2012
MASTER ELECTRICIAN EXAMINATION
REFERENCE MATERIAL

SECTION 1:
ADMINISTRATION AND CORE TECHNICAL CURRICULUM

SECTION 2:
SAFETY CULTURE

SECTION 3:
BUSINESS ADMINISTRATION
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# Definitions

**112.1** In this Part,

“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).

# Electrical Safety Regulations, LG in C

**113. (1)** The Lieutenant Governor in Council may make regulations,
(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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 themself 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).

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).

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).

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).

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).

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).

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).

**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).

**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).

**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).

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).

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).

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).

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-clause 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).

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).

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).

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).

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).

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,
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(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).

Expiration 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).

RELEASE OR FORFEITURE OF ELECTRICAL PRODUCT OR DEVICE

Application of section

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
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).

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).

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;

(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).

**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).

**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).

**Return of seized things**

(11) Subject to subsection (12), an inspector who seizes any thing under this section may make a copy of it and shall return it within a reasonable time. 2006, c. 34, s. 12 (6).

**Return of seized things not required**

(12) An investigator is not required to return an electrical product or device seized under this section where the investigator believes on reasonable grounds that the electrical product or device was sold or offered for sale in contravention of this Part or the regulations. 2006, c. 34, s. 12 (6).

**Admissibility of copies**

(13) 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).
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 (6), (10), (11), (12) and (13) apply, with necessary modifications, to the exercise of powers under this section. 2006, c. 34, s. 12 (6).

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).

Return of seized thing

(2) Subsections 113.14.1 (11), (12) and (13) apply, with necessary modifications, to any thing seized under this section. 2006, c. 34, s. 12 (6).

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).

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).

**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).

**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).

**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).

(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).

**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 themself 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).

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).

Conflict

113.21 This Part and the regulations prevail over any municipal by-law. 2004, c. 19, s. 12 (5).

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).
ONTARIO REGULATION 187/09
made under the
SAFETY AND CONSUMER STATUTES ADMINISTRATION ACT, 1996
Made: March 4, 2009
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GENERAL
PART I
ADMINISTRATION OF VARIOUS ACTS
DESIGNATED LEGISLATION

Designated legislation
1. The provisions that are specified in Column 2 of the following Table and that are provisions of the Act or regulations specified opposite in Column 1 are designated as designated legislation for the purposes of subsection 3 (1) of the Act:

<table>
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<th>Column 1</th>
<th>Column 2</th>
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<tbody>
<tr>
<td>Electricity Act, 1998</td>
<td>all provisions in Part VIII</td>
</tr>
<tr>
<td>the regulations made under Part VIII of the Electricity Act, 1998</td>
<td>all provisions</td>
</tr>
<tr>
<td>Motor Vehicle Dealers Act</td>
<td>all provisions except for section 24</td>
</tr>
<tr>
<td>the regulations made under the Motor Vehicle Dealers Act</td>
<td>all provisions</td>
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<tr>
<td>Real Estate and Business Brokers Act, 2002</td>
<td>all provisions except for sections 50 and 51</td>
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<tr>
<td>the regulations made under the Real Estate and Business Brokers Act, 2002 except for the regulations made under subsection 50 (2) or paragraph 25 of subsection 51 (1) of that Act with respect to a delegation of the power to make regulations</td>
<td>all provisions</td>
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<tr>
<td>Technical Standards and Safety Act, 2000</td>
<td>all provisions except for sections 33, 34 and 35 and subsections 36 (1), (2) and (5)</td>
</tr>
<tr>
<td>the regulations made under the Technical Standards and Safety Act, 2000</td>
<td>all provisions</td>
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<tr>
<td>Travel Industry Act, 2002</td>
<td>all provisions except for sections 42 and 43</td>
</tr>
<tr>
<td>the regulations made under the Travel Industry Act, 2002</td>
<td>all provisions</td>
</tr>
</tbody>
</table>

DESIGNATED ADMINISTRATIVE AUTHORITIES

Electricity Act, 1998
2. For the purposes of subsection 3 (2) of the Act, the Electrical Safety Authority, that is incorporated under the laws of the Province of Ontario by letters patent dated January 12, 1999 and with which the Minister of Consumer and Business Services entered into an administrative agreement dated March 11, 1999 for the purposes of section 4 of the Act, is designated as the sole administrative authority for the purposes of administering the provisions of the Electricity Act, 1998 and the regulations made under that Act that are designated legislation under section 1.

Motor Vehicle Dealers Act
3. For the purposes of subsection 3 (2) of the Act, the Ontario Motor Vehicle Industry Council, that is incorporated under the laws of the Province of Ontario by letters patent dated October 8, 1996 and with which the Minister of Consumer and Commercial Relations entered into an administrative agreement dated January 6, 1997 for the purposes of section 4 of the Act, is designated as the sole administrative authority for the purpose of administering the provisions of the Motor Vehicle Dealers Act and the regulations made under that Act that are designated legislation under section 1.
Real Estate and Business Brokers Act, 2002

4. For the purposes of subsection 3 (2) of the Act, the Real Estate Council of Ontario, that is incorporated under the laws of Canada by letters patent dated January 24, 1997 and with which the Minister of Consumer and Commercial Relations entered into an administrative agreement dated March 1, 1997 for the purposes of section 4 of the Act, is designated as the sole administrative authority for the purpose of administering the provisions of the Real Estate and Business Brokers Act, 2002 and the regulations made under that Act that are designated legislation under section 1.

Technical Standards and Safety Act, 2000

5. For the purposes of subsection 3 (2) of the Act, the Technical Standards and Safety Authority, that is incorporated under the laws of the Province of Ontario by letters patent dated August 30, 1996 and with which the Minister of Consumer and Commercial Relations entered into an administrative agreement dated January 13, 1997 for the purposes of section 4 of the Act, is designated as the sole administrative authority for the purpose of administering the provisions of the Technical Standards and Safety Act, 2000 and the regulations made under that Act that are designated legislation under section 1.

Travel Industry Act, 2002

6. For the purposes of subsection 3 (2) of the Act, the Travel Industry Council of Ontario, that is incorporated under the laws of the Province of Ontario by letters patent dated April 7, 1997 and with which the Minister of Consumer and Commercial Relations entered into an administrative agreement dated April 29, 1997 for the purposes of section 4 of the Act, is designated as the sole administrative authority for the purpose of administering the provisions of the Travel Industry Act, 2002 and the regulations made under that Act that are designated legislation under section 1.

MISCELLANEOUS

Motor Vehicle Dealers Act

7. For the purposes of subsection 20 (1) of the Motor Vehicle Dealers Act, any notice or order required to be given or served under that Act or the regulations made under it is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ontario Motor Vehicle Industry Council.

PART II
REVIEWS AND APPEALS OF ORDERS ISSUED BY THE ELECTRICAL SAFETY AUTHORITY UNDER PART VIII OF THE ELECTRICITY ACT, 1998

Definitions

8. In this Part,

“Authority” means the Electrical Safety Authority;

“Director” means a Director of the Authority that the Authority appoints under subsection 9 (1) of the Act for the purpose of this Part;

“Review Panel” means a panel of not more than three persons appointed by the Authority for the purpose of this Part.

Director’s review

9. (1) A person named in an order issued by the Authority under subsection 113 (11) of the Electricity Act, 1998 who considers oneself aggrieved by the order may, within 15 days of the issuance of the order, apply to the Director in writing for a review of the order.

(2) If a person applies to the Authority in writing for an order mentioned in subsection 113 (11) of the Electricity Act, 1998, if the Authority does not issue the order within 15 days of the application and if the person considers oneself aggrieved by the non-issuance of the order, the person may, within a further 15 days, apply to the Director in writing for a review of the Authority’s failure to issue the order.

(3) Before or after the expiration of the time for applying for a review under subsection (1) or (2), the person may apply to the Director for an extension in the time for applying for the review.

(4) The extension shall be for no more than 15 days from the day that the Director grants the extension.

(5) The Director may grant the extension if satisfied that there are apparent grounds for granting relief to the applicant and that there are reasonable grounds for granting the extension, and may give directions, as appropriate.

(6) An application under subsection (1) for a review of an order of the Authority operates as a stay of the order pending the outcome of the review.
(7) The Director may, without notice, order that the stay of the order be lifted if the Director is of the opinion that the action is necessary in the interest of public safety.

(8) The Director is not required to hold a hearing when conducting a review under this section.

(9) In reviewing an order of the Authority or the Authority’s failure to issue an order, the Director may,

(a) refuse to consider the substance of the application for a review and refer the matter to the Review Panel for a hearing under section 10; or

(b) confirm, amend or rescind the Authority’s order or make whatever other decision that the Director deems appropriate.

Appeal to Review Panel

10. (1) A person named in a decision made by the Director under section 9 may appeal the decision to the Review Panel by filing a notice of appeal with the Review Panel within 15 days after the decision is made.

(2) Before or after the expiration of the time for appealing a decision, a person mentioned in subsection (1) may apply to the Review Panel for an extension in the time for appealing the decision.

(3) The extension shall be for no more than 15 days from the day that the Review Panel grants the extension.

(4) The Review Panel may grant the extension if it is satisfied that there are reasonable grounds for applying for the extension and that there are apparent grounds for granting the extension, and may give directions, as appropriate.

(5) An appeal under subsection (1) operates as a stay of the decision pending the outcome of the appeal.

(6) Upon the application of the Director, which may be made without notice, the Review Panel may order that the stay of the decision be lifted if, in its opinion, the action is necessary in the interest of public safety.

(7) Subject to subsection (9), if a person appeals under subsection (1) or if the Director refers a matter to the Review Panel under clause 9 (9) (a), the Review Panel shall appoint a time for a hearing and hold the hearing.

(8) The Director or a person designated by the Director for the purpose is entitled to be heard at the hearing.

(9) If, on the application of a party to a hearing before the Review Panel with notice to the other parties, the Review Panel is satisfied that the appeal is frivolous or vexatious, the Review Panel may refuse to grant the hearing or may terminate the hearing at any time and make an order of costs as it considers appropriate in the circumstances.

(10) The Review Panel may, by order, confirm, amend or rescind the decision of the Director or make whatever other decision that the Review Panel deems appropriate.

(11) The Review Panel may make orders as to costs payable by the parties to the appeal and orders requiring the parties to the appeal to reimburse the Authority for its expenses incurred in respect of the appeal.

Rules for hearings

11. (1) The Authority may make rules establishing procedures for the hearing of reviews under section 9 and appeals under section 10 including,

(a) rules applicable if a member of the Review Panel conducting a hearing is unable to continue to conduct the hearing because of illness or other reason; and

(b) rules providing that the oral evidence given before the Review Panel at a hearing may be recorded if a party to the hearing so requests and pays the fee established by the Authority for that purpose in accordance with section 12 of the Act.

(2) A rule made under clause (1) (a) may provide for the continuation or termination of the hearing, with or without the consent of the parties, or the commencement of a new hearing by a panel differently composed if the initial hearing is terminated.

(3) A rule made under this section may be general or specific in its application and may apply differently to different hearings.

Appeal to Divisional Court

12. (1) Any party to the hearing before the Review Panel under section 10 may appeal from the decision of the Review Panel to the Divisional Court in accordance with the rules of court on any question that is not a question of fact alone.

(2) The Minister is entitled to be heard at a hearing under this section.
The judge who hears an appeal under this section may,
(a) refer the matter back to the Review Panel for reconsideration by the Review Panel;
(b) confirm or alter the decision of the Review Panel; or
(c) make whatever other order that the judge sees fit, including an order that the Director or an inspector
appointed under subsection 113 (8) of the Electricity Act, 1998 do any act that the person is authorized to do
under this Regulation or that Act.

PART III
APPEAL OF DIRECTOR’S DECISION ON LICENCES UNDER PART VIII OF THE ELECTRICITY ACT, 1998

Definitions
13. In this Part,
“Authority” means the Electrical Safety Authority;
“Director” means a person appointed as a Director under Part VIII of the Electricity Act, 1998;
“Review Panel” means a panel of not more than three persons appointed by the Authority for the purpose of this Part.

Appeal to Review Panel
14. (1) If, after a hearing on a proposal under section 113.4 of the Electricity Act, 1998, a Director concludes the
Director is entitled to carry out the proposal under that section, a person named in the proposal may appeal the decision
of the Director to the Review Panel by filing a notice of appeal with the Review Panel within 15 days after the decision
is made.

(2) In accordance with section 113.9 of the Electricity Act, 1998, if a person appeals a decision of a Director
under subsection (1), the Review Panel shall review the decision and the person is not entitled to appeal it to the
Divisional Court under section 113.10 of that Act except as provided in section 16 of this Regulation.

(3) Before or after the expiration of the time for appealing a decision, a person mentioned in subsection (1) may
apply to the Review Panel for an extension of the time for appealing the decision.

(4) The extension shall be for no more than 15 days from the day that the Review Panel grants the extension.

(5) The Review Panel may grant the extension if it is satisfied that there are reasonable grounds for applying for
the extension and that there are apparent grounds for granting the extension, and may give directions, as appropriate.

(6) An appeal under subsection (1) operates as a stay of the decision pending the outcome of the appeal.

(7) Upon the application of the Director, which may be made without notice, the Review Panel may order that
the stay of the decision be lifted if, in its opinion, the action is necessary in the interest of public safety or consumer
protection.

(8) Subject to subsection (10), if a person appeals under subsection (1), the Review Panel shall appoint a time for
a hearing and hold the hearing.

(9) The Director or a person designated by the Director for that purpose is entitled to be heard at the hearing.

(10) If, on the application of a party to a hearing before the Review Panel with notice to the other parties, the
Review Panel is satisfied that the appeal is frivolous or vexatious, the Review Panel may refuse to grant the hearing or
may terminate the hearing at any time and make an order of costs as it considers appropriate in the circumstances.

(11) The Review Panel may, by order, confirm, amend, rescind or impose terms and conditions to the decision of
the Director or make whatever other decision that the Review Panel deems appropriate.

(12) The Review Panel may make orders as to costs payable by the parties to the appeal and orders requiring the
parties to the appeal to reimburse the Authority for its expenses incurred in respect of the appeal.

Rules for hearings
15. (1) The Authority may make rules establishing procedures for the hearing of appeals under section 14
including,
(a) rules applicable if a member of the Review Panel conducting a hearing is unable to continue to conduct the
hearing because of illness or other reason; and

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(b) rules providing that the oral evidence given before the Review Panel at a hearing may be recorded if a party to the hearing so requests and pays the fee established by the Authority for that purpose in accordance with section 12 of the Act.

(2) A rule made under clause (1) (a) may provide for the continuation or termination of the hearing, with or without the consent of the parties, or the commencement of a new hearing by a panel differently composed if the initial hearing is terminated.

(3) A rule made under this section may be general or specific in its application and may apply differently to different hearings.

Appeal to Divisional Court

16. (1) Any party to the hearing before the Review Panel under section 14 may appeal the decision of the Review Panel to the Divisional Court in accordance with the rules of court on any question that is not a question of fact alone.

(2) The Minister is entitled to be heard at a hearing under this section.

(3) The court that hears an appeal under this section may,

(a) refer the matter back to the Review Panel for reconsideration by the Review Panel; or

(b) confirm or rescind the decision of the Review Panel.

PART IV
AMENDMENTS

Amendments

17. (1) The Table to section 1 of this Regulation is amended by striking out,

<table>
<thead>
<tr>
<th>Motor Vehicle Dealers Act</th>
<th>all provisions except for section 24</th>
</tr>
</thead>
<tbody>
<tr>
<td>the regulations made under the Motor Vehicle Dealers Act</td>
<td>all provisions</td>
</tr>
</tbody>
</table>

and substituting the following:

<table>
<thead>
<tr>
<th>Motor Vehicle Dealers Act, 2002</th>
<th>all provisions except for sections 43 and 44</th>
</tr>
</thead>
<tbody>
<tr>
<td>the regulations made under the Motor Vehicle Dealers Act, 2002 except for the regulations made under subsection 43 (2) or paragraph 40 of subsection 44 (1) of that Act with respect to a delegation of the power to make regulations</td>
<td>all provisions</td>
</tr>
</tbody>
</table>

(2) Section 3 of this Regulation is amended by striking out “Motor Vehicle Dealers Act” and substituting “Motor Vehicle Dealers Act, 2002”.

(3) Section 7 of this Regulation is revoked.

PART V
REVOCATIONS AND COMMENCEMENT

Revocations

18. Ontario Regulations 3/05, 27/05 and 122/06 are revoked.

Commencement

19. (1) Subject to subsection (2), this Regulation comes into force on the day it is filed.

(2) Section 17 comes into force on the later of the day Schedule B to the Consumer Protection Statute Law Amendment Act, 2002 comes into force and the day this Regulation is filed.
1. The code issued by the Canadian Standards Association entitled “Canadian Electrical Code Part I, C22.1-09”, as amended by the document entitled “Ontario Amendments to the Canadian Electrical Code Part I, C22.1-09”, dated December 12, 2008 and issued by the Electrical Safety Authority, are together adopted as the Electrical Safety Code. O. Reg. 10/02, s. 1; O. Reg. 62/07, s. 1; O. Reg. 289/08, s. 1; O. Reg. 453/08, s. 1.

Note: On May 1, 2012, section 1 is revoked and the following substituted:

1. The code issued by the Canadian Standards Association entitled “Canadian Electrical Code Part I, C22.1-12”, as amended by the document entitled “Ontario Amendments to the Canadian Electrical Code Part I, C22.1-12”, dated November 11, 2011 and issued by the Electrical Safety Authority, are together adopted as the Electrical Safety Code. O. Reg. 2/12, s. 1.

See: O. Reg. 2/12, ss. 1, 2.

2. Every act or omission in connection with the generation, transmission, distribution, retail or use of electricity in Ontario must be done or made in compliance with the Electrical Safety Code. O. Reg. 164/99, s. 2.

3. The Electrical Safety Authority shall ensure that an adequate supply of copies of the Electrical Safety Code is made available to the public. O. Reg. 164/99, s. 3.
INTERPRETATION AND APPLICATION

Definitions

1. (1) In this Regulation,
   “certificate of qualification” means a certificate of qualification issued under the Trades Qualification and Apprenticeship Act or the Apprenticeship and Certification Act, 1998, as the case may be;
   “electrical contracting business” means a business that is engaged in the carrying out of electrical work;
   “electrical contractor” means a person who is licensed to operate an electrical contracting business under this Regulation;
   “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;
   “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;
   “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;
   “industrial establishment” means an office building, factory, arena, shop or office, and any land, buildings and structures appertaining thereto;
   “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;
   “prior electrical contractor licence” means a licence that was issued before July 1, 2006 by a municipality or other jurisdiction authorizing the operation of an electrical contracting business within the municipality or other jurisdiction and that was valid and in good standing on June 30, 2006;
   “prior master electrician licence” means a licence that was issued before July 1, 2006 by a municipality or other jurisdiction authorizing the holder of the licence to assume responsibilities similar to those set out in section 6 for electrical work carried out on behalf of an electrical contractor within the municipality or other jurisdiction and that was valid and in good standing on June 30, 2006;
   “professional engineer” means a holder of licence, a limited licence or a temporary licence issued under the Professional Engineers Act. O. Reg. 570/05, s. 1 (1).

(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
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 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 installations within a residential dwelling if done by an owner or
occupant of the dwelling.

4. Work done on the controls and equipment within refrigeration and air-conditioning units by a person
authorized to do such work under Ontario Regulation 75/05 (Refrigeration and Air Conditioning Mechanic) made under the Trades Qualification and Apprenticeship Act.

5. Work done on fire protection alarm systems by a person authorized to do such work under Regulation 1078 of
the Revised Regulations of Ontario, 1990 (Sprinkler and Fire Protection Installer) made under the Trades Qualification and Apprenticeship Act.

6. Work done on elevators and escalators by a person authorized to do such work under Ontario Regulation

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.

**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;
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(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 valid certificate of qualification authorizing the carrying out of the electrical work. O. Reg. 570/05, s. 7 (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 a place of business 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 of paying any tax, penalty or interest assessed under 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.

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.

Provisional electrical contractor licence: requirements and application procedure

10. (1) A person may be issued a provisional electrical contractor licence in accordance with this section if, on July 1, 2006,

(a) the person operates an electrical contracting business in a part of Ontario where a licence to operate an electrical contracting business was not required on June 30, 2006; or

(b) the person operates an electrical contracting business in a part of Ontario where a licence to operate the business was required on June 30, 2006 and the person held the required licence on that date, but it was not a condition for the obtaining of that licence that the person either hold a prior master electrician licence, or employ a person with a prior master electrician licence and assign to that person responsibilities similar to those set out in section 6. O. Reg. 570/05, s. 10 (1).

(2) A provisional electrical contractor licence shall not be issued under this section unless the applicant,

(a) in the case of an individual, is at least 18 years old;
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(b) has a place of business in Ontario;
(c) demonstrates at least five years experience in,

(i) operating an electrical contracting business in a part of Ontario where a licence to operate such a business was not required on June 30, 2006, or in operating an electrical contracting business in a part of Ontario where a licence to operate such a business was required on June 30, 2006 and the person held the required licence on that date, but where it was not a condition for obtaining that licence that the person either hold a prior master electrician licence or employ a person with a prior master electrician licence and assign to that person responsibilities similar to those set out in section 6, and

(ii) carrying out electrical work;
(d) demonstrates that the applicant has been in compliance with the requirements of Rule 2-004 of the Electrical Safety Code for at least five years;
(e) has public liability and property damage insurance coverage of at least $2,000,000;
(f) has registered with the Workplace Safety and Insurance Board, if the applicant is required to register under the Workplace Safety and Insurance Act, 1997;
(g) is not in default of filing a return with the Minister of Finance or of paying any tax, penalty or interest assessed under the Retail Sales Tax Act or the Corporations Tax Act, if applicable, for which payment arrangements have not been made; and
(h) does not owe the Authority any money for which payment arrangements have not been made. O. Reg. 570/05, s. 10 (2); O. Reg. 187/11, s. 1.

(3) A person described in subsection (1) may apply for a provisional electrical contractor licence between July 1, 2006 and November 30, 2006 and, with the Director’s approval, after November 30, 2006, if, in the Director’s opinion, it would be a hardship not to allow the person to apply. O. Reg. 570/05, s. 10 (3).

(4) An application for a provisional electrical contractor licence shall be in the form established by the Authority under clause 12 (1) (a) of the Safety and Consumer Statutes Administration Act, 1996, be completed in full and be accompanied by the fee set by and payable to the Authority. O. Reg. 570/05, s. 10 (4).

(5) An applicant for a provisional electrical contractor licence shall provide with the application proof of the matters set out in clauses (2) (b) to (f) and, if applicable, evidence that the applicant has made arrangements for payment with the Minister of Finance. O. Reg. 570/05, s. 10 (5).

(6) For the purpose of proving the matters set out in clauses (2) (e) and (f), the applicant shall provide,

(a) a certificate of insurance for public liability and property damage insurance coverage of at least $2,000,000;
(b) 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. 10 (6).

Provisional electrical contractor licence for powerline technician work
10.1 (1) A person may be issued a provisional electrical contractor licence in accordance with this section if the person holds a provisional electrical contractor licence issued under section 10, where a Director has issued a proposal under subsection 113.3 (1) of the Act to grant the licence subject to the condition that the person’s electrical work is limited to work as a powerline technician and the Director has carried out the proposal under section 113.4 of the Act. O. Reg. 187/11, s. 2.

(2) Clauses 10 (2) (a), (b) and (d) to (h) and subsections 10 (4), (5) and (6) apply to a provisional electrical contractor licence issued under this section and an applicant for such a licence. O. Reg. 187/11, s. 2.

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) as a construction and maintenance electrician, a domestic and rural electrician or an industrial electrician carrying out electrical work under a valid certificate of qualification,

(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) as a powerline technician working under a certificate of qualification issued under the Trades Qualification and Apprenticeship Act to a lineworker as defined in Regulation 1067 of the Revised Regulations of Ontario, 1990 (Lineworker) made under that Act;

(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.

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 is a construction and maintenance electrician, a domestic and rural electrician or an industrial electrician, include a copy of a valid certificate of qualification and proof of at least three years experience in carrying out electrical work;

(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.

Licences

13. (1) An electrical contractor licence and a provisional electrical contractor licence shall be in the form of a certificate that includes the following information:

1. Whether the licence is an electrical contractor licence or a provisional electrical contractor licence.
2. The legal name of the business, the name under which it operates and its current address.
3. The number of the licence.
4. The date the licence takes effect and its expiry date. O. Reg. 570/05, s. 13 (1).

(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) A licence shall be deemed to be, as applicable, a prior electrical contractor licence or a prior master electrician licence for the purpose of any municipal by-law. O. Reg. 570/05, s. 13 (5).
Contractor failure to continue to meet requirements for licence

14. (1) The holder of an electrical contractor licence or a provisional electrical contractor licence shall immediately cease to operate the electrical contracting business in respect of which the electrical contractor licence or provisional electrical contractor licence is issued if any of the requirements for obtaining the licence, as set out in section 8 or section 10, cease to be met during the currency of the licence. O. Reg. 570/05, s. 14 (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 subsection 8 (2) 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).

(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 or a provisional electrical contractor licence expires on the date indicated on the licence. O. Reg. 570/05, s. 15 (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, a provisional 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).

(5) An applicant for the renewal of an electrical contractor licence shall meet the requirements set out in clauses 8 (b) to (f) and, for that purpose, shall provide the information and proof required by clauses 9 (c) and (d). O. Reg. 570/05, s. 15 (5).

(6) An applicant for the renewal of a provisional electrical contractor licence shall meet the requirements set out in clauses 10 (2) (b) and (e) to (h) and, for that purpose, shall provide proof of the matters set out in clauses 10 (2) (b), (e) and (f), including, in the case of clauses 10 (2) (e) and (f), the types of proof specified in subsection 10 (6). O. Reg. 570/05, s. 15 (6).

(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 valid certificate of qualification, a valid licence or a valid certificate and valid registration, as applicable, under clause 12 (d), (e) or (f). O. Reg. 570/05, s. 15 (7).

(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 referred to in subsection (2), (3) or (4), as applicable, and pay the renewal fee, calculated from the date of expiry of the expired licence. O. Reg. 570/05, s. 15 (8).
(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 referred to in subsection (2), (3) or (4), 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).

(10) 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. O. Reg. 570/05, s. 15 (10).

(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) An application for a renewal of a provisional electrical contractor licence issued under section 10 may be made up to and including November 30, 2010, but not after. O. Reg. 570/05, s. 15 (12); O. Reg. 187/11, s. 4 (1).

(13) An application for a renewal of a provisional electrical contractor licence issued under section 10.1 may be made up to and including November 30, 2015, but not after. O. Reg. 187/11, s. 4 (2).

CONDITIONS OF LICENCES

Conditions of electrical contractor licences
16. Sections 17 to 24 state conditions of an electrical contractor licence and a provisional electrical contractor licence. O. Reg. 570/05, s. 16.

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 within five business days of the change. O. Reg. 570/05, s. 22.

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. O. Reg. 570/05, s. 24.
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 within five business days of the change. O. Reg. 570/05, s. 28.

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 by registered mail within five business days of its suspension, revocation or expiry. O. Reg. 570/05, s. 30.

Transition: holders of prior licences

31. (1) If, immediately before July 1, 2006, a person holds a prior electrical contractor licence or prior master electrician licence authorizing the person to engage in activities for which a licence is required under this Regulation, the person may, despite this Regulation, continue to engage in those activities until a final decision is made with respect to the issuing of a licence to the person under this Regulation. O. Reg. 570/05, s. 31 (1).

(2) The holder of a prior electrical contractor licence or a prior master electrician licence may apply to the Director for a licence under this Regulation between July 1, 2006 and November 30, 2006 and, with the Director’s approval, after November 30, 2006, if, in the Director’s opinion, it would be a hardship not to allow the person to apply. O. Reg. 570/05, s. 31 (2).

(3) The holder of a prior master electrician licence is not required, despite this Regulation, to pass the master electrician qualifying examination for the purpose of obtaining a master electrician licence under this Regulation. O. Reg. 570/05, s. 31 (3).

(4) A person is not required, despite this Regulation, to pass the master electrician qualifying examination for the purpose of obtaining a master electrician licence under this Regulation if,

(a) the person held a valid master electrician licence issued by a municipality or other jurisdiction on the day before the municipality or other jurisdiction ceased to issue such licences; and

(b) the municipality or other jurisdiction did not issue any such licences on or after December 31, 2004 and before July 1, 2006. O. Reg. 570/05, s. 31 (4).

(5) If the Director issues a licence under this Regulation to a holder of a prior electrical contractor licence or a prior master electrician licence before the expiry date of the prior licence, the Director shall,

(a) divide the total fee payable to the Authority by 12; and

(b) subtract from the total fee payable for the licence the amount that corresponds to the amount payable for the months during which the prior licence remains valid. O. Reg. 570/05, s. 31 (5).

(6) A holder of a prior electrical contractor licence may apply for a provisional electrical contractor licence under section 10. O. Reg. 570/05, s. 31 (6).

(7) A holder of a prior licence may display their municipal licence number up to and including December 31, 2007. O. Reg. 570/05, s. 31 (7).

Transition: no prior licence

32. (1) If, immediately before July 1, 2006, a person operated an electrical contracting business in a part of Ontario where a licence to operate an electrical contracting business was not required on June 30, 2006, the person may,
despite this Regulation, continue to operate the business until a final decision is made with respect to the issuing of an electrical contractor licence to the person under this Regulation. O. Reg. 570/05, s. 32 (1).

(2) A person described in subsection (1) may apply to the Director for an electrical contractor licence under this Regulation between July 1, 2006 and November 30, 2006 and, with the Director’s approval, after November 30, 2006, if, in the Director’s opinion, it would be a hardship not to allow the person to apply. O. Reg. 570/05, s. 32 (2).

(3) A person described in subsection (1) may apply for an electrical contractor licence under section 9 or a provisional electrical contractor licence under section 10. O. Reg. 570/05, s. 32 (3).

33. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 570/05, s. 33.
1. Subsection 10 (2) of Ontario Regulation 570/05 is amended by adding “under this section” after “issued” in the portion before clause (a).

2. The Regulation is amended by adding the following section:

Provisional electrical contractor licence for powerline technician work

10.1 (1) A person may be issued a provisional electrical contractor licence in accordance with this section if the person holds a provisional electrical contractor licence issued under section 10, where a Director has issued a proposal under subsection 113.3 (1) of the Act to grant the licence subject to the condition that the person’s electrical work is limited to work as a powerline technician and the Director has carried out the proposal under section 113.4 of the Act.

(2) Clauses 10 (2) (a), (b) and (d) to (h) and subsections 10 (4), (5) and (6) apply to a provisional electrical contractor licence issued under this section and an applicant for such a licence.

3. Clause 11 (b) of the Regulation is amended by striking out “or” at the end of subclause (ii), by adding “or” at the end of subclause (iii) and by adding the following subclause:

(iv) as a powerline technician working under a certificate of qualification issued under the Trades Qualification and Apprenticeship Act to a lineworker as defined in Regulation 1067 of the Revised Regulations of Ontario, 1990 (Lineworker) made under that Act;

4. (1) Subsection 15 (12) of the Regulation is amended by adding “issued under section 10” after “licence”.

(2) Section 15 of the Regulation is amended by adding the following subsection:

(13) An application for a renewal of a provisional electrical contractor licence issued under section 10.1 may be made up to and including November 30, 2015, but not after.

Commencement

5. This Regulation comes into force on the later of July 1, 2011 and the day it is filed.
Definitions and application

1. (1) In this Regulation,

“certification body” means a body accredited in accordance with the *Standards Council of Canada Act* (Canada) to certify electrical products and devices and recognized by the Authority;

“field evaluation agency” means an inspection body accredited in accordance with the *Standards Council of Canada Act* (Canada) to evaluate electrical products and devices and recognized by the Authority;

“serious electrical incident or accident” means an electrical incident or accident that,

(a) results in death or serious injury to a person,

(b) has the potential to cause death or a risk of serious injury to a person, or

(c) causes or has the potential to cause substantial property damage.

(2) This Regulation applies to electrical products and devices governed by the Electrical Safety Code adopted under Ontario Regulation 164/99 (Electrical Safety Code) made under the Act.

Deemed approvals

2. (1) An electrical product or device that falls into one of the following categories is deemed to be approved:

1. An electrical product or device for which a certification body has issued a report certifying that the electrical product or device conforms to the applicable standards for the electrical product or device and,

   i. the report is available to the Authority from the certification body,

   ii. the electrical product or device complies with all standards of design and construction and all terms and conditions set out in the report, and

   iii. the electrical product or device bears the certification body’s mark, which identifies the electrical product or device as certified for use in Canada.

2. An electrical product or device, if a field evaluation agency has examined the electrical product or device or a sample and issued a report confirming that product or device conforms to the applicable standards for the electrical product or device and presents no undue hazard to persons or property and,

   i. the electrical product or device is within the scope of Section 3 of the Electrical Safety Code adopted under Ontario Regulation 164/99 (Electrical Safety Code) made under the Act and within the field evaluation agency’s accreditation under the *Standards Council of Canada Act* (Canada),

   ii. the electrical product or device bears a label approved for use in either Ontario or Canada affixed by the field evaluation agency, and

   iii. where the field evaluation agency has examined only a sample, the electrical product or device is of the same design and construction as the sample.

3. An electrical product or device, if the Authority has examined or tested the electrical product or device or a sample and determines that it presents no undue hazard to persons or property and,

   i. the electrical product or device bears a label affixed by the Authority,

   ii. all applicable fees have been paid, and

   iii. where the examination or testing was of only a sample, the electrical product or device is of the same design and construction as the sample.
(2) Where testing is required for the purposes of paragraph 3 of subsection (1), the Authority may accept reports or other evidence of testing from a certification body, field evaluation agency, professional engineer or other competent person.

(3) If an electrical product or device consists of or incorporates a component or components that are deemed to be approved under this section, the electrical product or device is not deemed to be approved unless the whole product or device as assembled is deemed to be approved under this section.

(4) In this section, “competent person” means a person who is qualified because of knowledge, training and experience to assess the design, construction or functioning of an electrical product or device in accordance with applicable standards for the determination of any undue hazard to a person or property.

**Product or device connected to electrical installation**

3. If an electrical product or device that is used in or connected to an electrical installation is inspected by the Authority, it is deemed to be approved if the installation and electrical product or device pass the inspection.

**Prohibition, affixing label not issued for product or device**

4. No person shall affix to any electrical product or device an approval label that was not issued for that electrical product or device.

**Prohibition, selling etc. non-approved product or device**

5. (1) No person shall use, advertise, display, sell, offer for sale or other disposal any electrical product or device unless it has been approved in accordance with this Regulation.

(2) No person shall use an electrical product or device for any purpose or in any manner other than the purpose or manner for which it is intended.

(3) If a certification report or a field evaluation report in respect of any approved electrical product or device requires that a notice indicating the proper and safe manner of use of the electrical product or device be affixed to the electrical product or device or be provided with it, no person shall use, advertise, display, sell, offer for sale or other disposal of the electrical product or device without affixing or providing the notice in the manner required by the report.

(4) Despite subsection (1), an electrical product or device does not require approval under this Regulation if,

(a) it is displayed at a trade show or is activated in a demonstration of its use; and

(b) permission to display or activate it is given by the Authority.

**Suspending or revoking an approval**

6. (1) The Authority may suspend or revoke the approval of an electrical product or device if,

(a) the electrical product or device is not manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report or field evaluation report;

(b) the Authority finds the electrical product or device to be unduly hazardous to persons or property; or

(c) an examination by the Authority of the electrical product or device or of the certification report or field evaluation report for the electrical product or device shows that the electrical product or device does not comply with all applicable standards.

(2) If an approval is suspended or revoked, the electrical product or device is deemed not to be approved.

(3) The Authority may establish rules with respect to a process for the suspension, revocation or reinstatement of deemed approvals.

**Revocation of recognition**

7. (1) The Authority may, by notice in writing to a certification body or a field evaluation agency,

(a) cease to recognize the body as a certification body for the purposes of certifying an electrical product or device under paragraph 1 of subsection 2 (1); or

(b) cease to recognize the agency as a field evaluation agency for the purposes of confirming an electrical product or device under paragraph 2 of subsection 2 (1).

(2) The Authority may establish rules with respect to a process for ceasing to recognize under subsection (1) a body as a certification body and an agency as a field evaluation agency.
Reporting serious electrical incidents or accidents or defects

8. (1) A manufacturer, wholesaler, importer, product distributor or retailer that becomes aware of a serious electrical incident or accident or a defect in the design, construction or functioning of an electrical product or device that affects or is likely to affect the safety of any person or cause damage to property, shall report to the Authority as soon as practicable after becoming aware of the serious electrical incident or accident or defect.

(2) A certification body or field evaluation agency that becomes aware of a serious electrical incident or accident or a defect in the design, construction or functioning of an electrical product or device that was the subject of a report given by the certification body or field evaluation agency that affects or is likely to affect the safety of any person or cause damage to property shall report to the Authority as soon as practicable after becoming aware of the serious electrical incident or accident or defect.

(3) A report under subsection (1) or (2) may be given by telephone, fax or other form of electronic transmission or by any other means that brings the report to the attention of the Authority.

(4) A report under subsection (1) or (2) must include,

(a) contact details of the person making the report or on whose behalf the report is being made, including name, address, email address and telephone number;

(b) information that permits precise identification of the product or device;

(c) details of the serious electrical incident or accident or the defect in the design, construction or functioning of the electrical product or device, including any damage or harm to property or persons; and

(d) any other relevant information that is required by the Authority, in a form required by the Authority.

(5) Upon the request of the Authority, the following persons or organizations shall assist in the investigation of the serious electrical incident or accident or the defect in the design, construction or functioning of the electrical product or device:

1. The manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device that is the subject of the report.

2. The certification body that certified the electrical product or device that is the subject of the report.

3. The field evaluation agency that examined the electrical product or device that is the subject of the report.

Order requiring notice to public or persons

9. (1) The Authority may, by order issued under subsection 113 (11) of the Act, require that notice be given to the public or any person or class of persons by,

(a) the manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device;

(b) the certification body that certified the electrical product or device;

(c) the field evaluation agency that examined the electrical product or device; or

(d) any other person specified by the Authority,

of a risk or defect in an electrical product or device or occurrence of a serious electrical incident.

(2) The order may require that the notice be,

(a) in writing, sent by ordinary mail or registered mail, by fax or by other form of electronic transmission to known persons or classes of persons;

(b) by publication in a newspaper with general distribution in Ontario;

(c) by such other means as may be required by the Authority to bring the notice to the attention of the public or to any person or class of persons; or

(d) by any combination of the means set out in clauses (a), (b) and (c).

(3) The Authority may issue the notice, if the manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device, the certification body that certified the electrical product or device or the field evaluation agency that examined the electrical product or device refuses or fails to comply with subsection (1).

(4) The Authority may, in its discretion, issue a notice to the public or to any person or class of person of a risk or defect in an electrical product or device or occurrence of a serious electrical incident.
(5) If the Authority issues the notice, in addition to the methods set out in subsection (2), the Authority may post the notice on its website.

(6) Before issuing a notice under subsection (3) or (4), the Authority shall give notice to the manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device, to the certification body that certified the electrical product or device or to the field agency that examined the electrical product or device and shall give them the opportunity to comment on the notice.

(7) Any costs associated with the Authority issuing a notice under subsection (3) shall be paid by the manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device, by the certification body that certified the electrical product or device or by the field evaluation agency that examined the electrical product or device.

**Order requiring electrical product or device be retained and preserved**

10. An order under subsection 113.13.1 (1) of the Act requiring that an electrical product or device be retained and preserved may include the following requirements:

1. That the product or device be retained in a secure place specified in the order, which is not accessible to the public.

2. That an inventory of the product or device be provided.

3. That an inspector have access to the product or device.

4. That a label approved by the Authority be affixed to the product or device stating that,

   i. the product or device is no longer approved for sale,

   ii. the product or device presents a risk to the safety of any person, and

   iii. if the product or device has been purchased, it should no longer be used.

5. That any other requirements set out in the order be satisfied.

**Commencement**

11. (1) Subject to subsections (2) and (3), this Regulation comes into force on October 1, 2007.

(2) Section 10 comes into force on January 1, 2008.

(3) Section 8 comes into force on July 1, 2008.
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e-Laws currency date is Monday, March 12, 2012.
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Last amendment: 2011, c. 11, ss. 1-18.

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


“certified member” means a committee member who is certified by the Workplace Safety and Insurance Board under the Workplace Safety and Insurance Act, 1997; (“membre agréé”)

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, the definition of “certified member” is repealed and the following substituted:

“certified member” means a committee member who is certified under section 7.6; (“membre agréé”)

See: 2011, c. 11, ss. 1 (2), 29 (3).

“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 of the Ministry” means a person who is employed by the Ministry and who is licensed as a professional engineer under the Professional Engineers Act; (“ingénieur du ministère”)

“factory” means,

(a) a building or place other than a mine, mining plant or place where homework is carried on, where,

(i) any manufacturing process or assembling in connection with the manufacturing of any goods or products is carried on,
(ii) in preparing, inspecting, manufacturing, finishing, repairing, warehousing, cleaning or adapting for hire or sale any substance, article or thing, energy is,
   (A) used to work any machinery or device, or
   (B) modified in any manner,

(iii) any work is performed by way of trade or for the purposes of gain in or incidental to the making of any goods, substance, article or thing or part thereof,

(iv) any work is performed by way of trade or for the purposes of gain in or incidental to the altering, demolishing, repairing, maintaining, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance, article or thing, or

(v) aircraft, locomotives or vehicles used for private or public transport are maintained,

(b) a laundry including a laundry operated in conjunction with,
   (i) a public or private hospital,
   (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; (“matériaux 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 representative” means a health and safety representative selected under this Act; (“délégué à la santé et à la sécurité”)  

“homework” means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof by a person for wages in premises occupied primarily as living accommodation; (“travail à domicile”)  

“industrial establishment” means an office building, factory, arena, shop or office, and any land, buildings and structures appertaining thereto; (“établissement industriel”)  

“inspector” means an inspector appointed for the purposes of this Act and includes a Director; (“inspecteur”)  

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

“licensee” means a person who holds a licence under Part III of the Crown Forest Sustainability Act, 1994; (“titulaire d’un permis”)  

“logging” means the operation of felling or trimming trees for commercial or industrial purposes or for the clearing of land, and includes the measuring, storing, transporting or floating of logs, the maintenance of haul roads, scarification, the carrying out of planned burns and the practice of silviculture; (“exploitation forestière”)  

“mine” means any work or undertaking for the purpose of opening up, proving, removing or extracting any metallic or non-metallic mineral or mineral-bearing substance, rock, earth, clay, sand or gravel; (“mine”)  

“mining plant” means any roasting or smelting furnace, concentrator, mill or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substance mentioned in the definition of “mine”; (“installation minière”)  

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

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

“occupational illness” means a condition that results from exposure in a workplace to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an occupational disease for which a worker is entitled to benefits under the Workplace Safety and Insurance Act, 1997; (“maladie professionnelle”)
“Office of the Employer Adviser” means the office continued under subsection 176 (2) of the Workplace Safety and Insurance Act, 1997; (“Bureau des conseillers des employeurs”)

“Office of the Worker Adviser” means the office continued under subsection 176 (1) of the Workplace Safety and Insurance Act, 1997; (“Bureau des conseillers des travailleurs”)

“owner” includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate; (“propriétaire”)

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

“project” means a construction project, whether public or private, including,

(a) the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking lot, cofferdam, conduit, sewer, watermain, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof,

(b) the moving of a building or structure, and

(c) any work or undertaking, or any lands or appurtenances used in connection with construction; (“chantier”)

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

“shop” means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale; (“magasin”)

“supervisor” means a person who has charge of a workplace or authority over a worker; (“superviseur”)

“trade union” means a trade union as defined in the Labour Relations Act, 1995 that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a workplace and includes an organization representing workers or persons to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such workers or persons; (“syndicat”)

“worker” means a person who performs work or supplies services for monetary compensation 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; (“travailleur”)

“workplace” means any land, premises, location or thing at, upon, in or near which a worker works; (“lieu de travail”)

“workplace harassment” means 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; (“harcèlement 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 (1, 3, 4).

Ship under repair

(2) For the purposes of this Act and the regulations, a ship being manufactured or under repair shall be deemed to be a project. R.S.O. 1990, c. O.1, s. 1 (2).

Limitation

(3) An owner does not become a constructor by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely to oversee quality control at a project. R.S.O. 1990, c. O.1, s. 1 (3).
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 34, 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).

PART II
ADMINISTRATION

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, Part II is amended by adding the following section:

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.

See: 2011, c. 11, ss. 2, 29 (3).
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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).

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.

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.

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.

Time limit 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.

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.

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

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.

See: 2011, c. 11, ss. 4, 29 (3).

Delegation

7.7 The Chief Prevention Officer may in writing delegate from time to time his or her powers or duties under subsections 7.1 (2) and 7.2 (2), sections 7.4 and 7.5 and clause 7.6 (1) (b) to any employee in the Ministry, subject to such limitations, restrictions, conditions and requirements as the Chief Prevention Officer may set out in the delegation. 2011, c. 11, s. 5.

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).
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Note: On a day to be named by proclamation of the Lieutenant Governor, section 8 is amended by adding the following subsections:

Training requirement

(5.1) Unless otherwise prescribed, a constructor or employer shall ensure that a health and safety representative selected under subsection (5) receives training to enable him or her to effectively exercise the powers and perform the duties of a health and safety representative. 2011, c. 11, s. 6.

Same

(5.2) The training described in subsection (5.1) shall meet such requirements as may be prescribed. 2011, c. 11, s. 6.

Entitlement to be paid

(5.3) A health and safety representative is deemed to be at work while he or she is receiving the training described in subsection (5.1), and the representative’s employer shall pay the representative for the time spent, at the representative’s regular or premium rate as may be proper. 2011, c. 11, s. 6.

See: 2011, c. 11, ss. 6, 29 (2).

Inspections

(6) Unless otherwise required by the regulations or by an order by an inspector, a health and safety representative shall inspect the physical condition of the workplace at least once a month. R.S.O. 1990, c. O.1, s. 8 (6).

Idem

(7) If it is not practical to inspect the workplace at least once a month, the health and safety representative shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month. R.S.O. 1990, c. O.1, s. 8 (7).

Schedule of inspections

(8) The inspection required by subsection (7) shall be undertaken in accordance with a schedule agreed upon by the constructor or employer and the health and safety representative. R.S.O. 1990, c. O.1, s. 8 (8).

Inspections

(9) The constructor, employer and workers shall provide a health and safety representative with such information and assistance as the member may require for the purpose of carrying out an inspection of the workplace. R.S.O. 1990, c. O.1, s. 8 (9).

Idem

(10) A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his or her findings thereon to the employer, the workers and the trade union or trade unions representing the workers. R.S.O. 1990, c. O.1, s. 8 (10).

Powers of representative

(11) A health and safety representative has the power,

(a) to obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety;

(b) to be consulted about, and be present at the beginning of, testing referred to in clause (a) conducted in or about the workplace if the representative believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid; and

(c) to obtain information from the constructor or employer respecting,

(i) the identification of potential or existing hazards of materials, processes or equipment, and

(ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge. R.S.O. 1990, c. O.1, s. 8 (11).

Response to recommendations

(12) A constructor or employer who receives written recommendations from a health and safety representative shall respond in writing within twenty-one days. R.S.O. 1990, c. O.1, s. 8 (12).
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).

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).

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).

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).

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).

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).

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).

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).

If a worker is designated under clause (3.2) (a), the following apply:
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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).
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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).

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, section 9 is amended by adding the following subsection:

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).

See: 2011, c. 11, ss. 7 (1), 29 (3).
Response to recommendations

(20) A constructor or employer who receives written recommendations from a committee shall respond in writing within twenty-one days. R.S.O. 1990, c. O.1, s. 9 (20).

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, subsection (20) is amended by striking out —committee‖ and substituting —committee or co-chair‖. See: 2011, c. 11, ss. 7 (2), 29 (3).

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).

Idem

(31) The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is killed or critically injured at a workplace from any cause and one of those members may, subject to subsection 51 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings to a Director and to the committee. R.S.O. 1990, c. O.1, s. 9 (31).

Posting of names and work locations

(32) A constructor or an employer required to establish a committee under this section shall post and keep posted at the workplace the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the workers. R.S.O. 1990, c. O.1, s. 9 (32).
Meetings

(33) A committee shall meet at least once every three months at the workplace and may be required to meet by order of the Minister. R.S.O. 1990, c. O.1, s. 9 (33).

Entitlement to time from work

(34) A member of a committee is entitled to,

(a) one hour or such longer period of time as the committee determines is necessary to prepare for each committee meeting;

(b) such time as is necessary to attend meetings of the committee; and

(c) such time as is necessary to carry out the member’s duties under subsections (26), (27) and (31). R.S.O. 1990, c. O.1, s. 9 (34).

Entitlement to be paid

(35) A member of a committee shall be deemed to be at work during the times described in subsection (34) and the member’s employer shall pay the member for those times at the member’s regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 9 (35).

Idem

(36) A member of a committee shall be deemed to be at work while the member is fulfilling the requirements for becoming certified by the Workplace Safety and Insurance Board 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).

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, subsection (36) is amended by striking out “certified by the Workplace Safety and Insurance Board” and substituting “a certified member”. See: 2011, c. 11, ss. 7 (3), 29 (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).

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).

13. Repealed: 1997, c. 16, s. 2 (5).
15. Repealed: 1997, c. 16, s. 2 (7).
16. Repealed: 1997, c. 16, s. 2 (8).
17. Repealed: 1997, c. 16, s. 2 (9).
18. Repealed: 1997, c. 16, s. 2 (10).

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.

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).

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).

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).

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).

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) establish requirements for the certification of persons for the purposes of this Act and certify persons under section 7.6 who meet those requirements;
(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).

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).

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).

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, Part II.1 is amended by adding the following sections:

**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).

Effect of designation

Directions

22.6 (1) The Minister may direct a designated entity to take such actions as the Minister considers appropriate. 2011, c. 11, s. 8 (2).

Government directives

(2) In addition to the directions the Minister may issue under subsection (1), the Minister may direct an entity to comply with such government directives as the Minister specifies. 2011, c. 11, s. 8 (2).

Failure to comply

(3) If an entity has committed any failure described in paragraphs 1 to 3 of subsection 22.7 (3), the Minister may, (a) reduce or suspend grants to the entity while the non-compliance continues; (b) assume control of the entity and responsibility for its affairs and operations; (c) revoke the designation and cease to provide grants to the entity; or (d) take such other steps as he or she considers appropriate. 2011, c. 11, s. 8 (2).

Compliance and monitoring of designated entities

22.7 (1) The Chief Prevention Officer shall monitor the operation of designated entities and, (a) may require a designated entity to provide such information, records or accounts as the Chief Prevention Officer specifies; and (b) may make such inquiries and examinations as he or she considers necessary. 2011, c. 11, s. 8 (2).

Report to Minister

(2) The Chief Prevention Officer shall report to the Minister on the compliance of designated entities with the standards established under section 22.5 and with any directions given by the Minister under section 22.6. 2011, c. 11, s. 8 (2).

Advice to Minister

(3) Where the Chief Prevention Officer determines that any of the following have occurred, the Chief Prevention Officer shall report that determination to the Minister and may advise the Minister with respect to any action the Minister may decide to take under section 22.6:

1. A designated entity has failed to operate in accordance with a standard established under section 22.5 that applies to it.
2. A designated entity has failed to comply with a direction given by the Minister under section 22.6 or a requirement of the Chief Prevention Officer under clause (1) (a).
3. A designated entity has failed to co-operate in an inquiry or examination conducted by the Chief Prevention Officer under clause (1) (b). 2011, c. 11, s. 8 (2).

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 Corporations Act. 2011, c. 11, s. 8 (2).

Note: On the later of (a) the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor and (b) the day section 24 of the Not-For-Profit Corporations Act, 2010 comes into force, subsection (7) is amended by striking out “Corporations Act” and substituting “Not-For-Profit Corporations Act, 2010”. See: 2011, c. 11, ss. 8 (3), 29 (4).

Unincorporated entity

(8) This section applies, with necessary modifications, to an entity that is not incorporated. 2011, c. 11, s. 8 (2).

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).

See: 2011, c. 11, ss. 8 (2), 29 (3).

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).

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. R.S.O. 1990, c. O.1, s. 25 (2).

Idem

(3) For the purposes of clause (2)(c), an employer may appoint himself or herself as a supervisor where the employer is a competent person. R.S.O. 1990, c. O.1, s. 25 (3).

Same

(3.1) Any explanatory material referred to under clause (2) (i) may be published as part of the poster required under section 2 of the Employment Standards Act, 2000. 2009, c. 23, s. 2.

Idem

(4) Clause (2) (j) does not apply with respect to a workplace at which five or fewer workers are regularly employed. R.S.O. 1990, c. O.1, s. 25 (4); 2011, c. 1, Sched. 7, s. 2 (2).

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).

Duties of supervisor

27. (1) A supervisor shall ensure that a worker,

(a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and

(b) uses or wears the equipment, protective devices or clothing that the worker’s employer requires to be used or worn.

Additional duties of supervisor

(2) Without limiting the duty imposed by subsection (1), a supervisor shall,

(a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;

(b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and

(c) take every precaution reasonable in the circumstances for the protection of a worker. R.S.O. 1990, c. O.1, s. 27.

Duties of workers

28. (1) A worker shall,

(a) work in compliance with the provisions of this Act and the regulations;

(b) use or wear the equipment, protective devices or clothing that the worker’s employer requires to be used or worn;

(c) report to his or her employer or supervisor the absence of or defect in any equipment or protective device of which the worker is aware and which may endanger himself, herself or another worker; and

(d) report to his or her employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he or she knows.

Idem

(2) No worker shall,

(a) remove or make ineffective any protective device required by the regulations or by his or her employer, without providing an adequate temporary protective device and when the need for removing or making ineffective the protective device has ceased, the protective device shall be replaced immediately;

(b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself, herself or any other worker; or

(c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.

Consent to medical surveillance

(3) A worker is not required to participate in a prescribed medical surveillance program unless the worker consents to do so. R.S.O. 1990, c. O.1, s. 28.

Duties of owners

29. (1) The owner of a workplace that is not a project shall,

(a) ensure that,

(i) such facilities as are prescribed are provided,

(ii) any facilities prescribed to be provided are maintained as prescribed,

(iii) the workplace complies with the regulations, and

(iv) no workplace is constructed, developed, reconstructed, altered or added to except in compliance with this Act and the regulations; and

(b) where so prescribed, furnish to a Director any drawings, plans or specifications of any workplace as prescribed.
Mine plans
(2) The owner of a mine shall cause drawings, plans or specifications to be maintained and kept up to date not more than six months last past on such scale and showing such matters or things as may be prescribed.

Plans of workplaces
(3) Where so prescribed, an owner or employer shall,
(a) not begin any construction, development, reconstruction, alteration, addition or installation to or in a workplace until the drawings, layout and specifications thereof and any alterations thereto have been filed with the Ministry for review by an engineer of the Ministry for compliance with this Act and the regulations; and
(b) keep a copy of the drawings as reviewed in a convenient location at or near the workplace and such drawings shall be produced by the owner or employer upon the request of an inspector for his or her examination and inspection.

Additional information
(4) An engineer of the Ministry may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information.

Fees
(5) Fees as prescribed for the filing and review of drawings, layout or specifications shall become due and payable by the owner or employer upon filing. R.S.O. 1990, c. O.1, s. 29.

Duty of project owners
30. (1) Before beginning a project, the owner shall determine whether any designated substances are present at the project site and shall prepare a list of all designated substances that are present at the site.

Tenders
(2) If any work on a project is tendered, the person issuing the tenders shall include, as part of the tendering information, a copy of the list referred to in subsection (1).

Idem
(3) An owner shall ensure that a prospective constructor of a project on the owner’s property has received a copy of the list referred to in subsection (1) before entering into a binding contract with the constructor.

Duty of constructors
(4) The constructor for a project shall ensure that each prospective contractor and subcontractor for the project has received a copy of the list referred to in subsection (1) before the prospective contractor or subcontractor enters into a binding contract for the supply of work on the project.

Liability
(5) An owner who fails to comply with this section is liable to the constructor and every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the project of a designated substance that the owner ought reasonably to have known of but that was not on the list prepared under subsection (1).

Idem
(6) A constructor who fails to comply with this section is liable to every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the project of a designated substance that was on the list prepared under subsection (1). R.S.O. 1990, c. O.1, s. 30.

Duties of suppliers
31. (1) Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a workplace shall ensure,
(a) that the machine, device, tool or equipment is in good condition;
(b) that the machine, device, tool or equipment complies with this Act and the regulations; and
(c) if it is the person’s responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition.

Architects and engineers
(2) An architect as defined in the Architects Act, and a professional engineer as defined in the Professional Engineers Act, contravenes this Act if, as a result of his or her advice that is given or his or her certification required under this Act that is made negligently or incompetently, a worker is endangered. R.S.O. 1990, c. O.1, s. 31.

Section 2: Safety Culture
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).

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.

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.

**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.

**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.

**Program, harassment**

32.0.6 (1) An employer shall develop and maintain a program to implement the policy with respect to workplace harassment required under clause 32.0.1 (1) (b). 2009, c. 23, s. 3.

**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) set out how the employer will investigate and deal with incidents and complaints of workplace harassment; and

(c) include any prescribed elements. 2009, c. 23, s. 3.

**Information and instruction, harassment**

32.0.7 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. 2009, c. 23, s. 3.
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.

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).

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).

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.

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).
(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).

(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).

(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).

(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).

(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).

(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).

(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).

(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).

(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).

(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).

New biological or chemical agents

34. (1) Except for purposes of research and development, no person shall,

(a) manufacture;
(b) distribute; or
(c) supply,

for commercial or industrial use in a workplace any new biological or chemical agent unless the person first submits to a Director notice in writing of the person’s intention to manufacture, distribute or supply such new agent and the notice shall include the ingredients of such new agent and their common or generic name or names and the composition and properties thereof.

Report on assessment

(2) Where in the opinion of the Director, which opinion shall be made promptly, the introduction of the new biological or chemical agent referred to in subsection (1) may endanger the health or safety of the workers in a workplace, the Director shall require the manufacturer, distributor or supplier, as the case may be, to provide, at the expense of the manufacturer, distributor or supplier, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the Director, of the agent intended to be manufactured, distributed or supplied and the manner of use including the matters referred to in subclauses 54 (1) (o) (i) to (vii).

Interpretation

(3) For the purpose of this section, a biological or chemical agent is not considered to be new if, before a person manufactures, distributes or supplies the agent, it was used in a workplace other than the person’s workplace or it is included in an inventory compiled or adopted by the Minister. R.S.O. 1990, c. O.1, s. 34.

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.


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, an unexpired material safety data sheet for all hazardous materials present in the workplace; and
(c) shall ensure that the identification required by clause (a) and material 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).
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, material safety data sheets and worker instruction and training are met. R.S.O. 1990, c. O.1, s.37 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of subsection (3) is amended. See: 2011, c. 1, Sched. 7, ss. 2 (5), 4 (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 material safety data sheet required by subsection (1). R.S.O. 1990, c. O.1, s.37 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out “material safety” and substituting “safety”. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of subsection (4) is amended. See: 2011, c. 1, Sched. 7, ss. 2 (14), 4 (2).

Expiry of material safety data sheet

(5) A material safety data sheet expires three years after the date of its publication. R.S.O. 1990, c. O.1, s.37 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of subsection (5) is amended. See: 2011, c. 1, Sched. 7, ss. 2 (14), 4 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out “material safety” and substituting “safety”. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).

Material safety data sheets to be made available

38. (1) A copy of every unexpired material 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).

Public access

(2) The medical officer of health, at the request of any person, shall request an employer to furnish a copy of an unexpired material safety data sheet. 2001, c. 9, Sched. I, s. 3 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out “material safety” and substituting “safety”. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).
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Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of subsection (1) is amended. See: 2011, c. 1, Sched. 7, ss. 2 (13), 4 (2).

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 material 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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out “material safety” and substituting “safety”. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of subsection (3) is amended. See: 2011, c. 1, Sched. 7, ss. 2 (14), 4 (2).

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).

Additional requirement

(5) In addition to the requirements imposed under subsection (1), a copy of every material safety data sheet required by subsection (1) shall be made available by the employer in the workplace in such a manner that it is readily accessible by all workers who may be exposed to the hazardous material to which it relates. R.S.O. 1990, c. O.1, s. 38 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of subsection (5) is re-enacted. See: 2011, c. 1, Sched. 7, ss. 2 (6), 4 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out “material safety” and substituting “safety”. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).

Idem

(6) An employer who makes a material safety data sheet readily accessible on a computer terminal at a workplace,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is amended by striking out “material safety” in the portion before clause (a) and substituting “safety”. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of subsection (6) in the portion before clause (a) is amended. See: 2011, c. 1, Sched. 7, ss. 2 (14), 4 (2).

(a) shall take all reasonable steps necessary to keep the terminal in working order;

(b) shall give a worker upon request a copy of the material safety data sheet; and

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is amended by striking out “material safety” and substituting “safety”. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of clause (b) is amended. See: 2011, c. 1, Sched. 7, ss. 2 (14), 4 (2).

(c) shall teach all workers who work with or in proximity to hazardous materials, the health and safety representative, if any, at the workplace and the members of the committee how to retrieve the material safety data sheet on the computer terminal. R.S.O. 1990, c. O.1, s. 38 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is amended by striking out “material safety” and substituting “safety”. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of clause (c) is amended. See: 2011, c. 1, Sched. 7, ss. 2 (14), 4 (2).

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 with the claims board for an exemption from disclosing,

(a) information required under this Part in a label or material safety data sheet; or

(b) the name of a toxicological study used by the employer to prepare a material 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).

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).

Powers and duties of the claims board


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 regulations, appeal a determination made under subsection (3). R.S.O. 1990, c. O.1, s. 40 (4).

Determination of claim

(5) The claims board, in accordance with its procedures, shall determine every appeal under subsection (4). R.S.O. 1990, c. O.1, s. 40 (5).

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).

Federal agency

(7) Where the Parliament of Canada establishes an agency that has the power to determine whether information related to any hazardous material is confidential business information, the Lieutenant Governor in Council may by regulation name that agency as the claims board and adopt its procedures for the purposes of this section. R.S.O. 1990, c. O.1, s. 40 (7).

Definition

(8) In this section,

“claims board” means an agency designated by the regulations as the claims board. R.S.O. 1990, c. O.1, s. 40 (8).

Information privileged

40.1 (1) Subject to subsection (2), all information obtained by an employee in the Ministry from the Hazardous Materials Information Review Commission under subsection 46(2) of the Hazardous Materials Information Review Act...
(Canada) is privileged and no employee in the Ministry shall knowingly, without the consent in writing of the Commission,

(a) communicate or allow to be communicated to any person any information obtained under that section;

(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 under that section. 1992, c. 14, s. 2 (1); 2006, c. 35, Sched. C, s. 93 (3).

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 the Hazardous Materials Information Review Commission not be disclosed prevail over any other law. 1992, c. 14, s. 2 (1).

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.
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).

(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;
(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).

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).

**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).

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).

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).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 50 is amended by adding the following subsections:

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).

See: 2011, c. 11, ss. 13 (1), 29 (2).

Inquiry by Board

(3) The Board may inquire into any complaint filed under subsection (2) 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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out “any complaint filed under subsection (2)” and substituting “any complaint filed under subsection (2) or a referral made under subsection (2.1)” See: 2011, c. 11, ss. 13 (2), 29 (2).

Same

(4) On an inquiry by the Board into a complaint filed under subsection (2), sections 110, 111, 114 and 116 of the Labour Relations Act, 1995 apply with all necessary modifications. 1998, c. 8, s. 56 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out “a complaint filed under subsection (2)” and substituting “a complaint filed under subsection (2) or a referral made under subsection (2.1)” See: 2011, c. 11, ss. 13 (3), 29 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 50 is amended by adding the following subsections:

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

Subsections 110 (19), (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).

See: 2011, c. 11, ss. 13 (4), 29 (2).

Onus of proof

On an inquiry by the Board into a complaint filed under subsection (2), 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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out “a complaint filed under subsection (2)” and substituting “a complaint filed under subsection (2) or a referral made under subsection (2.1)”. See: 2011, c. 11, ss. 13 (5), 29 (2).

Jurisdiction when complaint by public servant

The Board shall exercise jurisdiction under this section on a complaint by a public servant within the meaning of the Public Service of Ontario Act, 2006 that his or her employer has contravened subsection (1). 2006, c. 35, Sched. C, s. 93 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is repealed and the following substituted:

Jurisdiction when complaint by public servant

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).

See: 2011, c. 11, ss. 13 (6), 29 (2).

Board may substitute penalty

Where on an inquiry by the Board into a complaint filed under subsection (2), 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).

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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is amended by striking out “a complaint filed under subsection (2)” and substituting “a complaint filed under subsection (2) or a referral made under subsection (2.1)”. See: 2011, c. 11, ss. 13 (7), 29 (2).

Exception

Despite subsection (2), 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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is amended by striking out “subsection (2)” and substituting “subsections (2) and (2.1)”. See: 2011, c. 11, ss. 13 (8), 29 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, Part VI is amended by adding the following section:

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.
Notes
PART VIII
ENFORCEMENT

Powers of inspector

54. (1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

(a) subject to subsection (2), enter in or upon any workplace at any time without warrant or notice;
(b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;
(c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same;
(d) upon giving a receipt therefor, remove any drawings, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;
(e) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace and for such purposes, take and carry away such samples as may be necessary;
(f) require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as are specified by the inspector and to provide, at the expense of the employer, a report or assessment by that person;
(g) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him or her any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him or her and use any equipment or materials required for such purpose;
(h) make inquiries of any person who is or was in a workplace either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test;
(i) require that a workplace or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, investigation or test;
(j) require that any equipment, machine, device, article, thing or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;
(k) require in writing an employer to have equipment, machinery or devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and signature of the professional engineer stating that the equipment, machine or device is not likely to endanger a worker;
(l) require in writing that any equipment, machinery or device not be used pending testing described in clause (k);
(m) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,

(i) the load limits of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent,
(ii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or
(iii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,

(A) as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,
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(B) in accordance with such other requirements as may be prescribed, or
(C) in accordance with good engineering practice, if sub-subclauses (A) and (B) do not apply;

(n) require in writing an owner of a mine or part thereof to provide, at the owner’s expense, a report in writing bearing the seal and signature of a professional engineer stating that the ground stability of, the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered;

(o) require in writing, within such time as is specified, a person who is an employer, manufacturer, producer, importer, distributor or supplier to produce records or information, or to provide, at the expense of the person, a report or evaluation made or to be made by a person or organization having special, expert or professional knowledge or qualifications as are specified by the inspector of any process or biological, chemical or physical agents or combination of such agents present, used or intended for use in a workplace and the manner of use, including,

(i) the ingredients thereof and their common or generic name or names,
(ii) the composition and the properties thereof,
(iii) the toxicological effect thereof,
(iv) the effect of exposure thereto whether by contact, inhalation or ingestion,
(v) the protective measures used or to be used in respect thereof,
(vi) the emergency measures used or to be used to deal with exposure in respect thereof, and
(vii) the effect of the use, transport and disposal thereof; and

(p) require the production of any materials concerning the content, frequency and manner of instruction of any training program and inspect, examine and copy the materials and attend any such program. R.S.O. 1990, c. O.1, s. 54 (1); 2011, c. 11, s. 15.

Entry to dwellings

(2) An inspector may only enter a dwelling or that part of a dwelling actually being used as a workplace with the consent of the occupier or under the authority of a warrant issued under this Act or the Provincial Offences Act. 2001, c. 26, s. 1.

Representative to accompany inspector

(3) Where an inspector makes an inspection of a workplace under the powers conferred upon him or her under subsection (1), the constructor, employer or group of employers shall afford a committee member representing workers or a health and safety representative, if any, or a worker selected by a trade union or trade unions, if any, because of knowledge, experience and training, to represent it or them and, where there is no trade union, a worker selected by the workers because of knowledge, training and experience to represent them, the opportunity to accompany the inspector during his or her physical inspection of a workplace, or any part or parts thereof. R.S.O. 1990, c. O.1, s. 54 (3).

Consultation with workers

(4) Where there is no committee member representing workers, no health and safety representative or worker selected under subsection (3), the inspector shall endeavour to consult during his or her physical inspection with a reasonable number of the workers concerning matters of health and safety at their work. R.S.O. 1990, c. O.1, s. 54 (4).

Entitlement to time from work

(5) The time spent by a committee member representing workers, a health and safety representative or a worker selected in accordance with subsection (3) in accompanying an inspector during his or her physical inspection, shall be deemed to be work time for which he or she shall be paid by his or her employer at his or her regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 54 (5).

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).

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).
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.

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).
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.

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 an unexpired material 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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is amended by striking out “material safety” and substituting —safety”. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of subsection (8) is amended. See: 2011, c. 1, Sched. 7, ss. 2 (13), 4 (2).

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).

Entry into barricated 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).
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

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

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

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

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

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

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

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).

Obstruction of inspector

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

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.

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

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.

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).

**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).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 63 is amended by adding the following subsections:**

**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.

**See: 2011, c. 11, ss. 16, 29 (2).**

**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.

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) Repealed: 1997, c. 16, s. 2 (14).

   Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following clause:

   (b) an employee in the Office of the Worker Adviser or the Office of the Employer Adviser;

See: 2011, c. 11, ss. 17 (1), 29 (2).

   (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).

Liability of Crown
   (2) Subsection (1) does not, by reason of subsections 5(2) and (4) of the Proceedings Against the Crown Act, relieve the Crown of liability in respect of a tort committed by a Director, the Chief Prevention Officer, an inspector or an engineer of the Ministry to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. R.S.O. 1990, c. O.1, s. 65 (2); 2011, c. 11, s. 17 (2).

PART IX
OFFENCES AND PENALTIES

Penalties
   66. (1) Every person who contravenes or fails to comply with,

   (a) a provision of this Act or the regulations;
   (b) an order or requirement of an inspector or a Director; or
   (c) an order of the Minister,

is guilty of an offence and on conviction is liable to a fine of not more than $25,000 or to imprisonment for a term of not more than twelve months, or to both.

Idem
   (2) If a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed upon the corporation is $500,000 and not as provided therein.

Defence
   (3) On a prosecution for a failure to comply with,

   (a) subsection 23(1);
   (b) clause 25(1)(b), (c) or (d); or

Section 2: Safety Culture
(c) subsection 27(1),

it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken.

**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.

**Certified copies of documents, etc., as evidence**

67. (1) In any proceeding or prosecution under this Act,

(a) a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister or an inspector;

(b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom given or made under this Act or the regulations and purporting to be certified by an inspector;

(c) a document purporting to certify the result of a test or an analysis of a sample of air and setting forth the concentration or amount of a biological, chemical or physical agent in a workplace or part thereof and purporting to be certified by an inspector; or

(d) a document purporting to certify the result of a test or an analysis of any equipment, machine, device, article, thing or substance and purporting to be certified by an inspector,

is evidence of the order, decision, writing or document, and the facts appearing in the order, decision, writing or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof.

**Service of orders and decisions**

(2) In any proceeding or prosecution under this Act, a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister, a Director or an inspector may be served,

(a) personally in the case of an individual or in case of a partnership upon a partner, and in the case of a corporation, upon the president, vice-president, secretary, treasurer or a director, or upon the manager or person in charge of the workplace; or

(b) by registered letter addressed to a person or corporation mentioned in clause (a) at the last known place of business of the person or corporation,

and the same shall be deemed to be good and sufficient service thereof. R.S.O. 1990, c. O.1, s. 67.

**Place of trial**

68. (1) An information in respect of an offence under this Act may, at the election of the informant, be heard, tried and determined by the Ontario Court of Justice sitting in the county or district in which the accused is resident or carries on business although the subject-matter of the information did not arise in that county or district. R.S.O. 1990, c. O.1, s. 68 (1); 2001, c. 9, Sched. I, s. 3 (15).

**Provincial judge required**

(2) The Attorney General or an agent for the Attorney General may by notice to the clerk of the court having jurisdiction in respect of an offence under this Act require that a provincial judge preside over the proceeding. R.S.O. 1990, c. O.1, s. 68 (2).

**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.
Limitation on prosecutions

69. No prosecution under this Act shall be instituted more than one year after the last act or default upon which the prosecution is based occurred. R.S.O. 1990, c. O.1, s. 69.

PART X
REGULATIONS

Regulations

70. (1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety of persons in or about a workplace. R.S.O. 1990, c. O.1, s. 70 (1).

Idem

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

1. defining any word or expression used in this Act or the regulations that is not defined in this Act;
2. designating or defining any industry, workplace, employer or class of workplaces or employers for the purposes of this Act, a part of this Act, or the regulations or any provision thereof;
3. exempting any workplace, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof from the application of a regulation or any provision thereof;
4. limiting or restricting the application of a regulation or any provision thereof to any workplace, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof;
5. exempting an employer from the requirements of clause 37 (1) (a) or (b) with respect to a hazardous material;
6. respecting any matter or thing that is required or permitted to be regulated or prescribed under this Act;
7. respecting any matter or thing, where a provision of this Act requires that the matter or thing be done, used or carried out or provided as prescribed;
8. respecting any matter or thing, where it is a condition precedent that a regulation be made prescribing the matter or thing before this Act or a provision of this Act has any effect;
9. providing for and prescribing fees and the payment or refund of fees;
10. prescribing classes of workplaces for which and circumstances under which a committee shall consist of more than four persons and in each case prescribing the number of persons;
11. prescribing employers or workplaces or classes thereof for the purposes of clause 9 (1) (b);
12. exempting any workplace, industry, activity, business, work, trade, occupation, profession, constructor or employer or any class thereof from the application of subsection 9 (2);
13. respecting the conditions for eligibility, qualifications, selection and term of committee members, including certified members, and the operation of the committee;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by adding the following paragraphs:

13.1 exempting any class of workplaces from the requirement set out in subsection 8 (5.1);
13.2 requiring that the training of health and safety representatives under subsection 8 (5.1) meet such requirements as may be prescribed;

See: 2011, c. 11, ss. 18 (1), 29 (2).
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. prescribing the criteria to be used by the claims board to determine whether information is confidential business information in an application under subsection 40 (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 material safety data sheet;

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 39 is amended by striking out ―material safety‖ and substituting ―safety‖. See: 2011, c. 1, Sched. 7, ss. 2 (12), 4 (2).

40. prescribing the format and contents of a material safety data sheet;

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of paragraph 39 is amended. See: 2011, c. 1, Sched. 7, ss. 2 (14), 4 (2).
41. prescribing by class of employer the intervals at which a health and safety representative or a committee member designated under subsection 9 (23) shall inspect all or part of a workplace;

42. establishing criteria for determining, for the purpose of section 51, whether a person is critically injured;

43. prescribing first aid requirements to be met and first aid services to be provided by employers and constructors;

44. prescribing, for the purpose of clause 26 (1) (i), medical examinations and tests that a worker is required to undergo to ensure that the worker’s health will not affect his or her ability to perform his or her job in a manner that might endanger others;

45. prescribing classes of workplace with respect to which section 45 does not apply;

46. prescribing the qualifications of persons whom a certified member may designate under subsection 45 (9);

47. prescribing, for the purpose of subsection 46 (6), criteria for determining whether a constructor or employer has demonstrated a failure to protect the health and safety of workers;

48. prescribing matters to be considered by the Board in deciding upon an application under section 46;

49. prescribing classes of workplace with respect to which section 47 does not apply;

50. requiring an employer to designate a person in a workplace to act as a workplace co-ordinator with respect to workplace violence and workplace harassment, and prescribing the functions and duties of the co-ordinator;

51. in the case of a worker described in subsection 43 (2), specifying situations in which a circumstance described in clause 43 (3) (a), (b), (b.1) or (c) shall be considered, for the purposes of clause 43 (1) (a), to be inherent in the worker’s work or a normal condition of employment;

52. varying or supplementing subsections 43 (4) to (13) with respect to the following workers, in circumstances when section 43 applies to them:

   i. workers to whom section 43 applies by reason of a regulation made for the purposes of subsection 3 (3), and
   ii. workers described in subsection 43 (2). 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).

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;

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.
Occupational Health and Safety Act
R.R.O. 1990, REGULATION 860
WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM (WHMIS)

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DEFINITIONS

1. (1) In this Regulation,
“bulk shipment” means a shipment of a controlled product that is contained without intermediate packaging in,
(a) a vessel with a water capacity of more than 454 litres,
(b) a freight container, road vehicle, railway vehicle, portable tank, freight container that is carried on a road vehicle, railway vehicle, ship or aircraft or a portable tank that is carried on a road vehicle, railway vehicle, ship or aircraft,
(c) the hold of a ship, or
(d) a pipeline; (“expédition en vrac”)
“container” includes a bag, barrel, bottle, box, can, cylinder, drum, storage tank or similar package or receptacle; (“contenant”)
“controlled product” means a product, material or substance determined in accordance with Part IV of the Controlled Products Regulations (Canada) to be included in a class listed in Schedule II of the Hazardous Products Act (Canada); (“produit contrôlé”)
“Controlled Products Regulations (Canada)” means the Controlled Products Regulations, SOR/88-66, made under the Hazardous Products Act (Canada), as the Regulations read on the 31st day of October, 1988; (“Règlement sur les produits contrôlés (Canada)”) “fugitive emission” means a gas, liquid, solid, vapour, fume, mist, fog or dust that escapes from process equipment, from emission control equipment or from a product; (“émission fugitive”)
“hazard information” means information on the proper and safe use, storage and handling of a controlled product and includes information relating to the toxicological properties of the controlled product; (“renseignements sur les dangers”)
“hazardous waste” means a controlled product that is intended for disposal or is sold for recycling or recovery; (“résidu dangereux”)
“label” includes a mark, sign, device, stamp, seal, sticker, ticket, tag or wrapper; (“étiquette”)
“laboratory sample” means, in respect of a controlled product, a sample of the controlled product that is intended solely to be tested in a laboratory but does not include a controlled product that is to be used,
(a) by the laboratory for testing other products, materials or substances, or
(b) for educational or demonstration purposes; (“échantillon pour laboratoire”)
“manufactured article” means an article 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, under normal conditions of use, will not release or otherwise cause a person to be exposed to a controlled product; (“article fabriqué”)

“material safety data sheet” means a document that meets the requirements of,
(a) subsection 17 (2) if it is a supplier material safety data sheet, and
(b) subsection 18 (3) if it is prepared by an employer; (“feuille de données sur la sûreté des matériaux”)

“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 controlled product, the brand name, code name or code number specified by a supplier or the 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 controlled 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 controlled products; (“recherche et développement”)

“risk phrase” means, in respect of a controlled product or a class, division or subdivision of controlled products, a statement identifying a hazard that may arise from the nature of the controlled product or the class, division or subdivision of controlled products; (“mention de risque”)

“supplier label” means, in respect of a controlled product, a label provided by a supplier disclosing the information and displaying the hazard symbols referred to in paragraph 13 (b) of the Hazardous Products Act (Canada); (“étiquette du fournisseur”)

“supplier material safety data sheet” means, in respect of a controlled product, a material safety data sheet provided by a supplier; (“feuille de données sur la sûreté des matériaux du fournisseur”)

“workplace label” means, in respect of a controlled product, a label that discloses,
(a) a product identifier identical to that found on the material safety data sheet for the controlled product,
(b) information for the safe handling of the controlled product, and
(c) that a material safety data sheet, if supplied or produced, is available. (“étiquette du lieu de travail”)

(2) In this Regulation, “produces” in relation to the production of a controlled 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.

DESIGNATION OF HAZARDOUS MATERIALS

2. Every controlled product is designated as a hazardous material. R.R.O. 1990, Reg. 860, s. 2.

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.

(2) No employer is required to assess under subsection (1),
(a) wood or a product made of wood;
(b) tobacco or a product made of tobacco; or
(c) a manufactured article.

(3) An assessment under subsection (1) shall be performed in accordance with Part IV of the Controlled Products Regulations (Canada). R.R.O. 1990, Reg. 860, s. 3.
APPLICATION

4. (1) Sections 5 to 25 apply to employers and workers in respect of controlled products used, stored and handled at a workplace.

(2) Section 8 (supplier labels), sections 13 and 14 (laboratory labels) and sections 17 and 18 (material safety data sheets) do not apply with respect to,

(a) an explosive within the meaning of the Explosives Act (Canada);
(b) a cosmetic, device, drug or food within the meaning of the Food and Drugs Act (Canada);
(c) a control product within the meaning of the Pest Control Products Act (Canada);
(d) a prescribed substance within the meaning of the Atomic Energy Control Act (Canada); or
(e) a product, material or substance packaged as a consumer product and in quantities normally used by the consuming public.

(3) Sections 5 to 25 do not apply with respect to a controlled product that,

(a) is wood or a product made of wood;
(b) is tobacco or a product made of tobacco;
(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 (Canada).

(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 generated at a workplace through a combination of identification and worker education. R.R.O. 1990, Reg. 860, s. 4.

EXEMPTIONS FROM CLAUSES 37 (1) (A) AND (B) OF THE ACT

5. (1) An employer may store a controlled product received from a supplier without having a label on it, without obtaining a material 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 material safety data sheet for it.

(2) An employer may store an employer-produced controlled product without applying a label to it or using other identification for it, without a material 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 material safety data sheet. R.R.O. 1990, Reg. 860, s. 5.

WORKER EDUCATION

6. (1) An employer shall ensure that a worker who works with or in proximity to a controlled product received from a supplier is informed about all hazard information the employer receives from the supplier concerning the controlled product and all further hazard information of which the employer is or ought to be aware concerning its use, storage and handling.

(2) An employer who produces a controlled product in a workplace shall ensure that every worker who works with or in proximity to the controlled product is informed about all hazard information of which the employer is or ought to be aware concerning the controlled product and its use, storage and handling. R.R.O. 1990, Reg. 860, s. 6.

7. (1) An employer shall ensure that every worker who works with or in proximity to a controlled product is instructed in,

(a) the contents required on a supplier label and workplace label, and the purpose and significance of the information contained on the labels;
(b) the contents required on a material safety data sheet and the purpose and significance of the information contained on a material safety data sheet;
(c) procedures for the safe use, storage, handling and disposal of a controlled product;
(d) procedures for the safe use, storage, handling and disposal of a controlled 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 controlled product.

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.

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.

LABELS

SUPPLIER LABELS

8. (1) An employer shall ensure that every controlled product not in a container, and every container of a controlled product, received at a workplace from a supplier is labelled with a supplier label.

(2) No employer shall alter a supplier label on a container in which a controlled product is received from a supplier while any of the controlled product remains in the container.

(3) If a label applied to a controlled product or a container of a controlled product becomes illegible or is removed, an employer shall replace the label with either a supplier label or a workplace label.

(4) An employer who receives a controlled product in a multi-container shipment in which the supplier has not labelled the individual containers shall affix to each container a label that discloses the information and displays the hazard symbols referred to in paragraph 13 (b) of the Hazardous Products Act (Canada).

(5) An employer who receives at a workplace a controlled product imported under section 23 of the Controlled Products Regulations (Canada) without a supplier label shall affix to it a label that discloses the information and displays the hazard symbols referred to in paragraph 13 (b) of the Hazardous Products Act (Canada).

(6) An employer who receives from a supplier a controlled product transported as a bulk shipment,

(a) shall affix a supplier label to the container of the controlled product or to the controlled product in the workplace; or

(b) shall affix a workplace label to the container of the controlled product or to the controlled product in the workplace, if under subsection 15 (1) of the Controlled Products Regulations (Canada) the supplier is not required to label the controlled product. R.R.O. 1990, Reg. 860, s. 8.

WORKPLACE LABELS FOR EMPLOYER-PRODUCED PRODUCTS

9. (1) An employer who produces a controlled product in a workplace shall ensure that the controlled product or the container of the controlled product has a workplace label.

(2) Subsection (1) does not apply when the controlled 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.

WORKPLACE LABELS FOR DECANTED PRODUCTS

10. (1) If a controlled 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.

(2) No supplier label or workplace label is required on a portable container that is filled directly from a container of a controlled product with a supplier label or workplace label,

(a) if,
(i) the controlled product is under the control of and is used exclusively by the worker who filled the portable container,
(ii) the controlled 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 controlled product in the portable container is required for immediate use. R.R.O. 1990, Reg. 860, s. 10.

IDENTIFICATION OF A CONTROLLED PRODUCT IN PIPING SYSTEMS AND VESSELS

11. An employer shall ensure the safe use, storage and handling of a controlled product in a workplace through worker education and the use of colour coding, labels, placards or another mode of identification when the controlled 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.

PLACARD IDENTIFIERS

12. No label is required on a controlled product,
(a) if the controlled 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 controlled 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.

LABORATORY LABELS

13. (1) No supplier label is required on a controlled product that an employer receives from a supplier,
(a) if the controlled product,
   (i) originates from a laboratory supply house,
   (ii) is intended by the employer solely for use in a laboratory, and
   (iii) is packaged in a container in a quantity of less than ten kilograms; and
(b) if the supplier provides a label that is affixed to the container of the controlled product disclosing the information described in subsection (2).

(2) A label referred to in clause (1) (b) shall disclose with respect to the controlled product,
(a) a product identifier;
(b) if a material safety data sheet is available, a statement indicating that fact; and
(c) risk phrases, precautionary measures and first aid measures applicable to the controlled product. R.R.O. 1990, Reg. 860, s. 13.

14. (1) No supplier label is required on a sample of a product received from a supplier although the product is, or the employer has reason to believe the product may be, a controlled product,
(a) if the controlled product,
   (i) is contained in a container that contains less than ten kilograms of the product,
(ii) is intended by the employer solely for analysis testing or evaluation in a laboratory, and
(iii) is one in respect of which the supplier is exempted by subsection 9 (1) of the Controlled Products
Regulations (Canada) from the requirement to provide a material safety data sheet; and
(b) if the supplier provides a label that is affixed to the container of the controlled product disclosing the
information described in subsection (2).

(2) A label referred to in clause (1) (b) shall disclose with respect to a controlled product,
(a) the product identifier;
(b) the chemical identity or generic chemical identity of every ingredient of the controlled product referred to in
subparagraphs 13 (a) (i) to (v) of the Hazardous Products Act (Canada), if known to the supplier or the
employer;
(c) the supplier identifier;
(d) the statement “Hazardous Laboratory Sample, for hazard information or in an emergency call insert the
number described in clause (e)”; and
(e) an emergency telephone number of the supplier that will enable,
(i) a user of the controlled product to obtain hazard information in respect of the controlled product, and
(ii) a medical professional to obtain the information in respect of the controlled product that is referred to
in paragraph 13 (a) of the Hazardous Products Act (Canada) and is in the possession of the supplier
for the purpose of making a medical diagnosis of, or rendering treatment to, a person in an

15. (1) If an employer complies with subsection (2), no supplier label or workplace label is required for a
controlled product that,
(a) is produced in the workplace or is in a container other than the container in which it was received from a
supplier;
(b) originates from a laboratory supply house or is a laboratory sample;
(c) is intended by the employer solely for use, analysis, testing or evaluation in a laboratory; and
(d) is clearly identified through a combination of identification visible to workers at the workplace and worker
education.
(2) For the purpose of subsection (1), the employer shall ensure that the identification and worker education for
the controlled product or sample enables the workers to readily identify and obtain either the information required on a
material safety data sheet or,
(a) for a controlled product that originates from a laboratory supply house, the information described in clauses
13 (2) (a) to (c) on a label; and
(b) for a laboratory sample, the information described in clauses 14 (2) (a) to (e) on a label. R.R.O. 1990, Reg.
860, s. 15.

16. (1) If an employer complies with subsection (2), no workplace label is required for a controlled 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.
(2) For the purposes of subsection (1), the employer shall ensure that the identification and worker education for
the controlled product enables workers to readily identify and obtain either the information required on a material 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 controlled product. R.R.O. 1990, Reg. 860, s. 16.
17. (1) An employer who receives a controlled product from a supplier for use at a workplace shall obtain a supplier material safety data sheet for the controlled product.

(2) A supplier material safety data sheet for a controlled product shall contain the same information as the material safety data sheet, if any, that the supplier is required in the circumstances to transmit to a purchaser of the controlled product under paragraph 13 (a) of the Hazardous Products Act (Canada).

(3) When a supplier material safety data sheet obtained under subsection (1) is three years old, the employer shall, if possible, obtain from the supplier an unexpired supplier material safety data sheet if any of the controlled product remains in the workplace.

(4) An employer who is unable to obtain a material safety data sheet as referred to in subsection (3) shall add all new hazard information for the controlled product to the existing supplier material safety data sheet on the basis of the ingredients disclosed in it.

(5) An employer may provide a material safety data sheet in a different format from that of the supplier material safety data sheet for the controlled product or containing additional hazard information,

(a) if the material safety data sheet provided by the employer, subject to subsection 40 (6) of the Act, contains no less content than the supplier material safety data sheet; and

(b) if the supplier material safety data sheet is available at the workplace and the employer-provided material safety data sheet indicates that fact.

(6) If a supplier is exempted by subsection 9 (1) or section 10 of the Controlled Products Regulations (Canada) from providing a material safety data sheet for a controlled product, an employer is exempted from obtaining one from the supplier. R.R.O. 1990, Reg. 860, s. 17.

18. (1) An employer who produces a controlled product at a workplace shall prepare a material safety data sheet for the controlled product.

(2) No material safety data sheet is required for a controlled product that is a laboratory sample produced by the employer at the workplace.

(3) A material safety data sheet prepared for a controlled product by an employer shall contain the information that a supplier of the controlled product would be required, in the circumstances, to disclose under paragraph 13 (a) of the Hazardous Products Act (Canada) on a material safety data sheet if the controlled product were being sold to a purchaser.

(4) An employer shall update a material safety data sheet referred to in subsection (1),

(a) as soon as is practical but not later than ninety days after new hazard information about the controlled product becomes available to the employer; and

(b) at least every three years. R.R.O. 1990, Reg. 860, s. 18.

19. The Hazardous Materials Information Review Commission, established by subsection 28 (1) of the Hazardous Materials Information Review Act (Canada), including an appeal board established under subsection 43 (1) of that Act, is designated as the claims board and its procedures are adopted for the purposes of section 40 of the Act. R.R.O. 1990, Reg. 860, s. 19; O. Reg. 36/93, s. 1.

20. (1) A claim under subsection 40 (1) of the Act for exemption from disclosure shall be made only in respect of,

(a) the chemical identity or concentration of an ingredient of a controlled product;

(b) the name of a toxicological study that identifies an ingredient of a controlled product;

(c) the chemical name, common name, generic name, trade name or brand name of a controlled product; or

(d) information that could be used to identify a supplier of a controlled product. R.R.O. 1990, Reg. 860, s. 20.
Section 2: Safety Culture

(2) A label or material safety data sheet, to which a claim for an exemption from disclosure relates, shall meet the requirements of this Regulation excluding the information for which the exemption is sought. O. Reg. 36/93, s. 2.


22. (1) An employer who files a claim under subsection 40 (1) of the Act for exemption from disclosure in respect of a controlled product shall state on the material safety data sheet and, if applicable, on the label for the controlled product or container in which the controlled product is packaged the date that the claim for exemption was filed and the registry number assigned to the claim by the claims board.

(2) An employer whose claim for exemption from disclosure is determined to be valid shall not continue to disclose the information required by subsection (1),

(a) if the decision is not appealed, more than thirty days after the expiry of the appeal period; and

(b) if the decision is appealed, more than thirty days after the expiry of the appeal period in respect of the decision on appeal, if there is no appeal of that decision. R.R.O. 1990, Reg. 860, s. 22.

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 material safety data sheet and, if applicable, on the label for the controlled product or container in which the controlled 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 by the claims board.

(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.

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 controlled 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 material 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 health and safety committee, if any;

(d) the health and safety representative, if any; or

(e) in the absence of a health and safety committee or health and safety representative, a representative of the workers at the workplace. R.R.O. 1990, Reg. 860, s. 25.

CITATION

For the purposes of the Act and the Regulations, “critically injured” means an injury of a serious nature that,

(a) places life in jeopardy,
(b) produces unconsciousness,
(c) results in substantial loss of blood,
(d) involves the fracture of a leg or arm but not a finger or toe,
(e) involves the amputation of a leg, arm, hand or foot but not a finger or toe,
(f) consists of burns to a major portion of the body, or
(g) causes the loss of sight in an eye. R.R.O. 1990, Reg. 834, s. 1.
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Table 1
Table 2
Form 1  Record of compressed air worker

PART I
GENERAL

INTERPRETATION AND APPLICATION

1. (1) In this Regulation,

“adequate”, in relation to a procedure, 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;

“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;

“approved”, in relation to a form, means approved by the Minister;

“blocker truck” means a truck that weighs at least 6,800 kilograms and has four-way flashers and a mounted flashing arrowboard sign;

“boom” means the projecting part of a backhoe, shovel, crane or similar lifting device from which a load is likely to be supported;


“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 Petroleum Resources Act, drilled by an auger and into which a person may enter;

“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;

“competent worker”, in relation to specific work, means a worker who,
(a) is qualified because of knowledge, training and experience to perform the work,
(b) is familiar with the *Occupational Health and Safety Act* and with the provisions of the regulations that apply
to the work, and
(c) has knowledge of all potential or actual danger to health or safety in the work;

“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;

“crash truck” means a blocker truck that is equipped with a crash-attenuating device;

“excavation” means the hole that is left in the ground, as a result of removing material;

“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;

“excavation width” means the least horizontal dimension between the two opposite walls of the 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;

“fall restricting system” means a type of fall arrest system that has been designed to limit a worker’s fall to a specified
distance;

“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;

“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;

“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;

“form” means the mould into which concrete or another material is to be placed;

“formwork” means a system of forms connected together;

“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;

“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;

“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;

“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;

“longitudinal buffer area” means the area of a project between the end of a lane closure taper and the start of a work
area;

“magazine” means a place in which explosives are stored or kept, whether above or below ground;

“multi-point suspended scaffold” means a suspended scaffold or suspended work platform or a system of suspended
scaffolds or suspended work platforms, each scaffold or platform being more than 750 millimetres in width, that
is supported from an overhead support system by at least three primary load-carrying means of suspension to
maintain the system’s stability;

“professional engineer” means a person who is a professional engineer within the meaning of the *Professional
Engineers Act*;

“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;

“roadway” means the travelled portion of a highway;
“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;
“safety factor” means the ratio of the failure load to the specified load or rated load;
“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;
“service shaft” means a shaft by which people or materials are passed into or out of a tunnel under construction;
“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;
“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;
“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;
“strut” means a transverse member of shoring that directly resists pressure from a wale;
“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;
“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;
“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;
“traverse”, when used in relation to a multi-point suspended scaffold, means to move the scaffold horizontally, in a controlled manner, along the building or structure to which it is attached;
“trench” means an excavation where the excavation depth exceeds the excavation width;
“tunnel” means a subterranean passage into which a person may enter that is made by excavating beneath the overburden;
“underground”, in relation to work, means inside a shaft, tunnel or caisson;
“vehicle” means a vehicle propelled by mechanical power and includes a trailer, a traction engine and a road-building machine;
“wale” means a longitudinal member of the shoring that is placed against the sheathing to directly resist the pressure from the sheathing;
“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. 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.

(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.

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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 $50,000;

   (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; 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).

   (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. O. Reg. 145/00, s. 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.

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.

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.

Revoked: O. Reg. 145/00, s. 4.

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.

ACCIDENT NOTICES AND REPORTS UNDER SECTIONS 51-53 OF THE ACT

8. A written report under subsection 51 (1) of the Act respecting an occurrence in which a person is killed or critically injured shall set out,

(a) the name and address of the constructor and the employer, if the person involved is a worker;

(b) the nature and the circumstances of the occurrence and the bodily injury sustained by the person;

(c) a description of the machinery or equipment involved;

(d) the time and place of the occurrence;

(e) the name and address of the person involved;

(f) the names and addresses of all witnesses to the occurrence;

(g) the name and address of the any legally qualified medical practitioner by whom the person was or is being attended for the injury; and

(h) the steps taken to prevent a recurrence. O. Reg. 213/91, s. 8; O. Reg. 145/00, s. 6.

9. (1) A notice under subsection 52 (1) of the Act respecting an occurrence involving a worker shall set out,

(a) the name, address and type of business of the employer;

(b) the nature and the circumstances of the occurrence and the bodily injury or illness sustained by the worker;

(c) a description of the machinery or equipment involved;

(d) the time and place of the occurrence;

(e) the name and address of the worker involved;

(f) the names and addresses of all witnesses to the occurrence;

(g) the name and address of any legally qualified medical practitioner by whom the worker was or is being attended for the injury or illness;

(g.1) the name and address of each medical facility, if any, where the worker was or is being attended for the injury or illness; and

(h) the steps taken to prevent a recurrence. O. Reg. 213/91, s. 9 (1); O. Reg. 145/00, s. 7 (1).

(2) A notice under subsection 52 (2) of the Act (information and particulars respecting a worker’s occupational illness) shall contain the following information:

1. The employer’s name, address and type of business.
2. The nature of the illness.
3. The worker’s name and address.
4. The name and address of any legally qualified medical practitioner by whom the worker was or is being attended for the illness.
5. The name and address of each medical facility, if any, where the worker was or is being attended for the illness.
6. A description of the steps taken to prevent a recurrence. O. Reg. 145/00, s. 7 (2).

10. (1) An employer shall keep in the employer’s permanent records a record of any accident, explosion or fire involving a worker that causes injury requiring medical attention but does not disable the worker from performing his or her usual work. O. Reg. 213/91, s. 10 (1).

(2) The record shall include particulars of,
(a) the nature and circumstances of the occurrence and the injury sustained by the worker;
(b) the time and place of the occurrence;
(c) the name and address of the injured worker; and
(d) the steps taken to prevent a recurrence. O. Reg. 213/91, s. 10 (2).

(3) An employer to whom subsection (1) applies shall make the record available to an inspector upon request. O. Reg. 213/91, s. 10 (3).

11. (1) The following incidents are prescribed for the purpose of section 53 of the Act:
1. A worker falling a vertical distance of three metres or more.
2. A worker falling and having the fall arrested by a fall arrest system other than a fall restricting system.
3. A worker becoming unconscious for any reason.
4. Accidental contact by a worker or by a worker’s tool or equipment with energized electrical equipment, installations or conductors.
5. 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.
6. Structural failure of all or part of falsework designed by, or required by this Regulation to be designed by, a professional engineer.
7. Structural failure of a principal supporting member, including a column, beam, wall or truss, of a structure.
8. Failure of all or part of the structural supports of a scaffold.
9. 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.
10. 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.
11. Overturning or the structural failure of all or part of a crane or similar hoisting device. O. Reg. 213/91, s. 11 (1); O. Reg. 85/04, s. 3; O. Reg. 627/05, s. 1.

(2) A notice under section 53 of the Act shall set out the circumstances of the occurrence and the steps taken to prevent a recurrence. O. Reg. 213/91, s. 11 (2).

12. (1) This section applies with respect to an occurrence for which a report under subsection 51 (1) of the Act or a notice under section 52 or 53 of the Act is given, if the occurrence involves a failure of all or part of,
(a) temporary or permanent works;
(b) a structure;
(c) an excavation wall or similar earthwork for 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
(d) a crane or similar hoisting device. O. Reg. 213/91, s. 12 (1).
(2) A constructor or employer who submits a report under subsection 51 (1) of the Act (notice of death or injury) or gives a notice under section 52 or 53 of the Act (notice of accident, etc.) shall also provide, within 14 days after the occurrence, a professional engineer’s written opinion stating the cause of the occurrence. O. Reg. 145/00, s. 8.

**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 DIN standard pin. O. Reg. 213/91, s. 23 (2).

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 is 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.

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 reasonably possible to install a guardrail system as that subsection requires, a worker shall be adequately protected by at least one of the following methods of fall protection:

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).

(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:

4. CAN/CSA-Z259.2.3-99 (R2004): Descent Control Devices.
5. CAN/CSA-Z259.10-06: Full Body Harnesses.
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.

(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.

(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 is 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.

(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).
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 Standard 10.11-1989, Personnel and Debris Nets for Construction and Demolition Operations. O. Reg. 145/00, s. 14.

(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 securely fastened with a swaged fitting or eye splice supplied by the manufacturer of the lanyard. O. Reg. 145/00, s. 14.

(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; “service”, when used as a verb, means to have waste pumped out and to have the facilities replenished where necessary. 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 within 180 metres horizontally of the work area of the project. O. Reg. 145/00, s. 15.

(5) If work is being performed in a tunnel, the facilities shall be located within 180 metres horizontally from the entrance to the tunnel. O. Reg. 145/00, s. 15.

(6) The facilities may be located within 3 kilometres of the work area if transportation to the facilities is provided for workers where reasonably required. O. Reg. 145/00, s. 15.

(7) If the project is the construction of a building, then in addition to the requirement of subsection (4), the facilities must also be located within 9 metres vertically of the level at which work is being performed. O. Reg. 145/00, s. 15.

(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);

“sewered toilet facilities” means water flush toilets that are connected to a sanitary sewer system and equipped with a trap in accordance with Part 7 of the Building Code. O. Reg. 527/00, s. 2 (1).

(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>
<thead>
<tr>
<th>Minimum number of toilets</th>
<th>Number of workers regularly employed at the project</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1-15</td>
</tr>
<tr>
<td>2</td>
<td>16-30</td>
</tr>
<tr>
<td>3</td>
<td>31-45</td>
</tr>
<tr>
<td>4</td>
<td>46-60</td>
</tr>
<tr>
<td>4, plus 1 additional toilet for each additional group of 15 or fewer workers</td>
<td>61 or more</td>
</tr>
</tbody>
</table>

O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (5).

(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>
<thead>
<tr>
<th>Minimum number of toilets</th>
<th>Number of workers regularly employed at the project</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1-10</td>
</tr>
<tr>
<td>2</td>
<td>11-20</td>
</tr>
<tr>
<td>3</td>
<td>21-30</td>
</tr>
<tr>
<td>4</td>
<td>31-40</td>
</tr>
<tr>
<td>4, plus 1 additional toilet for each additional group of 15 or fewer workers</td>
<td>41 or more</td>
</tr>
</tbody>
</table>

O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (6).
(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 within 1.8 metres of,

(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).

(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, a suspended scaffold or a suspended 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).

(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. No internal combustion engine shall be operated,

(a) in an excavation unless provision is made to ensure that exhaust gases and fumes will not accumulate in the excavation; or

(b) in a building or other enclosed structure,

(i) unless the exhaust gases and fumes from the engine are discharged directly outside the building or structure to a point sufficiently remote to prevent the return of the gases and fumes, or

(ii) unless there is an adequate supply of air for combustion and adequate natural or mechanical ventilation to ensure exhaust gases and fumes will not accumulate. O. Reg. 213/91.

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).
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(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 4A40BC rating. O. Reg. 213/91, s. 53 (2).

**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 to within two storeys of the uppermost work level. O. Reg. 145/00, s. 18 (1).

(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,
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(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 within 4.5 metres of 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).

(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;

“barrier” means a device that provides a physical limitation through which a vehicle would not normally pass, and includes a concrete barrier;

“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. 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.
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) Subject to subsection (8), adequate barriers shall be installed to protect workers at a project from vehicular traffic if the project,

(a) is on a freeway;
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(b) is not a mobile operation; and

(c) is expected to require more than five days to complete. O. Reg. 145/00, s. 21.

(8) Until January 1, 2003, if a project to which subsection (7) would otherwise apply is expected to require five days or less to complete, or if it is not practical to install barriers as that subsection requires, the following measures shall be taken to protect workers at the project:

1. An adequate longitudinal buffer area shall be provided if physically possible.

2. If information about the annual average daily travel rate of vehicular traffic on the freeway is available and the rate is less than 25,000, blocker trucks shall be adequately positioned between vehicular traffic and workers.

3. If the annual average daily travel rate of vehicular traffic on the freeway is 25,000 or more or if information about the rate is unavailable, crash trucks shall be adequately positioned between vehicular traffic and workers. O. Reg. 145/00, s. 21.

(9) If subsection (8) applies and information about the annual average daily travel rate of vehicular traffic on the freeway is available, a record of the rate shall be maintained at the project and be made available to an inspector upon request. O. Reg. 145/00, s. 21.

(10) On and after January 1, 2003, 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.

(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. Until January 1, 2003, an adequate number of blocker trucks shall be adequately positioned between vehicular traffic and the worker.

2. On and after January 1, 2003, an adequate number of crash trucks shall be adequately positioned between vehicular traffic and the worker.

3. 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.

4. 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. 145/00, s. 21.

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 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.

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) On and after January 1, 2001, a nylon vest to which this section applies shall also have a side and front tear-away feature. O. Reg. 145/00, s. 23.

(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 area that is a suspended scaffold able to be moved to give access to a floor, roof or platform or to ground level. O. Reg. 213/91, s. 70 (2).

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 that will be at least two storeys high when it is finished unless stairs are installed in accordance with this section. O. Reg. 213/91, s. 75 (1).

(2) As the construction of a building or structure progresses, permanent or temporary stairs shall be installed up to,
   (a) the uppermost work level; or
   (b) if stairs would interfere with work on the uppermost work level, to within the lesser of two storeys or nine metres below the uppermost work level. O. Reg. 213/91, s. 75 (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; or
   (b) a structure to which a permanent ladder is attached before the structure is raised into position. O. Reg. 213/91, s. 75 (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. (1) 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. 213/91, s. 78 (1).

(2) A ladder,

(a) shall be free from defective or loose rungs;
(b) shall have rungs spaced at 300 millimetres on centres;
(c) shall have side rails at least 300 millimetres apart;
(d) shall be placed on a firm footing; and
(e) 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. O. Reg. 213/91, s. 78 (2).

(3) The maximum length of a ladder measured along its side rail shall not be more than,

(a) five metres for a trestle ladder or for each of the base and extension sections of an extension trestle ladder;
(b) six metres for a step-ladder;
(c) nine metres for a single ladder or an individual section of a ladder;
(d) fifteen metres for an extension ladder with two sections; and
(e) twenty metres for an extension ladder with more than two sections. O. Reg. 213/91, s. 78 (3).

(4) No ladder shall be lashed to another ladder to increase its length. O. Reg. 213/91, s. 78 (4).

(5) In this section, “extension trestle ladder” means a combination of a trestle ladder and a vertically-adjustable single ladder with a suitable means of securely locking the ladders together. O. Reg. 213/91, s. 78 (5).

79. No ladder shall be present in an elevator shaft or a similar hoisting area when the shaft or area is being used for hoisting. O. Reg. 213/91, s. 79.

80. A ladder used as a regular means of access between levels of a structure,

(a) shall extend at the upper level at least 900 millimetres above the landing or floor;
(b) shall 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; and
(d) shall be secured at the top and bottom to prevent movement. O. Reg. 213/91, s. 80.

81. (1) A wooden ladder,

(a) shall be made of wood that is straight-grained and free of loose knots, sharp edges, splinters and shakes; and
(b) shall not be painted or coated with an opaque material. O. Reg. 213/91, s. 81 (1).

(2) The side rails of a wooden ladder of the cleat type,

(a) shall be not less than 400 millimetres and not more than 610 millimetres apart; and
(b) shall measure not less than,

(i) thirty-eight millimetres by eighty-nine millimetres if the ladder is 5.8 metres or less long, or
(ii) thirty-eight millimetres by 140 millimetres if the ladder is more than 5.8 metres long. O. Reg. 213/91, s. 81 (2).

(3) The rungs of a wooden ladder of the cleat type,

(a) shall measure not less than,
(i) nineteen millimetres by sixty-four millimetres if the side rails are 400 millimetres apart, or
(ii) nineteen millimetres by eighty-nine millimetres if the side rails are more than 400 millimetres and not
more than 610 millimetres apart; and
(b) shall be braced by filler blocks that are nineteen millimetres thick and are located between the rungs. O. Reg.
213/91, s. 81 (3).

82. A double-width wooden ladder,
(a) shall have three evenly-spaced rails that measure at least thirty-eight millimetres by 140 millimetres;
(b) shall have rungs that,
   (i) measure at least thirty-eight millimetres by eighty-nine 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) shall not be less than 1.5 metres wide and not more than two metres wide. O. Reg. 213/91, s. 82.

83. (1) When a step-ladder is being used as a self-supporting unit, its legs shall be fully-spread and its spreader
shall be locked. O. Reg. 213/91, s. 83 (1).
   (2) No worker shall stand on the top of or the pail shelf of a step-ladder. O. Reg. 213/91, s. 83 (2).

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 three 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; and
   (f) shall have rungs that are at least 15 centimetres from the wall and spaced at regular intervals. O. Reg. 631/94,
s. 2.
   (2) Subsection (1) does not apply to an 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. 631/94, s. 2.

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).
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 at a project unless he or she is competent to do so. O. Reg. 145/00, s. 26.

(2) However, a worker being trained in the operation of a vehicle may operate it while being instructed and supervised by a competent person. O. Reg. 145/00, s. 26.

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;
   
   “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;
   
   “multi-tiered load hoisting operation” means the moving of one or more multi-tiered loads by one crane at a project;
   “procedures” means the procedures prepared under subsection (7). 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 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.

(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) On and after January 1, 2001, a nylon vest to which this section applies shall also have a side and front tear-away feature. O. Reg. 145/00, s. 28.

(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).
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(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
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(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 and prepared for firing. O. Reg. 213/91, s. 119 (5).

(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).
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).

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.

(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).

**SCAFFOLDS AND WORK PLATFORMS**

(1) A scaffold which meets the requirements of sections 126, 128, 129, 130, 134, 135, 137, 138, 139, 140, 141 and 142 shall be provided for workers where work cannot be done on or from the ground or from a building or other permanent structure without hazard to the workers. O. Reg. 213/91, s. 125 (1).

(2) A worker who is on or under a scaffold while it is being erected, altered or dismantled shall be on a part of the scaffold or scaffold platform that meets the requirements of sections 126, 128, 129, 130, 134, 135, 137, 138, 139, 140, 141 and 142. O. Reg. 213/91, s. 125 (2).

(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).

(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).

(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).
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(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).

**Suspended Platforms and Scaffolds and Boatswain’s Chairs**

136.1 Sections 137 to 142 do not apply to multi-point suspended scaffolds. O. Reg. 85/04, s. 13.
137. (1) Every suspended platform, suspended scaffold and boatswain’s chair shall meet the requirements of this section. O. Reg. 213/91, s. 137 (1).

(2) A suspended platform, suspended scaffold or boatswain’s chair shall be attached to a fixed support or outrigger beam in accordance with the manufacturer’s instructions. O. Reg. 213/91, s. 137 (2).

(3) A fixed support or outrigger beam shall be capable of supporting at least four times the maximum load to which it may be subjected without exceeding the allowable unit stresses for the materials of which it is constructed and without overturning. O. Reg. 213/91, s. 137 (3).

(4) An outrigger beam shall be tied back to a fixed support with a secondary line, each of which is capable of supporting the weight of the suspended load and the supporting system. O. Reg. 213/91, s. 137 (4).

(5) An outrigger beam shall be secured against horizontal and vertical movement. O. Reg. 213/91, s. 137 (5).

(6) An outrigger beam shall have securely attached counterweights that are designed and manufactured for the purpose. O. Reg. 213/91, s. 137 (6).

(7) Adequate legible instructions for the use of the counterweights shall be affixed to the outrigger beam. O. Reg. 213/91, s. 137 (7).

(8) Every part of the hoisting and rigging system for a suspended platform, suspended scaffold or boatswain’s chair shall be capable of supporting at least ten times the maximum load to which the part is likely to be subjected. O. Reg. 213/91, s. 137 (8).

(9) A suspended platform, suspended scaffold or boatswain’s chair that is capable of moving either horizontally or vertically shall have,

(a) supporting cables,
   (i) that are vertical from the fixed support or outrigger beam,
   (ii) that are parallel if there is more than one supporting cable, and
   (iii) that extend to the ground or have a positive stop that prevents the suspended platform, suspended scaffold or boatswain’s chair from running off the end of the supporting cables; and

(b) rope falls equipped with suitable pulley blocks or a mechanical hoisting device that,
   (i) has legible operating and safety instructions affixed to it in a conspicuous location, and
   (ii) is equipped with a positive device to prevent the platform, scaffold or boatswain’s chair from falling freely. O. Reg. 213/91, s. 137 (9).

(10) A suspended platform, suspended scaffold or boatswain’s chair shall have steel wire rope support cables,

(a) if the distance between the platform, scaffold or boatswain’s chair and the fixed support exceeds 90 metres;

(b) if a corrosive substance is in the vicinity of the support rope; or

(c) if mechanical grinding or flame-cutting equipment is used in the vicinity of the support rope. O. Reg. 213/91, s. 137 (10).

(11) A competent worker shall inspect a suspended platform, suspended scaffold or boatswain’s chair before each day’s use if it is operated by mechanical power. O. Reg. 213/91, s. 137 (11).

138. (1) Every suspended platform and suspended scaffold shall meet the requirements of this section. O. Reg. 213/91, s. 138 (1).

(2) A suspended platform or suspended scaffold shall have hangers located at least 150 millimetres but not more than 450 millimetres from the ends of the platform or scaffold that are securely attached to it. O. Reg. 213/91, s. 138 (2).

(3) A suspended platform or suspended scaffold shall be firmly anchored to the building or structure if practicable unless the platform or scaffold is being raised or lowered. O. Reg. 213/91, s. 138 (3).

(4) Wire mesh at least 1.6 millimetres in diameter and capable of rejecting a ball thirty-eight millimetres in diameter shall be securely fastened in place from the toe-board to the top rail of the guardrails of a suspended platform or suspended scaffold. O. Reg. 213/91, s. 138 (4).
139. (1) Every suspended scaffold that consists of more than one platform and every suspended platform that, together with its components, weighs more than 525 kilograms shall meet the requirements of this section. O. Reg. 213/91, s. 139 (1).

(2) A professional engineer shall design a suspended scaffold or suspended platform in accordance with good engineering practice. O. Reg. 213/91, s. 139 (2).

(3) There shall be design drawings for a suspended scaffold or suspended platform that,

(a) set out the size and specification of all components of the scaffold or platform including the type and grade of all materials to be used;
(b) state the maximum live load of the scaffold or platform; and
(c) state that, in the opinion of the professional engineer who designed the scaffold or platform, the design meets the requirements of this section.

(d) Revoked: O. Reg. 85/04, s. 14.

O. Reg. 213/91, s. 139 (3); O. Reg. 85/04, s. 14.

(4) A suspended scaffold or suspended platform shall be erected in accordance with the design drawings. O. Reg. 213/91, s. 139 (4).

(5) Before a suspended scaffold or suspended platform is used, a professional engineer shall inspect it and state in writing that it has been erected in accordance with the design drawings. O. Reg. 213/91, s. 139 (5).

(6) No person shall use a suspended scaffold or suspended platform until the statement required by subsection (5) has been given. O. Reg. 213/91, s. 139 (6).

(7) The constructor shall keep a copy of the design drawings and the statement required by subsection (5) on a project while the suspended scaffold or suspended platform is on the project. O. Reg. 213/91, s. 139 (7).

(8) If it is stacked or tiered a suspended platform or suspended scaffold shall have at least two independent means of support which shall be so arranged that the failure of one support will not result in the failure of the suspended platform or suspended scaffold. O. Reg. 213/91, s. 139 (8).

140. (1) A boatswain’s chair shall be at least 600 millimetres long and 250 millimetres wide. O. Reg. 213/91, s. 140 (1).

(2) A boatswain’s chair which is or is to be used by a worker who is using a corrosive substance or mechanical-grinding or flame-cutting equipment shall be supported by a sling consisting of wire rope at least nine millimetres in diameter. O. Reg. 213/91, s. 140 (2).

141. (1) A worker who is on or is getting on or off a suspended platform, suspended scaffold or boatswain’s chair shall wear a full body harness connected to a fall arrest system. O. Reg. 213/91, s. 141 (1).

(2) Every lifeline used with a suspended platform, suspended scaffold or boatswain’s chair,

(a) shall be suspended independently from the platform, scaffold or boatswain’s chair; and
(b) shall be securely attached to a fixed support so that the failure of the platform, scaffold or boatswain’s chair or its supporting system will not cause the lifeline to fail. O. Reg. 213/91, s. 141 (2).

(3) Despite clause (2) (a), the fall arrest system shall be securely fastened to the suspended platform or suspended scaffold if,

(a) all or part of the platform or scaffold has more than one means of support or suspension; and
(b) the platform or scaffold is so designed, constructed and maintained that the failure of one means of support or suspension will not cause the collapse of all or part of the platform or scaffold. O. Reg. 213/91, s. 141 (3).

142. (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. 213/91, s. 142 (1).

(2) The outrigger beams of an outrigger scaffold shall be secured against horizontal and vertical movement. O. Reg. 213/91, s. 142 (2).
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**MULTI-POINT SUSPENDED SCAFFOLDS**

142.1 Sections 142.2 to 142.8 apply to every multi-point suspended scaffold. O. Reg. 85/04, s. 15.

142.2 (1) A multi-point suspended scaffold 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.

(2) A multi-point suspended scaffold 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.

(3) In addition to the loads specified in subsection (2), a multi-point suspended scaffold 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 Table 2.5.1.1. (Design Data for Selected Locations in Ontario) of the Building Code, assuming a probability factor of at least one in ten; and
(c) any other loads likely to be applied to it. O. Reg. 85/04, s. 15.

(4) The wind load referred to in clause (3) (b) may be reduced by 30 per cent if the professional engineer who designs the scaffold 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.

(5) Subject to clause (2) (c) and subsections (3) and (4), the professional engineer who designs the scaffold shall determine the minimum specified loads for erecting, dismantling, traversing, or otherwise moving multi-point suspended scaffolds. O. Reg. 85/04, s. 15.

(6) If a multi-point suspended scaffold 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.

(7) Subject to subsection (8), in designing a multi-point suspended scaffold and its structural members, the following values of load factors, as described in Section 4.1.3. (Limit States Design) of the Building Code, shall be applied to the load requirements referred to in subsections (2) to (6):

1. Live load factor $\alpha_L = 3.0$.
2. Dead load factor $\alpha_D = 1.5$.
3. Wind load factor $\alpha_W = 1.5$. O. Reg. 85/04, s. 15.

(8) In designing the suspension and anchorage system of a multi-point suspended scaffold,

(a) the value of the live load factor $\alpha_L$ shall be 4.0;
(b) the value of the dead load factor $\alpha_D$ shall be 2.0; and
(c) the value of the wind load factor $\alpha_W$ shall be 2.0. O. Reg. 85/04, s. 15.

(9) Despite subsections (7) and (8), a multi-point suspended scaffold and its components may be designed by working stress design if the safety factors for the scaffold and the structural members are at least equal to what would otherwise be provided under those subsections. O. Reg. 85/04, s. 15.

(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 scaffold;
(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 scaffold. O. Reg. 85/04, s. 15.
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.

A multi-point suspended scaffold 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 scaffold to collapse or fail, under the most adverse loading condition as determined by the professional engineer who designs the scaffold; and

(b) compliance with subsections (7), (8), (9) and (10) is maintained in all fixed and moving conditions. O. Reg. 85/04, s. 15.

The design of a multi-point suspended scaffold shall include adequate movement-limiting devices to be used when traversing or otherwise moving it. O. Reg. 85/04, s. 15.

Before a multi-point suspended scaffold is erected, the constructor shall ensure that the professional engineer responsible for the structural integrity of the permanent building or structure from which the scaffold is suspended provides a written report approving the design loads imposed on the building or structure by the scaffold. O. Reg. 85/04, s. 15.

Design drawings for a multi-point suspended scaffold 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 scaffold 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.

The design drawings shall be followed, subject to subsection (17). O. Reg. 85/04, s. 15.

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 scaffold, 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.

(2) A multi-point suspended scaffold 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 scaffold is moved to another anchorage position, before it is used there. O. Reg. 85/04, s. 15.

(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 scaffold 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.

(6) Subsections (1), (2), (3), (4) and (5) do not apply to a multi-point suspended scaffold whose platform area is six square metres or less. O. Reg. 85/04, s. 15.

(7) A competent worker shall inspect a multi-point suspended scaffold each day before it is used. O. Reg. 85/04, s. 15.
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 scaffold 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.

(2) Before a worker is on a multi-point suspended scaffold for the first time, the employer shall provide the
worker with adequate oral and written instructions for using the scaffold, 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 scaffold. O. Reg. 85/04, s. 15.

(3) A worker who is to erect, dismantle, traverse or otherwise move a multi-point suspended scaffold 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.

(4) No person shall use a multi-point suspended scaffold 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.

142.6 (1) A multi-point suspended scaffold shall not be loaded in excess of the specified loads indicated on the
design drawings for the scaffold. O. Reg. 85/04, s. 15.

(2) Signs indicating the specified live loads shall be posted in conspicuous places on the scaffold. O. Reg. 85/04,
s. 15.

142.7 (1) A worker who is on a multi-point suspended scaffold 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 scaffold; and
(b) designed, constructed and maintained in accordance with this Regulation. O. Reg. 85/04, s. 15.

(2) Despite subsection (1), a worker is not required to use a fall arrest system while the scaffold is stationary if
guardrails are installed in accordance with section 26.3. O. Reg. 85/04, s. 15.

142.8 (1) The constructor of a project where a multi-point suspended scaffold is used shall keep a written record
of all inspections, tests, repairs, modifications and maintenance performed on the scaffold and make copies of the record
available to an inspector upon request. O. Reg. 85/04, s. 15.

(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 scaffold is there. O. Reg. 85/04, s. 15.

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>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
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<tbody>
<tr>
<td>Elevating Work Platform</td>
<td>National Standards of Canada standard</td>
</tr>
<tr>
<td>Elevating Rolling Work Platform</td>
<td>CAN3-B354.1-M82</td>
</tr>
<tr>
<td>Self-Propelled Elevating Work Platform</td>
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<tr>
<td>Boom-Type Elevating Work Platform</td>
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<tr>
<td>Vehicle-Mounted Aerial Device</td>
<td>CAN-CSA-C225-M88</td>
</tr>
</tbody>
</table>

O. Reg. 213/91, s. 144 (6).

(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) the date this Regulation is filed; 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).

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. An elevating work platform,
(a) shall not be loaded in excess of its rated working load;
(b) shall be used only on a firm level surface;
(c) shall be used only in accordance with the written instructions of the manufacturer;
(d) shall not be loaded and used in such a manner as to affect its stability or endanger a worker; and
(e) shall not be moved unless all workers on it are protected against falling by a safety belt attached to the
   platform. O. Reg. 213/91, s. 148.

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) No worker shall operate a crane or similar hoisting device that is capable of raising, lowering or moving
   material that weighs more than 7,260 kilograms unless the worker is certified as a hoisting engineer under the Trades
   Qualification and Apprenticeship Act. O. Reg. 631/94, s. 3.
   (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) A professional engineer or a competent worker designated by the professional engineer shall inspect the crane to ensure its structural integrity using non-destructive testing methods approved by the Canadian General Standards Board before the crane is used to lift persons and then at least once every 12 months after that. O. Reg. 631/94, s. 4.

(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).
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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.

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 or a competent worker designated by a professional engineer shall inspect its structural elements and components using methods of non-destructive testing approved by the Canadian General Standards Board to determine their structural integrity. O. Reg. 213/91, s. 158 (1); O. Reg. 631/94, s. 5.

(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. Only an alloy steel chain or a chain manufactured for the purpose shall be used for hoisting. O. Reg. 213/91, s. 176.

177. (1) No alloy chain shall be annealed or welded. O. Reg. 213/91, s. 177 (1).

   (2) A chain used for hoisting shall be selected, annealed, normalized and repaired in accordance with the specifications of its manufacturer. O. Reg. 213/91, s. 177 (2).

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 Electrical and Utilities Safety Association of Ontario Incorporated and revised January, 2009. O. Reg. 627/05, s. 4; O. Reg. 443/09, s. 5.

(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 is an electrician certified under the *Trades Qualification and Apprenticeship Act*; or

(b) the worker is otherwise permitted to connect, maintain or modify electrical equipment or installations under the *Trades Qualification and Apprenticeship Act*, the *Apprenticeship and Certification Act, 1998* or the *Technical Standards and Safety Act*, 2000. O. Reg. 627/05, s. 4.

(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>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nominal phase-to-phase voltage rating</td>
<td>Minimum distance</td>
</tr>
<tr>
<td>750 or more volts, but no more than 150,000 volts</td>
<td>3 metres</td>
</tr>
<tr>
<td>more than 150,000 volts, but no more than 250,000 volts</td>
<td>4.5 metres</td>
</tr>
<tr>
<td>more than 250,000 volts</td>
<td>6 metres</td>
</tr>
</tbody>
</table>

(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.
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(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.
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(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 within eight metres of any explosive. O. Reg. 213/91, s. 200 (1).

(2) No person shall smoke in a magazine or within eight metres of any explosive. O. Reg. 213/91, s. 200 (2).

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) within 7.5 metres of another hole that is being loaded with or contains explosives; and

(b) within 150 millimetres of 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).

(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 within one metre of another hole containing explosives. O. Reg. 213/91, s. 204 (4).

(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 within two metres of the edge of a roof, a guardrail shall be provided at the edge of the roof. O. Reg. 213/91, s. 208 (2).

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).

**DESTRUCTION 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, 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;
“hydraulic support system” means a system capable of being moved as a unit, designed to resist the earth pressure from the walls of an excavation by applying a hydraulic counterpressure through the struts;
“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;
“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. O. Reg. 213/91, s. 222.

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,
(a) is stiff to firm and compact to loose in consistency or is pre-viously-excavated soil;
(b) exhibits signs of surface cracking;
(c) exhibits signs of water seepage;
(d) if it is dry, may run easily into a well-defined conical pile; and
(e) has a low degree of internal strength. O. Reg. 213/91, s. 226 (4).

(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 within 1.2 metres of its bottom with a slope having a minimum gradient of one horizontal to one vertical;

(f) made in Type 3 soil and whose walls are sloped from its bottom with a slope having a minimum gradient of one horizontal to one vertical;

(g) made in Type 4 soil and whose walls are sloped from its bottom with a slope having a minimum gradient of three horizontal to one vertical; 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).

(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;
“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;
“post” means a vertical member of shoring that acts as a spacer between the wales;
“10 millimetres gap” means that the space between two adjacent members of sheathing is a maximum of ten millimetres. 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 and located in a soil type described in Column 1 of the Table to this section shall meet the corresponding specifications set out in Columns 2 to 4 of the Table. O. Reg. 213/91, s. 238 (2).

(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 (METRIC SIZES)**
Section 2: Safety Culture

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excavation Depth</td>
<td>Soil Type</td>
<td>Sheathing</td>
<td>Struts Width of Excavation at Strut Location</td>
</tr>
<tr>
<td>3.0 m or less</td>
<td>1</td>
<td>50 mm × 200 mm at 1.2 m o/c</td>
<td>200 mm × 200 mm</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>50 mm × 200 mm at 1.2 m o/c</td>
<td>200 mm × 200 mm</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>50 mm × 200 mm at 10 mm gap</td>
<td>200 mm × 200 mm</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>75 mm × 200 mm at 10 mm gap</td>
<td>200 mm × 200 mm</td>
</tr>
<tr>
<td>Over 3.0 m to 4.5 m</td>
<td>1</td>
<td>50 mm × 200 mm with 10 mm gap</td>
<td>200 mm × 200 mm</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>50 mm × 200 mm with 10 mm gap</td>
<td>200 mm × 200 mm</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>50 mm × 200 mm with 10 mm gap</td>
<td>250 mm × 250 mm</td>
</tr>
<tr>
<td>Over 3.0 m to 4.0 m</td>
<td>4</td>
<td>75 mm × 200 mm with 10 mm gap</td>
<td>300 mm × 300 mm</td>
</tr>
<tr>
<td>Over 4.5 m to 6.0 m</td>
<td>1</td>
<td>50 mm × 200 mm with 10 mm gap</td>
<td>300 mm × 300 mm</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>50 mm × 200 mm with 10 mm gap</td>
<td>300 mm × 300 mm</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>50 mm × 200 mm with 10 mm gap</td>
<td>300 mm × 300 mm</td>
</tr>
</tbody>
</table>

* 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.

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 augured 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.

(2) A steel liner, (a) shall extend sixty centimetres above ground level and to within 1.2 metres of 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).

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) within thirty metres of each work face of a tunnel and of each location where a fire hazard exists. O. Reg. 213/91, s. 249 (1).

(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 4A40BC rating. O. Reg. 213/91, s. 250 (2).

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 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).

(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).
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).

The training required by subsection (3) shall be repeated at least every thirty days. O. Reg. 213/91, s. 266 (4).

The self-contained breathing apparatus shall have a full face mask. O. Reg. 213/91, s. 266 (5).

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).

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).

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).

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).

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).

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).

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).

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.

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).

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).

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).

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).

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).

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).

A telephone system shall be installed before work on the tunnel is begun. O. Reg. 213/91, s. 270 (2).

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) The following signals shall be used to give signals between a hoist operator, the top or bottom of a shaft and all landings in the shaft:

<table>
<thead>
<tr>
<th>CODE OF SIGNALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where the conveyance is in motion –</td>
</tr>
<tr>
<td>1 signal</td>
</tr>
<tr>
<td>Where the conveyance is stationary –</td>
</tr>
<tr>
<td>1 signal</td>
</tr>
<tr>
<td>2 signals together</td>
</tr>
<tr>
<td>3 signals together (to be given before any person enters the conveyance)</td>
</tr>
</tbody>
</table>

O. Reg. 213/91, s. 273 (4).

(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).

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).

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).

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).

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(b) is constructed without any gaps that would permit the entry of a ball 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).

(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 appliances. O. Reg. 213/91, s. 290 (2).

(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 appliances 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.

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 limit of its normal travel; and
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(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).

(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 thirty-eight millimetres in diameter;

(b) shall extend the full width of the opening and from within fifty millimetres of 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).

(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).
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 other blasting agents. O. Reg. 213/91, s. 318 (2).

(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) within a 7.5 metre horizontal distance from one another. O. Reg. 213/91, s. 322.

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;

“compressed air” means air whose pressure is mechanically raised to more than atmospheric pressure;

“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”;

“kilopascals”, except in section 376, means kilopascals relative to atmospheric pressure;

“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;

“medical lock” means a chamber in which workers may be subjected to changes in air pressure for medical purposes;

“superintendent” means the person appointed by a constructor to be supervisor over and in charge of work done in compressed air;

“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. 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) all Form 1 reports by a 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).

(2) The superintendent shall send all Form 1 reports to a Director promptly when work in compressed air at the project is finished. O. Reg. 213/91, s. 338 (2); O. Reg. 145/00, s. 39.

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) The following code shall be used to give signals between a work chamber, an air lock and the lock tender’s work position:

<table>
<thead>
<tr>
<th>Signal</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 signal</td>
<td>When no people are in the air lock, MATERIAL IS COMING OUT.</td>
</tr>
<tr>
<td></td>
<td>When people are in the air lock, STOP COMPRESSING.</td>
</tr>
<tr>
<td>3 signals</td>
<td>PEOPLE ARE COMING OUT OF THE AIR LOCK.</td>
</tr>
</tbody>
</table>

O. Reg. 213/91, s. 341 (3).

(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 or work chamber. O. Reg. 213/91, s. 349 (1).

(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 on Form 1 that the worker is physically fit to work in compressed air. O. Reg. 213/91, s. 352 (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 Form 1 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).

(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, Occupational Health Medical Service of the Ministry. O. Reg. 213/91, s. 352 (11).

(12) The records of medical examinations, tests, medical treatment and worker exposure to compressed air made or obtained by the project physician under sections 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).

(13) After six years, the project physician may forward the records to the Chief Physician, Occupational Health Medical Service 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).
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 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 Form 1 that the worker is physically fit to resume work in compressed air. O. Reg. 213/91, s. 354.

**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 the *Boilers and Pressure Vessels Act* 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).

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) No worker shall be designated under subsection (1) unless the worker is qualified as a hoisting engineer under the *Trades Qualification and Apprenticeship Act* or as a stationary engineer under the *Operating Engineers Act*. O. Reg. 213/91, s. 359 (2); O. Reg. 631/94, s. 13 (1); O. Reg. 571/99, s. 1.

(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) Subsection (2) does not apply to a worker who is in charge of compressors compressing air for a work chamber and air lock,

(a) if the compressors are immediately adjacent to a hoist;

(b) if the combined brake power of the prime movers of the compressors is fifty-six kilowatts or less; and

(c) if the operator of the hoist holds a certificate of qualification as a hoisting engineer under the *Trades Qualification and Apprenticeship Act* and is present at the project. O. Reg. 213/91, s. 359 (4); O. Reg. 631/94, s. 13 (2).

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 within fifteen metres of the work face, a portable pressure gauge and a thermometer. O. Reg. 213/91, s. 375.

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 within fifteen metres of a work face. O. Reg. 213/91, s. 381 (2).

(3) Each smoke line shall have two quick opening valves at least 100 millimetres in diameter,
   (a) one located within seventeen metres of the work face; and
   (b) one located between the air lock closest to the work chamber and the work chamber and within two metres of the air lock. O. Reg. 213/91, s. 381 (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) within fifteen metres of 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).

(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,
Section 2: Safety Culture

387. (1) No worker shall be permitted to perform manual work or engage in physical exertion during a rest period. O. Reg. 213/91, s. 387 (1).

(2) No worker shall be permitted to leave a project during a rest period. O. Reg. 213/91, s. 387 (2).

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 the Tables to this Regulation. O. Reg. 213/91, s. 395 (2).

(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 to this Regulation 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).

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).


399. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 213/91, s. 399.

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O. Reg. 213/91, Table 1.
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### Section 2: Safety Culture

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|                       |                  | 4         | 40 20                  | 16                | 1                                 |                             |
|                       |                  | 5         | 20 0                   | 1                 | 1                                 |                             |

O. Reg. 213/91, Table 2.
**RECORD OF COMPRESSED AIR WORKER**

**O. Reg. 213/91, Form 1.**

### FORM 1

#### RECORD OF COMPRESSED AIR WORKER

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**O. Reg. 213/91, Form 1.**

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**Section 2: Safety Culture**

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**RECORD OF COMPRESSED AIR WORKER**

**O. Reg. 213/91, Form 1.**

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**Section 2: Safety Culture**
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”)

“architect” means a member or licensee of the Ontario Association of Architects under the Architects Act; (“architecte”)

“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.

**EQUIVALENCY**

2. In applying this Regulation, the composition, design, size and arrangement of any material, object, device or thing may vary from the composition, design, size or arrangement prescribed in this Regulation where the factors of strength, health and safety are equal to or greater than the factors of strength, health and safety in the composition, design, size or arrangement prescribed. R.R.O. 1990, Reg. 851, 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

Section 2: Safety Culture
Section 2: Safety Culture

(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.

NOTICE OF ACCIDENTS

5. (1) The written report required by section 51 of the Act shall include,
(a) the name and address of the constructor and the employer;
(b) the nature and the circumstances of the occurrence and of the bodily injury sustained;
(c) a description of the machinery or equipment involved;
(d) the time and place of the occurrence;
(e) the name and address of the person who was killed or critically injured;
(f) the names and addresses of all witnesses to the occurrence; and
(g) the name and address of the physician or surgeon, if any, by whom the person was or is being attended for the injury. R.R.O. 1990, Reg. 851, s. 5 (1); O. Reg. 420/10, s. 2 (1).

(2) For the purposes of section 52 of the Act, notice of,
(a) an accident, explosion or fire which disables a worker from performing his or her usual work; or
(b) an occupational illness,
shall include,
(c) the name, address and type of business of the employer;
(d) the nature and the circumstances of the occurrence and of the bodily injury or illness sustained;
(e) a description of the machinery or equipment involved;
(f) the time and place of the occurrence;
(g) the name and address of the person suffering the injury or illness;
(h) the names and addresses of all witnesses to the occurrence;
(i) the name and address of the physician or surgeon, if any, by whom the person was or is being attended for the injury or illness; and
(j) the steps taken to prevent a recurrence or further illness. R.R.O. 1990, Reg. 851, s. 5 (2); O. Reg. 420/10, s. 2 (2, 3).

(3) A record of an accident, explosion or fire causing injury requiring medical attention but not disabling a worker from performing his or her usual work shall be kept in the permanent records of the employer and include particulars of,
(a) the nature and circumstances of the occurrence and of the injury sustained;
(b) the time and place of the occurrence; and
(c) the name and address of the injured person. R.R.O. 1990, Reg. 851, s. 5 (3); O. Reg. 420/10, s. 2 (4).

(4) A record kept as prescribed by subsection (3) for the inspection of an inspector shall be notice to the Director. R.R.O. 1990, Reg. 851, s. 5 (4).

RETENTION OF REPORTS AND RECORDS

6. Where, under section 5 or 51, a report or permanent record is prescribed to be kept, 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 reports or records are kept. R.R.O. 1990, Reg. 851, s. 6; O. Reg. 629/05, s. 2.
In this section, “apparatus” means equipment or a machine or device; (“appareil”)
“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).

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.

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.

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.

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.

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.

(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.

(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.

(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.

(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.

(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.

(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).

(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).

(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.

(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.

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<td>These are hand control systems, two-hand tripping systems and single or multiple beam systems.</td>
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<td>2.</td>
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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).

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. A notice under subsection 57 (9) of the Act shall be in Form 2. R.R.O. 1990, Reg. 851, s. 10.

**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; and
(c) a pit used for,
   (i) work on an assembly line, or
   (ii) maintenance of vehicles or similar equipment. R.R.O. 1990, Reg. 851, s. 13 (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
Section 2: Safety Culture

(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
(1) 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,
(a) the Rule Book, Electric Utility Operations published in 1990 by the Electrical Utilities Association of Ontario, Incorporated; or
(b) the Ontario Hydro Corporate Safety Rules and Policies, dated 1994. O. Reg. 630/94, s. 1; O. Reg. 144/99, 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, 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.

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.

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.

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.

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.

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.

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 permanent 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).

(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>
<thead>
<tr>
<th>Voltage of live power line</th>
<th>Minimum Distance</th>
</tr>
</thead>
<tbody>
<tr>
<td>750 to 150,000 volts</td>
<td>3 metres</td>
</tr>
<tr>
<td>150,001 to 250,000 volts</td>
<td>4.5 metres</td>
</tr>
<tr>
<td>250,001 volts and over</td>
<td>6 metres</td>
</tr>
</tbody>
</table>

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;
Section 2: Safety Culture

(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 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
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>
<thead>
<tr>
<th>Type of Metal Container</th>
<th>Number of Workers Conveying Metal</th>
<th>Minimum Width</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hand shank ladles and crucibles</td>
<td>2 or less</td>
<td>90 centimetres</td>
</tr>
<tr>
<td>Hand shank ladles and crucibles</td>
<td>More than 2</td>
<td>120 centimetres</td>
</tr>
<tr>
<td>Ladle or crucible on truck, buggy or overhead track</td>
<td></td>
<td>60 centimetres wider than greatest width of ladle, crucible, truck, buggy or container support</td>
</tr>
</tbody>
</table>

R.R.O. 1990, Reg. 851, s. 90 (1).

(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>
<thead>
<tr>
<th>Height of Mould Above Aisle Level</th>
<th>Number of Workers Allocated to the Pouring Operation</th>
<th>Minimum Width of a Pouring Aisle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 50 centimetres</td>
<td>Not more than 2</td>
<td>40 centimetres</td>
</tr>
<tr>
<td>50 centimetres or greater</td>
<td>Not more than 2</td>
<td>60 centimetres</td>
</tr>
<tr>
<td>Any height</td>
<td>More than 2</td>
<td>90 centimetres</td>
</tr>
</tbody>
</table>

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

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”)

Section 2: Safety Culture
“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 of Training, Colleges and Universities in order to complete a training program referred to in subsection 105 (1). O. Reg. 488/01, s. 1.

105. (1) Every employer shall establish and maintain the following training programs, approved by the Ministry of Training, Colleges and Universities:

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 — Common Core (Program # P750025) and,
   i. Feller Buncher Operator (Program # P750035),
   ii. Cut-to-Length Processor Operator (Program # P750045),
   iii. Grapple Skidder Operator (Program # P750055),
   iv. Forwarder/Transporter Operator (Program # P750065),
   v. Delimber Operator (Program # P750075),
   vi. Slasher Operator (Program # P750085),
   vii. Chipper Operator (Program # P750095). O. Reg. 488/01, s. 1.

(2) A document issued by the Ministry of Training, Colleges and Universities, 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.

(3) In accordance with the *Agreement on Internal Trade, 1995* and the *Protocols of Amendment*, a worker shall be deemed to hold a document showing successful completion referred to in subsection (2) if he or she has successfully completed equivalent training in another province or territory of Canada, as determined by the Director. O. Reg. 488/01, s. 1.

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) Despite subsection (2), the employer shall ensure that every worker employed to work as a cutter or as a skidder operator on May 31, 2002 who has not successfully completed the training required under subsection (1) is registered for the appropriate program by June 3, 2002. O. Reg. 488/01, s. 1.

(4) The employer shall ensure that every worker who is registered under subsection (2) or (3) successfully completes the appropriate program within one year after being registered. O. Reg. 488/01, s. 1.

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) Despite subsection (2), the employer shall ensure that every worker employed to operate mechanical harvesting equipment on May 31, 2002 who has not successfully completed the training required under subsection (1) is registered for the appropriate program by June 3, 2002. O. Reg. 488/01, s. 1.

(4) The employer shall ensure that every worker who is registered under subsection (2) or (3) successfully completes the appropriate program within one year after being registered. O. Reg. 488/01, s. 1.

106.2 (1) The employer shall ensure that every worker who supervises the operation of mechanical harvesting equipment has successfully completed Mechanical Harvesting Equipment Operator — Common Core (Program # P750025) before performing supervisory work relating to mechanical harvesting equipment. O. Reg. 488/01, s. 1.

(2) Despite subsection (1), the employer shall ensure that every worker employed to supervise the operation of mechanical harvesting equipment on May 31, 2002 who has not successfully completed the training required under subsection (1) successfully completes the program no later than December 31, 2002. O. Reg. 488/01, s. 1.

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 signaler; 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,


PART III
INDUSTRIAL HYGIENE

124. Where a worker is exposed to a potential hazard of injury to the eye due to contact with a biological or chemical substance, an eyewash fountain shall be provided. R.R.O. 1990, Reg. 851, s. 124.

125. Where a worker is exposed to a potential hazard of injury to the skin due to contact with a substance, a quick-acting deluge shower shall be provided. R.R.O. 1990, Reg. 851, s. 125.

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.

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 18 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).

(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. (1) In this section,
“dBA” means a measure of sound level in decibels using a reference sound pressure of 20 micropascals when measured on the A-weighting network of a sound level meter; (“dBA”)
“decibel” means a unit of measurement of sound pressure level that is equal to 20 times the logarithm to the base 10 of the ratio of the pressure of a sound, divided by the reference pressure of 20 micropascals; (“décibel”)
“equivalent sound exposure level” is the steady sound level in dBA which, if present in a workplace for eight hours in a day, would contain the same total energy as that generated by the actual and varying sound levels to which a worker is exposed in his or her total work day, determined in accordance with the formula set out in subsection (2). (“niveau d’exposition sonore équivalent”) O. Reg. 565/06, s. 2.

(2) The formula for determining the equivalent sound exposure level is as follows:

\[
L_{ex,8} = 10 \log_{10} \left( \frac{\sum_{i=1}^{n} (t_i \times 10^{-0.1 \cdot \text{SPL}_i})}{8} \right)
\]

where,
\(L_{ex,8}\) is the equivalent sound exposure level in 8 hours,
\(\Sigma\) is the sum of the values in the enclosed expression for all activities from \(i = 1\) to \(i = n\),
\(i\) is a discrete activity of a worker exposed to a sound level,
\(t_i\) is the duration in hours of \(i\),
\(\text{SPL}_i\) is the sound level of \(i\) in dBA,
\(n\) is the total number of discrete activities in the worker’s total workday.

O. Reg. 565/06, s. 2; O. Reg. 420/10, s. 27.

(3) Every employer shall take all measures reasonably necessary in the circumstances to protect workers from exposure to hazardous sound levels. O. Reg. 565/06, s. 2.

(4) The protective measures shall include the provision and use of engineering controls, work practices and, subject to subsection (7), personal protective equipment. O. Reg. 565/06, s. 2.

(5) Any measurement of sound levels in the workplace that is done in order to determine what protective measures are appropriate shall be done without regard to any use of personal protective equipment. O. Reg. 565/06, s. 2.

(6) Without limiting the generality of subsections (3) and (4), every employer shall ensure that no worker is exposed to a sound level greater than an equivalent sound exposure level of 85 dBA, \(L_{ex,8}\). O. Reg. 565/06, s. 2.
Except in the circumstances set out in subsections (8) and (9), the employer shall protect workers from exposure to a sound level greater than the limit described in subsection (6) without requiring them to use and wear personal protective equipment. O. Reg. 565/06, s. 2.

If this subsection applies, workers shall wear and use personal protective equipment appropriate in the circumstances to protect them from exposure to a sound level greater than the limit described in subsection (6). O. Reg. 565/06, s. 2.

Subsection (8) applies if engineering controls are required by subsections (3) and (4) and, (a) are not in existence or are not obtainable;
(b) are not reasonable or not practical to adopt, install or provide because of the duration or frequency of the exposures or because of the nature of the process, operation or work;
(c) are rendered ineffective because of a temporary breakdown of such controls; or
(d) are ineffective to prevent, control or limit exposure because of an emergency. O. Reg. 565/06, s. 2.

A clearly visible warning sign shall be posted at every approach to an area in the workplace where the sound level, measured as described in subsection (5), regularly exceeds 85 dBA. O. Reg. 565/06, s. 2.

TABLE 1 Revoked: O. Reg. 494/09, s. 3.
FORM 1 Revoked: O. Reg. 420/10, s. 28.

FORM 2
NOTICE

Occupational Health and Safety Act

TAKE NOTICE that this ..................................................
(specify the “place”, “matter”

is a danger or hazard to the safety of workers employed in or having access to these premises and the use thereof shall be discontinued immediately until the inspector’s order of ...........................
(date)

10 ..................................................
(name of employer or owner)

..................................................
(address of employer or owner)

has been complied with.

No person, except an inspector, shall remove this notice unless authorized by an inspector.

Dated the ............. day of .................................. 19........

..................................................
(signature of inspector)

Definitions

1. In this Regulation,
   “acceptable atmospheric levels” means that,
   (a) the atmospheric concentration of any explosive or flammable gas or vapour is less than,
       (i) 25 per cent of its lower explosive limit, if paragraph 1 of subsection 19 (4) applies,
       (ii) 10 per cent of its lower explosive limit, if paragraph 2 of subsection 19 (4) applies,
       (iii) 5 per cent of its lower explosive limit, if paragraph 3 of subsection 19 (4) applies,
   (b) the oxygen content of the atmosphere is at least 19.5 per cent but not more than 23 per cent by volume,
   (c) in the case of a workplace that is not a project, the exposure to atmospheric contaminants does not exceed any applicable 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 or Ontario Regulation 490/09 (Designated Substances) made under the Act, and
   (d) in the case of a workplace that is a project, if atmospheric contaminants, including gases, vapours, fumes, dusts or mists are present, their concentrations do not exceed what is reasonable in the circumstances for the protection of the health and safety of workers; (“niveaux atmosphériques acceptables”)
   “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”)
   “assessment” means an assessment of hazards with respect to one or more confined spaces in a workplace, as described in section 6; (“évaluation”)
   “atmospheric hazards” means,
   (a) the accumulation of flammable, combustible or explosive agents,
(b) an oxygen content in the atmosphere that is less than 19.5 per cent or more than 23 per cent by volume, or
(c) the accumulation of atmospheric contaminants, including gases, vapours, fumes, dusts or mists, that could,
   (i) result in acute health effects that pose an immediate threat to life, or
   (ii) interfere with a person’s ability to escape unaided from a confined space; (“risque atmosphérique”)
“cold work” means work that is not capable of producing a source of ignition; (“travail à froid”)
“confined space” means a fully or partially enclosed space,
   (a) that is not both designed and constructed for continuous human occupancy, and
   (b) in which atmospheric hazards may occur because of its construction, location or contents or because of work
      that is done in it; (“espace clos”)
“emergency work” means work performed in connection with an unforeseen event that involves an imminent danger
   to the life, health or safety of any person; (“travail d’urgence”)
“hot work” means work that is capable of producing a source of ignition; (“travail à chaud”)
“lead employer” means an employer who contracts for the services of one or more other employers or independent
   contractors in relation to one or more confined spaces that are located,
   (a) in the lead employer’s own workplace, or
   (b) in another employer’s workplace; (“employeur principal”)
“plan” means a plan for one or more confined spaces in a workplace, as described in section 7; (“plan”)
“program” means a program for one or more confined spaces in a workplace, as described in section 5;
   (“programme”)
“purging” means displacing contaminants from a confined space; (“purge”)
“related work” means work that is performed near a confined space in direct support of work inside the confined
   space. (“travail connexe”) O. Reg. 632/05, s. 1; O. Reg. 492/09, s. 1; O. Reg. 95/11, s. 1.

Application

Subject to section 3, this Regulation applies to all workplaces to which the Occupational Health and Safety Act
applies. O. Reg. 632/05, s. 2.

Exceptions

This Regulation does not apply to work performed underwater by a diver during a diving operation as defined in Ontario Regulation 629/94 (Diving Operations) made under the Act. O. Reg. 95/11, s. 2.

Sections 4 to 7 and 9 to 21 of this Regulation do not apply to emergency work performed by,
   (a) a firefighter as defined in subsection 1 (1) of the Fire Protection and Prevention Act, 1997; or
   (b) a person who,
      (i) holds a certificate under the Technical Standards and Safety Act, 2000 designating him or her as a gas
          technician, and
      (ii) is working under the direction of a fire department, as defined in the Fire Protection and Prevention
          Act, 1997. O. Reg. 632/05, s. 3 (2); O. Reg. 23/09, s. 1.

A worker described in subsection (2) who performs emergency work shall be adequately protected by,
   (a) personal protective equipment, clothing and devices provided by the worker’s employer;
   (b) training under section 8 provided by that employer; and
   (c) written procedures and other measures developed by that employer. O. Reg. 632/05, s. 3 (3).

Confined spaces with multi-employer involvement

This section applies if the workers of more than one employer perform work in the same confined space or
related work with respect to the same confined space. O. Reg. 632/05, s. 4 (1).

Before any worker enters the confined space or begins related work with respect to the confined space, the
lead employer or, in the case of a project, the constructor shall prepare a co-ordination document to ensure that the duties

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imposed on employers by sections 5 to 7, 9 to 12 and 14 to 20 are performed in a way that protects the health and safety of all workers who perform work in the confined space or related work with respect to the confined space. O. Reg. 632/05, s. 4 (2); O. Reg. 95/11, s. 3 (1).

(3) Without restricting the generality of subsection (2), in the case of a workplace that is not a project, the co-ordination document may provide for the performance of a duty or duties referred to in that subsection by one or more employers on behalf of one or more other employers with respect to some or all of the workers. O. Reg. 95/11, s. 3 (2).

(4) A copy of the co-ordination document shall be provided to,
(a) each employer of workers who perform work in the same confined space or related work with respect to the same confined space;
(b) in the case of a workplace that is not a project, the joint health and safety committee or health and safety representative, if any, for each employer of workers who perform work in the same confined space or related work with respect to the same confined space; and
(c) in the case of a workplace that is a project, the joint health and safety committee or health and safety representative, if any, for the project. O. Reg. 95/11, s. 3 (3).

Program

5. (1) If a workplace includes a confined space that workers may enter to perform work, the employer shall ensure that a written program for the confined space is developed and maintained in accordance with this Regulation before a worker enters the confined space. O. Reg. 95/11, s. 4.

(2) A program described in subsection (1) may apply to one or more confined spaces. O. Reg. 95/11, s. 4.

(3) In the case of a workplace that is not a project, the program described in subsection (1) shall be developed and maintained in consultation with the joint health and safety committee or the health and safety representative, if any. O. Reg. 95/11, s. 4.

(4) A program described in subsection (1) shall be adequate and shall provide for,
(a) a method for recognizing each confined space to which the program applies;
(b) a method for assessing the hazards to which workers may be exposed, in accordance with section 6;
(c) a method for the development of one or more plans, in accordance with section 7;
(d) a method for the training of workers, in accordance with section 8 or section 9.1, as the case may be; and
(e) an entry permit system that sets out the measures and procedures to be followed when work is to be performed in a confined space to which the program applies. O. Reg. 95/11, s. 4.

(5) In the case of a workplace that is not a project, the employer shall provide a copy of the program to the joint health and safety committee or the health and safety representative, if any. O. Reg. 95/11, s. 4.

(6) In the case of a workplace that is a project, the employer shall provide a copy of the program to the constructor, who shall provide a copy of it to the project’s joint health and safety committee or the health and safety representative, if any. O. Reg. 95/11, s. 4.

(7) The employer or constructor, as the case may be, shall ensure that a copy of the program is available to,
(a) any other employer of workers who perform work to which the program relates; and
(b) every worker who performs work to which the program relates, if the workplace has no joint health and safety committee or health and safety representative. O. Reg. 95/11, s. 4.

Assessment

6. (1) Before any worker enters a confined space, the employer shall ensure that an adequate assessment of the hazards related to the confined space has been carried out. O. Reg. 632/05, s. 6 (1).

(2) The assessment shall be recorded in writing and shall consider, with respect to each confined space,
(a) the hazards that may exist due to the design, construction, location, use or contents of the confined space; and
(b) the hazards that may develop while work is done inside the confined space. O. Reg. 632/05, s. 6 (2).

(3) The record of the assessment may be incorporated into an entry permit under section 10. O. Reg. 632/05, s. 6 (3).
If two or more confined spaces are of similar construction and present the same hazards, their assessments may be recorded in a single document, but each confined space shall be clearly identified in the assessment. O. Reg. 632/05, s. 6 (4).

(5) The employer shall appoint a person with adequate knowledge, training and experience to carry out the assessment and shall maintain a record containing details of the person’s knowledge, training and experience. O. Reg. 632/05, s. 6 (5).

(6) The assessment shall contain the name of the person who carries out the assessment. O. Reg. 632/05, s. 6 (6).

(7) The person shall sign and date the assessment and provide it to the employer. O. Reg. 632/05, s. 6 (7).

(8) On request, the employer shall provide copies of the assessment and of the record mentioned in subsection (5) to,

(a) the joint health and safety committee or the project’s joint health and safety committee, as the case may be, or the health and safety representative, if any; or

(b) every worker who performs work to which the assessment relates, if the workplace has no joint health and safety committee or health and safety representative. O. Reg. 632/05, s. 6 (8); O. Reg. 95/11, s. 5.

(9) The employer shall ensure that the assessment is reviewed as often as is necessary to ensure that the relevant plan remains adequate. O. Reg. 632/05, s. 6 (9).

Plan

7. (1) Before any worker enters a confined space, the employer shall ensure that an adequate written plan, including procedures for the control of hazards identified in the assessment, has been developed and implemented by a competent person for the confined space. O. Reg. 632/05, s. 7 (1).

(2) The plan may be incorporated into an entry permit under section 10. O. Reg. 632/05, s. 7 (2).

(3) The plan shall contain provisions for,

(a) the duties of workers;

(b) co-ordination in accordance with section 4, if applicable;

(c) on-site rescue procedures, in accordance with section 11;

(d) rescue equipment and methods of communication, in accordance with section 12;

(e) personal protective equipment, clothing and devices, in accordance with section 13;

(f) isolation of energy and control of materials movement, in accordance with section 14;

(g) attendants, in accordance with section 15;

(h) adequate means for entering and exiting, in accordance with section 16;

(i) atmospheric testing, in accordance with section 18;

(j) adequate procedures for working in the presence of explosive or flammable substances, in accordance with section 19; and

(k) ventilation and purging, in accordance with section 20. O. Reg. 632/05, s. 7 (3).

(4) One plan may deal with two or more confined spaces that are of similar construction and present the same hazards as identified by the assessment. O. Reg. 632/05, s. 7 (4).

(5) The employer shall ensure that the plan is reviewed as often as is necessary to ensure that it remains adequate. O. Reg. 632/05, s. 7 (5).

Hazard recognition and other general training — workplaces other than projects

8. (0.1) This section does not apply to workplaces that are projects. O. Reg. 95/11, s. 6.

(1) Every worker who enters a confined space or who performs related work shall be given adequate training for safe work practices for working in confined spaces and for performing related work, including training in the recognition of hazards associated with confined spaces. O. Reg. 632/05, s. 8 (1).

(2) The employer shall appoint a person with adequate knowledge, training and experience to conduct the training. O. Reg. 632/05, s. 8 (2).
The employer shall ensure that training under this section is developed in consultation with the joint health and safety committee or the health and safety representative, if any. O. Reg. 632/05, s. 8 (3).

The employer shall ensure that training under this section is reviewed, in consultation with the joint health and safety committee or the health and safety representative, if any, whenever there is a change in circumstances that may affect the safety of a worker who enters a confined space in the workplace, and in any case at least once annually. O. Reg. 632/05, s. 8 (4).

The employer shall maintain up-to-date written records showing who provided and who received training under this section, the nature of the training and the date when it was provided. O. Reg. 632/05, s. 8 (5).

The records may be incorporated into an entry permit under section 10. O. Reg. 632/05, s. 8 (6).

Training under this section may be combined with training under section 9. O. Reg. 632/05, s. 8 (7).

Plan-specific training — workplaces other than projects

This section does not apply to workplaces that are projects. O. Reg. 95/11, s. 7.

The employer shall ensure that every worker who enters a confined space or who performs related work,
(a) receives adequate training, in accordance with the relevant plan, to work safely and properly; and
(b) follows the plan. O. Reg. 632/05, s. 9 (1).

The employer shall maintain up-to-date written records showing who provided and who received training under this section, and the date when it was provided. O. Reg. 632/05, s. 9 (2).

The records may be incorporated into an entry permit under section 10. O. Reg. 632/05, s. 9 (3).

Training under this section may be combined with training under section 8. O. Reg. 632/05, s. 9 (4).

Training — projects

This section applies only to workplaces that are projects. O. Reg. 95/11, s. 8.

The employer shall ensure that every worker who enters a confined space or who performs related work receives adequate training to perform the work safely, in accordance with the relevant plan. O. Reg. 95/11, s. 8.

Training under subsection (2) shall include training in,
(a) the recognition of hazards associated with confined spaces; and
(b) safe work practices for working in confined spaces and for performing related work. O. Reg. 95/11, s. 8.

The employer shall maintain up-to-date written records showing who provided and who received training under this section and the date when it was provided. O. Reg. 95/11, s. 8.

The employer shall provide the training records under subsection (4) to the project’s joint health and safety committee or health and safety representative, if any, on request. O. Reg. 95/11, s. 8.

The records may be incorporated into an entry permit under section 10. O. Reg. 95/11, s. 8.

Entry permits

The employer shall ensure that a separate entry permit is issued each time work is to be performed in a confined space, before any worker enters the confined space. O. Reg. 632/05, s. 10 (1).

An entry permit shall be adequate and shall include at least the following:
1. The location of the confined space.
2. A description of the work to be performed there.
3. A description of the hazards and the corresponding control measures.
4. The time period for which the entry permit applies.
5. The name of the attendant described in section 15.
6. A record of each worker’s entries and exits.
7. A list of the equipment required for entry and rescue, and verification that the equipment is in good working order.
8. Results obtained in atmospheric testing under section 18.
9. If the work to be performed in the confined space includes hot work, adequate provisions for the hot work and corresponding control measures. O. Reg. 632/05, s. 10 (2).

(3) Before each shift, a competent person shall verify that the entry permit complies with the relevant plan. O. Reg. 632/05, s. 10 (3).

(4) The employer shall ensure that the entry permit, during the time period for which it applies, is readily available to every person who enters the confined space and to every person who performs related work with respect to the confined space. O. Reg. 632/05, s. 10 (4).

On-site rescue procedures

11. (1) The employer shall ensure that no worker enters or remains in a confined space unless, in accordance with the relevant plan, adequate written on-site rescue procedures that apply to the confined space have been developed and are ready for immediate implementation. O. Reg. 632/05, s. 11 (1).

(2) Before a worker enters a confined space, the employer shall ensure that an adequate number of persons trained in the matters listed in subsection (3) are available for immediate implementation of the on-site rescue procedures mentioned in subsection (1). O. Reg. 632/05, s. 11 (2).

(3) The persons shall be trained in,
   (a) the on-site rescue procedures mentioned in subsection (1);
   (b) first aid and cardio-pulmonary resuscitation; and
   (c) the use of the rescue equipment required in accordance with the relevant plan. O. Reg. 632/05, s. 11 (3).

Rescue equipment and methods of communication

12. (1) The employer shall ensure that the rescue equipment identified in the relevant plan is,
   (a) readily available to effect a rescue in the confined space;
   (b) appropriate for entry into the confined space; and
   (c) inspected as often as is necessary to ensure it is in good working order, by a person with adequate knowledge, training and experience who is appointed by the employer. O. Reg. 632/05, s. 12 (1).

(2) The inspection under clause (1) (c) shall be recorded in writing by the person, and the record of the inspection may be incorporated into the entry permit under section 10. O. Reg. 632/05, s. 12 (2).

(3) The employer shall establish methods of communication that are appropriate for the hazards identified in the relevant assessment, and shall make them readily available for workers to communicate with the attendant described in section 15. O. Reg. 632/05, s. 12 (3).

Personal protective equipment, clothing and devices

13. The employer shall ensure that each worker who enters a confined space is provided with adequate personal protective equipment, clothing and devices, in accordance with the relevant plan. O. Reg. 632/05, s. 13.

Isolation of energy and control of materials movement

14. The employer shall, in accordance with the relevant plan, ensure that each worker entering a confined space is adequately protected,
   (a) against the release of hazardous substances into the confined space,
      (i) by blanking or disconnecting piping, or
      (ii) if compliance with subclause (i) is not practical in the circumstances for technical reasons, by other adequate means;
   (b) against contact with electrical energy inside the confined space that could endanger the worker,
      (i) by disconnecting, de-energizing, locking out and tagging the source of electrical energy, or
      (ii) if compliance with subclause (i) is not practical in the circumstances for technical reasons, by other adequate means;
   (c) against contact with moving parts of equipment inside the confined space that could endanger the worker,
      (i) by disconnecting the equipment from its power source, de-energizing the equipment, locking it out and tagging it, or
(ii) if compliance with subclause (i) is not practical in the circumstances for technical reasons, by immobilizing the equipment by blocking or other adequate means; and

(d) against drowning, engulfment, entrapment, suffocation and other hazards from free-flowing material, by adequate means. O. Reg. 632/05, s. 14; O. Reg. 23/09, s. 2.

Attendant

15. (1) Whenever a worker is to enter a confined space, the employer shall ensure that an attendant,

(a) is assigned;

(b) is stationed outside and near,

(i) the entrance to the confined space, or

(ii) if there are two or more entrances, the one that will best allow the attendant to perform his or her duties under subsection (2);

(c) is in constant communication with all workers inside the confined space, using the means of communication described in the relevant plan; and

(d) is provided with a device for summoning an adequate rescue response. O. Reg. 632/05, s. 15 (1).

(2) The attendant shall not enter the confined space at any time and shall, in accordance with the relevant plan,

(a) monitor the safety of the worker inside;

(b) provide assistance to him or her; and

(c) summon an adequate rescue response if required. O. Reg. 632/05, s. 15 (2).

Means for entering and exiting

16. An adequate means for entering and exiting shall be provided for all workers who enter a confined space, in accordance with the relevant plan. O. Reg. 632/05, s. 16.

Preventing unauthorized entry

17. If there is a possibility of unauthorized entry into a confined space, the employer or, in the case of a project, the constructor shall ensure that each entrance to the confined space,

(a) is adequately secured against unauthorized entry; or

(b) has been provided with adequate barricades, adequate warning signs regarding unauthorized entry, or both. O. Reg. 632/05, s. 17; O. Reg. 95/11, s. 9.

Atmospheric testing

18. (1) The employer shall appoint a person with adequate knowledge, training and experience to perform adequate tests as often as necessary before and while a worker is in a confined space to ensure that acceptable atmospheric levels are maintained in the confined space in accordance with the relevant plan. O. Reg. 632/05, s. 18 (1).

(2) If the confined space has been both unoccupied and unattended, tests shall be performed before a worker enters or re-enters. O. Reg. 632/05, s. 18 (2).

(3) The person performing the tests shall use calibrated instruments that are in good working order and are appropriate for the hazards identified in the relevant assessment. O. Reg. 632/05, s. 18 (3).

(4) The employer shall ensure that the results of every sample of a test are recorded, subject to subsection (5). O. Reg. 632/05, s. 18 (4).

(5) If the tests are performed using continuous monitoring, the employer shall ensure that test results are recorded at adequate intervals. O. Reg. 632/05, s. 18 (5).

(6) The tests shall be performed in a manner that does not endanger the health or safety of the person performing them. O. Reg. 632/05, s. 18 (6).

(7) In this section,

“sample” means an individual reading of the composition of the atmosphere in the confined space; (“prélèvement”)

“test” means a collection of samples. (“essai”) O. Reg. 632/05, s. 18 (7).
Explosive and flammable substances

19. (1) This section applies only in respect of atmospheric hazards described in clause (a) of the definition of “atmospheric hazards” in section 1. O. Reg. 632/05, s. 19 (1).

(2) The employer shall ensure that this section is complied with, by ventilation, purging, rendering the atmosphere inert or other adequate means, in accordance with the relevant plan. O. Reg. 632/05, s. 19 (2).

(3) The employer shall ensure that no worker enters or remains in a confined space that contains or is likely to contain an airborne combustible dust or mist whose atmospheric concentration may create a hazard of explosion. O. Reg. 632/05, s. 19 (3).

(4) The employer shall ensure that no worker enters or remains in a confined space that contains or is likely to contain an explosive or flammable gas or vapour, unless one of the following applies:

1. The worker is performing only inspection work that does not produce a source of ignition. In the case of an explosive or flammable gas or vapour, the atmospheric concentration is less than 25 per cent of its lower explosive limit, as determined by a combustible gas instrument.

2. The worker is performing only cold work. In the case of an explosive or flammable gas or vapour, the atmospheric concentration is less than 10 per cent of its lower explosive limit, as determined by a combustible gas instrument.

3. The worker is performing hot work. All the following conditions are satisfied:
   i. In the case of an explosive or flammable gas or vapour, the atmospheric concentration is less than 5 per cent of its lower explosive limit, as determined by a combustible gas instrument.
   ii. The atmosphere in the confined space does not contain, and is not likely to contain while a worker is inside, an oxygen content greater than 23 per cent by volume.
   iii. The atmosphere in the confined space is monitored continuously.
   iv. The entry permit includes adequate provisions for hot work and corresponding control measures.
   v. An adequate warning system and exit procedure are provided to ensure that workers have adequate warning and are able to exit the confined space safely if either or both of the following occur:
      A. In the case of an explosive or flammable gas or vapour, the atmospheric concentration exceeds 5 per cent of its lower explosive limit.
      B. The oxygen content of the atmosphere exceeds 23 per cent by volume. O. Reg. 632/05, s. 19 (4); O. Reg. 23/09, s. 3.

(5) Subsections (3) and (4) do not apply if,
   a) the atmosphere in the confined space,
      i. has been rendered inert by adding an inert gas, and
      ii. is monitored continuously to ensure that it remains inert; and
   b) a worker entering the confined space uses,
      i. adequate respiratory protective equipment,
      ii. adequate equipment to allow persons outside the confined space to locate and rescue the worker if necessary, and
      iii. such other equipment as is necessary to ensure the worker’s safety. O. Reg. 632/05, s. 19 (5).

(6) The equipment mentioned in subclauses (5) (b) (i), (ii) and (iii) shall be inspected by a person with adequate knowledge, training and experience, appointed by the employer, and shall be in good working order before the worker enters the confined space. O. Reg. 632/05, s. 19 (6).

Ventilation and purging

20. (1) This section applies only in respect of atmospheric hazards described in clause (b) or (c) of the definition of “atmospheric hazards” in section 1. O. Reg. 632/05, s. 20 (1).

(2) If atmospheric hazards exist or are likely to exist in a confined space, the confined space shall be purged, ventilated or both, before any worker enters it, to ensure that acceptable atmospheric levels are maintained in the confined space while any worker is inside. O. Reg. 632/05, s. 20 (2).
If mechanical ventilation is required to maintain acceptable atmospheric levels, an adequate warning system and exit procedure shall also be provided to ensure that workers have adequate warning of ventilation failure and are able to exit the confined space safely. O. Reg. 632/05, s. 20 (3).

If compliance with subsection (2) is not practical in the circumstances for technical reasons,

(a) compliance with subsection (3) is not required; and

(b) a worker entering the confined space shall use,

(i) adequate respiratory protective equipment,

(ii) adequate equipment to allow persons outside the confined space to locate and rescue the worker if necessary, and

(iii) such other equipment as is necessary to ensure the worker’s safety. O. Reg. 632/05, s. 20 (4).

The equipment mentioned in subclauses (4) (b) (i), (ii) and (iii) shall be inspected by a person with adequate knowledge, training and experience, appointed by the employer, and shall be in good working order before the worker enters the confined space. O. Reg. 632/05, s. 20 (5).

Records

21. (1) In the case of a workplace that is not a project, the employer shall retain every assessment, plan, co-ordination document under section 4, record of training under subsection 8 (5) or 9 (2), entry permit under section 10, record of an inspection under subsection 12 (2) and record of a test under section 18, including records of each sample, for the longer of the following periods:

1. One year after the document is created.

2. The period that is necessary to ensure that at least the two most recent records of each kind that relate to a particular confined space are retained. O. Reg. 95/11, s. 10.

(2) In the case of a workplace that is a project, the constructor or employer, as the case may be,

(a) shall keep available for inspection at the project every assessment, plan, co-ordination document under section 4, record of training under subsection 9.1 (4), entry permit under section 10, record of an inspection under subsection 12 (2) and record of a test under section 18, including records of each sample; and

(b) shall retain the documents described in clause (a) for one year after the project is finished. O. Reg. 95/11, s. 10.

(3) If section 4 applies,

(a) the documents described in subsection (1) shall be retained by the employer responsible for creating them; and

(b) the documents described in clause (2) (a) shall be retained by the constructor or employer, as the case may be, responsible for creating them. O. Reg. 95/11, s. 10.

22. Omitted (provides for coming into force of provisions of the English version of this Regulation). O. Reg. 632/05, s. 22.

TABLE 1 Revoked: O. Reg. 492/09, s. 2.
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”)

“patient or resident” means a person, including an out-patient, who is received, lodged in, admitted or registered at a facility for the purposes of being observed, examined, diagnosed or rehabilitated or for the purposes of receiving care or treatment; (“malade ou pensionnaire”)

“work surface” means a floor, platform or other surface used by a worker to stand or walk on in performing work and includes a surface on the premises of a facility used by a worker in performing work or in travelling to or from a work area. (“surface de travail”) O. Reg. 67/93, s. 1; O. Reg. 631/05, s. 1.

This Regulation applies to the following types of facilities:

1. A hospital as defined in the Public Hospitals Act.
2. A laboratory or specimen collection centre as defined in the Laboratory and Specimen Collection Centre Licensing Act.
3. A private hospital as defined in the Private Hospitals Act.
4. A psychiatric facility as defined in the Mental Health Act.
5. A long-term care home as defined in the Long-Term Care Homes Act, 2007.
6., 7. Revoked: O. Reg. 94/10, s. 1.

8. An intensive support residence or a supported group living residence as defined in the Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008.

9. A facility where any of the following are provided: child development services or child treatment services, as defined in the Child and Family Services Act, or child and family intervention services, as defined in Regulation 70 of the Revised Regulations of Ontario, 1990.

10. Revoked: O. Reg. 25/09, s. 1 (1).

11. Laundry facilities located in any of the facilities listed above.

12. A plant, as defined in Ontario Regulation 219/01 (Operating Engineers) made under the Technical Standards and Safety Act, 2000, that is operated primarily for one or more than one of the facilities listed above. O. Reg. 67/93, s. 2 (1); O. Reg. 25/09, s. 1; O. Reg. 94/10, s. 1; O. Reg. 169/11, s. 1.

(2) At a laundry facility to which this Regulation applies, if the regulations under the Occupational Health and Safety Act relating to industrial establishments conflict with this Regulation, this Regulation prevails unless the provision in that other regulation states that it is to prevail over this Regulation. O. Reg. 67/93, s. 2 (2).

3. In applying this Regulation, a measure or a procedure or the composition, design, size or arrangement of any physical object, device or thing may vary from that prescribed if,

(a) the variation affords protection for the health or safety of a worker equal to or greater than that prescribed by this Regulation; and

(b) notice of the variation is given to the joint health and safety committee, if any, and to the trade union, if any. O. Reg. 67/93, s. 3.

4. The employer shall keep on file all records or reports that are required to be kept under this Regulation for a period of at least one year or such longer period as is necessary to ensure that the two most recent reports or records are on file. O. Reg. 67/93, s. 4.

NOTICE OF ACCIDENTS

5. (1) If a worker is killed or critically injured at a facility, the written report required by subsection 51 (1) of the Act shall include,

(a) the name and address of the employer;

(b) the nature and circumstances of the occurrence and of the bodily injury sustained;

(c) a description of the machinery or thing involved, if any;

(d) the time and place of the occurrence;

(e) the name and address of the person who was critically injured or killed;

(f) the names and addresses of all witnesses to the occurrence;

(g) the name and address of the physician or surgeon, if any, who is attending to or attended to the injured or deceased person; and

(h) the steps taken to prevent a recurrence. O. Reg. 67/93, s. 5 (1).

(2) If an accident, explosion or fire causes injury to a worker at a facility that disables the worker from performing his or her usual work, the written notice required by subsection 52 (1) of the Act shall include,

(a) the name and address of the employer;

(b) the nature and circumstances of the occurrence and of the bodily injury sustained by the worker;

(c) a description of the machinery or thing involved, if any;

(d) the time and place of the occurrence;

(e) the name and address of the worker who was injured;

(f) the names and addresses of all witnesses to the occurrence;

(g) the name and address of the physician or surgeon, if any, who is attending to or attended to the worker for the injury; and
(h) the steps taken to prevent a recurrence. O. Reg. 67/93, s. 5 (2).

(3) If an accident, explosion or fire at a facility causes injury requiring medical attention but does not disable a worker from performing his or her usual work, the employer shall keep a record of that occurrence and the record shall include,

(a) the nature and circumstances of the occurrence and of the injury sustained;
(b) the time and place of the occurrence;
(c) the name and address of the injured worker; and
(d) the steps taken to prevent a recurrence. O. Reg. 67/93, s. 5 (3).

(4) The record kept by the employer under subsection (3) for inspection by an inspector shall be notice to a Director. O. Reg. 67/93, s. 5 (4).

(5) The written notice required under subsection 52 (2) of the Act if an employer is advised that a 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 shall include,

(a) the name and address of the employer;
(b) the nature of the occupational illness and the circumstances which gave rise to such illness;
(c) a description of the cause or the suspected cause of the occupational illness;
(d) the period when the worker was affected;
(e) the name and address of the worker who is suffering from the occupational illness;
(f) the name and address of the physician, if any, who is attending to or attended to the worker for the illness; and
(g) the steps taken to prevent further illness. O. Reg. 67/93, s. 5 (5); O. Reg. 25/09, s. 2.

6. If an occurrence involves the collapse or failure of a temporary or permanent structure that was designed by a professional engineer or architect, the employer shall, within fourteen days after the occurrence, supplement the notice or report required by section 51 or 52 of the Act with the written opinion of a professional engineer as to the cause of the collapse or failure. O. Reg. 67/93, s. 6.

7. A notice under subsection 57 (9) of the Act shall be in Form 1. O. Reg. 67/93, s. 7.

GENERAL DUTY TO ESTABLISH MEASURES AND PROCEDURES

8. Every employer in consultation with the joint health and safety committee or health and safety representative, if any, and upon consideration of the recommendation thereof, shall develop, establish and put into effect measures and procedures for the health and safety of workers. O. Reg. 67/93, s. 8.

9. (1) The employer shall reduce the measures and procedures for the health and safety of workers established under section 8 to writing and such measures and procedures may deal with, but are not limited to, the following:

1. Safe work practices.
2. Safe working conditions.
3. Proper hygiene practices and the use of hygiene facilities.
4. The control of infections.
5. Immunization and inoculation against infectious diseases.
6. The use of appropriate antiseptics, disinfectants and decontaminants.
7. The hazards of biological, chemical and physical agents present in the workplace, including the hazards of dispensing or administering such agents.
8. Measures to protect workers from exposure to a biological, chemical or physical agent that is or may be a hazard to the reproductive capacity of a worker, the pregnancy of a worker or the nursing of a child of a worker.
9. The proper use, maintenance and operation of equipment.
10. The reporting of unsafe or defective devices, equipment or work surfaces.

11. The purchasing of equipment that is properly designed and constructed.

12. The use, wearing and care of personal protective equipment and its limitations.

13. The handling, cleaning and disposal of soiled linen, sharp objects and waste.

(2) At least once a year the measures and procedures for the health and safety of workers shall be reviewed and revised in the light of current knowledge and practice.

(3) The review and revision of the measures and procedures shall be done more frequently than annually if,

(a) the employer, on the advice of the joint health and safety committee or health and safety representative, if any, determines that such review and revision is necessary; or

(b) there is a change in circumstances that may affect the health and safety of a worker.

(4) The employer, in consultation with and in consideration of the recommendation of the joint health and safety committee or health and safety representative, if any, shall develop, establish and provide training and educational programs in health and safety measures and procedures for workers that are relevant to the workers’ work. O. Reg. 67/93, s. 9.

PERSONAL PROTECTIVE EQUIPMENT

10. (1) A worker who is required by his or her employer or by this Regulation to wear or use any protective clothing, equipment or device shall be instructed and trained in its care, use and limitations before wearing or using it for the first time and at regular intervals thereafter and the worker shall participate in such instruction and training.

(2) Personal protective equipment that is to be provided, worn or used shall,

(a) be properly used and maintained;

(b) be a proper fit;

(c) be inspected for damage or deterioration; and

(d) be stored in a convenient, clean and sanitary location when not in use. O. Reg. 67/93, s. 10.

11. If a worker is exposed,

(a) to the hazard of head injury, the worker shall wear head protection appropriate in the circumstances;

(b) to the hazard of eye injury, the worker shall wear eye protection appropriate in the circumstances;

(c) to the hazard of foot injury, the worker shall wear foot protection appropriate in the circumstances; and

(d) to the hazard of slipping on a work surface, the worker shall wear footwear with slip-resistant soles. O. Reg. 67/93, s. 11.

12. If a worker has or wears long hair, loose clothing or jewellery that may present a hazard, it shall be suitably confined. O. Reg. 67/93, s. 12.

13. (1) Except where work is performed from a ladder, if a worker is exposed to the hazard of falling to a surface more than three metres below the position where the worker is situated, the worker shall be provided with and shall wear a fall arrest system.

(2) The fall arrest system shall consist of 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.

(3) The fall arrest system shall,

(a) 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

(b) be equipped with a shock absorber or other device to limit the maximum arresting force to 8.0 kilonewtons to the worker. O. Reg. 67/93, s. 13.

14. (1) If a worker is exposed to the hazard of drowning and the liquid into which the worker could fall is of sufficient depth that a flotation device would be effective,

(a) the worker shall be provided with and wear a flotation device appropriate in the circumstances;
(b) an alarm system to warn workers that a rescue operation is to be carried out shall be provided;
(c) appropriate rescue equipment including flotation devices, poles and ropes shall be available in proximity to
the hazard for immediate use; and
(d) a worker trained in cardio-pulmonary resuscitation shall be immediately available.

(2) Subsection (1) does not apply to a swimming pool or a pool used for therapeutic purposes. O. Reg. 67/93, s. 14.

15. (1) A worker who supports, positions or restrains a patient or resident during X-ray irradiation of the patient
or resident shall be provided with and wear a protective apron and protective gloves and, where appropriate, a protective
collar.

(2) The equipment provided under subsection (1) shall have a lead equivalence of at least 0.5 millimetres.
O. Reg. 67/93, s. 15.

PREMISES

16. A warning sign shall be posted on any door, corridor or stairway,
(a) that is not a means of egress but that is located or arranged so that it could be mistaken for one; or
(b) that leads to a hazardous, restricted or unsafe area. O. Reg. 67/93, s. 16.

17. Except where the door is in a fire separation, a self-closing door in a corridor used as a passageway for
vehicles or wheeled equipment shall be equipped with a hold-open device and a see-through panel. O. Reg. 67/93, s. 17.

18. (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.

(2) 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.

(3) One egress doorway in a hazardous room shall be located within a maximum distance of twenty-five metres
from any point in the room.

(4) A hazardous room shall be located in a floor area that has at least two exits.

(5) In this section,
“hazardous room” means a room containing a substance which, because of its nature or the form in which the
substance exists, is handled or stored, may explode or become easily ignited causing a fire or creating an
atmosphere or condition of imminent hazard to a worker. O. Reg. 67/93, s. 18.

VENTILATION

19. (1) General indoor ventilation adequate to protect the health and safety of a worker shall be provided by
natural or mechanical means.

(2) A mechanical ventilation system shall be inspected every six months to ensure it is in good condition.

(3) The inspection referred to in subsection (2) shall be carried out by a person who is qualified by training and
experience to make such an inspection.

(4) The person carrying out the inspection shall file a report on the inspection with the employer and with the
joint health and safety committee or health and safety representative, if any.

(5) A mechanical ventilation system,
(a) shall be serviced and have maintenance work performed on it as frequently as recommended by the
manufacturer; and
(b) shall be serviced, have maintenance work performed on it or be repaired when a report referred to in
subsection (4) indicates it is necessary to ensure the system is maintained in good condition. O. Reg. 67/93, s. 19.

20. (1) The ventilation system shall be such that replacement air is provided to replace air that is exhausted.
The replacement air shall,
(a) be heated, when necessary, to maintain at least the minimum temperature in the workplace specified in subsection 21 (1);
(b) be free from contamination from any hazardous dust, vapour, smoke, fume, mist or gas; and
(c) enter in such a manner so as not to cause undue drafts and prevent,
   (i) blowing of settled dust into the workplace, and
   (ii) interference with any exhaust system.

Air discharged from any exhaust system shall be discharged in such a manner so as to prevent the return of contaminants to any work area. O. Reg. 67/93, s. 20.

HEATING

21. (1) Subject to subsections (2) and (3), an enclosed workplace shall be maintained at a temperature,
(a) that is suitable for the type of work performed;
(b) that is no less than 18 degrees Celsius; and
(c) that is not likely to cause physical stress because of heat.

(2) Clause (1) (b) does not apply to a workplace,
(a) that is normally unheated;
(b) where materials requiring lower temperatures are used or stored, or a process or activity is carried out or performed requiring lower temperatures;
(c) 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 18 degrees Celsius;
(d) where the work or activity is such that a temperature of 18 degrees Celsius could cause discomfort; or
(e) during the first hour of the main operating shift where heat from processing or equipment provides a substantial portion of the heating.

(3) If it is not practical in the circumstances to maintain the temperature of an enclosed workplace as required by clause (1) (c), the employer shall, in consultation with the joint health and safety committee or health and safety representative, if any, develop, maintain and put into effect measures and procedures to ensure that a worker is not exposed to heat stress conditions that are likely to endanger or injure the worker. O. Reg. 67/93, s. 21.

LIGHTING

22. (1) A workplace shall be provided with illumination in accordance with the minimum lighting requirements as set out in Part 3 of the Ontario Building Code.

(2) The brightness levels and ratios, glare, contrast and shadows shall be maintained at a level that is not likely to be a hazard to a worker.

(3) Glare and reflection that are likely to be a hazard to a worker shall be limited as far as is practicable. O. Reg. 67/93, s. 22.

23. If a glare from a direct lighting source is likely to be a hazard to a worker, the source shall be shielded by louvres, lenses, lens covers or diffusers which control the glare. O. Reg. 67/93, s. 23.

24. If a worker is required to use a video display terminal for a continuous period of one hour or more, the worker shall have at least five minutes of time free from such work in every hour. O. Reg. 67/93, s. 24.

25. If fluorescent tubes are disposed of by crushing or compacting, it shall be done in an area adequately ventilated to protect the health and safety of the worker and the worker shall be provided with and use appropriate protective equipment. O. Reg. 67/93, s. 25.

26. Burned-out light bulbs and fluorescent tubes shall be promptly replaced with appropriate replacements to ensure the workplace is provided with adequate illumination to perform the work safely. O. Reg. 67/93, s. 26.

27. Lighting equipment shall be serviced and maintained at regular intervals to ensure the workplace is provided with illumination in accordance with section 22. O. Reg. 67/93, s. 27.
HYGIENE FACILITIES

28. Toilets and washbasins for the use of workers shall,
   (a) be provided in accordance with the requirements for sanitary facilities as set out in Part 3 of the Ontario
       Building Code;
   (b) have hot and cold running water for the washbasins; and
   (c) have reasonable personal hygiene supplies and equipment, including soap and disposable towels. O. Reg.
       67/93, s. 28.

29. (1) Potable drinking water shall be provided from a fountain with an upward jet or from 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.
       (2) Potable drinking water shall be available,
           (a) on every floor where work is regularly performed; and
           (b) within 100 metres of any area where work is regularly performed. O. Reg. 67/93, s. 29.

30. (1) If ten or more workers are employed at a facility, a room or other space affording reasonable privacy
       shall be provided.
       (2) The room shall be equipped with one or more cots and chairs, unless the facility has a first-aid station or
           infirmary room that is so equipped. O. Reg. 67/93, s. 30.

31. Refrigerators used to store cultures, specimens or biological ampules shall not be used to store food or drink.
    O. Reg. 67/93, s. 31.

32. No food, drink, tobacco or cosmetics shall be consumed, applied or kept in areas where infectious materials,
    hazardous chemicals or hazardous drugs are used, handled or stored. O. Reg. 67/93, s. 32.

WORK SURFACES

33. (1) A work surface shall be kept free of,
       (a) obstructions and hazards;
       (b) cracks, holes and bumps that may endanger a worker; and
       (c) accumulations of refuse, snow and ice.
       (2) A work surface shall not have any finish or protective material used on it that is likely to make the surface
           slippery.
       (3) A worker who knows that the condition of a work surface fails to comply with subsection (1) or (2) shall
           report the failure to a supervisor.
       (4) If a report of a failure to comply is made to a supervisor, he or she shall ensure that steps necessary to remedy
           the situation are taken forthwith, and until remedied, the hazard shall be identified by a conspicuous warning sign.
           O. Reg. 67/93, s. 33.

34. (1) If there is a spill of a liquid or material on a work surface that is likely to cause a worker to slip or fall, it
       shall be cleaned up forthwith and, until cleaned up, it shall be identified by a conspicuous warning sign.
       (2) If a work surface is slippery when it is being cleaned or polishing, a conspicuous sign warning that the surface
           is slippery shall be posted during cleaning or polishing. O. Reg. 67/93, s. 34.

35. If wet processes are used, or wet conditions are present, on a work surface and they cause it to be slippery,
    steps necessary to remedy the situation shall be taken including,
    (a) the use of non-slip work surfaces;
    (b) the provision of dry-standing places or non-slip mats;
    (c) the provision of drainage adequate in the circumstances; or
    (d) the use of water resistant, non-slip footwear by workers who may use the work surface. O. Reg. 67/93, s. 35.

36. (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, and
   (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.

(2) Subsection (1) does not apply to,
(a) a loading dock;
(b) a pit used for maintenance of vehicles or similar equipment;
(c) a roof to which access is required for maintenance purposes only;
(d) a swimming pool or a pool used for therapeutic purposes; or
(e) a stage in an auditorium or lecture theatre. O. Reg. 67/93, s. 36.

37. A guardrail shall be designed and constructed to meet the requirements for guardrails as set out in Parts 3 and 4 of the Ontario Building Code or it shall,
(a) have a horizontal top rail located not less than ninety-one and not more than 107 centimetres above the surface to be guarded;
(b) have an intermediate rail located midway between the top rail and the surface to be guarded;
(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 not less than 125 millimetres;
(d) be constructed to meet the structural requirements for guardrails as set out in Part 4 of the Ontario Building Code; and
(e) be free of splinters and other hazardous protrusions. O. Reg. 67/93, s. 37.

38. An opening in a work surface shall be covered or shall have a guardrail around its perimeter. O. Reg. 67/93, s. 38.

39. A cover on an opening in a work surface shall be secured in place and shall be constructed to meet the structural requirements for loads due to the use of floors and roofs as set out in Part 4 of the Ontario Building Code. O. Reg. 67/93, s. 39.

40. If frequent access is required to equipment that is elevated above or is located below a work surface, permanent platforms shall be provided with access by a fixed stair or a fixed access ladder. O. Reg. 67/93, s. 40.

41. (1) A fixed access ladder 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 more than five metres above grade, floor or landing, have a safety cage beginning 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. O. Reg. 67/93, s. 41 (1); O. Reg. 25/09, s. 3.

(2) Subsection (1) does not apply to an access ladder on a tower, water tank, chimney or similar structure that has a safety device which will provide protection should a worker using the ladder fall. O. Reg. 67/93, s. 41 (2).

42. (1) In this section,
"restricted space" means a tank, vat, vessel, duct, vault, boiler or other space from which the egress of a worker is restricted, limited or impeded because of the construction, design, location or other physical characteristics of the space.

(2) A worker shall enter a restricted space only if,

(a) he or she is informed of and familiar with the characteristics of the restricted space which restrict, limit or impede egress and is instructed in the procedures for entering, working in and exiting from the restricted space;

(b) there are procedures and measures in place for the removal of the worker from the restricted space in the event of an emergency;

(c) at least one other worker is stationed outside the restricted space and in proximity to it and is readily available and capable of implementing emergency procedures and measures for the removal of the worker from the restricted space; and

(d) mechanical equipment in the restricted space is disconnected from its power source and is locked out.

(3) The requirements of subsection (2) apply with all necessary modifications while a worker is in a restricted space. O. Reg. 67/93, s. 42.

43. Revoked: O. Reg. 97/11, s. 1.

EQUIPMENT

44. Machinery or equipment shall be,

(a) suitable for its actual use;

(b) constructed of materials of sufficient size and strength to withstand imposed stresses;

(c) provided with locking devices in order to prevent accidental operation which may be a hazard to a worker;

(d) placed on a surface that is capable of supporting it;

(e) inspected immediately before its use and at regular intervals as recommended by the manufacturer;

(f) serviced and maintained in accordance with the recommendations and instructions of the manufacturer;

(g) operated by a worker trained in its use and function; and

(h) stored in a manner that prevents its movement. O. Reg. 67/93, s. 44.

45. If a machine or prime mover or transmission equipment has an exposed moving part that may endanger the safety of any worker, it shall be equipped with and guarded by a guard or other device that prevents access to the moving part. O. Reg. 67/93, s. 45.

46. An in-running nip hazard or any part of a machine, device or thing that may endanger the safety of a worker shall be equipped with and guarded by a guard or other device that prevents access to the pinch point. O. Reg. 67/93, s. 46.

47. A machine shall be shielded or guarded so that the safety of a worker is not endangered by its product, the material being processed or its waste stock. O. Reg. 67/93, s. 47.

48. An emergency stop control on a power-driven machine shall be conspicuously identified and be located within easy reach of the operator. O. Reg. 67/93, s. 48.

49. (1) An operating control that acts as a guard for a machine that is not otherwise guarded shall,

(a) be in a location where the safety of the operator is not endangered by moving machinery; and

(b) be arranged so that it cannot be operated accidentally.

(2) An operating control that acts as a guard for a machine that is not otherwise guarded shall not be made ineffective by a tie-down device or other means. O. Reg. 67/93, s. 49.

50. (1) Subject to subsection (2), a worker shall repair, maintain or adjust a machine, transmission machinery, device or thing or a part thereof only if,

(a) the control switches or other control mechanisms are locked out;

(b) the moving parts are stopped; and
(c) the hydraulic, pneumatic or gravity-stored energy is dissipated or contained.

(2) If it is not practical to de-energize a machine or transmission equipment by locking out its controls during repair, maintenance or adjustment, a worker may do such work if barriers, shields or other effective precautions are used or taken to ensure the safety of the worker while he or she is doing the work. O. Reg. 67/93, s. 50.

51. Clearance 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. O. Reg. 67/93, s. 51.

52. (1) Subject to subsection (3), if a worker is repairing or altering a gas line, steam line, pipeline, drum, tank or other container, the worker shall,

(a) adjust its internal pressures to atmospheric pressure before any fastening is removed;

(b) drain and clean it or otherwise render it free from any explosive, flammable or harmful substance.

(2) If a worker is repairing or altering a gas line, steam line, pipeline, drum, tank or other container, the worker shall not refill it while there is any risk of vaporizing or igniting the substance that is being placed in it.

(3) Subsection (1) does not apply if a competent person is hot-tapping and boxing-in a pipeline under controlled conditions so as to provide for the protection of all workers. O. Reg. 67/93, s. 52.

53. If machinery or equipment is being dismantled, serviced or repaired and the collapse of any part of it may injure a worker, blocking shall be installed to prevent its collapse. O. Reg. 67/93, s. 53.

54. If a worker may pass or work under machinery, equipment or material that is temporarily elevated, it shall be securely and solidly blocked to prevent it from falling or moving. O. Reg. 67/93, s. 54.

55. Before lifting or self-propelled mobile equipment is operated after its repair or modification, a person qualified by training and experience to do so shall inspect it to ensure that it is in good condition and a record shall be kept of the inspection. O. Reg. 67/93, s. 55.

56. (1) Glassware used in a laboratory shall be inspected for chips and cracks before use.

(2) Chipped or cracked glassware shall not be used unless it is repaired to a condition that does not present a hazard to a worker and if not repaired it shall be placed in a puncture-resistant container for disposal as waste. O. Reg. 67/93, s. 56.

57. A grinding wheel shall be,

(a) marked with the maximum speed at which it may be operated;

(b) checked for any defect before it is mounted;

(c) mounted in accordance with the manufacturer’s specifications;

(d) provided with protective hoods that enclose the wheel as closely as the work will permit;

(e) operated only by a worker using eye protection;

(f) operated at a speed which does not exceed the manufacturer’s recommendations; and

(g) stored where it will not be subjected to heat, cold or impact which may damage it. O. Reg. 67/93, s. 57.

58. A work rest used with a grinding wheel shall,

(a) be in a position above the centre line of the grinding wheel;

(b) have a maximum clearance of three millimetres from the grinding wheel; and

(c) be adjusted only when the grinding wheel is stationary. O. Reg. 67/93, s. 58.

59. (1) A centrifuge shall be maintained and operated in accordance with the recommendations and instructions of its manufacturer.

(2) A centrifuge shall be designed or equipped with a device to prevent it from being operated at a speed in excess of that for which it was designed and intended.

(3) The load in a centrifuge shall be balanced to minimize vibration during its operation.

(4) If a flammable or infectious material is being centrifuged, a legible sign warning of the hazard shall be posted in the area where the centrifuge is being operated.
(5) If a bench-model centrifuge is being used to centrifuge a flammable or infectious material, it shall be operated in a biological safety cabinet or be otherwise appropriately contained, unless sealed safety heads or sealed centrifugal caps are used.

(6) Cushions shall be used in centrifuging material that is in glass containers. O. Reg. 67/93, s. 59.

60. (1) An autoclave or sterilization machine shall,

(a) if the sterilant used in it is ethylene oxide or another hazardous chemical, be vented to the outdoors;
(b) be operated by a worker qualified by training and experience to do so;
(c) have its operating and emergency instructions posted adjacent to it;
(d) be maintained on a regular basis and be inspected at least once every three months;
(e) be tested when first put into service and annually thereafter by a person qualified by training and experience to do so and a record of the test shall be kept; and
(f) have a pressure relief valve set at a pressure not exceeding that for which it was designed and intended.

(2) After its operation or use, an autoclave or sterilization machine shall not be opened until its pressure has returned to atmospheric pressure. O. Reg. 67/93, s. 60.

61. (1) Subject to subsection (2), a worker who is loading or unloading an autoclave or sterilization machine shall be provided with and wear aprons and elbow-length insulated gloves of an impervious material.

(2) If the autoclave or sterilization machine does not use heat, the gloves are not required to be insulated. O. Reg. 67/93, s. 61.

**Electrical Equipment**

62. Electrical equipment, power lines, conductors and insulating materials shall,

(a) be suitable for their use;
(b) be certified by the Canadian Standards Association or by the Electrical Safety Authority, as defined in the *Electricity Act, 1998*; and
(c) be installed, maintained, modified and operated in such a manner as not to present a hazard to a worker. O. Reg. 67/93, s. 62; O. Reg. 142/99, s. 1.

63. Except where electrical work is being carried out as permitted by section 68, tools, ladders, scaffolding and other equipment or materials capable of conducting electricity shall not be stored, used or left close enough to any energized electrical installation such that they may make electrical contact with an energized conductor. O. Reg. 67/93, s. 63.

64. No person, other than a person authorized to do so by the supervisor in charge of the room or enclosure, shall enter or be permitted to enter a room or other enclosure that contains exposed energized electrical parts. O. Reg. 67/93, s. 64.

65. The entrance to a room or other enclosure containing exposed energized electrical parts shall be marked by conspicuous signs warning of the danger and stating that entry by unauthorized persons is prohibited. O. Reg. 67/93, s. 65.

66. (1) The power supply to electrical installations, equipment or power lines shall be disconnected, locked out of service and tagged before any work is done, and while any work is being done, on or near the installations, equipment or power lines.

(2) Locking out and tagging are not required,

(a) if the power lines 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.

(3) Before beginning the work, each worker shall determine if the power supply is disconnected.

(4) If locking out and tagging are not required, the employer shall ensure that the procedures set out in clause (2) (b) are carried out.
This section does not apply if it is not practicable to disconnect electrical installations, equipment or power lines from the power supply before working on, or near, the installations, equipment or power lines. O. Reg. 67/93, s. 66.

67. A tag required by subsection 66 (1) shall,
(a) be made of non-conducting material;
(b) be secured to prevent its inadvertent removal;
(c) be placed in a conspicuous location;
(d) state the reason the switch is opened;
(e) show the name of the person responsible for opening the switch; and
(f) show the date and time on which the switch was opened. O. Reg. 67/93, s. 67.

68. (1) This section applies if it is not practicable to disconnect electrical installations, equipment or power lines from the power supply before working on, or near, the installations, equipment or power lines. O. Reg. 67/93, s. 68 (1).
(2) Only a competent person shall perform the work. O. Reg. 67/93, s. 68 (2).
(3) The worker shall use rubber gloves, mats, shields, electrical shock resistant footwear or other protective equipment and procedures adequate to ensure protection from electrical shocks and burns while performing the work. O. Reg. 67/93, s. 68 (3).
(4) If the installation, equipment or power line is operating at 300 volts or over but less than 750 volts, a suitably equipped, competent person who is able to perform rescue operations, including cardio-pulmonary resuscitation, shall be readily available and be able to see the worker who is performing the work. O. Reg. 67/93, s. 68 (4).
(5) If the installation, equipment or power line is operating at 750 volts or over,
(a) the work shall be carried out by a competent person under the authority of an electrical utility; and
(b) a suitably equipped, competent person who is able to perform rescue operations, including cardio-pulmonary resuscitation, shall be readily available and be able to see the worker who is performing the work. O. Reg. 67/93, s. 68 (5).
(6) Subsections (4) and (5) do not apply to troubleshooting, installing or replacing meters or to the testing of appliances or instruments by a worker who is an electrician certified under the Trades Qualification and Apprenticeship Act to do electrical work or a person with equivalent qualifications by training or experience. O. Reg. 67/93, s. 68 (6); O. Reg. 25/09, s. 7.

69. Cord-connected electrical equipment and tools shall be adequately grounded. O. Reg. 67/93, s. 69.

70. (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 electrical panel.
(2) If there is an indication of a ground fault, it shall be investigated and removed without delay. O. Reg. 67/93, s. 70.

71. Electrical equipment or power lines that are no longer used for the purpose for which they were intended or designed shall be isolated, de-energized and,
(a) removed; or
(b) left in place and locked out and permanently disconnected by removing the cables from their connections at both ends and cutting back or taping the cables. O. Reg. 67/93, s. 71.

72. (1) No object shall be brought closer to an energized electric conductor of the voltage set out in Column 1 of the following Table than the distance specified opposite to it in Column 2:

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conductor Voltage</td>
<td>Minimum Distance</td>
</tr>
<tr>
<td>750 to 150,000 volts</td>
<td>3 metres</td>
</tr>
<tr>
<td>over 150,000 to 250,000 volts</td>
<td>4.5 metres</td>
</tr>
<tr>
<td>over 250,000 volts</td>
<td>6 metres</td>
</tr>
</tbody>
</table>

O. Reg. 67/93, s. 72 (1).
Subsection (1) does not apply,

(a) if mats, shields or other protective devices adequate to ensure protection from electrical shocks and burns are installed under the authority of the owner of the conductor; and

(b) if the person who is responsible for bringing the object within the minimum distance is using procedures adequate to ensure protection from electrical shock and burns and is a worker who is an electrician certified under the Trade Qualification and Apprenticeship Act to do electrical work or a person with equivalent qualifications by training or experience. O. Reg. 67/93, s. 72 (2); O. Reg. 25/09, s. 8.

73. If a vehicle, crane or similar equipment is operated near a live power line and it is possible for any part of it or its load to make contact with the live power line,

(a) a worker shall be stationed within view of the operator to warn him or her when any part of the equipment is approaching the minimum distance from the live power line; and

(b) clearance shall be allowed for any changes in boom angle and for any swing of the hoisting cable and load. O. Reg. 67/93, s. 73.

COMPRESSED GAS CYLINDERS

74. (1) A storage cylinder for compressed gas shall,

(a) have a valve connection which prevents an inadvertent connection that would result in a hazardous mixture of gases;

(b) be secured in position during transportation, storage or use;

(c) not be rolled, slid or dropped;

(d) if designed for the use of a valve protection cap, have the valve protection cap in position when the cylinder is being transported or stored;

(e) if it contains acetylene, be in an upright position;

(f) be protected from physical damage;

(g) if it is empty, be labelled accordingly and have the valve securely turned off; and

(h) be stored in a well-ventilated area, away from any source of ignition.

(2) Subsection (1) does not apply to fire extinguishers or calibration equipment.

(3) A cylinder containing compressed flammable gas shall be stored,

(a) at least six metres from any cylinder containing oxygen; or

(b) with a barrier of noncombustible material at least 1.5 metres high having a fire resistance rating of at least one-half hour separating it from any cylinder containing oxygen.

(4) The area where compressed gas cylinders are stored shall be posted as a no smoking area and no person shall smoke in the area. O. Reg. 67/93, s. 74.

MATERIAL HANDLING EQUIPMENT

75. In sections 76 through 79, “material handling equipment” and “lifting equipment” do not include,

(a) equipment to which Ontario Regulation 209/01 (Elevating Devices), made under the Technical Standards and Safety Act, 2000, applies; or

(b) equipment used to lift, lower or transfer a person who is not a worker. O. Reg. 67/93, s. 75; O. Reg. 25/09, s. 9.

76. (1) Material handling equipment shall not be used to support, raise or lower a worker unless the requirements of this section are met.

(2) If material handling equipment is used to support, raise or lower a worker, the worker shall be on a platform that is,

(a) equipped with adequate safety devices that automatically prevent the platform and load from falling if the platform’s normal support fails;
(b) suspended from a boom that does not move; or
(c) attached to a mast or boom which,
   (i) is hydraulically or pneumatically operated, and
   (ii) is equipped with a safety device that will prevent free fall of the platform in the event of a pressure line failure.

(3) A worker on a platform that is suspended from a boom that does not move shall be 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.

(4) If the material handling equipment is not designed for the specific purpose of hoisting personnel, the load applied to it shall be less than one-half the maximum rated load.

(5) The platform shall have a sign indicating the load that may be applied to it under subsection (4).

(6) If controls are provided at more than one location,
   (a) each control station shall be provided with means that allow the operator to cut off power to the equipment; and
   (b) interlocks shall be provided so that only one station can be operative at any one time.

(7) Except when the controls are operated from the platform, a worker other than the worker on the platform shall attend to and operate them. O. Reg. 67/93, s. 76.

77. If a worker who is operating material handling equipment is exposed to overhead hazards and adequate protection from the hazards is not provided by the use of personal protective equipment, overhead protection by means of a cab, screen, canopy, guard or other adequate protection shall be provided on the equipment. O. Reg. 67/93, s. 77.

78. Except for purpose of testing, no material handling equipment shall be loaded in excess of its maximum rated load. O. Reg. 67/93, s. 78.

79. (1) Lifting equipment shall be thoroughly examined by a competent person to determine its capability of handling the maximum load as rated,
   (a) before being used for the first time; and
   (b) thereafter as often as necessary but not less frequently than recommended by the manufacturer and, in any case, at least once a year.

(2) A permanent record shall be kept of each examination conducted under subsection (1) for as long as the equipment remains on the premises and for one year after the equipment is removed and the record shall be signed by the person who conducted it.

(3) Lifting equipment shall be clearly marked with sufficient information to enable its operator to determine the maximum rated load that the equipment is capable of lifting under any operating condition.

(4) If lifting equipment is equipped with limit switches, the switches shall,
   (a) automatically cut off the power;
   (b) automatically apply the brake when a load reaches its permissible limit; and
   (c) be used as an operating control only when designed for such use.

(5) If a limit switch is used as an operating control on lifting equipment, a second limit switch shall be located behind the first switch.

(6) The lifting equipment’s controls shall be attended when its load is in the raised position.

(7) Lifting equipment shall be attended when the forks, bucket, blades or similar part is in the raised position unless,
   (a) the equipment is a hydraulic or pneumatic hoist that supports the load from below and is fixed in one location; or
   (b) the forks, bucket, blades or similar part is solidly supported. O. Reg. 67/93, s. 79.

LADDERS

80. (1) Except for a step stool, a worker shall not stand upon a chair, box or other loose object while working.
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81. The maximum length of a ladder measured along the side rail shall not be more than,
(a) six metres for a step-ladder;
(b) nine metres for a single ladder; and
(c) thirteen metres for an extension or sectional ladder. O. Reg. 67/93, s. 81.
82. (1) A ladder shall,
(a) have adequate strength, stiffness and stability to support any load likely to be applied to it;
(b) be free from broken or loose members or other faults;
(c) have rungs evenly spaced; and
(d) be equipped with slip-resistant feet.

(2) A wooden ladder shall not be painted or coated with an opaque material. O. Reg. 67/93, s. 82.

83. When a ladder is being used it shall,
(a) be placed on a firm footing and secured against slipping;
(b) if the ladder is between six and nine metres in length, be securely fastened or be held in place by one or more
workers while being used;
(c) if the ladder exceeds nine metres in length, be securely fastened or stabilized to prevent it from tipping or
falling;
(d) 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 one-quarter and not more than one-third of the length of the ladder; and
(e) if the ladder is likely to be endangered by traffic, have a worker stationed at its foot to direct such traffic or
have barriers or warning signs placed at its foot. O. Reg. 67/93, s. 83.

84. (1) When a step-ladder is being used as a self-supporting unit, its legs shall be fully spread and the spreader
shall be locked.

(2) No worker shall stand on the top of a step-ladder or shall use the pail shelf as a step. O. Reg. 67/93, s. 84.

Scaffolds

85. If work cannot be done from a ladder without hazard to a worker, a scaffold shall be provided for the worker.
O. Reg. 67/93, s. 85.

86. Only a competent person shall supervise the erection, alteration and dismantling of a scaffold. O. Reg. 67/93,
s. 86.

87. (1) Every scaffold shall be capable of supporting,
(a) two times the maximum load to which it is likely to be subjected, without exceeding the allowable unit
stresses for the particular materials used; and
(b) four times the maximum load to which it is likely to be subjected, without overturning.

(2) No scaffold shall be loaded in excess of the maximum load it could reasonably be expected to support and not
in excess of the maximum load set out in clauses (1) (a) and (b).

(3) The requirements in this section and in section 88 do not apply to a suspended scaffold. O. Reg. 67/93, s. 87.

88. (1) Every scaffold shall,
(a) be constructed of suitable structural material;
(b) have horizontal members that are adequately secured to prevent lateral movement and that do not have
splices between the points of support;
(c) have footings, sills or supports that are sound, rigid and capable of supporting at least two times the
maximum load to which the scaffold is likely to be subjected without settlement or deformation that may
affect the stability of the scaffold;
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(d) where it consists of a structural system of tubular metal frames, have connecting devices between components that provide positive engagement in compression and tension;
(e) have all fittings, gear, base plates and wheels installed according to the manufacturer’s instructions;
(f) have safety catches on all hooks;
(g) 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;
(h) where lumber is used in its construction, be constructed only of Construction Grade spruce or Number 1 Grade spruce; and
(i) have all uprights braced diagonally in the horizontal and vertical planes to prevent lateral movement.

(2) If a scaffold is more than fifteen metres in height, it shall be designed by a professional engineer and constructed in accordance with the design. O. Reg. 67/93, s. 88.

89. A scaffold mounted on castors or wheels, other than a movable working platform to which subsection 94 (1) applies, shall,

(a) have a height which does not exceed three times the least lateral dimension of the scaffold,
   (i) measured at the base, or
   (ii) measured between the outriggers;
(b) be equipped with a suitable braking device on each castor or wheel; and
(c) have the brakes applied when,
   (i) any worker is on the scaffold or the working platform of the scaffold, or
   (ii) the scaffold is unattended. O. Reg. 67/93, s. 89.

90. The working platform of a scaffold shall,

(a) be designed, constructed and maintained to support all loads to which it may be subjected without exceeding the allowable unit stresses for the materials used, and in any event shall support not less than 2.4 kilonewtons per square metre;
(b) be at least forty-six centimetres in width;
(c) be provided, at each open side and at the ends of the platform, with guardrails that comply with section 37;
(d) if the platform consists of sawn lumber planks, have planks of Number 1 Grade spruce that,
   (i) bear a legible grade identification stamp or bear a permanent grade identification mark,
   (ii) are at least forty-eight millimetres in thickness by 250 millimetres in width with a span not exceeding 2.1 metres,
   (iii) overhang their supports by not less than 150 millimetres and not more than 300 millimetres, and
   (iv) are cleated or otherwise secured against slipping; and
(e) if the platform required consists of planks manufactured of laminated wood, metal or a combination of materials, consist of planks tested in accordance with good engineering practice to demonstrate structural equivalence to the sawn lumber planks specified in clause (d). O. Reg. 67/93, s. 90.

SUSPENDED SCAFFOLDS

91. (1) This section applies to,

(a) a suspended scaffold that is permanently installed on a building or structure;
(b) a suspended scaffold that is transported in component form and is assembled for use at a work site;
(c) a boatswain’s chair or single-point suspension equipment intended for the support of one worker; and
(d) the supports and equipment for a suspended scaffold or boatswain’s chair, including lines, outrigger beams, davits, receptacles for outrigger beams or davits, cornice hooks, parapet wall hooks and anchors for attachment of primary suspension lines or lifelines.
(2) A worker who is on or is getting on or off a suspended scaffold, boatswain’s chair or similar single-point suspension equipment shall be protected by a fall arrest system that meets the requirements of section 13.

(3) All mechanically or electrically operated equipment described in subsection (1) shall,
   (a) be suitable for the purpose for which it is used;
   (b) have legible operating and maintenance instructions of the manufacturer affixed to the equipment in a conspicuous location;
   (c) be operated, inspected and maintained in accordance with the manufacturer’s instructions;
   (d) be used only in a manner which does not endanger a worker; and
   (e) not be used when a component, which may affect its safe operation, is damaged or defective.

(4) Primary suspension lines and lifelines used in connection with equipment described in subsection (1) shall,
   (a) be rigged in accordance with generally accepted rigging practice;
   (b) be rigged so that each line hangs vertically from the roof or access level to the ground or egress level of a worker using the line;
   (c) have a breaking strength of at least ten times the static load that the line is intended to bear;
   (d) have each connecting end wrapped around a protective thimble and securely fastened,
      (i) by means of a swagged fitting or eye splice if applied by the manufacturer of the line, or
      (ii) if the line is a wire rope, by a minimum of three clamps; and
   (e) be inspected before each day’s use by a competent person who shall report any defects or damage to a supervisor.

(5) Primary suspension lines and lifelines used in connection with equipment described in subsection (1) shall not be used when they are defective or damaged.

(6) A worker on a suspended scaffold, boatswain’s chair or similar single-point suspension equipment shall have an effective means of summoning assistance in case of emergency. O. Reg. 67/93, s. 91.

92. (1) A boatswain’s chair or similar single-point suspension equipment shall,
   (a) have a seat at least 600 millimetres long and 250 millimetres wide of one piece construction capable of supporting 225 kilograms;
   (b) be supported by a sling constructed of a wire rope of at least nine millimetres that crosses underneath the seat;
   (c) not be used where the descent exceeds ninety metres;
   (d) only be used for areas within arm’s reach of a worker freely suspended on the primary support line; and
   (e) not be used in conjunction with corrosive substances or solutions.

(2) A natural or synthetic line used as primary support line for a boatswain’s chair or other similar single-point suspension equipment shall be,
   (a) doubled from the anchor point or point of suspension of the line to ground or egress level;
   (b) permanently identified with,
      (i) the name of the manufacturer of the line,
      (ii) the date of manufacture of the line, and
      (iii) the length of the line;
   (c) protected from abrasion;
   (d) used only with a descent control or similar device,
      (i) approved by the manufacturer of the descent control or similar device for use in window cleaning operations, and

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(ii) in accordance with the installation, operating and maintenance instructions of the manufacturer of the
descent control or similar device, which instructions shall be kept available for the inspection of an
inspector;

(e) discarded when no longer safe for use or in accordance with the manufacturer’s recommendations, whichever
occurs first; and

(f) tested by a recognized testing laboratory at least once every twelve months for compliance with clause 91 (4)
(c), and, if found not in compliance, discarded. O. Reg. 67/93, s. 92.

93. (1) Static or horizontal lines rigged between anchor points for direct attachment of lifelines or primary
support lines shall meet the requirements of this section.

(2) A professional engineer shall,

(a) instruct on the use of the static or horizontal lines and primary support lines; and

(b) certify the maximum load to be applied to them.

(3) The support capability of an anchor point shall exceed the total breaking strength of all support lines attached
to it.

(4) Outrigger beams, cornice hooks and parapet wall hooks for support of primary support lines shall,

(a) be capable of supporting at least four times the maximum load to which they may be subjected without
overturning and without exceeding the allowable unit stress for the materials of which they are constructed;

(b) be constructed of steel or aluminum or equivalent material; and

(c) be tied back to a fixed support so as to prevent their movement.

(5) Outrigger beams for support of primary support lines shall,

(a) have counterweights,

(i) that are manufactured for the purpose,

(ii) that are marked as to weight, and

(iii) that are securely attached to the outrigger beam;

(b) be accompanied by the supplier’s or manufacturer’s instructions indicating the number of counterweights
that are necessary for the arrangements of the beam and the load that the beam can bear for each
arrangement; and

(c) if positioned on a rolling undercarriage, have the undercarriage fixed to prevent the counterweights from
moving while a worker is suspended by the primary support lines. O. Reg. 67/93, s. 93.

94. (1) A movable working platform operated by mechanical or electric power, including an elevating rolling
scaffold and a self-propelled elevating scaffold or work platform, shall,

(a) be designed by a professional engineer in accordance with good engineering practice to support,

(i) two times the maximum load to which it may be subjected without exceeding the allowable unit
stresses for the materials used, and

(ii) four times the maximum load to which it may be subjected without overturning;

(b) be constructed and maintained in accordance with the design of the professional engineer;

(c) be capable of supporting two times the maximum load to which it may be subjected without exceeding the
allowable unit stresses for the materials used;

(d) be provided with guardrails that comply with the requirements of section 37;

(e) be fitted with signs indicating the safe working load;

(f) if equipped with outriggers, have a notice indicating the circumstances when the outriggers shall be used;

(g) be equipped with a fail safe mechanism for the elevating power system in the case of a power source or
system failure;
(h) be equipped with a dead man control that will cut the power off from the operating mechanism unless the control regulating the power is continuously operated by a worker; and

(i) have each component which may affect its safe operation inspected by a competent person,

(i) before initial use, and

(ii) after initial use, as often as necessary but not less frequently than recommended by the manufacturer and, in any case, at least once a year.

(2) A movable working platform of the type described in subsection (1) shall not be used when a component that may affect its safe operation is defective.

(3) This section does not apply to a suspended scaffold. O. Reg. 67/93, s. 94.

EXPLOSIVE HAZARDS

95. A process that is likely to produce dust, fume, gas or vapour to such an extent as to be capable of forming an explosive mixture when mixed with air shall be carried out,

(a) in an area that has provision for the disposal of the mixture by burning under controlled conditions; or

(b) in another area if,

(i) the area is identified by a sign warning of the hazard,

(ii) the area is isolated from other operations,

(iii) the area has a system of ventilation adequate to ensure that the dust, fume, gas or vapour does not reach a hazardous concentration,

(iv) the area has no potential sources of ignition,

(v) any heating or air vents leading to other areas have baffles, chokes or dampers to reduce the effects of any explosion, and

(vi) the area has provision for explosion venting. O. Reg. 67/93, s. 95.

ANAESTHETIC GASES

96. Where anaesthetic gases are likely to be present, the following measures and procedures shall be put into effect:

1. The installation of effective scavenging systems to collect, remove and dispose of waste gases.

2. The installation and use of anaesthesia respirators and machines to reduce contamination of the air in the room during administration of anaesthetic gases.

3. The implementation and use of a maintenance program for scavenging systems and anaesthesia respirators and machines and for inspecting for leakage on a monthly basis.

4. The adoption and use of proper work practices to reduce contamination of the room air during the administration of anaesthetic gases.

5. The regular maintenance of the ventilation system including filters. O. Reg. 67/93, s. 96.

ANTINEOPLASTIC DRUGS

97. (1) The employer shall, in consultation with the joint health and safety committee or health and safety representative, if any, develop, establish and put into effect written measures and procedures to protect workers who may be exposed to antineoplastic agents or to material or equipment contaminated with antineoplastic agents.

(2) The measures and procedures required by subsection (1) shall include,

(a) procedures for the storing, preparing, handling, using, transporting and disposing of antineoplastic agents and material contaminated with antineoplastic agents;

(b) emergency procedures to be followed in the event of a worker’s exposure to antineoplastic agents by a needle puncture, inhalation or skin contact;

(c) procedures for the maintenance and disposal of equipment contaminated with antineoplastic agents;
(d) measures for the use of engineering controls, work practices, hygiene practices and facilities or personal protective equipment appropriate in the circumstances; and

(e) measures for the use of an appropriate biological safety cabinet for the preparation of antineoplastic agents.

(3) The employer shall provide training and instruction in the measures and procedures described in subsection (2) to workers who may be exposed to antineoplastic agents or to material or equipment contaminated with antineoplastic agents. O. Reg. 67/93, s. 97.

**FLAMMABLE LIQUIDS**

98. In sections 99, 100 and 101, “flammable liquid” means any liquid having a flash point below 37.8 degrees Celsius and a vapour pressure below 275 kilopascals absolute at 37.8 degrees Celsius. O. Reg. 67/93, s. 98.

99. (1) Flammable liquids shall be handled in such a manner so as to prevent the hazard of explosion or fire.

(2) Flammable liquids shall be,

(a) dispensed, removed from any potential source of ignition;

(b) if dispensed indoors, dispensed in an area equipped with ventilation adequate to remove any hazardous concentration of fume or vapour;

(c) transported in containers that prevent any leakage or spillage of the liquids or in containers equipped with spring-loaded caps; and

(d) handled in a manner that prevents any leakage or spillage of the liquids, if such leakage or spillage would result in exposing the liquids to a proximate source of potential ignition that cannot be eliminated.

(3) If flammable liquid is being dispensed from a holding container, the dispensing equipment, the containers from which the flammable liquid is dispensed and the containers into which the flammable liquid is to be placed shall be bonded and grounded so as to prevent any explosion hazard. O. Reg. 67/93, s. 99.

100. (1) Flammable liquids shall be brought into a workplace only if the liquids are contained in,

(a) sealed containers;

(b) containers that prevent any leakage or spillage of the liquids; or

(c) containers equipped with a flame arrester.

(2) If flammable liquids are brought into a workplace in sealed containers, the containers shall remain sealed until the contents or a portion of the contents is required for immediate use.

(3) After the flammable liquids that were brought into a workplace in sealed containers have been used, the remaining contents of the containers and any unused quantities of the flammable liquids shall be stored,

(a) in containers that prevent any leakage or spillage of the liquids; or

(b) in containers equipped with a spring-loaded cap. O. Reg. 67/93, s. 100.

101. (1) If more than 235 litres of flammable liquids are being stored, the liquids shall be stored,

(a) outdoors, remote from any means of egress:

(b) in a building used solely for the storage of flammable liquids; or

(c) within a workplace, in a storage room that is used solely for the storage of flammable liquids and that complies with subsection (2).

(2) The storage room shall,

(a) be separated from the rest of the building with partitions that have at least a one-hour fire resistance rating;

(b) be equipped with,

(i) liquid-tight seals between interior walls and the floor and a liquid-tight ramped sill at any door opening in an interior wall, or

(ii) other means to prevent leakage or spillage of the flammable liquid from the storage room to another part of the workplace in the building;
(c) be equipped with doors that are side hinged to swing outward and that are self-closing;
(d) be equipped with a drain connected to a holding tank of sufficient capacity to contain any possible leakage or spillage;
(e) be provided with a ventilation system that is adequate to render the atmosphere free of any accumulation of hazardous gas or vapour; and
(f) if the flammable liquids are in opened containers or have flash points below 22.8 degrees Celsius and boiling points below 37.8 degrees Celsius,
   (i) be equipped with a spark-resistant floor,
   (ii) be equipped with adequate explosion venting to the outdoors, and
   (iii) have no potential source of ignition.

(3) If the quantity of flammable liquids to be stored indoors is 235 litres or less, the liquids shall be stored,
   (a) in sealed containers of no more than twenty-three litres capacity each; or
   (b) subject to section 106, in a metal cabinet of double-walled construction with a 3-point door latch and a liquid-tight door sill raised at least fifty-five millimetres above the floor. O. Reg. 67/93, s. 101.

102. (1) An internal combustion engine shall be fuelled,
   (a) outside a building;
   (b) only when the engine is shut off; and
   (c) only if any source of ignition is more than three metres from the dispensing point.
(2) Subsection (1) does not apply to generators for emergency electrical power.
(3) A worker who is fuelling an internal combustion engine shall make an allowance for the possible expansion of the fuel due to the exposure of the equipment to higher surrounding temperature. O. Reg. 67/93, s. 102.

MATERIAL HANDLING

103. (1) Materials, articles or things shall be handled, stored and disposed of in a manner that will not cause a hazard.
(2) Materials, articles or things shall be transported, placed or stored so that they will not tip, collapse or fall and so that they can be removed or withdrawn without endangering the safety of any worker. O. Reg. 67/93, s. 103.

104. A container used to store, transport or dispense a hazardous material shall be,
   (a) adequate to protect the worker from the substance contained in it; and
   (b) protected from physical damage. O. Reg. 67/93, s. 104.

105. Incubators, refrigerators and deep freeze units used to store cultures, specimens or biological ampules shall be identified as biohazardous. O. Reg. 67/93, s. 105.

106. Flammable materials that require refrigeration shall be stored in an explosion-proof refrigerator. O. Reg. 67/93, s. 106.

107. Bottles and test tubes shall be transported in racks or containers that prevent them from breaking, leaking or spilling their contents and that protect workers from exposure to the contents. O. Reg. 67/93, s. 107.

108. Workbenches, shelves, fume hoods and safety cabinets shall have adequate space for a worker to perform the work safely. O. Reg. 67/93, s. 108.

109. (1) In a laboratory, appropriate disinfectants and decontaminants shall be provided and used to clean workbench, fume hood and safety cabinet surfaces and floors.
(2) In a laboratory where spills of a hazardous material are likely to occur, workbench, fume hood and safety cabinet surfaces and floors shall consist of a smooth nonporous or impervious material. O. Reg. 67/93, s. 109.

110. A piping system that contains a substance which is hazardous because of its toxicity, temperature, pressure, flammability, or other property, shall have its contents and direction of flow clearly identified,
   (a) at valves and fittings;
(b) in locations where a pipe passes through a wall or floor; and
(c) where circumstances may make its contents or direction of flow doubtful. O. Reg. 67/93, s. 110.

**HOUSEKEEPING AND WASTE**

111. (1) A room used for storing laundry or janitorial materials and equipment shall be maintained in accordance with good hygiene practices.

(2) Janitorial work that may cause dusty conditions shall be done in a manner that will minimize the contamination of air by dust. O. Reg. 67/93, s. 111.

112. Waste materials shall be removed from work areas in a building as often as is necessary to protect the health and safety of workers. O. Reg. 67/93, s. 112.

113. (1) Objects referred to in subsection (2) that are being discarded as waste materials shall be placed in puncture-resistant containers.

(2) Subsection (1) applies to needles, knives, scissors, scalpels, broken glass or other sharp objects that are capable of cutting or penetrating the skin or any part of a worker’s body. O. Reg. 67/93, s. 113.

114. (1) Used needles that are being discarded as waste material shall be discarded, immediately after use and without being bent or recapped, into a puncture-resistant container.

(2) If it is impracticable to discard used needles in accordance with subsection (1),

(a) the employer shall provide a device or equipment that protects workers from being accidentally punctured while they are recapping used needles; and

(b) the needles shall be recapped using the device or equipment described in clause (a) by workers who have received instruction and training in the use of that device or equipment.

(3) The kind of device or equipment provided under clause (2) (a) shall be chosen by the employer after consulting with the joint health and safety committee or health and safety representative, if any, and after considering their recommendations. O. Reg. 67/93, s. 114.

115. Containers that are used for storing liquid hazardous waste in a workplace shall,

(a) be equipped with a tight-fitting cover;

(b) be leak-proof;

(c) if there may be internal pressure in the container, be designed so that the pressure is relieved by controlled ventilation; and

(d) shall be emptied daily or as the circumstances may reasonably require. O. Reg. 67/93, s. 115.

116. (1) This section applies to all waste materials at a facility other than those waste materials generated in office administration or general building maintenance at the facility.

(2) The employer in consultation with the joint health and safety committee or health and safety representative, if any, shall develop, establish and put into effect measures and procedures to ensure that waste materials contaminated or potentially contaminated with hazardous infectious agents that are likely to endanger the health or safety of a worker are collected, contained, identified, transported, handled, stored and treated in a manner that will not endanger the health or safety of a worker.

(3) The employer shall ensure that a worker who generates, collects, transports, handles or treats contaminated or potentially contaminated waste materials is trained in the measures and procedures referred to in subsection (2). O. Reg. 67/93, s. 116.

117. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 67/93, s. 117.

**TABLE 1 Revoked: O. Reg. 495/09, s. 2.**

**FORM 1**

**NOTICE**

*Occupational Health and Safety Act*
TAKE NOTICE that this

(specify the "place" or "thing", as the case may be)

is a danger or hazard to the health or safety of workers employed in or having access to this place or thing, and the use thereof shall be
discontinued immediately until the inspector’s order of .............

(date)
to .................................................. has been complied with.

(name and address of employer or owner)

No person, except an inspector, shall remove this notice unless authorized by an inspector.

Dated the ............. day of ........................., 19......

..................................................

(Signature of Inspector)

O. Reg. 67/93, Form 1.
1.(1) The definition of “adequate” in subsection 1 (1) of Ontario Regulation 213/91 is revoked and the following substituted:

“adequate”, in relation to a procedure, 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;

(2) Subsection 1 (1) of the Regulation is amended by adding the following definitions:

“approved”, in relation to a form, means approved by the Minister;

“blocker truck” means a truck that weighs at least 6,800 kilograms and has four-way flashers and a mounted flashing arrowboard sign;


(3) The definition of “Construction Health and Safety Branch” in subsection 1 (1) of the Regulation is revoked.

(4) Subsection 1 (1) of the Regulation is amended by adding the following definition:

“crash truck” means a blocker truck that is equipped with a crash-attenuating device;

(5) The definition of “fall arrest system” in subsection 1 (1) of the Regulation is revoked and the following substituted:

“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;

(6) Subsection 1 (1) of the Regulation is amended by adding the following definitions:

“fall restricting system” means a type of fall arrest system that has been designed to limit a worker’s fall to a specified distance;

“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;

“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;

(7) The definition of “guardrail” in subsection 1 (1) of the Regulation is revoked and the following substituted:

“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;

(8) Subsection 1 (1) of the Regulation is amended by adding the following definitions:

“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;

“longitudinal buffer area” means the area of a project between the end of a lane closure taper and the start of a work area;
(9) The definition of “public way” in subsection 1(1) of the Regulation is revoked and the following substituted:

“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;

(10) Subsection 1(1) of the Regulation is amended by adding the following definition:

“roadway” means the travelled portion of a highway;

(11) The definition of “safety net” in subsection 1(1) of the Regulation is revoked and the following substituted:

“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;

(12) The definition of “sheathing” in subsection 1(1) of the Regulation is revoked and the following substituted:

“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;

(13) Subsection 1(1) of the Regulation is amended by adding the following definitions:

“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;

“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;

“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;

(14) The Table to subsection 1(2) of the Regulation is amended by adding the following row after “Short forms” and “Corresponding terms”:

ANSI American National Standards Institute

2. Section 4 of the Regulation is amended by striking out “The Director of the Construction Health and Safety Branch” and substituting “A Director”.

3. Section 5 of the Regulation is revoked and the following substituted:

5.(1) Before beginning work at a project, each constructor and employer engaged in construction shall complete an approved registration form.

(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.

4. Subsections 6(2), (3), (4), (5), (6) and (7) of the Regulation are revoked and the following substituted:

(2) The constructor shall comply with subsection (3) or (4) before beginning work at the project.

(3) The constructor shall complete an approved notification form and file it at the Ministry office located nearest to the project.

(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.
(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.

(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.

5. Section 7 of the Regulation is revoked and the following substituted:

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.

6. Clause 8 (g) of the Regulation is amended by striking out “the physician or surgeon, if any” and substituting “any legally qualified medical practitioner”.

7. Clause 9 (1) (g) of the Regulation is revoked and the following substituted:

(g) the name and address of any legally qualified medical practitioner by whom the worker was or is being attended for the injury or illness;

(g.1) the name and address of each medical facility, if any, where the worker was or is being attended for the injury or illness; and

2. Subsection 9 (2) of the Regulation is revoked and the following substituted:

(2) A notice under subsection 52 (2) of the Act (information and particulars respecting a worker’s occupational illness) shall contain the following information:

1. The employer’s name, address and type of business.
2. The nature of the illness.
3. The worker’s name and address.
4. The name and address of any legally qualified medical practitioner by whom the worker was or is being attended for the illness.
5. The name and address of each medical facility, if any, where the worker was or is being attended for the illness.
6. A description of the steps taken to prevent a recurrence.

8. Subsection 12 (2) of the Regulation is revoked and the following substituted:

(2) A constructor or employer who submits a report under subsection 51 (1) of the Act (notice of death or injury) or gives a notice under section 52 or 53 of the Act (notice of accident, etc.) shall also provide, within 14 days after the occurrence, a professional engineer’s written opinion stating the cause of the occurrence.

9. Clause 13 (1) (c) of the Regulation is revoked and the following substituted:

(c) the address and telephone number of the nearest office of the Ministry.

10. Section 15 of the Regulation is amended by adding the following subsection:

(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.

11. Sections 16, 17 and 18 of the Regulation are revoked and the following substituted:

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.

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.
(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.

(3) The constructor shall ensure that the emergency procedures are posted in a conspicuous place at the project.

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.

12. **Section 26 of the Regulation is revoked and the following substituted:**

26. Sections 26.1 to 26.10 apply where a worker is 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.

**26.1** (1) A worker shall be adequately protected by a guardrail system that meets the requirements of subsections
26.3 (2) to (8).

(2) Despite subsection (1), if it is not reasonably possible to install a guardrail system as that subsection requires, a
worker shall be adequately protected by at least one of the following methods of fall protection:

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 that meets the requirements of section 26.6.
4. A safety net that meets the requirements of section 26.8.

(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:

2. CAN/CSA–Z259.2.1–M98: Fall Arresting Devices and Vertical Lifelines.

(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.

13. **The Regulation is amended by adding the following section:**

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.

(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.

(3) The training and instruction record shall include the worker’s name and the dates on which training and
instruction took place.

(4) The employer shall make the training and instruction record for each worker available to an inspector on
request.

14. **The Regulation is amended by adding the following sections:**
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 is 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.

(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.

(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).

(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. 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 toe board shall extend from the surface to which the guardrail system is attached to a height of at least 100 millimetres or, if the toe board is made of wood, 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.

(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.

(6) If the distance between any two adjacent posts of the guardrail system is greater than 2.4 metres, the system shall be capable of resisting the loads specified in subsection (5) increased in proportion to the greater distance between the posts.

(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.
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.

(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.

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. The intermediate rail shall be located midway between the top rail and the toe board.

26.4(1) A travel restraint system shall consist of a full body harness with adequate attachment points or a safety belt.

(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.

(3) The travel restraint system shall be inspected by a competent worker before each use.

(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.

26.5(1) A fall restricting system 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 so that a worker’s free fall distance does not exceed 0.6 metres.

(2) The fall restricting system shall be inspected by a competent worker before each use.

(3) If a worker who is using the fall restricting system falls more than 0.6 metres, 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.

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.

(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.

(3) The fall arrest system shall be arranged so that a worker cannot hit the ground or an object or level below the work.

(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.

(5) The fall arrest system shall not subject a worker who falls to a peak fall arrest force greater than 8 kilonewtons.

(6) The fall arrest system shall be inspected by a competent worker before each use.

(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.

(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.

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.
(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.

(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.

(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.

26.8 (1) A safety net shall be designed, tested and installed in accordance with ANSI Standard 10.11–1989, Personnel and Debris Nets for Construction and Demolition Operations.

(2) The safety net shall be installed by a competent worker.

(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.

(4) The engineer shall document the inspection and testing of the safety net and shall sign and seal the document.

(5) A copy of the document shall be kept at the project while the safety net is in service.

26.9 (1) This section applies to a lanyard or lifeline that is part of a travel restraint system or a fall arrest system.

(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.

(3) Only one person at a time may use a lanyard.

(4) The connecting ends of a lanyard shall be wrapped around a protective thimble and securely fastened with a swaged fitting or eye splice supplied by the manufacturer of the lanyard.

(5) A horizontal or vertical lifeline shall be kept free from splices or knots, except knots used to connect it to a fixed support.

(6) Only one person at a time may use a vertical lifeline.

(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.

(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.

26.10(1) Subject to subsection (2), a worker who is performing work on a utility pole shall do so from an elevating work platform that meets the requirements of sections 143 and 144.

(2) If it is not practical for the worker to use an elevating work platform as described in subsection (1), the worker shall use a fall restricting system instead.

26.11 Until January 1, 2001, sections 26 to 26.10 do not apply to a worker while he or she is engaged in erecting or dismantling scaffolding, built-in-place formwork or built-in-place falsework.

15. Section 29 of the Regulation is revoked and the following substituted:

29. (1) In this section,
“facilities” means toilet, urinal and clean-up facilities;
“non-sewered flush toilet facilities” means water flush toilets or chemical flush toilets that have the features listed in subsection (2);
“service”, when used as a verb, means to have waste pumped out and to have the facilities replenished where necessary;
“sewered toilet facilities” means water flush toilets that are connected to a sanitary sewer system and equipped with a trap in accordance with Part 7 of the Building Code.

(2) The features referred to in the definition of “non-sewered flush toilet facilities” 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 flushed from the bowl with water containing chemical additives, deposited into a container and chemically treated sufficiently for the container’s maximum capacity.

(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.

(4) Subject to subsections (5) and (6), the facilities shall be located within 180 metres horizontally of the work area of the project.

(5) If work is being performed in a tunnel, the facilities shall be located within 180 metres horizontally from the entrance to the tunnel.

(6) The facilities may be located within 3 kilometres of the work area if transportation to the facilities is provided for workers where reasonably required.

(7) If the project is the construction of a building, then in addition to the requirement of subsection (4), the facilities must also be located within 9 metres vertically of the level at which work is being performed.

(8) The location of the facilities under subsection (7) may be varied if the arrangement affords reasonable accessibility for workers.
(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.
(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.
(11) The facilities shall be serviced, cleaned and sanitized as frequently as necessary to maintain them in a clean and sanitary condition.
(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.
(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.
29.1(1) Each toilet facility shall meet the following requirements:
1. There shall be a toilet with an open–front toilet seat. For a chemical flush toilet, a toilet cover is also required.
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, 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.
(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.
(3) Sewered toilet facilities or non–sewered flush toilet facilities shall be provided at a project, subject to subsection (4).
(4) If a project is being carried on in a remote unpopulated area and it is not reasonably possible to provide the facilities required under subsection (3), re–circulating chemical flush toilets or other types of toilets that comply with applicable municipal by–laws may be provided instead.
(5) When toilets are provided as described in subsection (3), the minimum number of toilets required at the project is as follows:

<table>
<thead>
<tr>
<th>Minimum number of toilets</th>
<th>Number of workers regularly employed at the project</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1–15</td>
</tr>
<tr>
<td>2</td>
<td>16–30</td>
</tr>
<tr>
<td>3</td>
<td>31–45</td>
</tr>
<tr>
<td>4</td>
<td>46–60</td>
</tr>
<tr>
<td>4, plus 1 additional toilet for each additional group of 15 or fewer workers</td>
<td>61 or more</td>
</tr>
</tbody>
</table>
(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).

(7) When toilets are provided as described in subsection (4), the minimum number of toilets required at the project is as follows:

<table>
<thead>
<tr>
<th>Number of workers regularly employed at the project</th>
<th>Minimum number of toilets</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–10</td>
<td>1</td>
</tr>
<tr>
<td>11–20</td>
<td>2</td>
</tr>
<tr>
<td>21–30</td>
<td>3</td>
</tr>
<tr>
<td>31–40</td>
<td>4</td>
</tr>
<tr>
<td>41 or more</td>
<td>4, plus 1 additional toilet for each additional group of 15 or fewer workers</td>
</tr>
</tbody>
</table>

(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.

(9) Portable urinals equipped with clean-up facilities are permitted in addition to the requirements of this section.

29.2 (1) One clean-up facility shall be provided for every two toilet facilities required under section 29.1 and, in any case, at least one clean-up facility shall be provided at a project.

(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.

(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.

16. Section 52 of the Regulation is amended by adding the following subsection:

(1.1) Every worker who may be required to use fire extinguishing equipment shall be trained in its use.

17. Section 56 of the Regulation is revoked and the following substituted:

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.

18. (1) Subsection 57 (1) of the Regulation is revoked and the following substituted:

(1) As construction proceeds in a building with two or more storeys, a permanent or temporary standpipe shall be installed to within two storeys of the uppermost work level.

(2) Section 57 of the Regulation is amended by adding the following subsections:

(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.

(7) A temporary standpipe shall be maintained so that it is readily operable.

(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.

(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.

(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.

(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.

(12) The constructor shall give a copy of the floor plan to the fire department located nearest to the project.

19. Section 59 of the Regulation is revoked and the following substituted:

**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.

20. Section 66 of the Regulation is amended by striking out “amber” in the third line.

21. Section 67 of the Regulation is revoked and the following substituted:

**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;
“barrier” means a device that provides a physical limitation through which a vehicle would not normally pass, and includes a concrete barrier;
“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.

(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.
10. Crash trucks.
11. Sign trucks.
12. Speed control devices.
13. Longitudinal buffer areas.

(3) In addition to the measures listed in subsection (2) but subject to section 68, a worker may be used to direct traffic.

(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.

(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.

(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.

(7) Subject to subsection (8), 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.

(8) Until January 1, 2003, if a project to which subsection (7) would otherwise apply is expected to require five days or less to complete, or if it is not practical to install barriers as that subsection requires, the following measures shall be taken to protect workers at the project:

1. An adequate longitudinal buffer area shall be provided if physically possible.

2. If information about the annual average daily travel rate of vehicular traffic on the freeway is available and the rate is less than 25,000, blocker trucks shall be adequately positioned between vehicular traffic and workers.

3. If the annual average daily travel rate of vehicular traffic on the freeway is 25,000 or more or if information about the rate is unavailable, crash trucks shall be adequately positioned between vehicular traffic and workers.

(9) If subsection (8) applies and information about the annual average daily travel rate of vehicular traffic on the freeway is available, a record of the rate shall be maintained at the project and be made available to an inspector upon request.

(10) On and after January 1, 2003, 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.

(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.

(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. Until January 1, 2003, an adequate number of blocker trucks shall be adequately positioned between vehicular traffic and the worker.

2. On and after January 1, 2003, an adequate number of crash trucks shall be adequately positioned between vehicular traffic and the worker.

3. 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.

4. 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.

22. Section 68 of the Regulation is revoked and the following substituted:
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 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.

Section 69 of the Regulation is revoked and the following substituted:

69. (1) This section applies with respect to directing vehicular traffic that may be a hazard to workers on a public way.

(2) A worker shall not direct vehicular traffic for more than one lane in the same direction.

(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.

(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.

(5) The written instructions referred to in clause (4) (d) shall be kept at the project.

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.

(2) If the garment is a vest, it shall have adjustable fit.

(3) On and after January 1, 2001, a nylon vest to which this section applies shall also have a side and front tear-away feature.

(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.

24. Sections 85 and 86 of the Regulation are revoked.

25. (1) Clause 93 (2) (c) of the Regulation is revoked and the following substituted:

(c) while it is being repaired or serviced, unless the repair or servicing requires that it be operated.

(2) Subsection 93 (3) of the Regulation is revoked and the following substituted:
Section 2: Safety Culture

(3) All vehicles, machines, tools and equipment shall be used in accordance with any operating manuals issued by the manufacturers.

(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.

26. Sections 94 and 96 of the Regulation are revoked and the following substituted:

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.

(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.

96. (1) No worker shall operate a vehicle at a project unless he or she is competent to do so.

(2) However, a worker being trained in the operation of a vehicle may operate it while being instructed and supervised by a competent person.

27. Sections 104 and 105 of the Regulation are revoked and the following substituted:

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.

(2) Vehicles, machines and equipment at a project shall not be operated in reverse unless there is no practical alternative to doing so.

(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.

(4) Subsection (3) also applies to shovels, backhoes and similar excavating machines and to cranes and similar hoisting devices.

(5) The operator and the signaller shall,
   (a) jointly establish the procedures by which the signaller assists the operator; and
   (b) follow those procedures.

(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.

105. A dump truck shall be equipped with an automatic audible alarm that signals when the truck is being operated in reverse.

28. Section 106 of the Regulation is amended by adding the following subsections:

(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.

(1.2) If the garment is a vest, it shall have adjustable fit.

(1.3) On and after January 1, 2001, a nylon vest to which this section applies shall also have a side and front tear-away feature.
(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.

(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.

29. Section 112 of the Regulation is amended by adding the following subsections:
(1.1) No worker shall use a chain–saw unless he or she has been adequately trained in its use.
(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.

30. Section 117 of the Regulation is revoked and the following substituted:
117.(1) No worker shall use an explosive actuated fastening tool unless he or she has been adequately trained in its use.
(2) When using an explosive actuated fastening tool, the worker shall carry proof of his or her training in its use.
(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.

31. Subsections 119 (2), (4), (6) and (7) of the Regulation are revoked and the following substituted:
(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.
(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.
(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.
(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).

32. Subsection 236 (8) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

33. (1) Subsection 245 (1) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.
(2) Clause 245 (2) (f) of the Regulation is amended by striking out “nearest public highway” and substituting “nearest highway”.

34. (1) Subsection 265 (3) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.
(2) Subsection 265 (4) of the Regulation is revoked and the following substituted:
(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.
35. Subsection 280 (4) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

36. Section 316 of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

37. (1) Subsection 334 (2) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

(2) Subsection 334 (3) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

38. Clause 335 (1) (b) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

39. Subsection 338 (2) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

40. Subsection 365 (4) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

41. (1) Subsection 397 (1) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

(2) Subsection 397 (2) of the Regulation is amended by striking out “the Director of the Construction Health and Safety Branch” and substituting “a Director”.

42. (1) Except as otherwise provided in this section, this Regulation comes into force on June 12, 2000.

(2) Section 13 comes into force on June 12, 2002.

(3) Section 22 comes into force on January 1, 2001.
In this Regulation,
“ordinary worker” does not include a participant in community participation under the Ontario Works Act, 1997; (“travailleur ordinaire”)
“volunteer worker” means a worker who performs work or supplies a service but who receives no monetary compensation for doing so other than an allowance for expenses or an honorarium. (“travailleur bénévole”) O. Reg. 385/96, s. 1; O. Reg. 131/98, s. 1.

2. A workplace at which fewer than 20 ordinary workers are regularly employed is exempted from clause 9 (2) (a) of the Act. O. Reg. 385/96, s. 2.

3. A project at which fewer than 20 ordinary workers are regularly employed is exempted from clause 9 (2) (c) of the Act. O. Reg. 385/96, s. 3.

4. The following workplaces are exempt from subsection 9 (12) of the Act:
   1. A workplace at which fewer than 20 ordinary workers (who are not volunteer workers) are regularly employed.
   2. A project at which fewer than 50 ordinary workers (who are not volunteer workers) are regularly employed. O. Reg. 385/96, s. 4.

5. Omitted (revokes other Regulations). O. Reg. 385/96, s. 5.

6. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 385/96, s. 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 and to prevent and reduce the occurrence of workplace injuries and occupational diseases.

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, paragraph 1 is repealed and the following substituted:

   1. To promote health and safety in workplaces.

See: 2011, c. 11, ss. 19, 29 (3).

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).

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")

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, subsection (1) is amended by the Statutes of Ontario, 2008, chapter 20, subsection 1 (1) by adding the following definition:

   "construction" means any of the industries listed in Class G of Schedule 1; ("construction")

See: 2008, c. 20, ss. 1 (1), 12 (3).

   "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.
   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")

   "employee" 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‖ 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‖)

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, the definition of ―independent operator‖ is repealed by the Statutes of Ontario, 2008, chapter 20, subsection 1 (2) and the following substituted:

―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‖)

See: 2008, c. 20, ss. 1 (2), 12 (3).

―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‖)

―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”)

“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.
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.

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, paragraph 10 is amended by the Statutes of Ontario, 2008, chapter 20, subsection 1 (3) by striking out “under section 12” and substituting “under section 12 or 12.2”. See: 2008, c. 20, ss. 1 (3), 12 (3).

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.

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).

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.
PART II
INJURY AND DISEASE PREVENTION

Application
3. This Part applies with respect to workplaces governed by the Occupational Health and Safety Act and the employers and workers to whom that Act applies and to employers engaged in any class of farm-related activity in Schedule 1 and their workers. 1997, c. 16, Sched. A, s. 3.

Functions of the Board
4. (1) In order to promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and occupational diseases, the Board’s functions include the following:

1. To promote public awareness of occupational health and safety.
2. To educate employers, workers and other persons about occupational health and safety.
3. To foster a commitment to occupational health and safety among employers, workers and others.
4. To develop standards for the certification of persons who are required to be certified for the purposes of the Occupational Health and Safety Act and to approve training programs for certification.
5. To certify persons who meet the standards.
6. To develop standards for the accreditation of employers who adopt health and safety policies and operate successful health and safety programs.
7. To accredit employers who meet the standards.
8. To designate safe workplace associations, to designate medical clinics and training centres specializing in occupational health and safety matters and to oversee their operation and make grants or provide funds to them.
9. To provide funding for occupational health and safety research.
10. To develop standards for training about first aid.
11. To advise the Minister on matters relating to occupational health and safety that are referred to the Board or brought to its attention. 1997, c. 16, Sched. A, s. 4 (1); 2010, c. 16, Sched. 9, s. 2.

Payments to construction workers
(2) 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. 1997, c. 16, Sched. A, s. 4 (2).

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, subsection (2) is amended by the Statutes of Ontario, 2008, chapter 20, section 2 by striking out “in the construction industry” and substituting “in construction”. See: 2008, c. 20, ss. 2, 12 (3).

Advisory council
5. (1) The Board may establish a workplace health and safety advisory council to advise the Board on such issues as it considers appropriate. 1997, c. 16, Sched. A, s. 5 (1).

Composition
(2) The council shall be composed of such members as the Board may appoint. 1997, c. 16, Sched. A, s. 5 (2).

Safe workplace associations, etc.
6. (1) The Board 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 Board. 1997, c. 16, Sched. A, s. 6 (1).
Standards
  (2) The Board shall establish standards respecting governance, objectives, functions and operations to be met by an entity before it is eligible to be designated. The Board may establish standards respecting other matters and may establish different standards for associations, clinics or centres serving different industries or groups. 1997, c. 16, Sched. A, s. 6 (2).

Charges to employers
  (3) Any funds paid to a safe workplace association under section 7 shall be charged against the class, subclass or group represented by the association and shall be charged as expenses of the Board to any Schedule 2 employer represented by the association. 1997, c. 16, Sched. A, s. 6 (3).

Same
  (4) Any funds paid to a medical clinic or training centre under section 7 shall be charged as expenses of the Board. 1997, c. 16, Sched. A, s. 6 (4).

Designated entities
  7. (1) This section applies with respect to an entity designated under section 6 as a safe workplace association, a medical clinic or a training centre. 1997, c. 16, Sched. A, s. 7 (1).

Effect of designation
  (2) An entity is eligible for financial assistance from the Board and shall operate in accordance with this section and the standards established by the Board. 1997, c. 16, Sched. A, s. 7 (2).

Monitoring
  (3) The Board shall monitor the operation of entities and may conduct such audits as it considers necessary. 1997, c. 16, Sched. A, s. 7 (3).

Directions
  (4) The Board may direct an entity to take such actions as the Board considers appropriate. The governing body of the entity shall comply with the direction. 1997, c. 16, Sched. A, s. 7 (4).

Failure to comply
  (5) If an entity does not operate in accordance with this section and the standards established by the Board,
      (a) the Board may reduce or suspend its financial assistance while the non-compliance continues;
      (b) the Board may assume control of the entity and responsibility for its affairs and operations;
      (c) the Board may revoke the designation and cease to provide financial assistance to it; or
      (d) the Board may take such other steps as it considers appropriate. 1997, c. 16, Sched. A, s. 7 (5).

Appointment of administrator
  8. (1) For the purposes of assuming control of an entity and responsibility for its affairs and operations pursuant to clause 7 (5) (b), the Board may appoint an administrator. 1997, c. 16, Sched. A, s. 8 (1).

Term of appointment
  (2) The appointment of the administrator remains valid until it is terminated by the Board. 1997, c. 16, Sched. A, s. 8 (2).

Notice
  (3) The Board shall provide 30 days written notice to the board of directors of the entity before appointing the administrator, but if there are not enough members of the board of directors to form a quorum, the Board may appoint an administrator without notice. 1997, c. 16, Sched. A, s. 8 (3).

Powers and duties of administrator
  (4) The administrator has the exclusive right to exercise all the powers and perform the duties of the board of directors and its officers and exercise the powers of its members. 1997, c. 16, Sched. A, s. 8 (4).

Same
  (5) The Board may specify the powers and duties of the administrator in the appointment and the terms and conditions governing those powers and duties. 1997, c. 16, Sched. A, s. 8 (5).

Additional power of administrator
  (6) The board of directors and officers may continue to act to the extent authorized by the Board in the notice, but any such act is valid only if approved, in writing, by the administrator. 1997, c. 16, Sched. A, s. 8 (6).
Report, directions

(7) The administrator shall report to the Board as required by it and shall carry out its directions. 1997, c. 16, Sched. A, s. 8 (7).

Meeting of members

(8) 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 Corporations Act. 1997, c. 16, Sched. A, s. 8 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is amended by striking out —the Corporations Act” and substituting —the Not-for-Profit Corporations Act, 2010”. See: 2010, c. 15, ss. 248 (1), 249.

Unincorporated entity

(9) This section applies with necessary modification to an entity that is not incorporated. 1997, c. 16, Sched. A, s. 8 (9).

Fees

9. The Board may charge fees for programs or services provided by the Board under this Part. 1997, c. 16, Sched. A, s. 9.

First aid requirements

10. (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. 1997, c. 16, Sched. A, s. 10 (1).

Repeal

(2) This section is repealed on a day to be named by proclamation of the Lieutenant Governor. 1997, c. 16, Sched. A, s. 10 (2).

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 section 12, the insurance plan does not apply to workers who are executive officers of a corporation. 1997, c. 16, Sched. A, s. 11 (2).

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, subsection (2) is amended by the Statutes of Ontario, 2008, chapter 20, section 3 by striking out —Subject to section 12” at the beginning and substituting —Subject to sections 12 and 12.2”. See: 2008, c. 20, ss. 3, 12 (3).

Deemed workers (optional insurance)

12. (1) Upon application, the Board may declare that any of the following persons is deemed to be a worker to whom the insurance plan applies:

1. An independent operator carrying on business in an industry included in Schedule 1 or Schedule 2.

2. A sole proprietor carrying on business in an industry included in Schedule 1 or Schedule 2.

3. A partner in a partnership carrying on business in an industry in Schedule 1 or Schedule 2. 1997, c. 16, Sched. A, s. 12 (1).

Same, executive officer

(2) Upon the application of a Schedule 1 or Schedule 2 employer who is a corporation, the Board may declare that an executive officer of the corporation is deemed to be a worker to whom the insurance plan applies. The Board may make the declaration only if the executive officer consents to the application. 1997, c. 16, Sched. A, s. 12 (2).
Conditions

(3) The Board may make a declaration subject to such conditions as it considers appropriate. The declaration may provide that the person is deemed to be a worker for only such period as is specified. 1997, c. 16, Sched. A, s. 12 (3).

Payment in advance

(4) The Board may require the employer to pay in advance all or part of any premiums payable in respect of the person. 1997, c. 16, Sched. A, s. 12 (4).

Revocation of status

(5) The Board may revoke a declaration that a person is a deemed worker if the employer at any time defaults in paying the required premiums in respect of the person. 1997, c. 16, Sched. A, s. 12 (5).

Set-off

(6) 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 the payments to the person or survivors the amount owed by the employer. 1997, c. 16, Sched. A, s. 12 (6).

Employer

(7) For the purposes of the insurance plan, while a declaration with respect to a person is in force the following person shall be deemed to be his or her employer:

1. In the case of an independent operator or a sole proprietor, the employer is the independent operator or the sole proprietor.
2. In the case of a partner, the employer is the partnership.
3. In the case of an executive officer of a corporation, the employer is the corporation. 1997, c. 16, Sched. A, s. 12 (7).

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, section 12 is repealed by the Statutes of Ontario, 2008, chapter 20, section 4 and the following substituted:

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.
Section 2: Safety Culture

(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.

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 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 contractor or subcontractor by more than one person during the time period set out in a Board policy. 2008, c. 20, s. 4.

Note: On the first anniversary of the day section 9 of the Workplace Safety and Insurance Amendment Act, 2008 comes into force, subclause (iii) is amended by striking out “contractor or subcontractor” and substituting “a contractor or subcontractor”. See: 2011, c. 1, Sched. 7, ss. 3 (1), 4 (3).

Note: On the first anniversary of the day section 9 of the Workplace Safety and Insurance Amendment Act, 2008 comes into force, subclause (ii) is amended by striking out “contractor or subcontractor” and substituting “a contractor or subcontractor”. See: 2011, c. 1, Sched. 7, ss. 3 (2), 4 (3).
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;

―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);

—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.

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 and executive officers described in clause 12.2 (8) (b). 2008, c. 20, s. 4.
Note: On the first anniversary of the day section 9 of the Workplace Safety and Insurance Amendment Act, 2008 comes into force, clause (b) is amended by striking out —and executive officers”. See: 2011, c. 1, Sched. 7, ss. 3 (3), 4 (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.

See: 2008, c. 20, ss. 4, 12 (3).

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.

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.

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.

Exception, mental stress

(4) Except as provided in subsection (5), a worker is not entitled to benefits under the insurance plan for mental stress.

Same

(5) A worker is entitled to benefits for mental stress that is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of his or her employment. However, the worker is not entitled to benefits for mental stress caused by his or her employer’s decisions or actions 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. 1997, c. 16, Sched. A, s. 13.


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 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;
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(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.

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.

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.
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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.

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).

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).

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).

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).

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).

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).

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).

**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).

**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).

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).

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 (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 he or she earns or is able to earn in suitable and available employment or business after the injury.

However, the minimum amount of the payments for full loss of earnings is the lesser of $15,312.51 or the worker’s net average earnings before the injury. 1997, c. 16, Sched. A, s. 43 (2); 2000, c. 26, Sched. I, s. 1 (5); 2007, c. 7, Sched. 41, s. 2 (1).

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 net average earnings before the injury must be adjusted by the alternate indexing factor for each January 1 since the date of the injury.

2. The amount described by 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.

3. If the amount described by clause (2) (b) is not zero and does not consist solely of disability payments in respect of the injury paid to the worker under the Canada Pension Plan or the Quebec Pension Plan, the amount of the payment must be adjusted,
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Annual adjustment

(6) Every year on January 1, the Board shall adjust the amount of the payments otherwise payable to a worker using,

(a) the alternate indexing factor, if the amount described by clause (2) (b) is zero or consists solely of disability payments in respect of the injury paid to the worker under the Canada Pension Plan or the Quebec Pension Plan; or

(b) the general indexing factor in any other case. 1997, c. 16, Sched. A, s. 43 (6).

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).

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

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

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

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

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

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

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

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

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

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

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).

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).

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) $51,535.37 plus $1,145.63 for each year by which the worker’s age at the time of the injury was less than 45;

or

(b) $51,535.37 less $1,145.63 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 $74,439.52 and the minimum amount is $28,631.22. 1997, c. 16, Sched. A, s. 46 (2).
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 $11,452.07, it is payable as a monthly payment for the life of the worker. If it is $11,452.07 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).

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 $11,452.07.

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).

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).

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


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).

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 $55,555.55,

(a) plus $1,388.88 for each year by which the spouse’s age on the date of the worker’s death is less than 40; or

(b) minus $1,388.88 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 $83,333.30 and the minimum amount is $27,777.76. 1997, c. 16, Sched. A, s. 48 (2); 1999, c. 6, s. 67 (10); 2005, c. 5, s. 73 (9).

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 $15,312.51, they shall be deemed to be $15,312.51. 1997, c. 16, Sched. A, s. 48 (3); 1999, c. 6, s. 67 (11); 2005, c. 5, s. 73 (10).

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 $15,312.51 per year. 1997, c. 16, Sched. A, s. 48 (4); 1999, c. 6, s. 67 (12); 2005, c. 5, s. 73 (11).

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).
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**

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**

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 $83,333.30.
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).

**Labour market re-entry plan for spouse**

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**

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**

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**

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**

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 $55,555.55. 1997, c. 16, Sched. A, s. 48 (13); 1999, c. 6, s. 67 (20); 2005, c. 5, s. 73 (19).

**Periodic payment to dependent children, no spouse**

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 $15,312.51, they shall be deemed to be $15,312.51. 1997, c. 16, Sched. A, s. 48 (14); 1999, c. 6, s. 67 (21); 2005, c. 5, s. 73 (20).

**Same**

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 $15,312.51 they shall be deemed to be $15,312.51 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).

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).

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 $2,083.32. 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).

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

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).

ANNUAL ADJUSTMENTS

General indexing factor

On January 1 every year, a general indexing factor for the year shall be calculated using the formula,

\[(1/2 \times A)^{-1}\]

in which \(A\) is 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. However, the indexing factor shall be not less than 0 per cent and not greater than 4 per cent.

1997, c. 16, Sched. A, s. 49 (1).

Application

The general indexing factor applies with respect to the calculation of all amounts payable under this Part other than,

(a) payments to workers whose loss of earnings is 100 per cent;
(b) payments under section 48 to survivors; and
(c) payments to the other person referred to in subsection 48 (5) and to a parent or other person described in subsection 48 (20). 1997, c. 16, Sched. A, s. 49 (2).

Temporary suspension

The general indexing factor, despite subsection (2), does not apply with respect to the calculation of amounts payable under this Part for the two years commencing January 1, 2008 and January 1, 2009; and applies with respect to the calculation of amounts payable under this Part for the year commencing January 1, 2010 and for all subsequent years. 2007, c. 7, Sched. 41, s. 5.

Temporary indexing factor

For the two years commencing January 1, 2008 and January 1, 2009, a temporary indexing factor of 2.5 per cent applies with respect to the calculation of the amounts payable under this Part that would otherwise have been adjusted by the general indexing factor in accordance with subsection (2). 2007, c. 7, Sched. 41, s. 5.

Alternate indexing factor

On January 1 every year, an alternate indexing factor for the year shall be calculated. It is 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. However, the indexing factor shall not be less than 0 per cent.

Application

The alternate indexing factor applies with respect to the calculation of payments,

(a) to workers whose loss of earnings is 100 per cent;
(b) under section 48 to survivors; and
(c) to the other person referred to in subsection 48 (5) and to a parent or other person described in subsection 48 (20). 1997, c. 16, Sched. A, s. 50.

Indexation of amounts in the Act

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 general indexing factor described in subsection 49 (1). 1997, c. 16, Sched. A, s. 51 (1).

Regulations

Subsection (1) is subject to any regulations made under subsection 52.1 (1). 2007, c. 7, Sched. 41, s. 6.

Exceptions

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).
Annual adjustment, exception for 2008 and 2009

(3) Despite subsection (1), on January 1, 2008 and January 1, 2009, the amounts set out in this Act (as adjusted on the preceding January 1) shall be adjusted by the amount of the temporary indexing factor described in subsection 49 (4). 2007, c. 7, Sched. 41, s. 6.

Same

(4) Subsections 49 (3) and (4) apply to the indexation of amounts set out in this Act, with necessary modifications. 2007, c. 7, Sched. 41, s. 6.

Annual adjustment, prescribed temporary indexing factor

(5) Despite subsection (1), on January 1 in any calendar year specified in a regulation made under clause 52.1 (1) (a), the amounts set out in this Act (as adjusted on the preceding January 1) that would otherwise be adjusted by the amount of the general indexing factor shall be adjusted by the amount of the temporary indexing factor prescribed in the regulation. 2007, c. 7, Sched. 41, s. 6.

Additional adjustment, July 1, 2007

(6) The amounts set out in this Act that were adjusted by the general indexing factor on January 1, 2007 shall be adjusted by an additional 2.5 per cent on July 1, 2007. 2007, c. 7, Sched. 41, s. 6.

Prescribed additional adjustment

(7) On any date specified in a regulation made under clause 52.1 (1) (b), the amounts set out in this Act (as most recently adjusted under this Act) shall be adjusted by the prescribed additional adjustment. 2007, c. 7, Sched. 41, s. 6.

Annual adjustment of payments

52. (1) On January 1 every year, the Board shall adjust average earnings by applying the general or alternate indexing factor, as the case may be, to the average earnings (as adjusted on the preceding January 1) and shall make consequential changes to the amounts payable under this Part. 1997, c. 16, Sched. A, s. 52 (1).

Regulations

(1.1) Subsection (1) is subject to any regulations made under subsection 52.1 (1). 2007, c. 7, Sched. 41, s. 7 (1).

Annual adjustment, exception for 2008 and 2009

(1.2) Despite subsection (1), on January 1, 2008 and January 1, 2009, the Board shall adjust average earnings that would otherwise be subject to the general indexing factor by applying the temporary indexing factor described in subsection 49 (4) to the average earnings (as adjusted on the preceding January 1) and shall make consequential changes to the amounts payable under this Part. 2007, c. 7, Sched. 41, s. 7 (1).

Annual adjustment, prescribed temporary indexing factor

(1.3) Despite subsection (1), on January 1 in any calendar year specified in a regulation made under clause 52.1 (1) (a), the Board shall adjust average earnings that would otherwise be subject to the general indexing factor by applying the temporary indexing factor prescribed in the regulation to the average earnings (as adjusted on the preceding January 1) and shall make consequential changes to the amounts payable under this Part. 2007, c. 7, Sched. 41, s. 7 (1).

Additional adjustment, July 1, 2007

(1.4) On July 1, 2007, the Board shall adjust average earnings that were adjusted on January 1, 2007 by application of the general indexing factor, by applying an additional 2.5 per cent to the average earnings and shall make consequential changes to the amounts payable under this Part. 2007, c. 7, Sched. 41, s. 7 (1).

Prescribed additional adjustment

(1.5) On any date specified in a regulation made under clause 52.1 (1) (b), the Board shall adjust average earnings by the prescribed additional adjustment and shall make consequential changes to the amounts payable under this Part. 2007, c. 7, Sched. 41, s. 7 (1).

Increases prospective

(2) Nothing in this section entitles a person to claim additional compensation for any period before the effective date of an adjustment or with respect to an award commuted or paid as a lump sum before the effective date. 1997, c. 16, Sched. A, s. 52 (2).

Maximum average earnings rounded

(3) The Board, when applying subsections (1), (1.2), (1.3), (1.4) and (1.5) to the maximum amount of average earnings set out in section 54, shall round the adjusted amount to the nearest $100. 1997, c. 16, Sched. A, s. 52 (3); 2007, c. 7, Sched. 41, s. 7 (2).

Regulations re temporary indexing factor and additional adjustment

52.1 (1) The Lieutenant Governor in Council may, by regulation,
(a) prescribe a temporary indexing factor to replace the general indexing factor described in subsection 49 (1) for the purposes of subsections 51 (5) and 52 (1.3), and specify the calendar year for which the temporary indexing factor shall be applied;

(b) prescribe an additional adjustment for the purposes of subsections 51 (7) and 52 (1.5), and specify the date on which it shall be applied. 2007, c. 7, Sched. 41, s. 8.

Same

(2) A temporary indexing factor prescribed under clause (1) (a),

(a) may be higher but shall not be less than the general indexing factor described in subsection 49 (1); or

(b) may be higher or lower than the alternate indexing factor described in subsection 50 (1). 2007, c. 7, Sched. 41, s. 8.

Same

(3) An additional adjustment prescribed under clause (1) (b) may be higher or lower than,

(a) the general indexing factor described in subsection 49 (1); or

(b) the alternate indexing factor described in subsection 50 (1). 2007, c. 7, Sched. 41, s. 8.

Conditions, etc.

(4) The application of a prescribed temporary indexing factor or prescribed additional adjustment may be subject to any terms, restrictions, limitations, conditions or exclusions that are set out in the regulation. 2007, c. 7, Sched. 41, s. 8.

Classes

(5) A regulation made under this section may create different classes of workers and may impose different requirements or create different entitlements with respect to each class. 2007, c. 7, Sched. 41, s. 8.

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
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(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.

**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.

**Annual redetermination**

(2) On January 1 every year, the Board shall redetermine the amount of a worker’s net average earnings.

**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.

**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).

**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).

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).

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 consider 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).

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.

—“Fade” 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).

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).

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).

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).

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).

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).
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.

Adjustments in premiums for particular employers

82. The Board may increase or decrease the premiums otherwise payable by a particular employer in such circumstances as the Board considers appropriate including the following:

1. If, in the opinion of the Board, the employer has not taken sufficient precautions to prevent accidents to workers or the working conditions are not safe for workers.

2. If the employer’s accident record has been consistently good and the employer’s ways, works, machinery and appliances conform to modern standards so as to reduce the hazard of accidents to a minimum.

3. If the employer has complied with the regulations made under this Act or the Occupational Health and Safety Act respecting first aid.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 is amended by striking out ―his Act or". See: 2011, c. 11, ss. 21, 29 (2).

4. If the frequency of work injuries among the employer’s workers and the accident cost of those injuries is consistently higher than that of the average in the industry in which the employer is engaged. 1997, c. 16, Sched. A, s. 82.

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.

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.

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.

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
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PART VIII
INSURANCE FUND

Insurance fund

96. (1) The Board shall maintain a fund for the following purposes:

1. To pay for 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 directed under any Act to be paid by the Board or out of the insurance fund.

1997, c. 16, Sched. A, s. 96 (1).

Sufficiency of fund

(2) The Board has a duty to maintain the insurance fund so that it is sufficient to make the required payments under the insurance plan as they become due. 1997, c. 16, Sched. A, s. 96 (2).

Same

(3) The Board has a duty to maintain the insurance fund so as not to burden unduly or unfairly any class of Schedule 1 employers in future years with payments under the insurance plan in respect of accidents in previous years. 1997, c. 16, Sched. A, s. 96 (3).

(4)-(6) Repealed: 2010, c. 26, Sched. 21, s. 1 (1).

Transition

(7) The accident fund maintained under the Workers’ Compensation Act is continued as the insurance fund. 1997, c. 16, Sched. A, s. 96 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 96 is repealed and the following substituted:

Insurance fund

Definitions

96. (1) In this Part,

“current benefits” means the benefits payable under the insurance plan in the current calendar year; (―pr eatations 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. (―pr eatations 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).
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).

Plan, sufficiency of fund

96.1 (1) If the insurance fund is insufficient for the purposes set out in subsection 96 (3) at any time before the date prescribed under clause 100 (b), the Board shall develop and implement a plan to achieve sufficiency that complies with the prescribed requirements. 2010, c. 26, Sched. 21, s. 1 (2).

Same

(2) The Board shall ensure that the plan sets out the steps the Board will take to ensure that the insurance fund is sufficient by the date prescribed under clause 100 (b). 2010, c. 26, Sched. 21, s. 1 (2).

Revision of plan

(3) Subject to any regulation made under clause 100 (d), the Board may revise the plan. 2010, c. 26, Sched. 21, s. 1 (2).

Plan submitted to Minister

(4) The Board shall submit the plan and any revisions made to the plan to the Minister. 2010, c. 26, Sched. 21, s. 1 (2).

Report to Minister

(5) The Board shall report to the Minister on the progress of the plan at such times as the Minister may determine and shall address in the report such matters as the Minister may specify. 2010, c. 26, Sched. 21, s. 1 (2).

Minister may obtain review

(6) If, at any time before the date prescribed under clause 100 (b), the Minister determines that it is unlikely that the insurance fund will become sufficient by the prescribed date, the Minister may obtain a review of the following:

1. The sufficiency of the fund.
2. The plan made under subsection (1) and the Board’s implementation of the plan. 2010, c. 26, Sched. 21, s. 1 (2).

Same

(7) The review shall be conducted by an actuary or auditor appointed by the Minister. 2010, c. 26, Sched. 21, s. 1 (2).

Report on findings of review

(8) The actuary or auditor shall,

(a) on completing the review, submit a written report to the Board and the Minister on the findings of the review; and
(b) address in the report such matters as the Minister may specify. 2010, c. 26, Sched. 21, s. 1 (2).

Revised or new plan

(9) If a finding of the review is that it is unlikely that the insurance fund will become sufficient by the date prescribed under clause 100 (b), the Board shall revise its plan or make a new plan and subsections (1) to (5) apply to the plan with necessary modifications. 2010, c. 26, Sched. 21, s. 1 (2).

Costs of review

(10) The costs of the review are an administrative expense of the Board. 2010, c. 26, Sched. 21, s. 1 (2).

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).

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).
Reserve funds

97. (1) The Board shall establish and maintain one or more reserve funds to pay benefits in future years in respect of claims for accidents that happen in a year. 1997, c. 16, Sched. A, s. 97 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Reserve funds

(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).

See: 2010, c. 26, Sched. 21, s. 2 (2), 6 (2).

Same

(2) The Board is not required to maintain a reserve fund that at all times equals the capitalized value of the benefits that will become due in future years, unless the Board is of the opinion that it is necessary to do so in order to comply with subsections 96 (2) and (3). 1997, c. 16, Sched. A, s. 97 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Use of reserve funds

(2) If, before the insurance fund becomes sufficient for the purposes set out in subsection 96 (3), there is not sufficient money available in the fund to allow the Board to meet its obligations under this Act to make payments under the insurance plan for current benefits as they become due without resorting to the reserve funds, the Board may make the payments out of the reserve funds. 2010, c. 26, Sched. 21, s. 2 (2).

See: 2010, c. 26, Sched. 21, s. 2 (2), 6 (2).

Use of reserve funds

(2.1) If there is not sufficient money available in the insurance fund to pay current benefits as they become due without resorting to the reserve funds, the Board may make the payments out of the reserve funds. 2010, c. 26, Sched. 21, s. 2 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2.1) is repealed and the following substituted:

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).

See: 2010, c. 26, Sched. 21, s. 2 (2), 6 (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).
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(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).

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.

100. Repealed: 2010, c. 26, Sched. 21, s. 3 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Regulations

100. The Lieutenant Governor in Council may make regulations,

(a) prescribing anything referred to in this Part as prescribed;
(b) prescribing the date by which the insurance fund must become sufficient and prescribing interim dates by which the fund must become partially sufficient;
(c) prescribing the amount of the insurance fund required to make the fund sufficient by the prescribed date or partially sufficient by prescribed interim dates, or prescribing the method of determining those amounts, including any formula, ratio or percentage to be used to calculate the amounts;
(d) prescribing the requirements for a plan for the purposes of subsection 96.1 (1), including the contents of the plan and the time period within which the plan is to be established by the Board and submitted to the Minister;
(e) prescribing the requirements with which the Board shall comply for the purposes of section 96.2, including the time period within which the Board must comply with those requirements;
(f) prescribing any terms, conditions, limitations or requirements on the use of reserve funds for the purposes of subsection 97 (2.1);
(g) providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in relation to this Part and the regulations made under it. 2010, c. 26, Sched. 21, s. 3 (2).

See: 2010, c. 26, Sched. 21, s. 3 (2), 6 (2).
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; (—Lod’avant 1997”)

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.

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).
103.2, 103.3 Repealed: 2005, c. 5, s. 73 (29).

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.
(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).

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).

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 —3-month period” in the first line of clause 62 (2) (b) shall be read as “—6-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).

107.1-107.3 Repealed: 2005, c. 5, s. 73 (38).
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).

108.1-108.5 Repealed: 2005, c. 5, s. 73 (39).
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.

Indexation of compensation

111. (1) 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** applies with respect to the calculation of all compensation payable under this Act.

Same

(2) 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** applies with respect to the calculation of the following:

Same

(3) Paragraph 6 of subsection 148 (1.2) of the pre-1997 Act shall be deemed to be repealed.

Same

(4) Subsection 148 (1.3) of the pre-1997 Act shall be deemed to be repealed.

Same

(5) The pre-1997 Act shall be deemed to be amended by striking out ―subsection 148 (1.3)‖ in paragraph 1 of subsection 43 (4), subparagraph ii of paragraph 2 of subsection 43 (4), paragraph 1 of subsection 43 (5) and clause 43 (6.1) (b) and substituting in each instance ―subsection 148 (1.2)‖.

Same

(6) Subsection 148 (2) of the pre-1997 Act shall be deemed to be amended by striking out ―the indexing factor‖ in clause (a) and in clause (b) and substituting in clause (a) ―the general indexing factor‖ and in clause (b) ―the general or alternate indexing factor, as the case may be‖. 1997, c. 16, Sched. A, s. 111.
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.
Section 2: Safety Culture

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).

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.

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.

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. Part II (injury and disease prevention).

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), 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).

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).

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.
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.

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.

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.

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).
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.

Health professionals

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

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.

The Appeals Tribunal shall pay a health professional the amount determined by the chair.

The Appeals Tribunal may call upon a health professional on the list for assistance at any time before or during a proceeding.

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.

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.

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.

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

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. 1997, c. 16, Sched. A, s. 135 (1).

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. 1997, c. 16, Sched. A, s. 135 (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).

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).

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).

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
141. (1) This section applies when a person retains a contractor or subcontractor to execute work in an industry included in Schedule 1 or Schedule 2. 1997, c. 16, Sched. A, s. 141 (1).

Deemed employer
(2) The person shall be deemed to be the employer of workers employed by the contractor or subcontractor to execute the work and 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 unless,

(a) the contractor or subcontractor, as the case may be, is a Schedule 1 or Schedule 2 employer in respect of the work; and

(b) the Board decides that the responsibility of the contractor or subcontractor is sufficient protection to the workers for the benefits provided under the insurance plan. 1997, c. 16, Sched. A, s. 141 (2).

Right to reimbursement
(3) Subject to subsection (4), the person is entitled to be reimbursed by the contractor or subcontractor, as the case may be, for amounts paid under the insurance plan in respect of workers employed by the contractor or subcontractor. 1997, c. 16, Sched. A, s. 141 (3).

Same
(4) The Board shall determine the extent of the contractor’s or subcontractor’s liability under subsection (3). 1997, c. 16, Sched. A, s. 141 (4).

Right of set-off
(5) The person may deduct from money payable to the contractor or subcontractor, as the case may be, the amount for which the contractor or subcontractor is liable under subsection (3). 1997, c. 16, Sched. A, s. 141 (5).

Obligation to pay
(6) If the person is not deemed to be the employer, the person shall ensure that the contractor or subcontractor complies with his, her or its obligations to make payments under the insurance plan. The person is liable to the extent that the contractor or subcontractor does not meet those obligations. 1997, c. 16, Sched. A, s. 141 (6).

Right of indemnity
(7) The person is entitled to be indemnified by the contractor or subcontractor, as the case may be, for payments the person makes under subsection (6). 1997, c. 16, Sched. A, s. 141 (7).

Same
(8) The Board shall determine all issues relating to subsections (6) and (7). 1997, c. 16, Sched. A, s. 141 (8).
Liability to contribute

(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. 1997, c. 16, Sched. A, s. 141 (9).

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, section 141 is repealed by the Statutes of Ontario, 2008, chapter 20, section 5 and the following substituted:

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.

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.

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.

See: 2008, c. 20, ss. 5, 12 (3).

Lienholder under *Construction Lien Act*

142. (1) This section applies if a Schedule 1 employer is entitled to a lien under the *Construction Lien Act* at a premises.

Liability of owner

(2) The owner (as defined in the *Construction Lien 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.

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.

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; or
(b) the person who owes the money is a corporation that is being wound up; or
Section 2: Safety Culture

(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 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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out —the Corporations Act and the Trustee Act— and substituting —the Corporations Act, the Not-for-Profit Corporations Act, 2010 and the Trustee Act". See: 2010, c. 15, ss. 248 (2), 249.

Committed 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 committed value of the periodic payments. The committed 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).

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 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).

Liability of person (2) The person is liable to pay all amounts owing under this Act by the employer immediately before the disposition.

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.

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 (4) and (5) 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).

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, subsection (1) is amended by the Statutes of Ontario, 2008, chapter 20, section 6 by striking out —subsections 12 (4) and (5) and sections 76, 137, 139 and 146— and substituting —subsections 12 (8) and (9), subsection 12.2 (3) and sections 76, 137, 139 and 146”. See: 2008, c. 20, ss. 6, 12 (3).
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).

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, section 149 is amended by the Statutes of Ontario, 2008, chapter 20, section 7 by adding the following subsections:

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.

See: 2008, c. 20, ss. 7, 12 (3).

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).

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).

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, the Act is amended by the Statutes of Ontario, 2008, chapter 20, section 8 by adding the following sections:

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.

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.

See: 2008, c. 20, ss. 8, 12 (3).

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).

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).

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).

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 $100,000.

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.

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;
(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).

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).


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).

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, section 159 is amended by adding the following subsections:

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).

See: 2011, c. 11, ss. 23 (1), 29 (3).

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 the prevention of injury and disease and workers’ compensation and return to work and providing for the avoidance of any duplication in compensation. 1997, c. 16, Sched. A, s. 159 (7).

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, subsection (7) is amended by striking out —the prevention of injury and disease and—and”. See: 2011, c. 11, ss. 23 (2), 29 (3).

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 the prevention of injury and disease and workers’ compensation and return to work and providing for the avoidance of any duplication in compensation. 1997, c. 16, Sched. A, s. 159 (8).

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, subsection (8) is amended by striking out —the prevention of injury and disease and—and”. See: 2011, c. 11, ss. 23 (3), 29 (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
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 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).

Corporations Act

(12) The Corporations Act does not apply to the Board. 1997, c. 16, Sched. A, s. 159 (12).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (12) is repealed and the following substituted:

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).

See: 2010, c. 15, ss. 248 (3), 249.

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 perform the functions assigned to it under Part II in respect of workplace safety and the prevention of injury and disease, shall administer the insurance plan and shall perform such other duties as it is assigned under this Act and any other Act. 1997, c. 16, Sched. A, s. 161 (1).

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Duties of the Board

(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).

See: 2011, c. 11, ss. 24 (1), 29 (3).
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 work and the prevention of injury and occupational disease and 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 and the performance of the Board’s functions under Part II in respect of workplace safety and the prevention of injury and occupational disease. 1997, c. 16, Sched. A, s. 161 (3).

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

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).

See: 2011, c. 11, ss. 24 (2), 29 (3).

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

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).


Duties of the board of directors

The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties.

Same, board members

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

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

The main offices of the Board shall be situate in the City of Toronto. 1997, c. 16, Sched. A, s. 165 (1);

Place of meeting

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).

Memorandum of understanding

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

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

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

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

The Board shall comply with the memorandum of understanding. 1997, c. 16, Sched. A, s. 166.

Value for money audit

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

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).

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).

Annual report

170. (1) The Board shall give the Minister an annual report concerning its affairs.

Tabling

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall lay the report before the Assembly if it is in session or, if not, at the next session. 1997, c. 16, Sched. A, s. 170.

Employees’ pension plan continued

171. (1) The Workers’ Compensation Board Superannuation Fund is continued as the Workplace Safety and Insurance Board Employees’ Pension Plan. Its purpose 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. 1997, c. 16, Sched. A, s. 171 (1).

Expenses

(2) The cost of maintaining and administering the pension plan is chargeable to the insurance fund. 1997, c. 16, Sched. A, s. 171 (2).

Terms of the plan

(3) The terms of the pension plan are as prescribed. 1997, c. 16, Sched. A, s. 171 (3).

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 designated under section 6.

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, paragraph 1 is repealed and the following substituted:

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*.

See: 2011, c. 11, ss. 25, 29 (3).

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*.


Reciprocal agreements

(7) With the approval of the Lieutenant Governor in Council, the Board may enter into agreements with the government of Canada or of a province of Canada or with a municipality in Canada or a board, commission or public
institution established under a statute of Canada or a province of Canada to provide reciprocal arrangements for the
transfer of contributions and credits between pension plans. 1997, c. 16, Sched. A, s. 171 (7).

Same
(8) Despite subsection (1) and the terms of the pension plan, transfers of money and credit to or from the pension
plan shall be made in accordance with the applicable agreement, if any, entered into under subsection (7). 1997, c. 16,
Sched. A, s. 171 (8).

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.

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, the Act
is amended by adding the following section:

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.

See: 2011, c. 11, ss. 26, 29 (3).

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

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).
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, a panel of three members shall hear and decide an appeal or other matter conferred upon the tribunal under this Act. The panel shall consist of the chair or a vice-chair, one tribunal member who is representative of employers and one who is representative of workers and shall be appointed by the chair. 1997, c. 16, Sched. A, s. 174 (3); 2000, c. 26, Sched. I, s. 1 (28).

Decision

(4) The decision of a majority of a three-member panel is the decision of the Appeals Tribunal. 1997, c. 16, Sched. A, s. 174 (4).

Panels

(5) A person sitting alone or a three person panel has all the jurisdiction and powers of the Appeals Tribunal. 1997, c. 16, Sched. A, s. 174 (5).

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.

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. Persons employed by a safe workplace association, a medical clinic or a training centre designated under section 6.

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.

Note: On the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor, paragraph 4 is repealed. See: 2011, c. 11, ss. 28 (1), 29 (3).

(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 subsections 5 (2) and (4) of the Proceedings Against the Crown Act, 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).

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).

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:

Section 2: Safety Culture
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).

**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.

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, the Act is amended by the Statutes of Ontario, 2008, chapter 20, section 10 by adding the following section:

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.

See: 2008, c. 20, ss. 10, 12 (3).

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, except under sections 15.1 and 52.1;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by striking out —sections 15.1 and 52.1” and substituting —sections 15.1, 52.1 and 100‰. If this amendment does not come into force before the day on which subsection 11 (1) of the Workplace Safety and Insurance Amendment Act, 2008 comes into force, this amendment is repealed on the same day that subsection 11 (1) of the Workplace Safety and Insurance Amendment Act, 2008 comes into force. See: 2010, c. 26, Sched. 21, ss. 5, 6 (2).

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, clause (a) is repealed by the Statutes of Ontario, 2008, chapter 20, subsection 11 (1) and the following substituted:

(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;

See: 2008, c. 20, ss. 11 (1), 12 (3).

(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.

Note: On the first anniversary of the day the Statutes of Ontario, 2008, chapter 20, section 9 is proclaimed in force, section 183 is amended by the Statutes of Ontario, 2008, chapter 20, subsection 11 (2) by adding the following subsections:

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).

See: 2008, c. 20, ss. 11 (2), 12 (3).

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).


e-Laws currency date is Monday, March 12, 2012.
No amendments.

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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Interpretation

Definitions

1. (1) In this Act,

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

“construction trade newspaper” means a newspaper having circulation generally throughout Ontario, that is published no less frequently than on all days except Saturdays and holidays, and in which calls for tender on construction contracts are customarily published, and that is primarily devoted to the publication of matters of concern to the construction industry; (“journal de l’industrie de la construction”)

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

Section 3: Business Administration
“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; (“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”)

“improvement” means, in respect of any land,
   (a) any alteration, addition or 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 le local”)

“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”)

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

“municipality” means a municipality or local board, both as defined in the Municipal Affairs Act; (“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”)

Section 3: Business Administration
“payer” means the owner, contractor or subcontractor who is liable to pay for the materials or services 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 unpreserved 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; (“local”)

“price” means the contract or subcontract price,

(a) agreed upon between the parties, or

(b) where no specific price has been agreed upon between them, the actual value of the services or materials that have been supplied to the improvement under the contract or subcontract; (“prix”)

“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; (“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” includes a claim for lien and any written notice given by a person having a lien that,

(a) identifies the payer and identifies the premises, and

(b) states the amount that the person has not been paid and is owed to the person by the payer. (“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).

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).

Idem

(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).

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 $500,000 of the contract price,

(ii) 2 per cent of the next $500,000 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).

Idem

(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 remainder of the improvement cannot be completed expeditiously for reasons beyond the control of the contractor or, where 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).

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) $1,000. R.S.O. 1990, c. C.30, s. 2 (3).

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).

Exception re certain payments

(2) This Act does not apply in respect of labour, material or services supplied as a result of a contract, as defined in the Ministry of Transportation and Communications Creditors Payment Act, being chapter 290 of the Revised Statutes of Ontario, 1980, made before the 1st day of April, 1990. R.S.O. 1990, c. C.30, s. 3 (2).

Exception re notice of claim

(3) Section 7 of the Proceedings Against the Crown Act does not apply in respect of an action against the Crown under this Act. R.S.O. 1990, c. C.30, s. 3 (3).

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

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.

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 irregularities  
6. No certificate, declaration or claim for lien is invalidated by reason only of a failure to comply strictly with subsection 32 (2) or (5), subsection 33 (1) or subsection 34 (5), unless in the opinion of the court a person has been prejudiced thereby, and then only to the extent of the prejudice suffered. R.S.O. 1990, c. C.30, s. 6.

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 the 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).

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).

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,  
(b) the value of the consideration received by the owner as a result of the sale,
(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).

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).

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).

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).

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, whether or not related to the improvement. R.S.O. 1990, c. C.30, s. 12.

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 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).

Note: Subsection (1) applies to services and materials supplied by architects, holders of certificates of practice under the Architects Act and their employees under contracts made on or after November 28, 1997, and under subcontracts made under such contracts. See: 1997, c. 23, s. 4 (2).

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).

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.

Interest of Crown

16. (1) A lien does not attach to the interest of the Crown in a premises. R.S.O. 1990, c. C.30, s. 16 (1).

Interest of person other than Crown

(2) Where an improvement is made to a premises in which the Crown has an interest, but the Crown is not an owner within the meaning of this Act, the lien may attach to the interest of any other person in that premises. R.S.O. 1990, c. C.30, s. 16 (2).

Where lien does not attach to premises

(3) Where the Crown is the owner of a premises within the meaning of this Act, or where the premises is,

(a) a public street or highway owned by a municipality; or

(b) a railway right-of-way,

the lien does not attach to the premises but constitutes a charge as provided in section 21, and the provisions of this Act shall have effect without requiring the registration of a claim for lien against the premises. R.S.O. 1990, c. C.30, s. 16 (3).

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).

Idem

(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, whether or not related to the improvement. R.S.O. 1990, c. C.30, s. 17 (3).

Public highway, liability of municipality re

(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 in respect of a public street or highway. R.S.O. 1990, c. C.30, s. 17 (4).
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.

Where owner’s interest leasehold

19. (1) Where the interest of the owner to which the lien attaches is leasehold, the interest of the landlord shall also be subject to the lien to the same extent as the interest of the owner if the contractor gives the landlord written notice of the improvement to be made, unless the landlord, within fifteen days of receiving the notice from the contractor, gives the contractor written notice that the landlord assumes no responsibility for the improvement to be made. R.S.O. 1990, c. C.30, s. 19 (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).

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).

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).

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).

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.

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 as provided in Part V, or have been satisfied, discharged or provided for under section 44 (payment into court). R.S.O. 1990, c. C.30, s. 22 (1).

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 as provided in Part V, or have been satisfied, discharged or provided for under section 44. R.S.O. 1990, c. C.30, s. 22 (2).
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).

Personal liability of owner

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).

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).

Idem

(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).

Transition

(5) This section does not affect the rights acquired by any person from a judgment or order of any court before the 28th day of June, 1990. R.S.O. 1990, c. C.30, s. 23 (5).

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).

Idem

(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 and materials that have been supplied under that contract or subcontract, less the amount retained. R.S.O. 1990, c. C.30, s. 24 (2).

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 as provided in Part V, or have been satisfied, discharged or provided for under section 44 (payment into court). R.S.O. 1990, c. C.30, s. 25.

Payment of basic holdback

26. Each payer upon the contract or a subcontract may, without jeopardy, 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 as provided in Part V, or have been satisfied, discharged or provided for under section 44. R.S.O. 1990, c. C.30, s. 26.

Payment of holdback for finishing work

27. Each payer upon the contract or a subcontract may, without jeopardy, 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 as provided in Part V, or have been satisfied, discharged or provided for under section 44. R.S.O. 1990, c. C.30, s. 27.

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 as provided in Part V, or have been satisfied, discharged or provided for under section 44 (payment into court). R.S.O. 1990, c. C.30, s. 30.

**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).

**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 forty-five-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 or abandoned; 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 forty-five-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. R.S.O. 1990, c. C.30, s. 31 (2).

**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 forty-five-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, and

(ii) the date on which the person last supplies services or materials to the improvement, 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 substantial performance, expires at the conclusion of the forty-five-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, 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).
Separate liens when ongoing supply

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).

Declaration of last supply

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).

Rules governing certification or declaration of substantial performance

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 once in a construction trade newspaper.

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 once in a construction trade newspaper.

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).

Contents of certificate

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;
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).

Manner of publication
(5) A construction trade newspaper shall publish upon commercially reasonable terms copies of certificates or declarations of substantial performance in the prescribed form and manner. R.S.O. 1990, c. C.30, s. 32 (5).

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).

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).

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 a construction trade newspaper at least five and not more than 15 days, excluding Saturdays and holidays, before the description is submitted for approval under subsection 9 (3) of the Condominium Act, 1998. 2010, c. 16, Sched. 2, s. 2 (4).

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).

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).

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).

Public highway

(2) Where a claim for lien is in respect of a public street or highway owned by a municipality, the copy of the claim for lien shall be given to the clerk of the municipality. R.S.O. 1990, c. C.30, s. 34 (2); 2010, c. 16, Sched. 2, s. 2 (6).

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 office prescribed by regulation, 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).

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).

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 and the name and address of the owner of the premises and of the person for whom the services or materials were supplied and the time within which those 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).

(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).

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).

Liability for exaggerated claim, etc.

35. 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,
(a) for an amount which the person knows or ought to know is grossly in excess of the amount which the person
is owed; or

(b) where the person knows or ought to know that the person does not have a lien,

is liable to any person who suffers damages as a result. R.S.O. 1990, c. C.30, s. 35.

**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 forty-five-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).

**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).

**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).

**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).

**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).

**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).

*Note: Subsection 37 (1), as re-enacted by the Statutes of Ontario, 1994, chapter 27, subsection 42 (1), does not
affect any rights acquired by a person under a judgment or court order before December 9th, 1994. See: 1994,
c. 27, s. 42 (3).*
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).

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, with,
   i. the names of the parties to the contract,  
   ii. the contract price,  
   iii. the state of accounts between the owner and the contractor,  
   iv. a copy of any labour and material payment bond in respect of the contract posted by the contractor with the owner, and  
   v. a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis.

from contractor or subcontractor  
2. By the contractor or a subcontractor, with,
   i. the names of the parties to a subcontract,  
   ii. the state of accounts between the contractor and a subcontractor or between a subcontractor and another subcontractor,  
   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. R.S.O. 1990, c. C.30, s. 39 (1).

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
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(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).

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, upon written request whenever made to the contractor by any person, within a reasonable time furnish in writing to the person the date of publication and the name of the construction trade newspaper in which a copy of a certificate of substantial performance has been published under subsection 32 (1). R.S.O. 1990, c. C.30, s. 39 (4).

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 sustained by reason thereof. R.S.O. 1990, c. C.30, s. 39 (5).

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).

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).

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).

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).

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).

PART VII

DISCHARGE OF PRESERVED OR PERFECTED LIENS

Discharge of lien and withdrawal of written notice of lien

Discharge of lien claim by release

41. (1) A preserved or perfected lien may be discharged,

(a) where the lien attaches to the premises, by the registration of a release in the prescribed form on the title to the premises and the release 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 release 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).

Withdrawal of written notice of lien

(2) A written notice of a lien may be withdrawn by giving a withdrawal in writing 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).

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 release in the prescribed form on the title to the premises released. R.S.O. 1990, c. C.30, s. 42.

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.

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 $50,000 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).

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).

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).

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).

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).

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).
Idem  
(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).

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 set out in 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).

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).

Idem  
(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).

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).
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).

Idem

(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).

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).

General power to discharge lien

47. (1) Upon motion, the court may,
(a) order the discharge of a lien;
(b) order that the registration of,
(i) a claim for lien, or
(ii) a certificate of action,
or both, be vacated;
(c) declare, where written notice of a lien has been given, that the lien has expired, or that the written notice of the lien shall no longer bind the person to whom it was given; or
(d) dismiss an action,
upon any proper ground and subject to any terms and conditions that the court considers appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 47 (1).

Direction by court

(2) Where a certificate of action is vacated under subsection (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).

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.

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.
PART VIII
JURISDICTION AND PROCEDURE

Lien claims and trust claims
Lien claim enforceable in action

50. (1) A lien claim is enforceable in an action in the Superior Court of Justice in accordance with the procedure set out in this Part. R.S.O. 1990, c. C.30, s. 50 (1); 2006, c. 19, Sched. C, s. 1 (1).

Trust claim and lien claim not to be joined

(2) A trust claim shall not be joined with a lien claim but may be brought in any court of competent jurisdiction. R.S.O. 1990, c. C.30, s. 50 (2).

Joinder in action

(3) Any number of lien claimants whose liens are in respect of the same owner and the same premises may join in the same action. R.S.O. 1990, c. C.30, s. 50 (3).

Court to dispose completely of action

51. The court, whether the action is being tried by a judge or on a reference by a master, a case management master or a person agreed on by the parties,

(a) shall try the action, including any set-off, crossclaim, counterclaim and, subject to section 56, 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).

Where exclusive jurisdiction not acquired

52. A judge, master or case management master 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, or for holding a settlement meeting. R.S.O. 1990, c. C.30, s. 52; 1996, c. 25, s. 4 (2).

Statement of claim and defence

How action commenced

53. (1) An action shall be commenced by issuing a statement of claim in the office of the local registrar of the court for the area in which the premises or a part thereof are situate. R.S.O. 1990, c. C.30, s. 53 (1).

Service of statement of claim

(2) The statement of claim shall be served within ninety days after it is issued, but the court may, upon a motion made before or after the expiration of that period of time, extend the time for service. R.S.O. 1990, c. C.30, s. 53 (2).

Crossclaim or counterclaim

(3) A crossclaim or counterclaim by any person shall accompany the person’s statement of defence, but on motion the court may grant leave to deliver a crossclaim or counterclaim after this time where it is appropriate to do so, and where leave is granted, the court may,

(a) make any order as to costs that it considers appropriate; and

(b) give directions as to the conduct of the action. R.S.O. 1990, c. C.30, s. 53 (3).

Time for delivery of pleadings

54. (1) The time for delivering a statement of defence to a lien claim, crossclaim, counterclaim or third party claim shall be twenty days. R.S.O. 1990, c. C.30, s. 54 (1).

Noting in default

(2) Where a person against whom a claim is made in a statement of claim, counterclaim, crossclaim or third party claim defaults in the delivery of a defence to that claim, the person against whom the claim is made may be noted in default. R.S.O. 1990, c. C.30, s. 54 (2).

Effect of default in defence

(3) Where a defendant or third party has been noted in default under subsection (2), the defendant or third party shall not be permitted to contest the claim of the person who named the defendant or third party as a defendant or third
party, or to file a statement of defence, except with leave of the court, to be given only where the court is satisfied that there is evidence to support a defence, and where leave is granted, the court,

(a) may make any order as to costs that it considers appropriate; and

(b) may give directions as to the conduct of the action. R.S.O. 1990, c. C.30, s. 54 (3).

**Allegations of fact deemed admitted**

(4) Except where leave has been granted under subsection (3), a defendant or third party who has been noted in default under subsection (2) shall be deemed to admit all allegations of fact made in the statement of claim, counterclaim, crossclaim or third party claim, as the case may be, and shall not be entitled to notice of or to participate in the trial of the action or any step in the action and judgment may be given against the defendant or third party. R.S.O. 1990, c. C.30, s. 54 (4).

**Accommodating multiple claims**

**Joinder of claims**

55. (1) A plaintiff in an action may join with a lien claim a claim for breach of contract or subcontract. R.S.O. 1990, c. C.30, s. 55 (1).

**Counterclaims and crossclaims**

(2) A defendant in an action may,

(a) counterclaim against the person who named the defendant as a defendant in respect of any claim that the defendant may be entitled to make against that person, whether or not that claim is related to the making of the improvement;

(b) crossclaim against a co-defendant in respect of any claim that the defendant may be entitled to make against that person related to the making of the improvement. R.S.O. 1990, c. C.30, s. 55 (2).

**Rules re third party claims**

56. The following rules govern third party claims:

1. Subject to paragraph 2, a person against whom a claim is made in a statement of claim, crossclaim, counterclaim or third party claim may join a person who is not a party to the action as a third party for the purpose of claiming contribution or indemnity from the third party in respect of that claim.

2. A person may only be joined as a third party with leave of the court upon a motion made with notice to the owner and all persons having subsisting preserved or perfected liens at the time of the motion, but such leave shall not be given unless the court is satisfied that the trial of the third party claim will not,

   i. unduly prejudice the ability of the third party or of any lien claimant or defendant to prosecute a claim or conduct a defence, or

   ii. unduly delay or complicate the resolution of the lien action.

3. The court may give such directions as it considers appropriate in the circumstances in respect of the conduct of third party claims. R.S.O. 1990, c. C.30, s. 56.

**Parties**

57. (1) The person serving the notice of trial and all persons served with notice of trial are parties to the action. R.S.O. 1990, c. C.30, s. 57 (1).

**Adding parties**

(2) Subject to section 54, the court may at any time add or join any person as a party to the action. R.S.O. 1990, c. C.30, s. 57 (2).

**Reference to master, etc.**

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 a master assigned to the area in which the premises or part of the premises are situate;

(a.1) to a case management master; or

(b) to a person agreed on by the parties. 1994, c. 27, s. 42 (5); 1996, c. 25, s. 4 (3).
Notice
(1.1) Notice of a motion for a reference under clause (1) (b) shall be given to every person who is or would be entitled to a notice of settlement meeting under subsection 60 (2). 1994, c. 27, s. 42 (5).

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).

Master not to hear motion
(2) A master or a case management master shall not hear or dispose of a motion made under subsection (1). R.S.O. 1990, c. C.30, s. 58 (2); 1996, c. 25, s. 4 (4).

Reference directed
(3) At the trial, a judge may direct a reference to a master assigned to the area in which the premises or part of the premises are situate, to a case management master or to a person agreed on by the parties. 1996, c. 25, s. 4 (5).

Powers of master on reference
(4) A master or case management master 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. R.S.O. 1990, c. C.30, s. 58 (4); 1996, c. 25, s. 4 (6).

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).

Application to set aside order of reference
(5) Where under subsection (1) the action has been referred to a master, to a case management master or to a person agreed on by the parties for trial, 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).

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).

Carriage of action
59. (1) The court may at any time make an order awarding carriage of the action to any person who has a perfected lien. R.S.O. 1990, c. C.30, s. 59 (1).

Consolidation of actions
(2) Where more than one action is brought to enforce liens in respect of the same improvement, the court may,
(a) consolidate all the actions into one action; and
(b) award carriage of the action to any person who has a perfected lien. R.S.O. 1990, c. C.30, s. 59 (2).

Application to fix date for trial or settlement meeting
60. (1) Any party may make a motion to the court without notice to any other person at any time after,
(a) the delivery of the statements of defence, or the statements of defence to all crossclaims, counterclaims or third party claims, if any, where the plaintiff’s claim is disputed; or
(b) the expiry of the time for the delivery of these statements of defence in all other cases,
to have a day, time and place fixed for the trial of the action, or for the holding of a settlement meeting under section 61, or both. R.S.O. 1990, c. C.30, s. 60 (1).

Notice of settlement meeting
(2) Where the court orders the holding of a settlement meeting, then at least ten days before the date appointed for the holding of the meeting, the party who obtained the appointment shall serve a notice of settlement meeting upon any person who was, on the twelfth day before the date appointed,
(a) subject to section 54 (default in filing defence), the owner and every other person named as a defendant in every statement of claim in respect of the action;
(b) where the lien attaches to the premises, a person with a registered interest in the premises;
(c) where the lien attaches to the premises, an execution creditor of the owner;
(d) any other person having a preserved or perfected lien against the premises; and
(e) a person joined as a third party under section 56. R.S.O. 1990, c. C.30, s. 60 (2).

Request to identify other persons having lien

(3) Where the lien does not attach to the premises, the party who obtained the appointment for the holding of the settlement meeting shall request the owner to inform the party who obtained the appointment of the identity of every person described in clause (2) (d). R.S.O. 1990, c. C.30, s. 60 (3).

Service of notice of trial

(4) Subject to section 54, where the court fixes a date for trial, the party who obtained the appointment shall serve a notice of trial, at least ten days before the date appointed for trial, upon any person who is or would be entitled to a notice of a settlement meeting under subsection (2). R.S.O. 1990, c. C.30, s. 60 (4).

Conduct of settlement meeting

61. (1) Where a settlement meeting is ordered by the court, it shall be conducted in accordance with this section. R.S.O. 1990, c. C.30, s. 61 (1).

Idem

(2) The settlement meeting shall be conducted by,

(a) a person selected by a majority of the persons present at the meeting; or
(b) where no person is selected, by the person who took out the appointment,

and shall be for the purpose of resolving or narrowing any issues to be tried in the action. R.S.O. 1990, c. C.30, s. 61 (2).

Idem

(3) The results of the settlement meeting shall be embodied in a statement of settlement which shall summarize those issues of fact and law which have been settled by the parties. R.S.O. 1990, c. C.30, s. 61 (3).

Statement of settlement

(4) The statement of settlement shall be filed with the court and shall be attached to and form part of the record, and the settlement shall be binding upon all persons served with notice of the settlement meeting, and upon all defendants against whom pleadings have been noted closed under section 54, but subject to subsection 54 (3), the court may vary or set aside the statement of settlement upon such order as to costs or otherwise as it considers appropriate. R.S.O. 1990, c. C.30, s. 61 (4).

Power of court

(5) Upon the filing of the statement of settlement with the court, the court may,

(a) if there was no dispute at the meeting to a claim for lien, declare the lien valid and give such further judgment as it considers appropriate;
(b) enter a judgment or make a report upon consent on those issues which have been settled by the parties;
(c) make any order that is necessary in order to give effect to any judgment or report of the court under clause (a) or (b); and
(d) make any order that is necessary for, or will expedite the conduct of, the trial. R.S.O. 1990, c. C.30, s. 61 (5).

Non-application of Rule 50


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 by a master, by a case management master, or by a person agreed on by the parties. R.S.O. 1990, c. C.30, s. 62 (1); 1994, c. 27, s. 42 (9); 1996, c. 25, s. 4 (8).
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).

(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).

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 Arbitrations Act,

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).

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.

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).

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).

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).
Application to court for directions

66. Where a person is in possession of an amount that may be subject to a trust under Part II, the person may apply to the court for direction and the court may give any direction or make any order that the court considers appropriate in the circumstances. R.S.O. 1990, c. C.30, s. 66.

Procedure generally
Summary procedure

67. (1) 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. R.S.O. 1990, c. C.30, s. 67 (1).

Interlocutory steps

(2) Interlocutory steps, other than those provided for in this Act, shall not be taken without the consent of the court obtained upon proof that the steps are necessary or would expedite the resolution of the issues in dispute. R.S.O. 1990, c. C.30, s. 67 (2).

Application of rules of court

(3) Except where inconsistent with this Act, and subject to subsection (2), the Courts of Justice Act and the rules of court apply to pleadings and proceedings under this Act. R.S.O. 1990, c. C.30, s. 67 (3).

Technical assistance

(4) The court may obtain the assistance of any merchant, accountant, actuary, building contractor, architect, engineer or other person in such a way as it considers fit, to enable it to determine better any matter of fact in question, and may fix the remuneration of such person and direct the payment thereof by any of the parties. R.S.O. 1990, c. C.30, s. 67 (4).

Representation

(5) A lien claimant whose claim is for an amount within the monetary jurisdiction of the Small Claims Court may be represented by a person authorized under the Law Society Act to represent the claimant. 2006, c. 21, Sched. C, s. 102 (2).

Manner of making motion

(6) Where in this Act the court is empowered to do anything upon motion, the motion may be made in the manner provided for in the rules of court for the making of motions, regardless of whether any action has been commenced at the time the motion is made. R.S.O. 1990, c. C.30, s. 67 (6).

PART IX
EXTRAORDINARY REMEDIES

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).

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).

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, charge, interest or other encumbrance that the court directs. R.S.O. 1990, c. C.30, s. 68 (4).
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).

Labour and material payment bonds

69. (1) Where a labour and material payment bond is in effect in respect of an improvement, any person whose payment is guaranteed by that bond 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 on the bond, where the principal on the bond defaults in making the payment guaranteed by the bond. R.S.O. 1990, c. C.30, s. 69 (1).

Saving

(2) Nothing in this section makes the surety liable for an amount in excess of the amount that the surety undertakes to pay under the 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. R.S.O. 1990, c. C.30, s. 69 (2).

Subrogation

(3) The surety, upon satisfaction of its obligation to any person whose payment is guaranteed by the bond, shall be subrogated to all the rights of that person. R.S.O. 1990, c. C.30, s. 69 (3).

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) Subject to subsection (3), 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).

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).

Where no appeal lies

(3) No appeal lies from,

(a) a judgment or an order on a motion to oppose confirmation of a report under this Act, where the amount claimed is $1,000 or less; or

(b) an interlocutory order made by the court. R.S.O. 1990, c. C.30, s. 71 (3).

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 or abandonment of the contract or a subcontract by any other person. R.S.O. 1990, c. C.30, s. 72.

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 unpreserved 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).
Idem

Where a person having a preserved or perfected general lien releases 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 released. R.S.O. 1990, c. C.30, s. 74 (2).

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).

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).

Lien claimant deemed purchaser

76. Where a claim for lien is preserved by registration, 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.

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).

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).

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).
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).

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 to 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).

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).

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 unpreserved 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).

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 a form prescribed 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.

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).

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).

**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.

**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.

**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.

**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).

Idem

(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).

Idem

(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 XII
MISCELLANEOUS RULES

Costs

86. (1) Subject to subsection (2), any order as to the costs in an action, application, motion or settlement meeting 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 or is for a grossly excessive 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, or the action has been referred under section 58 to, a master, case management master or commissioner. 2006, c. 21, Sched. C, s. 102 (3).

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).

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).

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).

Regulations

88. The Lieutenant Governor in Council may make regulations,

   (a) prescribing forms and providing for their use;

   (b) prescribing the appropriate offices of the Crown to which claims for lien must be sent;

   (c) prescribing the form and manner of publication of copies of certificates and declarations of substantial performance under section 32. R.S.O. 1990, c. C.30, s. 88.

Note: Despite Schedules A and B to the Revised Statutes of Ontario, 1990, section 92 of the Construction Lien Act, 1983, being chapter 6, shall be deemed to continue in force. See: 1993, c. 27, s. 8, par. 1 and s. 9.
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Interpretation

1. In this Act,

“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 the supplier agrees to supply goods or services for payment; (“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 themself 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”)

“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, and includes an agent of the supplier and a person who holds themself 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).

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;
(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).

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).

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).

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).

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, or

(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. 2002, c. 30, Sched. A, s. 13 (9).

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).

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**


**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).

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

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).

**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

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

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

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

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

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

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

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).

Cancellation: failure to meet requirements

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).

PERSONAL DEVELOPMENT SERVICES

Application

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

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).

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).

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).
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).

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. 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.

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 receiving the written copy of the agreement. 2002, c. 30, Sched. A, s. 43 (1).

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).

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 of entering into the agreement 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).

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 themself 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 themself out as a supplier of such goods or services. (“exploitant”) 2002, c. 30, Sched. A, s. 48; 2004, c. 19, s. 7 (9).
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**

**50 (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).

**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).

**Cancellation: failure to meet requirements**

**51 (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).

**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).

**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).

**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**

**54 (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**

**54 (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”)

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).

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).

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).
Section 3: Business Administration

(3) Repealed: 2004, c. 19, s. 7 (17).
(4) Repealed: 2004, c. 19, s. 7 (17).

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).

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).

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,
er 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).

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).

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).

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).

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).

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).

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 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).

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).

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).
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
89. (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).

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
90. (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).

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
92. (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
92. (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
92. (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
92. (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).

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
93. (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).

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).

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).

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).

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).

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.

2. Compliance orders issued under this Act.

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).

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).

PART XI
GENERAL

Definition
104.1 In this Part,
“investigator” means an investigator appointed under subsection 106 (1). 2006, c. 34, s. 8 (4).

Ministry receives complaints and makes inquiries
105. 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.

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).

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 is reasonable ground for believing that,
(a) a person has contravened or is contravening this Act or the regulations; and
(b) 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. 2004, c. 19, s. 7 (41); 2006, c. 34, s. 8 (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 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) to exercise any of the powers specified in subsection (10); and

(d) 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).

**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).

**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).

**Assistance**

(10) An investigator may, in the course of executing a warrant, require a person to produce the evidence or information 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 evidence or information described in the warrant and the person shall produce the evidence or information or provide the assistance. 2004, c. 19, s. 7 (41).

**Return of seized items**

(11) An investigator who seizes any thing under this section or section 107.1 may make a copy of it and shall return it within a reasonable time. 2006, c. 34, s. 8 (10).

**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).

**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).
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).

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 the 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).

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).

Compliance order

111. (1) The Director may propose to make an order directing a person to comply with the Act if the Director believes on reasonable grounds that the person has engaged or is engaging in any activity that contravenes any provision under this Act, whether the activity constitutes an offence or not. 2002, c. 30, Sched. A, s. 111 (1).

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).

Order for immediate compliance

112. (1) Despite section 111, the Director may make an order requiring immediate compliance with 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).
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 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).

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;
(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).

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).

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) and 36 (1),
(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,
(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),
(vii) in respect of Part VIII, Leasing, section 88 and subsection 89 (1), and
(viii) in respect of Part IX, Procedures for Consumer Remedies, subsections 96 (1), 98 (2) and 99 (5).
2002, c. 30, Sched. A, s. 116 (1); 2004, c. 19, s. 7 (43); 2006, c. 34, s. 8 (12).

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).
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).

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).

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).

Discharge of lien

(6) Within 10 days after the Director has knowledge of the payment in full of the fine, the Director shall,

(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).

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).

**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;

(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. 2002, c. 30, Sched. A, s. 123 (1); 2004, c. 19, s. 7 (45).

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;
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 the Act or the regulations applies to future performance agreements, including gift card agreements, with the modifications specified in the regulations. 2002, c. 30, Sched. A, s. 123 (5); 2004, c. 19, s. 7 (47); 2006, c. 34, s. 8 (13, 14).

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 VII

(8) The Lieutenant Governor in Council may make regulations,

(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;

(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,

(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;

(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;

(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).

**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).


Consumer Protection Act, 2002
ONTARIO REGULATION 17/05

GENERAL

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PART I

EXEMPTIONS FROM APPLICATION OF THE ACT

EXEMPTION FOR PROFESSIONAL SERVICES REGULATED BY STATUTE — CLAUSE 2 (2) (E) OF THE ACT

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:

   4. The Drugless Practitioners Act.
   5. The Law Society Act.
   6. The Ontario College of Teachers Act, 1996.
   7. The Professional Engineers Act.
  15. The Veterinarians Act. O. Reg. 17/05, 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.
   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).
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:

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 and 29 to 47 of the Act do not apply to a lease that is also a future performance agreement, a personal development services agreement, a direct agreement, an internet agreement or a remote agreement, if Part VIII of the Act applies to the lease. O. Reg. 17/05, s. 12.

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 personal development services agreement, a direct agreement, an internet agreement or a remote agreement. O. Reg. 17/05, s. 13.

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 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 in respect of which the consumer makes payment in full 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‖)

O. Reg. 187/07, s. 1; O. Reg. 202/08, 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

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

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; or

(b) a gift card that covers only one specific good or service; or

(c) the gift card agreement under which a gift card described in clause (a) or (b) is issued. O. Reg. 187/07, s. 3.

Exemption

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

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.

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

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 for entering into the agreement or hold out that the supplier can provide such a gift 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).

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 for entering into the agreement less $1.50 or hold out that the supplier can provide such a gift 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).

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,
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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 section 42 of the Act, a direct agreement 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).

(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).

**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).
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).

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

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).

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).

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.

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:
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).

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).

(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, 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.

Authorization not in writing

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

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, 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.

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, 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.

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.
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,

\[
[C ÷ (T × A)] × 100
\]

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),

(a) 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;

(b) 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;

(c) 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

(d) 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,

\[
\text{APR/100} × L × P
\]

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).
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).

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).

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).

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

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:

1. Any amount payable by the borrower, upon entering into the agreement, to process a payment provided by the borrower under the agreement.
2. Any other amount payable by the borrower, upon entering into the agreement, in connection with the agreement. O. Reg. 96/09, s. 5.

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).

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:

1. 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).

—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,

\[ C \times \left\{ \frac{(N - M)}{N} \right\} \]

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).
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(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 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”)

—anual 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,

\[
PMT = \frac{(PV - FV(1 + I)^N)}{\left(\frac{1 - (1 + I)^{(N-A)}}{I}\right) + A}
\]

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.
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).

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).

—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).

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).

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).

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).

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).

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 leased 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).
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).

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).

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).

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

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

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

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).

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

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.

O. Reg. 17/05, s. 86; O. Reg. 96/09, s. 9.

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 Athletics Control Act, the Bailiffs Act, the Cemeteries Act (Revised), the Collection Agencies Act, the Consumer Reporting Act, the Film Classification Act, 2005 or the Payday Loans Act, 2008 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.

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 Athletics Control Act, the Bailiffs Act, the Cemeteries Act (Revised), the Collection Agencies Act, the Consumer Reporting Act, the Film Classification Act, 2005 or the Payday Loans Act, 2008 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.

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 Athletics Control Act, the Bailiffs Act, the Cemeteries Act (Revised), the Collection Agencies Act, the Consumer Reporting Act or the Payday Loans Act, 2008, 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).

(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. Either,
   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).
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).

PART XI
PRESCRIBED ACTS AND JURISDICTIONS — PART XI OF THE ACT

Prescribed Acts

91. The Athletics Control Act is prescribed for the purposes of section 105 of the Act. O. Reg. 17/05, s. 91.

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.
Employment Standards Act, 2000
S.O. 2000, CHAPTER 41

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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”)

“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”)

“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”)

“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, as set out in subsection (2), or

(d) a person who is a homeworker,

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”)

Section 3: Business Administration
“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”)

“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”)

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

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

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

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

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

(b) otherwise, an hour of work in excess of the overtime threshold under this Act that applies to the employee’s employment; (“heure supplémentaire”)

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

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

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

“public holiday” means any of the following:

1. New Year’s Day.
2. Good Friday.
5. Labour Day.
6. Thanksgiving Day.
7. Christmas Day.
9. Any day prescribed as a public holiday; (“jour férié”)

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

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

(a) for an employee who is paid by the hour, the amount earned for an hour of work in the employee’s usual work week, not counting overtime hours,

(b) otherwise, the amount earned in a given work week divided by the number of non-overtime hours actually worked in that week; (“taux horaire normal”)

“regular wages” means wages other than overtime pay, public holiday pay, premium pay, vacation pay, termination pay and severance 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 or Part XV; (“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 that starts on or after the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force,
(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”)

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

Section 3: Business Administration
“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.

Person receiving training

(2) For the purposes of clause (c) of the definition of “employee” in subsection (1), an individual receiving training from a person who is an employer is an employee of that person if the skill in which the individual is being trained is a skill used by the person’s employees, unless all of the following conditions are met:

1. The training is similar to that which is given in a vocational school.
2. The training is for the benefit of the individual.
3. The person providing the training derives little, if any, benefit from the activity of the individual while he or she is being trained.
4. The individual does not displace employees of the person providing the training.
5. The individual is not accorded a right to become an employee of the person providing the training.
6. The individual is advised that he or she will receive no remuneration for the time that he or she spends in training. 2000, c. 41, s. 1 (2).

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).

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).

PART II
POSTING OF INFORMATION CONCERNING RIGHTS AND OBLIGATIONS

Minister to prepare poster

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

If poster not up to date

(2) If the Minister 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.

Material to be posted

(3) Every employer shall post and keep posted in at least one conspicuous place in every workplace of the employer where it is likely to come to the attention of employees in that workplace a copy of the most recent poster published by the Minister under this section. 2004, c. 21, s. 1.

Where majority language not English

(4) If the majority language of a workplace of an employer is a language other than English, the employer shall make enquiries as to whether the Minister has prepared a translation of the poster into that language, and if the Minister has done so, the employer shall post and keep posted a copy of the translation next to the copy of the poster. 2004, c. 21, s. 1.

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).

Exception, employees of the Crown, etc.

(4) Only the following provisions of this Act apply with respect to an employee and his or her employer if the employer is the Crown, a Crown agency or an authority, board, commission or corporation all of whose members are appointed by the Crown:

1. Part IV (Continuity of Employment).
2. Section 14.
3. Part XII (Equal Pay for Equal Work).
4. Part XIII (Benefit Plans).
5. Part XIV (Leaves of Absence).
6. Part XV (Termination and Severance of Employment).
7. Part XVI (Lie Detectors).
8. Part XVIII (Reprisal), except for subclause 74 (1) (a) (vii) and clause 74 (1) (b).
9. Part XIX (Building Services Providers). 2000, c. 41, s. 3 (4).

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.
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.
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.
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).
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.
Dual roles

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.

Separate persons treated as one employer

Subsection (2) applies if,

(a) associated or related activities or businesses are or were carried on by or through an employer and one or more other persons; and

(b) the intent or effect of their doing so is or has been to directly or indirectly defeat the intent and purpose of this Act.

Separate persons treated as one employer

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.

Businesses need not be carried on at same time

Subsection (2) applies even if the activities or businesses are not carried on at the same time.

Exception, individuals

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.

Joint and several liability

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.

No contracting out

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.

Greater contractual or statutory right

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.

Settlement by trade union binding

A settlement made on an employee’s behalf by a trade union that represents the employee is binding on the employee.

Agents

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.

Civil proceedings not affected

Subject to section 97, no civil remedy of an employee against his or her employer is affected by this Act.

Notice

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 or before the date the civil proceeding is set down for trial.

Service of notice

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.

**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).

Manner of payment

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

(a) by cash;
(b) by cheque payable only to the employee; or
(c) in accordance with subsection (4). 2000, c. 41, s. 11 (2).

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;
(b) no person other than the employee or a person authorized by the employee has access to the account; and
(c) unless the employee agrees otherwise, an office or facility of the financial institution is located within a reasonable distance from the location where the employee usually works. 2000, c. 41, s. 11 (4).

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).

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).

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).

Deductions, etc.

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

Statute or court order

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

Employee authorization

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

Exception

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

Same

(5) Subsection (3) does not apply if,
(a) the employee’s authorization does not refer to a specific amount or provide a formula from which a specific amount may be calculated;
(b) the employee’s wages were withheld, deducted or required to be returned,
   (i) because of faulty work,
   (ii) because the employer had a cash shortage, lost property or had property stolen and a person other than the employee had access to the cash or property, or
   (iii) under any prescribed conditions; or
(c) the employee’s wages were required to be returned and those wages were the subject of an order under this Act. 2000, c. 41, s. 13 (5).

Priority of claims

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

Exception

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

PART VI
RECORDS

Records

15. (1) An employer shall record the following information with respect to each employee, including an employee who is a homeworker:
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.
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 and clause 36 (3) (b).

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

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 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).

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 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).
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, personal emergency leave, emergency leave during a declared 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.

Retention of agreements re excess hours

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

Retention of averaging agreements

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

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.
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).

Additional requirement, alternative vacation entitlement year

(3) If the employer establishes for an employee an alternative vacation entitlement year that starts on or after the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force, 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.
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).

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 three years after it was made. 2002, c. 18, Sched. J, s. 3 (9).

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) This section does not apply with respect to a vacation entitlement year or a stub period that is completed before the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force. 2002, c. 18, Sched. J, s. 3 (9).

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.

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,

(a) 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;

(b) the employer has received an approval under section 17.1 that applies to the employee or to a class of employees that includes the employee; and

(c) the employee’s hours of work in a work week do not exceed the lesser of,

(i) the number of hours specified in the agreement, and

(ii) the number of hours specified in the approval. 2004, c. 21, s. 4.

Same, pending approval  
(4) Despite subsection (3), an employee’s hours of work may exceed the limit set out in clause (1) (b) even though the employer has not received the approval described in clause (3) (b), if,

(a) the employee has made an agreement described in clause (3) (a) with the employer;

(b) the employer has served on the Director an application for an approval under section 17.1;

(c) the application is for an approval that applies to the employee or to a class of employees that includes the employee;

(d) 30 days have passed since the application was served on the Director;

(e) the employer has not received a notice that the application has been refused;

(f) the employer’s most recent previous application, if any, for an approval under section 17.1 was not refused;

(g) the most recent approval, if any, received by the employer under section 17.1 was not revoked;

(h) the employer has posted and kept posted a copy of the application in at least one conspicuous place in the workplace where the employee works, so that it is likely to come to the employee’s attention; and
(i) the employee’s hours of work in a work week do not exceed any of,
   (i) the number of hours specified in the application,
   (ii) the number of hours specified in the agreement, and
   (iii) 60 hours. 2004, c. 21, s. 4.

Document re employee rights
(5) An agreement described in subsection (2) or in clause (3) (a) 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.

Revocation by employee
(6) An employee may revoke an agreement described in subsection (2) or in clause (3) (a) two weeks after giving
written notice to the employer. 2004, c. 21, s. 4.

Revocation by employer
(7) An employer may revoke an agreement described in subsection (2) or in clause (3) (a) after giving reasonable
notice to the employee. 2004, c. 21, s. 4.

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 clause (3) (a); 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 clause (3) (a). 2004, c. 21,
s. 4.

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 in clause (3) (a) in respect of an employee who is represented by
a trade union. 2004, c. 21, s. 4.

Transition: document re employee rights
(10) On or before June 1, 2005, an employer who made an agreement described in subsection (8) with an
employee who is not represented by a trade union shall provide the employee with a copy of the most recent document
published by the Director under section 21.1. 2004, c. 21, s. 4.

Transition: application for approval before commencement
(11) If the employer applies for an approval under section 17.1 before March 1, 2005, the 30-day period referred
to in clause (4) (d) shall be deemed to end on the later of,
   (a) the last day of the 30-day period; and
   (b) March 1, 2005. 2004, c. 21, s. 4.

Hours in work week: application for approval
17.1 (1) An employer may apply to the Director for an approval allowing some or all of its employees to work
more than 48 hours in a week. 2004, c. 21, s. 4.

Form
(2) The application shall be in a form provided by the Director. 2004, c. 21, s. 4.

Service of application
(3) The application 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 electronic transmission or by telephonic transmission of a facsimile.
2004, c. 21, s. 4.

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
employer 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 electronic or telephonic transmission is
made, subject to subsection (5). 2004, c. 21, s. 4.

Same
(5) Service shall be deemed to be effected on the next day on which the Director’s office is not closed, if the
electronic or telephonic transmission is made,
(a) on a day on which the Director’s office is closed; or
(b) after 5 p.m. on any day. 2004, c. 21, s. 4.

Application to be posted
(6) An employer who makes an application under subsection (1) shall,
(a) on the day the application is served on the Director, post a copy of the application in at least one conspicuous
place in every workplace of the employer where the employee or class of employees in respect of whom the
application applies works, so that it is likely to come to the attention of the employee or class of employees;
(b) keep the copy or copies posted as set out in clause (a) until an approval is issued or a notice of refusal is
given to the employer. 2004, c. 21, s. 4.

Criteria
(7) The Director may issue an approval to the employer if the Director is of the view that it would be appropriate
to do so. 2004, c. 21, s. 4.

Same
(8) In deciding whether it is appropriate to issue an approval to the employer, the Director may take into
consideration any factors that he or she considers relevant, and, without restricting the generality of the foregoing, he or
she may consider,
(a) any current or past contraventions of this Act or the regulations on the part of the employer;
(b) the health and safety of employees; and
(c) any prescribed factors. 2004, c. 21, s. 4.

Employees to whom approval applies
(9) An approval applies to the employee or class of employees specified in the approval, and applies to every
employee in a specified class whether or not the employee was employed by the employer at the time the approval was
issued. 2004, c. 21, s. 4.

Same
(10) For greater certainty, all the employees of the employer may constitute a specified class. 2004, c. 21, s. 4.

Approval to be posted
(11) An employer to whom an approval is issued shall,
(a) remove the copy or copies of the application that were posted under subsection (6); and
(b) post the approval or a copy of the approval in at least one conspicuous place in every workplace of the
employer where the employee or class of employees in respect of whom the approval applies works, so that
it is likely to come to the attention of the employee or class of employees. 2004, c. 21, s. 4.
The employer shall keep each approval or copy posted as set out in clause (11) (b) until the approval expires or is revoked, and shall then remove it. 2004, c. 21, s. 4.

An approval under this section expires on the date that is specified in the approval, which shall not be more than three years after the approval was issued. 2004, c. 21, s. 4.

Despite subsection (13), an approval under this section that would allow an employee to work more than 60 hours in a week shall specify an expiry date that is not more than one year after the approval was issued. 2004, c. 21, s. 4.

The Director may impose conditions on an approval. 2004, c. 21, s. 4.

The Director may revoke an approval on giving the employer such notice as the Director considers reasonable in the circumstances. 2004, c. 21, s. 4.

In deciding whether to impose conditions on or to revoke an approval, the Director may take into consideration any factors that he or she considers relevant, including but not limited to any factor that the Director could consider under subsection (8). 2004, c. 21, s. 4.

For greater certainty, nothing in this section prevents an employer from applying for an approval after an earlier approval expires or is revoked or after an application is refused. 2004, c. 21, s. 4.

If the Director decides that it is inappropriate to issue an approval to the employer, the Director shall give notice to the employer that the application for approval has been refused. 2004, c. 21, s. 4.

An employer who receives notice from the Director that an application has been refused shall, (a) remove the copy or copies of the application that were posted under subsection (6); and (b) for the 60-day period following the date on which the notice was issued, post and keep posted the notice or a copy of it in at least one conspicuous place in every workplace of the employer where the employee or the class of employees in respect of whom the application applied works, so that it is likely to come to the attention of that employee or class of employees. 2004, c. 21, s. 4.

Any approval granted by the Director under a regulation made under paragraph 8 of subsection 141 (1), as that paragraph read on February 28, 2005, ceases to have effect on March 1, 2005. 2004, c. 21, s. 4.

An application under subsection (1) may be made on or after the day the Employment Standards Amendment Act (Hours of Work and Other Matters), 2004 receives Royal Assent. 2004, c. 21, s. 4.

Despite subsection 5 (2), an employer shall not require or permit an employee to work more than the limit specified in clause 17 (1) (b), except in accordance with subsection 17 (3) or (4), even if one or more provisions in the employee’s employment contract that directly relate to limits on hours of work provide a greater benefit, within the meaning of subsection 5 (2), to an employee than is provided by section 17. 2004, c. 21, s. 4.

The Director may authorize an individual employed in the Ministry to exercise a power or to perform a duty conferred on the Director under section 17.1, either orally or in writing. 2004, c. 21, s. 4.

The Director may exercise a power conferred on the Director under section 17.1 even if he or she has delegated it to a person under subsection (1). 2004, c. 21, s. 4.
Duty re policies

An individual authorized by the Director under subsection (1) shall follow any policies established by the Director under subsection 88 (2). 2010, c. 16, Sched. 9, s. 1 (1).

Hours free from work

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

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).

Free from work between shifts

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

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).

Exceptional circumstances

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

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

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

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

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 clause 17 (3) (a). 2004, c. 21, s. 5.

If document not up to date

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.
PART VIII
OVERTIME PAY

Overtime threshold

22. (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.

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;

(b) the employer has received an approval under section 22.1 that applies to the employee or a class of employees that includes the employee; and

(c) the averaging period does not exceed the lesser of,

(i) the number of weeks specified in the agreement, and

(ii) the number of weeks specified in the approval. 2004, c. 21, s. 6 (1).

Same, pending approval

(2.1) Despite subsection (2), an employee’s hours of work may be averaged for the purpose of determining the employee’s entitlement, if any, to overtime pay even though the employer has not received the approval described in clause (2) (b), if,

(a) the employee has made an agreement described in clause (2) (a) with the employer;

(b) the employer has served on the Director an application for an approval under section 22.1;

(c) the application is for an approval that applies to the employee or to a class of employees that includes the employee;

(d) 30 days have passed since the application was served on the Director;

(e) the employer has not received a notice that the application has been refused;

(f) the employer’s most recent previous application, if any, for an approval under section 22.1 was not refused;

(g) the most recent approval, if any, received by the employer under section 22.1 was not revoked; and

(h) the employee’s hours of work, pending the approval, are averaged over separate, non-overlapping, contiguous periods of not more than two consecutive weeks. 2004, c. 21, s. 6 (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) An averaging agreement is not valid unless it provides for an expiry date and, if it involves an employee who is not represented by a trade union, the expiry date shall not be more than two years after the day the agreement takes effect. 2000, c. 41, s. 22 (3).

Agreement may be renewed

(4) Nothing in subsection (3) prevents an employer and employee from agreeing to renew or replace an averaging agreement. 2000, c. 41, s. 22 (4).

Existing agreement

(5) An averaging agreement made before this Act comes into force that was approved by the Director under the Employment Standards Act is valid for the purposes of subsection (2) until,
(a) one year after the day this section comes into force; or

(b) if the employee is represented by a trade union and a collective agreement applies to the employee,
   (i) the day a subsequent collective agreement that applies to the employee comes into operation, or
   (ii) if no subsequent collective agreement comes into operation within one year after the existing
       agreement expires, at the end of that year. 2000, c. 41, s. 22 (5); 2001, c. 9, Sched. I, s. 1 (4).

**Transition: application for approval before commencement**

(5.1) If the employer applies for an approval under section 22.1 before March 1, 2005, the 30-day period referred
       to in clause (2.1) (d) shall be deemed to end on the later of,

   (a) the last day of the 30-day period; and
   (b) March 1, 2005. 2004, c. 21, s. 6 (2).

**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).

**Averaging: application for approval**

22.1 (1) An employer may apply to the Director for an approval permitting the employer to average an
       employee’s hours of work for the purpose of determining the employee’s entitlement, if any, to overtime pay. 2004,
       c. 21, s. 7.

**Form**

(2) The application shall be in a form provided by the Director. 2004, c. 21, s. 7.

**Service of application**

(3) The application 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 electronic transmission or by telephonic transmission of a facsimile.
       2004, c. 21, s. 7.

**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
       employer 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 electronic or telephonic transmission is made, subject to subsection (5). 2004, c. 21, s. 7.

Same

(5) Service shall be deemed to be effected on the next day on which the Director’s office is not closed, if the electronic or telephonic transmission is made,

(a) on a day on which the Director’s office is closed; or

(b) after 5 p.m. on any day. 2004, c. 21, s. 7.

Criteria

(6) The Director may issue an approval to the employer if the Director is of the view that it would be appropriate to do so. 2004, c. 21, s. 7.

Same

(7) In deciding whether it is appropriate to issue the approval to the employer, the Director may take into consideration any factors that he or she considers relevant, and, without restricting the generality of the foregoing, he or she may consider,

(a) any current or past contraventions of this Act or the regulations on the part of the employer;

(b) the health and safety of employees; and

(c) any prescribed factors. 2004, c. 21, s. 7.

Employees to whom approval applies

(8) An approval applies to the employee or class of employees specified in the approval, and applies to every employee in a specified class whether or not the employee was employed by the employer at the time the approval was issued. 2004, c. 21, s. 7.

Same

(9) For greater certainty, all the employees of the employer may constitute a specified class. 2004, c. 21, s. 7.

Approval to be posted

(10) An employer to whom an approval is issued shall post the approval or a copy of the approval in at least one conspicuous place in every workplace of the employer where the employee or the class of employees in respect of whom the approval applies works, so that it is likely to come to the attention of that employee or class of employees. 2004, c. 21, s. 7.

Same

(11) The employer shall keep each approval or copy posted as set out in subsection (10) until the approval expires or is revoked, and shall then remove it. 2004, c. 21, s. 7.

Expiry

(12) An approval under this section expires on the date on which the averaging agreement between the employer and the employee expires, or on the earlier date that the Director specifies in the approval. 2004, c. 21, s. 7.

Conditions

(13) The Director may impose conditions on an approval. 2004, c. 21, s. 7.

Revocation

(14) The Director may revoke an approval on giving the employer such notice as the Director considers reasonable in the circumstances. 2004, c. 21, s. 7.

Criteria

(15) In deciding whether to impose conditions on or to revoke an approval, the Director may take into consideration any factors that he or she considers relevant, including but not limited to any factor that the Director could consider under subsection (7). 2004, c. 21, s. 7.

Further applications

(16) For greater certainty, nothing in this section prevents an employer from applying for an approval after an earlier approval expires or is revoked or after an application is refused. 2004, c. 21, s. 7.

Refusal to approve

(17) If the Director decides that it is inappropriate to issue an approval to the employer, the Director shall give notice to the employer that the application for approval has been refused. 2004, c. 21, s. 7.
Termination of old approvals

Any approval of an averaging agreement that is granted by the Director under a regulation made under paragraph 7 of subsection 141 (1), as that paragraph read on February 28, 2005, ceases to have effect on March 1, 2005. 2004, c. 21, s. 7.

Time for applications

An application under subsection (1) may be made on or after the day the Employment Standards Amendment Act (Hours of Work and Other Matters), 2004 receives Royal Assent. 2004, c. 21, s. 7.

Delegation by Director

The Director may authorize an individual employed in the Ministry to exercise a power or to perform a duty conferred on the Director under section 22.1, either orally or in writing. 2004, c. 21, s. 7.

Residual powers

The Director may exercise a power conferred on the Director under section 22.1 even if he or she has delegated it to a person under subsection (1). 2004, c. 21, s. 7.

Duty re policies

An individual authorized by the Director under subsection (1) shall follow any policies established by the Director under subsection 88 (2). 2010, c. 16, Sched. 9, s. 1 (2).

PART IX
MINIMUM WAGE

Minimum wage

An employer shall pay employees at least the prescribed minimum wage. 2000, c. 41, s. 23 (1).

Room or board

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

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

Hourly rate

Without restricting the generality of subsection (3), if the prescribed 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 prescribed 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 prescribed minimum wage. 2000, c. 41, s. 23 (4).

PART X
PUBLIC HOLIDAYS

Public holiday pay

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. 2000, c. 41, s. 24 (1); 2002, c. 18, Sched. J, s. 3 (12).

Premium pay

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).

Two kinds of work

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

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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 at least two weeks after each vacation entitlement year that he or she completes. 2002, c. 18, Sched. J, s. 3 (18).

Active and inactive employment

(2) Both active employment and inactive employment shall be included for the purposes of subsection (1). 2002, c. 18, Sched. J, s. 3 (18).

Where vacation not taken in complete weeks

(3) If an employee does not take his or her vacation in complete weeks and the 12-month period of employment to which the vacation relates begins on or after the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force, the employer shall base the number of days of vacation that the employee is entitled to on,

(a) the number of days in the employee’s regular work week;

(b) if the employee does not have a regular work week, the average number of days the employee worked per week during the most recently completed vacation entitlement year. 2002, c. 18, Sched. J, s. 3 (18).

Same

(4) If an employee does not take his or her vacation in complete weeks and the 12-month period of employment to which the vacation relates begins before the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force, the number of vacation days to which the employee is entitled shall be determined as follows:
1. If the 12-month period of employment ends before the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force, the number of days of vacation to which the employee is entitled shall be determined under subsection (3) of this section as it read before the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force.

2. If the 12-month period of employment had begun but not ended before the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force, the number of days of vacation to which the employee is entitled shall be the greater of,
   i. the number of days to which he or she would have been entitled under subsection (3) of this section as it read before the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force, and
   ii. the number of days to which he or she would be entitled under subsection (3) of this section as re-enacted by section 3 of Schedule J to the Government Efficiency Act, 2002.

Alternative vacation entitlement year
Application

34. (1) This section applies if the employer establishes for an employee an alternative vacation entitlement year that starts on or after the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force.

Vacation for stub period

(2) 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 him or her 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 him or her a vacation for the stub period that is equal to $2 \times A \times \text{the ratio calculated under paragraph 1}$, where,

   $A = \text{the average number of days the employee worked per work week in the stub period.}$

Active and inactive employment

(3) Both active employment and inactive employment shall be included for the purposes of subsection (2).

Timing of vacation

35. The employer shall determine when an employee shall take his or her vacation for a vacation entitlement year, subject to the following rules:
   1. The vacation shall be completed no later than 10 months after the end of the vacation entitlement year for which it is given.
   2. The vacation shall 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.

Timing of vacation, alternative vacation entitlement year

35.1 (1) This section applies if the employer establishes for an employee an alternative vacation entitlement year that starts on or after the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force.

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).  

**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 4 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given. 2002, c. 18, Sched. J, s. 3 (18).  

**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).  

**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).  

**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).

Transition

(6) This section does not apply with respect to a vacation entitlement year that is completed before the day on which section 3 of Schedule J to the Government Efficiency Act, 2002 comes into force. 2002, c. 18, Sched. J, s. 3 (21).

PART XII

EQUAL PAY FOR EQUAL WORK

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).
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).

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).

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. Dependents. 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).

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.

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

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

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

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

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.

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).

End of pregnancy leave

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) six weeks after the birth, still-birth or miscarriage. 2000, c. 41, s. 47 (1).

Ending leave early

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

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

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).

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).

When leave may begin

(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. 2000, c. 41, s. 48 (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).

End of parental leave

49. (1) An employee’s parental leave ends 35 weeks after it began, if the employee also took pregnancy leave and 37 weeks after it began, otherwise. 2000, c. 41, s. 49 (1).

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).

FAMILY MEDICAL LEAVE

Family medical leave

49.1 (1) In this section,
“qualified health practitioner” means a person who is qualified to practise medicine under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (3) or, 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.

Entitlement to leave
(2) An employee is entitled to a leave of absence without pay of up to eight 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. 2004, c. 15, s. 3.

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.
3. A child, step-child or foster child of the employee or the employee’s spouse.
4. Any individual prescribed as a family member for the purpose of this section. 2004, c. 15, s. 3.

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 week in which the period referred to in subsection (2) ends. 2004, c. 15, s. 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 eight weeks during the period referred to in subsection (2) that applies to the first certificate issued for the purpose of this section. 2004, c. 15, s. 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.

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 period referred to in subsection (2), 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. 2004, c. 15, s. 3.

Leave under s. 50
(12) An employee’s entitlement to leave under this section is in addition to any entitlement to leave under section 50. 2004, c. 15, s. 3.
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.

Leave under s. 50

(15) An employee’s entitlement to leave under this section is in addition to any entitlement to leave under section 50. 2009, c. 16, s. 2.

PERSONAL EMERGENCY LEAVE

Personal emergency leave

50. (1) An employee whose employer regularly employs 50 or more employees is entitled to a leave of absence without pay because of any of the following:

1. A personal illness, injury or medical emergency.
2. The death, illness, injury or medical emergency of an individual described in subsection (2).
3. An urgent matter that concerns an individual described in subsection (2). 2000, c. 41, s. 50 (1).

Same

(2) Paragraphs 2 and 3 of subsection (1) 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 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. 2000, c. 41, s. 50 (2); 2004, c. 15, s. 4.

Advising employer

(3) An employee who wishes to take leave under this section shall advise his or her employer that he or she will be doing so. 2000, c. 41, s. 50 (3).

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. 2000, c. 41, s. 50 (4).

Limit

(5) An employee is entitled to take a total of 10 days’ leave under this section in each calendar year. 2000, c. 41, s. 50 (5); 2004, c. 21, s. 8.

Leave deemed to be taken in entire days

(6) 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’s leave on that day for the purposes of subsection (5). 2000, c. 41, s. 50 (6).

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. 2000, c. 41, s. 50 (7).
Emergency leave, declared emergencies

50.1 (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 because of an emergency declared under section 7.0.1 of the Emergency Management and Civil Protection Act and,

(a) because of an order that applies to him or her made under section 7.0.2 of the Emergency Management and Civil Protection Act;

(b) because of an order that applies to him or her made under the Health Protection and Promotion Act;

(c) because he or she is needed to provide care or assistance to an individual referred to in subsection (8); or

(d) because of such other reasons as may be prescribed. 2006, c. 13, s. 3 (3).

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

(4) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances at a time that is reasonable in the circumstances that the employee is entitled to the leave. 2006, c. 13, s. 3 (3).

Limit

(5) An employee is entitled to take a leave under this section 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 clause (1) (a), (b), (c) or (d), but, subject to subsection (6), the entitlement ends on the day the emergency is terminated or disallowed. 2006, c. 13, s. 3 (3).

Same

(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).

Additional to entitlement under s. 50

(7) The entitlement to leave under this section is in addition to the entitlement to leave under section 50. 2006, c. 13, s. 3 (3).

Care or assistance, specified individuals

(8) Clause (1) (c) 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. 2006, c. 13, s. 3 (3).

Definitions

(9) The definitions of “parent” and “spouse” in section 45 apply for the purpose of subsection (8). 2006, c. 13, s. 3 (3).
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) clause 74 (1) (a) applies with necessary modifications in relation to the deemed leave described in clause (a).

2006, c. 13, s. 3 (3).

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.

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.

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).
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).

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).

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

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

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

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

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).

Employer notice period

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.

Notice, 50 or more employees

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

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

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).

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).

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 would 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).

Entitlement to severance pay
64. (1) An employer who severs an employment relationship with an employee shall pay severance pay to the
employee if the employee was employed by the employer for five years or more and,
(a) the severance occurred because of a permanent discontinuance of all or part of the employer’s business at an
establishment and the employee is one of 50 or more employees who have their employment relationship
severed within a six-month period as a result; or
(b) the employer has a payroll of $2.5 million or more. 2000, c. 41, s. 64 (1).

Payroll
(2) For the purposes of subsection (1), an employer shall be considered to have a payroll of $2.5 million or more if,
(a) the total wages earned by all of the employer’s employees in the four weeks that ended with the last day of
the last pay period completed prior to the severance of an employee’s employment, when multiplied by 13,
was $2.5 million or more; or
(b) the total wages earned by all of the employer’s employees in the last or second-last fiscal year of the
employer prior to the severance of an employee’s employment was $2.5 million or more. 2000, c. 41, s. 64
(2); 2001, c. 9, Sched. I, s. 1 (16).

Exceptions
(3) Prescribed employees are not entitled to severance pay under this section. 2000, c. 41, s. 64 (3).

Location deemed an establishment
(4) A location shall be deemed to be an establishment under subsection (1) if,
(a) there is a permanent discontinuance of all or part of an employer’s business at the location;
(b) the location is part of an establishment consisting of two or more locations; and
(c) the employer severs the employment relationship of 50 or more employees within a six-month period as a
result. 2000, c. 41, s. 64 (4).

Calculating severance pay
65. (1) Severance pay under this section shall be calculated by multiplying the employee’s regular wages for a
regular work week by the sum of,
(a) the number of years of employment the employee has completed; and
(b) the number of months of employment not included in clause (a) that the employee has completed, divided by
12. 2000, c. 41, s. 65 (1).
Non-continuous employment

(2) All time spent by the employee in the employer’s employ, whether or not continuous and whether or not active, shall be included in determining whether he or she is eligible for severance pay under subsection 64 (1) and in calculating his or her severance pay under subsection (1). 2000, c. 41, s. 65 (2).

Exception

(2.1) Despite subsection (2), when an employee in receipt of an actuarially unreduced pension benefit has his or her employment severed by an employer on or after November 6, 2009, time spent in the employer’s employ for which the employee received service credits in the calculation of that benefit shall not be included in determining whether he or she is eligible for severance pay under subsection 64 (1) and in calculating his or her severance pay under subsection (1). 2009, c. 33, Sched. 20, s. 1 (1).

Where employee resigns

(3) If an employee’s employment is severed under clause 63 (1) (e), the period between the day the employee’s notice of resignation took effect and the day the employer’s notice of termination would have taken effect shall not be considered in calculating the amount of severance pay to which the employee is entitled. 2000, c. 41, s. 65 (3).

Termination without notice

(4) If an employer terminates the employment of an employee without providing the notice, if any, required under section 57 or 58, the amount of severance pay to which the employee is entitled shall be calculated as if the employee continued to be employed for a period equal to the period of notice that should have been given and was not. 2000, c. 41, s. 65 (4).

Limit

(5) An employee’s severance pay entitlement under this section shall not exceed an amount equal to the employee’s regular wages for a regular work week for 26 weeks. 2000, c. 41, s. 65 (5).

Where no regular work week

(6) For the purposes of subsections (1) and (5), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employee’s regular wages for a regular work week shall be deemed to be the average amount of regular wages earned by the employee for the weeks in which the employee worked in the period of 12 weeks preceding the date on which,

(a) the employee’s employment was severed; or

(b) if the employee’s employment was severed under clause 63 (1) (c) or (d), the date on which the lay-off began. 2000, c. 41, s. 65 (6); 2002, c. 18, Sched. J, s. 3 (26).

In addition to other amounts

(7) Subject to subsection (8), severance pay under this section is in addition to any other amount to which an employee is entitled under this Act or his or her employment contract. 2000, c. 41, s. 65 (7).

Set-off, deduction

(8) Only the following set-offs and deductions may be made in calculating severance pay under this section:

1. Supplementary unemployment benefits the employee receives after his or her employment is severed and before the severance pay becomes payable to the employee.

2. An amount paid to an employee for loss of employment under a provision of the employment contract if it is based upon length of employment, length of service or seniority.

3. Severance pay that was previously paid to the employee under this Act, a predecessor of this Act or a contractual provision described in paragraph 2. 2000, c. 41, s. 65 (8).

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).
ELECTION RE RECALL RIGHTS

Where election may be made
67. (1) This section applies if an employee who has a right to be recalled for employment under his or her employment contract is entitled to,

(a) termination pay under section 61 because of a lay-off of 35 weeks or more; or

(b) severance pay. 2000, c. 41, s. 67 (1).

Exception
(2) Clause (1) (b) does not apply if the employer and employee have agreed that the severance pay shall be paid in instalments under section 66. 2000, c. 41, s. 67 (2).

Nature of election
(3) The employee may elect to be paid the termination pay or severance pay forthwith or to retain the right to be recalled. 2000, c. 41, s. 67 (3).

Consistency
(4) An employee who is entitled to both termination pay and severance pay shall make the same election in respect of each. 2000, c. 41, s. 67 (4).

Deemed abandonment
(5) An employee who elects to be paid shall be deemed to have abandoned the right to be recalled. 2000, c. 41, s. 67 (5).

Employee not represented by trade union
(6) If an employee who is not represented by a trade union elects to retain the right to be recalled or fails to make an election, the employer shall pay the termination pay and severance pay to which the employee is entitled to the Director in trust. 2000, c. 41, s. 67 (6).

Employee represented by trade union
(7) If an employee who is represented by a trade union elects to retain the right to be recalled or fails to make an election,

(a) the employer and the trade union shall attempt to negotiate an arrangement for holding the money in trust, and, if the negotiations are successful, the money shall be held in trust in accordance with the arrangement agreed upon; and

(b) if the trade union advises the Director and the employer in writing that efforts to negotiate such an arrangement have been unsuccessful, the employer shall pay the termination pay and severance pay to which the employee is entitled to the Director in trust. 2000, c. 41, s. 67 (7).

Where employee accepts recall
(8) If the employee accepts employment made available under the right of recall, the amount held in trust shall be paid out of trust to the employer and the employee shall be deemed to have abandoned the right to termination pay and severance pay paid into trust. 2000, c. 41, s. 67 (8).

Recall rights expired or renounced
(9) If the employee renounces the right to be recalled or the right expires, the amount held in trust shall be paid to the employee and, if the right to be recalled had not expired, the employee shall be deemed to have abandoned the right. 2000, c. 41, s. 67 (9).

PART XVI
LIE DETECTORS

Definitions
68. In this Part, and for purposes of Part XVIII (Reprisal), section 74.12, Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions), Part XXVII (Regulations) and Part XXVIII (Transition, Amendment, Repeals, Commencement and Short Title), insofar as matters concerning this Part are concerned,

“employee” means an employee as defined in subsection 1 (1) and includes an applicant for employment, a police officer and a person who is an applicant to be a police officer; (“employé”)

Section 3: Business Administration
“employer” means an employer as defined in subsection 1 (1) and includes a prospective employer and a police governing body; (“employeur”)

“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.

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.

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).
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,
(vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,
(vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the Retail Business Holidays Act,
(viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or
(b) because the employer is or may be required, because of a court order or garnishment, to pay to a third party an amount owing by the employer to the employee. 2000, c. 41, s. 74 (1).

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).

PART XVIII.1
TEMPORARY HELP AGENCIES

Interpretation and Application

Interpretation
74.1 (1) In this Part,

“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”)

“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”)

“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”) 2009, c. 9, s. 3.

Same
(2) An assignment employee is assigned to perform work for a client of a temporary help agency if the employee is assigned to receive training from the client for the purpose of performing the work for the client. 2009, c. 9, s. 3.

Application
74.2 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 Long-Term Care Act, 1994 if the assignment is made under a contract between,

(a) the individual and a community care access corporation within the meaning of the Community Care Access Corporations Act, 2001; or
(b) an employer of the individual and a community care access corporation within the meaning of the Community Care Access Corporations Act, 2001. 2009, c. 9, s. 3.

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.

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.

OBLIGATIONS AND PROHIBITIONS

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.

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.
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.

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.

Prohibitions 74.8 (1) A temporary help agency is prohibited from doing any of the following:

1. Charging a fee to an assignment employee in connection with him or her becoming an assignment employee of the agency.

2. Charging a fee to an assignment employee in connection with the agency assigning or attempting to assign him or her to perform work on a temporary basis for clients or potential clients of the agency.

3. Charging a fee to an assignment employee of the agency in connection with assisting or instructing him or her on preparing resumes or preparing for job interviews.

4. Restricting an assignment employee of the agency from entering into an employment relationship with a client.

5. Charging a fee to an assignment employee of the agency in connection with a client of the agency entering into an employment relationship with him or her.

6. Restricting a client from providing references in respect of an assignment employee of the agency.

7. Restricting a client from entering into an employment relationship with an assignment employee.

8. Charging a fee to a client in connection with the client entering into an employment relationship with an assignment employee, except as permitted by subsection (2).

9. Charging a fee that is prescribed as prohibited.

10. Imposing a restriction that is prescribed as prohibited. 2009, c. 9, s. 3.

Exception, par. 8 of subs. (1) (2) Where an assignment employee has been assigned by a temporary help agency to perform work on a temporary basis for a client and the employee has begun to perform the work, the agency may charge a fee to the client in the event that the client enters into an employment relationship with the employee, but only during the six-month
period beginning on the day on which the employee first began to perform work for the client of the agency. 2009, c. 9, s. 3.

Same
(3) For the purposes of subsection (2), the six-month period runs regardless of the duration of the assignment or assignments by the agency of the assignment employee to work for the client and regardless of the amount or timing of work performed by the assignment employee. 2009, c. 9, s. 3.

Interpretation
(4) In this section, “assignment employee” includes a prospective assignment employee. 2009, c. 9, s. 3.

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.

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.

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).

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).

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,

(vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,

(vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the Retail Business Holidays Act,

(viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or

(b) because the client or temporary help agency is or may be required, because of a court order or garnishment, to pay to a third party an amount owing to the assignment employee. 2009, c. 9, s. 3.

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.

ENFORCEMENT

Steps required before complaint assigned

74.12.1 For the purposes of the application of section 96.1 in respect of this Part, the following modifications apply:

1. If an assignment employee or prospective assignment employee files a complaint alleging that a temporary help agency has contravened or is contravening section 74.8,

   i. a reference to a complainant in section 96.1 is a reference to an assignment employee or prospective assignment employee, as the case requires,

   ii. a reference to an employer in section 96.1 is a reference to a temporary help agency, and

   iii. a reference to wages in section 96.1 is a reference to fees charged to the assignment employee or prospective assignment employee in contravention of paragraph 1, 2, 3, 5 or 9 of subsection 74.8 (1).

2. If an assignment employee files a complaint alleging that a client has contravened or is contravening section 74.12,
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).

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).

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; or 

(b) order the agency to pay the amount of the fee to the Director in trust. 2009, c. 9, s. 3.

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.

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.

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 pay to the Director in trust, 

(a) the amount of the compensation; and 

(b) an amount for administration costs equal to the greater of $100 and 10 per cent of the amount of 
compensation. 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 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.

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 pay to the Director in trust,

(a) the amount of the compensation; and

(b) an amount for administration costs equal to the greater of $100 and 10 per cent of the amount of compensation. 2009, c. 9, s. 3.

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.

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 Part III of the Corporations Act applies or to which the Co-operative Corporations Act applies. 2000, c. 41, s. 80 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out “Part III of the Corporations Act” and substituting “the Not-for-Profit Corporations Act, 2010”. See: 2010, c. 15, ss. 224, 249.

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 Part III of the Corporations Act 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).

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).

Interest
(8) A director is liable to pay interest, at the rate and calculated in the manner determined by the Director under subsection 88 (5), on outstanding wages for which the director is liable. 2000, c. 41, s. 81 (8).

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).

No relief by contract, etc.
(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).

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 rate of interest and the manner of calculating interest for the purposes of this Act. 2000, c. 41, s. 88 (5).

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).

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).

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).

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).

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).

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 sections 8, 17.1 and 22.1, 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.

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.

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).

Steps required before complaint assigned

96.1 (1) The Director shall not assign a complaint to an employment standards officer for investigation unless the complainant has taken the steps specified by the Director to facilitate the investigation of the complaint. 2010, c. 16, Sched. 9, s. 1 (8).

Exception

(2) Despite subsection (1), the Director may assign a complaint to an employment standards officer for investigation even though the complainant has not taken the specified steps. 2010, c. 16, Sched. 9, s. 1 (8).

Same

(3) Without restricting the generality of subsection (1), the Director may specify that,

(a) the complainant shall inform the employer of the basis for his or her view that this Act has been or is being contravened and, if he or she is of the view that wages are owed, the amount of the wages;
(b) the complainant shall indicate to the Director in writing what information was given to the employer under clause (a), the manner in which it was given and the response, if any, that the employer gave; and
(c) the complainant shall give the Director such evidence and other information in writing as the Director considers appropriate for assigning the complaint to an employment standards officer for investigation. 2010, c. 16, Sched. 9, s. 1 (8).

Where steps not taken

(4) If the Director determines that a complainant has not taken the specified steps, the Director shall inform the complainant that the complaint has not been assigned to an employment standards officer for investigation. 2010, c. 16, Sched. 9, s. 1 (8).

Deemed refusal

(5) If a complainant has been informed that his or her complaint has not been assigned to an employment standards officer and the complainant has not taken the specified steps within a period of six months after the complaint was filed, an employment standards officer shall be deemed to have refused to issue an order and to have served a letter on the complainant advising him or her of the refusal on the last day of the six-month period. 2010, c. 16, Sched. 9, s. 1 (8).

Delegation by Director

(6) The Director may authorize an individual employed in the Ministry to exercise the power conferred on the Director under subsection (2) or (4), either orally or in writing. 2010, c. 16, Sched. 9, s. 1 (8).
Duty re policies
(7) An individual authorized by the Director under subsection (6) shall follow any policies established by the Director under subsection 88 (2). 2010, c. 16, Sched. 9, s. 1 (8).

Residual power
(8) The Director may exercise a power conferred on the Director under subsection (2) or (4) even if he or she delegated it to a person under subsection (6). 2010, c. 16, Sched. 9, s. 1 (8).

When civil proceeding not permitted
97. (1) An employee who files a complaint under this Act with respect to an alleged failure to pay wages or comply with Part XIII (Benefit Plans) may not commence a civil proceeding with respect to the same matter. 2000, c. 41, s. 97 (1).

Same, wrongful dismissal
(2) An employee who files a complaint under this Act alleging an entitlement to termination pay or severance pay may not commence a civil proceeding for wrongful dismissal if the complaint and the proceeding would relate to the same termination or severance of employment. 2000, c. 41, s. 97 (2).

Amount in excess of order
(3) Subsections (1) and (2) apply even if,
(a) the amount alleged to be owing to the employee is greater than the amount for which an order can be issued under this Act; or
(b) in the civil proceeding, the employee is claiming only that part of the amount alleged to be owing that is in excess of the amount for which an order can be issued under this Act. 2000, c. 41, s. 97 (3).

Withdrawal of complaint
(4) Despite subsections (1) and (2), an employee who has filed a complaint may commence a civil proceeding with respect to matters described in those subsections if he or she withdraws the complaint within two weeks after it is filed. 2000, c. 41, s. 97 (4).

When complaint not permitted
98. (1) An employee who commences a civil proceeding with respect to an alleged failure to pay wages or to comply with Part XIII (Benefit Plans) may not file a complaint with respect to the same matter or have such a complaint investigated. 2000, c. 41, s. 98 (1).

Same, wrongful dismissal
(2) An employee who commences a civil proceeding for wrongful dismissal may not file a complaint alleging an entitlement to termination pay or severance pay or have such a complaint investigated if the proceeding and the complaint relate to the same termination or severance of employment. 2000, c. 41, s. 98 (2).

ENFORCEMENT UNDER COLLECTIVE AGREEMENT

When collective agreement applies
99. (1) If an employer is or has been bound by a collective agreement, this Act is enforceable against the employer as if it were part of the collective agreement with respect to an alleged contravention of this Act that occurs,
(a) when the collective agreement is or was in force;
(b) when its operation is or was continued under subsection 58 (2) of the Labour Relations Act, 1995; or
(c) during the period that the parties to the collective agreement are or were prohibited by subsection 86 (1) of the Labour Relations Act, 1995 from unilaterally changing the terms and conditions of employment. 2000, c. 41, s. 99 (1).

Complaint not permitted
(2) An employee who is represented by a trade union that is or was a party to a collective agreement may not file a complaint alleging a contravention of this Act that is enforceable under subsection (1) or have such a complaint investigated. 2000, c. 41, s. 99 (2).

Employee bound
(3) An employee who is represented by a trade union that is or was a party to a collective agreement is bound by any decision of the trade union with respect to the enforcement of this Act under the collective agreement, including a decision not to seek that enforcement. 2000, c. 41, s. 99 (3).
Membership status irrelevant
(4) Subsections (2) and (3) apply even if the employee is not a member of the trade union. 2000, c. 41, s. 99 (4).

Unfair representation
(5) Nothing in subsection (3) or (4) prevents an employee from filing a complaint with the Board alleging that a decision of the trade union with respect to the enforcement of this Act contravenes section 74 of the Labour Relations Act, 1995. 2000, c. 41, s. 99 (5).

Exception
(6) Despite subsection (2), the Director may permit an employee to file a complaint and may direct an employment standards officer to investigate it if the Director considers it appropriate in the circumstances. 2000, c. 41, s. 99 (6).

If arbitrator finds contravention
100. (1) If an arbitrator finds that an employer has contravened this Act, the arbitrator may make any order against the employer that an employment standards officer could have made with respect to that contravention but the arbitrator may not issue a notice of contravention. 2000, c. 41, s. 100 (1).

Same: Part XIII
(2) If an arbitrator finds that an employer has contravened Part XIII (Benefit Plans), the arbitrator may make any order that the Board could make under section 121. 2000, c. 41, s. 100 (2).

Directors and collective agreement
(3) An arbitrator shall not require a director to pay an amount, take an action or refrain from taking an action under a collective agreement that the director could not be ordered to pay, take or refrain from taking in the absence of the collective agreement. 2000, c. 41, s. 100 (3).

Conditions respecting orders under this section
(4) The following conditions apply with respect to an arbitrator’s order under this section:

1. In an order requiring the payment of wages or compensation, the arbitrator may require that the amount of the wages or compensation be paid,
   i. to the trade union that represents the employee or employees concerned, or
   ii. directly to the employee or employees.

2. If the order requires the payment of wages, the order may be made for an amount greater than is permitted under subsection 103 (4).

3. The order is not subject to review under section 116. 2000, c. 41, s. 100 (4).

Copy of decision to Director
(5) When an arbitrator makes a decision with respect to an alleged contravention of this Act, the arbitrator shall provide a copy of it to the Director. 2000, c. 41, s. 100 (5).

Arbitration and s. 4
101. (1) This section applies if, during a proceeding before an arbitrator, other than the Board, concerning an alleged contravention of this Act, an issue is raised concerning whether the employer to whom the collective agreement applies or applied and another person are to be treated as one employer under section 4. 2000, c. 41, s. 101 (1).

Restriction
(2) The arbitrator shall not decide the question of whether the employer and the other person are to be treated as one employer under section 4. 2000, c. 41, s. 101 (2).

Reference to Board
(3) If the arbitrator finds it is necessary to make a finding concerning the application of section 4, the arbitrator shall refer that question to the Board by giving written notice to the Board. 2000, c. 41, s. 101 (3).

Content of notice
(4) The notice to the Board shall,

(a) state that an issue has arisen in an arbitration proceeding with respect to whether the employer and another person are to be treated as one employer under section 4; and

(b) set out the decisions made by the arbitrator on the other matters in dispute. 2000, c. 41, s. 101 (4).
Decision by Board

(5) The Board shall decide whether the employer and the other person are one employer under section 4, but shall not vary any decision of the arbitrator concerning the other matters in dispute. 2000, c. 41, s. 101 (5).

Order

(6) Subject to subsection (7), the Board may make an order against the employer and, if it finds that the employer and the other person are one employer under section 4, it may make an order against the other person. 2000, c. 41, s. 101 (6).

Exception

(7) The Board shall not require the other person to pay an amount or take or refrain from taking an action under a collective agreement that the other person could not be ordered to pay, take or refrain from taking in the absence of the collective agreement. 2000, c. 41, s. 101 (7).

Application

(8) Section 100 applies, with necessary modifications, with respect to an order under this section. 2000, c. 41, s. 101 (8).

ENFORCEMENT BY EMPLOYMENT STANDARDS OFFICER

Settlement by employment standards officer

101.1 (1) An employment standards officer assigned to investigate a complaint may attempt to effect a settlement. 2010, c. 16, Sched. 9, s. 1 (9).

Effect of settlement

(2) If the employer and employee agree to a settlement under this section and do what they agreed to do under it,

(a) the settlement is binding on them;

(b) the complaint is deemed to have been withdrawn;

(c) the investigation is terminated; and

(d) any proceeding respecting the contravention alleged in the complaint, other than a prosecution, is terminated. 2010, c. 16, Sched. 9, s. 1 (9).

Application of s. 112 (4), (5), (7) and (9)

(3) Subsections 112 (4), (5), (7) and (9) apply, with necessary modifications, in respect of a settlement under this section. 2010, c. 16, Sched. 9, s. 1 (9).

Application to void settlement

(4) If, upon application to the Board, the employee or employer demonstrates that he, she or it entered into a settlement under this section as a result of fraud or coercion,

(a) the settlement is void;

(b) the complaint is deemed never to have been withdrawn;

(c) the investigation of the complaint is resumed; and

(d) any proceeding respecting the contravention alleged in the complaint that was terminated is resumed. 2010, c. 16, Sched. 9, s. 1 (9).

Settlement by labour relations officer, etc.

Attempt to effect settlement

101.2 (1) Where a complaint has been assigned for investigation, a labour relations officer or an individual who is employed in the Ministry and who reports to the Director of Dispute Resolution Services may, on the Director’s request, attempt to effect a settlement. 2010, c. 16, Sched. 9, s. 1 (9).

Application of s. 101.1 (2) to (4)

(2) Subsections 101.1 (2) to (4) apply, with necessary modifications, in respect of a settlement under this section. 2010, c. 16, Sched. 9, s. 1 (9).

Labour relations officers, etc., not compellable

(3) A person referred to in subsection (1) is not a competent or compellable witness in a civil proceeding or a proceeding under this Act respecting any information given or obtained, statements made or received, or records or other things produced or received under this Act. 2010, c. 16, Sched. 9, s. 1 (9).
Records

A person referred to in subsection (1) shall not be compelled in a civil proceeding or a proceeding under this Act to produce any record or other things he or she has made or received under this Act. 2010, c. 16, Sched. 9, s. 1 (9).

Confidentiality

A person who attempts to effect a settlement under this section shall not disclose to any person any information received in the course of doing so, except for a report as to whether a settlement was effected or not. 2010, c. 16, Sched. 9, s. 1 (9).

Definition

In this section,

“Director of Dispute Resolution Services” has the meaning assigned by subsection 1 (1) of the Labour Relations Act, 1995. 2010, c. 16, Sched. 9, s. 1 (9).

Repeal

This section is repealed on the second anniversary of the day subsection 1 (9) of Schedule 9 to the Open for Business Act, 2010 comes into force. 2010, c. 16, Sched. 9, s. 1 (9).

Meeting may be required

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

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

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

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

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

A person who receives a notice under this section shall comply with it. 2000, c. 41, s. 102 (6).

Use of technology

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

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).
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.

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

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).

Time for response

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

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

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).

Order to pay wages

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; or
(b) order the employer to pay the amount of wages to the Director in trust. 2000, c. 41, s. 103 (1).
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).

Maximum amount

(4) An employment standards officer shall not issue an order under this section for more than $10,000 in wages with respect to any one employee. 2000, c. 41, s. 103 (4).

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).

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 pay to the Director in trust,

(a) the amount of the compensation; and
(b) an amount for administration costs equal to the greater of $100 and 10 per cent of the amount of compensation. 2000, c. 41, s. 104 (3).

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).
Employee cannot be found

105. (1) If an employment standards officer has arranged with an employer that the employer pay wages under clause 103 (1) (a) directly 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. 2000, c. 41, s. 105 (1).

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).

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).

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).
Compliance order

108. (1) If an employment standards officer finds that a person has contravened a provision of this Act or the regulations, the officer may,

(a) order that the person cease contravening the provision;

(b) order what action the person shall take or refrain from taking in order to comply with the provision; and

(c) specify a date by which the person must do so. 2000, c. 41, s. 108 (1).

Payment may not be required

(2) No order under this section shall require the payment of wages, fees or compensation. 2009, c. 9, s. 10.

Other means not a bar

(3) Nothing in subsection (2) precludes an employment standards officer from issuing an order under section 74.14, 74.16, 74.17, 103, 104, 106 or 107 and an order under this section in respect of the same contravention. 2009, c. 9, s. 10.

Application of s. 103 (6) to (9)

(4) Subsections 103 (6) to (9) apply with respect to orders issued under this section with necessary modifications, including but not limited to the following:

1. A reference to an employer includes a reference to a client of a temporary help agency within the meaning of Part XVIII.1.

2. A reference to an employee includes a reference to an assignment employee or prospective assignment employee within the meaning of Part XVIII.1. 2009, c. 9, s. 10.

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).

Money paid when no review

109. (1) Money paid to the Director under an order under section 74.14, 74.16, 74.17, 103, 104, 106 or 107 shall be paid to the person with respect to whom the order was issued unless an application for review is made under section 116 within the period required under that section. 2009, c. 9, s. 11.

Money distributed rateably

(2) If the money paid to the Director under one of those orders is not enough to pay all of the persons entitled to it under the order the full amount to which they are entitled, the Director shall distribute that money, including money received with respect to administrative costs, to the persons in proportion to their entitlement. 2009, c. 9, s. 11.

No proceeding against Director

(3) No proceeding shall be instituted against the Director for acting in compliance with this section. 2000, c. 41, s. 109 (3).

Refusal to issue order

110. (1) If, after a person files a complaint alleging a contravention of this Act in respect of which an order could be issued under section 74.14, 74.16, 74.17, 103, 104 or 108, an employment standards officer assigned to investigate the complaint refuses to issue such an order, the officer shall, in accordance with section 95, serve a letter on the person advising the person of the refusal. 2009, c. 9, s. 12.

Deemed refusal

(2) If no order is issued with respect to a complaint described in subsection (1) within two years after it was filed, an employment standards officer shall be deemed to have refused to issue an order and to have served a letter on the person advising the person of the refusal on the last day of the second year. 2009, c. 9, s. 12.

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 six months before the complaint was filed. 2001, c. 9, Sched. I, s. 1 (22).
Same, another employee’s complaint

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 six months before the complaint was filed. 2001, c. 9, Sched. I, s. 1 (22).

Same, inspection

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 six months before the officer commenced the inspection. 2001, c. 9, Sched. I, s. 1 (22).

Vacation pay

Despite subsections (1) to (3), the time limit within which vacation pay must have become due under those subsections is 12 months, rather than six months. 2002, c. 18, Sched. J, s. 3 (28).

Repeated contraventions

(a) the employment standards officer investigating the complaint or performing the inspection finds that the employer has contravened the same provision of this Act or the regulations more than once with respect to the employee;
(b) the contraventions were in each case with respect to wages to which the employee became entitled under the same provision of this Act or the regulations or under provisions of the employee’s employment contract that are identical or are virtually identical; and
(c) at least one of the contraventions occurred within the six-month period referred to under those subsections.

2001, c. 9, Sched. I, s. 1 (22).

Complaints from different employees

If two or more employees file complaints alleging contraventions of this Act or the regulations and at least one of the contraventions in each of the complaints arose under the same provision of this Act or the regulations or under identical or virtually identical provisions of their employment contracts, subsections (1) and (2) apply with respect to all of the complaints, as if all of them had been filed on the day the first complaint was filed. 2001, c. 9, Sched. I, s. 1 (22).

Settlements

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**

(6) If the settlement concerns an order to pay, the Director is, despite clause (1) (c), entitled to be paid 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. 2000, c. 41, s. 112 (6); 2009, c. 9, s. 13 (1).

**Restrictions on settlements**

(7) No person shall enter into a settlement which would permit or require that person or any other person to engage in future contraventions of this Act. 2000, c. 41, s. 112 (7).

**Application to void settlement**

(8) If, upon application to the Board, the employee demonstrates that he or she entered into the settlement as a result of fraud or coercion,

(a) the settlement is void;
(b) the complaint is deemed never to have been withdrawn;
(c) any order made in respect of the contravention or alleged contravention is reinstated;
(d) any proceedings respecting the contravention or alleged contravention that were terminated shall be resumed.

2000, c. 41, s. 112 (8).

**Application to Part XVIII.1**

(9) For the purposes of the application of this section in respect of Part XVIII.1, the following modifications apply:

1. A reference to an employer includes a reference to a client of a temporary help agency within the meaning of Part XVIII.1.
2. A reference to an employee includes a reference to an assignment employee or prospective assignment employee within the meaning of Part XVIII.1. 2009, c. 9, s. 13 (2).

**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 the prescribed penalty for that contravention. 2000, c. 41, s. 113 (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).

Other means not a bar
(7) An employment standards officer may issue a notice to a person under this section even though an order has been or may be issued against the person under section 74.14, 74.16, 74.17, 103, 104 or 108 or the person has been or may be prosecuted for or convicted of an offence with respect to the same contravention. 2000, c. 41, s. 113 (7); 2009, c. 9, s. 14 (2).

Trade union
(8) This section does not apply with respect to a contravention of this Act with respect to an employee who is represented by a trade union. 2000, c. 41, s. 113 (8).

Director
(9) This section does not apply with respect to a contravention of this Act by a director or officer of an employer that is a corporation. 2000, c. 41, s. 113 (9).

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 within the meaning of Part XVIII.1.
2. A reference to an employee includes a reference to an assignment employee or prospective assignment employee within the meaning of Part XVIII.1. 2009, c. 9, s. 15 (3).

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 within the meaning of Part XVIII.1.
2. A reference to an employee includes a reference to an assignment employee or prospective assignment employee within the meaning of Part XVIII.1. 2009, c. 9, s. 16.

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).

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 within the meaning of Part XVIII.1. 2009, c. 9, s. 17.

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.

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).

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).

Effective date of rules under subs. (2)

(3) A rule made under subsection (2) comes into force on the day determined by order of the Lieutenant Governor in Council. 2006, c. 19, Sched. M, s. 1 (3).

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).

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).

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;
Section 3: Business Administration

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), (3), (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).

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 the Director believes or suspects that a person owes money to or is holding money for an employer, a director or another person who is liable to make a payment under this Act, the Director may demand that the person pay all or part of the money otherwise payable to the employer, director or other person who is liable to make a payment under this Act to the Director in trust, on account of the liability under this Act. 2009, c. 9, s. 22.

Client of temporary help agency

(2) Without limiting the generality of subsection (1), that subsection applies where a client of a temporary help agency, within the meaning of Part XVIII.1, owes money to or is holding money for a temporary help agency. 2009, c. 9, s. 22.

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.

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, 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).

Costs of collection

(3) Despite clause 22 (a) of the Collection Agencies 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).

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 Agencies Act to collect disbursements. 2000, c. 41, s. 127 (5).

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).

Settlement by collector
129. (1) A collector may agree to a settlement with the person from whom he or she seeks to collect money, but only with the written agreement of,
   (a) the person to whom the money is owed; or
   (b) in the case of a notice of contravention, the Director. 2000, c. 41, s. 129 (1).

Restriction
(2) A collector shall not agree to a settlement under clause (1) (a) without the Director’s written approval if the person to whom the money is owed would receive less than,
   (a) 75 per cent of the money to which he or she was entitled; or
   (b) if another percentage is prescribed, the prescribed percentage of the money to which he or she was entitled. 2000, c. 41, s. 129 (2).

Orders void where settlement
(3) If an order to pay has been made under section 74.14, 74.16, 74.17, 103, 104, 106 or 107 and a settlement respecting the money that was found to be owing is made under this section, the order is void and the settlement is binding if the person against whom the order was issued does what the person agreed to do under the settlement unless, on application to the Board, the individual to whom the money was ordered to be paid demonstrates that the settlement was entered into as a result of fraud or coercion. 2009, c. 9, s. 24 (1).

Notice of contravention
(4) If a settlement respecting money that is owing under a notice of contravention is made under this section, the notice is void if the person against whom the notice was issued does what the person agreed to do under the settlement. 2000, c. 41, s. 129 (4); 2009, c. 9, s. 24 (2).

Payment
(5) The person who owes money under a settlement shall pay the amount agreed upon to the collector, who shall pay it out in accordance with section 128. 2000, c. 41, s. 129 (5).

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, within the meaning of Part XVIII.1 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.
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.

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).

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.

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.

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).

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).

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).

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).

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).

Subsection (1) applies whether or not the corporation has been prosecuted or convicted of the offence.

2000, c. 41, s. 137 (2).

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).

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.

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 EVIDENTIAL 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).
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).

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.
2. Establishing minimum wage rates for employees or classes of employees.
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.

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).

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.

Regulations re emergency leaves, declared emergencies  
(2.1) If a regulation is made prescribing a reason for the purposes of clause 50.1 (1) (d), the regulation 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 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; and
(c) provide that clause 74 (1) (a) applies, with necessary modifications, in relation to the deemed leave described in clause (b). 2006, c. 13, s. 3 (4).

Retroactive regulation  
(2.2) A date specified in a regulation made under subsection (2.1) may be a date that is earlier than the day on which the regulation is made. 2006, c. 13, s. 3 (4).

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 section 50.1 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 emergency and because of a reason referred to in clause 50.1 (1) (a), (b), (c) or (d). 2006, c. 13, s. 3 (4).

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 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 prescribing penalties for contraventions for the purposes of subsection 113 (1) may,
(a) provide for greater penalties for the second contravention and for the third or subsequent contravention of a provision of this Act in a three-year period or in such other period as may be prescribed;
(b) provide that the penalty for a contravention is the prescribed amount multiplied by the number of employees affected by the contravention. 2001, c. 9, Sched. I, s. 1 (31).

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).

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.


143., 144. Omitted (amends or repeals other Acts). 2000, c. 41, ss. 143, 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.
Definitions

1. In this Regulation, “construction employee” means,
(a) an employee employed at the site in any of the activities described in the definition of “construction industry”, or

(b) an employee who is engaged in off-site work, in whole or in part, but is commonly associated in work or collective bargaining with an employee described in clause (a); (“employé de la construction”)

“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”)

“domestic worker” means a person who is employed by a householder to perform services in the household or to provide care, supervision or personal assistance to children, senior or disabled members of the household, but does not include a sitter who provides care, supervision or personal assistance to children on an occasional, short-term basis; (“travailleur domestique”)

“hotel, motel, tourist resort, restaurant and tavern” means an establishment that provides accommodation, lodging, meals or beverages for payment, and includes hotels, motels, motor hotels, tourist homes, tourist camps, tourist cabins and cottages, tourist inns, catering establishments and all other establishments of a similar nature; (“hôtel, motel, lieu de villégiature, restaurant et taverne”)

“information technology professional” means an employee who is primarily engaged in the investigation, analysis, design, development, implementation, operation or management of information systems based on computer and related technologies through the objective application of specialized knowledge and professional judgment; (“professionnel en technologie de l’information”)

“recorded visual and audio-visual entertainment production industry” means the industry of producing visual or audio-visual recorded entertainment that is intended to be replayed in cinemas or on the Internet, as part of a television broadcast, or on a VCR or DVD player or a similar device, but does not include the industry of producing commercials (other than trailers), video games or educational material; (“industrie de la production de divertissements visuels et audio-visuels enregistrés”)

“residential care worker” means a person who is employed to supervise and care for children or developmentally handicapped persons in a family-type residential dwelling or cottage and who resides in the dwelling or cottage during work periods, but does not include a foster parent; (“préposé aux soins en établissement”)

“road building” means the preparation, construction, reconstruction, repair, alteration, remodelling, renovation, demolition, finishing and maintenance of streets, highways or parking lots, including structures such as bridges, tunnels or retaining walls in connection with streets or highways, and all foundations, installation of equipment, appurtenances and work incidental thereto; (“construction de routes”)

“seasonal employee” means an employee who works not more than 16 weeks in a calendar year for an employer; (“employé saisonnier”)

“taxi cab” means a vehicle, with seating accommodation for not more than nine persons exclusive of the driver, used to carry persons for hire; (“taxi”)

“wage rate” means, where an employee is paid for piecework, the rate paid per piece and if there is more than one piece rate, each of the piece rates, and the number of pieces paid at each rate. (“taux de salaire”) O. Reg. 285/01, s. 1; O. Reg. 552/05, s. 1.

Family Day a public holiday

Family Day, being the third Monday in February, is prescribed as a public holiday for the purpose of the definition of “public holiday” in section 1 of the Act. O. Reg. 547/07, s. 1.

Exemptions from Parts VII to XI of Act

Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed,

(a) as a duly qualified practitioner of,

(i) architecture,

(ii) law,

(iii) professional engineering,

(iv) public accounting,
(v) surveying, or
(vi) veterinary science;

(b) as a duly registered practitioner of,
(i) chiropody,
(ii) chiropractic,
(iii) dentistry,
(iv) massage therapy,
(v) medicine,
(vi) optometry,
(vii) pharmacy,
(viii) physiotherapy, or
(ix) psychology;

(c) as a duly registered practitioner under the Drugless Practitioners Act;

d) as a teacher as defined in the Teaching Profession Act;

(e) as a student in training for an occupation mentioned in clause (a), (b), (c) or (d);

(f) in commercial fishing;

(g) as a salesperson or broker, as those terms are defined in the Real Estate and Business Brokers Act, 2002; or

(h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

(ii) are normally made away from the employer’s place of business. O. Reg. 285/01, s. 2 (1); O. Reg. 92/06, s. 1.

(2) Subject to sections 24, 25, 26 and 27 of this Regulation, Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish. O. Reg. 285/01, s. 2 (2).

SPECIAL RULE RE EMERGENCY LEAVE

Special rule for emergency leave

3. Section 50 of the Act does not apply to any of the following persons in circumstances in which the exercise of the entitlement would constitute an act of professional misconduct or a dereliction of professional duty:

1. A person described in clause 2 (1) (a), (c), (d) or (e).

2. A person employed as a registered practitioner of a health profession set out in Schedule 1 to the Regulated Health Professions Act, 1991, including a person described in clause 2 (1) (b). O. Reg. 285/01, s. 3.

EXEMPTION RE CERTAIN DEDUCTIONS, ETC.

Fees, s. 28 of Ontario Municipal Employees Retirement System Act, 2006

3.1 (1) An employer is exempted from the application of section 13 of the Act if the employer participates in an OMERS pension plan under the Ontario Municipal Employees Retirement System Act, 2006, but only with respect to fees that a by-law made under section 28 of that Act requires employees to pay. O. Reg. 444/07, s. 1.

(2) Subsection (1) applies only if the employer remits the fees in accordance with the by-law. O. Reg. 444/07, s. 1.

EXEMPTIONS RE HOURS OF WORK AND EATING PERIODS

Exemptions from Part VII of Act

4. (1) Sections 17, 18 and 19 of the Act do not apply to,

(a) a person employed as a firefighter as defined in section 1 of the Fire Protection and Prevention Act, 1997;
(b) a person whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis;

(c) a person employed as a fishing or hunting guide;

(d) a construction employee;

(e) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building; or

(f) a person employed as an embalmer or funeral director. O. Reg. 285/01, s. 4 (1).

(2) Sections 17 and 19 of the Act do not apply to a person employed,

(a) as a landscape gardener; or

(b) to install and maintain swimming pools. O. Reg. 285/01, s. 4 (2).

(3) Part VII of the Act does not apply to,

(a) a person whose employment is directly related to,

(i) the growing of mushrooms,

(ii) the growing of flowers for the retail and wholesale trade,

(iii) the growing, transporting and laying of sod,

(iv) the growing of trees and shrubs for the wholesale and retail trade,

(v) the breeding and boarding of horses on a farm, or

(vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for propagation or the production of pelts for commercial purposes;

(b) an information technology professional; or

(c) a person employed in the recorded visual and audio-visual entertainment production industry. O. Reg. 285/01, s. 4 (3); O. Reg. 552/05, s. 2.

**Establishment of Minimum Wage**

**Minimum wage**

5. (1) Until March 30, 2008, the prescribed minimum wage is as follows:

1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, $7.50 an hour.

2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act*, $6.95 an hour.

3. For the services of a hunting or fishing guide, $40.00 for less than five consecutive hours in a day and $80.00 for five or more hours in a day whether or not the hours are consecutive.

4. For an employee who is a homeworker, 110 per cent of the amount set out in paragraph 5.

5. For any other employee, $8.00 an hour. O. Reg. 294/07, s. 1 (1).

(1.1) From March 31, 2008 until March 30, 2009, the prescribed minimum wage is as follows:

1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, $8.20 an hour.

2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act*, $7.60 an hour.

3. For the services of a hunting or fishing guide, $43.75 for less than five consecutive hours in a day and $87.50 for five or more hours in a day whether or not the hours are consecutive.

4. For an employee who is a homeworker, 110 per cent of the amount set out in paragraph 5.

5. For any other employee, $8.75 an hour. O. Reg. 294/07, s. 1 (1).
From March 31, 2009 until March 30, 2010, the prescribed minimum wage is as follows:

1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, $8.90 an hour.

2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the Liquor Licence Act, $8.25 an hour.

3. For the services of a hunting or fishing guide, $47.50 for less than five consecutive hours in a day and $95.00 for five or more hours in a day whether or not the hours are consecutive.

4. For an employee who is a homeworker, 110 per cent of the amount set out in paragraph 5.

5. For any other employee, $9.50 an hour. O. Reg. 294/07, s. 1 (1).

From March 31, 2010 onwards, the prescribed minimum wage is as follows:

1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, $9.60 an hour.

2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the Liquor Licence Act, $8.90 an hour.

3. For the services of a hunting or fishing guide, $51.25 for less than five consecutive hours in a day and $102.50 for five or more hours in a day whether or not the hours are consecutive.

4. For an employee who is a homeworker, 110 per cent of the amount set out in paragraph 5.

5. For any other employee, $10.25 an hour. O. Reg. 294/07, s. 1 (1).

Revoked: O. Reg. 294/07, s. 1 (1).

If the calculation under paragraph 4 of subsection (1), (1.1), (1.2) or (1.3), as the case may be, results in an hourly minimum wage that is an amount ending in a fraction of a cent, the hourly minimum wage shall be rounded up to the nearest cent. O. Reg. 285/01, s. 5 (2); O. Reg. 401/03, s. 1 (2); O. Reg. 294/07, s. 1 (2).

If an employee falls within both paragraphs 1 and 4 of subsection (1), (1.1), (1.2) or (1.3), as the case may be, the employer shall pay the employee not less than the minimum wage set out in paragraph 4. O. Reg. 285/01, s. 5 (3); O. Reg. 401/03, s. 1 (3); O. Reg. 294/07, s. 1 (3).

If an employer provides room or board to an employee, the following are the amounts that shall be deemed to have been paid as wages for the purposes of determining whether the minimum wage set out in subsection (1), (1.1), (1.2) or (1.3), as the case may be, has been paid:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Room</td>
<td>$31.70 a week if the room is private and $15.85 a week if the room is not private.</td>
</tr>
<tr>
<td>Board</td>
<td>$2.55 a meal and not more than $53.55 a week.</td>
</tr>
<tr>
<td>Both room and board</td>
<td>$85.25 a week if the room is private and $69.40 a week if the room is not private.</td>
</tr>
</tbody>
</table>

O. Reg. 285/01, s. 5 (4); O. Reg. 401/03, s. 1 (4); O. Reg. 294/07, s. 1 (4).

The amount provided in subsection (4) in respect of a room shall be deemed to have been paid as wages only if the room is,

(a) reasonably furnished and reasonably fit for human habitation;
(b) supplied with clean bed linen and towels; and
(c) reasonably accessible to proper toilet and wash-basin facilities. O. Reg. 285/01, s. 5 (5).

Room or board shall not be deemed to have been paid by the employer to an employee as wages unless the employee has received the meals or occupied the room. O. Reg. 285/01, s. 5 (6).

For the purpose of determining whether an employee other than a student has been paid the minimum wage set out in subsection (1), (1.1), (1.2) or (1.3), as the case may be, the employee shall be deemed to have worked for three hours if he or she,

(a) regularly works more than three hours a day;
(b) is required to present himself or herself for work; and
(c) works less than three hours. O. Reg. 285/01, s. 5 (7); O. Reg. 401/03, s. 1 (5); O. Reg. 294/07, s. 1 (5).

(8) Subsection (7) 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. O. Reg. 285/01, s. 5 (8).

s. 23 (4) of Act, change to minimum wage during pay period

5.1 If the prescribed minimum wage applicable with respect to an employee changes during a pay period, the calculations required by subsection 23 (4) of the Act shall be performed as if the pay period were two separate pay periods, the first consisting of the part falling before March 31 in the relevant year and the second consisting of the part falling on and after March 31 in that year. O. Reg. 401/03, s. 2; O. Reg. 294/07, s. 2.

When work deemed to be performed

6. (1) Subject to subsection (2), work shall be deemed to be performed by an employee for the employer,

(a) where work is,

(i) permitted or suffered to be done by the employer, or

(ii) in fact performed by an employee although a term of the contract of employment expressly forbids or limits hours of work or requires the employer to authorize hours of work in advance;

(b) where the employee is not performing work and is required to remain at the place of employment,

(i) waiting or holding himself or herself ready for call to work, or

(ii) on a rest or break-time other than an eating period. O. Reg. 285/01, s. 6 (1).

(2) Work shall not be deemed to be performed for an employer during the time the employee,

(a) is entitled to,

(i) take time off work for an eating period,

(ii) take at least six hours or such longer period as is established by contract, custom or practice for sleeping and the employer furnishes sleeping facilities, or

(iii) take time off work in order to engage in the employee’s own private affairs or pursuits as is established by contract, custom or practice;

(b) is not at the place of employment and is waiting or holding himself or herself ready for call to work. O. Reg. 285/01, s. 6 (2).

EXEMPTIONS RE MINIMUM WAGE

Exemptions from Part IX of Act

7. Part IX of the Act does not apply to,

(a) a person who is employed as a student in a recreational program operated by a charitable organization registered under Part I of the Income Tax Act (Canada) and whose work or duties are directly connected with the recreational program;

(b) a person employed as a student to instruct or supervise children;

(c) a person employed as a student at a camp for children;

(d) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building. O. Reg. 285/01, s. 7.

EXEMPTIONS RE OVERTIME PAY

Exemptions from Part VIII of Act

8. Part VIII of the Act does not apply to,

(a) a person employed as a firefighter as defined in section 1 of the Fire Protection and Prevention Act, 1997;

(b) a person whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis;

(c) a person employed as a fishing or hunting guide;

(d) a person employed,
(i) as a landscape gardener, or
(ii) to install and maintain swimming pools;

(e) a person whose employment is directly related to,
   (i) the growing of mushrooms,
   (ii) the growing of flowers for the retail and wholesale trade,
   (iii) the growing, transporting and laying of sod,
   (iv) the growing of trees and shrubs for the retail and wholesale trade,
   (v) the breeding and boarding of horses on a farm, or
   (vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for
       propagation or the production of pelts for commercial purposes;

(f) a person employed as a student to instruct or supervise children;

(g) a person employed as a student at a camp for children;

(h) a person who is employed as a student in a recreational program operated by a charitable organization
    registered under Part I of the *Income Tax Act* (Canada) and whose work or duties are directly connected
    with the recreational program;

(i) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in
    the building;

(j) a person employed as a taxi cab driver;

(k) a person employed as an ambulance driver, ambulance driver’s helper or first-aid attendant on an ambulance;
   or

(l) an information technology professional. O. Reg. 285/01, s. 8.

**EXEMPTIONS re PUBLIC HOLIDAYS**

**Exemptions from Part X of Act**

9. (1) Part X of the Act does not apply to,

(a) a person employed as a firefighter as defined in section 1 of the *Fire Protection and Prevention Act, 1997*;

(b) a person employed as a fishing or hunting guide;

(c) a person employed,
   (i) as a landscape gardener, or
   (ii) to install and maintain swimming pools;

(d) a person whose employment is directly related to,
   (i) mushroom growing,
   (ii) the growing of flowers for the retail and wholesale trade,
   (iii) the growing, transporting and laying of sod,
   (iv) the growing of trees and shrubs for the retail and wholesale trade,
   (v) the breeding and boarding of horses on a farm, or
   (vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for
       propagation or the production of pelts for commercial purposes;

(e) a person employed as a student to instruct or supervise children;

(f) a person employed as a student at a camp for children;

(g) a person who is employed as a student in a recreational program operated by a charitable organization
    registered under Part I of the *Income Tax Act* (Canada) and whose work or duties are directly connected
    with the recreational program;
(h) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building;

(i) a person employed as a taxi cab driver; or

(j) a person who is employed as a seasonal employee in a hotel, motel, tourist resort, restaurant or tavern and provided with room and board.

(k) Revoked: O. Reg. 443/08, s. 1.

O. Reg. 285/01, s. 9 (1); O. Reg. 443/08, s. 1.

(2) Part X of the Act does not apply to a construction employee who works in the construction industry and receives 7.7 per cent or more of his or her hourly rate or wages for vacation pay or holiday pay. O. Reg. 285/01, s. 9 (2); O. Reg. 586/07, s. 1.

**EXEMPTION RE RETAIL BUSINESS ESTABLISHMENTS**

**Application of s. 73 of Act**

10. (1) Despite section 73 of the Act, an employee in a retail business establishment shall not refuse to work on a Sunday if he or she agreed, at the time of being hired, to work on Sundays. O. Reg. 285/01, s. 10 (1).

(2) Subsection (1) does not apply to an employee who declines to work on a Sunday for reasons of religious belief or religious observance. O. Reg. 285/01, s. 10 (2).

(3) The employer shall not make an employee’s agreement to work on Sundays a condition of being hired if the condition would be contrary to section 11 of the *Human Rights Code*. O. Reg. 285/01, s. 10 (3).

**SPECIAL RULES RE HOMEMAKERS**

**Homemakers**

11. (1) In this section,

“homemaker” means a person who is employed,

(a) to perform homemaking services for a householder or member of a household in the householder’s private residence, and

(b) by a person other than the householder. O. Reg. 285/01, s. 11 (1).

(2) Despite section 6, the hours of work in respect of which a homemaker is to be paid at least the minimum wage shall be not more than 12 hours in a day. O. Reg. 285/01, s. 11 (2).

(3) Parts VII (Hours of Work and Eating Periods) and VIII (Overtime Pay) and paragraph 4 of subsection 15 (1) (record of hours worked) of the Act do not apply to a homemaker who is paid in accordance with subsection (2). O. Reg. 285/01, s. 11 (3).

**SPECIAL RULES RE HOMEWORKERS**

**Homeworkers**

12. (1) The employer of a homeworker shall advise the homeworker in writing of the type of work that he or she is being employed to perform and,

(a) if the homeworker is to be paid according to the number of hours worked, of the amount to be paid for an hour of work in a regular work week;

(b) if the homeworker is to be paid according to the number of articles or things manufactured, of the amount to be paid for each article or thing manufactured in a regular work week; or

(c) if the homeworker is to be paid on some other basis, the basis on which he or she is to be paid. O. Reg. 285/01, s. 12 (1).

(2) If the employer of a homeworker who is paid according to the number of articles or things manufactured requires the manufacture of a certain number of articles or things to be completed by a certain date or time, the employer shall advise the homeworker of those requirements in writing. O. Reg. 285/01, s. 12 (2).

(3) In this section,

“manufacture” includes preparation, improvement, repair, alteration, assembly or completion. O. Reg. 285/01, s. 12 (3).
Section 3: Business Administration

SPECIAL RULES AND EXEMPTIONS RE OVERTIME PAY

Road building

13. (1) Despite Part VIII of the Act, in the case of an employee engaged at the site of road building in relation to streets, highways or parking lots,

(a) subject to clause (b), the employer shall pay overtime pay for each hour worked in excess of 55 hours in a work week, at an amount not less than one and one-half times the employee’s regular rate; and

(b) if the employee works less than 55 hours in a work week, the difference between 55 hours and the number of hours actually worked, up to an amount not exceeding 22 hours, may be added to the maximum set out in clause (a) for the purpose of determining the employee’s overtime pay for the next work week. O. Reg. 285/01, s. 13 (1).

(2) Despite Part VIII of the Act, in the case of an employee engaged at the site of road building in relation to structures such as bridges, tunnels or retaining walls in connection with streets or highways,

(a) subject to clause (b), the employer shall pay overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee’s regular rate; and

(b) if the employee works less than 50 hours in a work week, the difference between 50 hours and the number of hours actually worked, up to an amount not exceeding 22 hours, may be added to the maximum set out in clause (a) for the purpose of determining the employee’s overtime pay for the next work week. O. Reg. 285/01, s. 13 (2).

Hotels, motels, tourist resorts, restaurants and taverns

14. Despite Part VIII of the Act, the employer shall pay an employee who works for the owner or operator of a hotel, motel, tourist resort, restaurant or tavern for 24 weeks or less in a calendar year and who is provided with room and board overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee’s regular rate. O. Reg. 285/01, s. 14.

Fresh fruit and vegetable processing

15. Despite Part VIII of the Act, the employer shall pay a seasonal employee whose employment is directly related to the canning, processing and packing of fresh fruits or vegetables or their distribution by the canner, processor or packer overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee’s regular rate. O. Reg. 285/01, s. 15.

Sewer and watermain construction

16. Despite Part VIII of the Act, the employer shall pay an employee who is employed in laying, altering, repairing or maintaining sewers and watermain and in work incidental thereto, or in guarding the site during the laying, altering, repairing or maintaining of sewers and watermain, overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee’s regular rate. O. Reg. 285/01, s. 16.

Local cartage

17. (1) Despite Part VIII of the Act, the employer shall pay an employee who is a driver of a vehicle or a driver’s helper overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee’s regular rate. O. Reg. 285/01, s. 17 (1).

(2) Subsection (1) applies to employees who are,

(a) drivers of vehicles used in the business of carrying goods for hire within a municipality or to any point not more than five kilometres beyond the municipality’s limits; or

(b) drivers’ helpers on such vehicles. O. Reg. 285/01, s. 17 (2).

Highway transport

18. (1) Despite Part VIII of the Act, the employer shall pay an employee to whom this subsection applies overtime pay for each hour worked in excess of 60 hours in a work week, at an amount not less than one and one-half times the employee’s regular rate. O. Reg. 18/06, s. 1.

(2) Subsection (1) applies to an employee who is the driver of any of the following:

1. A truck whose operator held an operating licence under the former Act on December 31, 2005.

2. A truck whose operator held a certificate of intercorporate exemption under the former Act on December 31, 2005, if after that date the truck is operated to carry, for compensation, goods of another person who is not
an affiliated corporation under the former Act, such that the operator would be required to hold an operating licence under the former Act if it were still in force.

3. A truck that is operated to carry goods of another person for compensation, if the operator,
   i. did not hold an operating licence or a certificate of intercorporate exemption under the former Act on December 31, 2005, and
   ii. would be required to hold an operating licence under the former Act if it were still in force. O. Reg. 18/06, s. 1.

(3) For the purposes of paragraph 2 of subsection (2), subsection 3 (6) of the former Act does not apply. O. Reg. 18/06, s. 1.

(4) For the purposes of subparagraph 3 ii of subsection (2), subsections 3 (5) and (6) of the former Act do not apply. O. Reg. 18/06, s. 1.

(5) Subsection (1) does not apply to an employee to whom section 17 applies. O. Reg. 18/06, s. 1.

(6) For the purposes of this section, in computing the number of hours worked by an employee in a week, only the hours during which he or she is directly responsible for the truck shall be included. O. Reg. 18/06, s. 1.

(7) In this section, “commercial motor vehicle” has the same meaning as in the former Act; (“véhicule automobile utilitaire”) “former Act” means the Truck Transportation Act; (“ancienne loi”) “operate” has the same meaning as in the former Act, and “operator” has a corresponding meaning; (“exploiter”, “exploitant”) “truck” means a commercial motor vehicle or the combination of a commercial motor vehicle and trailer or trailers drawn by it. (“camion”) O. Reg. 18/06, s. 1.

SPECIAL RULES RE DOMESTIC WORKERS

Domestic workers

19. (1) A householder shall provide the domestic worker with written particulars of employment respecting,
   (a) the regular hours of work, including the starting and finishing times; and
   (b) the hourly rate of pay. O. Reg. 285/01, s. 19 (1).

(2) If the householder provides room or board to the domestic employee, the following are the amounts that shall be deemed to have been paid as wages for the purposes of determining whether the minimum wage set out in subsection 5 (1), (1.1), (1.2) or (1.3), as the case may be, has been paid:

<table>
<thead>
<tr>
<th>Type of Room</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private room</td>
<td>$31.70 a week</td>
</tr>
<tr>
<td>Non-private room</td>
<td>$0.00</td>
</tr>
<tr>
<td>Board</td>
<td>$2.55 a meal and not more than $53.55 a week</td>
</tr>
<tr>
<td>Both room and board</td>
<td>$85.25 a week if the room is private and $53.55 a week if the room is not private</td>
</tr>
</tbody>
</table>

O. Reg. 285/01, s. 19 (2); O. Reg. 401/03, s. 3; O. Reg. 294/07, s. 3.

(3) The amount provided in subsection (2) in respect of a room shall be deemed to have been paid as wages only if the room is,
   (a) reasonably furnished and reasonably fit for human habitation;
   (b) supplied with clean bed linen and towels; and
   (c) reasonably accessible to proper toilet and wash-basin facilities. O. Reg. 285/01, s. 19 (3).

(4) Room or board shall not be deemed to have been paid by the householder to the domestic employee as wages unless the employee has received the meals or occupied the room. O. Reg. 285/01, s. 19 (4).
Residential care workers

20. (1) In this section, “day” means the 24-hour period between 12:00 midnight on a day and 12:00 midnight on the next day. O. Reg. 285/01, s. 20 (1).

(2) Despite section 6 and subject to subsection (3), the employer shall pay to a residential care worker for each day of work wages in a minimum amount, not less than an amount calculated by multiplying 12 hours by the worker’s regular rate, which shall not be less than the minimum wage. O. Reg. 285/01, s. 20 (2).

(3) If a residential care worker, by arrangement with the employer, is free from the performance of normal and regular duties in a day and as a result works less than 12 hours, the worker shall be paid wages not less than an amount calculated by multiplying the number of hours actually worked by the worker’s regular rate as mentioned in subsection (2). O. Reg. 285/01, s. 20 (3).

(4) In addition to the wage payable under subsection (2), the employer shall pay to a residential care worker not less than the worker’s regular rate for not more than three additional hours worked in excess of 12 hours of work in a day, if the worker,

(a) makes and keeps an accurate daily record of the number of hours worked in the day; and

(b) provides the record to the employer on or before the first pay day after the pay day for the pay period in which the work is performed. O. Reg. 285/01, s. 20 (4).

Free time

21. (1) Despite section 18 of the Act, every employer shall give to a residential care worker not less than 36 hours in each work week, either consecutive or as may be arranged with the consent of the worker, free from the performance of any duties for the employer. O. Reg. 285/01, s. 21 (1).

(2) If the residential care worker consents, at the employer’s request, to do work during a free hour mentioned in subsection (1),

(a) that hour shall be added to one of the next eight 36-hour periods of free time; or

(b) the employer shall pay the residential care worker at least one and one-half times the worker’s regular rate for the time spent doing work during a free hour. O. Reg. 285/01, s. 21 (2).

When work deemed not to be performed

22. Despite section 6, work shall be deemed not to be performed during any time that satisfies the following conditions:

1. The residential care worker spends the time at the dwelling or cottage,
   i. attending to private affairs or pursuits, or
   ii. resting, sleeping or eating.

2. The time is, by agreement with the employer, free from the performance of any duties. O. Reg. 285/01, s. 22.

Exemptions

23. Parts VII (Hours of Work and Eating Periods) and VIII (Overtime Pay) and paragraph 4 of subsection 15 (1) (record of hours worked) of the Act do not apply to or in respect of a residential care worker. O. Reg. 285/01, s. 23.

SPECIAL RULES RE FRUIT, VEGETABLE AND TOBACCO HARVESTERS

Application

24. Sections 25, 26 and 27 apply to an employee who is employed on a farm to harvest fruit, vegetables or tobacco for marketing or storage. O. Reg. 285/01, s. 24.

Minimum wage

25. (1) For each pay period, the employer shall pay a minimum wage of not less than the amounts set out in subsection 5 (1), (1.1), (1.2) or (1.3), as the case may be. O. Reg. 285/01, s. 25 (1); O. Reg. 401/03, s. 4 (1); O. Reg. 294/07, s. 4 (1).

(2) The employer shall be deemed to comply with subsection (1) if employees are paid a piece work rate that is customarily and generally recognized in the area as having been set so that an employee exercising reasonable effort.
would, if paid such a rate, earn at least the amounts set out in subsection 5 (1), (1.1), (1.2) or (1.3), as the case may be. O. Reg. 285/01, s. 25 (2); O. Reg. 401/03, s. 4 (2); O. Reg. 294/07, s. 4 (2).

(3) Subsection (2) does not apply in respect of an employee described in paragraph 1 of subsection 5 (1), (1.1), (1.2) or (1.3), as the case may be. O. Reg. 285/01, s. 25 (3); O. Reg. 401/03, s. 4 (3); O. Reg. 294/07, s. 4 (3).

(4) For the purposes of this section, “piece work rate” means a rate of pay calculated on the basis of a unit of work performed. O. Reg. 285/01, s. 25 (4).

(5) If an employer provides room or board to an employee, the following are the amounts which shall be deemed to have been paid by the employer to the employee as wages for the purposes of determining whether the minimum wage set out in subsection 5 (1), (1.1), (1.2) or (1.3), as the case may be, has been paid:

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serviced housing accommodation</td>
<td>$99.35 a week.</td>
</tr>
<tr>
<td>Housing accommodation</td>
<td>$73.30 a week.</td>
</tr>
<tr>
<td>Room</td>
<td>$31.70 a week if the room is private and $15.85 a week if the room is not private.</td>
</tr>
<tr>
<td>Board</td>
<td>$2.55 a meal and not more than $53.55 a week.</td>
</tr>
<tr>
<td>Both room and board</td>
<td>$85.25 a week if the room is private and $69.40 a week if the room is not private.</td>
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</table>

O. Reg. 285/01, s. 25 (5); O. Reg. 401/03, s. 4 (4); O. Reg. 294/07, s. 4 (4).

(6) The amount provided in subsection (5) in respect of housing accommodation shall be deemed to have been paid as wages only if the accommodation,

(a) is reasonably fit for human habitation;

(b) includes a kitchen with cooking facilities;

(c) includes at least two bedrooms or a bedroom and a living room; and

(d) has its own private toilet and washing facilities. O. Reg. 285/01, s. 25 (6).

(7) The amount provided in subsection (5) in respect of serviced housing accommodation shall be deemed to have been paid as wages only if,

(a) the accommodation complies with clauses (6) (a) to (d); and

(b) light, heat, fuel, water, gas or electricity are provided at the employer’s expense. O. Reg. 285/01, s. 25 (7).

(8) The amount provided in subsection (5) in respect of a room shall be deemed to have been paid as wages only if the room is,

(a) reasonably furnished and reasonably fit for human habitation;

(b) supplied with clean bed linen and towels; and

(c) reasonably accessible to proper toilet and wash-basin facilities. O. Reg. 285/01, s. 25 (8).

(9) Room or board shall not be deemed to have been paid by the employer to an employee as wages unless the employee has received the meals or occupied the room. O. Reg. 285/01, s. 25 (9).

**Vacation or vacation pay**

26. (1) If an employee has been employed by the employer for 13 weeks or more, the employer shall, in accordance with Part XI of the Act,

(a) give the employee a vacation with pay; or

(b) pay the employee vacation pay. O. Reg. 285/01, s. 26 (1).

(2) An employee entitled to vacation pay under subsection (1) earns vacation pay from the commencement of his or her employment. O. Reg. 285/01, s. 26 (2).

(3) Section 41 of the Act does not apply to the employee. O. Reg. 285/01, s. 26 (3).

**Public holidays**

27. (1) Part X of the Act applies to an employee who has been employed by an employer for a period of 13 weeks or more. O. Reg. 285/01, s. 27 (1).
For the purposes of this section, an employee shall be deemed to be employed in a continuous operation. O. Reg. 285/01, s. 27 (2).

Revoked: O. Reg. 443/08, s. 2.

SPECIAL RULES RE COMMISSION AUTOMOBILE SALES SECTOR

Commission automobile sales sector

This section applies with respect to employees who sell automobiles partially or exclusively on a commission basis. O. Reg. 285/01, s. 28 (1).

(2) For each pay period, the employer shall pay to each employee an amount that is at least equal to the amount the employee would have earned at the minimum wage set out in subsection 5 (1), (1.1), (1.2) or (1.3), as the case may be. O. Reg. 285/01, s. 28 (2); O. Reg. 401/03, s. 5; O. Reg. 294/07, s. 5.

(3) A pay period shall not exceed one month. O. Reg. 285/01, s. 28 (3).

(4) Payments made to an employee shall be reconciled with wages earned by the employee for each reconciliation period. O. Reg. 285/01, s. 28 (4).

(5) No balance shall be carried forward past any reconciliation period. O. Reg. 285/01, s. 28 (5).

(6) The reconciliation of payments made to an employee and wages earned by an employee shall not result in any employee receiving less than the prescribed minimum wage for any pay period. O. Reg. 285/01, s. 28 (6).

(7) For each year, the reconciliation periods shall be:
2. April 1 - June 30.
4. October 1 - December 31. O. Reg. 285/01, s. 28 (7).

(8) If an employee’s employment terminates before the end of a reconciliation period, payments made to the employee shall be reconciled with wages earned by him or her, and subsection (6) applies. O. Reg. 285/01, s. 28 (8).

Revoked: O. Reg. 443/08, s. 3.

DIRECTOR’S APPROVALS

Revoked: O. Reg. 50/05, s. 1.

Certain approved agreements irrevocable

Despite subsection 17 (6) of the Act, an agreement under subsection 17 (2) of the Act that was made at the time of the employee’s hiring and that has been approved by the Director is irrevocable unless both the employer and the employee agree to its revocation. O. Reg. 285/01, s. 32 (1); O. Reg. 50/05, s. 2.

(2) The Director may impose conditions in granting an approval. O. Reg. 285/01, s. 32 (2).

EXISTING ARRANGEMENTS FOR LONG SHIFTS

Clause 17 (1) (a) of the Act does not apply with respect to the class of employees each of whom,

(a) has an arrangement described in subsection (2) with an employer to whom a permit was issued under section 18 of the Employment Standards Act; and

(b) is not required by the employer to work more than 10 hours a day. O. Reg. 361/01, s. 1.

(2) The arrangement,

(a) provides that the employee is willing to work, at the employer’s request, more hours per day than the number of hours in his or her regular work day;

(b) was made at or before the time of the employee’s hiring and before September 4, 2001; and

(c) has not been revoked by the mutual consent of the employer and employee. O. Reg. 361/01, s. 1.

(3) The terms of the arrangement need not be reduced to writing. O. Reg. 361/01, s. 1.

Revoked: O. Reg. 361/01, s. 33.

33. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 285/01, s. 33.
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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, 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).
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, 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).

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, 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).

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, 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).

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, 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).

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, 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).

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, 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).

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 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).

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 by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (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).
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).

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).

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.

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).

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.

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 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).

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).

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 Act 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).

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).

Tobacco and young persons

(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 and the regulations under it relating to selling or supplying tobacco to persons who are, or who appear to be, under the age of 19 years or 25 years, as the case may be. 1994, c. 10, s. 22; 2005, c. 18, s. 17.
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).

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).

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 or master is required to retire or cease to continue in office on reaching a specified age under the *Courts of Justice Act*;

(f) a case management master is required to retire on reaching a specified age under the *Courts of Justice Act*;

(g) the term of reappointment of a case management master expires on the case management master 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).

**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, master, case management master 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).

24.1 Repealed: 1995, c. 4, s. 3 (2).

**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).

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.

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.

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.

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.
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.

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.

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.
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.

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.

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.

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.

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 3: Business Administration
Other reports

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.

PART IV
HUMAN RIGHTS TRIBUNAL OF ONTARIO

Tribunal

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

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

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

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

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

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

The Lieutenant Governor in Council shall designate one of the vice-chairs to be the alternate chair. 2006, c. 30, s. 5.

Same

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

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

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

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.

Panels

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

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.

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.
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.

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.

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.

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.

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.

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.

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.

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.
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.
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.

A person conducting an inquiry under this section shall produce proof of their appointment upon request.

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.

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.

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.

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.

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.

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.

A person conducting an inquiry shall not use force to enter and search premises under this section.

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.

Deferral of application
45. The Tribunal may defer an application in accordance with the Tribunal rules. 2006, c. 30, s. 5.

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.

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.

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.
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.

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.

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.

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.

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).

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.

Annual report

45.10 (1) The Tribunal shall make a report to the Minister not later than June 30 in each year upon the affairs of the Tribunal during the year ending on March 31 of that year. 2006, c. 30, s. 5.

Report laid in Assembly

(2) The Minister shall submit the report to the Lieutenant Governor in Council 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. 5.

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.
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.

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.

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.

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.

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.

Annual report

45.17 (1) The Centre shall submit an annual report to the Minister within four months after the end of its fiscal year. 2006, c. 30, s. 6.

Fiscal year

(2) The fiscal year of the Centre shall be from April 1 to March 31 of the following year. 2006, c. 30, s. 6.

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.

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”)

“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.

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.
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.

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.

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) provide for the nature and scope of the annual report required under section 45.17;
(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 Corporations Act 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).

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.

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.

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.

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.

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.

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.

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.

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.

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.
Labour Relations Act, 1995
S.O. 1995, CHAPTER 1
SCHEDULE A

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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).

Purposes

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;
   (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 established by Part X.1 of the Education Act, except as provided by that Part, or to a supervisory officer, a principal or a vice-principal;
   (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).

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).

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

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).
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).

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 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).

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).

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).

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).

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.

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).

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).

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).

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).
Section 3: Business Administration

(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).

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).

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.

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.

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. 2005, c. 15, s. 2.

Same

(3) An order under subsection (2) may be made despite section 8.1 or subsection 10 (2). 2005, c. 15, 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. 2005, c. 15, s. 2.
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.

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.

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).

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.

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.

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.

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.
Same, 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.

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.

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

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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)


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. 1995, c. 1, Sched. A, s. 43 (1).

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. 1995, c. 1, Sched. A, s. 43 (2).

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. 1995, c. 1, Sched. A, s. 43 (3).

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. 1995, c. 1, Sched. A, s. 43 (4).

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. 1995, c. 1, Sched. A, s. 43 (5).

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. 1995, c. 1, Sched. A, s. 43 (6).

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 limited, the appointment shall be made by the Minister upon the request of either party. 1995, c. 1, Sched. A, s. 43 (7).

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. 1995, c. 1, Sched. A, s. 43 (8).
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. 1995, c. 1, Sched. A, s. 43 (9).

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. 1995, c. 1, Sched. A, s. 43 (10).

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. 1995, c. 1, Sched. A, s. 43 (11).

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. 1995, c. 1, Sched. A, s. 43 (12).

The Minister may appoint a mediator to confer with the parties and endeavour to effect a settlement. 1995, c. 1, Sched. A, s. 43 (13).

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. 1995, c. 1, Sched. A, s. 43 (16).

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. 1995, c. 1, Sched. A, s. 43 (17).

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. 1995, c. 1, Sched. A, s. 43 (18).

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...
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retroactive to the day that the Board may fix, but not earlier than the day on which notice was given under section 16. 1995, c. 1, Sched. A, s. 43 (19).

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. 1995, c. 1, Sched. A, s. 43 (20).

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. 1995, c. 1, Sched. A, s. 43 (21).

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). 1995, c. 1, Sched. A, s. 43 (22).

Definitions

(23) In subsections (23.1) to (23.4),

“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”) 2000, c. 38, s. 5.

Application of subs. (23.2)

(23.1) Subsection (23.2) 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. 2000, c. 38, s. 5.

Procedure in dealing with multiple applications

(23.2) The Board shall proceed to deal with the decertification application or displacement application, as the case may be, before dealing with or continuing to deal with the application under subsection (1). 2000, c. 38, s. 5.

When application under subsection (1) to be dismissed

(23.3) If the Board grants the decertification application or displacement application, it shall dismiss the application under subsection (1). 2000, c. 38, s. 5.

When application under subs. (1) proceeds

(23.4) If the Board dismisses the decertification application or displacement application, it shall proceed to deal with the application under subsection (1). 2000, c. 38, s. 5.

Transitional

(23.5) Subsections (23.2) to (23.4) apply with respect to an application referred to in those subsections that was filed with the Board before the day on which the Labour Relations Amendment Act, 2000 received Royal Assent only if the Board has not made a final decision on that application before that day. 2000, c. 38, s. 5.

Same

(24) An application for a declaration that a trade union no longer represents the employees in the bargaining unit 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). 1995, c. 1, Sched. A, s. 43 (24).

Same

(25) An application for certification by another trade union as bargaining agent for employees in the bargaining unit 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).

1995, c. 1, Sched. A, s. 43 (25).

Procedure

(26) The Arbitration Act, 1991 does not apply to an arbitration under this section. 1995, c. 1, Sched. A, s. 43 (26).

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.

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).
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.

Where arbitration provision inadequate

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

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

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

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

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).

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).

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).

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

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

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

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


Referral of grievances to a single arbitrator

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

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

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

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.
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 employer’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).

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 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).

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.

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

(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

(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

(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.

SUCCESS OR 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.

**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.

(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) seven days have elapsed after the day the Minister has released or is deemed pursuant to subsection 122 (2) to have released to the parties the report of a conciliation board or mediator; or
(b) 14 days have elapsed after the day the Minister has released or 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. 1995, c. 1, Sched. A, s. 79 (2).

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).

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.

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.
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.

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

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.

Information

Collective agreements to be filed

90. Each party to a collective agreement shall, forthwith after it is made, file one copy with the Minister. 1995, c. 1, Sched. A, s. 90.

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.

92.1 Repealed: 2005, c. 15, s. 6.

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).

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.

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.

“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) On application in a pending proceeding, the Board may,

(a) make interim orders concerning procedural matters on such terms as it considers appropriate;

(b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate; and

(c) subject to subsections (2) and (3), make interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated but whose terms and conditions of employment have been altered or who has been subject to reprisal, penalty or discipline by the employer. 2005, c. 15, s. 7.

Same

(2) The Board may exercise its power under clause (1) (b) or (c) only if the Board determines that all of the following conditions are met:

1. The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.

2. There is a serious issue to be decided in the pending proceeding.

3. The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.

4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding. 2005, c. 15, s. 7.

Same

(3) The Board shall not exercise its powers under clause (1) (b) or (c) if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee. 2005, c. 15, s. 7.

Same

(4) Despite subsection 96 (5), in an application under this section, the burden of proof lies on the applicant. 2005, c. 15, s. 7.

Same

(5) With respect to the Board, the power to make interim orders under this section applies instead of the power under subsection 16.1 (1) of the Statutory Powers Procedure Act. 2005, c. 15, s. 7.

Transition

(6) This section applies only in respect of an alteration of terms and conditions of employment or a dismissal, reprisal, penalty or discipline that occurred on or after the day section 7 of the Labour Relations Statute Law Amendment Act, 2005 comes into force. 2005, c. 15, s. 7.

Same

(7) This section, as it read immediately before the day section 7 of the Labour Relations Statute Law Amendment Act, 2005 came into force, continues to apply in respect of events that occurred before that date. 2005, c. 15, s. 7.

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
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).

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.

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.

Section 3: Business Administration
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.

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.

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.

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.

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).
Section 3: Business Administration

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).
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).

Effective date of rules

(19) Rules made under subsection (18) come into force on such dates as the Lieutenant Governor in Council may by order determine. 1995, c. 1, Sched. A, s. 110 (19).

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


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).

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.

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;
(i) to authorize any person to do anything that the Board may do under clauses (a) to (h) 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.

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.

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.

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.

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.

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.

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.

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).

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.
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).
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.

(1) 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.

Notice

122. (1) For the purposes of this Act and of any proceedings taken under it, any notice or communication sent through Her Majesty’s mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail. 1995, c. 1, Sched. A, s. 122 (1).

Time of release of documents

(1) A decision, determination, report, interim order, order, direction, declaration or ruling of the Board, a notice from the Minister that he or she 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,

(a) if sent by mail and addressed to the person, employers’ organization, trade union or council of trade unions concerned at his, her or its last-known address, shall be deemed to have been released on the second day after the day on which it was so mailed; or

(b) if delivered to a person, employers’ organization, trade union or council of trade unions concerned at his, her or its last-known address, shall be deemed to have been released on the day next after the day on which it was so delivered. 1995, c. 1, Sched. A, s. 122 (2).

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 by mail and addressed 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.

Second notice of desire to bargain

(1) Where a notice has been given under section 59 by registered mail 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 mailed, 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).

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).
Regulations

125. 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) providing for and fixing the remuneration and expenses of chairs and other members of conciliation boards and mediators;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (g) is repealed by the Statutes of Ontario, 2006, chapter 19, Schedule M, subsection 3 (4). See: 2006, c. 19, Sched. M, ss. 3 (4), 8 (2).

(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;

(j) prescribing amounts or a method of determining amounts payable under subsection 43 (5) for the expense of an arbitration by the Board;

(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;

(l.0.1) designating regional employers’ organizations for the purposes of section 151;

(l.1) prescribing the parties to an application under subsection 163.1 (3) or governing the specifying of such parties by the Board;

(l.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;

(l.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.

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 an employer who does no work in the construction industry for which the employer expects compensation from an unrelated person; (“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.

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.

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.


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.

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.

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

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

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

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

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

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.

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

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

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

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

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

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.
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.

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.

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.

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.

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.

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.

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.

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.

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 275th day of its operation and before the 365th day of its operation. 2000, c. 38, s. 26.


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).

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.

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

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).

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; (“jurisdiction”)

“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).

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.

Interference with the local trade union

149. (1) 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.

Same, officials and members

(2) 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.

Board powers

(3) 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.

Orders when just cause

(4) If the Board determines that an action described in subsection (1) 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. 1995, c. 1, Sched. A, s. 149.

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.

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.
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.

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.

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).
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.

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).
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).

Minister may convene conference

(3) Where a designation is not made by the Minister of an employee bargaining agency or an employer
bargaining agency under subsection (1) within 60 days after October 27, 1977, the Minister may convene a conference
of trade unions, councils of trade unions, employers and employers’ organizations, as the case may be, for the purpose of
obtaining recommendations with respect to the making of a designation. 1995, c. 1, Sched. A, s. 153 (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).

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

Application to Board by employer bargaining agency

155. (1) During the period between the 120th and the 180th days prior to the termination of a provincial
agreement, an employer bargaining agency, whether designated or not, may apply to the Board to be accredited to
represent in bargaining a provincial unit of employers for whose employees affiliated bargaining agents hold bargaining
rights.

Accreditation by Board

(2) Where the Board is satisfied that a majority of employers falling within the provincial unit is represented by
the employer bargaining agency and that the majority of employers employ a majority of the employees for whom the
affiliated bargaining agents hold bargaining rights, the Board shall accredit the employer bargaining agency. 1995, c. 1,
Sched. A, s. 155.

Employee bargaining agencies, vesting of rights, etc.

156. Where an employee bargaining agency has been designated under section 153 or certified under section 154
to represent a provincial unit of affiliated bargaining agents, all rights, duties and obligations under this Act of the
affiliated bargaining agents for which it bargains shall vest in the employee bargaining agency, but only for the purpose
of conducting bargaining and, subject to the ratification procedures of the employee bargaining agency, concluding a provincial agreement. 1995, c. 1, Sched. A, s. 156.

**Employer bargaining agencies, vesting of rights, etc.**

157. Where an employer bargaining agency has been designated under section 153 or accredited under section 155 to represent a provincial unit of employers,

(a) all rights, duties and obligations under this Act of employers for which it bargains shall vest in the employer bargaining agency, but only for the purpose of conducting bargaining and concluding a provincial agreement; and

(b) an accreditation heretofore made under section 136 of an employers’ organization as bargaining agent of the employers in the industrial, commercial and institutional sector of the construction industry, referred to in the definition of “sector” in section 126, represented or to be represented by the employer bargaining agency is null and void from the time of such designation under section 153 or accreditation under section 155. 1995, c. 1, Sched. A, s. 157.

**Bargaining agents in the industrial, commercial and institutional sector**

158. (1) An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126 shall be brought by either,

(a) an employee bargaining agency; or

(b) one or more affiliated bargaining agents of the employee bargaining agency,

on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (2) or by voluntary recognition.

**Saving**

(2) Despite subsection 128 (1), a trade union represented by an employee bargaining agency may bring an application for certification in relation to a unit of employees employed in all sectors of a geographic area other than the industrial, commercial and institutional sector and the unit shall be deemed to be a unit of employees appropriate for collective bargaining.

**Voluntary recognition agreements**

(3) A voluntary recognition agreement in so far as it relates to the industrial, commercial and institutional sector of the construction industry shall be between an employer on the one hand and either,

(a) an employee bargaining agency;

(b) one or more affiliated bargaining agents represented by an employee bargaining agency; or

(c) a council of trade unions on behalf of one or more affiliated bargaining agents affiliated with the council of trade unions,

on the other hand, and shall be deemed to be on behalf of all the affiliated bargaining agents of the employee bargaining agency and the defined bargaining unit in the agreement shall include those employees who would be bound by a provincial agreement.

**Exception**

(4) Despite subsections (1) and (3), a trade union that is not represented by a designated or certified employee bargaining agency may bring an application for certification or enter into a voluntary recognition agreement on its own behalf. 1995, c. 1, Sched. A, s. 158.

**Voting constituency**

159. (1) The Board shall determine the voting constituency to be used for a representation vote. 1995, c. 1, Sched. A, s. 159 (1).

**Direction for representation vote**

(2) If the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the trade unions at the time the application was filed, the Board shall direct that a representation vote be taken among the individuals in the voting constituency. 1995, c. 1, Sched. A, s. 159 (2).
Election under s. 128.1
(3) This section does not apply when an application for certification is being dealt with under section 128.1. 2005, c. 15, s. 11.

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).

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).

160.1 Repealed: 2000, c. 24, s. 5 (2).

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).
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, 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).

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).

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:

Section 3: Business Administration
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.

Adding new project to agreement

163.1.1 (1) This section applies if,

(a) the proponent under an existing project agreement believes that a new construction project that is not included in the agreement is economically significant;

(b) the proponent wishes to add the new project to be governed by the project agreement; and

(c) the project agreement contains a term providing that additional projects may be added to and governed by the project agreement. 2000, c. 38, s. 36.

Notice to be given

(2) The proponent shall do the following:

1. Give notice that the proponent wishes to add a new project to be governed by an existing project agreement to the bargaining agents, employee bargaining agencies and employer bargaining agencies that received notice under subsection 163.1 (11).

2. Include with the notice a copy of the existing project agreement and a general description of the new project and its estimated cost.

3. Give the Board a copy of the notice and evidence, in the form required by the Board, that the notice has been given to each bargaining agent entitled to receive notice. 2000, c. 38, s. 36.

Challenge

(3) A bargaining agent entitled to receive notice under subsection (2) may apply to the Board for an order that the new project may not be the subject of the project agreement. 2000, c. 38, s. 36.

Same

(4) Subsection 163.1 (3) applies, with necessary modifications, to an application under subsection (3). 2000, c. 38, s. 36.

Application by bargaining agent

(5) A bargaining agent entitled to receive notice under subsection (2) may challenge the proposed addition of the new project to the existing project agreement by giving notice to the Board within 10 days after the Board receives a copy of the notice and evidence under paragraph 3 of subsection (2). 2000, c. 38, s. 36.

Decision of Board

(6) In a challenge under subsection (5), the Board shall make an order declaring that the new project shall not be added to the existing project agreement if the Board makes either of the following findings:

1. The project agreement does not contain a term that additional projects may be added to and governed by the project agreement.

2. The requirements in subsection (2) have not been satisfied and the failure to satisfy the requirements affected the bargaining agent making the challenge. 2000, c. 38, s. 36.

Same

(7) If the Board does not make any of the findings set out in subsection (6), the Board shall dismiss the challenge. 2000, c. 38, s. 36.

Notice that new project added

(8) The proponent may give notice to the bargaining agents, employee bargaining agencies and employer bargaining agencies specified in subsection (2) that the new project has been added to be governed by the project agreement if,

(a) no application was made under subsection (3) within the time for making such an application;

(b) no challenge is made under subsection (5) within the time for making such a challenge; or

(c) the Board has dismissed any applications or challenges made under those subsections. 2000, c. 38, s. 36.

Effect of notice

(9) The following apply upon the proponent giving the notice under subsection (8):

1. The new project is added to the project agreement.
2. Subsections 163.1 (14), (15), (16) and (16.1) apply with respect to the new project on and after the day it is added to the project agreement. 2000, c. 38, s. 36.

Notice that new project not added

(10) If the Board grants an application made under subsection (3) or makes an order under subsection (6), the proponent shall give notice to the bargaining agents, employee bargaining agencies and employer bargaining agencies specified in subsection (2) that the new project has not been added to the project agreement. 2000, c. 38, s. 36.

Previous agreements re more than one project

(11) Multiple projects and the addition of new projects under a project agreement described in subsection (13) shall be governed in accordance with the project agreement and not in accordance with section 163.1 and subsections (1) to (10). 2000, c. 38, s. 36.

Previous agreements deemed valid

(12) The provisions in a project agreement described in subsection (13) dealing with multiple projects and the addition of new projects shall be deemed to be valid. 2000, c. 38, s. 36.

Same

(13) Subsections (11) and (12) apply with respect to a project agreement if notice was given under subsection 163.1 (11) with respect to the project agreement before November 2, 2000. 2000, c. 38, s. 36.

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 journeymen 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.

Referral to arbitration

163.3(1) If a provincial agreement that is the subject of an application under section 163.2 is not amended in accordance with that section within 14 days after the day on which the application was served on the affiliated bargaining agent, the applicant may give notice to the bargaining agent that it is referring the matter to a single arbitrator. 2000, c. 24, s. 7.

Notice requirements

(2) The notice of referral shall be in writing and shall,

(a) state the name of the individual whom the organization making the referral nominates as the arbitrator;

(b) set out the organization’s final offer with respect to the text of the amendments that the organization proposes to be made to the provincial agreement; and

(c) be accompanied by copies of those statements and submissions under clauses 163.2 (5) (a) and (b) that were provided with the application made under subsection 163.2 (1) or (2). 2000, c. 24, s. 7.
Restriction re subject matter of amendments
(3) The amendments proposed in the final offer of the organization making the referral may deal only with those provisions of the provincial agreement that concern the matters permitted in the original application, as set out in subsection 163.2 (4). 2000, c. 24, s. 7.

Restriction re subject matter of amendments
(4) The organization making the referral may include in the notice of referral only those submissions that were included in the application under subsection 163.2 (1) or (2). 2000, c. 24, s. 7.

Service of notice
(5) The organization making the referral shall serve the notice of referral and the statements and submissions referred to in clause (2) (c) on the affiliated bargaining agent and shall serve a copy of the notice of referral without those statements and submissions,

(a) on the employee bargaining agency of which the affiliated bargaining agent is a member;
(b) if the organization making the referral is an employer bargaining agency, on any designated regional employers’ organization having members who carry on a business in the area covered by the affiliated bargaining agent’s geographic jurisdiction; and
(c) if the organization making the referral is a designated regional employers’ organization, on the employer bargaining agency that is a party to the provincial agreement and on any other designated regional employers’ organization having members who carry on a business in the area covered by the affiliated bargaining agent’s geographic jurisdiction. 2000, c. 24, s. 7.

Service of response
(6) Within seven days after being served with a notice of referral, the affiliated bargaining agent,

(a) shall serve a response on the organization that made the referral; and
(b) shall serve a copy of the response, without the submissions, if any, referred to in clause (7) (c), on the organizations described in clauses (5) (a), (b) and (c). 2000, c. 24, s. 7.

Form and content of response
(7) The response shall be in writing and,

(a) shall state whether the affiliated bargaining agent agrees to the appointment of the individual whom the referrer nominated as the arbitrator and, if it does not agree, name the individual whom the affiliated bargaining agent nominates as arbitrator;
(b) shall set out the affiliated bargaining agent’s final offer with respect to the text of the amendments, if any, that it proposes to be made to the provincial agreement; and
(c) shall set out any submissions that the affiliated bargaining agent believes are relevant to the question of whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage with respect to the kind of work, the market and the location to which the amendments would apply. 2000, c. 24, s. 7.

Joint appointment of arbitrator
(8) If the parties agree on the appointment of an arbitrator, they shall jointly appoint him or her and advise each organization that was served with copies of the notice of referral and response that they have done so. 2000, c. 24, s. 7.

Failure to appoint
(9) If, within seven days after the affiliated bargaining agent is served with a notice of referral under subsection (5), the bargaining agent and the organization making the referral have not appointed an arbitrator, either of them may make a written request to the Minister to appoint an arbitrator. 2000, c. 24, s. 7.

Appointment by Minister
(10) Within two days after receiving a request under subsection (9), the Minister shall appoint an arbitrator and shall inform the affiliated bargaining agent and the organization making the referral of the name and address of the arbitrator. 2000, c. 24, s. 7.

Replacement
(11) If the arbitrator who is appointed is unable or unwilling to perform his or her duties, a new arbitrator shall be appointed in accordance with subsections (8), (9) and (10). 2000, c. 24, s. 7.
Appointment and proceedings not to be questioned

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

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

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

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

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

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

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)

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

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

After being appointed, the arbitrator shall hold a written hearing. 2000, c. 24, s. 7.

Restriction on what arbitrator may consider

Subject to subsection (23), the arbitrator shall consider only the following when making a decision:

1. The statements and submissions under clauses 163.2 (5) (a) and (b) that were included with the original application under subsection 163.2 (1) or (2), as the case may be.

2. The final offer of the organization making the referral to arbitration.

3. The affiliated bargaining agent’s final offer as set out under clause (7) (b).

4. The submissions contained in the affiliated bargaining agent’s notice under clause (7) (c). 2000, c. 24, s. 7.

Use of submissions under subss. (16) and (19)

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

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

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

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

Subsection 48 (12) applies with necessary modifications with respect to the arbitrator. 2000, c. 24, s. 7.

No amendment of final offers

The arbitrator shall not consider any purported amendment to a final offer. 2000, c. 24, s. 7.

Decision

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

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

The decision shall not include reasons. 2000, c. 24, s. 7.

Extension of time by agreement

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

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

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

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

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

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

The Arbitration Act, 1991 does not apply to an arbitration under this section. 2000, c. 24, s. 7.

Judicial review

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

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.

Sections 163.2 and 163.3

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)

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

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.

Election

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

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

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

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
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).

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).

**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.

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.

e-Laws currency date is Monday, March 12, 2012.

Note: On a day to be named by proclamation of the Lieutenant Governor, this Act is repealed. See: 2009, c. 22, ss. 103, 104 (1).

Last amendment: 2009, c. 24, s. 35.

Definitions

1. In this Act,
   “apprentice” means a person who is at least sixteen years of age and who has entered into a contract under which the person is to receive, from or through his or her employer, training and instruction in a trade; (“apprenti”)
   “certified trade” means a trade designated as a certified trade under section 10; (“métier agréé”)
   “Director” means the Director of Apprenticeship appointed under the Apprenticeship and Certification Act, 1998; (“directeur”)
   “employer” includes the Crown and any other public authority, the Ontario Apprenticeship Institute and any local apprenticeship committee; (“employeur”)
   “licence” means a licence under this Act and the regulations to operate a trade school and “licensee” means the holder of a licence; (“permis”, “titulaire d’un permis”)
   “Minister” means the Minister of Skills Development; (“ministre”)
   “regulations” means the regulations made under this Act. (“règlements”) R.S.O. 1990, c. T.17, s. 1; 1998, c. 22, s. 20 (1).

Application

1.1 (1) This Act applies only to the following trades:
   1. Architectural glass and metal technician.
   2. Brick and stone mason.
   3. Cement mason.
   5. Construction millwright.
   6. Drywall, acoustic and lathing applicator.
   7. Drywall finisher and plasterer.
   8. Electrician.
   11. Ironworker and reinforcing rodworker.
   12. Lineworker.
   13. Painter and decorator.
   15. Refrigeration and air-conditioning mechanic.
   17. Sprinkler and fire protection installer.
   18. Steamfitter.
   19. Such other trades in the construction industry as are prescribed by the regulations. 2009, c. 22, s. 101.
Despite subsection (1), the regulations made under clause 26 (1) (f) with respect to hairstyling schools continue to apply until December 31, 1999 and this Act continues to apply to hairstyling schools until that date. 1998, c. 22, s. 20 (2).

Despite subsection (1), the regulations made under clause 26 (1) (f) with respect to hairstyling schools continue to apply until December 31, 1999 and this Act continues to apply to hairstyling schools until that date. 1998, c. 22, s. 20 (2).

Subject to the approval of the Minister, the Director may appoint one or more examiners to assist in the conduct of examinations prescribed for any trade, and such examiners, upon the direction of the Lieutenant Governor in Council, may be paid their travelling expenses and a daily allowance for their services out of such money as is appropriated therefor by the Legislature. R.S.O. 1990, c. T.17, s. 2 (2).

The Minister may appoint a provincial advisory committee in any trade or group of trades to advise the Minister in matters relating to the establishment and operation of apprentice training programs and trades qualifications. Every provincial advisory committee shall consist of not fewer than five members made up of equal numbers of representatives of employers and of employees and the Director or such other officer of the Ministry of Skills Development as may be designated by the Director. The representatives of employers and employees on a provincial advisory committee shall be appointed for terms of one, two or three years, and having served a term shall not be reappointed for at least two years.

When a vacancy occurs on a provincial advisory committee during a term of office, the Minister may fill the vacancy for the unexpired portion of the term. The Lieutenant Governor in Council may direct payment, out of such money as is appropriated therefor by the Legislature, of the travelling expenses of the members of provincial advisory committees and a daily allowance for the time spent by such members in attending meetings, and of any expenses properly incurred by such a committee in carrying out its duties. R.S.O. 1990, c. T.17, s. 3.

The Director may appoint local apprenticeship committees composed of such persons as the Director considers appropriate for any area of Ontario to advise and assist him or her in matters relating to apprenticeship or trades qualifications in the area. R.S.O. 1990, c. T.17, s. 4.

With the approval of the Lieutenant Governor in Council, the Minister may enter into one or more agreements with the Minister of Labour of Canada respecting apprentice or other training. R.S.O. 1990, c. T.17, s. 5.

Subject to the supervision and control of the Minister, it is the duty of the Director to administer and enforce this Act, and, without limiting the generality of the foregoing, for the purposes of this Act,

(a) to collaborate with persons and organizations in the determination of training requirements in any trade;
(b) to undertake or collaborate in studies or investigations of any trade and of the requirements for the supply and training of persons therefor;
(c) to publicize and promote apprenticeship as a method of training in any trade;
(d) to plan and carry out programs of apprenticeship in any trade; and
(e) generally to perform such other duties as are assigned to him or her by the Minister for the carrying out of this Act. R.S.O. 1990, c. T.17, s. 6.

For the purpose of carrying out this Act, the Director, or any person authorized by the Minister in writing, may,
(a) inspect, upon production of his or her authorization under this subsection, the premises, equipment and training facilities of an employer;

(b) inspect and examine all books, payrolls and other records of an employer that in any way relate to the wages, hours of labour or conditions of employment of any person;

(c) take extracts from or make copies of any entry in such books, payrolls and records;

(d) require an employer to make full disclosure and production of all records, documents, statements, writings, books, papers, extracts therefrom or copies thereof that the employer may have in the employer’s possession or control, or other information, either oral or in writing and either verified by oath or otherwise, that in any way relate to the wages, hours of labour or conditions of employment of persons employed by the employer.

Idem, special circumstances

(2) Despite any of the provisions of this Act or the regulations, the Director may register any person as an apprentice, or grant a certificate of apprenticeship, a certificate of qualification or a certificate of proficiency to any person, who, in the opinion of the Director, is unable by reason of physical incapacity or other circumstances to take or complete the prescribed course of study or training in a trade or apprentice training program. R.S.O. 1990, c. T.17, s. 7.

Cancellation of contract

8. (1) Subject to subsection (2), the Director, or any person authorized by the Minister in writing, may cancel for cause a contract of apprenticeship. R.S.O. 1990, c. T.17, s. 8 (1).

Notice of proposal to cancel, right to hearing

(2) Where the Director, or any person authorized under subsection (1), proposes to cancel for cause a contract of apprenticeship under subsection (1), he or she shall serve notice of the proposal, together with written reasons therefor, on each party to the contract informing the person that the person has a right to a hearing by a judge if the person applies therefor within fifteen days after service of such notice, and a party to the contract may within such time apply for a hearing to the judge of the Superior Court of Justice. R.S.O. 1990, c. T.17, s. 8 (2); 2006, c. 19, Sched. C, s. 1 (1).

Powers of Director where no hearing

(3) Where none of the parties to a contract to which a notice under subsection (2) relates applies to a judge for a hearing within fifteen days after service of such notice, the Director or person authorized under subsection (1) may forthwith cancel the contract. R.S.O. 1990, c. T.17, s. 8 (3).

Powers of judge where hearing

(4) Where a party to a contract to which a notice under subsection (2) relates applies to a judge for a hearing within fifteen days after service of such notice, the judge shall appoint a time for and hold a hearing and, on application at the hearing by the Director or person serving the notice, may by order direct the Director or such person to cancel the contract or to refrain from cancelling the contract, as the case may be, and as the judge considers proper in accordance with this Act and the regulations. R.S.O. 1990, c. T.17, s. 8 (4).

Parties

(5) The Director or person serving the notice under subsection (2), the parties to the contract to which the notice relates and such other persons as the judge may specify are parties to proceedings before the judge under this section. R.S.O. 1990, c. T.17, s. 8 (5).

Duty to register as an apprentice

9. (1) Every person who commences to work at a trade for which an apprentice training program is established but who does not hold a certificate of apprenticeship or qualification in that trade shall,

(a) forthwith apply in the prescribed form for apprenticeship in that trade; and

(b) within three months after commencing to work in that trade, file with the Director his or her contract of apprenticeship.

Idem

(2) Every person who fails to comply with subsection (1) shall, upon the expiration of the period of three months mentioned in clause (1) (b), cease to work in that trade until the person files with the Director his or her contract of apprenticeship or until the Director authorizes in writing the continuation or resumption of such work. R.S.O. 1990, c. T.17, s. 9.

Certified trades

10. (1) The Lieutenant Governor in Council may designate any trade as a certified trade for the purposes of this Act, and may provide for separate branches or classifications within the trade.
Persons who may work in a certified trade

(2) No person, other than an apprentice or a person of a class that is exempt from this section or a person referred to in subsection (4), shall work or be employed in a certified trade unless he or she holds a subsisting certificate of qualification in the certified trade.

Persons who may be employed in a certified trade

(3) No person shall employ any person, other than an apprentice or a person of a class that is exempt from this section or a person referred to in subsection (4), in a certified trade unless the person employed holds a subsisting certificate of qualification in the certified trade.

Qualification of those in the trade at time of designation

(4) When a trade is certified under subsection (1), a person who is working in the trade at the time that it is certified shall be allowed a period of two years from the first day of the month following the month in which the trade is certified to qualify for a certificate of qualification in the trade, if the person,

(a) is the holder of a certificate of apprenticeship in the trade; or

(b) satisfies the Director that he or she has been continuously engaged as a journeyman in the trade for a period of time in excess of the apprenticeship period for the trade; or

(c) satisfies the Director that he or she is qualified to work in the trade and meets such other requirements as the Director may prescribe. R.S.O. 1990, c. T.17, s. 10.

Strikes

11. An apprentice who lawfully strikes within the meaning of the Labour Relations Act shall be deemed not to have broken his or her contract of apprenticeship. R.S.O. 1990, c. T.17, s. 11.

Essentials of apprenticeship contracts

12. Every contract of apprenticeship shall be,

(a) for a period of at least two years;

(b) in the prescribed form;

(c) signed,

(i) by the employer,

(ii) by the person to be apprenticed, and

(iii) if he or she is under eighteen years of age, by a parent or the guardian of the person to be apprenticed, but, if neither parent nor the guardian is willing to sign or is capable of signing, a judge of the Superior Court of Justice may, upon the application of the person to be apprenticed and without the appointment of a litigation guardian, dispense with the signature of either parent or of the guardian upon proof to the satisfaction of the judge that the contract is in the interests of the person to be apprenticed; and

(d) approved by the Director. R.S.O. 1990, c. T.17, s. 12; 2006, c. 19, Sched. C, s. 1 (1).

Registration of contracts

13. Every contract of apprenticeship shall, upon its approval by the Director, be registered by the Director forthwith. R.S.O. 1990, c. T.17, s. 13.

Minors

14. Every apprentice who is under eighteen years of age shall perform and is entitled to the benefits of his or her contract of apprenticeship in accordance with its terms in the same manner and to the same extent as if he or she were of the full age of eighteen years. R.S.O. 1990, c. T.17, s. 14.

Termination of apprenticeship contracts

15. (1) A contract of apprenticeship shall not be terminated before the completion of the apprenticeship period provided therein except by,

(a) the death of either party;

(b) consent, express or implied, of the parties; or

(c) cancellation for cause of the contract.
Transfer
(2) Where in the opinion of the Director the terms of a contract of apprenticeship cannot be fulfilled to the advantage of either party, the Director may arrange for the transfer of the contract.

Termination, etc., to be noted
(3) The termination, cancellation or transfer of a contract of apprenticeship shall be noted by the Director on the registered copy of the agreement. R.S.O. 1990, c. T.17, s. 15.

Certificate of apprenticeship
16. Where an apprentice has completed an apprentice training program for a certified trade and has passed such final examinations as are prescribed by the Director to determine his or her competency and has complied with the provisions of this Act and the regulations, the Director shall issue to the apprentice a certificate of apprenticeship for the certified trade. R.S.O. 1990, c. T.17, s. 16.

Certificate of qualification to holder of certificate of apprenticeship
17. (1) Where an applicant for a certificate of qualification for a certified trade is the holder of a certificate of apprenticeship in the trade issued under this Act or a predecessor of this Act, the Director shall, upon payment of the prescribed fee and without examination, issue to the applicant a certificate of qualification for the trade. R.S.O. 1990, c. T.17, s. 17 (1).

To non-holder of certificate of apprenticeship
(2) Where an applicant for a certificate of qualification for a certified trade who is not the holder of a certificate of apprenticeship in the trade has complied with the requirements of this Act and the regulations to entitle him or her to such certificate of qualification, the Director shall, upon payment of the prescribed fee, issue to the applicant a certificate of qualification for the certified trade. R.S.O. 1990, c. T.17, s. 17 (2).

To holder of equivalent Canadian document
(3) The Director shall, upon payment of the prescribed fee and without examination, issue a certificate of qualification for a certified trade to an applicant who is the holder of an equivalent document for the same trade issued in another province or territory of Canada, if,
(a) the document issued in the other province or territory is an authorizing certificate, within the meaning of the Ontario Labour Mobility Act, 2009, for the trade; or
(b) the other province or territory and the trade for which the document was issued in that province or territory are prescribed for the purpose of this clause. 2009, c. 24, s. 35 (1).

Term of certificate
18. (1) Unless otherwise prescribed by regulation, a certificate of qualification expires two years after the date of its issue.

Renewal
(2) Subject to section 19, a certificate of qualification shall be renewed by the Director upon application and payment of the prescribed fee by the holder. R.S.O. 1990, c. T.17, s. 18.

Refusal to renew, suspension or revocation
19. Subject to section 21, the Director may refuse to renew or may suspend or revoke a certificate of qualification where,
(a) the holder is convicted of an offence under this Act or the regulations; or
(b) there are reasonable grounds for believing that the holder is without capacity or not competent to perform work in the certified trade to which the certificate relates with reasonable skill. R.S.O. 1990, c. T.17, s. 19.

Suspension, etc., of trade school licence
20. Where under the regulations a licence is required for the operation of a trade school teaching any trade to which this Act applies and a licence for a trade school has been issued thereunder, subject to section 21, the Director may refuse to renew or may suspend or revoke the licence where the school is not being operated,
(a) in accordance with this Act and the regulations; or
(b) so as to provide reasonable and adequate training for the students taught therein. R.S.O. 1990, c. T.17, s. 20.

Proposal to suspend, etc., licence
21. (1) Where the Director proposes to refuse to renew or to suspend or revoke a certificate of qualification or a licence under section 19 or 20, the Director shall serve notice of the proposal, together with written reasons therefor, on the holder of the certificate or licensee. R.S.O. 1990, c. T.17, s. 21 (1).
Notice

(2) The notice shall inform the holder of the certificate or licensee that the person is entitled to a hearing by a judge of the Superior Court of Justice if the person applies to a judge thereof within fifteen days after the notice is served on the person, and the person may so apply for such a hearing. R.S.O. 1990, c. T.17, s. 21 (2); 2006, c. 19, Sched. C, s. 1 (1).

Powers of Director where no hearing

(3) Where a holder of a certificate or licensee does not apply to a judge for a hearing in accordance with subsection (2), the Director may carry out the proposal stated in the notice. R.S.O. 1990, c. T.17, s. 21 (3).

Powers of judge where hearing

(4) Where a holder of a certificate or licensee applies to a judge for a hearing in accordance with subsection (2), the judge shall appoint a time for and hold the hearing and, on the application of the Director at the hearing, may, by order, direct the Director to carry out the Director’s proposal or refrain from carrying out the proposal and to take such action as the judge considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the judge may substitute his or her opinion for that of the Director. R.S.O. 1990, c. T.17, s. 21 (4).

Continuation of certificate or licence pending renewal

(5) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of a certificate of qualification or licence, a holder of the certificate or the licensee has applied for renewal thereof and paid the prescribed fee, the certificate or licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where the holder is served with notice that the Director proposes to refuse to grant the renewal, until the time for applying for a hearing by a judge has expired and, where a hearing is applied for, until the judge has made his or her decision. R.S.O. 1990, c. T.17, s. 21 (5).

Parties

(6) The Director, the holder of a certificate or licensee who has applied for the hearing and such other persons as the judge may specify are parties to proceedings before a judge under this section. R.S.O. 1990, c. T.17, s. 21 (6).

Service of notice

22. (1) Service of a notice under section 8 or 21 may be made personally or by registered mail addressed to the person to be served at the person’s last known address, and, where notice is served by registered mail, 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 establishes to the judge to whom the person applies for a hearing 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. R.S.O. 1990, c. T.17, s. 22 (1).

Extension of time for appeal

(2) A judge to whom application is made for a hearing under section 8 or 21 may extend the time for making the application, either before or after expiration of the time fixed therein, where he or she is satisfied that there are apparent grounds for granting relief to the applicant pursuant to a hearing and that there are reasonable grounds for applying for the extension and may give such directions as he or she considers proper consequent upon the extension. R.S.O. 1990, c. T.17, s. 22 (2).

Notice of hearing

(3) Notice of a hearing under section 8 or 21 shall afford the parties or the holder of a certificate or licence, as the case may be, a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the continuation of the contract of apprenticeship or retention of the certificate of qualification or licence. R.S.O. 1990, c. T.17, s. 22 (3).

Examination of documentary evidence

(4) A party to a contract of apprenticeship or a holder of a certificate of qualification or licensee who is a party to proceedings under section 8 or 21 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. R.S.O. 1990, c. T.17, s. 22 (4).

Recording of evidence

(5) The oral evidence taken before the judge at a hearing shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Superior Court of Justice. R.S.O. 1990, c. T.17, s. 22 (5); 2006, c. 19, Sched. C, s. 1 (1).
Findings of fact

(6) The findings of fact of a judge pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the Statutory Powers Procedure Act. R.S.O. 1990, c. T.17, s. 22 (6).

Appeal to court

23. (1) Any party to proceedings before a judge under this Act may appeal from the decision or order of the judge to the Divisional Court in accordance with the rules of court.

Minister entitled to be heard

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Powers of court on appeal

(3) The Divisional Court may affirm the decision of the judge appealed from or may rescind it and make such new decision as the court considers proper under this Act and the regulations, and may order the Director to do any act or thing he or she is authorized to do under this Act and as the court considers proper, and for such purpose the court may substitute its opinion for that of the Director or of the judge, or the court may refer the matter back to the judge for rehearing, in whole or in part, in accordance with such directions as the court considers proper. R.S.O. 1990, c. T.17, s. 23.

Offences

24. (1) Every person,

(a) who contravenes any provision of this Act or the regulations;
(b) who fails to carry out the terms of a contract of apprenticeship under this Act;
(c) who enters into a contract or arrangement relating to the employment of an apprentice that is not in accordance with this Act;
(d) who withholds any information with regard to the working or training conditions of apprentices or makes any misrepresentation with regard thereto;
(e) who obstructs, hinders, prevents or otherwise interferes with the carrying out of this Act or the regulations or the terms of a contract of apprenticeship under this Act; or
(f) who uses for the purpose of obtaining employment or business a certificate of apprenticeship, a certificate of qualification or a certificate of proficiency issued to another person,

is guilty of an offence and on conviction is liable to a fine of not more than $2,000. R.S.O. 1990, c. T.17, s. 24 (1).

Collection of arrears of apprentice’s wages

(2) In addition to any fine that may be imposed on an employer for failure to pay an apprentice the wages due an apprentice, the court may order the employer to pay to the Director in trust for the apprentice an amount equal to the arrears of wages to which the apprentice is entitled, and, when the order becomes final, a copy of it, certified as a true copy by the court that made it, may be filed by the Director with a local registrar of the Superior Court of Justice or, where the amount of arrears does not exceed the monetary limit of the Small Claims Court, with the clerk of that court, and, when so filed and upon payment of the fees of the local registrar or clerk, such order becomes an order of the court in which it is filed and may be enforced as a judgment of the court against the employer for the amount mentioned in the order and the fees so paid. R.S.O. 1990, c. T.17, s. 24 (2); 2006, c. 19, Sched. C, s. 1 (1).

Certificate of Director as evidence

25. A statement as to the issuing or non-issuing of a certificate, approval or licence, or the renewal, revocation or suspension of a certificate or licence, or as to the registration or non-registration of a contract of apprenticeship purporting to be certified by the Director is, without proof of the appointment or signature of the Director, receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated therein for all purposes in any action, proceeding or prosecution. R.S.O. 1990, c. T.17, s. 25.

Regulations

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

(a) defining any trade;
(b) establishing an apprentice training program for any trade or group of trades;
(c) exempting any trade or class of persons in a trade from any provision of this Act or the regulations;
(d) providing a system of proficiency certificates for any trade not designated as a certified trade under section 10;
(e) providing for approval by the Director of apprentice training programs established by employers;
(f) providing licences for trade schools teaching any trade to which this Act applies and respecting their issue and prescribing courses of study and methods of training in such trade schools and respecting their operation;
(g) respecting the periods of apprenticeship, qualifications and training of apprentices in any trade;
(h) approving or prescribing courses of training or study for apprentices, and fixing the credits to be allowed for such courses;
(i) prescribing, in respect of any trade, rates of wages for applicants for apprenticeship or apprentices or any class of applicants or apprentices;
(j) prescribing the maximum number of persons who may be apprenticed to an employer in a trade;
(k) respecting the ratio of apprentices to journeymen who may be employed by an employer in a trade;
(l) providing for Interprovincial Standards Examinations and standing thereunder and for the recognition of certificates or standings granted under Interprovincial Standards Examinations in other provinces and the granting of certificates of qualification pursuant thereto;
(m) providing for the granting of provisional certificates of qualification and the grounds therefor and the conditions thereof;
(n) respecting the renewal of certificates of qualification that have expired without being renewed and the conditions of renewal;
(o) providing for the issue of certificates of qualification or licences to persons whose certificates or licences have been cancelled and the conditions upon which they may be issued;
(p) respecting the making, registration or transfer of contracts of apprenticeship;
(q) requiring and providing for the posting up in employers’ premises of extracts from this Act or the regulations;
(r) defining any expression used in this Act for the purposes of this Act;
(s) providing for and prescribing fees;
(t) prescribing forms and providing for their use;
(u) prescribing additional trades in the construction industry to which this Act applies. R.S.O. 1990, c. T.17, s. 26; 1998, c. 22, s. 20 (4, 5).

Same

(2) Despite section 1.1 and any regulations made under clause (1) (u), the Lieutenant Governor in Council may make regulations providing that this Act does not apply to a trade.

Same

(3) The Lieutenant Governor in Council shall not make a regulation under subsection (2) in respect of a trade unless the regulation is recommended by the committee established in the trade under section 3 or by a committee established under that section for a group of trades that includes the trade. 1998, c. 22, s. 20 (6).

Regulations by Minister

27. The Minister may make regulations for the purpose of clause 17 (3) (b), prescribing one or more provinces or territories of Canada and, for each province or territory so prescribed, prescribing one or more trades that are practised in that province or territory. 2009, c. 24, s. 35 (2).
1. In this Regulation,
   “certified trade” means the trade of electrician;
   “electrician” means a person who,
   (a) lays out, assembles, installs, repairs, maintains, connects or tests electrical fixtures, apparatus, control equipment and wiring for systems of alarm, communication, light, heat or power in buildings or other structures,
   (b) plans proposed installations from blueprints, sketches or specifications and installs panel boards, switch boxes, pull boxes and other related electrical devices,
   (c) measures, cuts, threads, bends, assembles and installs conduits and other types of electrical conductor enclosures that connect panels, boxes, outlets and other related electrical devices,
   (d) installs brackets, hangers or equipment for supporting electrical equipment,
   (e) installs in or draws electrical conductors through conductor enclosures,
   (f) prepares conductors for splicing of electrical connections, secures conductor connections by soldering or other mechanical means and reinsulates and protects conductor connections, or
   (g) tests electrical equipment for proper function,
   but does not include a person who is permanently employed in an industrial plant at a limited purpose occupation in the electrical trade. R.R.O. 1990, Reg. 1051, s. 1.

2. (1) The certified trade is composed of two branches. R.R.O. 1990, Reg. 1051, s. 2 (1).
   (2) Branch 1 is the trade of a construction and maintenance electrician as defined in clause (a) of the definition of “electrician” in section 1. R.R.O. 1990, Reg. 1051, s. 2 (2).
   (3) Branch 2 is the trade of a domestic and rural electrician who performs the work of an electrician in the construction, erection, repair, remodelling or alteration of houses, multiple dwelling buildings containing six or fewer dwellings, or buildings or structures used for farming, or who performs maintenance to electrical equipment in houses, multiple dwelling buildings containing six or fewer dwellings or farms. R.R.O. 1990, Reg. 1051, s. 2 (3).

3. The trade of electrician is designated as a certified trade for the purposes of the Act. R.R.O. 1990, Reg. 1051, s. 3.

4. An apprentice training program is established for the certified trade and consists of five periods of related training and work experience training of 1,800 hours for each period for Branch 1 and four periods of related training and work experience training of 1,800 hours for each period for Branch 2,
   (a) at full time educational day classes provided at a college of applied arts and technology or in courses that, in the opinion of the Director, are equivalent thereto in the subjects contained in Schedule 1; and
   (b) in practical training and instruction provided by the employer of the apprentice in the subjects contained in Schedule 2. R.R.O. 1990, Reg. 1051, s. 4.

5. The subjects of examination for an apprentice in the certified trade are the subjects contained in Schedules 1 and 2. R.R.O. 1990, Reg. 1051, s. 5.

6. The holder of a certificate of qualification in Branch 2 of the certified trade is entitled to a certificate of qualification in Branch 1 of the certified trade upon completion of a further period of training and instruction of 2,000 hours that shall include a course of study approved by the Director. R.R.O. 1990, Reg. 1051, s. 6.

7. (1) The rate of wages for an apprentice in the certified trade whether for regular daily hours of work or for hours of work in excess of regular daily hours of work shall not be less than,
   (a) 40 per cent during the first period;
(b) 50 per cent during the second period;
(c) 60 per cent during the third period;
(d) 70 per cent during the fourth period; and
(e) 80 per cent during the fifth period,
of the average hourly rate of wages or its equivalent for journeymen in that trade employed by the employer with whom
the apprentice is working. R.R.O. 1990, Reg. 1051, s. 7 (1).

(2) The rate of wages for a Branch 2 Electrician during the 2,000 hour period of training and instruction
mentioned in section 6 shall be not less than 80 per cent of the wages for a Branch 1 Electrician. R.R.O. 1990, Reg.
1051, s. 7 (2).

8. (1) The number of apprentices who may be employed by an employer in the certified trade shall not exceed
the number set out in Column 2 of the Table opposite the number of journeymen employed by the employer set out in
Column 1.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
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</thead>
<tbody>
<tr>
<td>Number of Journeymen</td>
<td>Number of Apprentices Allowed</td>
</tr>
<tr>
<td>1</td>
<td>1</td>
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<tr>
<td>2</td>
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<td>7</td>
<td>3</td>
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<tr>
<td>8</td>
<td>4</td>
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</tbody>
</table>

O. Reg. 466/91, s. 1.

(2) For every three journeymen employed by the employer after the eighth journeyman, one additional apprentice
may be employed. O. Reg. 466/91, s. 1.


10. A person is exempt from subsection 10 (2) of the Act if he or she,
(a) applies in the prescribed form for apprenticeship in the certified trade; and
(b) becomes an apprentice in the certified trade within three months after commencing to work in that trade.
R.R.O. 1990, Reg. 1051, s. 10.

11. The Director shall issue a progress record book to each apprentice and the apprentice and employer shall
record therein the time that the apprentice spends in related training and work experience and the apprentice shall be
responsible for the safekeeping of the progress record book. R.R.O. 1990, Reg. 1051, s. 11.

12. An applicant for a certificate of qualification in the certified trade shall submit to the Director evidence
satisfactory to the Director of,
(a) his or her successful completion of the apprenticeship training program described in section 4; or
(b) his or her engagement in the certified trade as a journeyman for a period at least equivalent to the total
number of hours of which the apprenticeship training program consists. R.R.O. 1990, Reg. 1051, s. 12.

SCHEDULE 1
ELECTRICIAN

In-School Training

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<th>Column 3</th>
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<tr>
<td>(Trade Related)</td>
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<tr>
<td><strong>and measures. Ratio and proportion. Percentage. Areas, volumes, linear, angular mensuration. Square root. Scale conversion. Algebra fundamentals; linear equations, formulae, shop calculations. Trigonometry; right angled and oblique triangles, formulae, shop calculations.</strong></td>
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</tbody>
</table>

| 2 English (Trade Related)       |
| Industry Communications         |
| **Vocabulary and organizational structure of the industry. Reading comprehension; use of trade publications, manuals. Sentence structure, grammar, punctuation, composition. Trade related letter, memoranda writing, completion of forms, reports, job descriptions, requisitions, orders. Oral communication.** |

| 3 Science (Trade Related)       |
| Physics and Chemistry           |

| 4 Electrical Theory D.C. Fundamentals |

| D.C. Fundamentals A.C. Fundamentals |
### Section 3: Business Administration

<p>| 231x746 | Basic Electronics | Vacuum tube fundamentals, amplifiers, oscillators, rectifiers. Cathode ray tube. |
| 231x746 | | Semi-conductors; atomic structure, transistor amplifiers and oscillators. Printed circuits. Silicon-controlled rectifiers. |
| 6 | Safety | General | Safety rules and safe operating procedures. Protective clothing and equipment. First aid. Fire protection; location, types, use and maintenance of fire fighting equipment. |
| 7 | Layout Procedures | Basic Measuring Tool | Measuring with rule, scale, inside and outside calipers, micrometer, vernier calipers, height and depth gauges. Inspecting with a dial indicator. Fits and clearances. |
| 7 | | Layout Techniques | Laying out benchwork; use of bench layout tools, clamping devices. Laying out plates, frames, panels, boxes, enclosures, wiring runs, tubing, conduit. |
| 7 | | | Laying out installations; use of layout tools, laying out conduit run, power supply, power panel, machinery, apparatus, lighting installations. |</p>
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<td>Conduits, Raceways and Busways General</td>
<td>Interpretation of drawings, specifications, codes and standards, manufacturers handbooks for type, size, location, application, fittings.</td>
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<td>Busways</td>
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19 Heating and Cooling

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20 Motors and Generators

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21 Control Devices

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R.R.O. 1990, Reg. 1051, Sched. 2; O. Reg. 139/99, s. 2.
0.1 For the purpose of paragraph 19 of subsection 1.1 (1) of the Act, the following trades in the construction industry are prescribed as additional trades to which the Act applies:

0.1 Architectural Glass and Metal Mechanic.
1. Cement finisher.
2. Drywall, acoustic and lathing applicator.
2.1 Drywall finisher and plasterer.
3. Floor covering installer.
4.0.1 Ironworker and Reinforcing Rodworker.
4.1 Pre-cast concrete erector.
5. Precast concrete finisher.
7. Restoration mason.
8. Roofer.
9. Revoked: O. Reg. 95/01, s. 1 (3).
10. Terrazzo, tile and marble setter. O. Reg. 567/99, s. 1; O. Reg. 95/01, s. 1; O. Reg. 71/05, s. 1; O. Reg. 326/07, s. 1.

1. This Regulation applies to any trade for which an apprentice training program is,
   (a) established by regulation; or
   (b) established by an employer and approved by the Director. R.R.O. 1990, Reg. 1055, s. 1.

2. An application for apprenticeship in a trade shall be in a form provided by the Minister. R.R.O. 1990, Reg. 1055, s. 2.

3. No person shall become an apprentice in a trade unless he or she,
   (a) is at least sixteen years of age and has Grade 10 standing or other qualifications determined by the Minister as equivalent thereto; or
   (b) has the qualifications that are prescribed in the regulations for the trade. R.R.O. 1990, Reg. 1055, s. 3.

4. (1) An applicant for apprenticeship in a trade or for a certificate of qualification shall, if requested by the Director, produce a birth certificate for inspection. R.R.O. 1990, Reg. 1055, s. 4 (1).
   (2) Where the Director is satisfied that the apprentice is unable to produce a birth certificate, the Director may accept as proof,
   (a) one item of Class A evidence of birth as prescribed in section 8 of Regulation 1094 of the Revised Regulations of Ontario, 1990;
   (b) two items of Class B evidence of birth as prescribed in section 10 of Regulation 1094 of the Revised Regulations of Ontario, 1990. R.R.O. 1990, Reg. 1055, s. 4 (2).

5. (1) Section 9 and subsection 10 (2) of the Act do not apply to persons,
(a) permanently employed in an industrial plant while performing work entirely within the plant and premises or on the land appertaining thereto, except work performed in the maintenance and repair of motor vehicles, trailers or conversion units registered for use on a highway under the *Highway Traffic Act*;

(b) who hold valid equivalent certificates of qualification issued by the Province of Quebec, or are registered as apprentices in the Province of Quebec, in one of the following trades:

1. Electrician.
2. Hoisting engineer.
3. Plumber.
4. Refrigeration and air-conditioning mechanic.
5. Sheet metal worker.
6. Steamfitter; or

(c) who are receiving training and work experience in a trade and who are enrolled,

(i) in the Ontario Youth Apprenticeship Program,

(ii) in a program that is similar to the Ontario Youth Apprenticeship Program, approved by the Director and operated under the supervision of,

   (A) a board as defined in the *Education Act*, or

   (B) a band, council of a band or education authority authorized by the Crown in right of Canada to provide education to persons who are Indians within the meaning of the *Indian Act* (Canada), or

(iii) in a pre-apprenticeship program approved by the Director. R.R.O. 1990, Reg. 1055, s. 5 (1); O. Reg. 228/95, s. 1; O. Reg. 352/01, s. 1; O. Reg. 71/05, s. 2.

(2) Section 9 of the Act and section 10 of this Regulation do not apply to each person who is engaged in a trade for which an apprenticeship training program is established by an employer and approved by the Director. R.R.O. 1990, Reg. 1055, s. 5 (2).

**TRAINING AND INSTRUCTION**

6. (1) The Director may approve an apprentice training program established by an employer if, in the opinion of the Director, the program,

   (a) is of sufficient duration and content to warrant a training program;

   (b) contains both practical work and related units of study;

   (c) meets or satisfies a perceived need of an employer; and

   (d) provides a marketable skill in an identifiable occupation. R.R.O. 1990, Reg. 1055, s. 6 (1).

(2) An apprentice in a trade shall complete to the satisfaction of the Director an apprentice training program,

   (a) established for the trade by regulation; or

   (b) established for the trade by an employer and approved by the Director under subsection (1). R.R.O. 1990, Reg. 1055, s. 6 (2).

7. (1) Every employer in a trade shall,

   (a) provide an apprentice with practical training and instruction; and

   (b) permit the apprentice to attend such educational classes as are prescribed by an apprentice training program established for the trade. R.R.O. 1990, Reg. 1055, s. 7 (1).

(2) Where the employer is unable to provide an apprentice with practical training and instruction, the employer and the apprentice shall each forthwith notify the Director. R.R.O. 1990, Reg. 1055, s. 7 (2).

8. (1) The regular daily hours of practical training and instructions of an apprentice shall not begin sooner or end later in each day than the regular daily working hours of the journeyperson with whom the apprentice is working. R.R.O. 1990, Reg. 1055, s. 8 (1); O. Reg. 71/05, s. 3.
(2) Any hours worked by an apprentice in excess of his or her regular daily hours of practical training and instruction shall not be included in computing the hours spent in training and instruction, unless otherwise prescribed or approved by the Director. R.R.O. 1990, Reg. 1055, s. 8 (2).

9. (1) Hourly credits as the Director determines may be granted to an applicant for a certificate of apprenticeship or qualification,

(a) for the successful completion of a course of study or training; or

(b) for work performed or experience gained in the trade prior to the application. R.R.O. 1990, Reg. 1055, s. 9 (1).

(2) No credits shall be granted under subsection (1) unless the applicant,

(a) supplies documentary evidence satisfactory to the Director of the completion of the course of study or training, or of the work performed or the experience gained, as the case may be; or

(b) passes such tests or examinations as are required by the Director. R.R.O. 1990, Reg. 1055, s. 9 (2).

10. (1) Unless otherwise prescribed, the rate of wages for an apprentice whether for his or her regular daily hours or for hours in excess of those regular daily hours shall be not less than,

(a) 40 per cent during the first period;

(b) 50 per cent during the second period;

(c) 60 per cent during the third period;

(d) 70 per cent during the fourth period; and

(e) 80 per cent during the fifth period,

of the average rate of wages for journeypersons employed by the employer in that trade, or where the employer is the only journeyperson employed, of the average rate of wages for journeypersons in the area. R.R.O. 1990, Reg. 1055, s. 10 (1); O. Reg. 71/05, s. 4 (1).

(2) Unless otherwise prescribed, the number of apprentices who may be employed by an employer in a trade shall not exceed,

(a) where the employer is a journeyperson in the trade, one apprentice plus an additional apprentice for each additional three journeypersons employed by the employer in that trade and with whom the apprentice is working; or

(b) where the employer is not a journeyperson in the trade, one apprentice for the first journeyperson employed by the employer plus an additional apprentice for each additional three journeypersons employed by the employer in that trade and with whom the apprentice is working. R.R.O. 1990, Reg. 1055, s. 10 (2); O. Reg. 71/05, s. 4 (1).

(3) The rate of wages for an apprentice or worker and the number of apprentices or workers who may be employed by an employer prescribed by this Regulation or any other Regulation under the Act do not apply to persons who are receiving training and work experience in a trade and who are enrolled,

(a) in the Ontario Youth Apprenticeship Program as an apprentice;

(b) in a program that is similar to the Ontario Youth Apprenticeship Program, approved by the Director and operated under the supervision of,

(i) a board as defined in the Education Act, or

(ii) a band, council of a band or education authority authorized by the Crown in right of Canada to provide education to persons who are Indians within the meaning of the Indian Act (Canada); or

(c) in a pre-apprenticeship program approved by the Director. O. Reg. 352/01, s. 2; O. Reg. 71/05, s. 4 (2).

11. (1) A contract of apprenticeship shall be in a form provided by the Minister. R.R.O. 1990, Reg. 1055, s. 11 (1).

(2) The apprentice shall use to the best of his or her ability any facilities provided for technical instruction. R.R.O. 1990, Reg. 1055, s. 11 (2).
The apprentice shall obey all lawful orders given by the employer or by a person delegated by the employer to supervise the work and training of the apprentice. R.R.O. 1990, Reg. 1055, s. 11 (3).

The apprentice shall furnish to the employer satisfactory reasons for any absence from employment. R.R.O. 1990, Reg. 1055, s. 11 (4).

The employer shall not employ any person in the trade other than a journeyperson while the apprentice is idle. R.R.O. 1990, Reg. 1055, s. 11 (5); O. Reg. 71/05, s. 5.

12. (1) A transfer of a contract of apprenticeship shall be in a form provided by the Minister. R.R.O. 1990, Reg. 1055, s. 12 (1).

(2) The employer to whom the contract is transferred shall perform the contract as fully and completely as if the employer were the employer with whom the contract was made. R.R.O. 1990, Reg. 1055, s. 12 (2).

CERTIFICATES


14. (1) Where an apprentice has completed an apprentice training program, and has passed such final examinations as are prescribed by the Director, the Director shall issue a certificate of apprenticeship to the apprentice. R.R.O. 1990, Reg. 1055, s. 14 (1).

(2) Where an examination for a certificate of apprenticeship in a trade has been established as an Interprovincial Standards Examination, an apprentice who obtains more than 69 per cent on that examination shall be awarded the Interprovincial seal on his or her certificate. R.R.O. 1990, Reg. 1055, s. 14 (2).

(3) Where a certificate of apprenticeship is obtained before an Interprovincial Standards Examination for the trade is established, the holder of the certificate may write the examination referred to in subsection (2) and if he or she obtains more than 69 per cent on that examination the holder shall be awarded the Interprovincial seal on his or her certificate. R.R.O. 1990, Reg. 1055, s. 14 (3).

15. (1) An application for a certificate of qualification in a trade designated as a certified trade under section 10 of the Act shall be in a form provided by the Minister. R.R.O. 1990, Reg. 1055, s. 15 (1).

(2) An application for renewal of a certificate of qualification in a trade designated as a certified trade under section 10 of the Act shall be in a form provided by the Minister. R.R.O. 1990, Reg. 1055, s. 15 (2).

(3) A certificate of qualification shall be in Form 2. R.R.O. 1990, Reg. 1055, s. 15 (3).

16. (1) Where an applicant for a certificate of qualification is the holder of a certificate of apprenticeship in the trade issued under the Act or a predecessor of the Act, the Director may, upon payment of the prescribed fee, issue to the applicant, without examination, a certificate of qualification. R.R.O. 1990, Reg. 1055, s. 16 (1).

(2) Where an applicant for a certificate of qualification is the holder of a certificate of apprenticeship in the trade that is issued by another Province and that bears a seal awarded for passing an Interprovincial Standards Examination, the Director may, upon payment of the prescribed fee, issue to the applicant, without examination, a certificate of qualification. R.R.O. 1990, Reg. 1055, s. 16 (2).

(3) Where an applicant for a certificate of qualification is required to write an examination, he or she shall pay the fee prescribed therefor. R.R.O. 1990, Reg. 1055, s. 16 (3).

(4) Where an applicant for a certificate of qualification who is not the holder of a certificate of apprenticeship in the trade,

(a) has attended a trade school licensed under the Act and has completed the period of training and instruction provided by the trade school;

(b) after graduation from the licensed trade school, works as an apprentice in the trade for a period prescribed by the Director; and

(c) passes such examination as is prescribed by the Director,

the Director may, upon payment of the prescribed fee, issue to the applicant a certificate of qualification. R.R.O. 1990, Reg. 1055, s. 16 (4).

17. (1) Where an applicant for a certificate of qualification who is not the holder of a certificate of apprenticeship in a certified trade,
(a) has successfully completed a training program approved by the Director as an alternative to an apprentice training program established for a certified trade;
(b) satisfies the Director that he or she has been continuously engaged in the alternate training program for a period equal to or greater than the apprenticeship training period prescribed by regulation for the certified trade; and
(c) passes such examination as is prescribed by the Director in the certified trade,

the Director may, upon payment of the prescribed fee, issue to the applicant a certificate of qualification. R.R.O. 1990, Reg. 1055, s. 17 (1).

(2) Where an applicant for a certificate of qualification who is not the holder of a certificate of apprenticeship in a certified trade,

(a) has successfully completed a training program approved by the Director as an alternative to an apprentice training program established for a certified trade;
(b) satisfies the Director that he or she has been continuously engaged in the alternate training program but where the period of training in the alternate training program is less than the apprenticeship training period prescribed by regulation for the certified trade; and
(c) passes such examination as is prescribed by the Director in the certified trade,

the Director may, upon payment of the prescribed fee issue to the applicant a provisional certificate of qualification valid until the expiry date specified thereon. R.R.O. 1990, Reg. 1055, s. 17 (2).

(3) Where an applicant for a certificate of qualification referred to in subsection (2) satisfies the Director that the total period of time that he or she has been continuously engaged in the alternate training program and as a journeyperson in the certified trade equals or is greater than the apprenticeship training period prescribed by regulation for the certified trade, the Director may, upon payment of the prescribed fee, issue to the applicant, without examination a certificate of qualification. R.R.O. 1990, Reg. 1055, s. 17 (3); O. Reg. 71/05, s. 6.

18. An applicant for a certificate of apprenticeship or a certificate of qualification who has failed to pass an examination may rewrite the examination at such times and places as are fixed by the Director. R.R.O.1990, Reg. 1055, s. 18.

19. An applicant for a certificate of apprenticeship or a certificate of qualification who fails to pass on rewriting the examination referred to in section 18 on two occasions shall attend and complete such training courses as the Director may determine before being permitted to rewrite the examination a third time. R.R.O. 1990, Reg. 1055, s. 19.

20. Where an applicant for a certificate of qualification, who is not the holder of a certificate of apprenticeship in the trade, supplies evidence satisfactory to the Director of having been continuously engaged in the trade as a journeyperson in Ontario or elsewhere for a period equal to or greater than the apprenticeship period prescribed for the trade, the Director may issue to the applicant a provisional certificate of qualification valid until the expiry date specified thereon. R.R.O. 1990, Reg. 1055, s. 20; O. Reg. 71/05, s. 7.

21. Where an applicant for a certificate of qualification referred to in section 20 passes such examination as is prescribed by the Director, the Director may, upon payment of the prescribed fee, issue to the applicant a certificate of qualification. R.R.O. 1990, Reg. 1055, s. 21.


23. (1) Where a certificate of qualification that is in force on the 31st day of January, 1983, expires and is renewed, it shall be renewed for a period of three years from the date of expiry and any subsequent renewal shall be for a period of three years. R.R.O. 1990, Reg. 1055, s. 23 (1).

(2) Unless otherwise prescribed by regulation, where a certificate of qualification issued on or after the 1st day of February, 1983, expires and is renewed, it shall be renewed for a period of three years from the date of expiry and any subsequent renewal shall be for a period of three years. R.R.O. 1990, Reg. 1055, s. 23 (2).

(3) A certificate of qualification may be renewed by the holder upon application and payment of the prescribed fee to the Director. R.R.O. 1990, Reg. 1055, s. 23 (3).

(4) Upon renewal of a certificate of qualification, a seal provided by the Director indicating the year for which the certificate is renewed shall forthwith upon its receipt by the applicant be affixed to the certificate of qualification in the space provided thereon. R.R.O. 1990, Reg. 1055, s. 23 (4).
24. Where a person proves to the satisfaction of the Director that,
   (a) his or her certificate of qualification has been lost or destroyed; or
   (b) his or her name has been changed,
the Director shall issue a duplicate certificate of qualification. R.R.O. 1990, Reg. 1055, s. 24.

25. The holder of a certificate of qualification shall carry the certificate on his or her person and, when requested
to do so, produce to a person designated by the Director, the certificate of qualification or such other evidence of
qualification as the Director may prescribe. R.R.O. 1990, Reg. 1055, s. 25.

26. A person who, after applying for or receiving a certificate of qualification, changes his or her address shall
within fifteen days thereafter notify the Director in writing of the former and new addresses and, where the certificate
has been received the number thereof. R.R.O. 1990, Reg. 1055, s. 26.

FEES

27. (1) The fees payable under this Regulation are as follows:

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<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>For registering a contract of apprenticeship</td>
<td>$40.00</td>
</tr>
<tr>
<td>2</td>
<td>For issuing an initial certificate of qualification without examination</td>
<td>60.00</td>
</tr>
<tr>
<td>3</td>
<td>For renewing a certificate of qualification, other than where paragraph 4 applies</td>
<td>60.00</td>
</tr>
<tr>
<td>4</td>
<td>For renewing a certificate of qualification that has been expired for more than one year</td>
<td>160.00</td>
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<td></td>
<td>plus</td>
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<tr>
<td></td>
<td>For each full year during which the certificate of qualification has been expired</td>
<td>20.00</td>
</tr>
<tr>
<td>5</td>
<td>For issuing a duplicate certificate of apprenticeship or a duplicate certificate of qualification</td>
<td>60.00</td>
</tr>
<tr>
<td>6</td>
<td>For examination leading to the initial issuing of a certificate of apprenticeship, for examination leading to the initial issuing of a certificate of qualification or for examination leading to the initial issuing of both a certificate of apprenticeship and a certificate of qualification</td>
<td>100.00</td>
</tr>
<tr>
<td>7</td>
<td>For re-examination leading to the initial issuing of a certificate of apprenticeship, for re-examination leading to the initial issuing of a certificate of qualification or for re-examination leading to the initial issuing of both a certificate of apprenticeship and a certificate of qualification</td>
<td>100.00</td>
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</table>

O. Reg. 193/98, s. 1.

(2) Where application is made for renewal of a certificate of qualification on or before the expiry date of the
certificate, the date of renewal shall be the anniversary of the date of the initial issuance of the certificate that
immediately follows the making of the application for renewal. O. Reg. 193/98, s. 1.

(3) Where application is made for renewal of a certificate of qualification after the expiry date of the certificate,
the date of renewal shall be the anniversary of the date of the initial issuance of the certificate that immediately precedes
the making of the application for renewal. O. Reg. 193/98, s. 1.

(4) Paragraph 4 of subsection (1) does not apply where the application for renewal is made on or before

FORM 1

CERTIFICATE OF APPRENTICESHIP

Trades Qualification and Apprenticeship Act
FORM 2
CERTIFICATE OF QUALIFICATION
Trades Qualification and Apprenticeship Act

This is to certify that
Nous attenons par les présents que

Having complied with the Trades Qualification and Apprenticeship Act and regulations is issued this certificate of qualification.

a satisfait aux exigences de la Loi sur la qualification professionnelle et l'apprentissage des gens de métier et des réglementations en foi de quoi, le présent certificat de qualification lui est délivré.

Date issued
Date délivré

Certificate No.
Certificat n°

Signature of Holder
Signature du titulaire

O.Reg. 230/93, s. 2.

Section 3: Business Administration
### PROVISIONAL CERTIFICATE

**Family Name:**

**Certificate Number:**

**Qualification:**

This is to certify that the above was submitted satisfactory proof of experience and is hereby permitted to work in the trade indicated pursuant to section 49 of the Trade Qualifications Act, 1984 and upon the issuance of a certificate by the Inspector. The certificate will expire on the date indicated.

**Employer's School / Work Address:**

**Certificate Date:**

<table>
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<th>REQUEST DATE</th>
<th>ISSUE DATE</th>
<th>RECEIVED DATE</th>
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</table>

Section 3: Business Administration

Trades Qualification and Apprenticeship Act
R.R.O. 1990, REGULATION 1067
LINEWORKER

1. In this Regulation,
“certified trade” means the trade of lineworker; (“métier agree”)
“lineworker” means a person who,
(a) operates, maintains and services power lines used to conduct electricity from generating plants to consumers, and
(b) constructs or assembles a system of power lines used to conduct electricity from generating plants to consumers. (“monteur de lignes”) R.R.O. 1990, Reg. 1067, s. 1.

2. Revoked: O. Reg. 73/05, s. 1.

3. The trade of lineworker is designated as a certified trade for the purposes of the Act. R.R.O. 1990, Reg. 1067, s. 3.

4. (1) An apprentice training program for the trade of lineworker shall consist of four periods of 2,000 hours of classes that provide training and instructions and of on the job training and work experience. O. Reg. 73/05, s. 2.

(2) An employer shall not establish an apprentice training program unless the program is approved by the Director. O. Reg. 73/05, s. 2.

5., 6. Revoked: O. Reg. 73/05, s. 3.

7. Despite subsection 8 (2) of Regulation 1055 of the Revised Regulations of Ontario, 1990, every hour worked by an apprentice in excess of his or her regular hours of work experience training shall be included in computing the hours spent in work experience training. R.R.O. 1990, Reg. 1067, s. 7.

8. (1) The rate of wages for an apprentice in the certified trade shall be no less than the following percentage of the average rate of wages for journeypersons who are employed by the employer and with whom the apprentice is working:
1. 40 per cent, during the first of the four periods of apprenticeship referred to in subsection 4 (1).
2. 50 per cent, during the second of the four periods of apprenticeship referred to in subsection 4 (1).
3. 60 per cent, during the third of the four periods of apprenticeship referred to in subsection 4 (1).
4. 70 per cent, during the fourth of the four periods of apprenticeship referred to in subsection 4 (1). O. Reg. 73/05, s. 4.

(2) The minimum rate of wages established under subsection (1) apply to all of the apprentice’s hours of work, whether for regular daily hours of work or for hours of work in excess of the regular daily hours of work. O. Reg. 73/05, s. 4.

9. The number of apprentices who may be employed by an employer in the certified trade shall not exceed,
(a) where the employer is a journeyperson in the trade, one apprentice plus an additional apprentice for each additional journeyperson employed by that employer in the trade and with whom the apprentice is working; and
(b) where the employer is not a journeyperson in the trade, one apprentice for each journeyperson employed by that employer in the trade and with whom the apprentice is working. R.R.O. 1990, Reg. 1067, s. 9; O. Reg. 73/05, s. 5.

10.-12. Revoked: O. Reg. 73/05, s. 6.

13. (1) Section 9 and subsection 10 (2) of the Act do not apply to any person who works or is employed in the certified trade. R.R.O. 1990, Reg. 1067, s. 13 (1).

(2) Subsection 10 (3) of the Act does not apply to an employer in the certified trade. R.R.O. 1990, Reg. 1067, s. 13 (2).


SCHEDULES 1-4 Revoked: O. Reg. 73/05, s. 7.

Section 3: Business Administration
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) 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 “commissions 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 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