheads adjacent to an air lock, other than telephone and signal system wiring, shall be installed in a rigid metal conduit. O. Reg. 213/91, s. 346.

**347.** (1) A lighting system shall be provided in each work chamber. O. Reg. 213/91, s. 347 (1).

(2) Electric light bulbs used in an air lock shall be enclosed in a glass and metal protective screen cover. O. Reg. 213/91, s. 347 (2).

(3) Flashlights shall be readily available at the entrance to an air lock, on the atmospheric side in an air lock and at every telephone required by section 340. O. Reg. 213/91, s. 347 (3).

**348.** An auxiliary source of supply of electricity that is not a portable emergency source of supply shall be provided for the lighting system. O. Reg. 213/91, s. 348.

**349.** (1) An emergency electrical lighting system shall be provided and maintained in each air lock and work chamber. O. Reg. 213/91, s. 349 (1); O. Reg. 142/17, s. 37.

(2) An emergency electrical lighting system,

(a) shall be connected to the electrical supply so that it automatically turns on in the event of the failure of the electrical supply; and

(b) shall have a testing switch, if the system is battery-powered. O. Reg. 213/91, s. 349 (2).

(3) An emergency electrical lighting system shall be tested at intervals that are at least as frequent as recommended by the manufacturer and that are adequate to ensure that it will function in an emergency. O. Reg. 213/91, s. 349 (3).

#### SANITATION

**350.** A work chamber shall be provided with a reasonable supply of drinking water and at least one chemical toilet. O. Reg. 213/91, s. 350.



## MEDICAL REQUIREMENTS

**351.** (1) An employer who is constructing a tunnel or caisson in which a worker works or will work in compressed air shall employ as project physician at least one legally qualified medical practitioner. O. Reg. 213/91, s. 351 (1).

(2) The project physician shall conduct such medical examinations of workers as in his or her opinion are necessary and shall establish a medical treatment program for the workers. O. Reg. 213/91, s. 351 (2).

(3) A project physician shall be reasonably available to render medical treatment or advice on the treatment of decompression sickness while a worker is working in compressed air. O. Reg. 213/91, s. 351 (3).

(4) The employer shall ensure that the project physician instruct workers on the hazards of working in compressed air and the necessary precautions to be taken to avoid decompression sickness. O. Reg. 213/91, s. 351 (4).

(5) If the pressure in a work chamber at a project may exceed 350 kilopascals for a period of more than five minutes, a project physician shall establish procedures to control decompression sickness including,

- (a) the maximum length of work periods for the workers in the chamber;
- (b) the minimum length of rest periods for workers in the chamber; and
- (c) compression and decompression procedures. O. Reg. 213/91, s. 351 (5).

**352.** (1) No worker shall work or be permitted to work in compressed air on a project unless,

- (a) the project physician has complied with subsection (4); and
- (b) the project physician indicates that the worker is physically fit to work in compressed air on the form entitled "Record of Compressed Air Worker", which is Figure 1 in the CSA Standard Z275.3-09 (R2014): Occupational Safety Code for Work in Compressed Air Environments. O. Reg. 213/91, s. 352 (1); O. Reg. 64/18, s. 3 (1).

(2) Subsection (1) does not apply with respect to an inspector or with respect to a worker accompanying an inspector at the inspector's request. O. Reg. 213/91, s. 352 (2).

(3) Every worker working in compressed air at a project shall have a medical examination performed by the project physician before beginning work in compressed air and every two months thereafter while the worker is working in compressed air to determine the worker's fitness for working in compressed air. O. Reg. 213/91, s. 352 (3).

(4) The project physician shall complete the form described in clause (1) (b) for the worker, stating whether the worker is physically fit to work in compressed air and ensure that the superintendent receives a copy. O. Reg. 213/91, s. 352 (4); O. Reg. 64/18, s. 3 (2).

(5) The medical examination shall include,

- (a) a physical examination;
- (b) a test under compressed air, if the worker has not previously worked in compressed air; and
- (c) such clinical tests as the project physician may require. O. Reg. 213/91, s. 352 (5).

(6) The clinical tests referred to in clause (5) (c) shall include x-rays of the chest and shoulders, and hip and knee joints taken at least once every five years. O. Reg. 213/91, s. 352 (6).

(7) If a worker undergoes a medical examination, the employer shall pay,

- (a) the worker's costs for any medical examinations and tests; and
- (b) the worker's reasonable travel costs respecting any medical examinations and tests. O. Reg. 213/91, s. 352 (7).

(8) The time the worker spends to undergo medical examinations and tests, including travel time, shall be deemed to be work time for which the worker shall be paid by the employer at the worker's regular or premium rate, as may be proper. O. Reg. 213/91, s. 352 (8).

(9) The project physician conducting the physical examination or clinical tests or under whose supervision the examination or tests are made shall advise the employer whether the worker is fit or is fit with limitations or unfit for work in compressed air, without giving or disclosing to the employer the records or results of the examination or tests. O. Reg. 213/91, s. 352 (9).

(10) The employer shall act on the advice given by the physician under subsection (9). O. Reg. 213/91, s. 352 (10).

(11) Where a project physician advises the employer that a worker, because of a condition resulting from work in compressed air, is fit with limitations or is unfit, the project physician shall forthwith communicate such advice to the Chief Physician of the Ministry. O. Reg. 213/91, s. 352 (11); O. Reg. 142/17, s. 38 (1).

(12) The records of medical examinations, tests, medical treatment and worker exposure to compressed air made or obtained by the project physician under section 351 and this section shall be kept in a secure place by the project physician who has conducted the examinations and tests or under whose supervision the examinations and tests have been made, for at least six years. O. Reg. 213/91, s. 352 (12); O. Reg. 142/17, s. 38 (2).

(13) After six years, the project physician may forward the records to the Chief Physician of the Ministry, or a physician designated by the Chief Physician, and, in any event, the records shall not be destroyed for a period the greater of forty years from the time such records were first made or twenty years from the time the last of such records were made. O. Reg. 213/91, s. 352 (13); O. Reg. 142/17, s. 38 (3).

**353.** (1) A worker who is about to work in compressed air and who does not feel well for any reason shall report the fact as soon as is practicable to the superintendent or a project physician before working in compressed air. O. Reg. 213/91, s. 353 (1).

(2) A worker who is working in compressed air and who does not feel well for any reason shall report the fact as soon as practicable to the superintendent or a project physician. O. Reg. 213/91, s. 353 (2).

**354.** A worker who is absent for a period of ten or more days from working in compressed air shall not resume work in compressed air until a project physician indicates on the form described in clause 352 (1) (b) that the worker is physically fit to resume work in compressed air. O. Reg. 213/91, s. 354; O. Reg. 64/18, s. 4.

#### MEDICAL LOCKS

**355.** (1) A first aid room shall be provided in close proximity to each medical lock at a project. O. Reg. 213/91, s. 355 (1).

(2) A first aid room shall contain all equipment necessary for first aid for workers working in compressed air and facilities adequate for conducting medical examinations. O. Reg. 213/91, s. 355 (2).

**356.** (1) A constructor shall supply at least one medical lock at a project where work in compressed air is done and shall maintain it ready for operation while work in compressed air is being done. O. Reg. 213/91, s. 356 (1).

(2) A certificate of inspection issued under Ontario Regulation 220/01 (Boilers and Pressure Vessels) made under the *Technical Standards and Safety Act, 2000* for a working pressure of at least 520 kilopascals is required for every medical lock on a project. O. Reg. 213/91, s. 356 (2); O. Reg. 142/17, s. 39.

**357.** (1) A medical lock shall be not less than 1.8 metres high at its centre line. O. Reg. 213/91, s. 357 (1).

(2) A medical lock shall be divided into two pressure compartments. O. Reg. 213/91, s. 357 (2).

(3) Each compartment of a medical lock shall have air valves that are arranged so that the compartment can be pressurized and depressurized from inside and outside the lock. O. Reg. 213/91, s. 357 (3).

(4) An observation window shall be installed in each door and in the rear wall of a medical lock. O. Reg. 213/91, s. 357 (4).

(5) A medical lock shall be equipped with,

(a) a pressure release valve which will automatically blow-off at a pressure not greater than seventy kilopascals more than the operating pressure of the work chamber;

(b) a pressure gauge, a thermometer, a telephone, a cot, seating and a radiant heater; and

(c) a cot mattress, mattress cover and blankets all of which are made of material that is not readily flammable. O. Reg. 213/91, s. 357 (5).

(6) The pressure release valve shall be tested and calibrated before the medical lock is used. O. Reg. 213/91, s. 357 (6).

(7) A medical lock shall be maintained at a temperature of at least 18 degrees celsius, well-lit and well-ventilated and kept clean and sanitary. O. Reg. 213/91, s. 357 (7).

**358.** (1) A project physician shall control the medical treatment of workers in a medical lock at a project. O. Reg. 213/91, s. 358 (1).

(2) While a worker is working in compressed air and for twenty-four hours afterwards, at least one worker experienced in the decompression of persons suffering from decompression sickness,

(a) shall be present on the project, if the work in compressed air was done at a pressure greater than 100 kilopascals; or

(b) shall be readily available, if the work in compressed air was done at a pressure of 100 kilopascals or less. O. Reg. 213/91, s. 358 (2).

#### AIR COMPRESSORS

**359.** (1) The superintendent shall designate at least one competent worker to be in charge of the compressors compressing air for a work chamber and air lock. O. Reg. 213/91, s. 359 (1).

(2) REVOKED: O. Reg. 88/13, s. 3.

(3) A competent worker designated under subsection (1) shall attend to the compressors,

(a) while a person is in compressed air in the work chamber or air lock; and

(b) for twenty-four hours after a person has been in compressed air with a pressure exceeding 100 kilopascals in the work chamber or air lock. O. Reg. 213/91, s. 359 (3).

(4) REVOKED: O. Reg. 88/13, s. 3.

**360.** (1) At least two air compressors shall be provided for every work chamber and air lock at a project. O. Reg. 213/91, s. 360 (1).

(2) The air compressors for a work chamber or an air lock shall have capacity enough to ensure that, if one compressor is not operating, the remaining compressors are capable of supplying the air required for the work chamber or air lock. O. Reg. 213/91, s. 360 (2).

**361.** (1) The energy required to furnish compressed air to a work chamber or an air lock shall be readily available at a project from at least two independent sources. O. Reg. 213/91, s. 361 (1).

(2) The two sources of energy shall be arranged so that, should the principal energy source fail, an auxiliary source automatically energizes the compressor. O. Reg. 213/91, s. 361 (2).

(3) An auxiliary source of energy shall be inspected and tested by being operated at regular intervals of not more than seven days to ensure that it works. O. Reg. 213/91, s. 361 (3).

**362.** (1) A compressor for a work chamber or an air lock shall be constructed so as to ensure that lubricating oil is not discharged with the air that the compressor supplies. O. Reg. 213/91, s. 362 (1).

(2) The air intake for a compressor shall be located so as to prevent the entry of exhaust gases from internal combustion engines or other contaminants. O. Reg. 213/91, s. 362 (2).

**363.** Air supplied for use in a work chamber or an air lock,

(a) shall be clean and free from excessive moisture, oil or other contaminants; and

(b) shall be kept between 10 degrees and 27 degrees celsius, as far as is practicable. O. Reg. 213/91, s. 363.

#### AIR LOCKS AND WORK CHAMBERS

**364.** One air lock shall be provided for each work chamber at a project. O. Reg. 213/91, s. 364.

**365.** (1) An air lock, including the bulkheads and doors, shall be designed by a professional engineer in accordance with good engineering practice to withstand the pressures to be used in the work chamber and in the air lock. O. Reg. 213/91, s. 365 (1).

(2) An air lock shall be constructed in accordance with the professional engineer's design drawings for it. O. Reg. 213/91, s. 365 (2).

(3) An air lock used for people,

(a) shall measure at least two metres laterally and vertically;

(b) shall be large enough to accommodate the maximum number of people expected to be in the work chamber without them being in cramped positions;

(c) other than an ancillary air lock that complies with section 367, shall contain a functional and accurate electric time piece, thermometer and pressure gauge. O. Reg. 213/91, s. 365 (3).

(4) The constructor shall send to a Director before construction of an air lock begins a copy of the design drawings for the air lock. O. Reg. 213/91, s. 365 (4); O. Reg. 145/00, s. 40; O. Reg. 85/04, s. 24.

(5) The constructor shall keep at a project a copy of the design drawings for an air lock while the air lock is at the project. O. Reg. 213/91, s. 365 (5).

**366.** Separate air locks shall be used for people and for materials,

(a) if the air lock is in a shaft; or

(b) where practicable, if the air locks are installed in a tunnel and if the air pressure is likely to exceed 100 kilopascals. O. Reg. 213/91, s. 366.

**367.** (1) Every air lock shall have an ancillary air lock that,

(a) can be pressurized independently of the primary air lock;

(b) has a door into the primary air lock or into the work chamber; and

(c) has a door into air at atmospheric pressure. O. Reg. 213/91, s. 367 (1).

(2) Except in an emergency, a door in an ancillary air lock into air at atmospheric pressure shall be kept open. O. Reg. 213/91, s. 367 (2).

(3) A vertical air lock in a shaft or pneumatic caisson shall not be used to decompress workers unless a separate worker-lock with its own controls for compression and decompression is provided. O. Reg. 213/91, s. 367 (3).

- (4) An ancillary air lock shall be used to enter the work chamber only,
- (a) when the door between the chamber and the primary air lock is open; and
  - (b) when it is impossible or impracticable for the door to be closed. O. Reg. 213/91, s. 367 (4).
- (5) Except in an emergency, an ancillary air lock shall not be used to decompress people. O. Reg. 213/91, s. 367 (5).
- 368.** (1) At least two pipes shall supply air to each work chamber and each air lock. O. Reg. 213/91, s. 368 (1).
- (2) Each of the pipes shall have a valve installed in the vicinity of the compressors to enable one pipe to be disconnected while another pipe remains in service at the work chamber or air lock. O. Reg. 213/91, s. 368 (2).
- (3) The outlet end of a pipe supplying air to a work chamber or an air lock shall have a hinged flap valve. O. Reg. 213/91, s. 368 (3).
- 369.** (1) Each work chamber and each air lock, including an ancillary air lock, shall have a means of controlling and of automatically limiting the maximum air pressure in it. O. Reg. 213/91, s. 369 (1).
- (2) The air pressure control mechanism shall be set at a level not greater than,
- (a) for an air lock, the pressure for which the air lock, bulkheads and doors are designed; and
  - (b) for a work chamber, seventy kilopascals more than the maximum air pressure to be used in the chamber. O. Reg. 213/91, s. 369 (2).
- 370.** At each set of valves controlling the air supply to and discharge from an air lock, there shall be,
- (a) a pressure gauge showing the air pressure in the air lock;
  - (b) a pressure gauge showing the air pressure in the work chamber;
  - (c) an electric time piece;
  - (d) a thermometer showing the temperature in the air lock; and
  - (e) a legible copy of the procedures governing maximum work periods and minimum decompression times for the air lock. O. Reg. 213/91, s. 370.
- 371.** (1) Separate valves controlling the air supply to and discharge from an air lock shall be provided inside and outside the lock. O. Reg. 213/91, s. 371 (1).
- (2) The valves shall be arranged so that a person can enter or leave the air lock or work chamber if no lock tender is attending the air lock. O. Reg. 213/91, s. 371 (2).
- 372.** If an automatic compression and decompression device is installed in an air lock used for people, the air lock shall have a manual means of controlling the air pressure in the lock. O. Reg. 213/91, s. 372.
- 373.** (1) An air lock, other than an ancillary air lock, used for people shall have an automatic recording gauge to permanently record the air pressure in the lock. O. Reg. 213/91, s. 373 (1).
- (2) The gauge shall be a rotating dial or strip-chart rectilinear type. O. Reg. 213/91, s. 373 (2).
- (3) The gauge,
- (a) shall be installed so that the lock tender cannot see it when at the controls of the air lock;
  - (b) shall indicate the change in air pressure at intervals of not more than five minutes; and
  - (c) shall be kept locked except when the recording paper is being changed. O. Reg. 213/91, s. 373 (3).
- (4) Despite subsection (2) and clause (3) (b), the gauge for an air lock at a work chamber whose air pressure exceeds 100 kilopascals shall be the strip-chart rectilinear type and shall indicate the change in air pressure at intervals of not more than one minute. O. Reg. 213/91, s. 373 (4).
- (5) The recording paper used in a gauge shall be changed every seven days and shall be marked to identify the period of time to which it relates. O. Reg. 213/91, s. 373 (5).
- 374.** (1) An air lock shall have a pressure gauge that can be read from the work chamber and that shows the air pressure in the lock. O. Reg. 213/91, s. 374 (1).
- (2) A pressure gauge, other than a portable pressure gauge, shall have fittings for attaching test gauges to it and shall be tested daily for accuracy. O. Reg. 213/91, s. 374 (2).
- 375.** A work chamber shall contain, in a protective container less than 15 metres from the work face, a portable pressure gauge and a thermometer. O. Reg. 213/91, s. 375; O. Reg. 142/17, s. 40.
- 376.** (1) Only one unit of measuring pressure (either kilopascals or pounds per square inch) shall be used on a project. O. Reg. 213/91, s. 376 (1).

(2) Pressure gauges for decompression equipment and decompression procedures established for a project shall be calibrated using the unit of pressure for the project. O. Reg. 213/91, s. 376 (2).

**377.** (1) The door between an air lock and a work chamber shall be kept open,

- (a) unless the air lock is being used to compress or decompress people or to move materials; or
- (b) when people are in the work chamber. O. Reg. 213/91, s. 377 (1).

(2) Clause (1) (a) does not apply with respect to an ancillary air lock. O. Reg. 213/91, s. 377 (2).

**378.** Every air lock door shall have a transparent observation window. O. Reg. 213/91, s. 378.

**379.** If practicable, an air lock used for people, other than an ancillary air lock, shall have one seat for each person being decompressed at one time. O. Reg. 213/91, s. 379.

**380.** (1) An air lock in which people are decompressed shall have a means of radiant heat if the air pressure in the lock exceeds 100 kilopascals. O. Reg. 213/91, s. 380 (1).

(2) The temperature in an air lock used for people shall not exceed 27 degrees celsius. O. Reg. 213/91, s. 380 (2).

**381.** (1) A smoke line shall be provided from each work face of a work chamber if an air lock or bulkhead is located between the chamber and the surface. O. Reg. 213/91, s. 381 (1).

(2) Each smoke line shall extend to a point less than 15 metres from a work face. O. Reg. 213/91, s. 381 (2); O. Reg. 142/17, s. 41 (1).

(3) Each smoke line shall have two quick opening valves at least 100 millimetres in diameter,

- (a) one located less than 17 metres from the work face; and
- (b) one located between the air lock closest to the work chamber and the work chamber and less than two metres from the air lock. O. Reg. 213/91, s. 381 (3); O. Reg. 142/17, s. 41 (2, 3).

(4) Each smoke line shall be at least 100 millimetres in diameter and shall have a readily-accessible outlet above ground,

- (a) that has a quick opening valve at least 100 millimetres in diameter;
- (b) that is clearly marked with a sign stating “SMOKE LINE – TO BE USED ONLY IN CASE OF EMERGENCY”; and
- (c) that is sealed to prevent the inadvertent opening of the valve. O. Reg. 213/91, s. 381 (4).

(5) Each smoke line shall extend from inside the work chamber to above ground and shall pass vertically through either the air lock or the bulkhead between the work chamber and air at atmospheric pressure. O. Reg. 213/91, s. 381 (5).

**382.** (1) No bulkhead in a work chamber shall interfere with the free passage from the work face to an air lock of people in a tunnel or shaft. O. Reg. 213/91, s. 382 (1).

(2) Subsection (1) does not apply with respect to a partial bulkhead in a sub-aqueous tunnel if the bulkhead is designed and placed to trap air so that workers can escape from the tunnel if it is flooded. O. Reg. 213/91, s. 382 (2).

**383.** (1) Except when it is necessary to protect people during an emergency, the pressure in a work chamber shall not exceed 350 kilopascals for more than five minutes. O. Reg. 213/91, s. 383 (1).

(2) If the pressure in a work chamber exceeds 350 kilopascals for more than five minutes,

- (a) the superintendent shall promptly notify an inspector by telephone, two-way radio or in person; and
- (b) the pressure maintained in the work chamber shall be the least possible pressure required to meet the emergency. O. Reg. 213/91, s. 383 (2).

**384.** (1) Subject to subsection (2), no worker shall work or be permitted to work in a work chamber in which the temperature exceeds the greater of,

- (a) 27 degrees celsius; and
- (b) the temperature at the entrance to the service shaft above ground. O. Reg. 213/91, s. 384 (1).

(2) No worker shall work or be permitted to work in a work chamber in which the temperature exceeds 38 degrees celsius. O. Reg. 213/91, s. 384 (2).

**385.** (1) Water on the floor of a work chamber or an air lock shall be drained by a pipe or mop line and, if necessary, a pump. O. Reg. 213/91, s. 385 (1).

(2) A pipe or mop line shall have an inside diameter of at least fifty-one millimetres. O. Reg. 213/91, s. 385 (2).

(3) At least one inlet with a valve to a pipe or mop line for an air lock and work chamber shall be located,

- (a) in the air lock;
- (b) less than 15 metres from the work face; and

- (c) at intervals of not more than thirty metres along the length of the work chamber. O. Reg. 213/91, s. 385 (3); O. Reg. 142/17, s. 42.
- (4) An inlet shall be diverted downward. O. Reg. 213/91, s. 385 (4).
- (5) An outlet from an air lock shall discharge downward under atmospheric air pressure. O. Reg. 213/91, s. 385 (5).

#### WORK PERIODS AND REST PERIODS

- 386.** (1) Subject to subsection (2), no worker shall,
- (a) work for more than two working periods in any consecutive twenty-four hour period where the maximum air pressure is not greater than 100 kilopascals; or
  - (b) work for more than one working period in any consecutive twenty-four hour period where the maximum air pressure is more than 100 kilopascals. O. Reg. 213/91, s. 386 (1).
- (2) No worker shall work or be permitted to work more than eight hours in a period of twenty-four hours. O. Reg. 213/91, s. 386 (2).
- (3) No lock tender shall work or be permitted to work more than nine hours in a period of twenty-four hours. O. Reg. 213/91, s. 386 (3).
- (4) The period between the end of one work period and the beginning of the next for a worker doing manual work under compressed air where the maximum air pressure exceeds 100 kilopascals shall be at least twelve hours. O. Reg. 213/91, s. 386 (4).
- 387.** (1) A worker who is working in compressed air shall have a rest period of at least,
- (a)  $\frac{1}{4}$  hour, if the worker was working in pressure of 100 kilopascals or less;
  - (b)  $\frac{3}{4}$  hour, if the worker was working in pressure greater than 100 kilopascals up to and including 140 kilopascals;
  - (c)  $1\frac{1}{2}$  hours, if the worker was working in pressure greater than 140 kilopascals up to and including 220 kilopascals; or
  - (d) two hours, if the worker was working in pressure greater than 220 kilopascals. O. Reg. 213/91, s. 387 (1).
- (2) No worker shall be permitted to perform manual work or engage in physical exertion during a rest period. O. Reg. 213/91, s. 387 (2).
- (3) No worker shall be permitted to leave a project during a rest period. O. Reg. 213/91, s. 387 (3).
- 388.** (1) The employer shall provide, free of charge, sugar and hot beverages for workers working in compressed air to consume during their rest periods. O. Reg. 213/91, s. 388 (1).
- (2) An employer shall keep containers and cups for beverages in a sanitary condition and shall store them in a closed container. O. Reg. 213/91, s. 388 (2).

#### LOCK TENDERS

- 389.** (1) A lock tender shall supervise the controls of an air lock when a worker is about to be, or is being, subjected to compressed air in the air lock or work chamber. O. Reg. 213/91, s. 389 (1).
- (2) Subject to subsection (3), a lock tender shall tend only one air lock at a time. O. Reg. 213/91, s. 389 (2).
- (3) A lock tender may tend two locks if,
- (a) they are in close proximity;
  - (b) the pressure in each work chamber does not exceed 100 kilopascals; and
  - (c) only one of the locks is being used to compress or decompress a worker. O. Reg. 213/91, s. 389 (3).
- 390.** (1) A lock tender shall ensure that the requirements of this section are met before a worker enters an air lock. O. Reg. 213/91, s. 390 (1).
- (2) A worker shall be examined by a project physician before the worker enters an air lock in preparation for working in compressed air. O. Reg. 213/91, s. 390 (2).
- (3) A lock tender shall ensure that any worker who enters the air lock in preparation for working in compressed air has been examined by a physician in accordance with subsection (2). O. Reg. 213/91, s. 390 (3).
- (4) The means of air supply, air pressure gauges and controls, lock equipment and other devices necessary for the safe operation of an air lock and the protection of workers shall be in working order. O. Reg. 213/91, s. 390 (4).
- 391.** (1) A lock tender shall increase the air pressure on a worker in an air lock in accordance with this section. O. Reg. 213/91, s. 391 (1).
- (2) Air pressure shall be increased uniformly and to no more than thirty-five kilopascals in the first two minutes of application of compressed air. O. Reg. 213/91, s. 391 (2).

(3) Air pressure shall not be increased to more than thirty-five kilopascals until the lock tender ensures that every worker in the air lock is free from discomfort due to air pressure. O. Reg. 213/91, s. 391 (3).

(4) Air pressure shall be increased above thirty-five kilopascals at a uniform rate of not greater than thirty-five kilopascals per minute. O. Reg. 213/91, s. 391 (4).

(5) A lock tender shall observe a worker in an air lock while increasing the air pressure on the worker and, if the worker shows signs of discomfort and the discomfort does not quickly disappear, the lock tender shall gradually decrease the air pressure until the worker reports that the discomfort has ceased or until the air pressure reaches atmospheric pressure. O. Reg. 213/91, s. 391 (5).

**392.** (1) A lock tender shall decrease the air pressure on a worker in an air lock in accordance with this section and section 395. O. Reg. 213/91, s. 392 (1).

(2) Air pressure shall be decreased uniformly in each of the stages of decompression referred to in section 395. O. Reg. 213/91, s. 392 (2).

(3) A lock tender shall constantly observe a worker in an air lock while decreasing the air pressure on the worker and, if the worker shows signs of discomfort and the discomfort does not quickly disappear, the lock tender shall gradually increase the air pressure until the worker reports that the discomfort has ceased or until the air pressure equals the pressure in the work chamber. O. Reg. 213/91, s. 392 (3).

**393.** (1) If a worker in an air lock appears to be suffering from decompression sickness, a lock tender shall notify, and follow the instructions of, a project physician, the superintendent or a person designated by the superintendent. O. Reg. 213/91, s. 393 (1).

(2) If a worker in an air lock appears to be injured or to be unwell from a cause unrelated to air pressure, a lock tender shall notify, and follow the instructions of, a project physician. O. Reg. 213/91, s. 393 (2).

(3) In the circumstances described in subsection (2), a lock tender shall decompress the worker unless otherwise instructed by the project physician. O. Reg. 213/91, s. 393 (3).

**394.** (1) A lock tender shall record information about the compression and decompression of a worker in an air lock. O. Reg. 213/91, s. 394 (1).

(2) A separate record shall be kept for each air lock and each compression and decompression of a worker. O. Reg. 213/91, s. 394 (2).

(3) The information to be recorded is,

(a) the description of the air lock;

(b) the worker's name;

(c) the time of the beginning and end of each compression or decompression to which the worker is subjected;

(d) the pressure and temperature in the air lock before and after each compression or decompression to which the worker is subjected; and

(e) a description of any unusual occurrence respecting the worker, the air lock or any related matter. O. Reg. 213/91, s. 394 (3).

(4) A lock tender shall give the record to the superintendent. O. Reg. 213/91, s. 394 (4).

#### DECOMPRESSION PROCEDURES

**395.** (1) A worker who has been in air pressure greater than atmospheric air pressure for more than five minutes shall be decompressed down to atmospheric pressure in accordance with this section. O. Reg. 213/91, s. 395 (1).

(2) Subject to subsection (3), decompression shall be done in accordance with Table A.1 and Table A.2 as set out in the CSA Standard Z275.3-09 (R2014): Occupational Safety Code for Work in Compressed Air Environments. O. Reg. 64/18, s. 5 (1).

(3) The rate of decompression required by subsection (2) may be doubled with respect to a worker if, while performing the work in compressed air, the worker,

(a) has not been exposed to air pressure greater than 220 kilopascals;

(b) has remained under compressed air for a maximum of thirty minutes; and

(c) has not done manual work. O. Reg. 213/91, s. 395 (3).

(4) Subsection (3) applies only if every worker who is in the air lock,

(a) meets the requirements of clauses 3 (a), (b) and (c); and

(b) has previously experienced decompression. O. Reg. 213/91, s. 395 (4).

(5) A copy of the tables used for decompression described in subsection (2) shall be kept posted at a project,

- (a) in each air lock;
- (b) at the controls outside each air lock; and
- (c) in each change room. O. Reg. 213/91, s. 395 (5); O. Reg. 64/18, s. 5 (2).

**396.** A worker who believes he or she has decompression sickness shall promptly notify,

- (a) the superintendent or a project physician; or
- (b) the lock tender, if the worker is under compressed air. O. Reg. 213/91, s. 396.

**397.** (1) The superintendent shall make a report at least once a week to a Director concerning every case of decompression sickness at a project occurring since the previous report, if any. O. Reg. 213/91, s. 397 (1); O. Reg. 145/00, s. 41 (1).

(2) The superintendent shall promptly make a report by telephone, two-way radio or other direct means to a Director concerning a case of decompression sickness that does not respond to first-aid treatment. O. Reg. 213/91, s. 397 (2); O. Reg. 145/00, s. 41 (2).

(3) A report under this section shall indicate, for each case of decompression sickness,

- (a) the air pressure to which the worker was subjected;
- (b) the length of time the worker was subjected to the air pressure;
- (c) the nature of the medical treatment given to the worker; and
- (d) the extent of the worker's recovery. O. Reg. 213/91, s. 397 (3).

**398.** OMITTED (REVOKES OTHER REGULATIONS). O. Reg. 213/91, s. 398.

**399.** OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 213/91, s. 399.

TABLES 1, 2 REVOKED: O. Reg. 64/18, s. 6.

FORM 1 REVOKED: O. Reg. 64/18, s. 6.

Français

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# Occupational Health and Safety Act

## R.R.O. 1990, REGULATION 851 INDUSTRIAL ESTABLISHMENTS

**Consolidation Period:** From July 1, 2021 to the [e-Laws currency date](#).

Last amendment: 434/21.

Legislative History: 516/92, 630/94, 230/95, 450/97, 144/99, 284/99, 528/00, 488/01, 280/05, 629/05, 565/06, 179/07, 494/09, 420/10, 98/11, 382/15, 289/17, 60/18, 456/18, 186/19, 421/21, 434/21.

*This is the English version of a bilingual regulation.*

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### DEFINITIONS

**1.** In this Regulation,

“adequate”, when used in relation to a procedure, plan, material, device, object or thing, means that it is,

- (a) sufficient for both its intended and its actual use, and
- (b) sufficient to protect a worker from occupational illness or occupational injury; (“adéquat”)

“adequately” has a meaning that corresponds to the meaning of “adequate”; (“adéquatement”)

“boom” means the projecting part of a back-hoe, shovel, crane or similar lifting device from which a load is likely to be supported; (“flèche”)

“fire-resistance rating” means the rating in hours or fraction thereof that a material or assembly of materials will withstand the passage of flame and the transmission of heat when exposed to fire, as established for the material or assembly of materials under the *Building Code Act*; (“indice de résistance au feu”)

“flammable liquid” means a liquid having a flash point below 37.8° Celsius, and a vapour pressure below 275 kilopascals absolute at 37.8° Celsius; (“liquide inflammable”)

“foundry” means the part of a building or premises or the workshop, structure, room or place in which base metals or their alloys are cast in moulds, other than permanent moulds, or where core-making, shakeout or cleaning or any casting or other dust-causing operation ancillary to the casting process is carried on; (“fonderie”)

“gangway” means a defined passageway between a metal melting unit and a metal pouring area; (“passage”)

“lifting device” means a device that is used to raise or lower any material or object and includes its rails and other supports but does not include a device to which Ontario Regulation 209/01 (Elevating Devices), made under the *Technical Standards and Safety Act, 2000*, applies; (“appareil de levage”)

“log” includes tree-length pulpwood and a pit prop, pole, post, tie or any similar product; (“bille”)

“pouring aisle” means a passageway leading from a gangway where metal is poured into a mould or box; (“allée de coulée”)

“prime mover” means an initial source of motive power; (“élément moteur”)

“professional engineer” means a member or licensee of the Association of Professional Engineers of Ontario under the *Professional Engineers Act*; (“ingénieur”)

“service room” means, in relation to a building, a room that accommodates building services and includes a boiler room, furnace room, incinerator room, garbage room, elevator machine room and a room that accommodates air conditioning or heating appliances, pumps, compressors or electrical services; (“local technique”)

“transmission equipment” means any object or objects by which the motion of a prime mover is transmitted to a machine that is capable of utilizing such motion and includes a shaft, pulley, belt, chain, gear, clutch or other device; (“organe de transmission”)

“working space” means any space where persons are engaged in the performance of work within a foundry but does not include offices, lunch rooms, locker rooms, change rooms, rest rooms, washrooms, shower rooms, toilet rooms, pattern shops, maintenance shops, laboratories, shipping areas, the storage space occupied by equipment or materials not regularly in use or the enclosed space where core sands and moulding sands are stored. (“aire de travail”) R.R.O. 1990, Reg. 851, s. 1; O. Reg. 516/92, s. 1; O. Reg. 629/05, s. 1; O. Reg. 420/10, s. 1; O. Reg. 60/18, s. 1.

#### ALTERNATIVE METHODS AND MATERIALS

2. An employer, owner or constructor may vary a procedure required by this Regulation or the composition, design, size or arrangement of a material, object, device or thing as required by this Regulation,

- (a) if the procedure, composition, design, size or arrangement as varied affords protection for the health and safety of workers that is at least equal to the protection that would otherwise be given; and
- (b) if the employer, owner or constructor gives written notice of the varied procedure, composition, design, size or arrangement to the joint health and safety committee or the health and safety representative, if any, for the workplace and to any trade union representing workers at the workplace. O. Reg. 186/19, s. 2.

#### APPLICATION

3. This Regulation applies to all industrial establishments. R.R.O. 1990, Reg. 851, s. 3.

#### PART I SAFETY REGULATIONS

4. (1) Subject to subsection (2), the minimum age of,

- (a) a worker; or
- (b) a person who is permitted to be in or about an industrial establishment,

shall be,

- (c) sixteen years of age in a logging operation;
- (d) fifteen years of age in a factory other than a logging operation; and
- (e) fourteen years of age in a workplace other than a factory. R.R.O. 1990, Reg. 851, s. 4 (1).

(2) Clause (1) (b) does not apply to a person who,

- (a) while in the industrial establishment, is accompanied by a person who has attained the age of majority;
- (b) is being guided on a tour of the industrial establishment;
- (c) is in an area of the industrial establishment used for sales purposes; or
- (d) is in an area of the industrial establishment to which the public generally has access. R.R.O. 1990, Reg. 851, s. 4 (2).

(3) Clauses (1) (d) and (e) do not apply with respect to a worker who works as a performer in the entertainment and advertising industry. O. Reg. 179/07, s. 1.

(4) In subsection (3),

“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. (“representation”) O. Reg. 179/07, s. 1.

5.-6. REVOKED: O. Reg. 421/21, s. 1.

#### PRE-START HEALTH AND SAFETY REVIEWS

7. (1) In this section,

“apparatus” means equipment or a machine or device; (“appareil”)

**Note: On January 1, 2022, subsection 7 (1) of the Regulation is amended by adding the following definition: (See: O. Reg. 434/21, s. 1 (1))**

“applicable provision” means an applicable provision of this Regulation that is listed in the Table; (“disposition applicable”)

“protective element” means a shield, a guard, an operating control acting as a guard, a locking device or any other device preventing access; (“élément protecteur”)

“spray booth” means a spray booth as defined in Ontario Regulation 213/07 (Fire Code) made under the *Fire Protection and Prevention Act, 1997*; (“cabine de pulvérisation”)

“Table” means the Table to this section. (“tableau”) O. Reg. 528/00, s. 2; O. Reg. 420/10, s. 3 (1).

(2) Subject to subsections (5), (7), (8) and (9), a pre-start health and safety review is required if, in a factory other than a logging operation, a provision of this Regulation listed in the Table applies and the circumstances described in the Table will exist,

- (a) because a new apparatus, structure or protective element is to be constructed, added or installed or a new process is to be used; or
- (b) because an existing apparatus, structure, protective element or process is to be modified and one of the following steps must be taken to obtain compliance with the applicable provision:
  1. New or modified engineering controls are used.
  2. Other new or modified measures are used.
  3. A combination of new, existing or modified engineering controls and other new or modified measures is used. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (2) of the Regulation is revoked and the following substituted: (See: O. Reg. 434/21, s. 1 (2))**

(2) Subject to subsection (3), an owner, lessee or employer shall ensure that a pre-start health and safety review is conducted if, in a factory, an applicable provision applies and a corresponding circumstance described in the Table will exist,

- (a) because a new apparatus, structure or protective element is to be constructed, added or installed or a new process is to be used; or
- (b) because an existing apparatus, structure, protective element or process is to be modified and one of the following steps must be taken to obtain compliance with the applicable provision:
  - (i) New or modified engineering controls are used.
  - (ii) Other new or modified measures are used.
  - (iii) A combination of new, existing or modified engineering controls and other new or modified measures is used. O. Reg. 434/21, s. 1 (2).

(3) When a pre-start health and safety review is required, the owner, lessee or employer shall ensure that the apparatus, structure or protective element is not operated or used or that the process is not used, as the case may be, unless the review has been conducted, and,

- (a) all measures identified in the review as being required for compliance with the relevant provisions of this Regulation that are listed in the Table have been taken; or
- (b) if some or all of the measures specified in clause (a) are not taken, the owner, lessee or employer has provided written notice to the joint health and safety committee or the health and safety representative, if any, of what measures have been taken to comply with the relevant provisions of this Regulation that are listed in the Table. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (3) of the Regulation is revoked and the following substituted: (See: O. Reg. 434/21, s. 1 (2))**

(3) A pre-start health and safety review is not required,

- (a) at a logging operation; or
- (b) if an exemption set out in the Table applies. O. Reg. 434/21, s. 1 (2).

(4) A pre-start health and safety review includes the preparation of a written report that is made to the owner, lessee or employer and contains,

- (a) details of the measures to be taken for compliance with the relevant provisions of this Regulation that are listed in the Table;
- (b) if testing is required before the apparatus or structure can be operated or used or before the process can be used, details of measures to protect the health and safety of workers that are to be taken before the testing is carried out; and
- (c) if item 3 or 7 of the Table applies, details of the structural adequacy of the apparatus or structure. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (4) of the Regulation is revoked and the following substituted: (See: O. Reg. 434/21, s. 1 (2))**

- (4) A pre-start health and safety review shall be conducted by,
  - (a) a professional engineer for item 1, 2, 3, 4, 5, 6 or 7 of the Table; and
  - (b) a professional engineer or a person who in the opinion of the owner, lessee or employer possesses special, expert or professional knowledge or qualifications appropriate to assess any potential or actual hazards for item 8 of the Table. O. Reg. 434/21, s. 1 (2).
- (5) When item 2 of the Table applies, a pre-start health and safety review is not required if,
  - (a) the protective element was installed at the time the apparatus was manufactured and the conditions set out in paragraphs 1, 2 and 3 of subsection (6) are met; or
  - (b) the protective element was not installed at the time the apparatus was manufactured and the conditions set out in paragraphs 1, 2, 3 and 4 of subsection (6) are met. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (5) of the Regulation is revoked and the following substituted: (See: O. Reg. 434/21, s. 1 (2))**

- (5) A report on the pre-start health and safety review shall,
  - (a) be made to the owner, lessee or employer in writing;
  - (b) be signed and dated by the person conducting the review;
  - (c) have a seal affixed to it in accordance with the requirements under the *Professional Engineers Act*, if the person conducting the review is a professional engineer; and
  - (d) include the following information:
    - (i) details of the measures to be taken for compliance with the applicable provisions,
    - (ii) if item 3 or 7 of the Table applies, details of the structural adequacy of the apparatus or structure,
    - (iii) if any testing is to be performed before the apparatus, structure, protective element or process can be operated or used, as the case may be, details of the measures to be taken to protect the health and safety of workers while the testing is carried out, and
    - (iv) if the person conducting the review is not a professional engineer, the person's special, expert or professional knowledge or qualifications. O. Reg. 434/21, s. 1 (2).
- (6) The following are the conditions mentioned in clauses (5) (a) and (b):
  1. The apparatus was manufactured in accordance with and meets current applicable standards, or it has been modified to meet current applicable standards.
  2. The apparatus is installed in accordance with the manufacturer's instructions and current applicable standards.
  3. The protective element was manufactured in accordance with and meets current applicable standards, or it has been modified to meet current applicable standards.
  4. The protective element is installed in accordance with the manufacturer's instructions, and current applicable standards, if any. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (6) of the Regulation is revoked and the following substituted: (See: O. Reg. 434/21, s. 1 (2))**

- (6) If a pre-start health and safety review is required, the owner, lessee or employer shall ensure that the apparatus, structure, protective element or process is not operated or used, as the case may be, unless the review has been conducted and,
  - (a) all measures identified in the review as being required for compliance with the applicable provisions have been taken; or
  - (b) if some or all of the measures specified in clause (a) are not taken, the owner, lessee or employer has provided written notice to the joint health and safety committee or the health and safety representative, if any, of what measures have been taken to comply with the applicable provisions. O. Reg. 434/21, s. 1 (2).
- (7) When item 3 of the Table applies, a pre-start health and safety review is not required if the rack or stacking structure is designed and tested for use in accordance with current applicable standards. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (7) of the Regulation is revoked and the following substituted: (See: O. Reg. 434/21, s. 1 (2))**

(7) If a pre-start health and safety review is required, the owner, lessee or employer shall provide a copy of the written report made under subsection (5) to the joint health and safety committee or the health and safety representative, if any, before the apparatus, structure, protective element or process is operated or used, as the case may be. O. Reg. 434/21, s. 1 (2).

(8) When item 4 of the Table applies, a pre-start health and safety review is not required if the process is conducted inside a spray booth that is manufactured and installed in accordance with current applicable standards. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (8) of the Regulation is revoked and the following substituted: (See: O. Reg. 434/21, s. 1 (2))**

(8) The owner, lessee or employer shall keep the following documents readily accessible in the workplace for as long as the apparatus, structure or protective element remains in the workplace or the process is used in the workplace, as the case may be:

1. A copy of a written report made under subsection (5), together with supporting documentation, if any.
2. A copy of the documentation that establishes an exemption set out in the Table. O. Reg. 434/21, s. 1 (2).

(9) When item 7 of the Table applies, a pre-start health and safety review is not required,

- (a) in the case of a lifting device or travelling crane, if it is in or on a supporting structure originally designed for it and its capacity does not exceed the capacity provided for in that original design;
- (b) in the case of an automobile hoist, if it is certified that it meets current applicable standards. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (9) of the Regulation is revoked and the following substituted: (See: O. Reg. 434/21, s. 1 (2))**

(9) If an exemption set out in the Table applies, the owner, lessee or employer shall provide a copy of the documentation described in paragraph 2 of subsection (8) to the joint health and safety committee or the health and safety representative, if any, upon request. O. Reg. 434/21, s. 1 (2).

(10) If no pre-start health and safety review is required because subsection (5), (7), (8) or (9) applies, the owner, lessee or employer shall keep documents establishing the exemption readily accessible in the workplace for as long as the protective element, rack or stacking structure or lifting device, travelling crane or automobile hoist remains in the workplace or the process is used in the workplace, as the case may be. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (10) of the Regulation is revoked. (See: O. Reg. 434/21, s. 1 (2))**

(11) A pre-start health and safety review required under item 1, 2, 3, 4, 5, 6 or 7 of the Table shall be conducted by a professional engineer. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (11) of the Regulation is revoked. (See: O. Reg. 434/21, s. 1 (2))**

(12) A pre-start health and safety review required under item 8 of the Table shall be conducted by a professional engineer or by a person who in the opinion of the owner, lessee or employer possesses special, expert or professional knowledge or qualifications appropriate to assess any potential or actual hazards. O. Reg. 528/00, s. 2; O. Reg. 420/10, s. 3 (2).

**Note: On January 1, 2022, subsection 7 (12) of the Regulation is revoked. (See: O. Reg. 434/21, s. 1 (2))**

(13) The person conducting a pre-start health and safety review shall,

- (a) date and sign the written report mentioned in subsection (4);
- (b) if the person is a professional engineer, affix his or her seal to the report; and
- (c) if the person is not a professional engineer, include in the report details of his or her special, expert or professional knowledge or qualifications. O. Reg. 528/00, s. 2; O. Reg. 420/10, s. 3 (3).

**Note: On January 1, 2022, subsection 7 (13) of the Regulation is revoked. (See: O. Reg. 434/21, s. 1 (2))**

(14) Reports of pre-start health and safety reviews conducted under this section shall,

- (a) be kept readily accessible in the workplace together with any supporting documents; and
- (b) be provided to the joint health and safety committee or the health and safety representative, if any, before the apparatus, structure or protective element is operated or used or the process is used. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (14) of the Regulation is revoked. (See: O. Reg. 434/21, s. 1 (2))**

(15) Documents kept under subsection (10) may be reviewed, on request, by,

- (a) the joint health and safety committee or the health and safety representative, if any; or
- (b) an inspector. O. Reg. 528/00, s. 2.

**Note: On January 1, 2022, subsection 7 (15) of the Regulation is revoked. (See: O. Reg. 434/21, s. 1 (2))**

TABLE

Item	Applicable provisions of this Regulation	Circumstances
1.	Subsections 22 (1), (2) and (4)	Flammable liquids are located or dispensed in a building, room or area.

2.	Sections 24, 25, 26, 28, 31 and 32	Any of the following are used as protective elements in connection with an apparatus: 1. Safeguarding devices that signal the apparatus to stop, including but not limited to safety light curtains and screens, area scanning safeguarding systems, radio frequency systems and capacitance safeguarding systems, safety mat systems, two-hand control systems, two-hand tripping systems and single or multiple beam systems. 2. Barrier guards that use interlocking mechanical or electrical safeguarding devices.
3.	Clause 45 (b)	Material, articles or things are placed or stored on a structure that is a rack or stacking structure.
4.	Section 63	A process involves a risk of ignition or explosion that creates a condition of imminent hazard to a person's health or safety.
5.	Section 65	The use of a dust collector involves a risk of ignition or explosion that creates a condition of imminent hazard to a person's health or safety.
6.	Sections 87.3, 87.4, 87.5 and 88, subsections 90 (1), (2) and (3), and sections 91, 92, 94, 95, 96, 99, 101 and 102	A factory produces aluminum or steel or is a foundry that melts material or handles molten material.
7.	Sections 51 and 53	The construction, addition, installation or modification relates to a lifting device, travelling crane or automobile hoist.
8.	Sections 127 and 128	A process uses or produces a substance that may result in the exposure of a worker in excess of any exposure limit set out in Regulation 833 of the Revised Regulations of Ontario, 1990 (Control of Exposure to Biological or Chemical Agents), Ontario Regulation 278/05 (Designated Substance — Asbestos on Construction Projects and in Buildings and Repair Operations) or Ontario Regulation 490/09 (Designated Substances) all made under the Act.

O. Reg. 528/00, s. 2; O. Reg. 280/05, s. 1; O. Reg. 494/09, s. 1; O. Reg. 420/10, s. 3 (4).

**Note: On January 1, 2022, the Table to section 7 of the Regulation is revoked and the following substituted: (See: O. Reg. 434/21, s. 1 (3))**

TABLE

Item	Circumstances	Applicable provisions of this Regulation	Exemptions
1.	Either of the following applies with respect to flammable liquids: 1. More than 235 litres of flammable liquids are located in a building or room. 2. Flammable liquids are dispensed in a building, room or area.	Subsections 22 (1), (2) and (4)	All of the following requirements are met: 1. No more than 235 litres of flammable liquids are stored per adequate cabinet. 2. No more than three cabinets containing flammable liquids are in a group of cabinets. 3. There is a minimum distance of 30 metres between groups of cabinets containing flammable liquids.
2.	Any of the following are used as protective elements in connection with an apparatus: 1. Safeguarding devices that signal the apparatus to stop, including but not limited to safety light curtains and screens, area scanning safeguarding systems, radio frequency systems and capacitance safeguarding systems, safety mat systems, two-hand control systems, two-hand tripping systems and single or multiple beam systems. 2. Barrier guards that use interlocking mechanical or electrical safeguarding devices.	Sections 24, 25, 26, 28, 31 and 32	1. The protective element was installed at the time the apparatus was manufactured, and, i. the apparatus and the protective element were manufactured in accordance with, or have been modified to meet, current applicable standards; and ii. the apparatus has been installed in accordance with current applicable standards, if any, and the manufacturer's instructions. 2. The protective element was not installed at the time the apparatus was manufactured, and, i. the apparatus and the protective element were manufactured in accordance with, or have been modified to meet, current applicable standards; and ii. the apparatus and the protective element have been installed in accordance with current applicable standards, if any, and the manufacturer's instructions.

3.	Material, articles or things are placed or stored on a structure that is a rack or stacking structure.	Clause 45 (b)	The rack or stacking structure is designed and tested for use in accordance with current applicable standards.
4.	A process involves a risk of ignition or explosion that creates a condition of imminent hazard to a person's health or safety.	Section 63	The process is conducted inside a spray booth that has been manufactured and installed in accordance with current applicable standards.
5.	The use of a dust collector involves a risk of ignition or explosion that creates a condition of imminent hazard to a person's health or safety.	Section 65	None.
6.	A factory produces aluminum or steel or is a foundry that melts material or handles molten material.	Sections 87.3, 87.4, 87.5 and 88, subsections 90 (1), (2) and (3), and sections 91, 92, 94, 95, 96, 99, 101 and 102	None.
7.	Any of the following are used: 1. A travelling crane, overhead crane, monorail crane, gantry crane, jib crane or other lifting device suspended from or supported by a structure. 2. A vehicle lift or hoist.	Sections 51 and 53	1. The supporting structure was originally designed for the travelling crane, overhead crane, monorail crane, gantry crane, jib crane or other lifting device that is being installed or used. 2. The vehicle lift or hoist has been certified as meeting current applicable standards.
8.	A process uses or produces a hazardous biological or chemical agent and uses a ventilation system to limit the exposure of a worker in accordance with any exposure limit set out in Regulation 833 of the Revised Regulations of Ontario, 1990 (Control of Exposure to Biological or Chemical Agents) made under the Act.	Sections 127 and 128	A portable device that extracts smoke, fumes or other substances and that does not exhaust to the outdoors is used.

O. Reg. 434/21, s. 1 (3).

8. REVOKED: O. Reg. 450/97, s. 3.

#### FEES AND FORMS

9. The fee for each copy of a report or each copy of an order furnished under section 64 of the Act is \$500. R.R.O. 1990, Reg. 851, s. 9.

10. REVOKED: O. Reg. 60/18, s. 2.

#### PREMISES

11. A floor or other surface used by any worker shall,

(a) be kept free of,

(i) obstructions,

(ii) hazards, and

(iii) accumulations of refuse, snow or ice; and

(b) not have any finish or protective material used on it that is likely to make the surface slippery. R.R.O. 1990, Reg. 851, s. 11.

12. Clearances between a moving part of any machine or any material carried by the moving part of the machine and any other machine, structure or thing shall be adequate to ensure that the safety of any worker in the area is not endangered. R.R.O. 1990, Reg. 851, s. 12.

13. (1) Subject to subsection (2), there shall be a guardrail,

(a) around the perimeter of an uncovered opening in a floor, roof or other surface to which a worker has access;

(b) at an open side of,

(i) a raised floor, mezzanine, balcony, gallery, landing, platform, walkway, stile, ramp or other surface, or

- (ii) a vat, bin or tank, the top of which is less than 107 centimetres above the surrounding floor, ground, platform or other surface; and
- (c) around a machine, electrical installation, place or thing that is likely to endanger the safety of any worker. R.R.O. 1990, Reg. 851, s. 13 (1).
- (2) Subsection (1) does not apply to,
  - (a) a loading dock;
  - (b) a roof to which access is required only for maintenance purposes;
  - (c) a pit used for,
    - (i) work on an assembly line, or
    - (ii) maintenance of vehicles or similar equipment; and
  - (d) a conveyor or similar system that transports a vehicle or vehicle part, and any raised platform used with the conveyor or similar system, if a guardrail would,
    - (i) obstruct the passage of the vehicle or vehicle part,
    - (ii) prevent a worker from performing work, or
    - (iii) pose a hazard to a worker. R.R.O. 1990, Reg. 851, s. 13 (2); O. Reg. 456/18, s. 1 (1).
- (3) If there is no guardrail in a situation described in subsection (2), an employer shall develop and implement other measures and procedures to protect workers from the hazard of falling. O. Reg. 456/18, s. 1 (2).

**14.** (1) A guardrail shall,

- (a) have a top rail located not less than 91 and not more than 107 centimetres above the surface to be guarded;
- (b) have a mid rail;
- (c) if tools or other objects may fall on a worker, have a toe-board that extends from the surface to be guarded to a height of at least 125 millimetres; and
- (d) be free of splinters and protruding nails. R.R.O. 1990, Reg. 851, s. 14 (1).

(2) A guardrail shall be constructed to meet the structural requirements for guards as set out in the Building Code. R.R.O. 1990, Reg. 851, s. 14 (2).

**15.** A cover on an opening in a floor, roof or other surface shall be,

- (a) secured in place; and
- (b) constructed to meet the structural requirements for loads due to the use of floors and roofs as set out in the Building Code. R.R.O. 1990, Reg. 851, s. 15.

**16.** A door,

- (a) located or arranged so that it could be mistaken for an exit door; or
- (b) leading to a hazardous, restricted or unsafe area,

shall be identified by a warning sign posted on it. R.R.O. 1990, Reg. 851, s. 16.

**17.** A fixed walkway, service stair or stile shall be at least fifty-five centimetres in width. R.R.O. 1990, Reg. 851, s. 17.

**18.** (1) Subject to subsection (2), an access ladder fixed in position shall,

- (a) be vertical;
- (b) have rest platforms at not more than nine metre intervals;
- (c) be offset at each rest platform;
- (d) where the ladder extends over five metres, above grade, floor or landing, have a safety cage commencing not more than 2.2 metres above grade, floor or landing and continuing at least ninety centimetres above the top landing with openings to permit access by a worker to rest platforms or to the top landing;
- (e) have side rails that extend ninety centimetres above the landing; and
- (f) have rungs which are at least fifteen centimetres from the wall and spaced at regular intervals. R.R.O. 1990, Reg. 851, s. 18 (1); O. Reg. 420/10, s. 4.

(2) Subsection (1) does not apply to an access ladder on a tower, water tank, chimney or similar structure which has a safety device which will provide protection should a worker using the ladder fall. R.R.O. 1990, Reg. 851, s. 18 (2).



**19.** Where frequent access is required to equipment elevated above or located below floor level, permanent platforms shall be provided with access by a fixed,

- (a) stair; or
- (b) access ladder. R.R.O. 1990, Reg. 851, s. 19.

**20.** Barriers, warning signs or other safeguards for the protection of all workers in an area shall be used where vehicle or pedestrian traffic may endanger the safety of any worker. R.R.O. 1990, Reg. 851, s. 20.

#### LIGHTING

**21.** Where natural lighting is inadequate to ensure the safety of any worker, artificial lighting shall be provided and shadows and glare shall be reduced to a minimum. R.R.O. 1990, Reg. 851, s. 21.

#### FIRE PREVENTION — PROTECTION

**22.** (1) Subject to subsections (2), (3) and (4), where not required for immediate use, flammable liquids shall be,

- (a) in sealed containers; and
- (b) located,
  - (i) outdoors and remote from any means of egress,
  - (ii) in a building not used for any other purpose, or
  - (iii) in a room,
    - (A) separated from the rest of the building with partitions having,
      - 1. at least a one-hour fire-resistance rating, and
      - 2. self-closing doors, hinged to swing outwardly on their vertical axes,
    - (B) equipped with,
      - 1. a drain connected to a dry sump or holding tank, and
      - 2. liquid-tight seals between interior walls and floor and a liquid-tight ramped sill at any door opening, which is not in an exterior wall, and
    - (C) having natural ventilation to the outdoors by upper and lower exterior wall gravity louvres. R.R.O. 1990, Reg. 851, s. 22 (1); O. Reg. 420/10, s. 5.

(2) Where not required for immediate use, flammable liquids,

- (a) in opened containers; or
- (b) having a flash point below 22.8° Celsius and a boiling point below 37.8° Celsius,

shall,

- (c) comply with the requirements of clause (1) (b);
- (d) be stored in facilities having no potential source of ignition; and
- (e) when located in a room, be located in a room equipped with,
  - (i) explosion venting to the outdoors, and
  - (ii) a spark resistant floor. R.R.O. 1990, Reg. 851, s. 22 (2).

(3) A maximum of 235 litres of flammable liquids may be stored,

- (a) in sealed containers of not more than twenty-three litre capacity each; or
  - (b) in a metal cabinet of double walled construction with a 3-point door latch and a liquid-tight door sill raised at least fifty millimetres above the floor. R.R.O. 1990, Reg. 851, s. 22 (3).
- (4) An area where flammable liquids are dispensed shall have,
- (a) mechanical ventilation from floor level to the outdoors at the rate of eighteen cubic metres per hour per square metre of floor area; and
  - (b) containers and dispensing equipment bonded and grounded when flammable liquid is dispensed. R.R.O. 1990, Reg. 851, s. 22 (4).

**23.** A portable container used for dispensing flammable liquid in a work area shall be made of material suitable to provide for the safety of all workers and have,

- (a) a spring-loaded cap; and

- (b) a flame arrestor. R.R.O. 1990, Reg. 851, s. 23.

#### MACHINE GUARDING

**24.** Where a machine or prime mover or transmission equipment has an exposed moving part that may endanger the safety of any worker, the machine or prime mover or transmission equipment shall be equipped with and guarded by a guard or other device that prevents access to the moving part. R.R.O. 1990, Reg. 851, s. 24.

**25.** An in-running nip hazard or any part of a machine, device or thing that may endanger the safety of any worker shall be equipped with and guarded by a guard or other device that prevents access to the pinch point. R.R.O. 1990, Reg. 851, s. 25.

**26.** A machine shall be shielded or guarded so that the product, material being processed or waste stock will not endanger the safety of any worker. R.R.O. 1990, Reg. 851, s. 26.

**27.** An emergency stop control on a power-driven machine shall,

- (a) be conspicuously identified; and
- (b) be located within easy reach of the operator. R.R.O. 1990, Reg. 851, s. 27.

**28.** An operating control that acts as a guard for a machine not otherwise guarded shall,

- (a) be in a location where the safety of the operator is not endangered by moving machinery;
- (b) be arranged so that it cannot be operated accidentally; and
- (c) not be made ineffective by a tie-down device or other means. R.R.O. 1990, Reg. 851, s. 28.

**29.** A grinding wheel shall be,

- (a) marked with the maximum speed at which it may be used;
- (b) checked for defects before mounting;
- (c) mounted in accordance with the manufacturer's specifications;
- (d) operated at a speed which does not exceed the manufacturer's recommendations;
- (e) provided with protective hoods that enclose the wheel as closely as the work will permit;
- (f) operated only by workers protected by eye protection; and
- (g) stored where it will not be subjected to,
  - (i) extreme heat or cold, or
  - (ii) damage from impact. R.R.O. 1990, Reg. 851, s. 29.

**30.** A work rest for a grinding wheel shall,

- (a) have a maximum clearance of three millimetres from the grinding wheel;
- (b) be in a position above the centre line of the grinding wheel; and
- (c) not be adjusted while the grinding wheel is in motion. R.R.O. 1990, Reg. 851, s. 30.

**31.** A centrifugal extractor, separator or dryer shall have an interlocking device that will prevent,

- (a) any lid or covering guard from being opened or removed while the rotating drum or basket is in motion; and
- (b) the starting of the drum or basket while the lid or covering guard is open or removed. R.R.O. 1990, Reg. 851, s. 31.

**32.** A tumbling mill or tumbling dryer shall have a locking device which prevents any movement of the mill or dryer that may endanger any worker during loading or unloading. R.R.O. 1990, Reg. 851, s. 32.

**33.** Portions of conveyors or other moving machinery that are not visible from the control station, and where starting up may endanger any worker, shall be equipped with automatic start-up warning devices. R.R.O. 1990, Reg. 851, s. 33.

**34.** Guards shall be provided beneath conveyors,

- (a) that pass over any worker; or
- (b) from which falling material, including broken conveyor parts, may be a hazard to any worker. R.R.O. 1990, Reg. 851, s. 34.

**35.** Overhead protection shall be provided where falling material may endanger any worker. R.R.O. 1990, Reg. 851, s. 35.

**36.** (1) Subject to subsection (2), an explosive actuated fastening tool shall,

- (a) have a firing mechanism that will prevent the tool from being fired,
  - (i) while being loaded,

- (ii) during preparation for firing, or
- (iii) if dropped;
- (b) be capable of being operated only when the muzzle end is held against a working surface with a force of at least twenty-two newtons greater than the weight of the tool;
- (c) if required to be dismantled into separate parts for loading, be capable of being operated only when the separate parts are firmly locked together;
- (d) be capable of being fired only after two separate and distinct actions have been carried out by the operator, with the firing movement separate from the operation of bringing the tool into the firing position;
- (e) be used only when equipped with a protective guard or shield,
  - (i) suitable for the particular fastening operation being performed,
  - (ii) mounted at right angles to the barrel,
  - (iii) at least seventy-five millimetres in diameter, and
  - (iv) placed in a central position on the muzzle end of the tool except where the fastener is intended to be driven into a surface at a point within thirty-eight millimetres of another surface that is at an angle to the surface into which the fastener is intended to be driven;
- (f) be capable of being operated when the guard prescribed by clause (e) is placed in the central position only when the bearing surface of the guard is tilted not more than eight degrees from the working surface;
- (g) when not in use, be stored in a locked container;
- (h) not be left unattended where it may be available to a person other than a worker having the qualifications set out in subclause (k) (i);
- (i) whether loaded or unloaded, not be pointed directly at any person;
- (j) not be loaded unless it is being prepared for immediate use;
- (k) be used only,
  - (i) by a worker who has been instructed in the proper and safe manner of its use by the manufacturer or the manufacturer's authorized and qualified agent,
  - (ii) by a worker wearing both head protection and eye protection,
  - (iii) after it has been inspected by the worker referred to in subclause (i) to ensure that,
    - (A) the tool is clean,
    - (B) all moving parts operate freely,
    - (C) the barrel is free from any obstruction,
    - (D) the tool is adequately equipped for the intended use, and
    - (E) it is not defective,
  - (iv) in accordance with the instructions of the manufacturer,
  - (v) with an explosive load of a strength adequate to perform the intended work without excessive force, and
  - (vi) to drive a stud or other fastener suitable for insertion in the tool; and
- (l) not be used in an atmosphere containing flammable vapours, gases or dusts. R.R.O. 1990, Reg. 851, s. 36 (1).

(2) Clauses (1) (e) and (f) do not apply to an explosive actuated fastening tool if the velocity of the stud or other fastener does not exceed ninety metres per second measured at a distance of two metres from the muzzle end of the tool when propelled by the maximum commercially available explosive load that the tool is chambered to accept. R.R.O. 1990, Reg. 851, s. 36 (2).

(3) A misfired cartridge that has been removed from an explosive actuated fastening tool shall be placed in a water filled container until the cartridge may be properly disposed of after its safe removal from the industrial establishment. R.R.O. 1990, Reg. 851, s. 36 (3).

**37.** An explosive load for an explosive actuated fastening tool shall,

- (a) be so marked or labelled that the operator can readily identify its strength;
- (b) not be stored in a container where an explosive load of a different strength is stored;

- (c) not be left unattended where it may be available to a person other than a worker having the qualifications set out in subclause 36 (1) (k) (i); and
  - (d) when not in use, be stored in a locked container. R.R.O. 1990, Reg. 851, s. 37.
- 38.** A hand-held nailing gun or similar tool shall be,
- (a) capable of being operated only when in contact with the work surface; and
  - (b) operated only,
    - (i) by a competent person, and
    - (ii) when the operator is wearing eye protection. R.R.O. 1990, Reg. 851, s. 38.
- 39.** A chain saw shall,
- (a) have,
    - (i) a chain that minimizes the possibility of a kickback, and
    - (ii) a device which will effectively stop the chain in the event of a kickback;
  - (b) be in safe operating condition;
  - (c) when being started, be held firmly;
  - (d) when being used, be held firmly by both hands; and
  - (e) have the chain stopped when not actually cutting. R.R.O. 1990, Reg. 851, s. 39.
- 40.** Electrical equipment, insulating materials and conductors shall be,
- (a) suitable for their use; and
  - (b) certified by,
    - (i) the Canadian Standards Association, or
    - (ii) the Electrical Safety Authority, as defined in the *Electricity Act, 1998*. R.R.O. 1990, Reg. 851, s. 40; O. Reg. 144/99, s. 2; O. Reg. 420/10, s. 6.
- 41.** The entrance to a room or similar enclosure containing exposed live electrical parts shall have a conspicuous sign, warning of the danger, and forbidding entry by unauthorized persons. R.R.O. 1990, Reg. 851, s. 41.
- 42.** (1) The power supply to electrical installations, equipment or conductors shall be disconnected, locked out of service and tagged before any work is done, and while it is being done, on or near live exposed parts of the installations, equipment or conductors. O. Reg. 630/94, s. 1.
- (2) Before beginning the work, each worker shall determine if the requirements of subsection (1) have been complied with. O. Reg. 630/94, s. 1.
  - (3) Locking out is not required,
    - (a) if the conductors are adequately grounded with a visible grounding mechanism; or
    - (b) if the voltage is less than 300 volts and there is no locking device for the circuit breakers or fuses and procedures are in place adequate to ensure that the circuit is not inadvertently energized. O. Reg. 630/94, s. 1.
  - (4) If locking out is not required for the reason set out in clause (3) (b), the employer shall ensure that the procedures required by that clause are carried out. O. Reg. 630/94, s. 1.
  - (5) If more than one worker is involved in the work referred to in subsection (1), the worker who disconnected and locked out the power supply shall communicate the purpose and status of the disconnecting and locking out. O. Reg. 630/94, s. 1.
  - (6) If a tag is used as a means of communication, the tag,
    - (a) shall be made of non-conducting material;
    - (b) shall be secured to prevent its inadvertent removal;
    - (c) shall be placed in a conspicuous location;
    - (d) shall state the reason the switch is disconnected and locked out;
    - (e) shall show the name of the worker who disconnected and locked out the switch; and
    - (f) shall show the date on which the switch was disconnected and locked out. O. Reg. 630/94, s. 1.
  - (7) The employer shall establish and implement written procedures for compliance with this section. O. Reg. 630/94, s. 1.

**42.1** (1) This section applies and section 42 does not apply if it is not practical to disconnect electrical installations, equipment or conductors from the power supply before working on, or near, live exposed parts of the installations, equipment or conductors. O. Reg. 630/94, s. 1.

(2) The worker shall use rubber gloves, mats, shields and other protective equipment and procedures adequate to ensure protection from electrical shock and burns while performing the work. O. Reg. 630/94, s. 1.

(3) If the installation, equipment or conductor is operating at a nominal voltage of 300 volts or more, a suitably equipped competent person who is able to recognize the hazards and perform rescue operations, including artificial respiration, shall be available and able to see the worker who is performing the work. O. Reg. 630/94, s. 1.

(4) Subsection (3) does not apply to equipment testing and trouble-shooting operations. O. Reg. 630/94, s. 1.

**42.2** Work performed on electrical transmission systems or outdoor distribution systems rated at more than 750 volts shall be performed in accordance with the document entitled “Electrical Utility Safety Rules”, published by the Infrastructure Health and Safety Association and revised in 2019. O. Reg. 60/18, s. 3; O. Reg. 186/19, s. 3.

**43.** Tools and other equipment that are capable of conducting electricity and endangering the safety of any worker shall not be used in such proximity to any live electrical installation or equipment that they might make electrical contact with the live conductor. R.R.O. 1990, Reg. 851, s. 43.

**44.** (1) Cord-connected electrical equipment and tools shall have a casing that is adequately grounded. O. Reg. 630/94, s. 2.

(2) Subsection (1) does not apply to cord-connected electrical equipment or tools that are adequately double-insulated and whose insulated casing shows no evidence of cracks or defects. O. Reg. 630/94, s. 2.

(3) Subsection (1) does not apply to a portable electrical generator in which the electrical equipment or tools are not exposed to an external electric power source if the casing of portable electrical equipment or tools connected to the generator is bonded to a non-current-carrying part of the generator. O. Reg. 420/10, s. 7.

**44.1** When used outdoors or in wet locations, portable electrical tools shall be protected by a ground fault circuit interrupter installed at the receptacle or on the circuit at the panel. O. Reg. 630/94, s. 2.

**44.2** A ground fault that may pose a hazard shall be investigated and removed without delay. O. Reg. 630/94, s. 2.

#### MATERIAL HANDLING

**45.** Material, articles or things,

(a) required to be lifted, carried or moved, shall be lifted, carried or moved in such a way and with such precautions and safeguards, including protective clothing, guards or other precautions as will ensure that the lifting, carrying or moving of the material, articles or things does not endanger the safety of any worker;

(b) shall be transported, placed or stored so that the material, articles or things,

(i) will not tip, collapse or fall, and

(ii) can be removed or withdrawn without endangering the safety of any worker; and

(c) to be removed from a storage area, pile or rack, shall be removed in a manner that will not endanger the safety of any worker. R.R.O. 1990, Reg. 851, s. 45.

**46.** Machinery, equipment or material that may tip or fall and endanger any worker shall be secured against tipping or falling. R.R.O. 1990, Reg. 851, s. 46.

**47.** Cylindrical objects stored on their side shall be piled symmetrically with each unit in the bottom row chocked or wedged to prevent motion. R.R.O. 1990, Reg. 851, s. 47.

**48.** Barrels, drums or kegs that are piled on their ends shall have two parallel planks placed on top of each row before another row is added. R.R.O. 1990, Reg. 851, s. 48.

**49.** A storage cylinder for compressed gas shall,

(a) have a valve connection that prevents an inadvertent connection which would result in a hazardous mixture of gases;

(b) be secured in position during transportation, storage or use;

(c) have the valve protection cap in position when the cylinder is not in use;

(d) when containing acetylene, be in an upright position; and

(e) be protected from physical damage. R.R.O. 1990, Reg. 851, s. 49.

**50.** A silo, bin, hopper, structure, container or thing that is not a confined space as defined in Ontario Regulation 632/05 (Confined Spaces) made under the Act and that is used for storing or containing bulk material may be entered only where,

(a) the supply of material thereto is stopped and precautions are taken that will prevent any further supply;

- (b) the worker entering is wearing a safety harness or other similar equipment attached to a rope or lifeline such that the worker shall not be endangered by any collapse or shifting of material in the silo, bin, hopper, structure, container or thing; and
- (c) at least one other worker equipped with a suitable alarm and capable of rendering any necessary assistance is keeping watch nearby. R.R.O. 1990, Reg. 851, s. 50; O. Reg. 629/05, s. 3; O. Reg. 98/11, s. 1.

**51.** (1) A lifting device shall,

- (a) be so constructed, of such strength and be equipped with suitable ropes, chains, slings and other fittings so as to adequately ensure the safety of all workers;
- (b) be thoroughly examined by a competent person to determine its capability of handling the maximum load as rated,
  - (i) prior to being used for the first time, and
  - (ii) thereafter as often as necessary but not less frequently than recommended by the manufacturer and in any case, at least once a year,

and a record shall be kept, signed by the competent person doing the examination;

- (c) be plainly marked with sufficient information so as to enable the operator of the device to determine the maximum rated load that the device is capable of lifting under any operating condition;
- (d) have a cab, screen, canopy guard or other adequate protection for the operator where the operator may be exposed to the hazard of falling material; and
- (e) when it is a pneumatic or hydraulic hoist, have controls that automatically return to their neutral position when released. R.R.O. 1990, Reg. 851, s. 51 (1); O. Reg. 420/10, s. 8 (1); O. Reg. 421/21, s. 2 (1).

(1.1) Where a record is required to be kept under clause (1) (b), it shall be kept for,

- (a) a period of at least one year; or
- (b) such longer period as is necessary to ensure that at least the two most recent records are kept. O. Reg. 421/21, s. 2 (2).

(2) A lifting device shall be operated,

- (a) only by,
  - (i) a competent person, or
  - (ii) a worker being instructed who is accompanied by a competent person; and
- (b) in such a way that,
  - (i) no part of the load passes over any worker,
  - (ii) where a worker may be endangered by the rotation or uncontrolled motion of a load, one or more guide ropes is used to prevent rotation or other uncontrolled motion, and
  - (iii) subject to subsection (3), when its load is in a raised position the controls are attended by an operator. R.R.O. 1990, Reg. 851, s. 51 (2).

(3) Subclause (2) (b) (iii) does not apply to,

- (a) a hydraulic hoist that supports the load from below and is fixed in one location; and
- (b) an assembly line hoist temporarily unattended during a stoppage of the assembly line. R.R.O. 1990, Reg. 851, s. 51 (3).

(4) Hoisting controls operated from other than a cab or cage shall,

- (a) be located so that they can be operated at a safe distance from a load being lifted; and
- (b) automatically return to their neutral position when released. R.R.O. 1990, Reg. 851, s. 51 (4).

(5) Where a lifting device is equipped with one or more limit switches,

- (a) each limit switch shall automatically cut off the power and apply the brake when the limit is reached; and
- (b) no limit switch shall be used as an operating control unless,
  - (i) the limit switch is designed for such use, and
  - (ii) the lifting device has a second limit switch in addition to the control limit switch. O. Reg. 420/10, s. 8 (2).

**52.** A crane, lift truck or similar equipment shall be used to support, raise or lower a worker only when,

- (a) the worker is on a platform,

- (i) equipped with adequate safety devices that will automatically prevent the platform and load from falling if the platform's normal support fails,
- (ii) suspended from a boom that does not move, and the person is attached to a separate lifeline suspended from the boom or a fixed support capable of supporting at least four times the weight of the worker, or
- (iii) attached to a mast or boom which,
  - (A) is hydraulically or pneumatically operated, and
  - (B) is equipped with a safety device that will prevent free fall of the platform in the event of a pressure line failure;
- (b) where the equipment is not designed for the specific purpose of hoisting personnel, the load applied to the crane, lift truck or similar equipment is less than one half the maximum rated load;
- (c) the platform has a sign indicating the load that may be applied to the crane, lift truck or similar equipment under clause (b);
- (d) where controls are provided at more than one location,
  - (i) each control station is provided with means whereby the operator can shut off power to the equipment, and
  - (ii) interlocks have been provided so that only one station can be operative at any time; and
- (e) except when the controls are operated from the platform, the controls are attended and operated by another worker. R.R.O. 1990, Reg. 851, s. 52; O. Reg. 420/10, s. 9.

**53.** Where a travelling crane is operated on a crane runway, there shall be,

- (a) rail stops or bumpers extending at least as high as the centre of the wheels at both ends of the crane runway; and
- (b) where applicable, similar rail stops at the ends of the crane bridge. R.R.O. 1990, Reg. 851, s. 53.

**54.** (1) Mobile equipment shall,

- (a) when lighting conditions are such that its operation may be hazardous, have head lights and tail lights that provide adequate illumination;
- (b) when exposed to the hazard of falling material, have a screen or canopy guard adequate to protect the operator;
- (c) be used to transport a person, other than the operator, only when that worker is seated in a permanently installed seat; and
- (d) subject to subsection (2), be operated only by a competent person.

(2) Clause (1) (d) does not apply to mobile equipment operated by a worker while the worker is being instructed and accompanied by a competent person. R.R.O. 1990, Reg. 851, s. 54.

**55.** A vehicle used to transport structural steel, logs or similar loads shall have a bulkhead between the operator's cab and the load that is reasonably capable of resisting any impact caused by the shifting of the load under emergency stop conditions. R.R.O. 1990, Reg. 851, s. 55.

**56.** Where the operator of a vehicle, mobile equipment, crane or similar material handling equipment does not have a full view of the intended path of travel of the vehicle, mobile equipment, crane or similar material handling equipment or its load, the vehicle, mobile equipment, crane or similar material handling equipment shall only be operated as directed by a signaller who is a competent person and who is stationed,

- (a) in full view of the operator;
- (b) with a full view of the intended path of travel of the vehicle, mobile equipment, crane or similar material handling equipment and its load; and
- (c) clear of the intended path of travel of the vehicle, mobile equipment, crane or similar material handling equipment and its load. R.R.O. 1990, Reg. 851, s. 56.

**57.** A vehicle left unattended shall be immobilized and secured against accidental movement. R.R.O. 1990, Reg. 851, s. 57.

**58.** Powered equipment shall not be left unattended unless forks, buckets, blades and similar parts are in the lowered position or solidly supported. R.R.O. 1990, Reg. 851, s. 58.

**59.** Except for the purpose of a test of the material handling equipment, no material handling equipment shall be loaded in excess of its maximum rated load. R.R.O. 1990, Reg. 851, s. 59.

**60.** (1) Except as prescribed by section 42.2, where a vehicle, crane or similar equipment is operated near a live power line carrying electricity at more than 750 volts, every part of the equipment shall be kept at least the minimum distance from

the live power line set out in Column 2 of the Table for the particular voltage set out opposite thereto in Column 1 of the Table:

TABLE

Minimum distance from live power lines for electricity	
Column 1	Column 2
Voltage of live power line	Minimum Distance
750 to 150,000 volts	3 metres
150,001 to 250,000 volts	4.5 metres
250,001 volts and over	6 metres

R.R.O. 1990, Reg. 851, s. 60 (1); O. Reg. 630/94, s. 3 (1).

(2) Subject to section 42.2, where a vehicle, crane or similar equipment is operated near a live power line, and it is possible for any part of the vehicle, crane or similar equipment or its load to make contact with the live power line,

- (a) a worker shall be stationed within the view of the operator to warn the operator when any part of the equipment is approaching the minimum distance from the live power line; and
- (b) clearance shall be allowed for any change in boom angle and for any swing of the hoisting cable and load. R.R.O. 1990, Reg. 851, s. 60 (2); O. Reg. 630/94, s. 3 (2).

**61.** Gasoline engines on mobile or portable equipment shall be refuelled,

- (a) outdoors;
- (b) with the engine on the equipment stopped;
- (c) with no source of ignition, within three metres of the dispensing point; and
- (d) with an allowance made for expansion of the fuel should the equipment be exposed to a higher ambient temperature. R.R.O. 1990, Reg. 851, s. 61.

**62.** (1) Subject to subsection (2), a piping system containing a substance which, because of its toxicity, temperature, pressure, flammability or other property, is hazardous, shall have its contents and direction of flow positively identified,

- (a) at valves and fittings;
- (b) where a pipe passes through a wall or floor; and
- (c) where circumstances may make such contents or direction of flow doubtful. R.R.O. 1990, Reg. 851, s. 62 (1); O. Reg. 420/10, s. 10.

(2) Subsection (1) does not apply to a piping system in a petro-chemical plant where processing and maintenance are carried out by a competent person under controlled conditions so as to provide for the protection of all workers. R.R.O. 1990, Reg. 851, s. 62 (2).

**63.** A process that is likely to produce a gas, vapour, dust or fume, to such an extent as to be capable of forming an explosive mixture with air shall be carried out in an area which has provision for safe disposal by burning under controlled conditions or in an area which,

- (a) is isolated from other operations;
- (b) has a system of ventilation adequate to ensure that the gas, vapour, dust or fume does not reach a hazardous concentration;
- (c) has no potential sources of ignition;
- (d) has provision for explosion venting; and
- (e) has, where applicable, baffles, chokes or dampers to reduce the effects of any explosion. R.R.O. 1990, Reg. 851, s. 63.

**64.** Where the hazard of a dust explosion may be created by the entry of foreign particles into equipment, the equipment shall have separators which prevent such entry. R.R.O. 1990, Reg. 851, s. 64.

**65.** (1) Subject to subsection (2), a collector that collects aluminum, magnesium or other fine dust of an easily ignitable nature shall be located,

- (a) outdoors; or
- (b) in a room used solely for the housing of dust-collecting equipment which is,
  - (i) separated from the rest of the building by a dust-tight partition having a minimum fire-resistance rating of one hour, and
  - (ii) constructed to provide explosion venting to the outdoors.

(2) Subsection (1) does not apply to a collector,



- (a) that uses an inert liquid as a medium to collect dust;
  - (b) that is used for a wood-working operation other than wood flour manufacturing and having less than 0.47 cubic metres per second capacity;
  - (c) that will safely contain explosions; or
  - (d) that will resist explosions and is equipped with effective explosion venting to the outdoors. R.R.O. 1990, Reg. 851, s. 65.
- 66.** A compressed air or other compressed gas blowing device shall not be used for blowing dust or other substances,
- (a) from clothing worn by a worker except where the device limits increase in pressure when the nozzle is blocked; or
  - (b) in such a manner as to endanger the safety of any worker. R.R.O. 1990, Reg. 851, s. 66.
- 67.-71.** REVOKED: O. Reg. 629/05, s. 4.

#### MAINTENANCE AND REPAIRS

- 72.** (1) Where a structure is damaged to the extent that a collapse of the structure or any part of the structure is likely to occur and cause injury to a worker,
- (a) the structure shall be braced and shored to prevent the collapse of the structure; or
  - (b) effective safeguards shall be provided to prevent access to the area. R.R.O. 1990, Reg. 851, s. 72 (1).
- (2) The bracing and shoring or other safeguards prescribed by subsection (1) shall be installed progressively to ensure that a worker installing the bracing and shoring or other safeguards is not in danger. R.R.O. 1990, Reg. 851, s. 72 (2).
- 73.** A portable ladder shall,
- (a) be free from broken or loose members or other faults;
  - (b) have non-slip feet;
  - (c) be placed on a firm footing;
  - (d) where it,
    - (i) exceeds six metres in length and is not securely fastened, or
    - (ii) is likely to be endangered by traffic,
 be held in place by one or more workers while being used; and
  - (e) when not securely fastened, be inclined so that the horizontal distance from the top support to the foot of the ladder is not less than 1/4 and not more than 1/3 of the length of the ladder. R.R.O. 1990, Reg. 851, s. 73.
- 74.** Machinery, equipment or material that is temporarily elevated and under which a worker may pass or work shall be securely and solidly blocked to prevent the machinery, equipment or material from falling or moving. R.R.O. 1990, Reg. 851, s. 74.
- 75.** A part of a machine, transmission machinery, device or thing shall be cleaned, oiled, adjusted, repaired or have maintenance work performed on it only when,
- (a) motion that may endanger a worker has stopped; and
  - (b) any part that has been stopped and that may subsequently move and endanger a worker has been blocked to prevent its movement. R.R.O. 1990, Reg. 851, s. 75.
- 76.** Where the starting of a machine, transmission machinery, device or thing may endanger the safety of a worker,
- (a) control switches or other control mechanisms shall be locked out; and
  - (b) other effective precautions necessary to prevent any starting shall be taken. R.R.O. 1990, Reg. 851, s. 76; O. Reg. 230/95, s. 1.
- 77.** Safety chains, cages or other protection against blown-off side or lock rings shall be used when inflating a tire mounted on a rim. R.R.O. 1990, Reg. 851, s. 77.
- 78.** (1) Subject to subsection (2), where repairs or alterations are to be made on a drum, tank, pipeline or other container, the drum, tank, pipeline or other container shall,
- (a) have internal pressures adjusted to atmospheric pressure before any fastening is removed;
  - (b) be drained and cleaned or otherwise rendered free from any explosive, flammable or harmful substance; and
  - (c) not be refilled while there is any risk of vaporising or igniting the substance that is being placed in the drum, tank, pipeline or other container. R.R.O. 1990, Reg. 851, s. 78 (1); O. Reg. 420/10, s. 11.

(2) Clauses (1) (a) and (b) do not apply to a pipeline where hot-tapping and boxing-in are carried out by a competent person under controlled conditions so as to provide for the protection of all workers. R.R.O. 1990, Reg. 851, s. 78 (2).

#### PROTECTIVE EQUIPMENT

**79.** A worker required to wear or use any protective clothing, equipment or device shall be instructed and trained in its care and use before wearing or using the protective clothing, equipment or device. R.R.O. 1990, Reg. 851, s. 79; O. Reg. 420/10, s. 12.

**80.** A worker exposed to the hazard of head injury shall wear head protection appropriate in the circumstances. R.R.O. 1990, Reg. 851, s. 80.

**81.** A worker exposed to the hazard of eye injury shall wear eye protection appropriate in the circumstances. R.R.O. 1990, Reg. 851, s. 81; O. Reg. 420/10, s. 13.

**82.** A worker exposed to the hazard of foot injury shall wear foot protection appropriate in the circumstances. R.R.O. 1990, Reg. 851, s. 82.

**83.** (1) Long hair shall be suitably confined to prevent entanglement with any rotating shaft, spindle, gear, belt or other source of entanglement.

(2) Jewellery or clothing that is loose or dangling or rings shall not be worn near any rotating shaft, spindle, gear, belt or other source of entanglement. R.R.O. 1990, Reg. 851, s. 83.

**84.** A worker exposed to the hazard of injury from contact of the worker's skin with,

- (a) a noxious gas, liquid, fume or dust;
- (b) a sharp or jagged object which may puncture, cut or abrade the worker's skin;
- (c) a hot object, hot liquid or molten metal; or
- (d) radiant heat,

shall be protected by,

- (e) wearing apparel sufficient to protect the worker from injury; or
- (f) a shield, screen or similar barrier,

appropriate in the circumstances. R.R.O. 1990, Reg. 851, s. 84.

**85.** Where a worker is exposed to the hazard of falling and the surface to which he or she might fall is more than three metres below the position where he or she is situated,

- (a) the worker shall wear a serviceable safety belt or harness and lifeline that is adequately secured to a fixed support and so arranged that the worker cannot fall freely for a vertical distance of more than 1.5 metres; and
- (b) the fall arrest system described in clause (a) shall,
  - (i) have sufficient capacity to absorb twice the energy and twice the load that under the circumstances of its use may be transmitted to it, and
  - (ii) be equipped with a shock absorber or other devices to limit the maximum arresting force to 8.0 kilonewtons to the worker. R.R.O. 1990, Reg. 851, s. 85; O. Reg. 420/10, s. 14.

**86.** Where a worker is exposed to the hazard of falling into liquid that is of sufficient depth for a life jacket or other personal flotation device to be effective as protection from the risk of drowning, there shall be an alarm system and rescue equipment, appropriate in the circumstances, to ensure the worker's rescue from the liquid and,

- (a) the worker shall wear a life jacket or other personal flotation device that is appropriate in the circumstances; or
- (b) the employer shall develop and implement written measures and procedures to prevent the worker from drowning. O. Reg. 186/19, s. 4.

#### MOLTEN MATERIAL

**87.** Sections 87.1 to 87.6 apply to foundries. O. Reg. 230/95, s. 2.

**87.1** An employer who is required to develop and implement measures and procedures under sections 87.2 to 87.6 shall consult with the committee or health and safety representative, if any, in the development of the measures and procedures. O. Reg. 230/95, s. 2.

**87.2** (1) Every employer shall develop and implement measures and procedures to prevent molten material from coming into contact with damp, rusty or cold surfaces, moisture or water, or other substances, if the contact might endanger the health or safety of workers.

(2) A worker shall work in compliance with the measures and procedures developed under subsection (1).

- (3) The employer shall ensure that a device used to contain molten material is,
  - (a) examined immediately before each use; and
  - (b) not used if found to be defective or contaminated by a substance that, on contact with molten material, might endanger the health or safety of workers. O. Reg. 230/95, s. 2.

**87.3** (1) In this section,

“spillage” refers to the spillage of molten material that could endanger the health or safety of workers. O. Reg. 230/95, s. 2.

(2) The employer shall use engineering controls, to the fullest extent that is reasonably possible in the circumstances, to prevent spillage. O. Reg. 230/95, s. 2.

(3) If spillage cannot be prevented by the use of engineering controls alone, the employer shall also develop and implement other measures and procedures to be used in combination with the engineering controls to prevent spillage. O. Reg. 230/95, s. 2.

(4) If the use of engineering controls is not reasonably possible in the circumstances, the employer shall develop and implement other measures and procedures to prevent spillage. O. Reg. 230/95, s. 2.

(5) The measures and procedures referred to in subsections (3) and (4) may include the use of personal protective equipment and the exclusion of workers from locations where they might be exposed to spillage. O. Reg. 230/95, s. 2.

**87.4** The employer shall provide adequate means of egress from all locations where workers may be exposed to molten material. O. Reg. 230/95, s. 2.

**87.5** (1) Subsections (2) to (4) apply to a location if the following conditions are met:

- 1. The location is a runout, pouring or moulding pit or other working space that is,
  - i. more than 60 centimetres below the adjacent floor level, or
  - ii. surrounded by a wall that is more than 60 centimetres high and that a person must pass over to leave the working space.
- 2. The location was constructed or altered after May 1, 1995.
- 3. Workers may be exposed to molten material at the location. O. Reg. 230/95, s. 2.

(2) Egress shall be provided by means of doorways, ramps or stairs of non-combustible material. O. Reg. 230/95, s. 2.

(3) Egress ramps and stairs shall be made of slip-resistant material. O. Reg. 230/95, s. 2.

(4) If the location is more than 15 square metres in area, or if any point within the location is more than 5 metres from an egress doorway, ramp or stair,

- (a) at least two doorways, ramps or stairs shall be provided, situated at a distance from each other that is at least three-quarters of the greatest diagonal dimension of the location, measured on the horizontal plane; and
- (b) a doorway, ramp or stair shall be provided within 25 metres of any point within the location. O. Reg. 230/95, s. 2.

**87.6** The employer shall develop and implement measures and procedures for communicating to workers the existence of emergency situations relating to molten material. O. Reg. 230/95, s. 2.

**88.** (1) A clear space adequate for safe operating and maintenance purposes shall be provided between the outer shell of any cupola or other melting unit and any wall, structure, equipment or operation. R.R.O. 1990, Reg. 851, s. 88 (1).

(2) Subject to subsection (5), the width of any passageway or aisle adjacent to a melting unit shall not be less than 1.2 metres. R.R.O. 1990, Reg. 851, s. 88 (2).

(3) The firing portion and fuel supply controls of each melting unit shall be accessible from an aisle or be in a location remote from a melting unit. R.R.O. 1990, Reg. 851, s. 88 (3).

(4) Subject to subsection (5), the dimensions of the working space at any melting unit shall not be less than 1.8 metres measured horizontally from the furnace shell or pouring spout or such additional clearance as is required for safe working. R.R.O. 1990, Reg. 851, s. 88 (4).

(5) Subsections (2) and (4) do not apply to a melting unit installed before the 31st day of July, 1964. R.R.O. 1990, Reg. 851, s. 88 (5).

**89.** Permanent gangways shall be clearly marked. R.R.O. 1990, Reg. 851, s. 89.

**90.** (1) Subject to subsections (2) and (3), where molten metal is conveyed, the minimum width of a gangway for one-way traffic shall be as specified in the following Table:

TABLE

Type of Metal Container	Number of Workers Conveying Metal	Minimum Width
Hand shank ladles and crucibles	2 or less	90 centimetres

Hand shank ladles and crucibles	More than 2	120 centimetres
Ladle or crucible on truck, buggy or overhead track	Not applicable	60 centimetres wider than greatest width of ladle, crucible, truck, buggy or container support

R.R.O. 1990, Reg. 851, s. 90 (1); O. Reg. 60/18, s. 4.

(2) Where a gangway is used for traffic in both directions but molten metal is conveyed in one direction only, the width required by subsection (1) shall be increased by at least ninety centimetres. R.R.O. 1990, Reg. 851, s. 90 (2).

(3) Where a gangway is used for carrying molten metal in both directions, the width required by subsection (1) shall be doubled. R.R.O. 1990, Reg. 851, s. 90 (3).

(4) Where a ladle is carried by an overhead crane,

(a) adequate warning shall be given before the ladle is moved; and

(b) the danger area over which it is transported shall be clear of any worker. R.R.O. 1990, Reg. 851, s. 90 (4).

**91.** Where a hand shank ladle or crucible is used to pour metal, the minimum width of a pouring aisle shall be as specified in the following Table:

TABLE

Height of Mould Above Aisle Level	Number of Workers Allocated to the Pouring Operation	Minimum Width of a Pouring Aisle
Less than 50 centimetres	Not more than 2	40 centimetres
50 centimetres or greater	Not more than 2	60 centimetres
Any height	More than 2	90 centimetres

R.R.O. 1990, Reg. 851, s. 91; O. Reg. 420/10, s. 15.

**92.** Where molten metal is poured from a crane, trolley or truck ladle, the minimum width of a pouring aisle shall not be less than thirty centimetres greater than the greatest width of the ladle equipment, except where a bottom-pour ladle is used, in which case the aisle width shall be ninety centimetres or more. R.R.O. 1990, Reg. 851, s. 92.

**93.** Where a worker is engaged in the handling of molten metal, gaiter-type boots shall be worn together with leggings or other protective clothing such that the tops of the boots are overlapped to protect the worker from injury due to molten metal. R.R.O. 1990, Reg. 851, s. 93.

**94.** A tilting ladle for molten metal shall be secured against accidental overturning. R.R.O. 1990, Reg. 851, s. 94.

**95.** A cupola shall have,

(a) legs and supports protected from damage by molten metal;

(b) doors on the top hinged to act as explosion vents to the outdoors when equipped with a closed top;

(c) a positive means of preventing the accumulation of combustible gases in the air supply system when the air supply fails; and

(d) a continuous open flame or other means of ignition maintained above the charging level of the cupola while the cupola is in operation and until all combustible material in the cupola is consumed. R.R.O. 1990, Reg. 851, s. 95.

**96.** (1) Subject to subsection (2), the bottom of a cupola shall be supported by one or more adequate metal props with metal bases and wedges supported on concrete or other solid footing. R.R.O. 1990, Reg. 851, s. 96 (1).

(2) The bottom of a cupola shall be dropped only,

(a) after a visual and audible warning signal has been given for at least three minutes; and

(b) by having the prop or props removed by a winch or similar device operated from outside a wall or shield at the cupola or from another safe location. R.R.O. 1990, Reg. 851, s. 96 (2).

(3) As soon as is practicable after a cupola is emptied, coke slag and unmelted metal from the dropping of the cupola bottom shall be removed by a mechanical rake or other mechanical means. R.R.O. 1990, Reg. 851, s. 96 (3).

**97.** (1) Subject to subsection (2), material to be charged into molten metal shall be free from ice or moisture. R.R.O. 1990, Reg. 851, s. 97 (1).

(2) Subsection (1) does not apply where precautions have been taken to ensure that any resultant reaction will not endanger any worker. R.R.O. 1990, Reg. 851, s. 97 (2).

**98.** A completely enclosed vessel shall be broken open prior to its being charged into a furnace. R.R.O. 1990, Reg. 851, s. 98.

**99.** Where metal castings or scrap are broken by means of a dropping device, or similar device, a permanent shield of wood planking at least thirty-eight millimetres thick shall be provided to protect workers from flying metal fragments. R.R.O. 1990, Reg. 851, s. 99.

**100.** A container used for holding or transporting molten metal shall be dry before use. R.R.O. 1990, Reg. 851, s. 100.

**101.** The floor and any water system immediately surrounding a melting unit shall be so constructed as to prevent the accumulation of moisture under or near the melting unit. R.R.O. 1990, Reg. 851, s. 101.

**102.** Where molten metal is handled on a gallery, mezzanine or other area having any working space below it, the gallery, mezzanine or area shall have a solid floor that will prevent molten metal from leaking or burning through it and the gallery, mezzanine or other area shall have a solid barrier, of not less than 1.05 metres in height, on all exposed sides to prevent metal spillage from the gallery, mezzanine or other area. R.R.O. 1990, Reg. 851, s. 102.

#### LOGGING

**103.** In this section and in sections 104 to 119,

“bucking” means the act of sawing a log or a tree that has been felled into smaller pieces; (“tronçonnage”)

“chicot” means,

- (a) a dead tree, or
- (b) a dead limb of a tree that may endanger a worker; (“chicot”)

“felling area” means an area where trees are being felled and into which they might fall; (“parterre de coupe”)

“hang up” means a tree that has not fallen to the ground after being,

- (a) partly or wholly separated from its stump, or
- (b) displaced from its natural position; (“encroué”)

“haul road” means a road, other than a highway as defined in the *Highway Traffic Act*, on which vehicles used to haul logs are operated; (“chemin d’exploitation”)

“landing area” means a cleared area where trees or logs are stored, measured, processed, unloaded or loaded and includes a log dump; (“dépôt transitoire”)

“limbing” means the act of removing limbs from a tree before or after felling; (“ébranchage”)

“logger” means a worker who engages in logging and includes the employer and any person under the control of the employer; (“travailleur forestier”)

“skidding” means the operation of moving logs or trees by pulling across the terrain; (“débusquage”)

“snag” means any material or object that may interfere with the safe movement of a tree or log or that may endanger a person or any equipment; (“obstacle”)

“spring pole” means a section of tree, or bush which is, by virtue of its arrangement in relation to other materials, under tension; (“perche sous tension”)

“stake” means a wooden or metal post used to support and prevent the lateral movement of logs; (“ridelle”)

“tree” means a tree that is standing or is down and from which the limbs have not been removed. (“arbre”) R.R.O. 1990, Reg. 851, s. 103; O. Reg. 630/94, s. 4.

**104.** (1) Sections 105 to 106.2 apply to employers who undertake logging operations. O. Reg. 488/01, s. 1.

(2) In sections 105 to 106.2,

“registered” means registered with the Ministry in order to complete a training program referred to in subsection 105 (1). O. Reg. 488/01, s. 1; O. Reg. 60/18, s. 5; O. Reg. 186/19, s. 5; O. Reg. 434/21, s. 2.

**105.** (1) Every employer shall establish and maintain the following training programs, approved by the Ministry:

1. For cutters and skidder operators,
  - i. Cutter-Skidder Operator (Program # P750000),
  - ii. Cutter (Program # P750010), and
  - iii. Skidder-Operator (Program # P750020).
2. For mechanical harvesting equipment operators, Mechanical Harvesting Equipment Operator (Program # P850715) and,

- i. Feller Buncher Operator (Program # P750035),
- ii. Cut to Length Operator (Program # P750045),
- iii. Grapple Skidder Operator (Program # P750055),
- iv. Forwarder or Transporter Operator (Program # P750065),
- v. Delimber Operator (Program # P750075),
- vi. Slasher Operator (Program # P750085), and
- vii. Chipper Operator (Program # P750095). O. Reg. 488/01, s. 1; O. Reg. 60/18, s. 6 (1); O. Reg. 186/19, s. 6 (1); O. Reg. 434/21, s. 3 (1, 2).

(2) A document issued by the Ministry, showing that a worker is registered for a training program referred to in subsection (1) or has successfully completed it, is conclusive proof, for the purposes of sections 106, 106.1 and 106.2, of the worker being registered for the program or of his or her successful completion of the program, as the case may be. O. Reg. 488/01, s. 1; O. Reg. 60/18, s. 6 (2); O. Reg. 186/19, s. 6 (2); O. Reg. 434/21, s. 3 (1).

(3) REVOKED: O. Reg. 60/18, s. 6 (3).

**106.** (1) The employer shall ensure that,

- (a) every cutter has successfully completed Cutter-Skidder Operator (Program # P750000) or Cutter (Program # P750010); and
- (b) every skidder operator has successfully completed Cutter-Skidder Operator (Program # P750000) or Skidder Operator (Program # P750020). O. Reg. 488/01, s. 1.

(2) The employer shall ensure that every cutter or skidder operator who has not successfully completed the training required under subsection (1) is registered for the appropriate program before performing work to which the program relates. O. Reg. 488/01, s. 1.

(3) REVOKED: O. Reg. 60/18, s. 7 (1).

(4) The employer shall ensure that every worker who is registered under subsection (2) successfully completes the appropriate program within one year after being registered. O. Reg. 488/01, s. 1; O. Reg. 60/18, s. 7 (2).

**106.1** (1) The employer shall ensure that every worker who operates mechanical harvesting equipment has successfully completed the appropriate program referred to in subparagraphs 2 i to vii of subsection 105 (1). O. Reg. 488/01, s. 1.

(2) The employer shall ensure that every worker who operates mechanical harvesting equipment and has not successfully completed the training required under subsection (1) is registered for the appropriate program before performing work to which the program relates. O. Reg. 488/01, s. 1.

(3) REVOKED: O. Reg. 60/18, s. 8 (1).

(4) The employer shall ensure that every worker who is registered under subsection (2) successfully completes the appropriate program within one year after being registered. O. Reg. 488/01, s. 1; O. Reg. 60/18, s. 8 (2).

**106.2** (1) The employer shall ensure that every worker who supervises the operation of mechanical harvesting equipment has successfully completed Supervisor Training Program (Program # P750025) before performing supervisory work relating to mechanical harvesting equipment. O. Reg. 488/01, s. 1; O. Reg. 434/21, s. 4.

(2) REVOKED: O. Reg. 60/18, s. 9.

**107.** (1) Subject to subsection (2), a felling area shall be kept clear of workers. R.R.O. 1990, Reg. 851, s. 107 (1).

(2) Subsection (1) does not apply to,

- (a) a worker authorized by the employer or supervisor to be in the felling area; or
- (b) an inspector or worker accompanying an inspector in the course of their duties. R.R.O. 1990, Reg. 851, s. 107 (2).

**108.** A landing area shall have sufficient space cleared of any hazard to enable operations to be performed without endangering any worker. R.R.O. 1990, Reg. 851, s. 108.

**109.** A tree shall,

- (a) be felled only,
  - (i) after all workers other than the logger felling the tree are cleared from the danger area,
  - (ii) after all snags have been cut and cleared away,
  - (iii) after all chicots and spring poles in the vicinity of the tree being felled have been lowered safely to the ground, and
  - (iv) in such a manner that the logger felling the tree is able to stand clear of the tree during its fall;

- (b) be felled alongside or across a road only after the road has been blocked off or controlled by signaller; and
- (c) be limbed, bucked or topped only when the logger is in a position so that the limb, log or top when severed cannot roll or drop on the logger. R.R.O. 1990, Reg. 851, s. 109.

**110.** When a hang up occurs,

- (a) the logger shall keep the felling area clear of all workers; and
- (b) the hang up shall,
  - (i) be felled forthwith by winching or pulling using a chain or cable from a safe distance or by other safe means,
  - (ii) not be climbed by any worker,
  - (iii) not be lowered by felling another tree into or onto it, and
  - (iv) not be removed by cutting the supporting tree. R.R.O. 1990, Reg. 851, s. 110.

**111.** A spring pole shall be severed or cut in a manner that will not endanger,

- (a) the logger cutting or severing the spring pole; or
- (b) any other worker. R.R.O. 1990, Reg. 851, s. 111.

**112.** Skidding shall be done,

- (a) only when all loggers, other than the operator of the vehicle doing the skidding, are clear of the danger area; and
- (b) so as not to raise the log being skidded to a height that might,
  - (i) cause the vehicle moving the log to upend or overturn, or
  - (ii) otherwise endanger the operator of the vehicle moving the log. R.R.O. 1990, Reg. 851, s. 112.

**113.** A log shall be loaded or unloaded only when,

- (a) the requirements of section 56 are met; and
- (b) the immediate area is clear of all workers except those engaged or assisting in the loading or unloading. R.R.O. 1990, Reg. 851, s. 113.

**114.** Except for a truck, a vehicle used in logging shall be equipped with a canopy that is,

- (a) of sufficient strength and construction to protect any worker in the cab from any load likely to fall on the canopy; and
- (b) installed by welding or bolting to the frame of the vehicle. R.R.O. 1990, Reg. 851, s. 114; O. Reg. 420/10, s. 16.

**115.** A truck used in logging shall have all rear windows guarded against penetration by any part of its load by a guard the strength of which is equivalent to the strength of the cab in which the window is located. R.R.O. 1990, Reg. 851, s. 115.

**116.** (1) A vehicle used for hauling logs shall,

- (a) comply with section 55;
- (b) be so loaded that no log extends,
  - (i) outside the stakes, or
  - (ii) farther than one-half its diameter above the stakes;
- (c) have its load secured with chains or cables so as to prevent the dislodging or other movement of the load or any part thereof;
- (d) while any worker is in the cab, not be loaded or unloaded by a method in which a boom or part of the load is likely to pass over the cab;
- (e) have the cab occupied by more than two workers only in an emergency;
- (f) subject to clause (e), be operated only when all workers are clear of the vehicle and of its load; and
- (g) when unable to be unloaded completely by mechanical means,
  - (i) be equipped with a tripping device for releasing the load that is so located that the worker operating the device is not endangered, and
  - (ii) have its load released only in compliance with subclause (i). R.R.O. 1990, Reg. 851, s. 116 (1); O. Reg. 420/10, s. 17.

(2) Where a truck or trailer used for hauling logs is equipped with stakes and the stakes are trip stakes, such stakes shall only be located on the right-hand side or rear of the truck or trailer. R.R.O. 1990, Reg. 851, s. 116 (2).

**117.** A haul road shall,

- (a) be adequate to provide for the safe operation of vehicles;
- (b) have by-passes or turnout spaces at sufficiently frequent intervals to permit the safe passing of vehicles using the road; and
- (c) have signs warning of the approach to every,
  - (i) bridge,
  - (ii) crossroad,
  - (iii) blind curve,
  - (iv) steep grade, and
  - (v) railway crossing. R.R.O. 1990, Reg. 851, s. 117.

**118.** A bridge on a haul road shall,

- (a) be structurally adequate to support any load likely to be applied to it;
- (b) have curbs of a height of not less than fifteen centimetres on each side of the travelled portion of the bridge;
- (c) be of sufficient width between curbs to permit the passage of vehicles using the bridge; and
- (d) have markers which clearly indicate the width and ends of the bridge. R.R.O. 1990, Reg. 851, s. 118.

**119.** A vehicle used to transport loggers shall have the part of the vehicle in which the loggers are transported,

- (a) structurally adequate to support any load likely to be applied to it;
- (b) provided with an adequate number of seats securely attached to the vehicle so that all loggers being transported may be seated;
- (c) illuminated by an electrical lighting system;
- (d) equipped with a means of communication between the loggers and operator of the vehicle to enable the loggers to signal the operator to stop;
- (e) adequately ventilated to protect loggers from noxious fumes and gases;
- (f) free of tools, equipment or flammable liquid, which may be in racks outside the logger compartment;
- (g) when used in inclement weather,
  - (i) enclosed to provide protection from the weather, and
  - (ii) adequately heated to protect the passengers from undue discomfort due to cold; and
- (h) provided with emergency exits in accordance with the provisions of the *Highway Traffic Act*. R.R.O. 1990, Reg. 851, s. 119.

**PART I.1** (ss. 119.1-119.20) REVOKED: O. Reg. 98/11, s. 2.

## **PART II BUILDINGS**

**120.** Except as prescribed in this Part, the Building Code applies to all industrial establishments with respect to,

- (a) access to an exit;
- (b) exit from a floor area;
- (c) structural adequacy;
- (d) washrooms;
- (e) service rooms;
- (f) the fire-resistance rating of a separation for an access to an exit, service room and a process room that contains a flammable substance;
- (g) the fire protection rating of a closure. R.R.O. 1990, Reg. 851, s. 120; O. Reg. 420/10, s. 23.

**121.** In this Part,

“hazardous room” means, with respect to an industrial establishment, a room containing a substance which, because of its chemical nature, the form in which the substance exists or its handling or processing, may explode or become easily ignited creating a condition of imminent hazard to a person’s health or safety. R.R.O. 1990, Reg. 851, s. 121.

**122.** (1) This section applies with respect to a hazardous room,



- (a) with an area greater than fifteen square metres; or
  - (b) requiring a distance of travel greater than 4.5 metres from any point in the room to an egress doorway. R.R.O. 1990, Reg. 851, s. 122 (1).
- (2) A hazardous room shall be located in a floor area that has at least two exits. R.R.O. 1990, Reg. 851, s. 122 (2).
- (3) A hazardous room shall have at least two egress doorways that are at least three-quarters of the length of the diagonal distance of the room from each other. R.R.O. 1990, Reg. 851, s. 122 (3).
- (4) One egress doorway must be located within a maximum distance of twenty-three metres from any point in a hazardous room. R.R.O. 1990, Reg. 851, s. 122 (4).
- 123.** (1) The requirements of the Fire Code respecting fire extinguishers apply at industrial establishments. 1990, Reg. 851, s. 123 (1).
- (2) The requirements of the Fire Code respecting keeping egress doorways, public corridors and exits free from obstruction apply at industrial establishments. 1990, Reg. 851, s. 123 (2).
- (3) In this section,
- “Fire Code” means Ontario Regulation 213/07 (Fire Code) made under the *Fire Protection and Prevention Act, 1997*. R.R.O. 1990, Reg. 851, s. 123 (3); O. Reg. 420/10, s. 24.

### PART III INDUSTRIAL HYGIENE

- 124.** (1) Where a worker is required to work with, or is likely to be exposed to, a hazardous biological or chemical agent that could cause injury to the eye or skin, an employer shall provide as many of the following as are needed for adequate emergency treatment:
- 1. Eye wash facilities.
  - 2. Emergency showers.
  - 3. Antidotes, flushing fluids or washes. O. Reg. 186/19, s. 7.
- (2) The emergency equipment or treatments described in subsection (1) must,
- (a) be clearly marked with a sign or label;
  - (b) be located or installed in a conspicuous place near where the hazardous biological or chemical agent is kept or used;
  - (c) be readily accessible to workers; and
  - (d) have instructions for its use displayed on the equipment or treatment or as near to it as is practical. O. Reg. 186/19, s. 7.
- 125.** REVOKED: O. Reg. 186/19, s. 7.
- 126.** Removal of material shall be done in such a way as not to cause a hazard. R.R.O. 1990, Reg. 851, s. 126.
- 127.** An industrial establishment shall be adequately ventilated by either natural or mechanical means such that the atmosphere does not endanger the health and safety of workers. R.R.O. 1990, Reg. 851, s. 127.
- 128.** (1) Replacement air shall be provided to replace air exhausted. R.R.O. 1990, Reg. 851, s. 128 (1).
- (2) The replacement air shall,
- (a) be heated, when necessary, to maintain at least the minimum temperature in the workplace specified in section 129;
  - (b) be free from contamination with any hazardous dust, vapour, smoke, fume, mist or gas; and
  - (c) enter in such a manner so as,
    - (i) to prevent blowing of settled dust into the workplace,
    - (ii) to prevent interference with any exhaust system, and
    - (iii) not to cause undue drafts. R.R.O. 1990, Reg. 851, s. 128 (2).
- (3) The discharge of air from any exhaust system shall be in such a manner so as to prevent the return of contaminants to any workplace. R.R.O. 1990, Reg. 851, s. 128 (3).
- 129.** (1) Subject to subsection (2), an enclosed workplace shall be at a temperature,
- (a) suitable for the type of work performed; and
  - (b) not less than 18° Celsius. R.R.O. 1990, Reg. 851, s. 129 (1).
- (2) Clause (1) (b) does not apply to a workplace,

- (a) that is normally unheated;
- (b) where the necessity of opening doors makes the heating of the area to the temperature specified in clause (1) (b) impracticable;
- (c) where perishable goods requiring lower temperatures are processed or stored;
- (d) where radiant heating is such that a worker working in the area has the degree of comfort that would result were the area heated to the temperature specified in clause (1) (b);
- (e) where the process or activity is such that the temperature specified in clause (1) (b) could cause discomfort; or
- (f) during the first hour of the main operating shift where process heat provides a substantial portion of building heat. R.R.O. 1990, Reg. 851, s. 129 (2).

**130.** A worker who may be exposed to a biological, chemical or physical agent that may endanger the worker's safety or health shall be trained,

- (a) to use the precautions and procedures to be followed in the handling, use and storage of the agent;
- (b) in the proper use and care of required personal protective equipment; and
- (c) in the proper use of emergency measures and procedures. R.R.O. 1990, Reg. 851, s. 130.

**131.** No food, drink or tobacco shall be taken into, left or consumed in any room, area or place where any substance that is poisonous by ingestion is exposed. R.R.O. 1990, Reg. 851, s. 131.

**132.** (1) Subject to subsection (2), the regulations made under the Act respecting designated substances and an order by a Director under section 33 of the Act, potable drinking water shall be provided,

- (a) from,
  - (i) a fountain with an upward jet, or
  - (ii) a tap from a piped water supply or a covered vessel, together with a supply of single-use cups in a sanitary container located near the tap;
- (b) on every floor where work is regularly performed; and
- (c) within 100 metres of any area where work is regularly performed. R.R.O. 1990, Reg. 851, s. 132 (1); O. Reg. 565/06, s. 1; O. Reg. 420/10, s. 25.

(2) Subsection (1) does not apply to logging, except in logging camps. R.R.O. 1990, Reg. 851, s. 132 (2).

**133.** (1) Except for emergency facilities, hot and cold water shall be provided at each shower. R.R.O. 1990, Reg. 851, s. 133 (1).

(2) Hot water required under subsection (1) shall not,

- (a) be less than 30° Celsius;
- (b) exceed 60° Celsius; or
- (c) be directly mixed with steam. R.R.O. 1990, Reg. 851, s. 133 (2); O. Reg. 420/10, s. 26.

**134.** Where workers are exposed to a substance that,

- (a) is poisonous by ingestion; and
- (b) can contaminate the skin,

shower rooms and individual lockers for street and work clothes shall be provided. R.R.O. 1990, Reg. 851, s. 134.

**135.** Where ten or more workers are employed, a room or other space shall be provided,

- (a) affording reasonable privacy; and
- (b) equipped with one or more cots and chairs, unless such facilities are provided at a first-aid station. R.R.O. 1990, Reg. 851, s. 135.

**136.** A place suitable for eating purposes shall be provided where,

- (a) thirty-five or more workers are employed; or
- (b) there is any room, area or place in which there is exposure to a substance that is poisonous by ingestion. R.R.O. 1990, Reg. 851, s. 136.

**137.** Protective clothing or other safety device that has been worn next to the skin shall be cleaned and disinfected prior to being worn by another worker. R.R.O. 1990, Reg. 851, s. 137.



**138.** (1) Where a worker is likely to be exposed to an atmosphere at atmospheric pressure with an oxygen content of less than 19.5 per cent, the worker shall be protected by mechanical ventilation so that the worker's safety and health is not endangered. R.R.O. 1990, Reg. 851, s. 138 (1); O. Reg. 289/17, s. 1.

(2) Where the measures prescribed by subsection (1) are not practicable, the worker shall be protected by air supplied breathing equipment so that the worker's safety and health is not endangered. R.R.O. 1990, Reg. 851, s. 138 (2).

**139.** REVOKED: O. Reg. 382/15, s. 1.

TABLE 1 REVOKED: O. Reg. 494/09, s. 3.

FORM 1 REVOKED: O. Reg. 420/10, s. 28.

FORM 2 REVOKED: O. Reg. 60/18, s. 10.

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## Occupational Health and Safety Act

### ONTARIO REGULATION 297/13

#### OCCUPATIONAL HEALTH AND SAFETY AWARENESS AND TRAINING

**Consolidation Period:** From January 1, 2021 to the [e-Laws currency date](#).

Last amendment: 751/20.

Legislative History: 253/14, 84/17, 191/19, 96/20, 751/20.

*This is the English version of a bilingual regulation.*

#### BASIC OCCUPATIONAL HEALTH AND SAFETY AWARENESS TRAINING

##### Basic occupational health and safety awareness training — workers

1. (1) An employer shall ensure that a worker who performs work for the employer completes a basic occupational health and safety awareness training program that meets the requirements set out in subsection (3) as soon as practicable. O. Reg. 297/13, s. 1 (1).

(2) Subsection (1) does not apply if,

- (a) the worker previously completed a basic occupational health and safety awareness training program and provides the employer with proof of completion of the training; and
- (b) the employer verifies that the previous training meets the requirements set out in subsection (3). O. Reg. 297/13, s. 1 (2).

(3) A basic occupational health and safety awareness training program for workers must include instruction on the following:

- 1. The duties and rights of workers under the Act.
- 2. The duties of employers and supervisors under the Act.
- 3. The roles of health and safety representatives and joint health and safety committees under the Act.
- 4. The roles of the Ministry, the Workplace Safety and Insurance Board and entities designated under section 22.5 of the Act with respect to occupational health and safety.
- 5. Common workplace hazards.
- 6. The requirements set out in Regulation 860 (Workplace Hazardous Materials Information System (WHMIS)) with respect to information and instruction on hazardous products.
- 7. Occupational illness, including latency. O. Reg. 297/13, s. 1 (3); O. Reg. 191/19, s. 1.

##### Basic occupational health and safety awareness training — supervisors

2. (1) An employer shall ensure that a supervisor who performs work for the employer completes a basic occupational health and safety awareness training program that meets the requirements set out in subsection (3) within one week of performing work as a supervisor. O. Reg. 297/13, s. 2 (1).

(2) Subsection (1) does not apply if,

- (a) the supervisor previously completed a basic occupational health and safety awareness training program and provides the employer with proof of completion of the training; and
- (b) the employer verifies that the previous training meets the requirements set out in subsection (3). O. Reg. 297/13, s. 2 (2).

(3) A basic occupational health and safety awareness training program for supervisors must include instruction on the following:

- 1. The duties and rights of workers under the Act.
- 2. The duties of employers and supervisors under the Act.
- 3. The roles of health and safety representatives and joint health and safety committees under the Act.

4. The roles of the Ministry, the Workplace Safety and Insurance Board and entities designated under section 22.5 of the Act with respect to occupational health and safety.
5. How to recognize, assess and control workplace hazards, and evaluate those controls.
6. Sources of information on occupational health and safety. O. Reg. 297/13, s. 2 (3).

#### Exemptions

3. (1) The requirements set out in section 1 do not apply to an employer with respect to a supervisor if,
  - (a) before this Regulation came into force, the supervisor was performing work as a supervisor for the employer; and
  - (b) the employer verifies that, before this Regulation came into force, the supervisor completed a basic occupational health and safety awareness training program that meets the requirements set out in subsection 2 (3). O. Reg. 297/13, s. 3 (1).
- (2) The requirements set out in section 1 do not apply to an employer with respect to a worker or supervisor if,
  - (a) another employer was exempt with respect to the worker or supervisor under subsection (1); and
  - (b) the worker or supervisor provides the employer with proof of the exemption. O. Reg. 297/13, s. 3 (2).

#### Record of training

4. (1) An employer shall maintain a record of the basic occupational health and safety awareness training required by sections 1 and 2 that is completed by workers and supervisors who perform work for the employer. O. Reg. 297/13, s. 4 (1).
- (2) An employer shall maintain a record of workers and supervisors who perform work for the employer in respect of whom the employer is exempt under section 3. O. Reg. 297/13, s. 4 (2).
- (3) If a worker or supervisor completes a training program under subsection 1 (1) or 2 (1), the employer shall, at the request of the worker or supervisor, provide the worker or supervisor with written proof of completion of the training. O. Reg. 297/13, s. 4 (3).
- (4) If an employer is exempt with respect to a supervisor under subsection 3 (1), the employer shall, at the request of the supervisor, provide the supervisor with written proof of the exemption. O. Reg. 297/13, s. 4 (4).
- (5) If, within six months of a worker or supervisor no longer performing work for an employer, the worker or supervisor requests a written proof described in subsection (3) or (4), the employer shall provide the worker or supervisor with the requested written proof. O. Reg. 297/13, s. 4 (5).

### CERTIFICATION TRAINING

#### Certification training

5. (1) An employer shall carry out the training programs necessary to enable a committee member to become a certified member, and the programs must be selected in accordance with the training and other requirements established by the Chief Prevention Officer under section 7.6 of the Act. O. Reg. 297/13, s. 5 (1); O. Reg. 191/19, s. 2.
- (2) For greater certainty, in subsection (1),  
“carry out” includes paying for the training. O. Reg. 297/13, s. 5 (2).

### WORKING AT HEIGHTS TRAINING — CONSTRUCTION PROJECTS

#### Application

6. The requirements of section 7 apply to an employer in respect of workers who are required under Ontario Regulation 213/91 (Construction Projects) to use any of the following methods of fall protection:
  1. A travel restraint system.
  2. A fall restricting system.
  3. A fall arrest system.
  4. A safety net.
  5. A work belt.
  6. A safety belt. O. Reg. 253/14, s. 1.

#### Required training programs

7. (1) An employer shall ensure that a worker who may use a method of fall protection listed in section 6 has successfully completed,
  - (a) a working at heights training program that meets the requirements set out in subsection (2) for which the validity period has not expired as described in section 8; or

(b) a training program on fall protection prescribed under section 139 of the *Occupational Health and Safety Regulations, 2012* made under the *Occupational Health and Safety Act* (Newfoundland and Labrador) for which the validity period has not expired as described in section 8. O. Reg. 751/20, s. 1.

(2) The following requirements apply to a working at heights training program described in clause (1) (a):

1. It must be approved by the Chief Prevention Officer under subsection 7.1 (2) of the Act as meeting the working at heights training program standard that applied at the time of the training.
2. It must be provided by a training provider approved by the Chief Prevention Officer under subsection 7.2 (2) of the Act as meeting the working at heights training provider standard that applied at the time of the training. O. Reg. 751/20, s. 1.

(3) Subsection (1) does not apply if the worker,

(a) is performing work on a project at a workplace where,

- (i) automobiles are manufactured or assembled,
- (ii) automobile marshalling is conducted,
- (iii) automobile parts manufacturing is conducted,
- (iv) automobile parts warehousing occurs, or
- (v) automobile research and development is conducted; and

(b) is directly employed by an employer that manufactures or assembles automobiles and that owns and operates the workplace described in clause (a). O. Reg. 751/20, s. 1.

(4) In subsection (3),

“automobile” includes a van or truck with a gross vehicle weight rating of 14,000 pounds (6,350 kilograms) or less; (“automobile”)

“automobile marshalling” means receiving assembled automobiles from the location where they are manufactured or assembled, storing the automobiles before delivery to purchasers or persons who sell to purchasers, organizing them for delivery and arranging for delivery; (“triage d’automobiles”)

“automobile parts manufacturing” means,

- (a) producing automobile parts that are supplied directly to an automobile manufacturing or assembling factory or an automobile parts warehouse, and
- (b) producing elements of automobile parts where those elements are supplied directly to an automobile manufacturing or assembling factory; (“fabrication de pièces automobiles”)

“automobile parts warehousing” means receiving automobile parts or accessories, storing them, organizing them for delivery and delivering them or arranging for delivery; (“entreposage de pièces automobiles”)

“automobile research and development” means research, development, design, engineering or testing related to automobile or automobile parts manufacturing or assembly. (“recherche et développement automobile”) O. Reg. 751/20, s. 1.

**Training — period of validity**

**8.** (1) The working at heights training described in clause 7 (1) (a) is valid for three years from the date of successful completion of the training program. O. Reg. 751/20, s. 1.

(2) Despite subsection (1), any working at heights training described in clause 7 (1) (a) that was successfully completed between February 28, 2017 and August 31, 2017 is valid for four years from the date of successful completion of the training program. O. Reg. 751/20, s. 1.

(3) The training program on fall protection described in clause 7 (1) (b) is valid until the date indicated on the proof of successful completion issued to the worker by the Workplace Health, Safety and Compensation Commission under the *Occupational Health and Safety Regulations, 2012* made under the *Occupational Health and Safety Act* (Newfoundland and Labrador). O. Reg. 751/20, s. 1.

**Training requirements under O. Reg. 213/91**

**9.** For greater certainty, the requirements of subsection 26.2 (1) of Ontario Regulation 213/91 (Construction Projects) apply in addition to the training requirements of section 7. O. Reg. 253/14, s. 1; O. Reg. 751/20, s. 2.

**Record of training**

**10.** (1) An employer shall maintain a record of the training that is required by section 7. O. Reg. 253/14, s. 1; O. Reg. 751/20, s. 3 (1).

- (2) The training record for working at heights training described in clause 7 (1) (a) shall include the following information:
1. The name of the worker.
  2. The name of the approved training provider.
  3. The date on which the approved training was successfully completed.
  4. The name of the approved training program that was successfully completed. O. Reg. 253/14, s. 1; O. Reg. 751/20, s. 3 (2).
- (3) A copy of a worker's proof of successful completion of a working at heights training program described in clause 7 (1) (a), issued by the Chief Prevention Officer, is a training record for the purposes of subsection (1). O. Reg. 751/20, s. 3 (3).
- (3.1) A copy of a worker's proof of successful completion of a training program on fall protection described in clause 7 (1) (b) that is issued by the Workplace Health, Safety and Compensation Commission under the *Occupational Health and Safety Regulations, 2012* made under the *Occupational Health and Safety Act* (Newfoundland and Labrador) is a training record for the purposes of subsection (1). O. Reg. 751/20, s. 3 (3).
- (4) The employer shall make a training record available to an inspector on request. O. Reg. 253/14, s. 1.
- 11. REVOKED:** O. Reg. 751/20, s. 4.

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# Workplace Safety and Insurance Act, 1997

## S.O. 1997, CHAPTER 16 SCHEDULE A

**Consolidation Period:** From January 1, 2022 to the [e-Laws currency date](#).

Last amendment: 2021, c. 35, Sched. 6.

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 (see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*); 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; 2021, c. 35, Sched. 6.

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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.

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 - no effect - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2021

**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

**96.1** REPEALED: 2021, c. 35, Sched. 6, s. 1.

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

2010, c. 26, Sched. 21, s. 1 (2) - 01/01/2013

2021, c. 35, Sched. 6, s. 1 - 01/01/2022

**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).

(2) REPEALED: 2021, c. 35, Sched. 6, s. 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

2021, c. 35, Sched. 6, s. 2 - 01/01/2022

**Distribution of surplus**

**97.1** (1) If the amount of the insurance fund meets a sufficiency ratio that is equal to or greater than 115 per cent and less than 125 per cent, the Board may distribute any amount in excess of the amount prescribed under clause 100 (c) that it considers appropriate among Schedule 1 employers having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate. 2021, c. 35, Sched. 6, s. 3.

**Same**

(2) Except in such circumstances as may be prescribed, if the amount of the insurance fund meets a sufficiency ratio that is equal to 125 per cent,

- (a) the Board shall distribute the difference in the amount prescribed under clause 100 (f.1) and the amount in the insurance fund among Schedule 1 employers; or
- (b) if no amount is prescribed under clause 100 (f.1), the Board shall distribute any amount in excess of the amount prescribed under clause 100 (c) that it considers appropriate among Schedule 1 employers having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate. 2021, c. 35, Sched. 6, s. 3.

**Distribution of different amounts**

(3) The Board may determine that Schedule 1 employers are to be distributed different amounts under this section having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate, including an employer's compliance with this Act. 2021, c. 35, Sched. 6, s. 3.

**No distribution**

(4) The Board may determine that a Schedule 1 employer is not to be distributed an amount under this section having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate, including an employer's compliance with this Act. 2021, c. 35, Sched. 6, s. 3.

**Timing of disbursements**

(5) Subject to such requirements as may be prescribed, the Board may determine the timing of disbursements made under this section and may distribute amounts to different Schedule 1 employers at different times. 2021, c. 35, Sched. 6, s. 3.

**Form of disbursements**

(6) The Board may determine the form of disbursements made under this section. 2021, c. 35, Sched. 6, s. 3.

**Same**

(7) The Board may distribute an amount to a Schedule 1 employer under this section in more than one disbursement. 2021, c. 35, Sched. 6, s. 3.

**Determination of amount in fund**

(8) For the purposes of this section, the sufficiency ratio of the insurance fund shall be calculated in accordance with the method prescribed under clause 100 (f.5). 2021, c. 35, Sched. 6, s. 3.

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

2021, c. 35, Sched. 6, s. 3 - 01/01/2022

**No right of reconsideration or appeal**

**97.2** A determination made by the Board regarding distributions or disbursements under section 97.1 is not a decision or a final decision of the Board for the purposes of Part XI of this Act and an employer has no right of reconsideration by, or appeal to, the Board or the Tribunal in respect of a determination made by the Board under that section. 2021, c. 35, Sched. 6, s. 3.

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

2021, c. 35, Sched. 6, s. 3 - 01/01/2022

**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;
- (c) prescribing the amount of the insurance fund required to make the fund sufficient by the prescribed date or prescribing the method of determining that amount, including any formula, ratio or percentage to be used to calculate the amount;
- (d) REPEALED: 2021, c. 35, Sched. 6, s. 4 (1).
- (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);
- (f.1) prescribing, for the purposes of subsection 97.1 (2), an amount, expressed as a ratio or percentage, that is greater than a sufficiency ratio of 115 per cent but less than a sufficiency ratio of 125 per cent;
- (f.2) prescribing circumstances for the purposes of subsection 97.1 (2);
- (f.3) prescribing criteria for the purposes of section 97.1;
- (f.4) prescribing requirements for the purposes of subsection 97.1 (5);
- (f.5) prescribing the method of calculating the sufficiency ratio for the purposes of section 97.1, including any formula, ratio or percentage to be used to calculate the amount;
- (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); 2021, c. 35, Sched. 6, s. 4.

**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).

**Agreement re administration of Part VII**

(11.1) The Board may enter into an agreement with any person or entity for the purpose of administering Part VII. 2021, c. 35, Sched. 6, s. 5.

**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
- 2021, c. 35, Sched. 6, s. 5 - 01/01/2022

**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)**

2011, c. 11, s. 24 (1, 2) - 01/04/2012

**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.

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Français

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**Workplace Safety and Insurance Act, 1997**  
**Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail**

**R.R.O. 1990, REGULATION 1101**

*formerly under Workers' Compensation Act*

**FIRST AID REQUIREMENTS**

**Consolidation Period:** From December 31, 1990 to the [e-Laws currency date](#).

No amendments.

***This Regulation is made in English only.***

1. (1) A first aid station shall contain,
  - (a) a first aid box containing the items required by this Regulation; and
  - (b) a notice board displaying,
    - (i) the Board's poster known as Form 82,
    - (ii) the valid first aid certificates of qualification of the trained workers on duty, and
    - (iii) an inspection card with spaces for recording the date of the most recent inspection of the first aid box and the signature of the person making the inspection. R.R.O. 1990, Reg. 1101, s. 1 (1).
- (2) A first aid station shall be in the charge of a worker who works in the immediate vicinity of the first aid station and who is qualified in first aid to the standards required by this Regulation. R.R.O. 1990, Reg. 1101, s. 1 (2).
- (3) First aid stations shall be so located as to be easily accessible for the prompt treatment of any worker at all times when work is in progress. R.R.O. 1990, Reg. 1101, s. 1 (3).
2. (1) A first aid box shall contain as a minimum the first aid items required by this Regulation and all items in the box shall be maintained in good condition at all times. R.R.O. 1990, Reg. 1101, s. 2 (1).
- (2) The box shall be large enough so that each item is in plain view and easily accessible. R.R.O. 1990, Reg. 1101, s. 2 (2).
3. Every employer shall at all times keep posted in other conspicuous places in the place of employment the Board's poster known as Form 82 respecting the necessity of reporting all accidents and receiving first aid treatment. R.R.O. 1990, Reg. 1101, s. 3.
4. The expense of furnishing and maintaining first aid appliances and services shall be borne by the employer. R.R.O. 1990, Reg. 1101, s. 4.
5. Every employer shall keep a record of all circumstances respecting an accident as described by the injured worker, the date and time of its occurrence, the names of witnesses, the nature and exact location of the injuries to the worker and the date, time and nature of each first aid treatment given. R.R.O. 1990, Reg. 1101, s. 5.
6. Employers shall inspect first aid boxes and their contents at not less than quarter-yearly intervals and shall mark the inspection card for each box with the date of the most recent inspection and the signature of the person making the inspection. R.R.O. 1990, Reg. 1101, s. 6.
7. The Board or its appointees may make inspections of first aid stations, appliances, services and records. R.R.O. 1990, Reg. 1101, s. 7.

FIRST AID REQUIREMENTS

8. (1) Every employer employing not more than five workers in any one shift at a place of employment shall provide and maintain at the place of employment a first aid station with a first aid box containing as a minimum,
  - (a) a current edition of a standard St. John Ambulance First Aid Manual;
  - (b) 1 card of safety pins; and
  - (c) dressings consisting of,
    - (i) 12 adhesive dressings individually wrapped,
    - (ii) 4 sterile gauze pads, 3 inches square,

- (iii) 2 rolls of gauze bandage, 2 inches wide,
- (iv) 2 field dressings, 4 inches square or 2 four-inch sterile bandage compresses, and
- (v) 1 triangular bandage. R.R.O. 1990, Reg. 1101, s. 8 (1).

- (2) The employer shall ensure that the first aid station is at all times in the charge of a worker who,
  - (a) is the holder of a valid St. John Ambulance Emergency First Aid Certificate or its equivalent; and
  - (b) works in the immediate vicinity of the station. R.R.O. 1990, Reg. 1101, s. 8 (2).

**9.** (1) Every employer employing more than five workers and not more than fifteen workers in any one shift at a place of employment shall provide and maintain a first aid station with a first aid box containing as a minimum,

- (a) a current edition of a standard St. John Ambulance First Aid Manual;
- (b) 1 card of safety pins; and
- (c) dressings consisting of,
  - (i) 24 adhesive dressings individually wrapped,
  - (ii) 12 sterile gauze pads, 3 inches square,
  - (iii) 4 rolls of 2-inch gauze bandage,
  - (iv) 4 rolls of 4-inch gauze bandage,
  - (v) 4 sterile surgical pads suitable for pressure dressings, individually wrapped,
  - (vi) 6 triangular bandages,
  - (vii) 2 rolls of splint padding, and
  - (viii) 1 roll-up splint. R.R.O. 1990, Reg. 1101, s. 9 (1).

- (2) The employer shall ensure that the first aid station is at all times in the charge of a worker who,
  - (a) is the holder of a valid St. John Ambulance Standard First Aid Certificate or its equivalent; and
  - (b) works in the immediate vicinity of the box. R.R.O. 1990, Reg. 1101, s. 9 (2).

**10.** (1) Every employer employing more than fifteen and fewer than 200 workers in any one shift at a place of employment shall provide and maintain at the place of employment one stretcher, two blankets and a first aid station with a first aid box containing as a minimum,

- (a) a current edition of a standard St. John Ambulance First Aid Manual;
- (b) 24 safety pins;
- (c) 1 basin, preferably stainless steel; and
- (d) dressings consisting of,
  - (i) 48 adhesive dressings, individually wrapped,
  - (ii) 2 rolls of adhesive tape, 1 inch wide,
  - (iii) 12 rolls of 1-inch gauze bandage,
  - (iv) 48 sterile gauze pads, 3 inches square,
  - (v) 8 rolls of 2-inch gauze bandage,
  - (vi) 8 rolls of 4-inch gauze bandage,
  - (vii) 6 sterile surgical pads suitable for pressure dressings, individually wrapped,
  - (viii) 12 triangular bandages,
  - (ix) splints of assorted sizes, and
  - (x) 2 rolls of splint padding. R.R.O. 1990, Reg. 1101, s. 10 (1).

- (2) The employer shall ensure that the first aid station is at all times in the charge of a worker who,
  - (a) is the holder of a valid St. John Ambulance Standard First Aid Certificate or its equivalent; and
  - (b) works in the immediate vicinity of the box. R.R.O. 1990, Reg. 1101, s. 10 (2).

## FIRST AID ROOM

11. (1) Every employer employing 200 or more workers in any one shift at a place of employment shall provide and maintain a first aid room equipped with,

- (a) a current edition of a standard St. John Ambulance First Aid Manual;
  - (b) instruments consisting of,
    - (i) dressing scissors,
    - (ii) dressing forceps,
    - (iii) safety pins,
    - (iv) graduated medicine glass,
    - (v) tongue depressors, and
    - (vi) applicators, cotton tipped;
  - (c) denatured ethyl alcohol;
  - (d) dressings consisting of,
    - (i) adhesive dressings, individually wrapped,
    - (ii) sterile gauze pads of assorted sizes, individually wrapped,
    - (iii) gauze bandages of assorted sizes,
    - (iv) adhesive plaster,
    - (v) absorbent cotton,
    - (vi) triangular bandages,
    - (vii) splints of assorted sizes, and
    - (viii) splint padding; and
  - (e) furnishings consisting of,
    - (i) hot and cold running water,
    - (ii) 3 washbasins, preferably stainless steel,
    - (iii) 1 instrument sterilizer,
    - (iv) 1 cabinet for surgical dressings,
    - (v) 1 enamel foot bath,
    - (vi) 1 sanitary disposal receptacle with lid,
    - (vii) 1 first aid box containing as a minimum the items required by subsection 9 (1), for use by the attendant at the scene of an accident before the patient is moved to the first aid room or general hospital,
    - (viii) 1 couch curtained off or in a separate cubicle,
    - (ix) 1 stretcher, and
    - (x) 2 blankets. R.R.O. 1990, Reg. 1101, s. 11 (1).
- (2) The employer shall ensure that the first aid room is in the charge of,
- (a) a registered nurse; or
  - (b) a worker who,
    - (i) is the holder of a valid St. John Ambulance Standard First Aid Certificate or its equivalent,
    - (ii) works in the immediate vicinity of the first aid room, and
    - (iii) does not perform other work of a nature that is likely to affect adversely his or her ability to administer first aid. R.R.O. 1990, Reg. 1101, s. 11 (2).

(3) The certificate referred to in subclause (2) (b) (i) shall be prominently displayed in the first aid room. R.R.O. 1990, Reg. 1101, s. 11 (3).

12. Where the first aid station referred to in section 9 or 10 or the first aid room referred to in section 11 is not easily accessible in order to provide prompt treatment of any worker, an additional first aid station or stations shall be established to comply with subsection 1 (3). R.R.O. 1990, Reg. 1101, s. 12.

TRANSPORTATION, CONSTRUCTION, FARM AND BUSH SITES

13. For the purposes of sections 8, 9, 10 and 11,

- (a) a railway train, vessel or bus on a route, other than an urban or suburban route, on which a worker is employed;
- (b) the central point from which bush workers are dispatched daily to work sites;
- (c) a vehicle being used by an employer to transport workers; or
- (d) the site of the construction, repair or demolition of a building,

shall be deemed to be a place of employment. R.R.O. 1990, Reg. 1101, s. 13.

14. (1) Where the place of employment is the site of construction, repair or demolition of a building, a first aid station shall be maintained in the time office for the project. R.R.O. 1990, Reg. 1101, s. 14 (1).

(2) Where there is no time office for the project, a first aid station shall be maintained in a vehicle or building at the site and section 1 applies. R.R.O. 1990, Reg. 1101, s. 14 (2).

15. Where the construction, repair or demolition of a building is in the charge of a general contractor, the general contractor shall provide and maintain the first aid station or stations required by this Regulation in respect of the workers in the same manner as if the general contractor were the employer of the workers. R.R.O. 1990, Reg. 1101, s. 15.

16. (1) Every employer of bush workers or farm workers, or both, shall provide at a central location a first aid box containing,

- (a) a current edition of a standard St. John Ambulance First Aid Manual;
- (b) 1 card of safety pins;
- (c) dressings consisting of,
  - (i) 16 adhesive dressings, individually wrapped,
  - (ii) 6 sterile gauze pads, 3 inches square,
  - (iii) 4 rolls of 3-inch gauze bandage,
  - (iv) 2 sterile surgical pads suitable for pressure dressings, individually wrapped, and
  - (v) 4 triangular bandages. R.R.O. 1990, Reg. 1101, s. 16 (1).

(2) Every employer using a vehicle to transport workers shall equip the vehicle with a first aid box containing,

- (a) a current edition of a standard St. John Ambulance First Aid Manual;
- (b) 1 card of safety pins;
- (c) dressings consisting of,
  - (i) 16 adhesive dressings, individually wrapped,
  - (ii) 6 sterile gauze pads, 3 inches square,
  - (iii) 4 rolls of 3-inch gauze bandage,
  - (iv) 2 sterile surgical pads suitable for pressure dressings, individually wrapped, and
  - (v) 4 triangular bandages. R.R.O. 1990, Reg. 1101, s. 16 (2).

(3) The employer of workers engaged in transporting goods outside an urban area in a vehicle shall equip the vehicle with a first aid kit containing,

- (a) a current edition of a standard St. John Ambulance First Aid Manual;
- (b) dressings consisting of,
  - (i) 12 adhesive dressings, individually wrapped,
  - (ii) 1 four-inch bandage compress,
  - (iii) 2 two-inch bandage compresses, and
  - (iv) 1 triangular bandage. R.R.O. 1990, Reg. 1101, s. 16 (3).

(4) Where a worker is operating heavy construction and maintenance equipment in a place where a first aid station is not readily available to him or her in the event of an accident, the employer shall equip the machinery with a first aid kit containing the items required by subsection (3) R.R.O. 1990, Reg. 1101, s. 16 (4).

(5) A bus operated on a route other than an urban route shall be equipped with a first aid kit containing the items required by subsection (3). R.R.O. 1990, Reg. 1101, s. 16 (5).

(6) Motive power units of all railways other than units used in yard service shall be equipped with a first aid box equipped with the items required by subsection (2). R.R.O. 1990, Reg. 1101, s. 16 (6).

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