Occupational Health and Safety Act

CHAPTER 7 OF THE ACTS OF 1996

as amended by

2000, c. 28, ss. 86, 87; 2004, c. 6, s. 24; 2007, c. 14, s. 7;
2009, c. 24; 2010, c. 37, ss. 117-126; 2010, c. 66; 2011, c. 24;
2013, c. 41

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Published by Authority of the Speaker of the House of Assembly
Halifax

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CHAPTER 7 OF THE ACTS OF 1996
amended 2000, c. 28, ss. 86, 87; 2004, c. 6, s. 24; 2007, c. 14, s. 7; 2009, c. 24; 2010, c. 37, ss. 117-126; 2010, c. 66; 2011, c. 24; 2013, c. 41

An Act Respecting Occupational Health and Safety

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Occupational Health and Safety Act*. 1996, c. 7, s. 1.

Internal Responsibility System

2 The foundation of this Act is the Internal Responsibility System which

(a) is based on the principle that

(i) employers, contractors, constructors, employees and self-employed persons at a workplace, and

(ii) the owner of a workplace, a supplier of goods or provider of an occupational health or safety service to a workplace or an

architect or professional engineer, all of whom can affect the health and safety of persons at the workplace,

share the responsibility for the health and safety of persons at the workplace;

(b) assumes that the primary responsibility for creating and maintaining a safe and healthy workplace should be that of each of these parties, to the extent of each party's authority and ability to do so;

(c) includes a framework for participation, transfer of information and refusal of unsafe work, all of which are necessary for the parties to carry out their responsibilities pursuant to this Act and the regulations; and

(d) is supplemented by the role of the Occupational Health and Safety Division of the Department of Labour and Advanced Education, which is not to assume responsibility for creating and maintaining safe and healthy workplaces, but to establish and clarify the responsibilities of the parties under the law, to support them in carrying out their responsibilities and to intervene appropriately when those responsibilities are not carried out. 1996, c. 7, s. 2; 2010, c. 66, s. 1; 2011, c. 24, s. 1.

Interpretation

3 In this Act,

(a) "aggrieved person" means an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer or union at a workplace who is directly affected by an order or decision;

(b) "analyst" means a person appointed as an analyst by the Minister pursuant to this Act;

(c) "Board" means the Labour Board established under the *Labour Board Act*;

(d) "committee" means a joint occupational health and safety committee established pursuant to this Act;

(e) "compliance notice" means a response, in writing, to an order of an officer, describing the extent to which the person against whom the order was made has complied with each item identified in the order;

(f) "constructor" means a person who contracts for work on a project or who undertakes work on a project himself or herself;

(g) "contractor" means a person who contracts for work to be performed at the premises of the person contracting to have the work performed, but does not include a dependent contractor or a constructor;

(h) "contracts for work" includes contracting to perform work and contracting to have work performed;

(i) "Council" means the Occupational Health and Safety Advisory Council established pursuant to this Act;

(j) "dependent contractor" means a person, whether or not employed under a contract of employment and whether or not furnishing the person's own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another on such terms and conditions that the person is

(i) in a position of economic dependence upon the other,

(ii) under an obligation to perform duties mainly for the other, and

(iii) in a relationship with the other more closely resembling that of an employee than an independent contractor;

(k) "Deputy Minister of Labour and Advanced Education" includes a person designated by the Deputy Minister of Labour and Advanced Education to act in the stead of the Deputy Minister;

(l) "Director" means the Executive Director of Occupational Health and Safety or any person designated by the Executive Director pursuant to this Act to act on behalf of the Executive Director;

(m) "Director of Labour Standards" means the Director of Labour Standards under the *Labour Standards Code*;

(n) "Division" means the Occupational Health and Safety Division of the Department of Labour and Advanced Education

(o) "employee" means a person who is employed to do work and includes a dependent contractor;

(p) "employer" means a person who employs one or more employees or contracts for the services of one or more employees, and includes a constructor, contractor or subcontractor;

(q) "former Act" means Chapter 320 of the Revised Statutes, 1989, the *Occupational Health and Safety Act*;

(r) *repealed 2010, c. 37, s. 117.*

(s) "Minister" means the Minister of Labour and Advanced Education;

(t) "occupation" means any employment, business, calling or pursuit;

(u) "officer" means an occupational health and safety officer appointed pursuant to this Act and includes the Director;

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

(w) "police officer" means

(i) a member of the Royal Canadian Mounted Police, or

(ii) a member or chief officer of a police force appointed pursuant to the *Police Act*;

(x) "policy" means an occupational health and safety policy made pursuant to this Act;

(y) "practicable" means possible, given current knowledge, technology and invention;

(z) "program" means an occupational health and safety program required pursuant to this Act, unless the context otherwise requires;

(aa) "project" means a construction project, and includes

(i) the construction, erection, excavation, renovation, repair, alteration or demolition of any structure, building, tunnel or work and the preparatory work of land clearing or earth moving, and

(ii) work of any nature or kind designated by the Director as a project;

(ab) "reasonably practicable" means practicable unless the person on whom a duty is placed can show that there is a gross disproportion between the benefit of the duty and the cost, in time, trouble and money, of the measures to secure the duty;

(ac) "regularly employed" includes seasonal employment with a predictably recurring period of employment that exceeds four weeks, unless otherwise established by regulation or ordered by an officer;

(ad) "representative" means a health and safety representative selected pursuant to this Act;

(ae) "self-employed person" means a person who is engaged in an occupation on that person's own behalf and includes a person or persons operating a sole proprietorship but does not include a dependent contractor;

(af) "supplier" means a person who manufactures, supplies, sells, leases, distributes or installs any tool, equipment, machine or device or any biological, chemical or physical agent to be used at or near a workplace;

(ag) "union" includes a trade union as defined in the *Trade Union Act* that has the status of bargaining agent under that Act in respect of any bargaining unit at a workplace, and includes an organization representing employees where the organization has exclusive bargaining rights under any other Act in respect of the employees;

(ah) "workplace" means any place where an employee or a self-employed person is or is likely to be engaged in any occupation and includes any vehicle or mobile equipment used or likely to be used by an employee or a self-employed person in an occupation. 1996, c. 7, s. 3; 2000, c. 28, s. 86; 2010, c. 37, s. 117; 2010, c. 66, s. 2; 2011, c. 24, s. 2.

APPLICATION AND ADMINISTRATION

Application of Act

4 **(1)** This Act binds Her Majesty in right of the Province.

(2) This Act applies to

(a) every agency of the Government of the Province; and

(b) all matters within the legislative jurisdiction of the Province.

(3) To the extent that Her Majesty in right of Canada submits, this Act binds Her Majesty in right of Canada, every agency of the Government of Canada and every other person whose workplace health and safety standards are ordinarily within the legislative jurisdiction of the Parliament of Canada. 1996, c. 7, s. 4.

Conflict with other enactments

5 Notwithstanding any general or special Act, where there is a conflict between this Act and the regulations and any other enactment, this Act and the regulations prevail. 1996, c. 7, s. 5.

Supervision and management of Act

6 The Minister has the general supervision and management of this Act and the regulations. 1996, c. 7, s. 6.

Research, programs and activities

7 The Minister may undertake research, programs and activities to promote occupational health and safety and may undertake such programs in co-operation with the Government of Canada or of any other province of Canada or with any person or organization undertaking similar programs. 1996, c. 7, s. 7.

Continuation of Division

8 The Occupational Health and Safety Division of the Department of Labour and Advanced Education, established by the former Act, is hereby continued. 1996, c. 7, s. 8; 2010, c. 66, s. 3; 2011, c. 24, s. 3.

Functions of Division

9 The Division shall

(a) be concerned with occupational health and safety and the maintenance of reasonable standards for the protection of the health and safety of employees and self-employed persons;

(b) either alone or in conjunction with the Workers' Compensation Board, the Department of Health or other departments and agencies, prepare and maintain statistics and information relating to employees and self-employed persons;

(c) provide assistance to persons concerned with occupational health and safety and provide services to assist joint occupational health and safety committees, health and safety representatives, employers, employees and self-employed persons in maintaining reasonable standards for the protection of the health and safety of employees and self-employed persons;

(d) promote or conduct studies and research projects in the field of occupational health and safety;

(e) encourage and conduct educational programs to promote occupational health and safety;

(f) annually, submit to the Advisory Council a report on a review of this Act; and

(g) perform such other functions as the Minister or the Governor in Council may direct. 1996, c. 7, s. 9.

Payment from Accident Fund

10 Part of the costs of the Division pursuant to this Act and the regulations and costs of education and research related to occupational health and safety shall be paid out of the Accident Fund by the Workers' Compensation Board as determined by the Governor in Council. 1996, c. 7, s. 10.

Director and other personnel

11 **(1)** There shall be appointed in accordance with the *Civil Service Act* ~~an~~ [a] Director of Occupational Health and Safety and such officers and employees as are necessary for the administration and enforcement of this Act and the regulations.

(2) Notwithstanding subsection (1), the Minister may appoint officers, to administer and enforce this Act and the regulations, who are employees of

(a) the Government of Canada or an agency thereof;

(b) the government of another province of Canada or an agency thereof;

(c) another department or an agency of the Government;

(d) a municipality within the meaning of the *Municipal Government Act* or an agency thereof; or

(e) an agency created by any combination of the governments of this Province, other provinces of Canada or the Government of Canada,

and who work in the field of occupational health and safety.

(3) The Director may, in writing, delegate to any person any of the Director's powers, duties or functions pursuant to this Act or the regulations and

shall, when so delegating, specify the powers, duties or functions to be exercised by the person to whom the Director delegates.

(4) Notwithstanding anything contained in this Act, an officer appointed pursuant to subsection (2) shall not exercise the powers, duties and functions the officer has pursuant to this Act in relation to the agency, department or municipality, as the case may be, that employs the officer. 1996, c. 7, s. 11; 2000, c. 28, s. 87; 2010, c. 66, s. 4; 2013, c. 41, s. 1.

Designation of inspectors

12 The Minister may designate certain officers as inspectors or chief inspectors for the purpose of this Act or any other Act or part thereof that is administered by the Division. 1996, c. 7, s. 12.

DUTIES AND PRECAUTIONS

Employers' precautions and duties

13 **(1)** Every employer shall take every precaution that is reasonable in the circumstances to

(a) ensure the health and safety of persons at or near the workplace;

(b) provide and maintain equipment, machines, materials or things that are properly equipped with safety devices;

(c) provide such information, instruction, training, supervision and facilities as are necessary to the health or safety of the employees;

(d) ensure that the employees, and particularly the supervisors and foremen, are made familiar with any health or safety hazards that may be met by them at the workplace;

(e) ensure that the employees are made familiar with the proper use of all devices, equipment and clothing required for their protection; and

(f) conduct the employer's undertaking so that employees are not exposed to health or safety hazards as a result of the undertaking.

(2) Every employer shall

(a) consult and co-operate with the joint occupational health and safety committee, where such a committee has been established at the workplace, or the health and safety representative, where one has been selected at the workplace;

(b) co-operate with any person performing a duty imposed or exercising a power conferred by this Act or the regulations;

(c) provide such additional training of committee members or the representative as may be prescribed by the regulations;

(d) comply with this Act and the regulations and ensure that employees at the workplace comply with this Act and the regulations; and

(e) where an occupational health and safety policy or occupational health and safety program is required pursuant to this Act or the regulations, establish the policy or program.

(3) The employer at a subsea coal mine shall provide such additional resources or information for the committee as may be prescribed by the regulations. 1996, c. 7, s. 13; 2007, c. 14, s. 7; 2010, c. 66, s. 5.

Precautions to be taken by contractors

14 Every contractor shall take every precaution that is reasonable in the circumstances to ensure

(a) the health and safety of persons at or near a workplace;

(b) that the activities of the employers and self-employed persons at the workplace are co-ordinated;

(c) communication between the employers and self-employed persons at the workplace of information necessary to the health and safety of persons at the workplace;

(d) that the measures and procedures prescribed pursuant to this Act and the regulations are carried out at the workplace; and

(e) that every employee, self-employed person and employer performing work at the workplace complies with this Act and the regulations. 1996, c. 7, s. 14.

Precautions to be taken by constructors

15 Every constructor shall take every precaution that is reasonable in the circumstances to ensure

(a) the health and safety of persons at or near a project;

(b) that the activities of the employers and self-employed persons at the project are co-ordinated;

(c) communication between the employers and self-employed persons at the project of information necessary to the health and safety of persons at the project, and facilitate communication with any committee or representative required for the project pursuant to this Act or the regulations;

(d) that the measures and procedures prescribed under this Act and the regulations are carried out on the project; and

(e) that every employee, self-employed person and employer performing work in respect of the project complies with this Act and the regulations. 1996, c. 7, s. 15.

Precautions to be taken by suppliers

16 Every supplier shall take every precaution that is reasonable in the circumstances to

(a) ensure that any device, equipment, machine, material or thing supplied by the supplier is in safe condition, and in compliance with this Act and the regulations when it is supplied;

(b) where it is the supplier's responsibility under a leasing agreement to maintain it, maintain any device, equipment, machine, material or thing in safe condition and in compliance with this Act and the regulations; and

(c) ensure that any biological, chemical or physical agent supplied by the supplier is labelled in accordance with the applicable federal and Provincial regulations. 1996, c. 7, s. 16.

Employees' precautions and duties

17 **(1)** Every employee, while at work, shall

(a) take every reasonable precaution in the circumstances to protect the employee's own health and safety and that of other persons at or near the workplace;

(b) co-operate with the employer and with the employee's fellow employees to protect the employee's own health and safety and that of other persons at or near the workplace;

(c) take every reasonable precaution in the circumstances to ensure that protective devices, equipment or clothing required by the employer, this Act or the regulations are used or worn;

(d) consult and co-operate with the joint occupational health and safety committee, where such a committee has been established at the workplace, or the health and safety representative, where one has been selected at the workplace;

(e) co-operate with any person performing a duty or exercising a power conferred by this Act or the regulations; and

(f) comply with this Act and the regulations.

(2) Where an employee believes that any condition, device, equipment, machine, material or thing or any aspect of the workplace is or may be dangerous to the employee's health or safety or that of any other person at the workplace, the employee shall

(a) immediately report it to a supervisor;

(b) where the matter is not remedied to the employee's satisfaction, report it to the committee or the representative, if any; and

(c) where the matter is not remedied to the employee's satisfaction after the employee reports in accordance with clauses (a) and (b), report it to the Division. 1996, c. 7, s. 17.

Self-employed persons' precautions and duties

18 Every self-employed person shall

(a) take every reasonable precaution in the circumstances to protect the self-employed person's own health and safety and that of other persons who may be affected by the self-employed person's undertaking;

(b) co-operate with any employer, joint occupational health and safety committee or health and safety representative that may be found at a place at which the self-employed person conducts an undertaking, to protect the self-employed person's own health and safety and that of other persons who may be affected by the undertaking;

(c) co-operate with any person performing a duty or exercising a power conferred by this Act or the regulations; and

(d) comply with this Act and the regulations. 1996, c. 7, s. 18.

Owners' precautions and duties

19 Every owner shall

(a) take every precaution that is reasonable in the circumstances to provide and maintain the owner's land or premises being or to be used as a workplace

(i) in a manner that ensures the health and safety of persons at or near the workplace, and

(ii) in compliance with this Act and the regulations; and

(b) give to the employer at the workplace the information that is

(i) known to the owner or that the owner could reasonably be expected to know, and

(ii) necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace. 1996, c. 7, s. 19.

Precautions to be taken by providers of service

20 Every person or body who, for gain, is a provider of an occupational health or safety service shall take every precaution that is reasonable in the circumstances to

(a) ensure that no person at a workplace is endangered as a result of the provider's activity; and

(b) ensure, where the service involves providing information, that the information provided, at the time that it is provided, is accurate and sufficiently complete to enable the recipient to make a competent judgement on the basis of the information. 1996, c. 7, s. 20.

Precautions to be taken by architects and engineers

21 **(1)** An architect, as defined in the *Architects Act*, who gives advice or affixes the architect's seal to documents or a professional engineer, as defined in the *Engineering Profession Act*, who gives advice or stamps documents shall take every precaution that is reasonable in the circumstances to ensure that a person who is likely to rely on the advice, seal or stamp will not be in contravention of this Act or the regulations as a result of such reliance.

(2) Where

(a) an architect, as defined in the *Architects Act*, gives advice or affixes the architect's seal to documents; or

(b) a professional engineer, as defined in the *Engineering Profession Act*, gives advice or stamps documents,

negligently or incompetently and a person at a workplace is endangered thereby, the architect or professional engineer contravenes this Act. 1996, c. 7, s. 21.

Required instruction in principles

22 The curricula of

(a) an occupational-training program within the meaning of the *Private Career Colleges Regulation Act*;

(b) a program of study within the meaning of the *Community Colleges Act*; and

(c) any other educational institution or class of educational institution designated pursuant to the regulations,

shall include instruction in the principles of occupational health and safety contained in this Act. 1996, c. 7, s. 22; 2010, c. 66, s. 6.

Nature and extent of duties and requirements

23 **(1)** A specific duty or requirement imposed by this Act or the regulations does not limit the generality of any other duty or requirement imposed by this Act or the regulations.

(2) Where a provision of this Act or the regulations imposes a duty or requirement on more than one person, the duty or requirement is meant to be imposed primarily on the person with the greatest degree of control over the matters that are the subject of the duty or requirement.

(3) Notwithstanding subsection (2), but subject to subsection (5), where the person with the greatest degree of control fails to comply with a duty or

requirement referred to in subsection (2), the other person or persons on whom the duty or requirement lies shall, where possible, comply with the provision.

(4) Where the person with the greatest degree of control complies with a provision described in subsection (2), the other persons are relieved of the obligation to comply with the provision only

(a) for the time during which the person with the greatest degree of control is in compliance with the provision;

(b) where simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense; and

(c) where the health and safety of persons at the workplace is not put at risk by compliance by only one person.

(5) Where the person with the greatest degree of control fails to comply with a provision described in subsection (2) but one of the other persons on whom the duty or requirement is imposed complies with the provision, the other persons, if any, to whom the provision applies are relieved of the obligation to comply with the provision in the circumstances set out in clauses 4(a) to (c) with the necessary modifications. 1996, c. 7, s. 23.

OCCUPATIONAL HEALTH AND SAFETY ADVISORY COUNCIL

Continuation of Council

24 (1) The Occupational Health and Safety Advisory Council, established by the former Act, is hereby continued.

(2) The Minister shall appoint to the Council persons who have a particular knowledge and experience relating to the protection and promotion of occupational health and safety generally. 1996, c. 7, s. 24.

Membership of Council and subcommittees

25 (1) The membership of the Council shall include equal representation from employers and employees.

(2) In addition, the Director and the Chair of the Workers' Compensation Board, or a person designated to represent the Chair, and a representative of any group or groups selected by the Minister are members of the Council.

(3) and **(4)** *repealed 2010, c. 66, s. 7.*

(5) A member of the Council holds office during the term prescribed in that person's appointment and may be re-appointed.

(5A) A member of the Council whose term of office expires may, with the approval of the Minister, remain on the Council until a successor is appointed.

(6) The Council may, with the approval of the Minister, appoint one or more subcommittees of the Council and a subcommittee shall perform any of the functions described in Section 26, as determined by the Council.

(7) For greater certainty, a person who is not a member of the Council may be a member of a subcommittee of the Council.

(8) The Minister may designate one employer representative and one employee representative as co-chairs of the Council.

(9) Persons appointed to the Council or a subcommittee of the Council shall be paid the reasonable expenses incurred by them in the course of carrying out their duties for the Council or subcommittee of the Council, plus such remuneration as is determined by the Minister. 1996, c. 7, s. 25; 2004, c. 6, s. 24; 2010, c. 66, s. 7.

Functions of Council

26 The Council may advise the Minister on

(a) the administration of this Act and the regulations;

(b) occupational health and safety including, but not limited to, providing recommendations, giving advice and monitoring and reporting on occupational health and safety throughout the Province;

(c) the exclusion of any profession, employee, employer, workplace, project, owner, occupation, industry, self-employed person or dependent contractor from all or part of the application of this Act or the regulations;

(d) any other matter relating to occupational health and safety. 1996, c. 7, s. 26.

OCCUPATIONAL HEALTH AND SAFETY POLICY

Requirement for policy

27 **(1)** Where

(a) five or more employees are regularly employed by an employer other than a constructor or contractor;

(b) five or more employees are regularly employed directly by a constructor or contractor, not including employees for whose services the constructor or contractor has contracted;

(c) the regulations require an occupational health and safety policy; or

(d) an officer so orders,

the employer shall prepare and review, at least annually, a written occupational health and safety policy, in consultation with the committee or representative, if any.

(2) Where this Act or the regulations do not require there to be a committee at a workplace, consultation on the development of the policy shall be carried out by the employer and shall include discussion of the proposed policy at one or more workplace health and safety meetings involving the employees.

(3) The policy shall express the employer's commitment to occupational health and safety and shall include

(a) the reasons for the employer's commitment to health and safety;

(b) the commitment of the employer to co-operate with the employees in pursuing occupational health and safety; and

(c) the responsibilities of the employer, supervisors and other employees in fulfilling the commitment required pursuant to clause (b). 1996, c. 7, s. 27.

OCCUPATIONAL HEALTH AND SAFETY PROGRAM

Requirement for program

28 **(1)** Where

(a) twenty or more employees are regularly employed by an employer other than a constructor or contractor;

(b) twenty or more employees are regularly employed directly by a constructor or contractor, not including employees for whose services the constructor or contractor has contracted; or

(c) the regulations require an occupational health and safety program,

the employer shall establish and maintain a written occupational health and safety program, in consultation with the committee or representative, if any, that is adapted to the circumstances of the organization for the purpose of implementing the employer's policy, this Act and the regulations.

(2) The program shall include

(a) provision for the training and supervision of employees in matters necessary to their health and safety and the health and safety of other persons at the workplace;

(b) provision for the preparation of written work procedures required to implement safe and healthy work practices, including those required pursuant to this Act, the regulations or by order of

an officer, and identification of the types of work for which the procedures are required at the employer's workplace;

(c) provision for the establishment and continued operation of a committee required pursuant to this Act, including maintenance of records of membership, rules of procedure, access to a level of management with authority to resolve health and safety matters and any information required under this Act or the regulations to be maintained in relation to a committee;

(d) provision for the selection and functions of a representative where required pursuant to this Act, including provision for access by the representative to a level of management with authority to resolve health and safety matters;

(e) a hazard identification system that includes

(i) evaluation of the workplace to identify potential hazards,

(ii) procedures and schedules for regular inspections,

(iii) procedures for ensuring the reporting of hazards and the accountability of persons responsible for the correction of hazards, and

(iv) identification of the circumstances where hazards must be reported by the employer to the committee or representative, if any, and the procedures for doing so;

(f) a system for workplace occupational health and safety monitoring, prompt follow-up and control of identified hazards;

(g) a system for the prompt investigation of hazardous occurrences to determine their causes and the actions needed to prevent recurrences;

(h) maintenance of records and statistics, including reports of occupational health and safety inspections and occupational health and safety investigations, with provision for making them available to persons entitled to receive them pursuant to this Act; and

(i) provision for monitoring the implementation and effectiveness of the program.

(3) The employer shall make available a copy of the program

(a) to the committee or representative, if any; and

(b) on request, to an employee at the workplace. 1996, c. 7, s. 28.

JOINT OCCUPATIONAL HEALTH AND SAFETY COMMITTEES

Requirement for committees

29 **(1)** At every workplace where twenty or more persons are regularly employed, the employer shall establish and maintain one joint occupational health and safety committee or, at the discretion of the employer, more than one such committee and, where twenty or more persons are regularly employed by one or more constructors at a project, a constructor shall establish and maintain a joint occupational health and safety committee for the project.

(2) At a workplace where fewer than twenty persons are regularly employed, the Director may

(a) consult with the employer and employees at the workplace regarding whether a committee should be formed at the workplace; and

(b) order that a committee be established.

(3) Where an order respecting establishment of a committee is given pursuant to subsection (2), the employer shall ensure that the committee is chosen and functioning in accordance with this Act within fifteen days of receipt of the order. 1996, c. 7, s. 29.

Committee where subsea coal mine

29A Notwithstanding Section 29, at a subsea coal mine where fewer than twenty persons are regularly employed, the employer shall establish and maintain a joint occupational health and safety committee where so prescribed by the regulations. 2007, c. 14, s. 7.

Composition and procedure of committee

30 **(1)** A committee shall consist of such number of persons as may be agreed to by the employer and the employees or their union or unions.

(2) At least half of the members of a committee shall be employees at the workplace who are not connected with the management of the workplace and the employer may choose up to one half of the members of the committee if the employer wishes to do so.

(3) The employees on the committee are to be determined by the employees they represent, or designated by the union that represents the employees.

(4) A committee shall meet at least once each month unless

(a) a different frequency is prescribed by the regulations; or

(b) the committee alters the required frequency of meetings in its rules of procedure.

(5) Where a committee alters the required frequency of meetings by its rules of procedure and the Director is not satisfied that the frequency of meetings is sufficient to enable the committee to effectively perform its functions, the frequency of meetings shall be as determined by the Director.

(6) An employee who is a member of a committee is entitled to such time off from work as is necessary to attend meetings of the committee, to take any training prescribed by the regulations and to carry out the employee's functions as a member of the committee, and such time off is deemed to be work time for which the employee shall be paid by the employer at the applicable rate.

(7) A committee shall establish its own rules of procedure and shall adhere to the applicable regulations.

(8) Unless a committee determines another arrangement for chairing the committee in its rules of procedure, two of the members of the committee shall co-chair the committee, one of whom shall be selected by the members who represent employees and the other of whom shall be selected by the other members.

(9) The rules of procedure established pursuant to subsection (7) shall include an annual determination of the method of selecting the person or persons who shall

(a) chair the committee; and

(b) hold the position of chair for the coming year.

(10) Where agreement is not reached on

(a) the size of the committee;

(b) the designation of employees to be members; or

(c) rules of procedure,

the Director shall determine the matter. 1996, c. 7, s. 30.

Functions of committees

31 It is the function of the committee to involve employers and employees together in occupational health and safety in the workplace and, without restricting the generality of the foregoing, includes

(a) the co-operative identification of hazards to health and safety and effective systems to respond to the hazards;

(b) the co-operative auditing of compliance with health and safety requirements in the workplace;

(c) receipt, investigation and prompt disposition of matters and complaints with respect to workplace health and safety;

(d) participation in inspections, inquiries and investigations concerning the occupational health and safety of the employees

and, in particular, participation in an inspection referred to in Section 50;

(e) advising on individual protective devices, equipment and clothing that, complying with this Act and the regulations, are best adapted to the needs of the employees;

(f) advising the employer regarding a policy or program required pursuant to this Act or the regulations and making recommendations to the employer, the employees and any person for the improvement of the health and safety of persons at the workplace;

(g) maintaining records and minutes of committee meetings in a form and manner approved by the Director and providing an officer with a copy of these records or minutes on request; and

(h) performing any other duties assigned to it

(i) by the Director,

(ii) by agreement between the employer and the employees or the union, or

(iii) as are established by the regulations. 1996, c. 7, s. 31; 2010, c. 66, s. 8.

Deemed establishment of committee

32 Where a committee was established prior to January 1, 1986, and has been maintained, pursuant to a collective agreement or other arrangement in a workplace, and the Director is satisfied that such committee or arrangement provides benefits for the health and safety of employees equal to or greater than the benefits to be derived under a committee established pursuant to this Act, the committee or arrangement is deemed to have been established in compliance with this Act. 1996, c. 7, s. 32.

HEALTH AND SAFETY REPRESENTATIVES

Requirement for and functions of representatives

33 **(1)** At a workplace where no committee is required pursuant to Section 29 and where the number of persons employed is five or more, the employer shall cause the employees to select at least one health and safety representative from among the employees at the workplace who are not connected with the management of the workplace.

(2) At a project where no committee is required pursuant to Section 29 and where the number of persons employed is five or more, a constructor shall cause the employees to select at least one health and safety representative for the purposes of the project from among the employees at the project who are not connected with the management at the project.

(3) At a workplace where fewer than five persons are employed, the Director may

(a) consult with the employer and employees at the workplace regarding whether a representative should be selected at the workplace; and

(b) order that a representative be selected by the employees from among the employees at the workplace who are not connected with the management of the workplace.

(4) Where an order respecting the selection of a representative is given pursuant to subsection (3), the employer shall ensure that the representative is selected and functioning in accordance with this Act within fifteen days of receipt of the order.

(5) An employee who is a representative is entitled to such reasonable time off from work as is necessary to carry out the employee's functions as a representative, and such time off is deemed to be work time for which the employee shall be paid by the employer at the applicable rate.

(6) It is the function of the representative to be involved, on behalf of the employees together with the employer, in occupational health and safety in the workplace and, without restricting the generality of the foregoing, includes

(a) the co-operative identification of hazards to health and safety and effective systems to respond to the hazards;

(b) the co-operative auditing of compliance with health and safety requirements in the workplace;

(c) receipt of and co-operation with the employer in the investigation and prompt disposition of matters and complaints with respect to workplace health and safety;

(d) participation in inspections, inquiries and investigations concerning the occupational health and safety of the employees and, in particular, participation in an inspection referred to in Section 50;

(e) advising on individual protective devices, equipment and clothing which, complying with this Act and the regulations, are best adapted to the needs of the employees;

(f) advising the employer regarding a policy or program required by this Act or the regulations and making recommendations to the employer, the employees and any person for the improvement of the health and safety of persons at the workplace; and

(g) performing any other duties assigned to the representative

(i) by the Director,

(ii) by agreement between the employer and the employees or the union, or

(iii) as are established by the regulations. 1996, c. 7, s. 33.

COMMUNICATION OF INFORMATION

Response to written recommendations

34 (1) An employer who receives written recommendations from a committee or representative and a request in writing to respond to the recommendations, shall respond in writing to the committee or representative within twenty-one days, and the response shall

(a) indicate acceptance of the recommendations; or

(b) give reasons for the disagreement with any recommendations that the employer does not accept,

or, where it is not reasonably possible to provide a response before the expiry of the twenty-one day period, provide within that time a reasonable explanation for the delay, indicate to the committee or representative when the response will be forthcoming, and provide the response as soon as it is available.

(2) Where the committee or representative makes a request pursuant to subsection (1) and is not satisfied that the explanation provided for a delay in responding is reasonable in the circumstances, the chair or co-chairs of the committee, or representative, as the case may be, shall promptly report this fact to an officer. 1996, c. 7, s. 34.

Duty of employer to provide certain information

35 (1) An employer shall notify the committee or representative, if any, of the existence of reports of

(a) workplace occupational health or safety inspections; and

(b) workplace occupational health or safety monitoring or tests,

undertaken at the workplace by, or at the request of, an officer or the employer and, on request, the employer shall make the reports available to the committee or the representative.

(2) An employer shall make available to an employee at a workplace, on request, reports of

(a) workplace occupational health or safety inspections; and

(b) workplace occupational health or safety monitoring or tests,

undertaken at the workplace by, or at the request of, an officer or the employer.

(3) Within twenty-one days of receiving a request in writing from the committee, representative or, where there is no committee or representative, an employee at a workplace for any information of a health or safety nature other than that specified in subsection (1), the employer shall respond in writing and the response shall

(a) provide the requested information; or

(b) give reasons for not providing the information, in whole or in part,

and where it is not reasonably possible to provide a response before the expiry of the twenty-one day period, provide within that time a reasonable explanation for the delay, indicate to the committee, representative or employee when the response will be forthcoming and provide the response as soon as it is available.

(4) Where the committee, representative or employee makes a request pursuant to subsection (3) and is not satisfied that the explanation provided for a delay in responding is reasonable in the circumstances, the chair or co-chairs of the committee, the representative or the employee, as the case may be, shall promptly report this fact to an officer. 1996, c. 7, s. 35.

Duty of officer to provide certain information

36 An officer shall provide to the employer at a workplace reports of

(a) workplace occupational health or safety inspections; and

(b) workplace occupational health or safety monitoring or tests,

undertaken at the workplace by, or at the request of, an officer, and the employer shall comply with subsections 35(1) and (2). 1996, c. 7, s. 36.

Duty of employer to post certain information

37 The employer shall

(a) post and maintain the current names of the committee members or the representative, if any, and the means of contacting them; and

(b) post promptly, where there is a committee, the minutes of the most recent committee meeting and ensure they remain posted until superseded by minutes of the next committee meeting. 1996, c. 7, s. 37.

Availability of information at workplace

38 (1) Every employer shall

(a) make available for examination at the workplace

(i) a copy of the regulations that relate to the workplace, and

(ii) information and reports that an officer considers advisable to enable employees to become acquainted with

their rights and responsibilities pursuant to this Act and the regulations;

and

(b) post in a prominent place or places in the workplace capable of being easily accessed by the employees

(i) a current copy of this Act,

(ii) a code of practice required pursuant to this Act or the regulations,

(iii) a current telephone number for reporting occupational health or safety concerns to the Division, and

(iv) where the employer is required pursuant to this Act or the regulations to have an occupational health and safety policy, the policy,

and ensure they remain posted.

(2) Where anything other than the information listed in subsection (1) is required to be posted pursuant to this Act or the regulations, the person who has the duty to post shall

(a) post a legible copy of it in a prominent place or places in the workplace capable of being easily accessed by the employees; and

(b) ensure that it remains posted for at least seven days, or longer if additional time is necessary to enable employees at the workplace to inform themselves of the content, unless this Act or the regulations otherwise specify,

or in lieu of complying with clauses (a) and (b), shall provide the information to each employee, in writing. 1996, c. 7, s. 38.

Duty of employer to provide certain information

39 **(1)** Where

(a) an officer makes an order pursuant to this Act or the regulations against an employer;

(b) a compliance notice is required of an employer pursuant to subsection 56(1); or

(c) an appeal is initiated or disposed of pursuant to Section 69,

the employer shall, subject to subsections (2) and (3), immediately

(d) post the order, compliance notice, notice of appeal or decision; and

(e) deliver a copy of the order, compliance notice, notice of appeal or decision to the committee or representative, if any.

(2) An officer may authorize in writing an officer's order to be edited to protect a trade secret, secret manufacturing process or confidential personal information, the disclosure of which is limited pursuant to this Act.

(3) Where an order is edited pursuant to subsection (2), the authorization of the officer shall be affixed to the order and it shall be posted in accordance with this Act in substitution for the unedited order. 1996, c. 7, s. 39; 2013, c. 41, s. 2.

Service of documents

40 **(1)** For the purpose of this Act and the regulations and any proceedings thereunder, an order, notice or other document sent by regular mail is deemed to have been received ten days after the day on which it was mailed, unless the person to whom it was sent establishes that, acting in good faith, the person did not receive the order, notice or other document until a later date, through absence, incident, illness or other cause beyond the person's control.

(2) For the purpose of this Act and the regulations and any proceedings thereunder, an order, notice or other document that is to be served on a person must be served by

(a) personal service;

(b) a form of delivery that provides proof of delivery, sent to the last known address of the person being served; or

(c) electronic transmission, including facsimile or electronic mail.

(3) An order, notice or other document that is served on a person under clause (2)(b) is deemed to have been received five days after the date of the first attempted delivery, unless the person being served establishes that, acting in good faith, the person did not receive the order, notice or other document until a later date, through absence, incident, illness or other cause beyond the person's control.

(4) An order, notice or other document that is served on a person under clause (2)(c) is deemed to have been received the day after it was sent or, where that day is a Saturday or a holiday, on the next day that is not a Saturday or a holiday, unless the person being served establishes that, acting in good faith, the person did not receive the order, notice or other document until a later date, through absence, incident, illness or other cause beyond the person's control. 2013, c. 41, s. 3.

Right to annual summary of data

41 Where the *Workers' Compensation Act* applies to a workplace,

(a) a committee;

(b) a representative;

(c) an employee; or

(d) an employer,

at the workplace who so requests in writing shall receive an annual summary of data relating to the employer. 1996, c. 7, s. 41.

WORKPLACE MONITORING, MEASUREMENTS AND TESTS

Right of employee to observe and be paid

42 (1) Every employer shall permit an employee selected pursuant to subsection (2) to observe workplace occupational health or safety monitoring and the taking of samples, tests or measurements where a significant part of the rationale is based on either health or safety of employees at the workplace, unless the monitoring or taking of samples, tests or measurements takes place

(a) continuously or on a regular and frequent basis, except to observe the initial setup of the workplace occupational health or safety monitoring process and to be informed and observe the monitoring where there has been a malfunction of the monitor or alteration in the process;

(aa) in a situation that would violate an employee's personal privacy;

(b) in a location that is remote and is part of the regular task of a person employed at the location; or

(c) during an emergency situation,

and time spent by the employee in such activities is deemed to be work time for which the employee shall be paid by the employer at the applicable rate.

(2) Where there is

(a) a committee or representative at a workplace, the employee who observes workplace occupational health or safety monitoring and the taking of samples or measurements shall be selected by the committee or representative, as the case may be; or

(b) no committee or representative at a workplace, the employee who observes workplace occupational health or safety monitoring and the taking of samples or measurements shall be selected by the employees.

(3) Every employer shall provide

(a) reasonable notice to an observer of the commencement of the occupational health or safety monitoring and of the taking of samples or measurements undertaken pursuant to subsection (1); and

(b) access to a workplace for the purpose of the observation.

(4) Where an observer requests, the procedure for occupational health or safety monitoring and the taking of samples or measurements shall be identified and explained to the observer.

(5) Where an owner, constructor or contractor performs occupational health or safety monitoring or takes samples or measurements that relate to the health or safety of employees at the workplace,

(a) the owner, constructor or contractor shall provide reasonable notice to all employers at the workplace of the commencement of the occupational health or safety monitoring and of the taking of samples or measurements; and

(b) the requirements of subsections (1) to (4) apply.

(6) Where the monitoring, samples or measurements referred to in subsection (1) are conducted by, or at the request of, an officer, the officer may undertake the monitoring, samples or measurements whether or not notice has been given pursuant to subsection (3) or (5). 1996, c. 7, s. 42; 2010, c. 66, s. 10.

RIGHT TO REFUSE WORK

Right to refuse work and consequences of refusal

43 **(1)** Any employee may refuse to do any act at the employee's place of employment where the employee has reasonable grounds for believing that the act is likely to endanger the employee's health or safety or the health or safety of any other person until

(a) the employer has taken remedial action to the satisfaction of the employee;

(b) the committee, if any, has investigated the matter and unanimously advised the employee to return to work; or

(c) an officer has investigated the matter and has advised the employee to return to work.

(2) Where an employee exercises the employee's right to refuse to work pursuant to subsection (1), the employee shall

(a) immediately report it to a supervisor;

(b) where the matter is not remedied to the employee's satisfaction, report it to the committee or the representative, if any; and

(c) where the matter is not remedied to the employee's satisfaction after the employee has reported pursuant to clauses (a) and (b), report it to the Division.

(3) At the option of the employee, the employee who refuses to do any act pursuant to subsection (1) may accompany an officer or the committee or representative, if any, on a physical inspection of the workplace, or part thereof, being carried out for the purpose of ensuring others understand the reasons for the refusal.

(4) Notwithstanding subsection 50(8), an employee who accompanies an officer, the committee or a representative, as provided in subsection (3), shall be compensated in accordance with subsection (7), but the compensation shall not exceed that which would otherwise have been payable for the employee's regular or scheduled working hours.

(5) Subject to any applicable collective agreement, and subsection (3), where an employee refuses to do work pursuant to subsection (1), the employer may reassign the employee to other work and the employee shall accept the reassignment until the employee is able to return to work pursuant to subsection (1).

(6) Where an employee is reassigned to other work pursuant to subsection (5), the employer shall pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued in the employee's normal work.

(7) Where an employee has refused to work pursuant to subsection (1) and has not been reassigned to other work pursuant to subsection (5), the employer shall, until clause (1)(a), (b) or (c) is met, pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued to work.

(8) A reassignment of work pursuant to subsection (5) is not discriminatory action pursuant to Section 45.

(9) An employee may not, pursuant to this Section, refuse to use or operate a machine or thing or to work in a place where

(a) the refusal puts the life, health or safety of another person directly in danger; or

(b) the danger referred to in subsection (1) is inherent in the work of the employee. 1996, c. 7, s. 43.

Restriction on assignment of work where refusal

44 Where an employee exercises the employee's right to refuse to work pursuant to subsection 43(1), no employee shall be assigned to do that work until the matter has been dealt with under that subsection, unless the employee to be so assigned has been advised of

(a) the refusal by another employee;

(b) the reason for the refusal; and

(c) the employee's rights pursuant to Section 43. 1996, c. 7, s. 44.

DISCRIMINATORY ACTION

Prohibition of "discriminatory action"

45 **(1)** In this Section and in Section 46, "discriminatory action" means an action that adversely affects an employee with respect to terms or conditions of employment or any opportunity for employment or promotion and includes dismissal, layoff, suspension, demotion, transfer of job or location, change in hours of work, coercion, intimidation, imposition of any discipline, reprimand or other penalty including reduction in wages, salary or other benefits, or the discontinuation or elimination of the job of the employee.

(2) No employer or union shall take, or threaten to take, discriminatory action against an employee because the employee has acted in compliance with this Act or the regulations or an order or direction made thereunder or has sought the enforcement of this Act or the regulations or, without limiting the generality of the foregoing, because

(a) of the participation of the employee in, or association with, a committee or the employee has sought the establishment of a committee or performed functions as a committee member;

(b) of the association of the employee with a representative or the employee has sought the selection of a representative or performed functions as a representative;

(c) the employee has refused to work pursuant to subsection 43(1);

(d) the employee has sought access to information to which the employee is entitled by this Act or the regulations, or has been assigned the role of observer pursuant to Section 42;

(e) the employee has testified or is about to testify in any proceeding or inquiry pursuant to this Act or the regulations; or

(f) the employee has given information to the committee, a representative, an officer or other person concerned with the administration of this Act or the regulations with respect to the health and safety of employees at the workplace,

unless the employer or union, as the case may be, establishes that such action is solely motivated by legitimate business reasons.

(3) On an inquiry into a complaint pursuant to Section 46 alleging that there has been a failure by an employer or a union to comply with subsection (2), the burden of proving that there has been no such failure is upon the employer or the union, as the case may be. 1996, c. 7, s. 45.

Right to make complaint or file grievance

46 **(1)** An employee who complains that

(a) an employer has failed to pay wages, salary, pay or a benefit entitlement required pursuant to

(i) subsection 30(6), 33(5), 42(1), 43(4), 43(6), 43(7) or 50(8), or

(ii) the regulations; or

(b) an employer or a union has taken, or threatened to take, discriminatory action contrary to subsection 45(2),

may

(c) where the employee is not subject to a collective agreement under which the employee is entitled to file a grievance, within thirty days, make a complaint in writing to an officer; or

(d) where the employee is subject to a collective agreement under which the employee is entitled to file a grievance,

(i) have the complaint dealt with by final and binding arbitration under the collective agreement, or

(ii) within thirty days, make a complaint in writing to an officer, if an arbitrator has not seized jurisdiction over the matter under the collective agreement, in which case the matter shall be dealt with by the arbitrator under the collective agreement.

(2) Where an officer receives a complaint pursuant to subsection (1), the officer shall investigate the complaint and

(a) issue an order specifying the provision of this Act or the regulations that has been contravened; or

(b) determine that there are no grounds upon which to issue an order, and so notify the complainant.

(3) Where the officer determines that an employer has failed to pay wages, salary, pay or a benefit entitlement required by a provision referred to in clause (1)(a), the officer's order issued pursuant to clause (2)(a) shall require, by a specified date,

(a) the employer to pay the wages, salary, pay or other benefits required by the provision referred to in clause (1)(a); or

(b) the employer or the union to do the things that, in the opinion of the officer, are necessary to secure compliance with this Act and the regulations.

(4) Where the officer determines that discriminatory action has been taken or threatened against an employee contrary to subsection 45(2), the officer's order issued pursuant to clause (2)(a) shall require, by a specified date,

(a) the employer to reinstate the employee pursuant to the same terms and conditions under which the employee was formerly employed;

(b) the employer to pay any wages, salary, pay or other benefits that the employee would have earned but for the discriminatory action;

(c) that any reprimand or other references to the matter in the employer's records on the employee be removed;

(d) the reinstatement of the employee to the union and the payment by the union to the employee of any wages, salary, pay or other benefits that the employee would have earned but for the discriminatory action; or

(e) the employer or the union to do the things that, in the opinion of the officer, are necessary to secure compliance with this Act and the regulations.

(5) Where an order or decision of an officer made pursuant to clause (2)(a) is not appealed, the decision of the officer is final and binding. 1996, c. 7, s. 46; 2009, c. 24, s. 1.

NOTE - Chapter 24 of the Acts of 2009 provides in part as follows:

> 6 Where a complaint regarding discriminatory action is commenced pursuant to the Occupational Health and Safety Act before the coming into force of this Act, the provisions of the Occupational Health and Safety Act respecting appeals apply to that complaint as if this Act had not been enacted.

Chapter 24 came into force on February 23, 2010.

Powers of officers

47 For the purpose of ensuring compliance with this Act and the regulations and any order made thereunder, an officer may

(a) at a reasonable hour of the day or night enter and inspect a workplace, conduct tests and make such examinations as the officer considers necessary or advisable;

(b) require the production of records, drawings, specifications, books, plans or other documents in the possession of the employer that relate to the workplace or the health and safety of employees or other persons at the workplace and remove them temporarily for the purpose of making copies;

(c) require the production of documents or records that may be relevant to the investigation of a complaint pursuant to subsection 46(1), and remove them temporarily for the purpose of making copies;

(d) take photographs or recordings of the workplace and any activity taking place in the workplace;

(e) make any examination, investigation or inquiry as the officer considers necessary to ascertain whether there is compliance with this Act and the regulations and any order made under them;

(f) inspect, take samples and conduct tests of samples, including tests in which a sample is destroyed, of any material, product, tool, equipment, machine or device being produced, used or found at the workplace for which the officer shall be responsible, except for a sample that has been destroyed, until the material, product, tool, equipment, machine or device is returned to the person being inspected;

(g) examine a person with respect to matters pursuant to this Act or the regulations;

(h) for the purposes of an investigation, inquiry or examination made by the officer pursuant to this Act or the regulations, summons to give evidence and administer an oath or affirmation to a person;

(i) in an inspection, examination, inquiry or test be accompanied and assisted by or take with the officer a person having special, expert or professional knowledge of any matter;

(j) exercise such other powers as may be necessary or incidental to the carrying out of the officer's functions pursuant to this Act or the regulations. 1996, c. 7, s. 47.

Powers of peace officer under Summary Proceedings Act

48 While acting under the authority of this Act, an officer has and may exercise, in any part of the Province, all the powers, authorities and immunities of a peace officer under the *Summary Proceedings Act*. 2010, c. 66, s. 11.

Powers of a peace officer under Criminal Code

49 While acting under the authority of this Act, an officer has and may exercise, in any part of the Province, all the powers, authorities and immunities of a peace officer under the *Criminal Code* (Canada). 1996, c. 7, s. 49.

Accompaniment during inspections

50 **(1)** For the purpose of this Section, "inspection" means a physical inspection of a workplace, or any part or parts of a workplace, pursuant to the powers conferred upon an officer pursuant to Section 47.

(2) Where an officer conducts an inspection,

(a) the employer shall give the representative or an employee member of the committee, if any; and

(b) a representative of the employer shall have,

the opportunity to accompany the officer during the officer's inspection.

(3) Where there is no committee member representing employees or representative available, the officer may select one or more employees who shall accompany the officer during the officer's inspection.

(4) Where a representative or employee member of the committee is unavailable to accompany the officer during the officer's inspection, the officer shall endeavour to consult with a reasonable number of employees during the inspection.

(5) For greater certainty, where

(a) a person referred to in clause (2)(a) or (b) is unavailable to accompany an officer during the officer's inspection; and

(b) in the officer's opinion it is necessary to proceed with the inspection without accompaniment,

the officer may conduct the inspection without accompaniment.

(6) Notwithstanding subsections (2) and (3) and subject to subsection (7), an officer may question any person who is or was in a workplace either separate and apart from another person or in the presence of any other person regarding anything that is or may be relevant to the officer's inspection, examination, investigation, inquiry or test.

(7) The individual who is questioned pursuant to subsection (6) may request to be accompanied and may be accompanied by another person during the questioning.

(8) Subject to subsection 43(4), time spent by a committee member, representative or employee in accompanying or consulting with an officer during an inspection is deemed to be work time for which the committee member, representative or employee shall be paid by the employer at the applicable rate. 1996, c. 7, s. 50.

Power to issue stop orders

51 Where an officer determines that any device, equipment, machine, material or thing to be used by an employee or self-employed person

(a) is unsafe; or

(b) does not comply with the standards prescribed by this Act or the regulations,

the officer may order the supplier or any other person to stop selling, renting, leasing or otherwise supplying the device, equipment, machine, material or thing to any employer, employee or self-employed person. 1996, c. 7, s. 51.

Power to require reports, assessments and tests

52 Where

(a) an officer determines that there may be a risk to health or safety; and

(b) an employer, owner, contractor or constructor fails to establish that it would not be reasonably practicable to carry out the order,

the officer may order, at the expense of the employer, owner, contractor or constructor that the employer, owner, contractor or constructor, as the case may be,

(c) obtain a report or assessment from a person who possesses such special expert or professional knowledge or qualifications as are specified by the officer for the purpose of determining whether any biological, chemical or physical agent, material, equipment, machine, device, article, thing or procedure, in or about a workplace, conforms with this Act or the regulations or good professional practice; and

(d) cause any tests necessary to the production of the report or assessment to be conducted or taken. 1996, c. 7, s. 52.

Prohibition against disclosure of certain information

53 Except in accordance with this Act and the regulations, a person who, at the request of an officer, makes an examination, inquiry or a test pursuant to clause 47(i) shall not publish, disclose or communicate to a person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred pursuant to this Act or the regulations, and, for greater certainty, subsection 61(3) applies. 1996, c. 7, s. 53.

Service of notice of decision and right to appeal

54 Where

(a) an officer conducts an investigation of a work refusal by an employee pursuant to subsection 43(1) and the employee or employer is not satisfied with the advice provided by the officer or the failure to provide advice; or

(b) a complaint of an alleged contravention of this Act or the regulations is investigated by an officer and the officer does not issue an order that, in the opinion of the complainant, is necessary for the health or safety of persons at the workplace,

and the employee, employer or complainant so requests, the officer shall serve the employee, employer or complainant, as the case may be, in writing, with notice of the officer's decision and, where the employee, employer or complainant is an aggrieved person, the employee, employer or complainant may appeal the decision pursuant to Section 69. 1996, c. 7, s. 54; 2013, c. 41, s. 4.

Orders and consequences of orders

55 **(1)** An officer may give an order orally or in writing to a person for the carrying out of any matter or thing regulated, controlled or required by this Act or the regulations, and may require that the order be carried out within such time as the officer specifies.

(2) Where an officer makes an oral order pursuant to subsection (1), the officer shall confirm the oral order in writing.

(3) For greater certainty, an oral order is effective pursuant to this Act before it is confirmed in writing.

(4) Where an officer makes an order pursuant to subsection (1) and finds that the matter or thing referred to therein is a source of danger or a hazard to the health or safety of a person at the workplace, the officer may order that

(a) any place, device, equipment, machine, material or thing not be used until the order is complied with;

(b) work at the workplace or any part of the workplace stop until the order to stop work is withdrawn or cancelled by an officer;

(c) the workplace or any part of the workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access thereto until the danger or hazard is removed.

(5) Where an order is made pursuant to clause (4)(c), no employer or supervisor shall require or permit an employee to enter the workplace or part of the workplace that is the subject of the order except for the purpose of doing work that is necessary or required to remove the danger or the hazard and only where the employee is protected from the danger or the hazard.

(6) Where an officer issues an order pursuant to this Section, the officer may affix to the workplace or to any device, equipment, machine, material or thing a copy or notice of the order and no person except an officer shall remove the copy or notice unless authorized to do so by an officer. 1996, c. 7, s. 55.

Compliance notices and determination of compliance

56 **(1)** Where an officer makes an order pursuant to this Act or the regulations, unless the officer records in the order that compliance with the order was achieved before the officer left the workplace, the person against whom an order is made shall submit to the officer a compliance notice within the time specified in the order.

(2) Where a compliance notice is required pursuant to subsection (1), the officer shall specify in the order the time within which the person against whom the order is made shall submit the compliance notice to the officer.

(3) Notwithstanding the submission of a compliance notice, a person against whom an order is made achieves compliance with an order made pursuant to this Act or the regulations when an officer determines that compliance is achieved. 1996, c. 7, s. 56.

Prohibition against interference with officer

57 **(1)** No person shall hinder, obstruct, molest or interfere with an officer in the exercise of a power or the performance of a duty pursuant to this Act or the regulations.

(2) No person shall knowingly furnish an officer with false information or neglect or refuse to furnish information required by an officer in the exercise of the officer's powers or performance of the officer's duties pursuant to this Act or the regulations.

(3) A person who

(a) wilfully delays an officer in the exercise of the officer's powers or the performance of the officer's duties pursuant to this Act or the regulations; or

(b) fails to comply with a direction or summons of an officer given pursuant to this Act or the regulations or to produce any certificate or document that the person is required by this Act or the regulations to produce,

is guilty of obstructing the officer in the exercise of the officer's powers or the performance of the officer's duties pursuant to this Act.

(4) A person shall furnish all necessary means in that person's power to facilitate any entry, inspection, examination, testing or inquiry by an officer in the exercise of the officer's powers or performance of the officer's duties pursuant to this Act or the regulations. 1996, c. 7, s. 57.

CHEMICAL SAFETY

Restriction on use of chemicals

58 Where a biological, chemical or physical agent or a 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 the Director, likely to endanger the health or safety of an employee, the Director may, by notice in writing to the employer, constructor, contractor or self-employed person, order that

(a) labelling be utilized to identify at least the presence and composition, including common or generic names, of the biological, chemical or physical agent, the risks associated with its use and the measures to be taken in case of emergency;

(b) the use, intended use, presence or manner of use be

(i) prohibited,

(ii) limited or restricted in such manner as the Director specifies,

(iii) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies; or

(c) labelling be in accordance with applicable federal and Provincial regulations. 1996, c. 7, s. 58.

Duty of employer to prepare list of chemicals

59 (1) Subject to Section 61, unless the employer has received from the Director specific written direction to the contrary and the direction has not been revoked by the Director, the employer shall prepare a list of all chemical substances regularly used, handled, produced or otherwise present at the workplace that may be a hazard to the health or safety of the employees or that are suspected by the employees of being such a hazard, and the list shall identify all chemical substances by their common or generic names where they are known to the employer.

(2) The list referred to in subsection (1) shall include the trade name and the address of the supplier and manufacturer of any chemical substance, the chemical composition or common or generic name of which is unknown to the employer.

(3) The employer shall advise the committee at the workplace or the representative, if any, of the list referred to in this Section and any amendments to the list and, where there is no committee or representative, the employer shall advise the employees, the union, if any, a self-employed person and an officer upon request by any of them. 1996, c. 7, s. 59.

Duties of suppliers and manufacturers

60 (1) A supplier or manufacturer of a chemical substance shall, at the request of the Director, provide the following information with respect to a chemical substance referred to in subsection 59(1):

(a) the ingredients and their common or generic name or names;

(b) the composition and properties;

(c) the toxicological effect of the chemical substance;

(d) the effect of exposure to the chemical substance, whether by contact, inhalation or ingestion;

(e) the protective measures used or to be used regarding the chemical substance; and

(f) the emergency measures used or to be used to deal with exposure to the chemical substance.

(2) Where a supplier or manufacturer fails to provide the information referred to in subsection (1) within such time as is specified by the Director, the chemical substance for which the information has been requested is deemed to be an unsafe material and an order may be made pursuant to Section 51. 1996, c. 7, s. 60.

TRADE SECRETS

Extent of right to withhold trade secrets

61 (1) Notwithstanding anything contained in this Act or the regulations, an employer, a supplier or a chemical manufacturer may withhold trade secrets or information that might disclose a trade secret and the identity of a specific chemical, including the chemical name and other specific identification of a hazardous chemical, provided that the specific chemical identity is made available to health professionals in accordance with the procedures established by regulations made pursuant to this Act.

(2) Where a treating physician or nurse determines that

(a) a medical emergency exists; and

(b) the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment,

an employer, a supplier or a chemical manufacturer shall immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse regardless of the existence of a written statement of need or a confidentiality agreement, but the employer, supplier or chemical manufacturer may require a written statement of need and confidentiality agreement in accordance with regulations made pursuant to this Act as soon as circumstances permit.

(3) Notwithstanding Section 35, no person shall publish, disclose or communicate to a person a secret manufacturing process or trade secret acquired, furnished, obtained or received pursuant to this Act or the regulations. 1996, c. 7, s. 61.

MEDICAL INFORMATION

Disclosure of medical information

62 (1) Notwithstanding Section 35, no person shall disclose information obtained in a medical examination, test, X-ray or hospital record of an employee made, taken or provided pursuant to this Act except in a form calculated to prevent the information from being identified with a particular person or case or with the permission of the employee.

(2) No person to whom information is communicated in confidence pursuant to this Act or the regulations

(a) shall divulge the information, except in accordance with this Act and the regulations;

(b) is competent or compellable to divulge the information before a court or other tribunal or in any other proceeding. 1996, c. 7, s. 62.

ACCIDENTS

Notice of accident at the workplace

63 **(1)** The employer shall send written notice to the Director

(a) of a fire or accident at the workplace that occasions serious injury to an employee, within seven days of its occurrence;

(b) of an accidental explosion at the workplace, whether any person is injured or not, within twenty-four hours of its occurrence; and

(c) where at the workplace a person is killed from any cause or is injured from any cause in a manner likely to prove fatal, within twenty-four hours of the occurrence of the death or injury.

(2) A true copy of the notice of accident required to be given by an employer to the Workers' Compensation Board, pursuant to the *Workers' Compensation Act*, may be delivered or mailed to the Director as sufficient notice pursuant to this Section.

(3) Where a notice is required to be sent to the Director pursuant to this Section, the employer shall furnish the committee or representative at the workplace, if any, with a copy of the notice. 1996, c. 7, s. 63; 2010, c. 66, s. 12.

Disturbance of accident scene

64 Except as otherwise directed by an officer, no person shall disturb the scene of an accident that results in serious injury or death except as is necessary to

(a) attend to persons injured or killed;

(b) prevent further injuries; or

(c) protect property that is endangered as a result of the accident. 1996, c. 7, s. 64.

Duty to disclose accident information

65 Every person present at an accident when it occurred or who has any information relating to the accident shall, upon the request of an officer, provide to the officer such information respecting the accident as the officer requests. 1996, c. 7, s. 65.

CODE OF PRACTICE

Power to require code of practice

66 **(1)** The Director may, in writing, require an employer to establish a code of practice or adopt a code of practice specified by the Director.

(2) A code of practice established or adopted pursuant to subsection (1) may be revised or required to be revised from time to time by the Director. 1996, c. 7, s. 66.

APPEALS

Review of order or decision

67 **(1)** For the purpose of this Section and subsection 69(2), "alter" means vary, revoke or suspend the order or decision of an officer or make any order or decision that an officer may make under this Act or the regulations.

(2) Subject to the regulations, the Director may

(a) on the Director's own motion, review an order or decision of an officer; and

(b) by order, alter an order or decision of an officer after first consulting with the officer.

(3) When reviewing an order or decision of an officer, the Director may consider new information that was not available to the officer when the officer made the order or decision.

(4) The Director is not disqualified from reviewing an order or decision by reason only that the Director, in the course of performing the Director's powers, duties or functions pursuant to this Act, receives information regarding or communicates with a person concerning the matter to which the order or decision relates.

(5) An order of the Director made pursuant to clause (2)(b) that is not appealed pursuant to subsection 69(1) is final and binding.

(6) Subject to the regulations, where the Director alters an order or decision of an officer after reviewing it, the Director shall provide a copy of the Director's order to

(a) the employer;

(b) the person to whom the officer's order or decision was issued;

(c) the Board, if the Director's order is issued after the filing of a notice of appeal under subsection 69(2); and

(d) an aggrieved person, other than a person referred to in clauses (a) and (b), who has filed a notice of appeal, if the Director's order is issued after the filing of a notice of appeal under subsection 69(2),

and the employer shall communicate the order in accordance with subsection 39(1). 2013, c. 41, s. 5.

67A *repealed 2013, c. 41, s. 5.*

Labour Board

68 **(1)** The Board shall hear all appeals filed under this Act and the regulations.

(2) *repealed 2013, c. 41, s. 6.*

(3) Persons appointed to a panel of the Board constituted in accordance with subsection (1) must have knowledge and experience in matters of occupational health and safety.

(4) to **(8)** *repealed 2010, c. 37, s. 120.*

(9) The Director has standing as a party in any case that is appealed to the Board pursuant to this Act or the regulations.

(10) and **(11)** *repealed 2010, c. 37, s. 120.*

1996, c. 7, s. 68; 2009, c. 24, s. 4; 2010, c. 37, s. 120; 2010, c. 66, s. 14; 2013, c. 41, s. 6.

Right to appeal and consequences of appeal

69 **(1)** Subject to the regulations and subsection (2), an aggrieved person may appeal

(a) an order made by an officer pursuant to this Act or the regulations;

(b) the decision of an officer not to issue an order;

(c) the decision of an officer to advise an employee to return to work or the decision to provide no advice, pursuant to clause 43(1)(c);

(d) an order made by the Director pursuant to this Act or the regulations;

(e) any decision for which a right of appeal is provided in the regulations.

(2) Where an order or decision of an officer is appealed to the Board and the Director subsequently alters the decision in accordance with subsection 67(2), the appeal of the order or decision of the officer is terminated.

(2A) Subject to the regulations, an appeal pursuant to subsection (1) is initiated by filing a notice of appeal with the Board within thirty days after the order or decision is served on the recipient.

(3) Subject to the regulations, a notice of appeal filed pursuant to subsection (2) shall

(a) identify and state the order or decision appealed from;

(b) set out the grounds of the appeal and the relief requested, including any request for the suspension of all or a portion of the order or decision appealed from; and

(c) include any other information required pursuant to the regulations.

(4) Subject to the regulations, where the aggrieved person who appeals pursuant to subsection (1) has sufficient authority in the workplace to ensure that the notice of appeal is posted, the aggrieved person shall post a copy of the notice and, where the aggrieved person does not have such authority, the aggrieved person shall serve a copy of the notice on the employer and the employer shall communicate it in accordance with subsection 39(1).

(5) Subject to the regulations, on receipt of a notice of appeal,

(a) the Board shall forthwith provide a copy of the notice of appeal to the Director; and

(b) the Board shall hold a hearing, either orally or by way of written submissions, that provides any aggrieved persons who have so requested the opportunity to present evidence and make representations, in accordance with the regulations.

(6) Subject to the regulations, the Board may, by order, confirm, vary, revoke or suspend the order or decision appealed from or make any order that an officer is empowered to make pursuant to this Act.

(7) Subject to subsection (8) and the regulations, an appeal of an order or decision pursuant to subsection (1) does not suspend the operation of the order or decision.

(8) Subsection (7) does not apply to an appeal of an order of an officer or the Director regarding a provision referred to in subsection 46(1).

(9) Notwithstanding subsection (7) but subject to the regulations, the Board may order the suspension of the operation of an order or decision until the appeal is disposed of.

(10) Subject to the regulations, the Board shall provide a copy of its decision to

(a) the employer;

(b) the aggrieved person who appealed;

(c) any other aggrieved person who has made representations in relation to the matter appealed; and

(d) the Director,

and the employer shall communicate the decision in accordance with subsection 39(1). 1996, c. 7, s. 69; 2007, c. 14, s. 7; 2009, c. 24, s. 5; 2010, c. 37, s. 121; 2010, c. 66, s. 15; 2011, c. 24, s. 5; 2013, c. 41, s. 7.

Appeals may be heard together

69A Subject to the regulations, where an aggrieved person has more than one appeal made pursuant to the Act or the regulations pending before the Board, the Board may hear the appeals together but shall render a separate decision for each appeal. 2013, c. 41, s. 8.

Jurisdiction of Board and court review

70 **(1)** Subject to subsection (2), the Board has exclusive jurisdiction to determine all questions of

(a) law respecting this Act;

(b) fact; and

(c) mixed law and fact,

that arise in any matter before it, and a decision of the Board is final and binding and not open to review except for error of law or jurisdiction.

(2) The review of a decision of the Board shall be conducted

(a) by the Nova Scotia Court of Appeal, and only with leave of that Court; and

(b) with recognition that a panel of the Board is constituted ~~is established~~, for the purpose of this Act, as an expert body.

(3) The Director has standing as a party in a review conducted pursuant to subsection (2). 1996, c. 7, s. 70; 2010, c. 37, s. 122.

ENFORCEMENT

Registration of decision or order with Supreme Court

71 **(1)** A final decision or order of an arbitrator, an officer, the Director or the Board regarding a claim arising from subsection 30(6), 33(5), 42(1), 43(4), 43(6), 43(7), 45(2) or 50(8) or subclause 46(1)(a)(ii) may, for the purpose of enforcement thereof, be registered with the Supreme Court of Nova Scotia and shall be enforced in the same manner as a judgment of that Court.

(2) To register a final decision or final order referred to in subsection (1) with the Supreme Court of Nova Scotia, the Director may make a certified

copy of the decision or order, upon which shall be made the following endorsement, signed by the Director:

Register the within with the Supreme Court of Nova Scotia.

Dated this . . . . . day of . . . . . , 19.....

. . . . . .
Director

(3) The Director may forward the certified copy referred to in subsection (2), so endorsed, to a prothonotary of the Supreme Court of Nova Scotia who shall, on receipt of the certified copy, enter it as a record and it shall thereupon be registered with the Supreme Court and enforceable as a judgment of that Court.

(4) Where a decision or order referred to in subsection (1) is registered with the Supreme Court of Nova Scotia, a subsequent decision or order rescinding or varying the first-mentioned decision or order may, in the same manner, be registered with the Supreme Court and enforced in the same manner as a judgment of the Supreme Court. 1996, c. 7, s. 71; 2010, c. 37, s. 123.

Enforcement of final decision or order

72 **(1)** The Director may request the Director of Labour Standards to enforce a final decision or order of an officer, the Director or the Board regarding a complaint that an employer has failed to pay wages, salary, pay or a benefit entitlement required pursuant to subsection 30(6), 33(5), 42(1), 43(4), 43(6), 43(7), 45(2) or 50(8) or subclause 46(1)(a)(ii).

(2) A decision or order referred to in subsection (1) shall, for the purpose of enforcement pursuant to subsection (1), be made an order of the Board pursuant to the *Labour Standards Code* and may be enforced in the same manner as an order of the Labour Standards Tribunal may be enforced.

(3) To make a final decision or order an order of the Board pursuant to the *Labour Standards Code*, the Director shall make a certified copy of the decision or order, upon which shall be made the following endorsement, signed by the Director:

Make the within an order of the Labour Board.

Dated this . . . . . day of . . . . . , 19.....

. . . . . .
Director

and the Director shall forward the certified copy, so endorsed, to the Director of Labour Standards and the Board.

(4) The Director of Labour Standards may enforce a final decision or order referred to in subsection (1) as if the decision or order were an order made by the Board under Section 26 of the *Labour Standards Code* and, for greater

certainty, Sections 87, 88, 89A, 90 and 90A of the *Labour Standards Code* apply *mutatis mutandis*.

(5) Where the Director

(a) provides the Director of Labour Standards with a certified copy of an order of an officer, the Director or the Board regarding a complaint that an employer has failed to pay wages, salary, pay or a benefit entitlement required pursuant to subsection 30(6), 33(5), 42(1), 43(4), 43(6), 43(7), 45(2) or 50(8) or subclause 46(1)(a)(ii), whether the order is final or not; and

(b) requests the Director of Labour Standards to treat the order as a complaint pursuant to Section 81 of the *Labour Standards Code*,

the Director of Labour Standards may exercise the power set out in Section 85(1) of the *Labour Standards Code* and subsections 85(2), 85(3), 85(3A) and 85(4) of the *Labour Standards Code* apply.

(6) Any money received by the Board pursuant to the *Labour Standards Code* as a result of a request made by the Director pursuant to clause 5(b) shall be held in trust by the Board for the employer concerned.

(7) Where

(a) the appeal period has expired; or

(b) any appeal has been disposed of,

whichever is later, regarding an order or decision of an officer, the Director or the Board respecting payment, by the employer to the employee, of money held in trust pursuant to subsection (6), the Board shall pay the employee from the trust money up to the amount specified in the order and the surplus, if any, shall be paid to the employer.

(8) Where a decision is made an order of the Board pursuant to the *Labour Standards Code*, a decision or order rescinding or varying the first-mentioned decision is deemed to rescind or vary the order of the Board and may be made an order of the Board in accordance with this Section. 1996, c. 7, s. 72; 2010, c. 37, s. 124.

Power to arrest

73 (1) A police officer who has reasonable and probable grounds to believe that a person is failing to comply with an order issued pursuant to subsection 55(4) may arrest the person without warrant and shall take the person before a justice as soon as practicable.

(2) A person taken before a justice pursuant to subsection (1) is entitled to an immediate hearing but, if a hearing cannot then be had, the person

shall be released from custody on giving a personal undertaking to appear to answer to the charge at such time and place as shall then be fixed by the justice.

(3) A police officer who arrests a person pursuant to subsection (1) shall promptly inform the person of the reason for the arrest and of the right to retain and instruct counsel without delay. 1996, c. 7, s. 73.

Offences and penalties

74 **(1)** A person who

(a) contravenes this Act or the regulations; or

(b) fails to comply with

(i) an order or direction made pursuant to this Act or the regulations, or

(ii) a provision of a code of practice adopted pursuant to Section 66,

is guilty of an offence and liable on summary conviction to a fine as set out in subsections (1A) and (1B), or to a term of imprisonment not exceeding two years, or to both a fine and imprisonment.

(1A) A person is liable

(a) to a fine of not more than two hundred and fifty thousand dollars; or

(b) for a second or subsequent offence, within five years from the date of conviction for a previous offence, to a fine of not more than five hundred thousand dollars.

(1B) Notwithstanding subsection (1A), where the offence resulted in a fatality, the person is liable to a fine of not more than five hundred thousand dollars.

(2) In addition to a fine imposed pursuant to subsection (1A), (1B) or (3), the court may impose a fine not exceeding twenty-five thousand dollars for each additional day during which the offence continues.

(3) Where a person is convicted of an offence pursuant to this Act and the court is satisfied that, as a result of the commission of the offence, monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine imposed pursuant to subsection (1A), (1B) or (2), a fine in an amount equal to the estimation by the court of the amount of the monetary benefits. 1996, c. 7, s. 74; 2011, c. 24, s. 6.

Powers of court on conviction

75 **(1)** Where a person is convicted of an offence pursuant to this Act[,] in addition to a fine imposed pursuant to Section 74 and~~,~~ in addition to any

other punishment that may be imposed pursuant to this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order

(a) directing the offender to publish, in the manner prescribed, the facts relating to the offence;

(b) directing the offender to pay to the Minister an amount for the purpose of occupational health and safety initiatives including, but not limited to, public education;

(c) on application by the Director made within three years after the date of conviction, directing the offender to submit to the Director such information with respect to the activities of the offender as the court considers appropriate and just in the circumstances;

(d) directing the offender to perform community service, subject to such reasonable conditions as may be imposed in the order;

(e) directing the offender to provide such bond or pay such amount of money into court as will ensure compliance with an order made pursuant to this Section;

(f) requiring the offender to comply with such other reasonable conditions as the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.

(1A) *repealed 2011, c. 24, s. 7.*

(2) Where an offender fails to comply with an order made under clause (1)(a) directing the publication of the facts relating to the offence, the Director may publish the facts in compliance with the order and recover the costs of publication from the offender.

(3) Where the court makes an order pursuant to clause(1)(b) directing the offender to pay an amount for the purpose of occupational health and safety initiatives or the Director incurs publication costs pursuant to subsection (2), the amount or costs constitutes a debt due to Her Majesty in right of the Province and may be recovered as such in a court of competent jurisdiction.

(4) An order made pursuant to subsection (1) comes into force on the day on which it is made or on such other day as the court may order and shall not continue in force for more than three years after that day. 1996, c. 7, s. 75; 2010, c. 66, s. 16; 2011, c. 24, s. 7.

Deemed act or omission of employer

76 (1) In a proceeding or prosecution against an employer pursuant to this Act or the regulations, the act or omission of a manager, a superintendent or

another person who exercises management functions for the employer is deemed to be the act or omission of the employer.

(2) Notwithstanding subsection (1), the act or omission of a manager, a superintendent or another person who exercises management functions for the employer is not the act or omission of the employer where it is proven that the employer took every precaution reasonable in the circumstances to ensure that the act or omission would not occur and the employer

(a) did not have actual knowledge of, or could not reasonably have known of, the act or omission; and

(b) did not expressly or impliedly consent to the act or omission. 1996, c. 7, s. 76.

Participation in offence

77 An officer, director, manager or agent of a corporation who directs, authorizes, assents to, acquiesces or participates in the commission of an offence pursuant to this Act is guilty of that offence. 1996, c. 7, s. 77.

Immunity from civil action

78 No action lies or shall be instituted against an officer, a committee, a member of a committee, a representative, the Director, the Board, a member of the Board or the Director of Labour Standards where that person or body is acting pursuant to the authority of this Act or the regulations for any loss or damage suffered by a person because of an act or omission done in good faith by the person or body

(a) pursuant to, or in the exercise or supposed exercise of, a power conferred by this Act or the regulations; or

(b) in the carrying out, or supposed carrying out, of a function or duty imposed by this Act or the regulations. 1996, c. 7, s. 78; 2007, c. 14, s. 7; 2010, c. 37, s. 125.

Limitation period for prosecution

79 A prosecution for an offence pursuant to this Act shall not be commenced more than two years after the later of

(a) the date on which the offence was committed; or

(b) the date on which evidence of the offence first came to the attention of an officer. 1996, c. 7, s. 79.

Analysts

80 **(1)** The Minister may appoint as an analyst any person who, in the opinion of the Minister, has the qualifications and experience to be so appointed and an analyst shall perform such functions and carry out such duties as may be determined by regulation.

(2) No document of an analyst may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the document.

(3) The party against whom a document of an analyst is produced may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination. 1996, c. 7, s. 80.

Proof of orders and other documents

81 In any proceeding or prosecution pursuant to this Act or the regulations,

(a) a copy of an order, decision, notice, report or certificate purporting to have been made or issued pursuant to this Act or the regulations and purporting to have been signed by a person authorized to make or issue the order, decision, notice, report or certificate;

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

(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 of a workplace, and purporting to be certified by an officer or an analyst;

(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 officer or an analyst;

(e) a document purporting to be signed by the Director stating that a report, request, notice or order was or was not given or received;

(f) a document purporting to be signed by a person authorized pursuant to this Act or the regulations to issue a certificate of examination or authorize a deviation, stating that on a specified day or during a specified period a person named in the document was or was not the holder of a certificate of examination or authorized for a deviation of regulations pursuant to this Act;

(g) a document setting out with reasonable particularity the conviction and sentence of a person for an offence pursuant to this Act or the regulations purporting to be signed by

(i) the person who made the conviction, or

(ii) the prothonotary or clerk of the court in which the conviction was made,

shall be admitted in evidence as *prima facie* proof of the order, decision, notice, report, certificate or document and the contents of the order, decision, notice, report,

certificate or document, without proof of the signature or official character of the person appearing to have signed the order, decision, notice, report, certificate or document, as the case may be. 1996, c. 7, s. 81; 2013, c. 41, s. 9.

REGULATIONS

Regulations

82 **(1)** The Governor in Council may make such regulations as the Governor in Council considers necessary or advisable for the purpose of this Act or to ensure the health or safety of all persons at a workplace and, without limiting the generality of the foregoing, the Governor in Council may make regulations

(a) requiring an employer or class of employers to prepare a written policy or a written program;

(b) setting out the health or safety standards to be established and complied with at workplaces or classes of workplaces;

(c) establishing conditions regarding the design, construction and use of plants or undertakings in order to protect the health and safety of employees;

(d) prescribing standards or codes for devices, equipment, machines, material and things or adopting by reference all or part of a standard or code, as the edition adopted is amended from time to time, or any change thereto, in whole or in part, with such modifications and additions as may be specified in the regulations, and providing for the prohibition of the use, sale, rental, lease or supply of any devices, equipment, machines, materials or things that do not comply with the prescribed or adopted standards or codes;

(e) prohibiting or controlling the manufacture, supply, storage, handling or use of any device, equipment, machine, chemical, biological or physical agent or material in order to protect the health or safety of employees;

(f) respecting the safe use of any device, equipment, machine, material or thing;

(g) imposing requirements regarding the testing, labelling or examination of any material that may affect the health and safety of employees;

(h) requiring the making of arrangements by employers for measuring and monitoring the atmospheric or other conditions of workplaces;

(i) requiring the use of certain protective devices, equipment or clothing by persons at a workplace or class of workplaces;

(j) requiring the making of arrangements by employers for the prevention of occupational disease and for securing the health

of employees including, but not limited to, arrangements for medical examinations and health surveys;

(k) requiring and governing medical facilities or first-aid facilities to be located at workplaces;

(l) prescribing

(i) the making of reports by committees,

(ii) procedures for the operation of committees including, but not limited to, minimum requirements for the contents of, and a retention period for, minutes and records of committees,

(iii) the activities that may be carried on by committees or representatives within the functions described in subsection 31(1) or 33(6);

(m) altering the frequency of committee meetings required pursuant to this Act;

(n) prescribing additional requirements for the training of committee members or representatives including, but not limited to, requiring employers or classes of employers to provide for and pay for the training;

(o) increasing or decreasing the period of employment to be considered in a determination of the number of persons regularly employed at a workplace;

(p) excluding any profession, employee, employer, workplace, project, owner, occupation, industry, self-employed person or dependent contractor from all or part of the application of this Act or the regulations;

(q) designating occupations as hazardous occupations;

(r) determining the amount, manner and method of payments out of the Accident Fund;

(s) defining education and research to be paid for out of the Accident Fund;

(sa) determining the manner in which payment is to be made to the Minister pursuant to clause 75(1)(b);

(t) prescribing educational institutions or classes of educational institutions for which the curricula must include instruction in the principles of occupational health and safety contained in this Act;

(u) designating agencies, divisions or parts of other departments of the Government, or any other body constituted by an enactment, and their employees, to become part of the Division;

(v) prescribing the type of information to be transferred, the form in which information shall be transferred and the frequency of transfer of the information to be exchanged between the Division and the Workers' Compensation Board;

(w) prescribing records to be kept by employers and submitted to the Division;

(x) requiring the making of reports by employers to the Division;

(y) requiring the filing of drawings, layouts and specifications;

(z) prescribing information required to be provided by owners and the manner and form of its communication;

(aa) imposing requirements on health insurers and health-care agencies to provide to the Division statistical reports regarding occurrences of injury and disease arising from employment;

(ab) prescribing procedures with respect to disclosure of information that is considered trade secrets;

(ac) prescribing confidentiality protection for trade secrets;

(ad) respecting the publication and distribution in the workplace of this Act and the regulations made pursuant to this Act;

(ada) respecting the Director's ability to review and alter an order or decision of an officer under subsection 67(2);

(ae) restricting the performance of certain tasks to persons having certain qualifications;

(af) prescribing the duties and functions of analysts;

(ag) establishing boards of examiners for the certification of occupational qualifications and providing processes for the issuance and revocation of certificates of examination;

(ah) altering the standard or processes according to which an application for a deviation from regulations must be considered pursuant to this Act;

(ai) prescribing regulations for which a deviation is not permitted pursuant to this Act;

(aj) modifying the provisions of the *Labour Standards Code* for the purposes of enforcement pursuant to this Act;

(ak) interpreting Sections 23 and 29 and subsections 33(1), (2) and (3) and 38(1) in the context of an industry, occupation, project or workplace;

(al) establishing a means of identifying the persons referred to in Section 23 and the manner of communicating the identity of the persons;

(am) enabling the adoption of a code of practice at a workplace containing one or more provisions from a regulation that would not otherwise apply to the workplace;

(an) respecting the establishment and administration of a system of administrative penalties, including, without limiting the generality of the foregoing, regulations

(i) prescribing who may impose administrative penalties,

(ii) prescribing time frames for imposing an administrative penalty,

(iii) respecting the payment of administrative penalties,

(iv) prescribing the content of a notice of administrative penalty,

(v) prescribing the dollar amount of administrative penalties,

(vi) prescribing how an administrative penalty may be revoked,

(vii) respecting the extension of the time frame for filing a notice of appeal of an order or decision made under this Act or the regulations in relation to a notice of administrative penalty,

(viii) respecting the remedies available on an appeal of an administrative penalty, and

(ix) respecting the use to be made of any funds collected through the imposition of administrative penalties, including where such funds are to be deposited or held;

(ao) respecting appeals pursuant to this Act and the regulations, including, without limiting the generality of the foregoing,

(i) who may be a party to an appeal,

(ii) limiting the amount of time available to parties to make representations at appeal hearings,

(iii) the contents of a notice of appeal,

(iv) the appeal of matters other than those permitted pursuant to this Act,

(v) the conduct and procedure of appeals generally,

(vi) respecting the effect of any defect in form or any technical irregularity in an appeal proceeding, and

(vii) the hearing of appeals together if an aggrieved person has more than one appeal made pursuant to the Act or the regulations pending before the Board;

(ap) prescribing forms for use pursuant to this Act;

(apa) respecting the effect of any defect in form or any technical irregularity that occurs in any order, decision, notice, report, certificate or other document issued pursuant to this Act and the regulations;

(aq) prescribing charges to recover the cost of services pursuant to this Act and fees in relation to appeals and deviations, certificates, licences, permits, review of documents and filing of documents;

(ar) defining words or expressions used but not defined in this Act.

(2) Without limiting the generality of this Section, the Governor in Council may, in respect of a subsea coal mine, make regulations that the Governor in Council considers necessary or advisable to ensure the health and safety of all persons at a subsea coal mine

(a) requiring the establishment of a committee;

(b) prescribing additional functions of a committee;

(c) prescribing additional requirements for the provision of resources or information to a committee;

(d) requiring the filing or approval of drawings, layouts, specifications, plans, procedures, methods, machinery and equipment; and

(e) *repealed 2013, c. 41, s. 10.*

(f) prescribing charges to recover the cost of services pursuant to this Act and fees in relation to matters referred to in clause (d).

(3) The exercise by the Governor in Council of the authority contained in subsections (1) and (2) is regulations within the meaning of the *Regulations Act*. 1996, c. 7, s. 82; 2007, c. 14, s. 7; 2010, c. 37, s. 126; 2010, c. 66, s. 17; 2013, c. 41, s. 10.

Authorized deviation from regulations

83 **(1)** Where an application is made in writing to the Director for authorization to deviate at a workplace or workplaces from a provision of the regulations, unless the standard to be used by the Director in considering an application is altered by regulation, the Director may authorize the deviation where the Director is satisfied that the deviation affords protection for the health and safety of employ-

ees equal to or greater than the protection prescribed by the regulations from which the deviation is requested.

(2) The Director may attach such terms and conditions to an authorization of a deviation pursuant to subsection (1) as the Director considers advisable.

(3) Subsections (4) to (13) apply to an application for a deviation made pursuant to subsection (1) unless

(a) the processes required pursuant to those subsections are altered by regulation; or

(b) a notice period is reduced or eliminated pursuant to subsection (15).

(4) Where the workplace location or locations exist for which a deviation pursuant to subsection (1) is requested, unless

(a) the committee or representative at a workplace, if any; or

(b) where there is no committee or representative, all the employees at the workplace,

agree otherwise, upon applying for a deviation, the applicant for the deviation shall post a copy of the application, ensure it remains posted for at least twenty-eight days and furnish a copy to the committee or representative, if any, at the workplace.

(5) Where the workplace location or locations for which a deviation pursuant to subsection (1) is requested are not yet in existence, the applicant shall, upon applying for a deviation, publish, at the applicant's cost, a notice of the application for a deviation

(a) that contains information regarding the deviation being requested; and

(b) where it would reasonably be expected to come to the attention of persons interested in health and safety who might be affected by the decision regarding the deviation.

(6) After receiving an application for a deviation pursuant to subsection (1), the Director may conduct such consultation or give such notice of the application as the Director considers advisable.

(7) The applicant for a deviation pursuant to subsection (1) shall submit with the application, at the applicant's cost,

(a) the technical information required to enable the Director to determine the application;

(b) information with respect to the benefits and drawbacks to health and safety that might reasonably be anticipated if the deviation is authorized; and

(c) any fee prescribed by the regulations.

(8) The applicant for a deviation pursuant to subsection (1) for an existing workplace location or locations shall ensure that the information required pursuant to clauses (7)(a) and (b) is made available for examination at the applicant's workplace by the committee or representative, if any, and by the employees.

(9) The Director may make available the information required pursuant to clauses (7)(a) and (b) to any person for examination on request.

(10) A decision by the Director pursuant to subsection (1) shall

(a) not be made less then twenty-eight days following the date of the application; and

(b) be accompanied by written reasons for the decision that shall include

(i) the information considered in arriving at the decision and the rationale for the decision,

(ii) the specifics of a deviation that is authorized, including the location of the workplace or workplaces where the deviation applies, and

(iii) the details of any terms or conditions attached to the authorization of a deviation.

(11) The applicant for a deviation pursuant to subsection (1) shall ensure that

(a) a copy of the Director's decision is

(i) posted for at least seven days, or longer if additional time is necessary to enable employees at the workplace to inform themselves of the content, and

(ii) furnished to the committee or representative, if any, at the workplace; and

(b) where a deviation is authorized, a copy of the Director's decision is posted and maintained throughout the time the deviation is in effect.

(12) The Director shall provide a copy of the decision referred to in subsection (10) to anyone from whom the Director has received a written response to the application for a deviation pursuant to subsection (1).

(13) In applying a regulation for which a deviation pursuant to subsection (1) is authorized, a deviation and any terms and conditions authorized pur-

suant to this Section shall, while the deviation is in effect, be substituted for the prescription or requirement in the regulations.

(14) The Director may, at the initiative of the Director or upon application, reconsider, confirm, vary, revoke or suspend the Director's decision regarding a deviation at any time when information is produced that, had it been known when the request for the deviation was determined previously, would reasonably be expected to have resulted in a different decision from the one made at that time, and subsections (1) to (13) apply with the necessary modifications.

(15) Notwithstanding the periods of notice required pursuant to this Section, where information that was not available at the time a decision was made by the Director regarding a deviation pursuant to this Section is produced that indicates that imminent danger might result as a result of the deviation, the Director may reduce or eliminate a period of notice required pursuant to this Section. 1996, c. 7, s. 83.

TRANSITIONAL PROVISIONS

84 *repealed 2010, c. 66, s. 18.*

Enforcement under Act and substituted references

85 **(1)** Any regulation, order or direction made under the *Metalliferous Mines and Quarries Regulation Act*, the *Coal Mines Regulation Act* or the former Act or under any Act relating to occupational health and safety may be enforced as if the regulation, order or direction were made pursuant to this Act.

(2) Any reference in any Act of the Legislature or in any rule, order, regulation, by-law, ordinance or in any document whatsoever to the Occupational Safety Division of the Department of Labour and Manpower, the Occupational Health Division of the Department of Health, the Mine Safety Division of the Department of Mines and Energy or the Accident Prevention Division of the Workers' Compensation Board, whether such reference is by official name or otherwise, shall, as regards any subsequent transaction, matter or thing relating to the affairs or matters or any of them assigned to those divisions, be held and construed to be a reference to the Division, as defined in this Act. 1996, c. 7, s. 85.

EFFECTIVE DATES

Coal Mines Regulation Act repealed

86 Chapter 73 of the Revised Statutes, 1989, the *Coal Mines Regulation Act,* is repealed. 1996, c. 7, s. 86.

Metalliferous Mines and Quarries Act repealed

87 Chapter 284 of the Revised Statutes, 1989, the *Metalliferous Mines and Quarries Regulation Act,* is repealed. 1996, c. 7, s. 87.

Former Act repealed

88 The former Act is repealed. 1996, c. 7, s. 88.

Effective dates

89 **(1)** Section 22 has effect on and after July 1, 1999, or such earlier day as the Governor in Council orders and declares by proclamation.

In force - July 1, 1999

(2) Section 27 has effect on and after July 1, 1997.

(3) Section 28 has effect on and after January 1, 1998.

(4) Sections 86 and 87 come into force on such day as the Governor in Council orders and declares by proclamation.

Proclaimed - August 11, 2003
In force - November 8, 2003

(5) This Act, except for Sections 22, 27, 28, 86 and 87, has effect on and after January 1, 1997. 1996, c. 7, s. 89.