PROVINCIAL
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A GUIDE TO THE OCCUPATIONAL HEALTH AND SAFETY ACT

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A Guide to the Occupational Health and Safety Act

A Guide to the Occupational Health and Safety Act is published by the Provincial Building & Construction Trades Council of Ontario (Ontario Building Trades), to help union representatives and workers understand the Occupational Health & Safety Act (Act).

The Ontario Building Trades consists of 13 International craft unions in the construction industry with a total membership of about 150,000, with locals being situated in both urban and remote regions of the province.

The Guide provides you with basic information and interpretation of the Occupational Health and Safety Act. It answers questions about your rights and your employer's legal obligations. References to the relevant articles of the Act are highlighted after each section.

The content of this Guide is intended to provide a general overview to the subject matter. Specialist advice should be sought about specific circumstances. Do not use this Guide as a substitute for expert legal advice. There are many individual facts, which can make a tremendous difference as to how to handle a specific situation.

If you require additional clarification, please contact your local union health and safety representative. If further information is required, contact the Provincial Building Trades office at (416) 679-8887 and ask to speak to the Director of Occupational Services.

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INTRODUCTION: **THE OCCUPATIONAL HEALTH AND SAFETY ACT**

The Occupational Health and Safety Act (OHSA) is the principal vehicle through which the Ontario government protects Ontario's workers from being exposed to unacceptably hazardous working conditions. It does so by imposing duties on employers, supervisors, workers, and others to comply with standards established by the Act and the regulations made pursuant to it.

As well, it requires the employer to establish a system to manage OHS that includes the appointment of competent supervisors, preparation of a written OHS policy, and provision of information to health and safety representatives or joint health and safety committees. The legislation also provides for workers to be involved in OHS management at their workplaces through **a right to know about hazards in the workplace, a right to participate through the appointment of health and safety representatives, and a right to refuse unsafe work without the threat of retaliation for doing so.**

The Workplace Safety and Insurance Board (WSIB) is involved in prevention principally through the provision of financial incentives administered through its various experience rating plans. It used to also be involved in prevention through its supervision of safe workplace associations and other educational and promotional activities.

In 2011 in response to recommendations from the Expert Advisory Panel on Occupational Health and Safety, known as the Dean Report, many of the WSIB's prevention functions were transferred to the OHS Division (OHSD) of the MOL by Bill 160 (2011) under the direction of the Chief Prevention Officer.

Specific & Process Regulations

It is useful at this point to draw out a distinction between two different kinds of regulation. On the one hand, the OHSA, and the regulations promulgated under it, sets out specific standards that must be obeyed. For example, designated substance regulations limit worker exposure to various harmful substances such as lead and asbestos. These are known as specification standards. On the other hand, the OHSA also requires

employers to create or engage in certain processes to manage OHS. A good example is the recent violence and harassment sections of the Act that require employers to prepare policies that have a certain minimum content, conduct a risk assessment, and provide workers with information and instruction (OHSA, Part III.01). These are known as process standards.

OHSA applies to nearly all provincially regulated employers

The OHSA applies to nearly all provincially regulated employers and binds the Crown (s.2). Sections of the Act also apply to independent contractors (s.4). It does not, however, apply to work performed by the owner or occupant, or a servant of the owner or occupant in or about a private residence (s. 3(1)). As a result, domestic workers employed by the owner or occupant fall outside the act, a matter of some concern given the precarious and vulnerable situation of such workers.

OHSA is not built on the platform of the contract of employment

Unlike most employment law, the OHSA is not built on the platform of the contract of employment. Rather, rights and duties depend on establishing a "worker" status. Worker is defined as "a person who performs work or supplies services for monetary compensation" (s. 1). Also, employer is defined as a person who employs one or more persons or contracts for the services of one or more workers and includes a contractor or a subcontractor who performs work or supplies services. As a result, an employer owes the same duties to self-employed persons it hires as it does to employees. Thus, for example, the Ontario Court of Appeal recently held that a company that hires truck drivers as independent contractors was nevertheless required to establish a joint health and safety committee because it regularly employed twenty or more workers.

Powers of the Inspectors

Inspectors have broad powers to enforce the OHSA. They are authorized to enter any workplace at any time without a warrant or notice (s. 54(1)). The only exception to this is with respect to dwellings used as workplaces. In this setting, inspectors may only enter with the consent of the occupier or under the authority of a warrant (s. 54(2)). Again, this exception may be significant for some precarious or vulnerable workers who are working at home.

Once in the workplace inspectors have authority to examine and handle equipment and materials that are present, to require production of documents, to conduct tests, to be accompanied and assisted by experts, to require the employer to conduct tests, etc. (s. 54(1)). The inspector is also authorized to question any person and every person must assist the inspector in the performance of her or his duties (s. 62). Where the inspection becomes an investigation into a suspected violation of the Act because the inspector has reasonable and probable grounds to believe that an offence has been committed, a warrant will be required and can be obtained under the act.

Where the inspector finds a violation of the Act, he or she has a variety of enforcement powers. The inspector can issue an order to comply and specify either that the order be carried out forthwith or at some specified date in the future (s. 57(1)). The inspector may also order the employer to submit a compliance plan (s. 57(4)). Where the inspector finds that the violation presents a danger or hazard to the safety of a worker, he or she can issue a stop work order. Work may not be resumed until the inspector withdraws the order after an inspection. However, work may be resumed pending an inspection if a worker representative advises the inspector that in her or his opinion the order has been complied with (s. 57(6-7)). Inspectors' orders may be appealed to the Ontario Labour Relations Board within 30 days and the Board has the power to suspend the operation of the order pending a disposition of the appeal (s. 61).

Inspectors do not have the power to prosecute violations of the act although they can recommend that a prosecution take place. They may, however, issue tickets under Part I of the Provincial Offences Act (POA) for contraventions of the Act that are listed in schedules issued pursuant to O. Reg. 950 promulgated under the POA. There is a set fine that may be paid without a court appearance or a defendant may elect to have the charge tried.

Offences & Ticketing

Employers, supervisors, and workers can be ticketed. The ticketing power was substantially enlarged in 2005. Previously, tickets had been used in construction, but they now cover a much wider range of contraventions. There are now 81 ticketable offences. Workers are the target of 30, supervisors the target of 31, and employers of 21. The set fine is determined by the Senior Justice of the Ontario Court of Justice. They

were last updated at the beginning of 2010. Current fines are either $195 or $295 per offence. Inspectors can also issue summonses under Part I for any violation of the OHSA. When a summons is issued, the defendant must make a court appearance and the maximum fine on conviction is $1000.

Criminal Code Charges

More serious offences are prosecuted under Part III of the POA. The decision to prosecute is made by the Legal Services Branch (LSB) of the MOL, which also conducts the prosecution. Defendants can raise a due diligence defense, but they bear the burden of proving that they took every precaution reasonable in the circumstances to comply with the law. Upon being convicted, an individual may be fined up to $100,000 or to a prison term of not more than 12 months, or both. A corporation may be fined up to $1,500,000.

Finally, it should also be noted that employers may also be charged under the Criminal Code. While in theory employers always could be charged with criminal offences, such as criminal negligence, historically it had been attempted rarely and succeeded only once. The enactment of the so-called Westray Bill, Bill C-45, in 2003 facilitated the prosecution of such charges. It imposes a duty on all persons "directing the work of others" to take reasonable steps to ensure the safety of workers and the public. It also creates new rules for attributing criminal liability to organizations, including corporations, and identifies factors that should be used to sentence an organization convicted of a criminal offence.

In sum, OHS law imposes enforceable duties on employers, supervisors, workers, and others to provide a safe and healthy workplace, to adopt specified OHS management practices and to work safely. To obtain compliance with these duties, OHS inspectors can choose from among a wide range of measures. In addition to non-statutory mechanisms, such as providing advice and persuading, enforcement actions range from issuing an order to launching a criminal prosecution.

The following sections will deal with specific sections of the Act.

PART A: **APPLICATION OF THE ACT**

Who is covered by the law?

- The Occupational Health and Safety Act (Act) covers almost all workplaces in Ontario. A workplace is any place "at, upon, in, or near" where a worker performs work. The Act applies to workers, employers, supervisors, contractors, owners of premises and Suppliers of materials and equipment.
- Public school and university teachers are also covered by with the enactment of Regulations 191 and 307.
- Farming operations such as mushroom, greenhouse, dairy, hog, cattle, and poultry farming are covered by the Act with the enactment of Regulation 414/05 as long as they have at least 1 paid worker.
- "Worker" in the OHSA also includes co-op students and unpaid interns giving them the same rights as paid employees.

Who is not covered by the Act?

- The Act does not apply to work performed by an owner/occupant or domestic servants in a private residence.

   **Sec. 3, Sub. 1 and 2**

- The Act does not apply to workplaces under the jurisdiction of the federal government of Canada.

PART B: **DUTIES AND RESPONSIBILITIES**

An essential part of Ontario's health and safety legislation is the importance of having a strong "Internal Responsibility System" (IRS). The basis of this concept is that everyone in the workplace has a direct responsibility for health and safety. Whether you are a worker, a supervisor, or the owner of the company, health and safety is your responsibility.

Each workplace party on a construction project has certain duties and responsibilities that contribute to a safe and healthy workplace. These health and safety responsibilities are specified in the current Occupational Health and Safety Act and Regulations for Construction Projects, commonly known as the "green book."

Before beginning work, it is important for everyone on the project to know and understand their legal rights, responsibilities, and duties.

Section 25 the "employer general duties."

- Section 25(2)(h) establishes a duty that has been described as "even more sweeping" than s. 25(1)[1]. **It is more sweeping because it does not depend on the existence of a specific regulation prescribing or proscribing particular conduct.**

- Section 25(2)(h) is necessary because the regulations cannot reasonably anticipate and provide for all of the needs and circumstances of the many and varied workplaces across the province.

- Investigation and workplace analysis need to go beyond merely determining whether section 25(1) of the OHSA, requiring employers to ensure that the measures and procedures prescribed by the regulations, are being carried out.

- **Employers are required to comply with s. 25(2)(h) as well as s. 25(1), and the application of s. 25(2)(h) does not depend on compliance with any of the regulations.**

1 R. v. Wyssen (1992), 10 O.R. (3d) 193 (C.A.), at p. 198.

- Courts have held that regulations cannot "occupy the field"[2] by displacing statutory authority. Section 25(2)(h) specifically requires that employers take every precaution reasonable in the circumstances for the protection of a worker.

The employer must:

- Take all reasonable precautions for the protection of workers. This includes taking appropriate measures to protect susceptible or disabled workers.

   **Sec. 25, Sub. 2(h)**

- Provide information, instruction, and supervision for the protection of workers.

   **Sec. 25, Sub. 2(a)**

- Ensure that all supervisors have a working knowledge of the Act and regulations as well as any actual or potential hazards at the workplace.

   **Sec. 25, Sub. 2(c) (d)**

- Ensure all equipment required by the Act or regulations is provided, maintained in good condition and used properly by workers.

   **Sec. 25, Sub. 1(a) (b) (d)**

- Develop and review annually a written health and safety policy, post it in the workplace, and maintain a program for its implementation.

   **Sec. 25, Sub. 2(j) (k)**

- Ensure that work practices required by the Act and regulations are carried out.

   **Sec. 25, Sub. 1(c) (d)**

- Ensure that health and safety committees and representatives are selected as required.

   **Sec. 8, Sub. 1 and Sec. 9, Sub. 4**

2 Ontario (Labour) v. Quinton Steel (Wellington) Limited, 2017 ONCA 1006; 2017 12 20

- Cooperate and afford assistance to a joint committee and its members and health and safety representatives in carrying out their duties.

   **Sec. 25, Sub. 2(e)**

- Give a written response to joint committee recommendations within 21 days. This must include a timetable for implementation or reasons for not agreeing with the recommendations.

   **Sec. 9, Sub. 20 and 21**

- Provide joint committees and health and safety representatives with any health and safety reports in his/her possession.

   **Sec. 25, Sub. 2(l)**

- Advise workers of the results of any health and safety reports in his/her possession and make copies available upon request.

   **Sec. 25, Sub. 2(m)**

- Provide a medical surveillance program for workers where required by regulation, **pay for all medical tests, and travel expenses, and provide paid time off work.**

   **Sec. 26, Sub. 1(h) (i) and Sub. 3**

- Carry out training programs for workers, supervisors and committee members where required by regulation.

   **Sec. 26, Sub. 1(l)**

- Prepare written policies to address workplace violence and workplace harassment and review them at least annually.

   **Sec. 32.0.1, Sub. 1, 2, 3**

- Develop and maintain a workplace harassment program that includes measures and procedures to report harassment, including reporting to someone other than the employer if the employer is the alleged harasser, how information will not be disclosed until necessary to investigate or take corrective action, how the matter will be investigated and dealt with, and how complainants and

respondents will be informed of results and any corrective action taken.

 **Sec. 32.0.6, Sub.2**

- The employer must consult with the joint health and safety committee or health and safety representative in the development and maintenance of the harassment program.

   **Sec. 32.0.6, Sub.1**

- For harassment complaints and incidents, the employer must perform a harassment investigation that is appropriate in the circumstances.

   **Sec.32.0.7, Sub.1**

- The employer must review the harassment program as often as necessary but at least annually to ensure that it adequately implements the harassment policy.

   **Sec. 32.0.7, Sub.1**

- Develop and maintain a workplace violence program that includes measures and procedures to control the risks, measures, and procedures for summoning immediate assistance when violence occurs or is likely to occur, and that describes how workers can report incidents and how employers will investigate incidents or complaints of workplace violence.

   **Sec. 32.0.2**

- The employer must assess the risks of workplace violence and advise the JHSC or health and safety representative of the results of the assessment and provide a copy if it is in writing. Reassess the risks as often as necessary to ensure that the workplace violence program continues to protect workers.

   **Sec. 32.0.3**

- Take all reasonable precautions to protect a worker from the hazard of domestic violence which may endanger a worker in the

workplace. To meet this obligation, employers must be "aware or ought reasonably to be aware" of the hazard.

 **Sec. 32.0.4**

- The employer must provide workers with information and instruction on the contents of the workplace harassment and violence policies and programs.

   **Sec. 32.0.5, Sub. 2; Sec. 32.0.7**

- Provide a worker with information, including personal information about a person with a history of violent behaviour if the worker can be expected to encounter that person in the workplace and if the worker is at risk of physical injury. The employer is not to disclose more personal information than is reasonably necessary.

   **Sec. 32.0.5, Sub.3**

- If a worker is killed or critically injured at work, the employer must immediately advise an MOL inspector the health and safety representative or JHSC and the union. And within 48 hours, the employer must send the MOL a written report according to the regulations.

   **Sec. 51, Sub 1**

- Provide written notice within four days to the joint committee, health and safety representative and the trade union when workers are disabled from regular work (lost time or no lost time) or require medical attention as a result of an accident, fire, explosion or incident of workplace violence.

   **Sec. 52, Sub. 1**

- Give written notice of any occupational illness of current and former employees to the joint committee, the union and the Ministry of Labour within four days of being advised of such an illness or where a WSIB claim has been filed for such an illness.

   **Sec. 52, Sub. 2 and 3**

- Post inspectors' orders in the workplace and provide joint committees and health and safety representative with copies of these.

   **Sec. 57, Sub. 10**

What are the duties of supervisors?

A supervisor must:

- Ensure that workers comply with the Act and regulations.

   **Sec. 27, Sub. 1(a)**

- Ensure that workers wear, or use required protective equipment, and follow all required measures and procedures.

   **Sec. 27, Sub. 1(b)**

- Advise workers of all existing and potential hazards, including workplace violence.

   **Sec. 27, Sub. 2(a)**

- Provide written instruction to workers on measures and procedures to be taken where required.

   **Sec. 27, Sub. 2(b)**

- Take all precautions reasonable in the circumstance for the protection of workers.

   **Sec. 27, Sub. 2(c)**

The supervisor is responsible to ensure that workers follow all safety procedures. It is not enough to warn workers about dangers or safety rules, and then turn a blind eye to violations. They must tell workers about the hazards and ensure that they follow the safety procedures.

What are the duties of workers?

- Workers must work in compliance with the Act and regulations.

   **Sec. 28, Sub. 1(a)**

- Workers are not required to participate in medical surveillance programs unless they consent to do so.
- However, **under Section 26, Sub. 1 (j)** an employer cannot permit a worker to work unless the worker has undergone medical examinations or tests required by a regulation and is found fit to work.

   **Sec. 28, Sub. 3**

- Workers must follow all required procedures and wear or use all required protective equipment.

   **Sec. 28, Sub. 1(a) (b)**

- Workers must report all safety defects in equipment or any hazard to the supervisor or employer.

   **Sec. 28, Sub. 1(c) (d)**

- Workers must not remove any required protective devices.

   **Sec. 28, Sub. 2(a)**

- Workers must report all violations of the Act and regulations and hazards to the supervisor or employer.

   **Sec. 28, Sub. 1(d)**

- Workers must not work in a manner or use defective equipment that might endanger the worker and others. In this instance a worker has a legal obligation to refuse work.

   **Sec. 28, Sub. 2(b)**

What are the duties of owners and constructors?

- An owner must determine if there is a designated substance on site, prepare a list of the substances and provide this list as part of any tendering information and ensure that constructors receive a copy before entering a contract. The constructor must ensure that all contractors or subcontractors receive a copy before entering a contract.

   **Sec. 30, Sub. 1, 2, 3, 4**

For more information about designated substances and applicable regulations please refer to Section K in this guidebook

- A constructor must give written notice to the Ministry of Labour, joint committee or health and safety representative and the trade union of any accident or unexpected event that occurs on a project even if no one is injured.

  Sec. 53

What are the duties of architects and engineers?

- Architects and engineers are liable to prosecution if their advice or certification of a structure endangers workers.

  Sec. 31, Sub. 2

What are the duties of directors and officers of corporations?

- Officers and directors are legally liable to ensure that there is compliance with the Act, the regulations and MOL orders.

  Sec. 32 (a)

Can directors and officers be found criminally liable?

- Yes. The loss of 26 miners in the Westray disaster in 1992 led to the enactment of Bill C45 in 2004. Bill C45 makes a clear statement in the Criminal Code that wanton or reckless disregard for the safety of workers and the public at large in a workplace setting is a criminal offence and that corporate executives, directors and managers could be held criminally accountable.

Bill C-45 convictions (Directors & Officers Liability)

- The most significant case was Metron Construction Corporation (Metron). In September 2009, Metron entered into an agreement to restore the concrete balconies on two high-rise buildings.

- On December 24, 2009, at approximately 4:30 p.m., six workers, including the site supervisor, all of whom had been working on the 14th floor, climbed onto a swing stage at the project to travel

back to the ground to close and leave the project site for the day. The platform collapsed, and five of the workers fell some 14 floors to the ground. Four of the five died as a result of injuries. The fifth survived but suffered serious injuries. The sixth was properly attached to a safety line, which prevented him from falling, and he was uninjured.

- Justice R. Bigelow's decision fined Metron $312,500 (including a victim fine surcharge). The fines amounted to three times the net earnings of Metron in its last profitable year, effectively crippling the company.

- Metron's last profitable year was 2009, with losses reported in both 2010 and 2011. Still, union groups, including the Provincial Building Trades, were sharply critical of the court's decision, calling the fine far too low. Ontario's Ministry of the Attorney General also appealed the decision. Prosecutors originally sought a $1 million fine against Metron, which would most likely have resulted in the company declaring bankruptcy. Court case documents can be found here.

  (http://www.canlii.org/en/on/oncj/doc/2012/2012oncj506/2012oncj506.html).

- Another two C-45 convictions have occurred in Quebec. A paving company (Transpave) was fined $100,000 in the death of a 23-year-old worker, killed in October 2005 while trying to remove a blockage in a machine.

- An owner of a landscaping company was sentenced to 2 years less a day in the community with a curfew when found guilty of criminal negligence causing death when employee was crushed by a backhoe against a wall on June 12, 2006.

Company and director fined under the Occupational Health and Safety Act

- Another ruling demonstrates that workplace safety incidents can carry consequences not only for a company but also for executives or supervisors responsible for ensuring compliance with the Occupational Health and Safety Act and its regulations.

- On September 17, 2008, a worker fell from a cement pier while dismantling a guardrail system in Field, Ontario. The court found that the worker did not have fall protection of any kind. Three other workers at the construction project were similarly unprotected. The safety equipment for each worker on the job was inadequate, and the equipment that was present was not properly cared for or inspected. The court also found that the supervisor on-site was unqualified.
- Chelmsford-based construction companies Bélanger Construction (1981) Inc. and R.M. Bélanger Limited were fined $290,000 (plus a 25% victim fine surcharge) on August 10, 2012, for violations of the Occupational Health and Safety Act in relation to the incident. The companies' director, Ronald Bélanger, was also fined $10,000 (plus a 25% victim fine surcharge).
- A company executive can be charged under either the Occupational Health and Safety Act or the Criminal Code.
- Section 217.1 of the Criminal Code provides that "Everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

Where are joint health and safety committees required?

Joint committees are required in the following workplaces:

- All workplaces where 20 or more workers are regularly employed.

   **Sec. 9, Sub. 2**

- All construction projects with 20 or more workers and lasting more than three months.

   **Sec. 9, Sub. 1(a) and 2(a)**

- With the exception of construction projects, in those workplaces where a designated substance regulation applies.

   **Sec. 9, Sub. 2(c)**

- In any workplace where an order has been issued under section 33 of the Act to control toxic substances.

   **Sec. 9, Sub. 2(b)**

How do you calculate the number of workers?

- To determine the number of workers in your workplace, the total number of all full-time and part-time workers on all shifts must be included. A worker does not have to be on the worksite for a full eight hours to be counted if there is a consistent pattern of employment. Managers and supervisors are also counted.

What workplaces are excluded from having joint committees?

- A construction project lasting less than three months.

   **Sec. 9, Sub. 1(a)**

- All workplaces with fewer than 20 workers.

   **Sec. 9, Sub. 2(a)**

- All workplaces that may be exempted by special regulation.

   **Sec. 9, Sub. 1(b)**

Can joint committees be requested where they are not required?

- Yes. The Minister of Labour has the power to order the establishment of one or more committees in a workplace or part of a workplace.

   **Sec. 9, Sub. 3, and 5**

- Negotiated safety committee systems may go beyond the provisions of the Act, such as area-wide, ministry-wide, agency or campus committees that comprise numerous workplaces.
- It is vital that these be legally sanctioned by the minister **under Sec. 9, Sub. 3, 3.1, 4, and 5.**
- The minister will usually sanction these where a joint request is made by both union and employer.

What about workplaces with more than one location?

- In the case of an employer with several work locations, the requirement for a joint committee applies to each location with 20 or more workers, not to the employer's entire operation.
- Some work operations have scattered work locations where no single worksite has more than 20 workers, but the whole operation may have over 20 employees. In this case, because no one worksite meets the criteria for the establishment of a joint committee, your employer is not compelled to form a committee. If a location has fewer than 20 workers and more than 5, a health and safety representative is required.

Can workers in workplaces with scattered locations request the Ministry of Labour to order a joint committee when one is not required?

In workplaces with scattered locations where there are fewer than 20 workers in each location, it is sometimes possible to form what is known as a multi-workplace Joint Health and Safety Committee. If workers in scattered workplaces such as this determine that a multi-workplace JHSC will improve health and safety conditions, they should consider the following two options:

1. A complaint to a Ministry of Labour health and safety inspector about the absence of a joint committee might result in an order from the inspector for the establishment of a joint committee that covers the entire operation (multi-workplace JHSC); or,

2. Under Sections 9 (3) and (5) workers can request that the Minister of Labour order your employer to establish a multi-workplace JHSC that covers the entire operation. When dealing with the union's request, the Minister or his/her designee (usually the regional director) must consider the following:
   - the nature of the work, e.g., how hazardous it is;
   - the frequency of illness and injury in the operation or the sector;
   - the existence of health and safety programs and practices;
   - whether the request is made jointly or just by the union or the employer.

The success of your effort will depend on the local union making a strong case for the committee's establishment. The union will have to show that workers face serious hazards and need an avenue to raise and address them with the employer.

To do this, your local union will have to gather information about the employer's health and safety record. Under Sections 51 and 52, the employer is required to give the union written notification of all injuries, fatalities, and occupational illnesses. The union is also entitled to request and receive an annual summary of occupational injury and illness data for that workplace from the WSIB.

Sec. 12, Sub. 1, 2; Sec. 51, and Sub.1; Sec. 52, Sub. 1, 2, 3

Can the workplace parties jointly request the Ministry of Labour to approve one joint committee to cover multiple worksites?

- Yes. Section 9 (3.1) gives the Minister of Labour the power to issue an order that permits an employer to establish one joint committee for more than one workplace. In this regard, it is important to note the following:

  1. a single joint committee for multiple worksites is illegal unless ordered by the Minister under Section 9(3.1).

2. a submission must be made by the workplace parties which includes a signed agreement between the union and the employer which spells out complete details on how the joint committee is to function.

3. the Minister will assess the submission based on the criteria set out in Section 9 (5) as well as any additional criteria that the Minister requires such as location and distance between workplace, travel and related costs, and the ability of members to perform their duties. Note: The Ministry of Labour document, "Multi-Workplace Joint Health and Safety Committee Guidance," posted on its website will assist workplace parties to draft a term of reference for a multi-workplace committee.

4. the process is initiated by a letter and submission to a Regional Director at the Ministry of Labour who has been delegated to consider the request and authorized to issue an order.

What is the minimum size of joint committees?

- All workplaces with 50 or more workers must have at least four committee members; at least one half of them must consist of workers selected by the union.

   **Sec. 9, Sub. 6(b)**

- All workplaces with between 20 and 49 workers must have at least two members; at least one half of these must be workers selected by the union (or unions) in the workplace.

   **Sec. 9, Sub. 6(a)**

How large should a committee be to work effectively?

- The Act sets the minimum size of committees. As a rule, it is important to ensure that committees are large enough to represent the concerns of all workers, with representatives from most departments or areas of the workplace.

How must committees be composed?

- All committees must have co-chairpersons, one representing workers and one representing the employer.

  Sec. 9, Sub. 11

- All committees must have at least one management and one worker member who have been certified by the Ministry of Labour (MOL) after they have met the certification training requirements established by the MOL. Rights and duties of certified members are covered later in this Guide.

  Sec. 9, Sub. 12, 13, and 14

- Worker members on the committee must come from the workplace, while employer members must come from the workplace to the extent possible.

How are health and safety committee members and health and safety representatives chosen?

- A health and safety representative is chosen from among the workers by the trade union (or unions) which represents them.

  Sec. 8, Sub. 5

- If there is a union, it (or they) will select worker members to the joint health and safety committee. If there is no union, the workers will select representatives.

  Sec. 9, Sub. 8

- If more than one union exists in a workplace, all unions are entitled to participate in the selection of worker representatives to the JHSC.
- The OHSA does not give non-unionized workers in a largely unionized workplace the right to select their own representative to the JHSC, nor does the Act authorize an employer to specify representation on the JHSC for the non-unionized. However, the union or unions may be under an obligation to consult with the non-unionized workers and agree on a representative.

  Sec. 9, Sub. 8

What are the rights and duties of joint committees?

- The committee has the power to identify hazards and make recommendations for their correction.

  Sec. 9, Sub. 18(a) (b) (c)

- The committee has the power to schedule monthly inspections.

  Sec. 9, Sub. 26, 27 and 28

- The committee must receive a written response to its recommendations from the employer within 21 days.
- This would also include a requirement to respond to worker member recommendations in the absence of joint recommendations.
- The response must contain a timetable for implementation or reasons why the employer disagrees with the recommendation.

  Sec. 9, Sub. 20 and 21

- The committee has the power to obtain information from the employer on any actual or potential hazard or any experiences, practices, and standards of which the employer is aware.

  Sec. 9, Sub. 18(d)

- The committee must be consulted about any health and safety testing being carried out, and has the right to have a worker member present at the beginning of such testing.

  Sec. 9, Sub.18 (f)

- The committee must be consulted about hygiene testing strategies developed by the employer and has the right to have a worker member present at the beginning of testing.

  Sec. 9, Sub. 18(e) and
  Sec. 11, Sub. 1, 2, 3, 4

- The committee must be provided with any health and safety reports in the employer's possession.

- The employer must make workers aware that such reports exist, and workers have the right to request copies of health and safety reports.

   **Sec. 25, Sub. 2(l), (m)**

- The committee and the union must be given notices of all critical or fatal accidents, accidents resulting in injury, and all occupational illnesses.

   **Sec. 51, Sub. 1; and**
  Sec. 52, Sub. 1, 2, 3

- The committee, a worker, the union, or an employer has the right to request and receive an annual summary of work-related accident and illness data from the Workplace Safety and Insurance Board. The employer must post a copy of the summary in a conspicuous place in the workplace.

   **Sec. 12, Sub. 1 and 2**

- The committee or the health and safety representative must be given copies of any reports or orders issued to the employer by the MOL inspector. The employer must also post a copy or copies of the reports or orders in a conspicuous place in the workplace. The worker who made the health and safety complaint may request the report or order from the inspector.

   **Sec. 57, Sub. 10 (a) (b)**

- The committee must have an opportunity to participate in the development and implementation of worker education and training programs required by the Workplace Hazardous Materials Information System (WHMIS) regulations.

   **Sec. 42, Sub. 1 to 4**

- At least one management and one worker member of the committee must become certified after undergoing certification training requirements established by the Ministry of Labour (MOL).

   **Sec. 9, Sub. 12, 13 and 14**

- A committee is required to meet at least once every three months. But it may be necessary to meet more frequently in workplaces that are particularly hazardous.

   **Sec. 9, Sub. 33**

- The Act requires that minutes of meetings be recorded, maintained, and made available for review by an inspector. These should indicate the problems raised, their resolution and what action was to be taken by whom.

   **Sec. 9, Sub. 22**

What happens if a dispute arises over committee requirements?

- The minister should be notified of the dispute. The Ministry will refer the parties to private dispute resolution. Should this fail, the minister will make a ruling.

   **Sec. 9, Sub. 39**

Should all joint health and safety committees have a written term of reference (TOR)?

- It is a good idea to have a term of reference (TOR) especially to cover items not specified in the Act, such as who takes minutes, the flow of inspection reports, existence of and use of alternates (if any) and attendance of guests.

- The TOR may also refer to things covered by the Act, such as inspections, investigations, injury notices etc., but it is very important that we not limit our rights in any TOR. Terms of reference are meant to govern the work of the joint committee, not change the Act.

- The TOR must set out all those procedures, functions, powers, and entitlements that are required by the Act as a bare minimum. Additional supports to assist the committee must also be considered.

- The TOR should include the following:

  1. the composition of the committee
  2. the functions and powers;

3. the entitlements of worker members;
4. procedures for conducting meetings;
5. guests to meetings
6. minutes;
7. quorum;
8. procedures for raising and resolving concerns;
9. procedures for resolving disputes;
10. information entitlements;
11. frequency of meetings;
12. certification training process;
13. health and safety training;
14. how changes in the TOR will occur

Remember

- Only the union can enter into a formal agreement, such as a Terms of Reference, with the employer.

What are the rights and duties of worker members of joint committees?

Inspections:

- A worker member selected by the workers on the committee has a right to inspect the workplace at least once a month.

   **Sec. 9, Sub. 23 and 26**

- Where it is not practical to inspect the entire workplace once a month, it must be inspected at least once a year. However, at least part of the workplace must be inspected once in each month in accord with a schedule of inspections that must be established by the committee.

   **Sec. 9, Sub. 27 and 28**

- Inspections do not have to be carried out by the same person. It is possible to select other worker members to conduct inspections.

   **Sec. 9, Sub. 25**

- The worker member conducting inspections must be given information from the employer to assist in the inspection. He or she must report all hazards to the committee. This should be done immediately after the inspection.

   **Sec. 9, Sub. 29 and 30**

- The committee must review reported hazards within a reasonable period of time which may require the committee to meet more frequently than once every three months.

   **Sec. 9, Sub. 30**

Investigations:

- A worker member selected by worker members of the committee has the right to investigate critical or fatal accidents. The worker must report the findings to the committee and the Ministry of Labour.

   **Sec. 9, Sub. 31; Reg. 834 (Critical Injury-defined)**

- Members selected to investigate where workers are killed or critically injured should interview witnesses and collect relevant information. The Act says "investigate."

Testing for hazards:

- A worker member has the right to be present at the beginning of any health and safety testing, including hygiene testing at the workplace.

   **Sec. 9, Sub. 18(f); Sub. 19; and**
  Sec. 11, Sub. 3 and 4

- The worker member must ensure that the device or area being tested is representative of actual conditions and that the testing equipment and procedures are appropriate. He or she must be given sufficient time and information to make these determinations.

Do worker members get paid preparation time?

- Yes. Worker members must be given at least one hour paid preparation time prior to joint health and safety committee meetings.

   **Sec. 9, Sub. 34(a)**

Are worker members entitled to paid time off to perform their duties?

- Yes. Workers must be given time off to attend meetings, carry out their duties to inspect the workplace, investigate accidents, represent workers during refusals, witness tests and accompany inspectors.

   **Sec. 9, Sub. 34 (a)(b)(c);**
  Sec. 43, Sub. 13; and
  Sec. 54, Sub. 3, 4, 5

- The Act says that the performance of these duties and rights is considered work time, paid at the worker's regular or premium rate of pay.

   **Sec. 9, Sub. 35, 36;**
  Sec. 43, Sub. 13; and
  Sec. 54, Sub. 5

How do designated joint committee members become certified?

- Designated worker and employer members must be certified by the MOL after completing the training requirements established by the MOL.

   **Sec. 1, Sub.1; Sec.9, Sub. 12 to Sub. 17**

What if there is more than one certified member?

- If there is more than one certified member, or selection of a new certified member will mean that there is more than one, the union must designate one or more members to act as the certified

person(s) to be solely entitled to exercise the rights and duties of a certified member.

 **Sec. 9, Sub 15**

Who pays for certification training?

- The employer must pay you during the training and assume all costs including reasonable expenses associated with the delivery of the training.

 **Sec. 9, Sub. 36**

Who provides certification training and what must be taught?

- The MOL has a list of approved certification training providers posted on its website. Certification training must meet the criteria set out in the MOL's "Joint Health and Safety Committee Certification Training Program Standard" found on the MOL website.

  https://www.ontario.ca/page/program-standard-joint-health-and-safety-committee-training

- On May 1 2020 changes came into effect Joint Health and Safety Committee Certification Training Program Standard" These changes do not affect the approval status of existing training providers.

Changes have also been made to the training and other requirements that joint health and safety committee (JHSC) members must fulfill to become certified.

Changes include the following:

Option to deliver Part One training through eLearning

- The minimum time for Part One eLearning training is 13 hours (two days).
- Training providers who deliver eLearning must also deliver face-to-face training for both Part One and Part Two.
- Training providers who do not yet deliver face-to-face training can apply for Chief Prevention Officer approval to deliver both eLearning and face-to-face training.

Changes to Part Two timelines

- After completing Part One, learners now have up to 12 months to complete Part Two. Learners who do not complete Part Two within 12 months are not allowed to take Refresher training. They will need to take Part One again.
- Learners who completed Part One within the 6 months before May 1, 2020 now have an additional 6 months to complete Part Two.
- Providers are responsible for updating their training program materials to ensure learners are aware of the changes to the timelines.

What are health and safety representatives and where are they required?

- A health and safety representative must be selected by the union in all workplaces where more than five, but fewer than 20 workers are regularly employed.

   **Sec. 8, Sub. 1 and 5**

- Where a representative is not specifically required by the Act, the Minister of Labour may order that a representative be selected.

   **Sec. 8, Sub. 2**

What are the duties and rights of health and safety representatives?

- The health and safety representative has the same powers and rights as the joint committee and its worker members, except that the health and safety representative is not required to become certified. In addition, the Act is silent on the matter of paid preparation time for representatives.

   **Sec. 8, Sub. 6 to 16**

- The health and safety representative has a legal obligation to inspect the workplace at least once a month, in accordance with

an inspection schedule agreed to by the representative and the employer.

 **Sec. 8, Sub.6**

- A health and safety representative has the power to recommend corrective action to the employer.

   **Sec. 8, Sub. 10**

- He or she must receive a written response from the employer within 21 days to all recommendations. This response must indicate a timetable for implementation or reasons for not accepting the recommendations.

   **Sec. 8, Sub. 12 and 13**

Can an employer or supervisor interfere with or obstruct the joint committee or health and safety representative?

- No. The law clearly forbids anyone from interfering, obstructing, or providing false information to members of a joint committee or a health and safety representative when they are performing their duties. Complaints should be filed immediately with the inspector should any obstruction occur.

   **Sec. 62, Sub. 5**

Table 1 provides additional information on Health & Safety Representatives & JHSC under OHSA

RIGHTS AND RESPONSIBILITIES

Table 1-1: Health and Safety Representatives and JHSC Requirements under the OHSA

Size and Duration of Project	Representative or Committee	Number of Members	Membership Requirements	Selection of Members	Powers and Rights
1 to 5 workers	None (unless the workplace uses designated substances)				
6 to 19 workers (on a project lasting more than 3 months) **OR** **6 plus workers** (on a project lasting less than 3 months)	One Health and Safety Representative JHSC (if the workplace uses designated substances)			Selected by the other workers or their union(s)	· Obtain information from a constructor or employer regarding the testing of equipment, materials, or chemicals in the workplace. · Inspect the workplace at least once a month, with the full cooperation of constructor, employers, and workers. · Ask for and obtain information regarding existing or potential hazards in the workplace. · Make health and safety recommendations to a constructor or employer, who must respond in writing within 21 days, either giving a timetable for implementation or giving reasons for disagreeing with the recommendations. · Where a person has been killed or critically injured in the workplace, investigate the circumstances of the accident and report findings to a director of the Ministry of Labour. · Exercise all the powers granted to the Health and Safety Representative by virtue of a collective agreement.

Size and Duration of Project	Representative or Committee	Number of Members	Membership Requirements	Selection of Members	Powers and Rights
20 to 49 workers (on a project lasting more than 3 months)	Joint Health and Safety Committee (created by the constructor)	At least two	At least one non-management worker at the project and one management representative from the project if possible.	Worker representatives selected from the site by workers or trade union(s) represented. Management representatives selected by constructor or employer.	· Identify situations that may be a source of danger or hazard to workers. · Make recommendations regarding health and safety matters. · Recommend the establishment, maintenance, and monitoring of programs. · Obtain information from constructors or employers regarding testing of equipment or environments and be present when testing is initiated.
50 plus workers (on a project lasting more than 3 months)	Joint Health and Safety Committee (created by the constructor)	At least four	Half non-management workers from the workplace with at least one certified. Half management representatives from the workplace if possible with at least one certified.	Worker representatives selected from the site by workers or trade union(s) represented. Management representatives selected by constructor or employer.	
	Worker Trades Committee (created by the JHSC)	At least one worker representative from each trade	One worker representative from each trade	Members to be selected by trade workers or trade union(s) at the site. Members do not have to be workers at the site.	Advise the JHSC of the health and safety concerns of the workers in the trades at the workplace.

PART D: THE RIGHT TO REFUSE UNSAFE WORK

What is the right to refuse?

- All workers have the right to refuse work they believe may endanger their health and safety.

   **Sec. 43, Sub. 3**

Are there any restrictions on the right to refuse?

- Police officers, fire fighters or workers who are employed in correctional or health care facilities or other residential facilities such as group homes are prohibited from using this right when the hazard is a normal part of their work, or when the act of their refusal directly endangers another person.

   **Sec. 43, Sub. 1 and 2**

Does this mean that these workers cannot refuse in all circumstances?

- Workers have a right to refuse dangerous work, as long as their refusal does not directly endanger another person, and the employer has not taken steps to address hazards that are regularly present.

What are some examples of work refusals for these occupations?

Correctional officers:

- Correctional officers could not refuse to work in what they considered a dangerously overcrowded facility, since overcrowding may occur from time to time as a normal condition of employment.
- However, correctional officers could refuse to work where normally required precautions to handle unsafe conditions created by overcrowding were absent, and the refusal did not directly endanger another person.
- A correctional officer could refuse to deal one-on-one with a violent inmate when the normal safe work practice requires two or

more officers and other special procedures to handle the situation safely.

Ambulance officers:

- An ambulance officer could not refuse to aid an accident victim because a dangerous circumstance exists at the accident site. The work refusal could directly endanger the health and safety of the accident victim.
- However, an ambulance officer could refuse to go out on a routine transfer or non-urgent call if the ambulance vehicle had a safety defect, or if the officer was not provided with equipment to do the job safely.
- An ambulance officer could also refuse to lift a heavy patient in a routine transfer, or if proper equipment were not available to lift the patient in a safe manner.

Health care workers:

- A psychiatric nurse could refuse to deal one-on-one with a violent patient where two or more people would normally be required to handle the situation safely, and the refusal would not directly endanger another person.

Are teachers restricted from exercising the right to refuse?

- Teachers in elementary and secondary schools cannot exercise the right to refuse when the act of their refusal would place the life, health, or safety of a pupil in "imminent jeopardy."**Reg. 857/90**
- Unfortunately, the law does not define "imminent jeopardy." nor does it say who determines when "imminent jeopardy" exists.
- The supervisor must investigate the circumstances of the teacher's refusal in the first stage of the refusal. The problem arises when the supervisor investigates and states that the life, health or safety of a pupil is in "imminent jeopardy" if the work refusal continues.
- If the worker continues to refuse because he or she believes that his or her own safety is endangered by returning to work, an inspector must be called in to the workplace to investigate.

Under what conditions can a worker refuse unsafe work?

- A worker can refuse to work where he or she has "reason to believe" that any equipment, machine, device, or thing is likely to endanger himself, herself, or another person, or if the physical condition of the workplace or workplace violence is "likely" to endanger himself or herself.

   **Sec. 43, Sub. 3(a)(b)(b.1)**

- Workers have the right to refuse unsafe work when the hazard is a violent or potentially violent person. However, workers described in Sec. 43, Sub. 2 continue to have a limited right to refuse unsafe work. Their refusal cannot endanger the life, health or safety of another person and the refusal cannot be because of a hazard considered to be a normal or inherent part of their job.

   **Sec. 43, Sub. 3(b.1)**

- Workers can also refuse where any of these is in contravention of the Act or regulations, and this contravention endangers their health and safety.

   **Sec. 43, Sub. 3(c)**

- Conditions do not have to be immediately life-threatening for a worker to refuse.

What are the procedures for refusing unsafe work?

- Workers, supervisors, employers, and inspectors must adhere to the following procedures:

  First Stage:

  1. The worker must report the circumstances of the refusal to the supervisor. The worker must remain in a safe place that is as near as reasonably possible to his or her workstation and available to the employer or supervisor for the investigation. The worker is considered to be at work during all stages of the refusal and cannot be reassigned during the first stage of the refusal.

  2. The supervisor must make available a union appointed representative or worker committee member and investigate

the circumstances in the presence of the worker and the representative.

 **Sec. 43, Sub. 4**

3. The supervisor must give the worker an answer as to whether it is safe or unsafe. If the worker is satisfied that the work is safe, then the worker should return to work and the matter is considered resolved.

Second Stage:

1. If the worker has "reasonable grounds" to believe that the work is still unsafe despite the supervisor's answers or corrective measures, then the worker can continue to refuse and a Ministry of Labour inspector must be called in to investigate. The refusing worker, the worker representative or the employer can call the inspector.

    **Sec. 43, Sub. 6**

2. When the Ministry of Labour receives a call requesting that an inspector come to a workplace because of a work refusal, the Ministry staff will attempt to decide over the phone whether the work refusal meets their criteria of a valid refusal. In workplaces such as healthcare facilities, developmental services facilities or correctional facilities, inspectors frequently determine over the phone that the circumstances are a normal or inherent part of the job and that the worker does not have the right to refuse. In these cases, even if the MOL inspector makes that decision and downgrades the work refusal to a complaint, workers and their representatives must insist that the inspector come to the workplace to investigate and to assist.

   In other cases, the inspector may determine over the phone that the parties involved have not completed Stage 1 of the refusal. If you and the employer believe that you have exhausted all attempts to resolve the issue, insist that the inspector come to the workplace.

3. The Ministry of Labour inspector must investigate "in consultation" with the worker, the supervisor, and the

worker's representative. Union representatives and workers should insist that the inspector come to the workplace to investigate.

 **Sec. 43, Sub. 7**

Note: Prior to June 2001, inspectors had a legal duty to investigate a work refusal "in the presence" of the worker and her/his representative. Now, however, the Act states that the investigation can take place in "consultation" with the parties. However, current MOL policy states that when an inspector decides over the phone that a work refusal has met MOL criteria as a valid refusal and attempts to resolve it internally have been exhausted, an inspector will be sent to the workplace.

If the inspector will not attend, both the union representative and worker must insist that they be present for any telephone conversations between the employer and the inspector. Do not let the employer present their description of the situation without either the union and or worker input.

4. After the inspector's investigation is completed, the inspector must give a written decision as to whether the work is likely to endanger.

    **Sec. 43, Sub. 8 and 9**

5. If the worker disagrees with the inspector's decision, an appeal can be filed within 30 days with the Ontario Labour Relations Board for a ruling.

    **Sec. 61**

Can refused work be reassigned to another worker?

- Yes, during Stage 2 of the refusal. But the employer must advise this worker that the work has been refused and the reasons for the refusal. This must be done in the presence of a worker member of the joint committee, a health and safety representative or a worker

selected by the union. This worker can also refuse if he or she believes the job is unsafe.

 **Sec. 43, Sub.11**

Does the worker have to be correct?

- What does "reason to believe" and "reasonable grounds to believe" mean?
- In order to legally refuse to work, the law requires only that a worker have a reasonable belief. A mountain of evidence is not needed.

 **Sec. 43, Sub. 3**

Can a supervisor put off or refuse to investigate or send the worker home?

- No. The supervisor must investigate immediately in accordance with the procedure.
- If the supervisor refuses, workers should call a ministry inspector immediately and indicate what has taken place.

 **Sec. 43, Sub. 4**

Do workers have a right to be paid during an investigation of a work refusal?

- Yes. The refusing worker and his/her representative are entitled to payment during all stages of a refusal.

 **Sec. 43, Sub. 13**

- During the second stage of the refusal, the law allows the employer to give undefined "other directions" to the worker should no other work be available. Should this result in any loss of pay, benefits or layoff, the employer must prove that this was not a reprisal which is forbidden by the Act.

 **Sec. 43, Sub. 10(b); Sec. 50**

Can a worker continue to refuse if the inspector rules that the work is not likely to endanger?

- The Act is silent on this question and thus full protection is not clearly provided. Generally, the worker returns to work and any dissatisfaction handled through the appeal process.
- The Ontario Labour Relations Board has ruled in a few cases that since this is not forbidden by the Act, a worker would have the right to continue to refuse to work if the inspector's decision was not knowledgeably and independently based. These instances would be rare.
- Continuing a work refusal in this circumstance must be carefully considered. Workers are advised to consult their union staff representative on this issue.

Can an injured or susceptible worker refuse to perform unsafe work?

- Yes. The injured or susceptible worker has a right to refuse unsafe work under Section 43 (3) of OHSA.
- The right to refuse applies to a disabled or susceptible worker and not just the average healthy worker.
- The employer has a duty to make appropriate safety provisions that address your medical limitations. While the inspector will not rule specifically on whether an accommodation is appropriate, he/she will determine whether work is likely to endanger a disabled or susceptible worker.

> **Note:** It is important that injured workers obtain medical documentation in advance about their particular limitations or sensitivities to support these actions.

PART E: YOUR RIGHT TO BE FREE FROM REPRISALS

Can workers be penalized for seeking compliance with the law or exercising their rights under the Act?

- No. The law specifically prohibits employers from penalizing or intimidating workers for seeking compliance or exercising their rights, or for giving evidence with respect to the enforcement of the Act or during a coroner's inquest. This also includes the exercise of a worker's right to refuse unsafe work.

  Sec. 50, Sub. 1

What can be done if an employer engages in a reprisal against a worker?

There are three possible options available to workers:

1. Call the Ministry of Labour: Since this is a violation of the Act, the worker should immediately file a complaint with an inspector. Also, the inspector can issue orders to deal with the underlying health and safety violation that led to the reprisal. As of April 2012, an inspector, on consent of a worker, may refer an allegation of reprisal to the Ontario Labour Relations Board provided that the matter has not been dealt with by grievance arbitration under a Collective Agreement. An inspector may also (with approval from a Ministry of Labour manager) investigate a reprisal for the limited purpose of determining whether to recommend a prosecution.

    **Sec. 50, Sub. 2.1**

2. File a grievance. The worker can also file a grievance in accordance with the procedures in a collective agreement. In this case, the worker still has the option to file a complaint with the OLRB so long as the grievance does not enter the arbitration process.

    **Sec. 50, Sub. 2**

3. Consider filing a complaint to the Ontario Labour Relations Board. The worker can file a complaint to the Ontario Labour Relations

Board (OLRB). In this case the worker must file a special form with the registrar providing the complete details.

Note: Unionized workers will have to elect either grievance arbitration or a decision from the OLRB but may not have the issue dealt with in two forums.

PART F: **YOUR RIGHT TO KNOW**

Do workers have a right to health and safety information?

- Yes. The employer is obligated to give workers information on the hazards of any chemical, biological and physical agent or any hazards associated with equipment or devices used in the workplace.

  Sec. 25, Sub. 2 (a),(d)

- Under the Workplace Hazardous Materials Information System (WHMIS) provisions of the Act the employer must provide very specific information on chemical and biological agents by labeling containers and providing material safety data sheets (MSDS) to workers.

  Sec. 37 to Sec. 42 and Regulation 860, as amended by Regulation 36/93

- The employer must advise workers of any health and safety reports (not harassment reports) in their possession and make these available on request.

  Sec. 25, Sub. 2 (m) and Sec. 32.0.7, Sub (2)

- The employer must provide workers with information and instruction on the contents of the workplace harassment and violence policies and programs.

  Sec. 32.0.5, Sub. 2 and Sec. 32.0.7

- The employer must provide information to a worker about a person in the workplace with a history of violent behaviour if the worker can be expected to encounter that person in the workplace and there is a risk to the worker of physical injury. The employer is not to disclose more personal information than is reasonably necessary.

  Sec. 32.0.5, Sub. 3 (a)(b) and Sub. 4

What information do workers, health and safety representatives and JHSCs have a right to?

- A worker, a health and safety representative, a member of the JHSC and/or a union member can request an annual summary of information concerning workplace injuries and illnesses from the Workplace Safety and Insurance Board. The employer must post a copy of the information in the workplace where workers are likely to see it.

  
  Sec. 12, Sub.1 and 2

- When an employer does a risk assessment for the hazard of workplace violence, it must advise the JHSC or the health and safety representative, or workers if there is no JHSC or representative, of the results of the assessment.
- If the assessment is in writing, a written copy must be provided to the representative or the JHSC. If there is no representative or JHSC, workers must be given a copy or be advised how to obtain copies.

  
  Sec. 32.0.3, Sub. 3 (a)(b)

- If a Ministry of Labour inspector gives written orders or a report in a workplace, the employer must post the orders or report in a place where workers are likely to see the report. A copy must be given to the health and safety representative of JHSC. Additionally, if it was a worker complaint that brought the inspector into the workplace, the inspector must give a copy to the complainant on request.

  
  Sec. 57, Sub. 10

What information do health and safety representatives and JHSCs have a right to?

- The employer must provide health and safety representatives and JHSC members with information and assistance required to perform workplace inspections.

  
  Sec. 8, Sub. 9; Sec. 9, Sub. 29

- Health and safety representatives and JHSC members have the right to obtain information from the employer about workplace

hazards, to be consulted prior to testing for workplace hazards, and to be present at the beginning of testing.

Sec. 8, Sub. 11 and
Sec. 9, Sub. 18 (d)(e)(f)

- The employer must consult with health and safety representatives and JHSC members about industrial hygiene testing strategies and provide them with information about industrial hygiene testing strategies. A health and safety representative or JHSC member has the right to be present at the beginning of testing.

Sec. 11, Sub. 1 to 4

- If a worker is killed or critically injured at work, the employer must immediately advise an MOL inspector the health and safety representative or JHSC and the union. Within 48 hours, the employer must send the MOL a written report according to the regulations.

Sec. 51, Sub. 1, and
Regulation 851, Sec. 5, Sub. 1

- If a worker is injured at work, including injuries from workplace violence, the employer must notify the JHSC or health and safety representative and the union in writing within four days. The written notice shall contain all the items listed in the regulations. If the employer is notified that a worker has developed an occupational illness or has made a claim to WSIB for an occupational illness, the employer must notify the MOL, the health and safety representative or JHSC and the union within four days.

Sec. 52, Sub. 1 and 2;
Regulation 851, Sec. 5, Sub. 2

Do workers have a right to be trained in health and safety?

- Yes. The employer must train workers to work in a safe manner. Under WHMIS, the employer must ensure that workers are trained to have a working knowledge of the information provided on material safety data sheets (MSDS) and labels and how to handle

any of these hazardous materials in a safe manner as set out in Regulation 860, as amended by Regulation 36/93.


Sec. 25, Sub. 2(a)(d) and Sec. 42

- The Act also obliges the employer to carry out any training programs that might be required by a regulation.


Sec. 26, Sub. 1(l)

- The Act requires that at least one worker member of the joint committee receive certification training.


Sec. 9, Sub. 12

- An employer must provide information and instruction on workplace harassment and violence policies and programs.


Sec. 32.0.5, Sub. 2; Sec. 37.0.7

- Regulation 297/13 (introduced by Bill 160) requires employers to provide basic occupational health and safety awareness training to workers as soon as reasonably possible on the job and to supervisors within a week of working as a supervisor. The employer must maintain records of all training and provide written confirmation of the training to workers and supervisors.

PART G: **MEDICAL RIGHTS OF WORKERS**

Do workers have a right to have their personal medical information kept confidential?

- Yes. Employers are prohibited from trying to get access to a worker's medical records without the worker's consent.

  Sec. 63, Sub. 2

- Members of joint committees and worker representatives are prohibited from revealing any personal medical information that comes into their possession.

  Sec. 63, Sub. 1(f)

What rights do workers have regarding medical testing and monitoring?

- Workers are not required to undergo medical tests unless they consent.

  Sec. 28, Sub. 3

- Workers consenting to undergo medical tests required by regulation must be provided with paid time off work as well as all costs of the medical examinations, including reasonable travel expenses.

  Sec. 26, Sub. 3

PART H: THE POWER TO STOP UNSAFE WORK

What are the powers and rights of certified committee members when a dangerous circumstance is reported?

- A worker certified member has the right to investigate a complaint by a worker that danger exists in the workplace.

  Sec. 48

- If both management and worker certified members agree that a danger exists, they may order that the work stop. This is known as a bilateral work stoppage.

  Sec. 45, Sub. 4

When can the power to stop work be exercised?

- When both certified members agree that a dangerous circumstance exists.

  Sec. 45

What is meant by a "dangerous circumstance?"

- A dangerous circumstance means that there has been a contravention of the Act or regulations which poses a danger, and any delay in controlling the danger may seriously endanger a worker.

  Sec. 44

What is the procedure for a bilateral work stoppage?

1. The certified member requests that the supervisor investigate the dangerous circumstance.
2. The supervisor must investigate immediately in the presence of the certified member.
3. If the certified member is not satisfied with the supervisor's investigation, another certified member is called in to investigate.

4. If both certified members agree that a dangerous circumstance exists, they can order a work stoppage.
5. The employer must follow this order immediately.
6. If the certified members cannot agree, the work cannot be stopped, but an inspector can be called in to investigate.
7. Following the investigation, the inspector will issue a written decision to both certified members.
8. If a certified member does not agree, he or she can appeal to the Ontario Labour Relations Board within 30 days of the decision.

What can be done if the bilateral work stoppage provision is not working to protect workers, or if the employer has bad safety practices?

- A certified member or an inspector can apply to the OLRB for a declaration or recommendation. The OLRB can order that the certified worker member be given the unilateral power to direct a work stoppage or recommend that the government assign an inspector to the workplace on a full time or part time basis at the employer's expense.

   **Sec. 46, Sub. 1 to 8**

- In considering an application for a declaration the OLRB must be in accord with the criteria set out in Regulation 243/95. This would include consideration of the employer's safety record (i.e. complaints, convictions, inspection records, etc), injury and illness records, safety policies and practices, pattern of bad faith with the joint committee, etc.
- In addition to having this ordered by the OLRB, unions can negotiate a unilateral stop work provision with the employer. Should the employer agree to such a provision, a worker certified member will have this power when the employer so advises the joint committee.

   **Sec. 47, Sub. 1(b)**

What is the procedure for unilateral work stoppage direction?

- If the OLRB has issued a declaration that a certified worker can unilaterally stop work, or if the employer has adopted a unilateral work stoppage process, the following steps are followed.
- Should a certified member find a dangerous circumstance he or she can order the employer to stop the work operation in question.

  Sec. 47, Sub. 2

- The employer must immediately comply, and immediately investigate.
- After investigating and taking corrective action, the employer may ask the certified member to cancel the order.
- If the employer and certified member cannot agree, then an inspector can be called in to investigate.
- Following the investigation, the inspector will issue a written decision which may include a cancellation of the stop work order.

Are certified members subject to any liability under this provision?

- Yes. Anyone can file a complaint with the OLRB within 30 days alleging that a certified member exercised or failed to exercise this power recklessly or in bad faith. The OLRB can take whatever action it considers appropriate, including decertifying the certified member.

  Sec. 49

Are there any restrictions on the power to order either a bilateral or unilateral work stoppage?

- Police, fire fighters and persons employed in correctional facilities are prohibited from exercising this power under any circumstances.

  Sec. 44, Sub. 2(a)

- Workers employed in health care facilities are prohibited from using it in circumstances that would directly endanger another person.

   **Sec. 44, Sub. 2(b)**

Are workers paid during a work stoppage order by certified members?

- There is no guarantee that workers affected by a safety shutdown will be paid.

What can be done if you disagree with an inspector's decision or order?

- Anyone who disagrees with an inspector's decision or order can file an appeal with the Ontario Labour Relations Board within 30 days of the decision. The Board may affirm or rescind an inspector's orders, or substitute its findings. And the Board's decision is final.

   **Sec. 61**

How are appeals dealt with by the OLRB?

- The board requires that you file your appeal in writing on Form A-65 within 30 calendar days of the inspector's decision. All of the OLRB forms and Information Bulletins are available on the provincial government website. Look for the OLRB link on the Ministry of Labour's site.
- The board will then send a copy of the completed Appeal Form (A-65) and a blank Response to Appeal Form (A-66) to all the responding parties to the appeal. The parties to the appeal usually include the worker, the union, the employer, and the inspector.
- The board will appoint a labour relations officer (LRO) to meet with the parties in an effort to resolve the appeal.

   **Sec. 61, Sub .3**

- The LRO will report the results of this effort to the board. If the matter is not resolved, the case will be set for a consultation or hearing, and a Notice of Consultation or Hearing will be sent to all of the parties.
- The Response to Appeal (Form A-66) must be completed and delivered to the Board and all of the parties no later than 21 calendar days before the consultation or hearing date.

How are requests for a suspension of an inspector's decision processed by the OLRB?

- Suspension requests will be processed only if an application for appeal has also been filed with the board.
- An application for suspension of an inspector's decision is filed with the Board on Form A-67. In giving your reasons for a suspension request, applicants must address the following criteria:
    1. Will the health and safety of the workers be assured if the order is suspended?
    2. Will there be any negative impact on the applicant if the decision is not suspended?
    3. Is there a good chance of succeeding in your appeal?
    4. Is there a good reason to vary the inspector's decision or order before the appeal can be dealt with?
    5. And any other information that might be supportive.
- A completed Form A-68 must be delivered to all parties within 14 calendar days of confirmation of filing sent by the board.
- Applications for suspension are usually dealt with through consideration of written submissions only. In certain instances, the Board may call for an oral hearing or consultation.

What options can the OLRB take in appeal/suspension applications?

- Hold formal hearings;
- Limit the presentation of evidence by the parties;
- Issue a decision without holding a hearing after consulting with the parties;
- Suspend the inspector's order pending the disposition of the appeal;
- Reconsider any decision or order an inspector has made.

How are Section 50 reprisal complaints processed by the OLRB?

- Applications alleging that an employer has violated Section 50 must be made on Form A-53. The applicant must fully describe how Section 50 was violated and provide facts and documents in support of the allegations that the employer imposed an unlawful reprisal on a worker.
- Before filing the application with the board, the worker must deliver an Application Package to the employer. This consists of the completed application, a blank response Form A-54, a Notice of Application Form C-26, and a copy of the Board's Information Bulletin.
- No later than five days after delivering the Application Package to the employer, the worker must file two copies of the application with the board. The matter will be terminated if the application is not filed within five days of delivery to the employer.
- After receiving the Application Package, the employer has 10 working days to Respond to the application on Form A-54. The employer must first deliver a copy of the response to the worker and then file 2 copies to the Board.
- After the response has been filed, the board will assign an LRO who will attempt to mediate a settlement.
- If no settlement is reached, a hearing will be held. At the hearing, the employer must establish that it did not impose an unlawful reprisal. Usually, the employer must give its evidence first.

What is the role of the OLRB under the Act?

The Act empowers the Board to hear and decide:

- Appeals of inspectors' orders and decisions.

   **Sec. 61**

- Complaints from certified members or an inspector that the bilateral work stoppage provision does not protect the workers from serious risk to their health and safety.

   **Sec. 46**

- Complaints that a certified member has exercised or failed to exercise the power to stop work recklessly or in bad faith.

   **Sec. 4**

- Complaints that an employer has taken a reprisal against a worker. These are filed on Form A-53 with the OLRB.

   **Sec. 50**

How can an application to the board under Section 46 assist workers?

- An application places the employer under the close scrutiny of the OLRB.
- The employer is faced with the possibility of having the unilateral shutdown provision imposed or having an inspector assigned on a full-time or part-time basis.

What must you carefully document to build a case against a bad employer?

- obstruction of the internal responsibility system;
- cases where the employer ignores the recommendations of the joint committee;
- cases where the employer fails to correct identified safety violations;
- the number of orders, repeat orders or charges;
- the incidence of occupational illness and injury;
- lack of policies, programs, safety procedures and training;
- the number of health and safety reprisals. (See Regulation 243/95)

Who can call an inspector?

- Anyone can call an inspector.

   **Sec. 43, Sub. 6**

Do workers have a right to accompany an inspector?

- Yes. The Act requires that a designated worker (a worker JHSC member, or another worker chosen by the union because of knowledge and training) accompany an inspector during a routine inspection.

   **Sec. 54, Sub. 3**

- In addition, worker representatives are required to be present during an inspector's investigation of a work refusal.

   **Sec. 43, Sub.7**

What are the powers of Ministry of Labour inspectors?

Inspectors have the power to:

- Enter any workplace at any time without a warrant.

   **Sec. 54, Sub. 1(a)**

- Must investigate all work refusals and give a written decision.

   **Sec. 43, Sub. 7, 8**

- Be accompanied by a person with specialized knowledge during an inspection.

   **Sec. 54, Sub. 1(g)**

- Request any drawings, documents, records, etc, and take these away to copy.

   **Sec. 54, Sub. 1(c)**

- Determine compliance with orders.

  Sec. 59, Sub. 4

- Order tests by qualified persons at the employer's expense.

  Sec. 54, Sub. 1(f)(k)

- As of September 2016, and the Bill 132 changes, an inspector can order an employer to cause an investigation of workplace harassment to be conducted by a third-party person. The inspector can also specify the knowledge, experience, or qualifications of the person. Also, that a written report be provided by that person at the expense of the employer. (The report is not a report a type of report that must be shared with the JHSC).

  Sec. 55, Sub. 3(1)(2)

- Order that equipment not be used until it is tested.

  Sec. 54, Sub. 1(l)

- Alter the frequency of inspections by worker members or health and safety representatives.

  Sec. 55

- Examine and copy training materials and attend training programs provided by the employer.

  Sec. 54, Sub. 1(p)

- Seize documents or objects as evidence of a contravention.

  Sec. 56

- Require a compliance plan.

  Sec. 57, Sub. 4 and 5

- Order that work not resume under a stop work order until the operation is re-inspected and the stop work order is withdrawn.

  Sec. 57, Sub. 8

What can an inspector do if unsafe or unhealthy conditions are found?

- The inspector can issue orders to comply, issue stop work orders and/or initiate a prosecution.

Who has the power to determine compliance with an order?

- Compliance with an order can only be determined by an inspector.

   **Sec. 59, Sub. 4**

- Work placed under a stop work order cannot resume until an inspector re-inspects, unless the worker member or a health and safety representative advises the inspector that he or she agrees with the employer's notice of compliance.

   **Sec. 57, Sub. 7**

- The employer's notice of compliance with an order must be accompanied by a statement of agreement or disagreement signed by the committee member or the health and safety representative.

   **Sec. 59**

How should workers deal with work orders, stop work orders and compliance notices?

- According to Ministry of Labour policy, the inspector can accept that compliance has been met without re-inspection, if the worker representative agrees with the employer's notice of compliance. If the worker disagrees, then an inspector will re-inspect. If the worker declines to sign the employer's notice, then the inspector might re-inspect.

Worker representatives are well advised to take the following measures:

- Insist that inspectors issue an order for a compliance plan. This gives you an opportunity to review how the employer will correct the hazard, and a means of monitoring the progress. It is absolutely essential that worker representatives carefully assess an employer's notice of compliance. In most cases, it would be

wise to insist on a re-inspection by the inspector before endorsing the notice of compliance.

What can be done if an inspector's order or decision does not address the hazard or violation of the Act?

- Either a worker or Union can initiate an appeal under section 61(1) of OHSA contesting the inspector's refusal to write an order.
- See Ontario Labour Relations Board information bulletin No. 21 "Occupational health and safety act appeals of an inspector's order. http://www.olrb.gov.on.ca/english/infob/infbul21.pdf.

What can happen if someone violates the Act and its regulations, or fails to comply with an order?

- Anyone can be charged and prosecuted for these violations. If found guilty, they are subject to a fine of up to $25,000 or one year in prison or both.

   **Sec. 66, Sub. 1**

- If found guilty, a corporation can be fined up to $500,000.

   **Sec. 66, Sub. 2**

- The Attorney General can require that a case be tried by a provincial judge instead of a justice of the peace.

   **Sec. 68, Sub. 2**

What can be done if the government refuses to prosecute an employer for violating the Act?

- In addition to putting public pressure on the government, an individual or a union can bring a private prosecution by filing information with a justice of the peace indicating that there is evidence that an employer violated the law. Unless the government decides to assume the prosecution, the individual or the union is responsible for conducting the prosecution and paying the legal bills.

PART K: **REGULATIONS**

What are the regulations?

- Section 70 of the Act empowers the cabinet to make regulations pursuant to the Act. These are the detailed rules applying to specific circumstances. These cannot, however, go beyond the powers of the Act or contradict the provisions of the Act.
- Any time you see the word "prescribed," it means that a regulation could set specific safety requirements.

Can the government make regulations which affect workers' or unions' rights?

Yes. The Act gives the government the power to make regulations such as the following (see OHSA Sec. 70 for a complete list):

- Require more than 4 persons on a joint committee at certain workplaces.

   **Sec. 70, Sub. 10**

- Exempt any workplace from the requirement to have a committee. The right to a committee can be taken away without review by the legislature.

   **Sec. 70, Sub. 11**

- Set the requirements for the terms, qualifications, and eligibility for membership on joint committees. The union's right to select its representatives on its own terms can be restricted.

   **Sec. 70, Sub. 13**

- Exempt any workplace from the requirement to have certified members.

   **Sec. 70, Sub. 14**

- Exempt workplaces from the bilateral or unilateral right to shut down unsafe work.

   **Sec. 70, Sub. 49**

➢ **CONSTRUCTION REGULATIONS AND GUIDELINES DESIGNATED SUBSTANCES**

Section 30 of the Ontario Occupational Health and Safety Act, R.S.O., 1990, c. O.1 (the Act) requires that an owner determine whether any Designated Substances are present at the project site and prepare a list of all Designated Substances identified. The list of Designated Substances shall be provided to contractors as part of the tendering information so that they may comply with the Act.

SECTION 30: ONTARIO OCCUPATIONAL HEALTH AND SAFETY ACT

- **Duty of Project Owners**

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

- **Tenders**

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

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

- **Duty of constructors**

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

- **Liability**

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

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

The following Sections of the Act are also noteworthy with respect to Designated Substances:

- Section (s.) 23 (1)c – A constructor shall ensure, on a project undertaken by the construction that, the health and safety of workers on the project is protected.

- Section (s.) 25 (2)a, h – Without limiting the strict duties imposed, in s. 25 (1), an employer shall, provide information instruction and supervision to a worker to protect the health or safety of the worker; and, take every precaution reasonable in the circumstances for the protection of a worker.

- Section (s.) 54 (1)e, f - An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations, conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace and for such purposes, take and carry away such samples as may be necessary; and, require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as are specified by the inspector and to provide, at the expense of the employer, a report or assessment by that person.

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The regulations noted below are the current regulations published by the Government of Ontario in effect at the time of publication. The actual names and numbers of the regulations may change over time. It is the readers responsibility to confirm the current publication and content of the regulations for each project.

O. REG. 490/09: DESIGNATED SUBSTANCES

- O. Reg. 490/09: *Designated Substances* under the Act lists/ defines the Designated Substances and provides the associated exposure limits:
    - Acrylonitrile,
    - Arsenic,
    - Asbestos,
    - Benzene,
    - Coke Oven Emissions,
    - Ethylene Oxide,
    - Isocyanates,
    - Lead,
    - Mercury,
    - Silica, and
    - Vinyl Chloride
- It should be noted that Section 14 of O. Reg. 490/09 indicates that the regulation does not apply to:
    (a) to an employer who engages in construction; or
    (b) to the workers of an employer described in clause (a) who are engaged in construction.
- O. Reg. 490/09 does not apply to construction; however, is frequently referenced as defining Designated Substances. **The exposure limits presented in O.Reg. 490/09 are consistent with exposure limits presented in O.Reg. 833/90, which in recent amendments, no longer excludes construction.**
- Additional worker protection requirements are required under OHSA Section 25(2)h, and Revised Regulations of Ontario (RRO) 1990 Regs 347and 860, O. Regs. 213/91 and 278/05, which do apply to construction and worker protection.

O. REG. 833/90: CONTROL OF EXPOSURE TO BIOLOGICAL OR CHEMICAL AGENTS

- O. Reg. 833 applies to workplaces and construction and establishes exposure limits for chemical, biological and physical agents.
- This regulation lists exposure limits for Designated Substances (Acrylonitrile, Arsenic, Asbestos, Benzene, Coke Oven Emissions, Ethylene Oxide, Isocyanates, Lead, Mercury, Silica, and Vinyl Chloride) by including the exposure limits for Designated Substances.

O. REG. 860: WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM (WHMIS)

- O. Reg. 860. prescribes the dissemination of information related to the hazards of materials used in the workplace in the form of training, labelling, etc.
- This regulation uses and/or defines the terms "hazardous product" and "hazardous material". It is important to note that Hazardous Material for the purpose of the assessments prescribed in this guideline are not the "hazardous materials" defined by (O. Reg.) 860/90.
- *Workplace Hazardous Materials Information Systems (WHMIS)* or "hazardous products" as defined by SOR/2015-17 *Hazardous Products Regulations* made under the *Hazardous Products Act* (Canada) even if the Hazardous Materials assessed in this guideline are identified or listed by such legislation.

O. REG. 213/91: CONSTRUCTION PROJECTS

- O. Reg 213/91 contains requirements for construction projects which include the disturbance of Designated Substances. This regulation specifies that a notice shall be filed and include a list of all Designated Substances that may be used, handled, or disturbed by the work (s. 6).
- Section 214 (4) states that all toxic, flammable or explosive substances must be removed from a building structure that is to be demolished, dismantled or moved.

O. REG. 278/05: DESIGNATED SUBSTANCE – ASBESTOS ON CONSTRUCTION PROJECTS AND IN BUILDINGS AND REPAIR OPERATIONS

- O. Reg. 278/05 sets specific requirements for the identification, abatement, and ongoing management of asbestos-containing materials.

  s. 6 (1) notes that "the demolition of all or part of machinery, equipment, a building, aircraft, locomotive, railway car, vehicle or ship shall be carried out or continued only when any asbestos-containing material that may be disturbed during the work has been removed to the extent practicable."

  s.8 requires an owner "to prepare and keep on the premises an asbestos survey, and if asbestos is present, provide the information to building occupiers, contractors and employees, establish a training program for workers who may disturb asbestos, prepare a management plan and inspect known asbestos at least annually."

- O. Reg. 278/05 also sets specific requirements for Owner of the facility prior to requesting tender or arranging for work (s.10)

  "***10.*** (1) An owner shall comply with subsections (2), (3), (4), (5) and (6) before,

  (a) requesting tenders for the demolition, alteration or repair of all or part of machinery, equipment, or a building, aircraft, locomotive, railway car, vehicle or ship; or

  (b) arranging or contracting for any work described in clause (a), if no tenders are requested. O. Reg. 278/05, s. 10 (1).

  (2) Unless clause (3) (a) or (b) applies, the owner shall have an examination carried out in accordance with section 3 to establish whether any material that is likely to be handled, dealt with, disturbed or removed, whether friable or non-friable, is asbestos-containing material. O. Reg. 278/05, s. 10 (2).

(3) An examination under subsection (2) is required if,

(a) the owner,

(i) already knows that the material is not asbestos-containing material, or

(ii) already knows that the material is asbestos-containing material and, in the case of sprayed-on friable material, knows the type of asbestos; or

(b) the work is being arranged or contracted for in accordance with this Regulation as though the material were asbestos-containing material and, in the case of sprayed- *on friable material, as though it contained a type of asbestos other than chrysotile. O. Reg. 278/05, s. 10 (3).*

(4) Whether an examination is required under subsection (2) or not, the owner shall have a report prepared,

(a) stating whether,

(i) the material is or is not asbestos-containing material, or

(ii) the work is to be performed in accordance with this Regulation as though the material were asbestos-containing material and, in the case of sprayed-on friable material, as though it contained a type of asbestos other than chrysotile;

(b) describing the condition of the material and stating whether it is friable or non-friable; and

(c) containing drawings, plans and specifications, as appropriate, to show the location of the material identified under clause (a). O. Reg. 278/05, s. 10 (4).

(5) An owner shall give any prospective constructor a copy of the complete report prepared under subsection (4). O. Reg. 278/05, s. 10 (5).

(6) Subsection (5) applies, with necessary modifications, with respect to,

(a) a constructor and a prospective contractor; and

(b) a contractor and a prospective subcontractor. O. Reg. 278/05, s. 10 (6).

(7) Subsections (8), (9) and (10) apply if, during work described in clause (1) (a), material is discovered that,

(a) was not referred to in the report prepared under subsection (4); and (b) may be asbestos-containing material. O. Reg. 278/05, s. 10 (7).

(8) The constructor or employer shall immediately notify, orally and in writing,

(a) an inspector at the office of the Ministry of Labour nearest the workplace;

(b) the owner;

(c) the contractor; and

(d) the joint health and safety committee or the health and safety representative, if any, for the workplace. O. Reg. 278/05, s. 10 (8).

(9) The written notice referred to in subsection (8) shall include the information referred to in clauses 11 (3) (a) to (f). O. Reg. 278/05, s. 10 (9).

(10) No work that is likely to involve handling, dealing with, disturbing or removing the material referred to in subsection (7) shall be done unless,

(a) it has been determined under section 3 whether the material is asbestos-containing material; or

(b) the work is performed in accordance with this Regulation as though the material were asbestos-containing material and, in the case of sprayed-on friable material, as though it contained a type of asbestos other than chrysotile. O. Reg. 278/05, s. 10 (10).

(11) Subsection (10) does not prohibit handling, dealing with, disturbing or removing material for the sole purpose of determining whether it is asbestos-containing material. O. Reg. 278/05, s. 10 (11)."

Furthermore, O. Reg 278/05 further states that "demolition includes dismantling and breaking up" and that "building" is defined as "any structure, vault, chamber or tunnel including, without limitation, the electrical, plumbing, heating and air handling equipment (including rigid duct work) of the structure, vault, chamber or tunnel."

It is important to ensure areas requiring assessment are not omitted due to colloquial or conversational understanding or language.

O. Reg. 278/05 also sets specific requirements for the Constructor to notify the Ministry of Labour prior to commencing any Type 3 work, or Glove Bag work where greater than one square meter is removed (s.11). This notification is independent of the required notifications under O.Reg. 213/91.

CONSTRUCTION REGULATION BIO HAZARDS

O. Reg. 213/91 safe work practices Hygiene

- **Constructors** must ensure that, in accordance with section 29 of the Construction Regulation (O. Reg. 213/91), toilets, urinals and clean-up facilities are provided or arranged for workers before work starts at a project and that there is reasonable access to them.

- **Suppliers** have a duty under section 31 of the OHSA, to provide toilets and clean-up facilities that are in good condition and that comply with section 29.1 of the Construction Regulation.

Water (Section 28)

- **Subsection 28 (1)** A reasonable supply of potable drinking water shall be kept readily accessible at a project for the use of workers.
- **Subsection 28 (2)** Drinking water shall be supplied from a piping system or from a clean, covered container with a drain faucet.
- **Subsection 28 (3)** Workers shall be given a sanitary means of drinking the drinking water.
- **Subsection 28 (4)** Workers shall not be required to share a common drinking cup to drink water.

Constructors Toilets: (Section 29)

- **Subsection 29(3)** The constructor shall ensure,(a) that facilities are provided or arranged for workers before work has started at a project; and(b) that workers at the project have reasonable access to these facilities.
- **Subsection 29.1 (0.1)** Provide (or make arrangements for) water flush toilets that are connected to a sanitary sewer, or chemical flush toilets that are not connected to a sanitary sewer.
- **Subsection 29.1 (2-5)** Ensure that minimum numbers of toilets as prescribed per number of workers regularly employed at the project are provided, and separate facilities for female workers are provided, unless the facilities are intended to be used by only one worker at a time.
- **Subsection 29.1(6)** provides the number of urinals that can replace toilets if the facilities are only to be used by males. Ensure that facilities are serviced as often as required. (One-week intervals may not be sufficient in warm weather or when larger numbers of workers are present at a project).

Clean-up facilities

- Provide an adequate number of clean-up facilities, as prescribed and ensure that they are equipped with wash basins, with both hot and cold running water where reasonably possible, paper towels and receptacle or a hand dryer.

- In cases where it is not reasonably possible to provide running water, it is permissible to use hand cleanser that can be used without water, paper towels (and receptacle) or a hand dryer.

PART L: **RESOURCES**

1. **Ministry of Labour, Training and Skills Development Health and Safety**
    - **Guide to the OHSA**
      https://www.ontario.ca/document/guide-occupational-health-and-safety-act
    - **Workplace Hazardous Materials Information System (WHMIS)**
      https://www.ontario.ca/page/workplace-hazardous-materials-information-system-whmis
    - **Health and Safety Awareness Training**
      https://www.labour.gov.on.ca/english/hs/training/index.php
    - **Mandatory Workplace Poster**
      https://www.ontario.ca/page/posters-required-workplace#section-2
    - **Healthy and Safe Ontario Workplaces Strategy**
      https://www.ontario.ca/document/healthy-and-safe-ontario-workplaces-strategy
    - **Report an Incident**
      https://www.ontario.ca/page/reporting-workplace-incidents-or-structural-hazards
    - **File a workplace health and safety complaint**
      https://www.ontario.ca/page/filing-workplace-health-and-safety-complaint
    - **Reprisals**
      https://www.ontario.ca/page/reprisals-against-workers-employers

2. **The Infrastructure Health and Safety Association (IHSA)**
   https://www.ihsa.ca/About.aspx

APPENDIX A

O. Reg. 213/91 Hygiene

28. (1) A reasonable supply of potable drinking water shall be kept readily accessible at a project for the use of workers. O. Reg. 213/91, s. 28 (1).

(2) Drinking water shall be supplied from a piping system or from a clean, covered container with a drain faucet. O. Reg. 213/91, s. 28 (2).

(3) Workers shall be given a sanitary means of drinking the drinking water. O. Reg. 213/91, s. 28 (3).

(4) Workers shall not be required to share a common drinking cup to drink water. O. Reg. 213/91, s. 28 (4).

29. (1) In this section,

"facilities" means toilet, urinal and clean-up facilities; ("installations")

"service", when used as a verb, means to have waste pumped out and to have the facilities replenished where necessary. O. Reg. 527/00, s. 1.

(2) Revoked: O. Reg. 527/00, s. 1.

(3) The constructor shall ensure,

(a) that facilities are provided or arranged for workers before work has started at a project; and

(b) that workers at the project have reasonable access to these facilities. O. Reg. 145/00, s. 15.

(4) Subject to subsections (5) and (6), the facilities shall be located not more than 180 metres, measured horizontally, from the project work area. O. Reg. 142/17, s. 6.

(5) If work is being performed in a tunnel, the facilities shall be located not more than 180 metres, measured horizontally, from the entrance to the tunnel. O. Reg. 142/17, s. 6.

(6) The facilities may be located not more than 3 kilometres from the work area if transportation to the facilities is provided for workers where reasonably required. O. Reg. 142/17, s. 6.

(7) If the project is the construction of a building, the facility shall be located not more than 9 metres, measured vertically, from the level at which work is being performed, in addition to meeting the requirement set out in subsection (4). O. Reg. 142/17, s. 6.

(8) The location of the facilities under subsection (7) may be varied if the arrangement affords reasonable accessibility for workers. O. Reg. 145/00, s. 15.

(9) If the location of the facilities is varied under subsection (8), the constructor shall document in writing the location and the reasons for the variance, and shall provide the document to,

(a) the joint health and safety committee or the health and safety representative, if any, for the workplace; or

(b) the workers, if there is no committee or representative for the workers. O. Reg. 145/00, s. 15.

(10) The constructor shall,

(a) inform workers of the location of the facilities; and

(b) post the location of the facilities in a conspicuous place at the project if it is practical to do so. O. Reg. 145/00, s. 15.

(11) The facilities shall be serviced, cleaned and sanitized as frequently as necessary to maintain them in a clean and sanitary condition. O. Reg. 145/00, s. 15.

(12) The constructor shall keep at the project for the duration of the project,

(a) a record of the servicing, cleaning and sanitizing of the facilities; and

(b) a copy of the document required under subsection (9), if any. O. Reg. 145/00, s. 15.

(13) Facilities that are not under the constructor's control satisfy the requirements of this section only if the constructor has received permission from the facilities' owner for workers to use the facilities. O. Reg. 145/00, s. 15.

29.1 (0.1) In this section,

"non-sewered flush toilet facilities" means water flush toilets or chemical flush toilets that have the features listed in subsection (0.2); ("installations de toilettes à chasse non raccordées à un réseau d'égouts")

"sewered toilet facilities" means water flush toilets that are connected to a sanitary sewer system and equipped with a trap in accordance with the applicable provisions of the Building Code. ("installations de toilettes raccordées à un réseau d'égouts") O. Reg. 527/00, s. 2 (1); O. Reg. 142/17, s. 7.

(0.2) The features referred to in the definition of "non-sewered flush toilet facilities" in subsection (0.1) are:

1. The toilets are not connected to a sanitary sewer system.

2. They are equipped with a trap or a positive seal separating stored waste from the bowl.

3. The waste is first flushed from the bowl with water or with water containing chemical additives. Then the waste is deposited into a container and chemically treated sufficiently for the container's maximum capacity. O. Reg. 527/00, s. 2 (1).

(1) Each toilet facility shall meet the following requirements:

1. There shall be a toilet with an open-front toilet seat.

2. There shall be a toilet paper holder and an adequate supply of toilet paper. If the facility is intended for use by female workers, there shall be a disposal receptacle for sanitary napkins.

3. The facility shall afford the user privacy and protection from weather and from falling objects. There shall be a self-closing door that can be locked from inside the facility.

4. The facility shall be,

   i. illuminated by natural or artificial light,

   ii. adequately heated, if that is possible, and

   iii. adequately ventilated.

5. If the facility is intended for use by males only or by females only, it shall have a sign indicating that fact.

6. The facility shall be kept in good repair at all times. O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (2, 3).

(2) Separate toilet facilities shall be provided for male and female workers, unless the facilities are intended to be used by only one worker at a time. O. Reg. 145/00, s. 15.

(3) Sewered toilet facilities or non-sewered flush toilet facilities shall be provided at a project, subject to subsection (4). O. Reg. 145/00, s. 15.

(4) If a project is being carried out in a remote unpopulated area and it is not reasonably possible to provide the toilet facilities required under subsection (3), other types of toilet facilities that come as close as possible to having the features of non-sewered flush toilet facilities shall be provided instead. O. Reg. 527/00, s. 2 (4).

(5) When water flush toilets or non-recirculating chemical flush toilets are provided, the minimum number of toilets required at the project is as follows:

Item	Minimum number of toilets	Number of workers regularly employed at the project
1.	1	1-15
2.	2	16-30
3.	3	31-45
4.	4	46-60
5.	4, plus 1 additional toilet for each additional group of 15 or fewer workers	61 or more

O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (5); O. Reg. 345/15, s. 8 (1).

(6) If the toilets are located in a multiple water flush toilet facility and are intended to be used by male workers, water flush urinals may be substituted for a maximum of two-thirds of the number of toilets required by subsection (5). O. Reg. 145/00, s. 15.

(7) When toilets other than water flush toilets or non-recirculating chemical flush toilets are provided, the minimum number of toilets required at the project is as follows:

Item	Minimum number of toilets	Number of workers regularly employed at the project
1.	1	1-10
2.	2	11-20
3.	3	21-30
4.	4	31-40
5.	4, plus 1 additional toilet for each additional group of 15 or fewer workers	41 or more

O. Reg. 145/00, s. 15; O. Reg. 527/00, s. 2 (6); O. Reg. 345/15, s. 8 (2).

(8) If the toilets are located in a portable single-unit toilet facility intended for use by male workers, there shall be at least one urinal for each toilet. O. Reg. 145/00, s. 15.

(9) Portable urinals equipped with clean-up facilities are permitted in addition to the requirements of this section. O. Reg. 145/00, s. 15.

29.2 (1) Each single-toilet facility shall be provided with its own clean-up facility. O. Reg. 527/00, s. 3.

(1.1) In a multiple-toilet facility at a project, one clean-up facility shall be provided for every two toilets. O. Reg. 527/00, s. 3.

(2) Each clean-up facility shall meet the following requirements:

1. Subject to subsection (3), the facility shall have a wash basin with running water. Both hot and cold running water shall be available if reasonably possible.

2. Soap or hand cleanser shall be provided.

3. Paper towels or a hand dryer shall be provided. If paper towels are provided, there shall be a waste disposal receptacle nearby. O. Reg. 145/00, s. 15.

(3) If it is not reasonably possible to have a wash basin with running water at a clean-up facility, hand cleanser that can be used without water shall be provided instead. O. Reg. 145/00, s. 15.

30. Workers who handle or use corrosive, poisonous or other substances likely to endanger their health shall be provided with washing facilities with clean water, soap and individual towels. O. Reg. 213/91, s. 30.

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