

Labour Standards Code

CHAPTER 246 OF THE REVISED STATUTES, 1989

as amended by

1991, c. 14; 2000, c. 35; 2001, c. 6, s. 110;
2003 (2nd Sess.), c. 4, ss. 1, 2; 2003 (2nd Sess.), c. 7, ss. 4-14;
2004, c. 6, ss. 15-20; 2005, c. 38, ss. 3, 4; 2006, c. 10, ss. 1-5;
2006, c. 13, ss. 8, 9; 2006, c. 32; 2007, c. 11, s. 3; 2009, c. 18;
2010, c. 37, ss. 84-116; 2011, c. 19; 2011, c. 64; 2013, c. 11;
2013, c. 35, s. 4; 2015, cc. 41, 42; 2016, c. 11; 2018, c. 1, Sch. A, s. 121



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 2004, c. 6, ss. 15-20; 2005, c. 38, ss. 3, 4; 2006, c. 10, ss. 1-5;
 2006, c. 13, ss. 8, 9; 2006, c. 32; 2007, c. 11, s. 3; 2009, c. 18;
 2010, c. 37, ss. 84-116; 2011, c. 19; 2011, c. 64; 2013, c. 11;
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An Act to Provide for a Labour Standards Code

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Short title

1 This Act may be cited as the *Labour Standards Code*. R.S., c. 246, s. 1.

INTERPRETATION

Interpretation

2 In this Act,

(a) “Board” means the Labour Board established under the *Labour Board Act*;

(aa) “construction industry” means the on-site constructing, erecting, altering, decorating, repairing, demolishing of buildings, structures, roads, sewers, water mains, pipe-lines, tunnels, shafts, bridges, wharves, piers, canals or other works;

(b) “Director” means the Director of Labour Standards or other officer of the Department of Labour and Advanced Education designated by the Minister to administer this Act, and any person acting under the control and direction of the person designated by the Minister to administer this Act and includes, for the purpose of any activities prescribed by regulation in relation to licensing and registration under this Act and the regulations, any government department or agency of the Province prescribed by regulation and any person acting under the control and direction of the department or agency so prescribed;

(c) “discharge” means a termination of employment by an employer other than a lay-off or suspension;

(d) “employee” means a person employed to do work and includes a deceased employee but does not include a teacher employed by Her Majesty, the Minister of Education, an education entity as defined in the *Education Act*, or other employer, to teach, supervise or administer in a public school, a school established or maintained under the *Education Act* or in a school system;

(e) “employer” means a person, firm, corporation, agent, manager, representative, contractor or subcontractor having control or direction of or being responsible, directly or indirectly, for the employment of any employee;

(f) “establishment” means a place or places at or in which all or any part of a business or undertaking of an employer is or has been carried on;

(fa) “foreign worker” means an individual who is not

(i) a Canadian citizen, or

(ii) a permanent resident within the meaning of the *Immigration and Refugee Protection Act* (Canada),

and who is recruited to become employed in the Province, regardless of whether the individual becomes so employed;

(g) “forest industry” means all operations in or incidental to the production or manufacture of articles produced from wood;

(ga) “general holiday” means New Year’s Day, Good Friday, Canada Day, Labour Day, Christmas Day, the third Monday in February and a day specified as a general holiday in a regulation, and includes any day substituted for one of those days pursuant to Section 39;

(h) “industrial undertakings” includes mines, quarries and other works for the extraction of minerals from the earth, undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including ship building and the generation, transformation, transmission and distribution of electricity or motive power of any kind, and undertakings in the construction industry;

(i) “lay-off” means temporary or indefinite termination of employment because of lack of work and includes a temporary, indefinite or permanent termination of employment because of the elimination of a position, and “laid off” has a corresponding meaning;

(ia) “licensee” means a person who holds a licence under this Act;

(j) “minimum wage” means the amount of wages fixed by order of the Governor in Council pursuant to Section 50;

(k) *repealed 1991, c. 14, s. 1.*

(l) “Minister” means the Minister of Labour and Advanced Education;

(m) “officer” means a person appointed for the purposes of this Act and who is under the control and direction of the Minister;

(n) “pay” means wages due or paid to an employee and compensation paid or due to an employee under Sections 32, 33 and 34, but does not include deductions from wages that may lawfully be made by an employer;

(o) “period of employment” means the period of time from the last hiring of an employee by an employer to his discharge by that employer and includes any period on lay-off or suspension of less than twelve consecutive months and “employed” has a corresponding meaning;

(oa) “recruitment” means, for the purpose of this Act, the following activities, whether or not they are provided for a fee:

(i) finding or attempting to find an individual for employment,

(ii) finding or attempting to find employment for an individual,

(iii) assisting another person in attempting to do the things described in subclause (i) or (ii), or

- (iv) referring an individual to another person to do any of the things described in subclause (i) or (ii);
- (p) “regulations” means regulations made by the Governor in Council;
- (pa) “retail business” means the selling or offering for sale of goods or services by retail;
- (q) “sector” has the same meaning as in the *Trade Union Act*;
- (r) “suspension” means a temporary interruption of employment, other than a lay-off at the direction of the employer, and “suspend” and “suspended” have corresponding meanings, unless the context otherwise requires;
- (s) *repealed 2010, c. 37, s. 84.*
- (sa) “uniform closing day” means a uniform closing day as defined in the *Retail Business Uniform Closing Day Act*;
- (t) “unpaid pay” means any vacation or pay in lieu of vacation which has not been paid in accordance with Sections 32, 33 and 34 and wages which have not been paid in accordance with Sections 79 and 80; and
- (u) “wage” or “wages” includes salaries, commissions and compensation in any form for work or services measured by time, piece or otherwise, and includes compensation under Sections 37, 40, 41, 46, 50, 57, 58, 72 and 74, but does not include vacation pay and pay in lieu of vacation under Sections 32, 33 or 34 or gratuities. R.S., c. 246, s. 2; 1991, c. 14, s. 1; 2003 (2nd Sess.), c. 7, s. 4; 2006, c. 10, s. 1; 2010, c. 37, s. 84; 2011, c. 19, s. 1; 2016, c. 11, s. 1; 2018, c. 1, Sch. A, s. 121.

POWERS AND DUTIES OF THE MINISTER

Powers and duties of Minister

3 The Minister of Labour and Advanced Education is charged with the administration of this Act and shall exercise the powers and perform the duties imposed on the Minister by this Act. R.S., c. 246, s. 3; 2010, c. 37, s. 85; 2011, c. 19, s. 2.

APPLICATION

Application of Act

4 (1) Subject to exceptions expressly provided for by other provisions of this Act, this Act applies to all matters within the legislative jurisdiction of the Province including Her Majesty in right of the Province and the employees of Her Majesty.

(2) The Governor in Council may by regulation expressly exempt the following persons from application of this Act or any Section or Sections of this Act:

- (a) members of named professions;

(b) those who are engaged in classes of work designated in the regulations. R.S., c. 246, s. 4.

Application of former Act

5 Under no circumstances shall Chapter 322 of the Revised Statutes, 1967, have at any time applied or be deemed to have applied in respect of any teacher employed by an employer as defined in clause (c) of Section 1 of said Chapter 322 to teach, supervise or administer in a public school, a school established or maintained under the *Education Act* or in a school system. R.S., c. 246, s. 5.

Effect of Act

6 This Act applies notwithstanding any other law or any custom, contract or arrangement, whether made before, on or after the first day of February, 1973, but nothing in this Act affects the rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to him than his rights or benefits under this Act. R.S., c. 246, s. 6.

GENERAL

Regulations

7 The Governor in Council may make regulations concerning any matter or thing which appears to him necessary or advisable for the effectual working of this Act and, without limiting the generality of the foregoing, may

(a) designate professions or classes of work as professions or classes of work to which this Act, or any Section of this Act, does not apply;

(b) exempt specified employers or classes of employers from the obligation to grant pregnancy leave pursuant to Section 59;

(ba) exempt specified employers or classes of employers from the obligation to grant parental leave pursuant to Section 59B;

(bb) exempt specified employers or classes of employers from the obligation to grant bereavement leave pursuant to Section 60A;

(bc) exempt specified employers or classes of employers from the obligation to grant court leave pursuant to Section 60B;

(bd) prescribe classes of persons for the purpose of subclause (iv) of the definition of “family member” in clause (b) of subsection (1) of Section 60E;

(be) exempt classes of retail business from the application of Section 66A;

(bf) prescribe the time within which an employee must return to work or apply to return to work;

(bg) limit periods or classes of training as service for the purpose of Section 60H;

(bh) prescribe a circumstance for the purpose of subclause (v) of the definition of “emergency” in clause (b) of subsection (1) of Section 60I;

(bi) prescribe fees and charges to recover the cost of services pursuant to this Act;

(bj) prescribe classes of persons entitled to a leave of absence to provide care or support for a critically ill child for the purpose of clause (f) of subsection (1) of Section 60L;

(bk) prescribe classes of persons for the purpose of subclause (v) of the definition of “parent” in clause (d) of Section 60T;

(c) prohibit the employment of any child under sixteen years of age in any work or class of work pursuant to subsections (1) and (2) of Section 68;

(ca) prescribe the government department or agency of the Province that may act as the Director for the purpose of activities in relation to licensing and registration under this Act and prescribe the activities in relation to licensing and registration that may be performed by the prescribed government department or agency;

(cb) specify the information that must be kept and maintained in the records of an employer of a foreign worker;

(cc) exempt classes of individuals from the prohibition against charging or collecting a fee from an individual for

(i) finding or attempting to find employment in the Province for the individual, or

(ii) providing an individual with information about any employer who is seeking employees in the Province,

pursuant to subsection (1) of Section 89B;

(cd) specify the additional documents and records that must be prepared by a licensee and the period of time in relation to which such documents must be maintained by the licensee;

(ce) establish the procedure to be followed by the Director in declaring a letter of credit, cash or other security provided by a licensee under this Act, forfeited, and in applying the proceeds to reduce or satisfy the amount recoverable by order of the Director;

(cf) exempt persons or classes of persons from the requirement for licensing of persons engaged in foreign worker recruitment;

(cg) specify the fees, and the terms, conditions and amount in relation to security requirements, for a licence application and a licence renewal application;

(ch) establish requirements for a licence application and a licence renewal application and qualifications and requirements for the issuance of a licence;

- (ci) specify prohibited activities for the holder of a licence to recruit foreign workers;
- (cj) specify terms and conditions to which a licence may be subject;
- (ck) establish the procedure to be followed in exercise of the right to be heard in relation to the issuance or renewal of a licence, the application of conditions to a licence or the proposed cancellation of a licence;
- (cl) exempt persons or classes of persons from the requirement for registration in relation to employers of foreign workers;
- (cm) establish requirements for a registration application and a registration renewal application;
- (cn) specify the period of validity of a registration pursuant to subsection (1) of Section 89V;
- (co) specify prohibited activities for an employer registered to employ foreign workers;
- (cp) establish the procedure to be followed in exercise of the right to be heard in relation to a registration or renewal of a registration, or the proposed cancellation of a registration;
- (cq) establish the procedure to be followed on appeal from a refusal to issue or renew a licence or registration, a cancellation of a licence or registration or the application of conditions to a licence;
- (d) establish, in accordance with subsection (3) of Section 72, the circumstances in which a lay-off is excepted from the provisions of subsections (1) and (2) of Section 72;
- (e) exempt any employer or class of employers from the notice requirements of subsection (1) of Section 72;
- (f) exempt any employer or class of employers from the notice requirements of subsection (2) of Section 72;
- (g) establish the amount, terms and conditions, and administration and management of any payment or bond required by the Board under Section 84;
- (ga) define any word or expression used but not defined in this Act;
- (h) require the use in industrial undertakings by employers of mechanical or other devices for ascertaining or assisting in ascertaining or for recording the time worked by employees and other employment information as is in his opinion convenient for the administration of this Act;
- (i) determine the procedure to be followed and the forms to be used in any proceeding under this Act, except where this Act provides that a complaint may be made in any form. R.S., c. 246, s. 7; 1991, c. 14, s. 2; 2003 (2nd Sess.), c. 4, s. 1; 2006, c. 10, s. 2; 2006, c. 13, s. 8; 2009, c. 18, s. 1; 2010, c. 37, s. 86; 2011, c. 19, s. 3; 2013, c. 11, s. 2; 2016, c. 11, s. 2.

Service of document

8 (1) For the purpose of this Act, and of any proceedings taken thereunder, any notice or other communication sent through Her Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

(2) A document may be served or delivered for the purpose of this Act or any proceedings thereunder by personal service or by sending by registered mail to the last known address of the addressee, or in any other manner prescribed by regulation. R.S., c. 246, s. 8.

Certificate as prima facie evidence

9 A certificate purporting to be signed by the Minister or his Deputy or by an official in his Department stating that a report, request or notice was or was not received or given by the Minister or by an official in his Department pursuant to this Act, and if so received or given, the date upon which it was so received or given, is *prima facie* evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the certificate. R.S., c. 246, s. 9.

Irregularity

10 No proceedings under this Act are invalid by reason of any defect in form or any technical irregularity. R.S., c. 246, s. 10.

Related business

11 Where, in the opinion of the Director or the Board, associated or related activities or businesses are carried on, concurrently or consecutively, by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the Director or the Board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act. R.S., c. 246, s. 11; 1991, c. 14, s. 3; 2010, c. 37, s. 87.

Transfer of business

12 If an activity, business, trade or undertaking is disposed of, transferred or sold in any manner or amalgamated, whether by agreement, will, instrument, transfer, including transfer of shares, or by operation of law, the period of employment of an employee of the activity, business, trade or undertaking at the time of such disposition, transfer, sale or amalgamation, shall be deemed to have been employment with the disposee, transferee, purchaser or amalgamation and the continuity of employment is not broken. R.S., c. 246, s. 12.

13 *repealed 2010, c. 37, s. 88.*

Personnel

14 There may be employed any officers, clerks and employees who are necessary for the administration of this Act. R.S., c. 246, s. 14.

Limited release of personal information

14A For the purpose of administering and enforcing this Act and the regulations, the Director may provide information collected or obtained under this Act and the regulations, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*, to a department of the Government or a department or agency of the Government of Canada or of another province of Canada. 2011, c. 19, s. 4.

RECORDS

Preparation and retention of records

15 (1) Every employer shall keep and maintain, at the employer's principal place of business for at least thirty-six months after the work was performed, records from which it may be ascertained whether or not the employer is complying with this Act, including

- (a) each employee's name and address;
- (b) each employee's date of birth;
- (c) each employee's social insurance number;
- (d) the date that each employee's employment began;
- (e) the date that each employee's employment ended, if applicable;
- (f) the number of hours worked by each employee each day and each week;
- (g) each employee's wage rate and gross earnings for each pay period;
- (h) the amount of each deduction from the gross earnings of each employee for each pay period and the purpose for which each deduction is made;
- (i) the net amount of money paid to each employee for each pay period;
- (j) any period during which an employee was on vacation;
- (k) any vacation pay due or paid to an employee;
- (l) any general holiday pay due or paid to an employee;
- (m) any period during which an employee was on a leave of absence and the reason for the leave of absence;
- (n) any documents or certificates relating to a leave of absence of an employee;

(o) the dates of all discharges or layoffs of an employee and the dates of all notices thereof; and

(p) in the case of a person who is recruiting an individual for employment with the person, or who has done so,

(i) the name and address of any person to whom the person recruiting the individual made a payment for engaging in the recruitment,

(ii) the date and amount of the payment, and

(iii) such other information as may be prescribed,

and shall produce the same or a certified true copy thereof to the Director upon request of the Director.

(1A) An employer may provide a pay statement to an employee electronically if the employer provides to the employee, through the employee's place of employment,

(a) confidential access to the electronic pay statement; and

(b) a means of making a paper copy of the electronic pay statement.

(2) A licensee or a person whose licence has been suspended or cancelled shall

(a) prepare complete and accurate financial records of its operations in the Province and maintain them for at least three years after the records are made; and

(b) prepare other records and documents described in the regulations and maintain them for the period specified in the regulations. R.S., c. 246, s. 15; 1991, c. 14, s. 4; 2011, c. 19, s. 5; 2016, c. 11, s. 3.

Inspection of records

16 The Director or an officer may

(a) inspect and examine all registers, books, payrolls and other records of any employer or recruiter that in any way relate to

(i) the employment of employees, or

(ii) the recruitment of individuals, including foreign workers;

(b) require an employer or recruiter to verify by statutory declaration any entry in any such register, book, payroll or other record;

(c) take extracts from or make copies of any such register, book, payroll or other record;

(d) at all reasonable times enter any establishment, inspect any place where he has reason to believe any person is or was employed, or any

individual was or is being recruited, and question any employee, or individual who is or was being recruited, during or outside working hours apart from or together with the employer or recruiter for the purpose of ascertaining whether this Act or any regulation or order made under it is being observed. R.S., c. 246, s. 16; 2011, c. 19, s. 6.

LABOUR BOARD

Constitution of Board

17 (1) to (4) *repealed 2010, c. 37, s. 89.*

(5) The Board is constituted under this Act and shall act as a panel of the Board consisting of the Chair or a vice-chair, as the chair of a panel, and two other members of the Board equally representative of employees and employers.

(5A) Notwithstanding subsection (5), where the parties to the proceeding consent, the Chair or the vice-chair shall act as a panel consisting of the Chair or the vice-chair, sitting alone, as chair of the panel.

(5B) Notwithstanding subsection (5), a panel under subsection (5A) is a quorum.

(6) Where a panel of the Board consists of more than one person, a decision of the majority of the members of the Board is the decision of the Board but, where a panel consists of the Chair or the vice-chair alone, the decision of the chair of the panel is the decision of the panel.

(7) to (10) *repealed 2011, c. 19, s. 7.*

R.S., c. 246, s. 17; 2010, c. 37, s. 89; 2011, c. 19, s. 7; 2016, c. 11, s. 4.

18 and 19 *repealed 2010, c. 37, s. 90.*

Determination by Board and appeal to court

20 (1) If in any proceeding before the Board a question arises under this Act as to whether

- (a) a person is an employer or employee;
- (b) an employer or other person is doing or has done anything prohibited by this Act,

the Board shall decide the question and the decision or order of the Board is final and conclusive and not open to question or review except as provided by subsection (2).

(2) Any party to an order or decision of the Board may, within thirty days of the mailing of the order or decision, appeal to the Nova Scotia Court of Appeal on a question of law or jurisdiction.

(3) The practice and procedure in relation to an appeal under subsection (2) are the same as upon an appeal from the Supreme Court of Nova Scotia.

(4) The Board may of its own motion state a case in writing for the opinion of the Nova Scotia Court of Appeal upon any question that, in the opinion of the Board, is a question of law.

(5) The Nova Scotia Court of Appeal shall hear and determine the question or questions of law arising thereon and remit the matter to the Board, with the opinion of the Court thereon.

(6) Costs shall not be awarded in a case stated under subsection (4).
R.S., c. 246, s. 20; 2010, c. 37, s. 91.

ADMINISTRATION

Complaint to or inquiry by Director

21 (1) Where the Director receives a complaint in any form alleging that there has been a failure to comply with this Act, he or a person designated by him shall inquire into the complaint and may endeavour to effect a settlement.

(2) Where the Director has reasonable grounds to believe that there has been a failure to comply with this Act, he or a person designated by him may inquire into the matter and endeavour to effect a settlement.

(3) Notwithstanding Section 72, where, after inquiry pursuant to subsection (1) or (2), the Director concludes that any person has contravened a provision of this Act and he has been unable to effect a settlement, or any person has contravened the terms of a settlement under this Section, the Director may, in writing, order the contravening person, or the person responsible under this Act, to

(a) do any act or thing that in the opinion of the Director constitutes full compliance with this Act;

(b) rectify an injury caused to the person injured or make compensation therefor; and

(c) for greater certainty and without limiting the generality of clauses (a) and (b), reinstate an employee who is the object of the contravention,

but where the Director concludes that a complaint under Section 81 is made out he shall order the employer to pay over to the Board by a specified date the amount of pay found to be unpaid.

(3A) Where the Director makes an order under subsection (3) in respect of a licensee, the Director may, in accordance with the regulations,

- (a) declare a letter of credit, cash or other security provided by the licensee under this Act forfeited; and
- (b) use the proceeds realized to reduce or satisfy the amount recoverable under the order.

(3B) Where the Director is unable to determine the amount recoverable because the person against whom the order is to be made has failed to

- (a) keep or maintain complete and accurate records; or
- (b) make the records available for inspection,

the Director may determine the amount to be recovered, in a reasonable and appropriate manner, by order in writing under this Section.

(3C) Subsection (3B) applies *mutatis mutandis* to the Board when acting pursuant to this Act.

(3D) The Director shall not make an order pursuant to this Section unless the failure to comply with the Act occurred within the six months preceding

- (a) the receipt of the complaint by the Director; or
- (b) the initiation of an inquiry by the Director.

(4) The Director shall, in any order made under this Section, specify the provision or provisions of this Act or the terms of any settlement which have, in his opinion, been contravened and advise the person against whom the order is made of his right to appeal to the Board.

(5) Any person against whom the Director has made an order under this Section may, within ten days after the order is served on the person, file an appeal to the Board in accordance with the regulations and, where no such appeal is filed, the Director's order is deemed to be an order of the Board for the purpose of Section 88.

(6) Notwithstanding subsection (5), the Board may, either before or after the ten days referred to in that subsection, extend the time for filing an appeal.

(7) Where, in the opinion of the Director, there has been no failure to comply with this Act or the terms of any settlement under this Section he shall so inform the complainant and advise him of his right to make a complaint to the Board and that he may wish the advice of legal counsel.

(8) The Director is not required to serve notice upon or hear any person before making an order under this Section or advising a complainant that there has been no failure to comply with this Act.

(9) Any person against whom the Director has made an order under this Section shall comply with the order unless the person has filed an appeal with the Board.

(10) Subject to the rights under subsection (4) of Section 90 of persons other than persons against whom an order of the Director has been made, an order of the Director under this Section is final and conclusive and not open to review by any court by *certiorari* or otherwise or to appeal except to the Board as provided by this Section. R.S., c. 246, s. 21; 1991, c. 14, s. 5; 2003 (2nd Sess.), c. 7, s. 5; 2010, c. 37, s. 92; 2011, c. 19, s. 8.

Parties to proceeding under Section 21

22 In any proceeding before the Board with respect to any matter arising under Section 21, including any matter arising under Section 81 or Section 81A, the parties shall be

- (a) the Director;
- (b) the person alleged by the Director to have failed to comply with this Act;
- (c) the complainant, if any; and
- (d) any other person specified by the Board upon such notice as the Board may determine, provided that at the hearing he is given an opportunity to be heard against his joinder as a party. R.S., c. 246, s. 22; 2010, c. 37, s. 93; 2011, c. 19, s. 9.

Complaint to Board

23 (1) A complaint under subsection (2) of Section 31, subsection (3) of Section 43, subsection (3) of Section 56, subsection (3) of Section 60, subsection (2) of Section 67, subsection (2) of Section 70, subsection (3) of Section 78, Section 81A or subsection (1) of Section 83 or any other complaint to the Board by a complainant who has made a complaint to the Director and is not satisfied with the result shall be in writing in the form set out in the rules of the Board governing its practice and procedure.

(2) The Board shall not proceed with any matter arising out of a complaint referred to in subsection (1) until the complainant has made a complaint in writing to the Director in the form set out in the rules of the Board and either

- (a) the Director has informed the complainant in writing that he will not entertain the complaint or that he is not proceeding with the matter; or
- (b) one month has elapsed and the complainant has not received either notice of an order by the Director under subsection (3) of Section 21 or notice that a hearing shall be held by the Board in accordance with Section 24.

(3) In any proceeding before the Board with respect to any matter arising out of a complaint referred to in subsection (1) the parties shall be

- (a) the complainant, who shall have the carriage of the complaint;
- (b) the person alleged by the complainant to have failed to comply with this Act; and
- (c) any other person specified by the Board upon such notice as the Board may determine, provided that at the hearing he is given an opportunity to be heard against his joinder as a party.

(4) The Board shall not proceed with any matter arising out of a complaint referred to in subsection (1) unless the matter to which the complaint to the Director refers occurred within the six months preceding

- (a) the receipt of that complaint by the Director; or
- (b) the initiation of an inquiry by the Director. R.S., c. 246, s. 23; 2004, c. 6, s. 15; 2010, c. 37, s. 94; 2011, c. 19, s. 10.

Hearing

24 (1) In any proceeding leading to an order or decision, the Board may, in its discretion, conduct an oral hearing or a hearing through written submissions and evidence, without receiving oral testimony.

(2) Where a person who has been duly notified of a hearing does not attend, the Board may proceed in the person's absence. 2010, c. 37, s. 95; 2011, c. 19, s. 11.

Hearings public

25 All hearings pursuant to this Act are open to the public except where the Board finds that intimate financial or personal matters or other matters may be disclosed at the hearing of a nature that, having regard to the circumstances, the desirability of avoiding their disclosure in the interests of any person affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the Board may hold the hearing concerning the matters *in camera*. R.S., c. 246, s. 25; 2010, c. 37, s. 96.

Duty of Board

- 26 (1) The Board, in determining any matter under this Act, shall
- (a) decide whether or not a party has contravened this Act;
- and
- (b) make an order in writing.

(2) Notwithstanding Section 72, where the Board decides that a party has contravened a provision of this Act the Board may order the contravening party to

- (a) do any act or thing that, in the opinion of the Board, constitutes full compliance with the provision;
- (b) rectify an injury caused to the person injured or to make compensation therefor; and
- (c) for greater certainty and without limiting the generality of clauses (a) and (b), reinstate the employee,

but where the Board decides that a complaint under Section 81 is made out the Board shall order the employer to pay over to the Board by a specified date the amount of pay found to be unpaid. R.S., c. 246, s. 26; 2003 (2nd Sess.), c. 7, s. 6; 2010, c. 37, s. 97.

Record of hearing

- 27** The record of a hearing before the Board under this Act must include
- (a) the notice of hearing;
 - (b) the complaint;
 - (c) any rulings or orders made in the course of the proceedings of the Board;
 - (ca) all documentary evidence filed with the Board;
 - (d) any written submissions received by the Board; and
 - (e) the decision and the reasons therefor. R.S., c. 246, s. 27; 2010, c. 37, s. 98.

EMPLOYEE PROTECTION

Protection of identity of complainant

28 Where a person who makes a complaint to the Director or the Board requests that his name and identity be withheld, the Director or the Board shall not disclose his name or identity to any person except where disclosure is considered by the Board to be in the public interest. R.S., c. 246, s. 28; 1991, c. 14, s. 6; 2011, c. 19, s. 12.

Employer not to discriminate if garnishment

29 An employer shall not discharge, lay off or discriminate in any other manner against any employee because garnishment proceedings have been or may be taken against that employee. R.S., c. 246, s. 29.

No discrimination against complainant, witness, etc.

- 30 (1)** An employer shall not discharge, lay off, suspend, intimidate, penalize, discipline or discriminate in any other manner against any person because
- (a) that person has made or has assisted another person in making a complaint pursuant to this Act;
 - (b) that person has initiated an inquiry, investigation or proceeding or has assisted with the initiation of an inquiry, investigation or proceeding pursuant to this Act;

(c) that person has testified or is about to testify, or the employer believes that person may testify, in any proceeding pursuant to an enactment;

(d) that person has participated or is about to participate, or the employer believes that person may participate, in any proceeding pursuant to an enactment;

(e) that person has made or is about to make an inquiry about that person's rights or the rights of another person pursuant to this Act;

(f) that person has made or is about to make any disclosure that that person is required or permitted to make by this Act;

(g) that person has made or is about to make a statement or provide information to the Director or an officer that that person is required or permitted to make or provide by this Act;

(h) that person has asked or required the employer to comply with this Act and the regulations;

(i) that person has taken or has evidenced an intention to take, or the employer believes that that person may take, a leave of absence to which that person was or will be entitled pursuant to this Act at the time of any such leave of absence; or

(j) that person has refused or attempted to refuse to work on a uniform closing day in a retail business or refuses to sign a contract of employment or agreement that requires that person to work in a retail business on a uniform closing day if the employee is not required to work on a uniform closing day by or pursuant to Section 66A.

(2) Without limiting the meaning of "discriminate" in subsection (1), an employer discriminates against an employee contrary to clause (d) of that subsection where the employer discharges, lays off or suspends the employee within three months of that person taking or evidencing an intention to take, or the employer believing that the employee may take, a leave of absence to which the employee is or was entitled to pursuant to this Act unless

(a) the employee is guilty of wilful misconduct, disobedience or neglect of duty that has not been condoned by the employer;

(b) the employer has just cause to discharge or suspend the employee;

(c) the reason for the discharge or lay-off is beyond the control of the employer and the employer has exercised due diligence to foresee and avoid the cause of the discharge or lay-off; or

(d) the employer, in good faith and for legitimate business reasons, ceases operation or eliminates the position in which the

employee is employed and is unable to provide reasonable alternative employment to the employee.

(3) In any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this Section lies with the employer. 1991, c. 14, s. 7; 2003 (2nd Sess.), c. 7, s. 7; 2004, c. 6, s. 16; 2006, c. 10, s. 3; 2015, c. 42, s. 1.

Duty of Director upon contravention of clause 30(1)(e)

30A (1) Where the Director determines that an employer has contravened clause (e) of subsection (1) of Section 30 or, with respect to the *Retail Business Uniform Closing Day Act*, clause (b) of subsection (1) of Section 30, the Director shall require, by a specified date,

(a) that the employer reinstate the employee pursuant to the same terms and conditions under which the employee was employed immediately before the termination;

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

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

(d) that the employer do the things that, in the opinion of the Director, are necessary to secure compliance with this Act and the regulations.

(2) Where an order or requirement of the Director pursuant to subsection (1) is not appealed pursuant to this Act, the order or requirement is final and binding. 2003, (2nd Sess.), c. 7, s. 8; 2006, c. 10, s. 4.

Complaint to Director or Board

31 (1) A person who has reasonable grounds to believe that he has been discharged or otherwise discriminated against contrary to Section 29 or Section 30 may make a complaint to the Director in accordance with Section 21.

(2) A person who has made a complaint under subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. R.S., c. 246, s. 31; 2010, c. 37, s. 99.

VACATION PAY

Vacation

32 (1) Where an employee works for an employer at any time during a continuous twelve-month period, the employer

(a) not later than ten months after the twelve-month period ends, shall give the employee an unbroken vacation of at least two

weeks or, where the employee has been in the employ of the employer for more than eight years, an unbroken vacation of at least three weeks;

(b) at least one week in advance, shall notify the employee of the date his vacation begins; and

(c) at least one day before his vacation begins, shall pay the employee an amount at least equal to four per cent or, where the employee has been in the employ of the employer for more than eight years, an amount at least equal to six per cent, of the employee's wages for the twelve-month period during which the employee established his right to a vacation.

(2) Notwithstanding clause (a) of subsection (1), the employer and the employee may by agreement provide for two or more vacation periods if

(a) the periods are in total equal to at least the length of vacation to which the employee is entitled under that clause; and

(b) include an unbroken period of at least one week prior to which the employer gives notice as required by clause (b) of subsection (1) and pays the employee the full amount as required by clause (c) of subsection (1). R.S., c. 246, s. 32; 1991, c. 14, s. 8; 2003 (2nd Sess.), c. 7, s. 9; 2004, c. 6, s. 17.

Waiver of entitlement under subsection 32(1)

33 (1) An employee who works for an employer for less than ninety per cent of the regular working hours during a continuous twelve-month period may waive the entitlement set out in subsection (1) of Section 32 to a period of vacation leave.

(2) Where the employee notifies the employer in writing that the employee is exercising the option specified in subsection (1), Section 32 does not apply and the employer shall pay to the employee, not later than one month after the twelve-month period ends, an amount at least equal to four per cent or, where the employee has been in the employ of the employer for more than eight years, an amount at least equal to six per cent, of the wages of the employee for the twelve-month period. 1991, c. 14, s. 9; 2004, c. 6, s. 18.

Vacation pay on termination

34 Where an employee works for an employer and is not entitled to a vacation with pay or pay in lieu of a vacation as provided for in Sections 32 and 33, and his employment with that employer terminates, the employer shall pay to the employee within ten days after his employment terminates an amount at least equal to four per cent or, where the employee has been in the employ of the employer for more than eight years, an amount at least equal to six per cent, of the wages of the employee during the time he was employed. R.S., c. 246, s. 34; 2004, c. 6, s. 19.

Calculation of vacation pay

35 (1) For the purpose of calculating vacation pay or pay in lieu of vacation as provided for in Sections 32, 33 and 34, the wages of the employee include the cash value of board or lodging provided by the employer, which is the greater of

(a) the amount agreed upon between the employer and the employee as being its cash value; and

(b) the amount specified in any order issued under the authority of this Act.

(2) Subsection (1) does not apply to the construction industry.

(3) For the purpose of calculating vacation pay or pay in lieu of vacation pay as provided for in Sections 32, 33 and 34, the twelve-month period or any other period of employment shall commence on the first day the employee is employed. R.S., c. 246, s. 35.

Vacation pay in trust and deemed secure debt due

36 (1) Every employer is deemed to hold vacation pay accruing due to an employee in trust for the employee and for payment of the vacation pay over in the manner and at the time provided under this Act and the regulations, and the amount is a charge upon the assets of the employer or his estate in his hands or the hands of a trustee and has priority over all other claims.

(2) Notwithstanding any other Act, the amount of vacation pay accruing due to an employee is a debt due or accruing due by the employer to the employee and the employee shall be deemed to hold a mortgage on the assets of the employer to the amount of the vacation pay accruing due and may enforce the mortgage by foreclosure proceedings.

(3) The mortgage referred to in subsection (2) shall be payable in priority over all liens, charges or mortgages of every person in respect of the real and personal property of the employer, including those of Her Majesty in right of the Province, but excepting liens for wages due to workmen by that employer. R.S., c. 246, s. 36.

HOLIDAYS WITH PAY

Employer to grant general holiday

37 (1) *repealed 2016, c. 11, s. 5.*

(2) Except as provided by Section 39 and Section 41, every employer shall grant each of his employees a holiday with pay on each general holiday falling within any period of his employment. R.S., c. 246, s. 37; 2013, c. 35, s. 4; 2016, c. 11, s. 5.

Alternative holiday

38 Except as otherwise provided in this Act, when a general holiday falls on a day that is a non-working day for an employee, his employer shall grant him a holiday with pay on either

- (a) the working day immediately following the general holiday;
- or
- (b) the day immediately following the vacation of the employee, or grant the employee another day agreed upon by the employee and the employer. R.S., c. 246, s. 38.

Substituted holiday

39 An employer may substitute any other holiday for a general holiday in any of the circumstances following:

- (a) where a class of employees of an employer is represented by a trade union and the parties to a collective agreement entered into with respect to the terms or conditions of employment of the employees notify the Director in writing that a specified day has been designated in the collective agreement as a holiday with pay in lieu of a general holiday under this Act, the designated day shall, for those employees mentioned in the collective agreement, be a general holiday for the purposes of this Act; or
- (b) where no employees of an employer are represented by a trade union or where a class of employees is not provided for under a collective agreement with regard to general holidays, and the employer applies to the Director to substitute another designated holiday for any general holiday under this Act, the Director may, if he is satisfied that a majority of the employees or, as the case may be, that a majority of the class of employees who are not provided for under a collective agreement in regard to general holidays, concur with the application, approve the substitution of the designated holiday for the specified general holiday, and the designated day shall for those employees be a general holiday for the purposes of this Act. R.S., c. 246, s. 39.

Wages not to be reduced or not paid

40 (1) An employer of an employee whose wages are calculated on a weekly or monthly basis shall not reduce his employee's weekly or monthly wages for a week or month in which a general holiday occurs by reason only that the employee does not work on the general holiday.

(2) An employer of an employee whose wages are calculated on a daily or hourly basis shall pay the employee for a general holiday on which he does not work at least the equivalent of the wages he would have paid at the employee's regular rate of wages for his normal hours of work.

(3) An employer of an employee whose wages are calculated on any basis other than a basis mentioned in subsection (1) or (2) shall pay the employee for a general holiday on which he does not work at least the equivalent of

the wages he would have paid at the employee's regular rate of wages for his normal working day.

(4) Notwithstanding anything contained in this Act, where an employee is required to work more than forty-eight hours in a week, that employee shall be paid one and a half times the employee's regular hourly wage for each additional hour worked in that week in excess of forty-eight hours. R.S., c. 246, s. 40; 2003 (2nd Sess.), c. 7, s. 10.

Holiday pay at one and one-half times regular rate

41 (1) In this Section and Section 42, "employed in a continuous operation" refers to employment in

(a) any industrial establishment in which in each seven-day period, operations once begun normally continue without cessation until the completion of the regularly scheduled operations for that period;

(b) any operations or services concerned with the running of trucks and other vehicles whether in scheduled or non-scheduled operations;

(c) any telephone or other communication operations or services; or

(d) any operation or service normally carried on without regard to Sundays or public holidays.

(2) Except in the case of an employee employed in a continuous operation, an employer of an employee who is required to work on a day on which he is entitled under this Act to a holiday with pay shall pay that employee an amount equal to the amount he would otherwise have received for that holiday and at a rate at least equal to one and one-half times his regular rate of wages for the time worked by him on that day.

(3) An employer of an employee employed in a continuous operation who is required to work on a day on which he is entitled under this Act to a holiday with pay

(a) shall pay the employee an amount equal to the amount he would otherwise have received for that holiday and at a rate at least equal to one and one-half times his regular rate of wages for the time worked by him on that day; or

(b) shall grant the employee a holiday and pay in accordance with Section 40 on the working day immediately following the annual vacation of the employee or another day agreed upon by the employee and the employer. R.S., c. 246, s. 41.

Entitlement to holiday pay

42 (1) An employee shall be entitled to be paid for a general holiday if

(a) he has received or is entitled to receive pay for at least fifteen days during the thirty calendar days immediately preceding the general holiday; and

(b) he has worked on his scheduled working day immediately preceding and immediately following the holiday.

(2) Clause (b) of subsection (1) shall not apply if the employer has directed the employee not to report for work on his scheduled working day either immediately prior to or following the holiday.

(3) An employee in a continuous operation is not entitled to be paid for a general holiday on which he did not report for work after having been called upon to work on that day.

(4) Where the employment of an employee ceases before the day agreed upon by the employee and the employer as a holiday for the employee under clause (b) of Section 38 or clause (b) of subsection (3) of Section 41, the employer shall pay the employee, in addition to any other payment to which the employee is entitled, at least the equivalent of the wages he would have paid the employee for that day at his regular rate of wages for his normal working day. R.S., c. 246, s. 42; 1991, c. 14, s. 10.

Complaint respecting general holiday

43 (1) An employee who is not granted a general holiday to which he is entitled by this Act may make a complaint to the Director in accordance with Section 21.

(2) The Director shall treat a complaint under subsection (1) which alleges that an employee has not been paid all pay as a complaint under Section 81.

(3) An employee who has made a complaint under subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. R.S., c. 246, s. 43; 2010, c. 37, s. 100.

INDUSTRIAL STANDARDS

Construction industry conference schedule of wages and hours

44 (1) This Section and Sections 45, 46 and 47 apply to the cities, towns, municipalities, municipal districts, polling divisions of a municipal district or other areas of a municipality that the Governor in Council determines by proclamation from time to time.

(2) The Minister may, upon the petition of representatives of employees or employers in the construction industry, convene a conference or series of conferences of employees and employers engaged in the industry, for the purpose of investigating or considering the condition of labour and the practices prevailing in the industry and for negotiating standard or uniform rates of wages and hours and days of labour.

(3) If, in the opinion of the Minister, a schedule of wages and of hours of labour for all or any class of employees in any sector or sectors of the construction industry in any geographic area or areas is agreed upon in writing by a proper and sufficient representation of employees and employers, he may approve the schedule.

(4) The Minister shall not approve a schedule that prescribes wages that are less for a female employee than for a male employee.

(5) Upon the recommendation of the Minister, the Governor in Council may declare a schedule agreed upon and approved in accordance with subsection (3) to be in force for the period agreed upon and thereafter until the Governor in Council rescinds his declaration or declares another schedule to be in force.

(6) A schedule declared to be in force by the Governor in Council becomes effective ten days after publication of the order in council in the Royal Gazette. R.S., c. 246, s. 44.

Posting of schedule

45 Every employer bound by a schedule shall cause a copy of the schedule to be posted and maintained for as long as it remains in force in a conspicuous place where his employees engaged in their duties may readily see and read it. R.S., c. 246, s. 45.

Schedule binds employer and employee

46 (1) An employer of an employee to whom an effective schedule applies shall not pay the employee less than prescribed by the schedule, nor shall he require the employee to work a greater number of hours in each day, or a greater number of days in each week, than is prescribed by the schedule.

(2) An employee to whom an effective schedule applies shall not agree or consent to be employed for wages less than he is entitled to by the schedule and an employee to whom an effective schedule applies shall not work a greater number of hours in each day, or a greater number of days in each week, than is prescribed by the schedule. R.S., c. 246, s. 46.

Complaint respecting hours

47 (1) An employee who is required to work a greater number of hours in a day or a greater number of days in a week than is prescribed by a sched-

ule that applies to him may make a complaint to the Director in accordance with Section 21.

(2) The Director shall treat a complaint under subsection (1) which alleges that an employee has not been paid all pay as a complaint under Section 81.

(3) An employee who has made a complaint under subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. R.S., c. 246, s. 47; 2011, c. 19, s. 13.

48 and 49 *repealed 1991, c. 14, s. 11.*

MINIMUM WAGES

Minimum wage order

50 (1) The Governor in Council may

(a) fix a minimum wage for employees in different employments or in different classes or descriptions of an employment at the rate and in the manner that the Governor in Council considers advisable;

(b) direct that no employer, who employs employees for whom minimum wages are so fixed, shall employ an employee at a rate of wages less than the minimum wages so fixed.

(2) The Governor in Council may

(a) apply the minimum wage so fixed to all employees or to a group or class of employees in any industry, business, trade or occupation, or to any group or class of employees in all or in any two or more industries, businesses, trades or occupations;

(b) fix a different minimum wage to be paid to employees in the same industry, business, trade or occupation in different parts of the Province;

(c) fix a minimum wage applicable only in the part or parts of the Province designated in the order;

(d) fix the minimum wage upon an hourly, daily, weekly or monthly basis;

(e) fix the maximum number of hours of labour for which the minimum wage shall be paid;

(f) fix the minimum wage payable for time worked in excess of the maximum number of hours of work established under clause (e);

(g) fix a special rate of wages for apprentices or inexperienced employees, and limit the number of such employees to whom the special rate may be payable by any employer;

(h) specify when and under what conditions deductions may be made from the minimum wage;

(i) fix the maximum amount, if any, that may be deducted from the minimum wage in cases where the employer furnishes to the employee board, lodging, uniforms, laundry or other services;

(j) prescribe the periods in respect of which wages shall be paid whether daily, weekly, monthly or for any other period, and fix the day upon which the wages payable for any period whether so prescribed or not shall be paid, either generally or with respect to any designated employer, and prescribe the manner in which wages shall be paid;

(k) establish the regular working period and the maximum number of hours of labour that may be worked regularly in any industry, business, trade or occupation, or the part or parts thereof to which the order is applicable;

(l) exempt from the operation of this Act or any order made hereunder any group, class or description of employees or employers in any industry, business, trade or occupation. R.S., c. 246, s. 50; 1991, c. 14, s. 12.

Minimum Wage Review Committee

51 (1) There is hereby established a committee to be known as the Minimum Wage Review Committee.

(2) The Minimum Wage Review Committee shall be composed of an equal number of employee and employer representatives appointed by the Minister.

(3) The function of the Minimum Wage Review Committee is to conduct an annual review of the minimum wage and submit to the Minister a report containing the recommendations of the Committee.

(4) The Minister shall

(a) make the report referred to in subsection (3) public within thirty days of receipt of the report; and

(b) make public the response of the Government to the report within sixty days of receipt of the report. 2003 (2nd Sess.), c. 7, s. 11.

Publication of minimum wage order

52 Every order of the Governor in Council fixing a minimum wage shall be published in the Royal Gazette and shall take effect ten days after it is so pub-

lished, or on a later day fixed by the Governor in Council and stated in the order. R.S., c. 246, s. 52; 1991, c. 14, s. 14.

Temporary suspension or variation of order

53 (1) *repealed 1991, c. 14, s. 15.*

(2) The Governor in Council, without making a new order, may temporarily suspend or vary any order made pursuant to Section 50 so as to conform to special conditions in an industry, business, trade or occupation. R.S., c. 246, s. 53; 1991, c. 14, s. 15.

Posting of order

54 Every employer of employees affected by an order of the Governor in Council fixing a minimum wage shall post and keep posted in a conspicuous place in his establishment or plant a copy of the order so that all employees affected thereby may have ready access to and see the same. R.S., c. 246, s. 54; 1991, c. 14, s. 16.

Deemed agreement to pay minimum wage

55 An employer who permits an employee to perform any work with respect to which a minimum wage is established is deemed to have agreed to pay the employee at least the minimum wage established. R.S., c. 246, s. 55.

Complaint respecting minimum wage

56 (1) Where an employer contravenes an order made under Section 50, an employee may make a complaint to the Director in accordance with Section 21.

(2) The Director shall treat a complaint under subsection (1) which alleges that an employee has not been paid all pay as a complaint under Section 81.

(3) An employee who has made a complaint under subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. R.S., c. 246, s. 56; 2010, c. 37, s. 101.

EQUAL PAY

Equal pay for women and men

57 (1) An employer and any person acting on his behalf shall not pay a female employee at a rate of wages less than the rate of wages paid to a male employee, or a male employee at a rate of wages less than the rate of wages paid to a female employee, employed by him for substantially the same work performed in the same establishment, the performance of which requires substantially equal skill, effort and responsibility, and which is performed under similar working conditions.

(2) Where an employer or person acting on the employer's behalf establishes that a different rate of wages is justified based on payment in accordance with

- (a) a seniority system;
- (b) a merit system;
- (c) a system that measures wages by quantity or quality of production; or
- (d) another differential based on a factor other than sex,

a difference in the rate of wages between a male and a female employee based on any of the factors referred to in clauses (a) to (d) does not constitute a failure to comply with this Section.

(3) No employer shall reduce the rate of wages of an employee in order to comply with this Section.

(4) Every employer shall post and keep posted, in a conspicuous place in the employer's establishment, a copy of this Section so that all employees may have ready access to and see the same. R.S., c. 246, s. 57; 1991, c. 14, s. 18.

Complaint to Director or Board

58 (1) An employee who is denied equal pay to which the employee is entitled by Section 57 may make a complaint to the Director in accordance with Section 21.

(2) An employee who has made a complaint pursuant to subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. 1991, c. 14, s. 19; 2011, c. 19, s. 14.

PREGNANCY LEAVE AND PARENTAL LEAVE

Pregnancy leave

59 (1) A pregnant employee, who has been employed by her employer for at least one year, is entitled to an unpaid leave of absence of up to seventeen weeks upon

- (a) giving the employer notice of the date that she will begin the leave and the date she will return to work, as required by Section 59D; and
- (b) providing to the employer, where the employer so requests, a certificate of a legally qualified medical practitioner stating that the employee is pregnant and specifying the expected date of delivery.

(2) Pregnancy leave pursuant to this Section begins on such date, not sooner than sixteen weeks preceding the expected date of delivery, as the employee determines, and not later than the date of delivery.

(3) Pregnancy leave pursuant to this Section ends on such date

(a) not sooner than one week after the date of delivery;
and

(b) not later than seventeen weeks after the pregnancy leave began pursuant to this Section,

as determined by the employee. 1991, c. 14, s. 19.

Requirement by employer to take leave

59A (1) Notwithstanding Section 59, an employer may require a pregnant employee, who has been employed by the employer for at least one year, to take an unpaid leave of absence while the duties of her position cannot reasonably be performed by a pregnant woman or the performance of the employee's work is materially affected.

(2) For greater certainty, nothing in subsection (1) affects any protection provided to a pregnant employee, regardless of the length of employment, by the *Human Rights Act*. 1991, c. 14, s. 19.

Parental leave

59B (1) An employee, who has been employed by an employer for at least one year, and who becomes, before or after this Section comes into force, a parent of one or more children through

(a) the birth of the child or children; or

(b) the placement of the child or children in the care of the employee for the purpose of adoption of the child or children pursuant to the law of the Province,

is entitled to an unpaid leave of absence of, subject to subsection (4), up to fifty-two weeks upon giving the employer notice of the date that the employee will begin the leave and the date that the employee will return to work, as required by Section 59D.

(2) Where an employee takes pregnancy leave pursuant to Section 59 and the employee's new-born child or children arrive in the employee's home during the pregnancy leave, parental leave pursuant to this Section

(a) begins immediately upon completion of the pregnancy leave and without the employee returning to work; and

(b) ends not later than thirty-five weeks after the parental leave began pursuant to this Section, as determined by the employee.

(3) Where subsection (2) does not apply, parental leave pursuant to this Section

(a) begins on such date, coinciding with or after the birth of the child or children or the child or children first arriving in the employee's home; and

(b) ends not later than fifty-two weeks after the child or children first arrive in the employee's home,

as determined by the employee.

(4) The maximum combined pregnancy leave and parental leave to which an employee is entitled is fifty-two weeks. 1991, c. 14, s. 19; 2000, c. 35, s. 1.

Interruption of leave by hospitalization of child

59C (1) Notwithstanding Section 59B, where an employee has begun parental leave pursuant to that Section and the child to whom the parental leave relates is hospitalized for a period exceeding or likely to exceed one week, the employee is entitled to return to and resume work in accordance with Section 59G and defer the unused portion of the parental leave until the child is discharged from the hospital, upon giving the employer notice in accordance with Section 59D.

(2) An employee is entitled pursuant to subsection (1) to only one interruption and deferral of each parental leave. 1991, c. 14, s. 19.

Notice

59D (1) An employee shall give the employer four weeks' notice of

(a) the date the employee will begin pregnancy leave pursuant to Section 59 or parental leave pursuant to subsection (3) of Section 59B; and

(b) the date the employee will return to work upon completion of the leave unless the employee will take the maximum leave to which the employee is entitled.

(2) Notice given pursuant to subsection (1) may be amended from time to time by the employee

(a) by changing any date in the notice to an earlier date if the notice is amended at least four weeks before that earlier date;

(b) by changing any date in the notice to a later date if the notice is amended at least four weeks before the original date; and

(c) by adding the date that the employee will return to work if the notice is amended at least four weeks before the employee would have been required to return to work.

(3) An employee shall give the employer as much notice as reasonably practicable of

(a) the date the employee will begin pregnancy leave pursuant to Section 59 where she is advised by a legally qualified medical practitioner to begin pregnancy leave sooner than planned because of medical circumstances resulting from her pregnancy;

(b) the delivery where the actual delivery occurs sooner than expected;

(c) the first arrival of the child or children in the employee's home where that arrival is not anticipated or occurs sooner than reasonably expected;

(d) the return to work of the employee pursuant to Section 59C; and

(e) the resumption of parental leave by the employee in accordance with Section 59C,

and subsection (1) does not apply.

(4) Notice given pursuant to this Section shall be put in writing where the employer so requests. 1991, c. 14, s. 19.

Proof of entitlement

59E (1) Upon the request of the employer, where an employee takes parental leave pursuant to Section 59B, interrupts and defers leave pursuant to Section 59C or gives notice pursuant to subsection (3) of Section 59D, the employee shall provide such proof as is reasonably necessary to establish the entitlement of the employee pursuant to those provisions.

(2) The certificate of a legally qualified medical practitioner or, in the case of adoption, of an official in the Department of Community Services with knowledge of the proposed adoption is sufficient proof for the purpose of subsection (1) of the matters attested to in the certificate. 1991, c. 14, s. 19.

Maintenance of benefit plan

59F (1) For the periods of time specified in Sections 59, 59A, 59B and 59C, the employer shall grant to the employee the option of maintaining a benefit plan in which the employee participated prior to the commencement of that period and shall notify the employee in writing of the option and the date beyond which the option may no longer be exercised at least ten days prior to the last day on which the option could be exercised to avoid an interruption in benefits.

(2) Where the employee opts in writing to maintain the benefit plan referred to in subsection (1), the employee shall enter into an arrangement with the employer to pay the cost required to maintain the benefit plan, including the employer's share thereof, and the employer shall process the documentation and payments as arranged.

(3) Nothing in subsection (2) prevents an employer from contributing to the cost of a benefit plan referred to in subsection (1). 1991, c. 14, s. 19.

Resumption of work

59G (1) When an employee returns to work upon the expiry of a leave of absence taken pursuant to Section 59, 59A or 59B or returns to work pursuant to Section 59C, the employer shall permit the employee to resume work

(a) in the position held by the employee immediately before the leave began or, where that position is not available, in a comparable position with not less than the same wages and benefits; and

(b) with no loss of seniority or benefits accrued to the commencement of the leave.

(2) Where the employer's operations are or will be suspended or discontinued when the employee returns to work upon the expiry of a leave of absence taken pursuant to Sections 59, 59A or 59B or returns to work pursuant to Section 59C, subsection (1) of this Section does not apply and the employer shall comply with Section 72 and, when the operation resumes, subsection (1) applies subject to the employer's seniority system, if any.

(3) For greater certainty, nothing in this Section limits any protection provided to an employee by a collective agreement or other contract of employment or by the *Human Rights Act*. 1991, c. 14, s. 19.

Interpretation of Sections 59 to 59G

59H For greater certainty, nothing in Sections 59 to 59G limits any benefits to which an employee would otherwise be entitled. 1991, c. 14, s. 19.

Complaint to Director or Board

60 (1) An employee who is denied a leave of absence, the opportunity to resume work, seniority or benefits to which the employee is entitled by Section 59, 59A, 59B, 59C, 59F or 59G may make a complaint to the Director in accordance with Section 21.

(2) The Director shall treat a complaint under subsection (1) which alleges that an employee has not been paid all pay as a complaint under Section 81.

(3) An employee who has made a complaint under subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. R.S., c. 246, s. 60; 1991, c. 14, s. 20; 2010, c. 37, s. 102.

BEREAVEMENT LEAVE AND COURT LEAVE

Bereavement leave

60A An employee is entitled to an unpaid leave of absence of up to, at the employee's option, five consecutive working days upon the death of the employee's spouse, parent, guardian, child, ward, grandparent, grandchild, sister, brother, mother-in-law, father-in-law, son-in-law, daughter-in-law, sister-in-law or brother-in-law. 2015, c. 41, s. 1.

Court leave

60B An employee is entitled to an unpaid leave of absence for such time as the employee is required to perform jury duty or is required by subpoena or summons to attend as a witness at a place other than the place of employment of the employee. 1991, c. 14, s. 21.

Notice

60C Before taking bereavement leave pursuant to Section 60A or court leave pursuant to Section 60B, an employee shall give the employer as much notice as reasonably practicable of the employee's intention to take the leave. 1991, c. 14, s. 21.

Complaint to Director or Board

60D (1) An employee who is denied a leave of absence pursuant to Section 60A or 60B or the opportunity to resume work on account of taking such leave may make a complaint to the Director in accordance with Section 21.

(2) An employee who makes a complaint pursuant to subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. 1991, c. 14, s. 21; 2010, c. 37, s. 103.

COMPASSIONATE-CARE LEAVE

Entitlement to unpaid compassionate-care leave

60E (1) In this Section,

(a) "common-law partner" of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least one year;

(b) "family member", in relation to an employee, means

(i) a spouse or common-law partner of the employee,

(ii) a child of the employee or a child of the employee's spouse or common-law partner,

(iii) a parent of the employee or a spouse or common-law partner of the parent, and

(iv) any other person who is a member of a class of persons prescribed in the regulations for the purpose of this definition;

(c) “week” means the period between midnight on Saturday and midnight on the following Saturday.

(2) An employee who has been employed by an employer for a period of at least three months is entitled to an unpaid leave of absence of up to twenty-eight weeks to provide care or support to a family member of the employee if a legally qualified medical practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within twenty-six weeks from

(a) the day the certificate is issued; or

(b) where the leave was begun before the certificate was issued, the day the leave was begun.

(3) The leave of absence referred to in subsection (2) may only be taken during the period

(a) that begins with

(i) the first day of the week in which the certificate is issued, or

(ii) where the leave was begun before the certificate was issued, the first day of the week in which the leave was begun if the certificate is valid from any day in that week; and

(b) that ends with the last day of the week in which either of the following occurs:

(i) the family member dies, or

(ii) the period of fifty-two weeks following the first day of the week referred to in clause (a) ends.

(3A) For greater certainty, but subject to subsection (3), for leave under this Section to be taken after the end of the period of twenty-six weeks set out in subsection (2), it is not necessary for a legally qualified medical practitioner to issue an additional certificate under that subsection.

(4) A leave of absence under this Section may only be taken in periods of not less than one week’s duration.

(5) Where requested in writing by the employer, the employee must provide the employer with a copy of the certificate referred to in subsection (2).

(6) For the period of time specified in subsection (2), the employer shall grant to the employee the option of maintaining a benefit plan in which the employee participated before the beginning of that period and shall notify the employee in writing of the option and the date beyond which the option may no longer be exercised at least ten days before the last day on which the option could be exercised to avoid an interruption in benefits.

(7) Where the employee opts in writing to maintain the benefit plan referred to in subsection (6), the employee shall enter into an arrangement with the employer to pay the cost required to maintain the benefit plan, including the employer's share thereof, and the employer shall process the documentation and payments as arranged.

(8) Nothing in subsection (7) prevents an employer from contributing to the cost of a benefit plan referred to in subsection (6).

(9) An employee shall advise an employer as soon as possible of any intention to take a leave of absence under this Section. 2003 (2nd Sess.), c. 4, s. 2; 2015, c. 41, s. 2.

Sections 59G to 60 apply

60F Sections 59G to 60 apply *mutatis mutandis* to an employee who takes a leave of absence pursuant to Section 60E. 2003 (2nd Sess.), c. 4, s. 2.

SICK LEAVE

Entitlement to unpaid sick leave

60G (1) An employee is entitled to a maximum of three days of unpaid leave per year where the leave is required

- (a) due to the sickness of a child, parent or family member; or
- (b) for medical, dental or other similar appointments during working hours.

(2) Section 60D applies *mutatis mutandis*. 2003 (2nd Sess.), c. 7, s. 12; 2004, c. 6, s. 20.

RESERVISTS

Unpaid service leave

60H (1) In this Section,

- (a) "Reserves" means that component of the Canadian Forces referred to in the *National Defence Act* (Canada) as the reserve force;
- (b) "service" means a period of active duty or training in the Reserves

(2) An employee, who has been employed by an employer for at least one year and is required to be absent from the employer's civilian employment for purpose of service, is entitled to an unpaid leave of absence upon

(a) giving the employer the required notice of the date that the leave will begin and the anticipated date of return to work; and

(b) providing to the employer, where the employer so requests, a certificate from an official with the Reserves stating that the employee is a member, is required for service and, where possible, specifying the expected dates for the period of service.

(3) Every employee taking a leave of absence pursuant to subsection (2) shall

(a) provide the employer with reasonable notice prior to the date when the employee intends to take a leave of absence for a period of service; and

(b) provide the employer with reasonable notice prior to the date when the employee intends to return to work upon completion of service.

(4) Notice given pursuant to this Section must be put in writing if the employer so requests.

(5) Sections 59F to 60 apply *mutatis mutandis* to an employee who takes a leave of absence pursuant to this Section. 2006, c. 13, s. 9.

EMERGENCY LEAVE

Unpaid leave of absence

60I (1) In this Section,

(a) "common-law partner" means a "common-law partner" as defined in Section 60E;

(b) "emergency" means

(i) an emergency declared under the *Emergency Management Act* that prevents the employee from performing the employee's work duties,

(ii) a direction or order of a medical officer under the *Health Protection Act* that prevents the employee from performing the employee's work duties,

(iii) a public health emergency declared by the Minister under Section 53 of the *Health Protection Act* that prevents the employee from performing the employee's work duties,

(iv) an emergency declared under Part 1, Part 2 or Part 3 of the *Emergencies Act* (Canada) that prevents the employee from performing the employee's work duties, or

(v) such other circumstances as are prescribed in the regulations;

(c) "family member", in relation to an employee, means a family member as defined in Section 60E.

(2) Notwithstanding clause (b) of subsection (1), an emergency includes a circumstance under subclause (i), (ii), (iii), (iv) or (v) of clause (b) that applies to a family member of an employee if

(a) the declaration, direction, order or other prescribed circumstance directly applies to a family member of the employee;

(b) the declaration, direction, order or other prescribed circumstance results in a situation where the family member of the employee requires care or assistance;

(c) the employee is the only person reasonably able under the circumstances to provide the family member with the required care or assistance; and

(d) providing the required care or assistance to the family member has the effect of preventing the employee from performing the employee's work duties.

(3) An employee is entitled to an unpaid leave of absence for such time as the employee cannot perform the duties of the employee's position because of the emergency.

(4) An employee shall give the employer as much notice as reasonably practicable of the employee's intention to take an emergency leave or, where required to leave before notice can be provided, the employee shall advise the employer of the emergency leave as soon as possible after the leave begins.

(5) An employee who takes a leave under this Section shall provide to the employer, where the employer so requests, evidence that is reasonable in the circumstances that the employee is entitled to the leave and such evidence must be provided within a time that is reasonable in the circumstances.

(6) A leave under this Section continues for as long as the emergency continues and the emergency prevents the employee from performing the employee's work duties but the entitlement ends on the day the emergency is terminated or the emergency no longer prevents the employee from performing the employee's work duties.

(7) Where an emergency as defined in clause (b) of subsection (1) is made retroactive under subsection (3) of Section 25 of the *Emergency Management Act* or under subsection (2), an employee who does not perform the duties of

the employee's position because of the declared emergency is deemed to have been on leave beginning on the first day that the employee did not perform the duties of the position on or after the date to which the declared emergency was made retroactive.

(8) Sections 59F to 60 apply *mutatis mutandis* to an employee who takes a leave of absence pursuant to this Section. 2009, c. 18.

LEAVE FOR CITIZENSHIP CEREMONY

Unpaid leave of absence

60J (1) An employee is entitled to an unpaid leave of absence of up to, at the employee's option, a maximum of one day on the day of and to attend a citizenship ceremony to receive the employee's certificate of citizenship under the *Citizenship Act* (Canada).

(2) The employee shall give the employer fourteen days' notice or as much notice as is reasonably practicable of the date of the citizenship ceremony and the time the employee will be away from work to attend the citizenship ceremony.

(3) Upon request by the employer, the employee shall provide evidence of the date of the citizenship ceremony.

(4) An employee who is denied the leave of absence or the opportunity to resume work on account of taking such leave may make a complaint to the Director in accordance with Section 21.

(5) An employee who makes a complaint pursuant to subsection (4) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. 2011, c. 64, s. 1.

CRITICALLY ILL CHILD CARE LEAVE

Interpretation of Sections 60K to 60S

60K (1) In Sections 60L to 60Q,

(a) "common-law partner" means a common-law partner as defined in Section 60E;

(b) "critically ill child" has the same meaning as in regulations made under the *Employment Insurance Act* (Canada);

(c) "week" means a week as defined in Section 60E.

(2) Notwithstanding clause 60K(1)(b), for the purpose of this Section and Sections 60L to 60S where the definition of critically ill child in regulations made under the *Employment Insurance Act* (Canada)

(a) does not include a step-child or foster child, it shall be read as if it did; and

(b) does not apply with respect to an injury, it shall be read as if it did, subject to any condition or restriction in the definition that applies to an illness and that can apply with respect to an injury. 2013, c. 11, s. 3.

Unpaid leave of absence

60L (1) This Section and Sections 60M to 60S apply to an employee who is

- (a) a parent of a critically ill child;
- (b) the spouse or common-law partner of a parent of a critically ill child;
- (c) a person with whom a critically ill child has been placed for the purpose of adoption;
- (d) a guardian or foster parent of a critically ill child;
- (e) a person who has the care and custody of a critically ill child pursuant to the *Children and Family Services Act*; or
- (f) a member of a class of persons prescribed in the regulations.

(2) An employee who has been employed by an employer for a period of at least three months is entitled to an unpaid leave of absence of up to thirty-seven weeks to provide care or support to the critically ill child if a legally qualified medical practitioner issues a certificate

- (a) stating that the child is a critically ill child and requires the care or support of the employee; and
- (b) setting out the period during which the child requires the care or support.

(3) An employee shall advise his or her employer in writing as soon as possible of any intention to take a leave of absence under this Section and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave.

(4) Where an employee must begin a leave under this Section before advising the employer pursuant to subsection (3), the employee shall so advise the employer as soon as possible.

(5) Where requested in writing by the employer, the employee shall provide the employer with a copy of the certificate referred to in subsection (2).

(6) A leave of absence under this Section may only be taken in periods of not less than one week's duration, not exceeding in total the number of weeks to which the employee is entitled. 2013, c. 11, s. 3.

Beginning and end of leave

60M (1) The leave of absence referred to in Section 60L may only be taken during the fifty-two week period that begins on the first day of the week in which the child with respect to whom the certificate was issued became critically ill.

(2) The leave of absence referred to in Section 60L ends with the last day of the week in which any of the following occurs:

- (a) subject to subsection (2) of Section 60N, the child dies;
- (b) the number of weeks in the period specified in the certificate has been taken, if the certificate sets out a period of less than thirty-seven weeks;
- (c) a thirty-seven week leave has been taken. 2013, c. 11, s. 3.

End of leave if more than one child critically ill

60N (1) Where more than one child of the employee is critically ill as a result of the same event and the period specified in any certificate described in subsection (2) of Section 60L that was issued with respect to any of the children is fifty-two weeks or longer, the leave ends no later than the last day of the last week of the fifty-two week period that begins on the first day of the week in which the first of the children with respect to whom a certificate was issued became critically ill.

(2) Clause (a) of subsection (2) of Section 60M does not apply if more than one child of the employee is critically ill as a result of the same event, unless all of the children die while the employee is on leave, in which case the employee's entitlement to be on leave ends at the end of the last week in which the last child dies. 2013, c. 11, s. 3.

Additional leave

60O (1) Where more than one child of the employee is critically ill as a result of the same event, the employee is not entitled to take a leave for a longer period than would otherwise apply under subsection (2) of Section 60L or clause (b) of subsection (2) of Section 60M.

(2) Where one or more children with respect to whom an employee has taken a leave under Section 60L remain critically ill while the employee is on leave or after the employee returns to work, the employee is entitled to take an extension of the leave or a new leave if

- (a) a legally qualified medical health practitioner issues an additional certificate described in subsection (2) of Section 60L for

the child or children that sets out a different period during which the child or children require care or support;

(b) the total amount of leave taken in the leave or combined leaves, as the case may be, does not exceed thirty-seven weeks; and

(c) the leave or combined leaves end no later than the last day of the period described in subsection (1) of Section 60M or subsection (1) of Section 60N, as the case may be.

(3) Where one or more children with respect to whom an employee has taken a leave under Section 60L remain critically ill after the fifty-two week period described in subsection (1) of Section 60M or subsection (1) of Section 60N, as the case may be, expires, the employee is entitled to take another unpaid leave beginning the first day of the week in which the additional certificate is issued, and Sections 60L to 60N and Sections 60P to 60R apply *mutatis mutandis* to the new leave. 2013, c. 11, s. 3.

Ending leave early and changing when leave taken

60P (1) Unless the employee and employer agree otherwise, an employee may end a leave earlier than the expiry of thirty-seven weeks by giving the employer written notice of at least fourteen days before the employee wishes to end the leave.

(2) An employee may take a leave at a time other than that indicated in the plan provided under subsection (3) of Section 60L if the change to the time of the leave meets the requirements of Sections 60L to 60Q and the employee

(a) requests permission to do so from the employer in writing and the employer grants permission in writing; or

(b) provides the employer with such written notice as is reasonable in the circumstances. 2013, c. 11, s. 3.

Return to work and calculation of weeks taken

60Q (1) Where an employee who takes a leave to provide care and support to a person pursuant to Section 60E, 60L or 60O ceases to provide care or support during a week of leave,

(a) the employee's entitlement to leave continues until the end of the week; and

(b) the employee may return to work during the week only if the employer agrees, whether in writing or not.

(2) Where an employee returns to work under clause (b) of subsection (1), the week counts as an entire week for the purpose of any provision in Section 60E, 60L or 60O that limits the entitlement to leave to a certain number of weeks. 2013, c. 11, s. 3.

Sections 59F to 60 apply

60R Sections 59F to 60 apply *mutatis mutandis* to an employee who takes a leave of absence pursuant to Section 60L or 60O. 2013, c. 11, s. 3.

Entitlement to leave

60S An employee's entitlement to leave under Section 60L or 60O is in addition to any entitlement to leave under Section 60E, 60U, 60V or 60X. 2013, c. 11, s. 3.

CRIME-RELATED CHILD
DEATH OR DISAPPEARANCE LEAVE

Interpretation of Sections 60T to 60X

60T In this Section and Sections 60U to 60X,

(a) "child" means a child, step-child or foster child who is under eighteen years of age;

(b) "common-law partner" means a common-law partner as defined in Section 60E;

(c) "crime" means an offence under the *Criminal Code* (Canada), other than an offence that is prescribed by the regulations made under paragraph 209.4(f) of the *Canada Labour Code*;

(d) "parent" includes

(i) the spouse or common-law partner of a parent of a child,

(ii) a person with whom a child has been placed for the purpose of adoption,

(iii) a guardian or foster parent of a child,

(iv) a person who has the care and custody of a child pursuant to the *Children and Family Services Act*, and

(v) a member of a class of persons prescribed in the regulations;

(e) "week" means a week as defined in Section 60E. 2013, c. 11, s. 3.

Unpaid leave of absence, crime-related child death

60U (1) An employee who has been employed by an employer for a period of at least three months is entitled to an unpaid leave of absence of up to one hundred and four weeks if the employee is the parent of a child who dies and it is probable, considering the circumstances, that the child died as a result of a crime.

(2) The leave of absence referred to in subsection (1) may only be taken during the one hundred and five week period that begins the week the child is found dead. 2013, c. 11, s. 3.

Unpaid leave of absence, crime-related child disappearance

60V (1) An employee who has been employed by an employer for a period of at least three months is entitled to an unpaid leave of absence of up to fifty-two weeks if the employee is the parent of a child who disappears and it is probable, considering the circumstances, that the child disappeared as a result of a crime.

(2) Except as otherwise provided in subsection (1) of Section 60X, the leave of absence referred to in subsection (1) may only be taken during the fifty-three week period that begins the week the child disappears. 2013, c. 11, s. 3.

When leave may be taken

60W (1) An employee is not entitled to a leave of absence under Section 60U or 60V if the employee is charged with the crime with respect to which the leave was granted.

(2) A leave of absence under Section 60U or 60V may only be taken in a single period.

(3) An employee shall advise his or her employer in writing as soon as possible of any intention to take a leave of absence under Section 60U or 60V and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave.

(4) Where an employee must begin a leave under Section 60U or 60V before advising the employer pursuant to subsection (3), the employee shall so advise the employer as soon as possible.

(5) An employer may require an employee who takes a leave under Section 60U or 60V to provide evidence, reasonable in the circumstances, of the employee's entitlement to the leave. 2013, c. 11, s. 3.

Change of circumstances

60X (1) Subject to subsection (2), where an employee takes a leave of absence under subsection (1) of Section 60V and the child is found within the fifty-two week period that begins the week the child disappears, the employee is entitled to

(a) continue taking leave for fourteen days after the day on which the child is found, if the child is found alive; or

(b) take one hundred and four weeks unpaid leave from the day the child is found dead,

and, for greater certainty, in the latter case, any remaining leave under subsection (1) of Section 60V ends.

(2) Where the child is found dead more than fifty-two weeks after the week in which the child disappeared, the employee is entitled to take an unpaid leave of up to one hundred and four weeks from the day the child is found dead.

(3) Where the circumstances change and it no longer seems probable that the death or disappearance was the result of a crime,

(a) a leave under Section 60U or 60V or this Section ends no later than fourteen days following the day on which it no longer seems probable unless the employee and employer agree in writing to an earlier return to work; and

(b) the employee shall provide written notice to the employer as soon as possible that the leave is ending.

(4) Unless the employee and employer agree otherwise, an employee may end a leave earlier than the expiry of the leave period by giving the employer written notice of at least fourteen days before the employee wishes to end the leave.

(5) An employee may take a leave at a time other than that indicated in the plan provided under subsection (3) of Section 60W if the change to the time of the leave meets the requirements of Section 60U, 60V or this Section, as the case may be, and Section 60W and the employee

(a) requests permission to do so from the employer in writing and the employer grants permission in writing; or

(b) provides the employer with four weeks' written notice before the change is to take place.

(6) Subsection (2) of Section 60U and Section 60W apply *mutatis mutandis* to a leave under this Section. 2013, c. 11, s. 3.

Sections 59F to 60 apply

60Y Sections 59F to 60 apply *mutatis mutandis* to an employee who takes a leave of absence pursuant to Section 60U, 60V or 60X. 2013, c. 11, s. 3.

Entitlement to leave

60Z An employee's entitlement to leave under Section 60U, 60V or 60X is in addition to any entitlement to leave under Section 60E, 60L or 60O. 2013, c. 11, s. 3.

HOURS OF LABOUR

Powers respecting hours of labour

61 (1) The Governor in Council may determine all or any of the following:

- (a) the number of hours per day or per week during which a person employed in industrial undertakings may work;
- (b) the kinds of industrial undertakings to which this Section applies;
- (c) the categories of employees employed in an industrial undertaking to whom this Section applies;
- (d) the districts of the Province to which this Section applies;
- (e) the length of time during which this Section applies.

(2) This Section does not apply to persons holding positions of supervision or management, nor to persons employed in a confidential capacity.

(3) Notwithstanding subsection (1), the limit of hours of work determined by the Governor in Council may be exceeded in those processes which are required by reason of the nature of the processes to be carried on continuously by a succession of shifts. R.S., c. 246, s. 61; 1991, c. 14, s. 22.

Variation of hours in certain cases

62 Where by law, custom, or agreement between employers' and workers' organizations, or, where no such organizations exist, between employers' and workers' representatives, the hours of work on one or more days of the week are less than the period determined by the Governor in Council, the period so determined may be exceeded on the remaining days of the week by agreement between such organizations or representatives. R.S., c. 246, s. 62; 1991, c. 14, s. 23.

Excess hours in special cases

63 The limit of hours of work determined by the Governor in Council may be exceeded in case of accident, actual or threatened, or in case of urgent work to be done to machinery or plant, or in case of *vis major*, but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking. R.S., c. 246, s. 63; 1991, c. 14, s. 24.

Exception

64 The limit of hours of work determined by the Governor in Council may be exceeded in those processes which are required, by reason of the nature of the process, to be carried on continuously by a succession of shifts. R.S., c. 246, s. 64; 1991, c. 14, s. 25.

Where hours of labour restricted

65 An employer engaged in an industry to which Section 61 is declared to apply shall

- (a) notify by means of notices posted conspicuously in the establishment, or any other convenient place, or in any other manner determined

by or under the authority of the Governor in Council, the hours at which work begins and ends, and, where work is carried on by shifts, the hours at which each shift begins and ends, and no change shall be made in these hours except upon such notice and in such manner as may be approved by or under the authority of the Governor in Council; and

(b) notify in the same way the rest intervals accorded during the period of work that are not reckoned as part of the working hours. R.S., c. 246, s. 65; 1991, c. 14, s. 26.

Period of rest

66 (1) An employer in any industrial undertaking, except as otherwise provided herein, shall

(a) grant each of his employees a period of rest comprising at least twenty-four consecutive hours in every period of seven days; and

(b) whenever possible grant the period of rest simultaneously to all employees in any establishment and grant the day of rest on Sunday.

(2) An employer, other than in an industrial undertaking, except as otherwise provided herein, shall grant each of the employees a period of rest comprising at least twenty-four consecutive hours in every period of seven days.

(3) Notwithstanding subsection (1) or (2), an employer may require more than six consecutive days of work

(a) in case of an accident;

(b) in the case of work required to be done to the machinery or establishment of the employer whose employees are affected;

(c) in the case of an occurrence beyond human control,

but only to the extent necessary to avoid serious interference with the ordinary working of the employer's undertaking.

(4) Notwithstanding subsection (1) or (2), an employer may require more than six consecutive days of work in accordance with an order of the Director, where, upon application of the employer, the Director by such order approves, with or without conditions, the substitution of an alternative arrangement for a period of rest. R.S., c. 246, s. 66; 1991, c. 14, s. 27.

Working in retail business on uniform closing day

66A (1) Notwithstanding any contract of employment or agreement made before or after the coming into force of this subsection, no employee is required, and no employer shall require an employee, to work or to sign a contract of employment or agreement that requires the employee to work in a retail business

on a uniform closing day unless the retail business is of a class of retail business exempted from the application of this Section.

(2) Where an employee to whom subsection (1) applies has agreed to work on uniform closing days, the employee may refuse to work on uniform closing days or on a particular uniform closing day if the employee gives the employer at least seven days notice to that effect before the employee is scheduled to begin such work or, where the employee receives less than seven days notice of being scheduled for such work, the employee gives the employer notice to that effect within two days of receiving the notice from the employer. 2003 (2nd Sess.), c. 7, s. 13; 2006, c. 10, s. 5.

Rest or eating break

66B (1) An employee is entitled to a rest or eating break of at least one-half hour at intervals such that as a result no employee is required to work longer than five consecutive hours without a rest or eating break.

(2) Notwithstanding subsection (1), where an employee works more than ten consecutive hours, the employee is entitled to at least one rest or eating break of at least one-half hour and other rest or eating breaks totalling at least one-half hour for each five consecutive hours of work.

(3) Subsections (1) and (2) do not apply

(a) where an accident occurs, urgent work is necessary or unforeseeable or unpreventable circumstances occur;

(b) where it is unreasonable for an employee to take a meal break;

(c) to an employee whose terms of employment are determined by a collective agreement; or

(d) in any other case prescribed by the regulations.

(4) Where it is necessary for medical reasons, an employee is entitled to a rest or eating break at a time or times other than when provided by subsection (1) or (2).

(5) Where an employee has worked five hours and has not been provided a rest or eating break, the employee is entitled to eat while working.

(6) The Governor in Council may make regulations prescribing cases where subsections (1) or (2) do not apply.

(7) The exercise by the Governor in Council of the authority contained in subsection (6) is regulations within the meaning of the *Regulations Act*. 2006, c. 32, s. 1.

Complaint to Director or Board

67 (1) An employee to whom Section 61 applies who is required to work more hours than provided by order in accordance with Section 61 or whose employer does not grant him a day of rest in accordance with Section 66 or a rest or eating break in accordance with Section 66B may make a complaint to the Director in accordance with subsection (2) of Section 21.

(2) An employee who has made a complaint under subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. R.S., c. 246, s. 67; 2006, c. 32, s. 2; 2010, c. 37, s. 104.

EMPLOYMENT OF CHILDREN

Children under sixteen years

68 (1) No person shall pay wages to a child under fourteen years of age to do work that is or is likely to be

- (a) unwholesome or harmful to his health or normal development; or
- (b) such as to prejudice his attendance at school or capacity to benefit from instruction there given.

(2) No person shall employ a child under sixteen years of age in work of any kind in

- (a) an industrial undertaking;
- (b) the forest industry;
- (c) garages and automobile service stations;
- (d) hotels;
- (da) restaurants, except where an employee is not operating cooking equipment and where safety training on all equipment and adequate supervision is provided and the person is at least fourteen years of age;
- (e) the operating of elevators;
- (f) theatres, dance halls, shooting galleries, bowling-alleys, billiard and pool rooms;
- (g) work or class of work in which the employment of a child under sixteen years of age is prohibited by regulation.

(3) No person shall employ a child under fourteen years of age to

work

- (a) for more than eight hours in any day;

(b) for more than three hours on any school day unless an employment certificate authorizing the employment of the child has been issued under the *Education Act*;

(c) on any day for a period that, when added to the time required for attendance at school on that day, totals more than eight hours;

(d) between the hour of ten o'clock in the afternoon of any day and the hour of six o'clock in the forenoon of the following day;

(e) in any work or class of work in which the employment of a child under fourteen years of age is prohibited by regulation.

(4) Subject to any other Act or regulation, subsection (2) does not apply to an employer who employs members of his family.

(5) The parent or guardian of a child employed in contravention of this Act, unless he establishes that the child was so employed without his consent or connivance, is liable to a fine in accordance with Section 93. R.S., c. 246, s. 68; 2006, c. 32, s. 3.

Effect of Section 68

69 The provisions of Section 68 are in addition to and not in derogation of the provisions of any other Act respecting the employment of children. R.S., c. 246, s. 69.

Complaint to Director or Board

70 (1) A person who has reasonable grounds to believe that any employer is employing a child contrary to Section 68 may make a complaint to the Director in accordance with Section 21.

(2) A person who has made a complaint under subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. R.S., c. 246, s. 70; 2010, c. 37, s. 105.

TERMINATION OF EMPLOYMENT

Dismissal or suspension without just cause

71 (1) Where the period of employment of an employee with an employer is ten years or more, the employer shall not discharge or suspend that employee without just cause unless that employee is a person within the meaning of person as used in clause (d), (e), (f), (g), (h) or (i) of subsection (3) of Section 72.

(2) An employee who is discharged or suspended without just cause may make a complaint to the Director in accordance with Section 21.

(3) An employee who has made a complaint under subsection (2) and who is not satisfied with the result may make a complaint to the Board in

accordance with Section 23 and such complaint shall be and shall be deemed to be a complaint within the meaning of subsection (1) of Section 23. R.S., c. 246, s. 71; 2010, c. 37, s. 106.

Termination of employment by employer

72 (1) Subject to subsection (3) and Section 71, an employer shall not discharge, suspend or lay off an employee, unless the employee has been guilty of wilful misconduct or disobedience or neglect of duty that has not been condoned by the employer, without having given at least

(a) one week's notice in writing to the person if his period of employment is less than two years;

(b) two weeks' notice in writing to the person if his period of employment is two years or more but less than five years;

(c) four weeks' notice in writing to the person if his period of employment is five years or more but less than ten years; and

(d) eight weeks' notice in writing to the person if his period of employment is ten years or more.

(2) Subject to subsection (3), and notwithstanding subsection (1), where an employer discharges or lays off ten or more persons in an establishment within any period of four weeks or less, the employer shall give notice of not less than

(a) eight weeks if the employment of ten or more persons and fewer than one hundred persons is to be terminated;

(b) twelve weeks if the employment of one hundred or more persons and fewer than three hundred is to be terminated;

(c) sixteen weeks if the employment of three hundred or more persons is to be terminated.

(3) Subsections (1) and (2) do not apply to

(a) a person whose period of employment is less than three months;

(b) a person employed for a definite term or task for a period not exceeding twelve months;

(c) a person who is laid off or suspended for a period not exceeding six consecutive days;

(d) a person who is discharged or laid off for any reason beyond the control of the employer including complete or partial destruction of plant, destruction or breakdown of machinery or equipment, unavailability of supplies and materials, cancellation, suspension or inability to obtain orders for the products of the employer, fire, explosion, accident, labour disputes, weather conditions and

actions of any governmental authority, if the employer has exercised due diligence to foresee and avoid the cause of discharge or lay-off;

(e) a person who has been offered reasonable other employment by his employer;

(f) a person who, having reached the age of retirement established by the employer on the basis of a *bona fide* occupational requirement for the position in which that person is employed, has his employment terminated;

(g) a person who is laid off in circumstances established by regulation as an exception to subsection (1) or (2);

(h) a person employed in the construction industry;

(i) a person employed in an activity, business, work, trade, occupational profession, or any part thereof, that is exempted by regulation.

(4) Notwithstanding subsections (1), (2) and (3), but subject to Section 71, the employment of a person may be terminated forthwith where the employer gives to the person notice in writing to that effect and pays him an amount equal to all pay to which he would have been entitled for work that would have been performed by him at the regular rate in a normal, non-overtime work week for the period of notice prescribed under subsection (1) or (2), as the case may be. R.S., c. 246, s. 72; 2007, c. 11, s. 3.

Termination of employment by employee

73 (1) Where an employee has been employed by an employer continuously for three months or more, the employee shall not terminate the employment unless the employer has been guilty of a breach of the terms and conditions of employment, without first having given

(a) one week's notice in writing to the employer if the period of employment is less than two years; and

(b) two weeks' notice in writing to the employer if the period of employment is two years or more.

(2) Subsection (1) does not apply to a person employed in the construction industry. R.S., c. 246, s. 73.

Duty of employer if notice given

74 Where the notice referred to in Section 72 or 73 has been given

(a) the employer shall not alter the rates of wages or any other term or condition of employment of a person to whom or by whom notice has been given; and

(b) at the expiry of the notice, the employer shall pay to the person all pay to which he is entitled. R.S., c. 246, s. 74.

Notice of termination by employer

75 (1) Every employer required by Section 72 to give notice of termination shall give notice in writing addressed to each person whose employment is to be terminated and shall serve the notice personally or by registered mail.

(2) Where an employer is required by subsection (2) of Section 72 to give notice he shall at the same time inform the Minister in writing of any such notices. R.S., c. 246, s. 75.

Conditional notice of termination and where lay-off and no notice

76 (1) Notice of termination of employment may be made conditional upon the happening of the future event if the length of notice complies with this Act.

(2) Where a person who has been laid off and who, by virtue of the duration of his lay-off was not entitled to the notice under Section 72, has his employment terminated by continued lay-off or otherwise, the employer shall pay to that person an amount calculated in accordance with Section 72 as though his employment had been terminated without notice on the day he was laid off. R.S., c. 246, s. 76.

If employment continues

77 (1) Where a person continues to be employed after the expiry of notice of termination of employment for a period exceeding the length of the notice, his employer shall not terminate his employment except in accordance with Section 72.

(2) Where a person employed for a definite term or task continues to be employed for a period of three months or more after completion of the term or task for which he was employed, his employment shall be deemed not to be for a definite term or task and shall be deemed to have commenced at the beginning of the term or task.

(3) Successive periods of employment of a person by an employer constitute one period of employment, except for successive periods of employment more than thirteen weeks apart in which case the last employment constitutes the period of employment for the purposes of Sections 71, 72 and 73.

(4) Periods of employment referred to in Sections 71, 72 and 73 include employment before the first day of February, 1973. R.S., c. 246, s. 77.

Complaint to Director or Board

78 (1) A person entitled to notice in accordance with Section 72 or Section 73 who has not received notice or pay in lieu of notice in accordance with subsection (4) of Section 72 may make a complaint to the Director in accordance with Section 21.

(2) The Director shall treat a complaint under subsection (1) which alleges that an employee has not been paid all pay as a complaint under Section 81.

(3) A person who has made a complaint under subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23. R.S., c. 246, s. 78; 2010, c. 37, s. 107.

PROTECTION OF PAY

Frequency of pay

- 79 (1) Subject to subsections (2) and (3), an employer shall
- (a) at least as often as semi-monthly pay to each of his employees all wages earned by the employee; and
 - (b) make that payment within five working days after the expiration of each pay period.

(2) An employee who is absent at the time fixed for payment or who, for any other reason, is not paid at that time, is entitled to the pay at any time thereafter during regular hours of work on demand.

- (3) This Section does not prohibit an employer
- (a) from paying any of his employees at intervals less frequent than those set out in clause (a) of subsection (1); or
 - (b) from paying any of his employees within a period that is longer than that mentioned in clause (b) of subsection (1),

if the payments are made in accordance with the terms of an existing practice or under the terms of an existing collective agreement, or in accordance with the provisions of an order of the Director with respect thereto granted on application. R.S., c. 246, s. 79.

Deductions for loss

79A (1) An employer shall not, directly or indirectly, withhold, deduct or require payment of all or part of the employee's wages for the purpose of paying for a loss that occurs while the employee is working unless allowed by statute, court order or written authorization.

(2) An employee's written authorization is not lawful if the deduction is for a loss that is the result of a customer leaving the employer's business without paying for the purchase of goods or services unless the employer can verify that the loss is the fault of the employee.

(3) An employee's written authorization is not lawful if the deduction is for a loss that brings the employee's wages below the minimum wage.

(4) The Governor in Council may make regulations concerning deductions from pay.

(5) The exercise by the Governor in Council of the authority contained in subsection (4) is regulations within the meaning of the *Regulations Act*, 2005, c. 38, s. 3.

Form of wages

80 Every employer shall pay all wages

- (a) in lawful currency of Canada;
- (b) by cheque or bill of exchange or demand for payment drawn upon a chartered bank, credit union, trust company or other company insured under the *Canada Deposit Insurance Corporation Act*; or
- (c) by deposit in an account of the employee in a chartered bank, credit union, trust company or other company insured under the *Canada Deposit Insurance Corporation Act*. R.S., c. 246, s. 80.

Complaint to Director

81 Where, within the preceding six months,

- (a) an employer has failed or refused to pay an employee any pay earned by or becoming due and payable to an employee in accordance with Sections 21, 32, 33, 34, 58, 60D, 71, 79, 79A and 80, or in accordance with existing practice or the provisions of a contract or collective agreement by which he is bound; or
- (b) an employer has failed or refused to pay any benefit to which an employee is entitled but which is not required to be made directly to the employee,

the employee may make a complaint to the Director in accordance with Section 21. R.S., c. 246, s. 81; 1991, c. 14, s. 28; 2005, c. 38, s. 4.

Complaint to Director by individual recruited for employment

81A Where, within the preceding six months, any person has acted contrary to Section 89B, 89E, 89F or 89G,

- (a) the individual referred to in Section 89B;
- (b) the employee referred to in Section 89E; or
- (c) the foreign worker referred to in Sections 89F and 89G,

may make a complaint to the Director in accordance with Section 21. 2011, c. 19, s. 15.

When Director not to entertain complaint

82 Subject to Section 83A, where the Director has received a complaint from an employee and the Director is satisfied

(a) that the employee is proceeding with or has commenced or was successful in an action for the recovery of the unpaid pay; or

(b) that the employee is bound by a collective agreement, as defined in the *Trade Union Act*, and that the employee could file a grievance under that agreement for the recovery of unpaid pay,

he shall not entertain the application. R.S., c. 246, s. 82; 1991, c. 14, s. 29.

Complaint to Board

83 (1) An employee who has made a complaint under Section 81 or Section 81A and who is not satisfied with the result may apply to the Board for a determination of the matter in accordance with Section 23.

(2) In a case where the Director finds that there is no pay unpaid or other amount owing, nor any other failure to comply with this Act or the regulations or where, in accordance with Section 82, he does not entertain an application he shall so advise the employee or other individual and advise him of his right to apply to the Board as provided by subsection (1) and that he may wish to seek the advice of legal counsel.

(3) Subject to Section 83A, where the Board is satisfied

(a) that the employee is proceeding with or has commenced or was successful in an action for the recovery of the unpaid pay; or

(b) that the employee is bound by a collective agreement, as defined in the *Trade Union Act*, and that the employee could file a grievance under that agreement for the recovery of unpaid pay,

the Board shall not entertain the application pursuant to this Act. R.S., c. 246, s. 83; 1991, c. 14, s. 30; 2010, c. 37, s. 108; 2011, c. 19, s. 16.

Mechanics' Lien Act

83A Notwithstanding clause (a) of Section 82 and clause (a) of subsection (3) of Section 83, the Director may entertain an application pursuant to those clauses where the employee has commenced an action pursuant to the *Mechanics' Lien Act*. 1991, c. 14, s. 31.

Security if appeal by employer

84 (1) Before proceeding to deal with an appeal by an employer or a person referred to in Section 81A under subsection (5) of Section 21, the employer or the person referred to in Section 81A, as the case may be, shall

(a) pay to the Board the lesser of the amount owing under the Director's order or the amount that is prescribed by the regulations; or

(b) furnish, to the Board, security in the form of a bond with one or more sureties acceptable to the Board in such amount and subject to such conditions as may be prescribed by regulations.

(2) Where an employer or any person referred to in Section 81A has paid to the Board the amount owing under clause (a), or has furnished a bond under subsection (1) and the Board, after completion of its consideration of and the investigation into the complaint of the employee or other individual, finds that the employer or any person referred to in Section 81A is indebted to the employee or other individual for the amount found owing by the Board it may apply the amount paid to the Board or the proceeds of the bond towards the amount found owing by the Board in accordance with Section 87.

(3) Where, under subsection (2), the Board has applied the proceeds of a bond towards the payment of unpaid pay or the amount found owing by the employer or a person referred to in Section 81A, it shall in writing, as soon as is reasonably possible, notify the employer or other person referred to in Section 81A to that effect and where after the application of the amount paid to the Board or the proceeds there remains a surplus of funds, the surplus shall be turned over by the Board to the employer or person referred to in Section 81A, to the surety or sureties, as the case may be. R.S., c. 246, s. 84; 2010, c. 37, s. 109; 2011, c. 19, s. 17.

Statutory garnishee

85 (1) Where a complaint is received by the Director under Section 81 or 81A and the Director has knowledge or has reason to believe that

(a) in the case of a complaint pursuant to Section 81, a person is or is about to become indebted to the employer for any sum of money, or that the person is about to pay to the employer a sum of money; or

(b) in the case of a complaint pursuant to Section 81A, a person is or is about to become indebted to any person referred to in Section 81A, for any sum of money, or that person is about to pay to any person referred to in Section 81A a sum of money,

the Director may, notwithstanding that the Director has not determined whether the employer is indebted to the employee for unpaid pay or that any person has acted contrary to Section 89B, 89E, 89F or 89G as alleged, by order served personally or by registered mail on that person, require that person to pay to the Board part or all of the moneys owing, likely to be owed or about to be paid by that person to the employer or to any person referred to in Section 81A, as the case may be.

(2) For the purposes of this Section, money on deposit in a general bank account or in a credit union account in the name of an employer or any person referred to in Section 81A is money for which the bank or credit union is indebted to the employer or any person referred to in Section 81A.

(3) A person to whom an order of the Director under subsection (1) is directed shall upon service of the order forthwith comply with the order.

(3A) Where a person

(a) is ordered pursuant to this Section to pay money to the Board; and

(b) is or becomes indebted to the employer or any person referred to in Section 81A or, by reason of an assignment by the employer or any person referred to in Section 81A, is or becomes indebted to another person for a sum of money,

then

(c) that sum of money is subject to a lien and charge in favour of and is a debt due or accruing due to the Board and is payable in accordance with subsection (2) of Section 88;

(d) notwithstanding that that sum of money has, subsequent to service of the order pursuant to subsection (1) of this Section, been paid to the employer, or any person referred to in Section 81A or another person, the person referred to in clause (a) is liable to pay that sum to the Board; and

(e) the Director has standing in any court of competent jurisdiction to bring an action to recover that sum of money.

(4) Immediately upon receipt of any money in accordance with this Section, the Board shall in writing notify the employer or any person referred to in Section 81A concerned and issue a receipt therefor to the person from whom the money was received, and the receipt of the Board is a good and sufficient discharge of the liability of the person to whom the order was made to the employer or any person referred to in Section 81A to the extent of the amount shown on the receipt.

(5) Any money received by the Board under this Section shall be held by the Board in trust for the employer or any person referred to in Section 81A concerned and where

(a) the Director finds that the employer or any person referred to in Section 81A is indebted to the employee for unpaid pay or to any individual for an amount under this Act other than unpaid pay; and

(b) either

(i) the time for the employer or any person referred to in Section 81A to apply to the Board has expired, or

(ii) the Board has determined the matter,

the Board shall pay over the amount of unpaid pay as determined by it, in accordance with Section 87, or shall pay over any other amount found owing, and if after making such payment there remains a surplus, the surplus shall be paid over to the employer or any person referred to in Section 81A, as the case may be. R.S., c. 246, s. 85; 1991, c. 14, s. 32; 2010, c. 37, s. 110; 2011, c. 19, s. 18; 2016, c. 11, s. 6.

Payment where employee cannot be found

86 (1) An employer who is unable to locate an employee in order to pay him shall pay all pay due and owing the employee to the Director.

(2) Payment by an employer under subsection (1) constitutes, to the extent of the payment, a discharge of the employer in respect of pay owing. R.S., c. 246, s. 86.

Payment by Board or Director

87 (1) All money received by the Board or the Director on account of pay owing to an employee or, in relation to an amount owing to an employee or other individual under this Act other than pay, shall be paid

(a) to the employee or other individual to whom the pay or other amount is owing;

(b) if the employee or other individual is deceased, to his estate;

(c) if the employee or other individual is deceased and he has no other estate, to such other person as the Board considers entitled thereto; or

(d) if no other person is entitled thereto, to the Minister of Finance to and for the public uses of the Province.

(2) Where the Board or the Director is unable, within one month, to locate an employee or other individual for the purpose of payment under subsection (1), the Board or the Director shall pay the money to the Minister of Finance to be held in trust for the employee or other individual.

(3) Notwithstanding any other provision of this Act, the Board shall not pay over any money received by it in any proceeding until the time for an appeal from the order of the Board has expired or where an appeal is taken, the appeal is either withdrawn, abandoned or determined. R.S., c. 246, s. 87; 2010, c. 37, s. 111; 2011, c. 19, s. 19.

Lien

88 (1) Notwithstanding any other Act, an order of the Board under Section 26 constitutes a lien and charge in favour of the Board for the amount set forth in the order and the amount set forth in the order is a debt due or accruing due to the Board by the employer or any person referred to in Section 81A and the Board shall be deemed to hold a mortgage on the assets of the employer or any person referred to in Section 81A to the amount set forth in the order and may enforce the mortgage by foreclosure proceedings.

(2) The lien and charge and mortgage referred to in subsection (1) shall be payable in priority over all liens, charges or mortgages of every person in respect of the real and personal property of the employer or any person referred to in

Section 81A, including those of Her Majesty in right of the Province, but excepting liens for wages due to workers by that employer or person referred to in Section 81A.

(3) The lien and charge and mortgage referred to in subsection (1) has no effect with respect to property registered pursuant to the *Land Registration Act* until the order of the Board under Section 26 is recorded in the judgment roll. R.S., c. 246, s. 88; 2001, c. 6, s. 110; 2010, c. 37, s. 112; 2011, c. 19, s. 20.

Unlawful assignment of wages

89 An assignment of wages or any portion thereof to secure payment of a debt is unlawful. R.S., c. 246, s. 89.

Reciprocal enforcement of orders

89A (1) Where the Governor in Council is satisfied that reciprocal provisions will be made by another province for the enforcement of orders made pursuant to this Act, the Governor in Council may declare that province to be a reciprocating province and may designate an authority of that province for the purpose of this Section.

(2) Where an order, judgment or certificate for the payment of wages has been obtained by an authority designated pursuant to subsection (1), the authority may apply to the Director to enforce the order, judgment or certificate for the payment of wages.

(3) On receiving a copy of the order, judgment or certificate for the payment of wages

(a) certified by the court in which the order, judgment or certificate is registered; or

(b) where there is no provision in the reciprocating province for registration in a court of the order, a copy of the order, judgment or certificate, certified to be a true copy by the designated authority,

and on being satisfied that the wages are still owing, the Director shall issue an order for payment of the amount owing and enter the order with the Prothonotary, and on being so entered, the order is enforceable as of the date it was issued by the Director and as if it were an order of the Supreme Court of Nova Scotia, and the order of the Director is deemed to be an order of the Board pursuant to Section 26. 1991, c. 14, s. 33; 2010, c. 37, s. 113.

PROTECTION OF INDIVIDUALS RECRUITED FOR EMPLOYMENT

No fee permitted

89B (1) No person shall, directly or indirectly, charge or collect a fee from an individual for

- (a) finding or attempting to find employment in the Province for the individual; or
 - (b) providing the individual with information about any employer who is seeking employees for employment in the Province.
- (2) No person shall assist another person to do any of the things described in subsection (1).
- (3) Where the Director is satisfied that
- (a) any person, except a licensee, has contravened subsection (1) or (2), the Director may, by order in writing, recover the fee from that person or from the employer of the individual on behalf of the individual; or
 - (b) a licensee has contravened subsections (1) or (2), the Director may, by order in writing, recover the amount from the licensee on behalf of the individual.
- (4) Notwithstanding subsection (1), the Governor in Council may by regulation prescribe a class or classes of individuals exempt from the operation of this Section. 2011, c. 19, s. 21.

No engagement of unlicensed recruiter

89C No person shall engage the services of a recruiter of foreign workers unless the recruiter holds a valid and subsisting licence issued pursuant to this Act or is otherwise exempt by the provisions of this Act or the regulations from the obligation to be licenced. 2011, c. 19, s. 21.

Contract void

89D A provision in a contract that provides for the payment of a fee contrary to Section 89B is void. 2011, c. 19, s. 21.

No cost recovery from employee

89E No employer shall, directly or indirectly, recover from an employee any cost incurred by the employer in recruiting the employee. 2011, c. 19, s. 21.

No wage reduction

89F (1) No employer shall reduce the wages of a foreign worker employed by the employer, or reduce or eliminate any other benefit, term or condition of the foreign worker's employment that the employer undertook to provide as a result of participating in the recruitment of a foreign worker.

(2) Any agreement by a foreign worker to a reduction or elimination of wages contrary to subsection (1) is void. 2011, c. 19, s. 21.

Property foreign worker entitled to possess

89G (1) In this Section, “property that the foreign worker is entitled to possess” includes the foreign worker’s passport and work permit.

(2) No employer or recruiter, and no person on the employer’s behalf, shall take possession of, or retain, property that the foreign worker is entitled to possess.

(3) No person shall assist another person to do any of the things described in subsection (2).

(4) Where the Director is satisfied that an employer or recruiter, or any person on behalf of an employer or recruiter, has taken possession of, or retained, property that a foreign worker is entitled to possess, the Director may, in writing, order the contravening person to

(a) do any act or thing that in the opinion of the Director constitutes full compliance with this Act; or

(b) rectify an injury caused to the person injured or make compensation therefor. 2011, c. 19, s. 21.

LICENSING OF RECRUITERS AND REGISTRATION
OF EMPLOYERS OF FOREIGN WORKERS

No recruiting unless licensed

89H (1) No person shall engage in foreign worker recruitment unless the person is an individual who holds a licence under this Act that authorizes the person to do so.

(2) Notwithstanding subsection (1), the following persons are not required to hold a licence under this Act:

(a) a person who is engaged in recruiting a foreign worker for employment with that person;

(b) an individual who, on behalf of his or her employer, engages in foreign worker recruitment for the employer;

(c) a person who, without receiving a fee directly or indirectly, engages in activities to find employment for a foreign worker who is his or her family member;

(d) a department or agency of the government or a municipality; and

(e) a person or class of persons exempt under the regulations. 2011, c. 19, s. 21.

Application for licence

89I (1) An individual may apply, in a form approved by the Director, for a licence or renewal of a licence authorizing the individual to engage in foreign worker recruitment.

(2) When applying for a licence or renewal of a licence, the applicant shall provide

(a) the information required by the regulations and the application form; and

(b) any additional information requested by the Director.

2011, c. 19, s. 21.

Fee and security

89J Before the Director issues or renews a licence, the applicant shall

(a) pay any licence or renewal fee which is specified in the regulations; and

(b) provide the Director with security on terms and conditions, and in the amount, specified in the regulations. 2011, c. 19, s. 21.

Inquiries by Director

89K (1) The Director may make inquiries into and investigate the character, financial history and competence of

(a) an applicant for a licence or a licence renewal; or

(b) any person, including a corporation, partnership or other entity, associated with the business of the applicant,

as necessary, to determine whether the applicant meets the requirements of this Act and the regulations.

(2) Where a person who is the subject of an inquiry or investigation by the Director in subsection (1) is a corporation, partnership or other entity, the Director may inquire into or investigate the conduct of the officers, directors or partners of the corporation, partnership or other entity.

(3) The Director may

(a) require information or material from any person who is the subject of the inquiry or investigation; and

(b) request information or material from any person who the Director has reason to believe can provide information or material relevant to the inquiry or investigation.

(4) The Director may require that any information provided under subsection (3) be verified by statutory declaration. 2011, c. 19, s. 21.

Terms and conditions

89L (1) The Director may, where the Director considers it in the public interest to do so, impose terms or conditions on a licence at the time of issuing or renewing it, or at any other time by written notice to the licensee.

(2) Notwithstanding subsection (1), a licence is also subject to any terms or conditions imposed by regulation. 2011, c. 19, s. 21.

Term of licence

89M A licence is valid for three years from the day it is issued or renewed. 2011, c. 19, s. 21.

Licence not transferable

89N A licence is not transferable or assignable. 2011, c. 19, s. 21.

Notification of change

89O Where there is a change in the officers, directors or partners of any corporation, partnership or other entity associated with the business of the licensee, the licensee shall notify the Director, and the licensee may not continue to engage in activities under the licence unless the Director consents to the continuation in writing. 2011, c. 19, s. 21.

Refusal of licence

89P The Director may refuse to issue a licence or renew a licence to an applicant if

- (a) the applicant provides incomplete, false, misleading or inaccurate information in support of the application;
- (b) the applicant fails to meet any qualification or satisfy any requirement of this Act or the regulations;
- (c) having regard to the past conduct of the applicant, or of any person associated with the business of the applicant, there are reasonable grounds to believe that the applicant will not act in accordance with law, or with integrity, honesty or in the public interest, while carrying out the activities for which the licence is required;
- (d) the applicant for a licence, or any person associated with the business of the applicant, is carrying on activities that are in contravention of this Act or the regulations, or will be in contravention if the licence is granted;
- (e) the applicant for a licence renewal, or any person associated with the business of the applicant, is carrying on activities that are in contravention of this Act, the regulations or the terms of the licence, or will be in contravention if the licence is renewed. 2011, c. 19, s. 21.

No refusal without hearing

89Q The Director may not refuse to issue or renew a licence, and may not apply conditions to a licence, without first giving the applicant an opportunity to be heard before the Director in the manner set out in the regulations. 2011, c. 19, s. 21.

Cancellation or suspension

89R (1) Subject to subsection (2), the Director may cancel or suspend the licence of a licensee

(a) for any reason for which the Director may refuse to issue or renew a licence to an applicant under Section 89P; or

(b) if the licensee fails to provide information requested by the Director or required by the regulations.

(2) Where the Director proposes to cancel a licence, the Director

(a) shall serve written notice on the licensee and shall provide the licensee an opportunity to be heard in relation to the proposal; and

(b) may, by order, suspend the licence if the Director considers it in the public interest to do so, and any such order takes effect immediately.

(3) A suspension under subsection (2) continues in effect until

(a) the licensee is provided an opportunity to be heard, in the manner set out in the regulations, and a final determination has been made in respect of the proposed cancellation and there is no further right of appeal;

(b) the Director receives new information that leads the Director to believe that the licence should not be cancelled; or

(c) the licensee does not request an opportunity to be heard within twenty-one days after notice is served on the licensee in accordance with clause (2)(a).

(4) Where a licensee does not request an opportunity to be heard within the time permitted under clause (3)(c), the Director may take the proposed action. 2011, c. 19, s. 21.

“employer” defined

89S In Sections 89T through 89Z, “employer” includes a person who proposes to employ a foreign worker. 2011, c. 19, s. 21.

No recruiting by employer unless registered

89T (1) No employer shall recruit or engage the services of another person to recruit a foreign worker for employment with the employer unless the employer is registered with the Director.

(2) Notwithstanding subsection (1), a person or class of persons exempt under the regulations is not required to register with the Director in order to recruit or engage the services of another person to recruit a foreign worker. 2011, c. 19, s. 21.

Application for registration

89U (1) An employer may apply to the Director, in a form approved by the Director, to be registered to recruit or to engage the services of another person to recruit a foreign worker for employment with the employer.

- (2) When applying to be registered, the employer shall provide
- (a) the information required by the regulations and the application form; and
 - (b) any additional information requested by the Director.
- 2011, c. 19, s. 21.

Registration

89V (1) Unless an application is refused under Section 89W, the Director shall

- (a) register the employer; and
- (b) provide the employer written notice of the registration and the date on which the registration expires.

(2) Subject to the regulations, a registration is valid for the period stated in the registration. 2011, c. 19, s. 21.

Refusal of registration

89W The Director may refuse to register an employer if

- (a) the employer provides incomplete, false, misleading or inaccurate information in support of the application;
- (b) the employer is carrying on activities that are in contravention of this Act or the regulations or will be in contravention if the registration is granted;
- (c) the employer has previously contravened this Act or the regulations;
- (d) the employer has been found to be in breach of the *Occupational Health and Safety Act*, by final order or decision made pursuant to that Act, or has been convicted of an offence under this Act; or
- (e) an individual who will be engaged in foreign worker recruitment on behalf of the employer does not hold a required licence under subsection 89H(1). 2011, c. 19, s. 21.

No refusal without hearing

89X The Director shall not refuse to register an employer without first giving the employer an opportunity to be heard before the Director, in the manner set out in the regulations, or an opportunity to correct or complete the application. 2011, c. 19, s. 21.

Cancellation or suspension

89Y (1) Subject to subsection (2), the Director may cancel or suspend the registration of an employer

- (a) for any reason for which the Director may refuse to register an employer under Section 89W; or
- (b) if the employer fails to provide information requested by the Director or required by the regulations.

(2) Where the Director proposes to cancel a registration, the Director

- (a) shall serve written notice on the employer and shall provide the employer an opportunity to be heard in relation to the proposal in the manner set out in the regulations; and
- (b) may, by order, suspend the registration if the Director considers it in the public interest to do so, and any such order takes effect immediately.

(3) A suspension under subsection (2) continues in effect until

- (a) the employer is provided an opportunity to be heard, in the manner set out in the regulations, and a final determination has been made in respect of the proposed cancellation, and there is no further right of appeal;
- (b) the Director receives new information that leads the Director to believe that the registration should not be cancelled; or
- (c) the employer does not request an opportunity to be heard within twenty-one days after notice is served on the employer in accordance with clause (2)(a).

(4) Where an employer does not request an opportunity to be heard within the time permitted under clause (3)(c), the Director may take the proposed action. 2011, c. 19, s. 21.

Appeals

89Z (1) Where the Director

- (a) refuses to issue or renew a licence to a recruiter or cancels a recruiter's licence; and

(b) refuses to register an employer or cancels an employer's registration,

the Director shall give a person referred to in clause (a) or (b) written reasons for the refusal or cancellation along with a notice that the refusal or cancellation may be appealed in accordance with this Section.

(2) Where the Director applies conditions to a licence, the Director shall give the recruiter notice that the application of conditions may be appealed in accordance with this Section.

(3) A person in relation to whom the Director has

(a) refused to issue or renew a licence, cancelled a licence or applied conditions to a licence; or

(b) refused or cancelled a registration,

may appeal to the Board within ten days after the notice of the decision or, in respect of a licence, the imposition of terms and conditions on the licence is served upon the person in the manner set out in the regulations.

(4) Notwithstanding subsection (3), the Board may, either before or after the ten days referred to in that subsection, extend the time for filing an appeal.

(5) In hearing and deciding an appeal under this Section, the Board shall conduct the appeal as specified in Sections 24, 25 and 27.

(6) The Board may dismiss the appeal, allow the appeal or make any decision that the Director is authorized to make under this Act. 2011, c. 19, s. 21.

ENFORCEMENT AND PENALTIES

Standing of Director to bring action and effect of order

90 (1) The Director shall have standing to bring action in any court of competent jurisdiction or otherwise to pursue any claim to recover unpaid pay or any other amount found owing pursuant to this Act on behalf of the Board, any employee, group of employees or other individual.

(2) The Director or any complainant on whose behalf the order has been made may enter with the prothonotary

(a) an order of the Director by which an employer is ordered to pay unpaid pay or any person is ordered to pay an amount found owing pursuant to this Act other than unpaid pay, in respect of which the time for appeal to the Board under subsection (5) of Section 21 has elapsed and no appeal has been filed; or

(b) an order of the Board by which an employer is ordered to pay unpaid pay or any person is ordered to pay an amount found owing pursuant to this Act other than unpaid pay,

as if it were an order of the Supreme Court of Nova Scotia and every such order is thereafter enforceable as an order of the Supreme Court by the Director or the complainant for whose benefit it was made.

(3) Subject to subsection (4), where any sheriff has in his possession or under his control any property of a person against whom an order has been entered under subsection (2) or the proceeds thereof he shall disperse the proceeds in accordance with the priorities established by Section 88.

(4) Where an order of the Director or the Board has been entered as an order of the Supreme Court of Nova Scotia in accordance with subsection (2), any person, other than the employer or person against whom the order has been entered, may challenge the order in interpleader proceedings or an application to set aside any execution order or execution thereunder as provided for by the *Civil Procedure Rules* or any other court proceedings in which priority among creditors is determined, but the order of the Director or the Board is *prima facie* proof that the amount of money ordered to be paid was due and owing when the order was made.

(5) Where, in the opinion of the Director,

(a) an employee has good cause for a complaint under Section 81; or

(b) an individual, employee or foreign worker referred to in Section 81A has good cause for a complaint under that Section,

the Director shall notify the sheriff and may apply for an attachment order against the employer or person against whom the complaint was made, as provided for in the *Civil Procedure Rules*.

(6) Notwithstanding the requirement of the *Civil Procedure Rules*, the Director is not required to have sureties or give any security. R.S., c. 246, s. 90; 2010, c. 37, s. 114; 2011, c. 19, s. 22; revision corrected.

Agreement between Director and employer's creditors

90A Where an asset of an insolvent employer or any person referred to in Section 81A would, by lawful means, otherwise be subject to a process that would make it unavailable to satisfy an order of the Board, the Director may negotiate and enter into an agreement with the creditors of the employer or any person referred to in Section 81A with respect to the asset of the employer or any person referred to in Section 81A for the purpose of enabling the recovery of funds payable to the Board. 1991, c. 14, s. 34; 2010, c. 37, c. 115; 2011, c. 19, s. 23.

Employer vicariously liable

91 In a prosecution under this Act against an employer or any person referred to in Section 81A, the act or omission of any manager, or superintendent or

of any other person who exercises management functions for the employer or person referred to in Section 81A shall be deemed to be the act or omission of the employer or person referred to in Section 81A, unless and until it is proved that the act or omission was without the knowledge or consent of the employer or person referred to in Section 81A. R.S., c. 246, s. 91; 2011, c. 19, s. 24.

Consent to prosecution

92 (1) No prosecution for an offence under this Act shall be instituted without the consent in writing of the Minister.

(2) A writing by the Minister indicating that he has consented to the prosecution of a person named therein for an offence under this Act alleged to have been committed, or in the case of a continuing offence, alleged to have commenced, on a date therein set out, is a sufficient consent for the purposes of this Section to the prosecution of the person for any offence under this Act committed by or commencing on that date.

(3) This Section does not apply to a prosecution instituted by the Minister or the Attorney General. R.S., c. 246, s. 92.

Offences

93 (1) Every person who

(a) does anything prohibited by this Act or who refuses or neglects to do anything required by this Act to be done by that person;

(b) does any act or thing prohibited by an order made under this Act, fails to perform an act required by an order made under this Act or otherwise contravenes an order made under this Act;

(c) wilfully makes or causes to be made false or misleading entries in any record that the person is required to keep by this Act or by the regulations or by an order of the Governor in Council;

(d) wilfully supplies or causes to be supplied false or misleading information to the Director, an officer or the Board;

(e) refuses or neglects to permit an inspection or examination authorized by this Act; or

(f) wilfully fails to furnish a bond or an amount owing under clause (a) of subsection (1) of Section 84,

is guilty of an offence.

(2) Where an employee by collusion with the employee's employer or otherwise wilfully works for less than the minimum wage to which the employee is entitled under this Act, or directly or indirectly returns to the employer any part of the employee's wages thereby in effect reducing the wages actually

received and retained by the employee to an amount less than the minimum wage to which the employee is entitled, the employee and the employer are both guilty of an offence. 2003 (2nd Sess.), c. 7, s. 14; 2010, c. 37, s. 116; 2011, c. 19, s. 25.

Penalty

94 (1) A person that is guilty of an offence under this Act is liable on summary conviction to a fine of

(a) in the case of a corporation, not more than twenty-five thousand dollars;

(b) in the case of a person, other than an employee, that is not a corporation or in the case of a director of a corporation, not more than five thousand dollars; or

(c) in the case of an employee, not more than two thousand five hundred dollars.

(2) A person guilty of a second or subsequent offence under this Act is liable, in addition to the fine under subsection (1), to

(a) an additional fine of not more than the maximum fine set out in subsection (1) for that person; or

(b) imprisonment for a term of three months,

or to both.

(3) Where a contravention or failure to comply continues for more than one day, the person is guilty of a separate offence for each day that the offence continues. 2003 (2nd Sess.), c. 7, s. 14; 2011, c. 19, s. 26.

95 to 98 *repealed 2003 (2nd Sess.), c. 7, s. 14.*