

Labour Relations Act, 1995

S.O. 1995, CHAPTER 1 Schedule A

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Definitions

1. (1) In this Act,

“accredited employers’ organization” means an organization of employers that is accredited under this Act as the bargaining agent for a unit of employers; (“association patronale accréditée”)

“agriculture” includes farming in all its branches, including dairying, beekeeping, aquaculture, the raising of livestock including non-traditional livestock, furbearing animals and poultry, the production, cultivation, growing and harvesting of agricultural commodities, including eggs, maple products, mushrooms and tobacco, and any practices performed as an integral part of an agricultural operation, but does not include anything that was not or would not have been determined to be agriculture under section 2 of the predecessor to this Act as it read on June 22, 1994; (“agriculture”)

“bargaining unit” means a unit of employees appropriate for collective bargaining, whether it is an employer unit or a plant unit or a subdivision of either of them; (“unité de négociation”)

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

“certified council of trade unions” means a council of trade unions that is certified under this Act as the bargaining agent for a bargaining unit of employees of an employer; (“conseil de syndicats accrédité”)

“collective agreement” means an agreement in writing between an employer or an employers’ organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers’ organization, on the other hand, containing provisions respecting terms or conditions of employment or the

rights, privileges or duties of the employer, the employers' organization, the trade union or the employees, and includes a provincial agreement and does not include a project agreement under section 163.1; ("convention collective")

"construction industry" means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site; ("industrie de la construction")

"council of trade unions" includes an allied council, a trades council, a joint board and any other association of trade unions; ("conseil de syndicats")

"dependent contractor" means a person, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, material, or any other thing owned by the dependent contractor, who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor; ("entrepreneur dépendant")

"Director of Dispute Resolution Services" means the Director of Dispute Resolution Services in the Ministry of Labour or, if there ceases to be a public servant with that title, the public servant or servants who are assigned the duties formerly carried out by the Director of Dispute Resolution Services; ("directeur des Services de règlement des différends")

"employee" includes a dependent contractor; ("employé")

"employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees and includes an accredited employers' organization and a designated or accredited employer bargaining agency; ("association patronale")

"lock-out" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of employees, with a view to compel or induce the employees, or to aid another employer to compel or induce that employer's employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers' organization, the trade union, or the employees; ("lock-out")

"member", when used with reference to a trade union, includes a person who has applied for membership in the trade union; ("membre")

"Minister" means the Minister of Labour; ("ministre")

"professional engineer" means an employee who is a member of the engineering profession entitled to practise in Ontario and employed in a professional capacity; ("ingénieur")

"strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output; ("grève")

"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency. ("syndicat") 1995, c. 1, Sched. A, s. 1 (1); 1998, c. 8, s. 1; 2000, c. 38, s. 1; 2006, c. 35, Sched. C, s. 57 (1); 2009, c. 33, Sched. 20, s. 2 (1).

Same

(2) For the purposes of this Act, no person shall be deemed to have ceased to be an employee by reason only of the person's ceasing to work for the person's employer as the result of a lock-out or strike or by reason only of being dismissed by the person's employer contrary to this Act or to a collective agreement. 1995, c. 1, Sched. A, s. 1 (2).

Same

(3) Subject to section 97, for the purposes of this Act, no person shall be deemed to be an employee,

(a) who is a member of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; or

(b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations. 1995, c. 1, Sched. A, s. 1 (3).

Same

(4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination

thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate. 1995, c. 1, Sched. A, s. 1 (4).

Duty of respondents

(5) Where, in an application made pursuant to subsection (4), it is alleged that more than one corporation, individual, firm, syndicate or association or any combination thereof are or were under common control or direction, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation. 1995, c. 1, Sched. A, s. 1 (5).

PURPOSES AND APPLICATION OF ACT

Purposes

2. The following are the purposes of the Act:

1. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees.
2. To recognize the importance of workplace parties adapting to change.
3. To promote flexibility, productivity and employee involvement in the workplace.
4. To encourage communication between employers and employees in the workplace.
5. To recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees and trade unions.
6. To encourage co-operative participation of employers and trade unions in resolving workplace issues.
7. To promote the expeditious resolution of workplace disputes. 1995, c. 1, Sched. A, s. 2.

Non-application

3. This Act does not apply,

- (a) to a domestic employed in a private home;
- (b) to a person employed in hunting or trapping;
- (b.1) to an employee within the meaning of the *Agricultural Employees Protection Act, 2002*;
- (c) to a person, other than an employee of a municipality or a person employed in silviculture, who is employed in horticulture by an employer whose primary business is agriculture or horticulture;
- (d) to a member of a police force within the meaning of the *Police Services Act*;
- (e) except as provided in Part IX of the *Fire Protection and Prevention Act, 1997*, to a person who is a firefighter within the meaning of subsection 41 (1) of that Act;
- (f) to a member of a teachers' bargaining unit within the meaning of the *School Boards Collective Bargaining Act, 2014*, except as provided by that Act and by the *Protecting the School Year Act, 2015*, or to a supervisory officer, a principal or a vice-principal within the meaning of the *Education Act*;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 3 (f) of the Act is repealed and the following substituted: (See: 2015, c. 11, s. 20 (2))

- (f) to a member of a teachers' bargaining unit within the meaning of the *School Boards Collective Bargaining Act, 2014*, except as provided by that Act, or to a supervisory officer, a principal or a vice-principal within the meaning of the *Education Act*;
- (g) REPEALED: 2006, c. 35, Sched. C, s. 57 (2).
- (h) to an employee of a college of applied arts and technology;
- (i) to a provincial judge; or
- (j) to a person employed as a labour mediator or labour conciliator. 1995, c. 1, Sched. A, s. 3; 1997, c. 4, s. 83; 1997, c. 31, s. 151; 2002, c. 16, s. 20; 2006, c. 35, Sched. C, s. 57 (2); 2014, c. 5, s. 50; 2015, c. 11, s. 20 (1).

Certain Crown agencies bound

4. (1) This Act binds agencies of the Crown other than,
- (a) agencies in which are employed Crown employees as defined in the *Crown Employees Collective Bargaining Act, 1993*; and
 - (b) colleges of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*. 2006, c. 35, Sched. C, s. 57 (3).

Crown not bound

- (2) Except as provided in subsection (1), this Act does not bind the Crown. 1995, c. 1, Sched. A, s. 4 (2).

FREEDOMS

Membership in trade union

5. Every person is free to join a trade union of the person's own choice and to participate in its lawful activities. 1995, c. 1, Sched. A, s. 5.

Membership in employers' organization

6. Every person is free to join an employers' organization of the person's own choice and to participate in its lawful activities. 1995, c. 1, Sched. A, s. 6.

ESTABLISHMENT OF BARGAINING RIGHTS BY CERTIFICATION

Application for certification

7. (1) Where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees in the unit are not bound by a collective agreement, a trade union may apply at any time to the Board for certification as bargaining agent of the employees in the unit. 1995, c. 1, Sched. A, s. 7 (1).

Same

(2) Where a trade union has been certified as bargaining agent of the employees of an employer in a bargaining unit and has not entered into a collective agreement with the employer and no declaration has been made by the Board that the trade union no longer represents the employees in the bargaining unit, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit determined in the certificate only after the expiration of one year from the date of the certificate. 1995, c. 1, Sched. A, s. 7 (2).

Same

(3) Where an employer and a trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties and the parties have not entered into a collective agreement and the Board has not made a declaration under section 66, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the recognition agreement only after the expiration of one year from the date that the recognition agreement was entered into. 1995, c. 1, Sched. A, s. 7 (3).

Same

(4) Where a collective agreement is for a term of not more than three years, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the last three months of its operation. 1995, c. 1, Sched. A, s. 7 (4); 2000, c. 38, s. 2 (1).

Same

(5) Where a collective agreement is for a term of more than three years, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the 34th month of its operation and before the commencement of the 37th month of its operation and during the three-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last three months of its operation, as the case may be. 2000, c. 38, s. 2 (2).

Same

(6) Where a collective agreement referred to in subsection (4) or (5) provides that it will continue to operate for a further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement

during the further term or successive terms only during the last three months of each year that it so continues to operate, or after the commencement of the last three months of its operation, as the case may be. 1995, c. 1, Sched. A, s. 7 (6); 2000, c. 38, s. 2 (3).

Restriction

(7) The right of a trade union to apply for certification under this section is subject to subsections 10 (3) and 11.1 (4), section 67, subsections 128.1 (10), (15), (21), (22) and (23) and subsection 160 (3). 2005, c. 15, s. 1.

Withdrawal of application

(8) An application for certification may be withdrawn by the applicant upon such conditions as the Board may determine. 1995, c. 1, Sched. A, s. 7 (8).

Bar to reapplying

(9) Subject to subsection (9.1), if the trade union withdraws the application before a representation vote is taken, the Board may refuse to consider another application for certification by the trade union as the bargaining agent of the employees in the proposed bargaining unit until one year or such shorter period as the Board considers appropriate has elapsed after the application is withdrawn. 1995, c. 1, Sched. A, s. 7 (9); 2000, c. 38, s. 2 (4).

Mandatory bar

(9.1) If the trade union withdraws the application before a representation vote is taken, and that trade union had withdrawn a previous application under this section not more than six months earlier, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year has elapsed after the second application was withdrawn. 2000, c. 38, s. 2 (5).

Exception

(9.2) Subsection (9.1) does not apply if the trade union that withdrew the application is a trade union that the Board is prohibited from certifying under section 15. 2000, c. 38, s. 2 (5).

Same

(9.3) Despite subsection (9.1), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2000, c. 38, s. 2 (5).

Same

(10) If the trade union withdraws the application after the representation vote is taken, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the original application is withdrawn. 2000, c. 38, s. 2 (6).

Same

(10.1) Despite subsection (10), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2000, c. 38, s. 2 (6).

Exception

(10.2) Subsection (10) does not apply if the trade union that withdrew the application is a trade union that the Board is prohibited from certifying under section 15. 2000, c. 38, s. 2 (6).

Notice to employer

(11) The trade union shall deliver a copy of the application for certification to the employer by such time as is required under the rules made by the Board and, if there is no rule, not later than the day on which the application is filed with the Board. 1995, c. 1, Sched. A, s. 7 (11).

Proposed bargaining unit

(12) The application for certification shall include a written description of the proposed bargaining unit including an estimate of the number of individuals in the unit. 1995, c. 1, Sched. A, s. 7 (12).

Evidence

(13) The application for certification shall be accompanied by a list of the names of the union members in the proposed bargaining unit and evidence of their status as union members, but the trade union shall not give this information to the employer. 1995, c. 1, Sched. A, s. 7 (13).

Same

(14) If the employer disagrees with the description of the proposed bargaining unit, the employer may give the Board a written description of the bargaining unit that the employer proposes and shall do so within two days (excluding Saturdays, Sundays and holidays) after the day on which the employer receives the application for certification. 1995, c. 1, Sched. A, s. 7. 1995, c. 1, Sched. A, s. 7 (14).

Voting constituency

8. (1) Upon receiving an application for certification, the Board may determine the voting constituency to be used for a representation vote and in doing so shall take into account,

- (a) the description of the proposed bargaining unit included in the application for certification; and
- (b) the description, if any, of the bargaining unit that the employer proposes.

Direction re representation vote

(2) If the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the union at the time the application was filed, the Board shall direct that a representation vote be taken among the individuals in the voting constituency. 1995, c. 1, Sched. A, s. 8 (1, 2).

Membership in trade union

(3) The determination under subsection (2) shall be based only upon the information provided in the application for certification and the accompanying information provided under subsection 7 (13). 1998, c. 8, s. 2.

No hearing

(4) The Board shall not hold a hearing when making a decision under subsection (1) or (2).

Timing of vote

(5) Unless the Board directs otherwise, the representation vote shall be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the application for certification is filed with the Board.

Conduct of vote

(6) The representation vote shall be by ballots cast in such a manner that individuals expressing their choice cannot be identified with the choice made.

Sealing of ballot box, etc.

(7) The Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs.

Subsequent hearing

(8) After the representation vote has been taken, the Board may hold a hearing if the Board considers it necessary in order to dispose of the application for certification.

Exception

(9) When disposing of an application for certification, the Board shall not consider any challenge to the information provided under subsection 7 (13). 1995, c. 1, Sched. A, s. 8 (4-9).

Disagreement by employer with union's estimate

8.1 (1) If the employer disagrees with the trade union's estimate, included in the application for certification, of the number of individuals in the unit, the employer may give the Board a notice that it disagrees with that estimate. 1998, c. 8, s. 3.

Content of notice

- (2) A notice under subsection (1) must include,
- (a) the description of the bargaining unit that the employer proposes or a statement that the employer agrees with the description of the bargaining unit included in the application for certification;
 - (b) the employer's estimate of the number of individuals in the bargaining unit described in the application for certification; and
 - (c) if the employer proposes a different bargaining unit from that described in the application for certification, the employer's estimate of the number of individuals in the bargaining unit the employer proposes. 1998, c. 8, s. 3.

Deadline for notice

(3) A notice under subsection (1) must be given within two days (excluding Saturdays, Sundays and holidays) after the day on which the employer receives the application for certification. 1998, c. 8, s. 3.

Sealing of ballot boxes

(4) If the Board receives a notice under subsection (1), the Board shall direct that the ballot boxes from the representation vote be sealed unless the trade union and the employer agree otherwise. 1998, c. 8, s. 3.

Board determinations, etc.

- (5) The following apply if the Board receives a notice under subsection (1):
1. The Board shall not certify the trade union as the bargaining agent or dismiss the application for certification except as allowed under paragraph 2 or as required under paragraph 8.
 2. If the Board did not direct that the ballot boxes be sealed, the Board may dismiss the application for certification.
 3. Unless the Board dismisses the application as allowed under paragraph 2, the Board shall determine whether the description of the bargaining unit included in the application for certification could be appropriate for collective bargaining. The determination shall be based only upon that description.
 4. If the Board determines that the description of the bargaining unit included in the application for certification could be appropriate for collective bargaining, the Board shall determine the number of individuals in the unit as described in the application.
 5. If the Board determines that the description of the bargaining unit included in the application for certification could not be appropriate for collective bargaining,
 - i. the Board shall determine, under section 9, the unit of employees that is appropriate for collective bargaining, and
 - ii. the Board shall determine the number of individuals in that unit.
 6. After the Board's determination of the number of individuals in the unit under paragraph 4 or 5, the Board shall determine the percentage of the individuals in the bargaining unit who appear to be members of the union at the time the application for certification was filed, based upon the Board's determination under paragraph 4 or 5 and the information provided under subsection 7 (13).
 7. If the percentage determined under paragraph 6 is less than 40 per cent, the Board shall dismiss the application for certification and, if the ballot boxes were sealed, the Board shall direct that the ballots be destroyed without being counted.
 8. If the percentage determined under paragraph 6 is 40 per cent or more,
 - i. if the ballot boxes were sealed, the Board shall direct that the ballot boxes be opened and the ballots counted, subject to any direction the Board has made under subsection 8 (7), and
 - ii. the Board shall either certify the trade union or dismiss the application for certification. 1998, c. 8, s. 3; 2000, c. 38, s. 3.

Board to determine appropriateness of units

9. (1) Subject to subsection (2), upon an application for certification, the Board shall determine the unit of employees that is appropriate for collective bargaining, but in every case the unit shall consist of more than one employee and the Board

may, before determining the unit, conduct a vote of any of the employees of the employer for the purpose of ascertaining the wishes of the employees as to the appropriateness of the unit.

Certification pending resolution of composition of bargaining unit

(2) Where, upon an application for certification, the Board is satisfied that any dispute as to the composition of the bargaining unit cannot affect the trade union's right to certification, the Board may certify the trade union as the bargaining agent pending the final resolution of the composition of the bargaining unit.

Crafts units

(3) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to the skills or craft, and the Board may include in the unit persons who according to established trade union practice are commonly associated in their work and bargaining with the group, but the Board shall not be required to apply this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

Units of professional engineers

(4) A bargaining unit consisting solely of professional engineers shall be deemed by the Board to be a unit of employees appropriate for collective bargaining, but the Board may include professional engineers in a bargaining unit with other employees if the Board is satisfied that a majority of the professional engineers wish to be included in the bargaining unit.

Dependent contractors

(5) A bargaining unit consisting solely of dependent contractors shall be deemed by the Board to be a unit of employees appropriate for collective bargaining but the Board may include dependent contractors in a bargaining unit with other employees if the Board is satisfied that a majority of the dependent contractors wish to be included in the bargaining unit. 1995, c. 1, Sched. A, s. 9.

Certification after representation vote

10. (1) The Board shall certify a trade union as the bargaining agent of the employees in a bargaining unit that is determined by the Board to be appropriate for collective bargaining if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union. 1995, c. 1, Sched. A, s. 10 (1).

No certification

(2) The Board shall not certify the trade union as bargaining agent and shall dismiss the application for certification if 50 per cent or less of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union. 1995, c. 1, Sched. A, s. 10 (2).

Bar to reapplying

(3) If the Board dismisses an application for certification under this section, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the original application is dismissed. 2000, c. 38, s. 4.

Same

(3.1) Despite subsection (3), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2000, c. 38, s. 4.

Exception

(3.2) Subsection (3) does not apply if the trade union whose application was dismissed is a trade union that the Board is prohibited from certifying under section 15. 2000, c. 38, s. 4.

Same

(4) For greater certainty, subsection (3) does not apply with respect to a dismissal under paragraph 7 of subsection 8.1 (5). 1998, c. 8, s. 4.

Remedy if contravention by employer, etc.

11. (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,

- (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or
- (b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed. 2005, c. 15, s. 2.

Same

- (2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,
 - (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
 - (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or
 - (c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention. 2005, c. 15, s. 2.

Same

- (3) An order under subsection (2) may be made despite section 8.1 or subsection 10 (2). 2005, c. 15, s. 2.

Considerations

- (4) On an application made under this section, the Board may consider,
 - (a) the results of a previous representation vote; and
 - (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining. 2005, c. 15, s. 2.

Remedy of contravention by trade union, etc.

11.1 (1) Subsection (2) applies where a trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions contravenes this Act and, as a result, the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote. 2005, c. 15, s. 2.

Same

- (2) In the circumstances described in subsection (1), on the application of an interested person, the Board may, despite subsection 10 (1),
 - (a) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or
 - (b) dismiss the application for certification if no other remedy would be sufficient to counter the effects of the contravention. 2005, c. 15, s. 2.

Considerations

- (3) On an application made under this section, the Board may consider,
 - (a) the results of a previous representation vote; and
 - (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining. 2005, c. 15, s. 2.

Bar to reapplying

(4) If the Board dismisses an application for certification under clause (2) (b), the Board shall not consider another application for certification by the trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the application is dismissed. 2005, c. 15, s. 2.

Same

(5) Despite subsection (4), the Board may consider an application for certification by the trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2005, c. 15, s. 2.

Industrial, commercial and institutional sector

(6) If the Board dismisses under clause (2) (b) an application for certification that relates to the industrial, commercial and institutional sector of the construction industry, the references to “trade union” in subsections (4) and (5) shall be read as references to the trade unions on whose behalf the application for certification was brought. 2005, c. 15, s. 2.

Transition

11.2 (1) Sections 11 and 11.1 apply only in respect of contraventions described in subsection 11 (1) or subsection 11.1 (1) that occurred on or after the day section 2 of the *Labour Relations Statute Law Amendment Act, 2005* comes into force. 2005, c. 15, s. 2.

Same

(2) Section 11, as it read immediately before the day section 2 of the *Labour Relations Statute Law Amendment Act, 2005* came into force, continues to apply in respect of contraventions that occurred before that date. 2005, c. 15, s. 2.

Certification of councils of trade unions

12. (1) Sections 7 to 15, 126, 128 and 128.1 apply with necessary modifications to an application for certification by a council of trade unions, but, before the Board certifies such a council as bargaining agent for the employees of an employer in a bargaining unit, the Board shall satisfy itself that each of the trade unions that is a constituent union of the council has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent. 1995, c. 1, Sched. A, s. 12 (1); 2005, c. 15, s. 3 (1).

Postponement of disposition

(2) Where the Board is of opinion that appropriate authority has not been vested in the applicant, the Board may postpone disposition of the application to enable the constituent unions to vest such additional or other authority as the Board considers necessary. 1995, c. 1, Sched. A, s. 12 (2).

Membership

(3) For the purposes of sections 7, 8 and 128.1, a person who is a member of any constituent trade union of a council shall be deemed by the Board to be a member of the council. 1995, c. 1, Sched. A, s. 12 (3); 2005, c. 15, s. 3 (2).

Right of access

13. Where employees of an employer reside on the property of the employer, or on property to which the employer has the right to control access, the employer shall, upon a direction from the Board, allow the representative of a trade union access to the property on which the employees reside for the purpose of attempting to persuade the employees to join a trade union. 1995, c. 1, Sched. A, s. 13.

Security guards

14. (1) This section applies with respect to guards who monitor other employees or who protect the property of an employer.

Trade union with members other than guards, etc.

(2) Unless the employer notifies the Board that it objects, a trade union that admits to membership persons who are not guards or that is chartered by or affiliated with an organization that does so may be certified as the bargaining agent for a bargaining unit composed solely of guards.

Mixed bargaining unit

(3) Unless the employer notifies the Board that it objects, a bargaining unit may include guards and persons who are not guards.

If objection

(4) If the employer objects, the trade union must satisfy the Board that no conflict of interest would result from the trade union becoming the bargaining agent or from including persons other than guards in the bargaining unit.

Conflict of interest

(5) The Board shall consider the following factors in determining whether a conflict of interest would result:

1. The extent of the guards' duties monitoring other employees of their employer or protecting their employer's property.
2. Any other duties or responsibilities of the guards that might give rise to a conflict of interest.
3. Such other factors as the Board considers relevant.

Certification

(6) If the Board is satisfied that no conflict of interest would result, the Board may certify the trade union to represent the bargaining unit. 1995, c. 1, Sched. A, s. 14.

What unions not to be certified

15. The Board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*. 1995, c. 1, Sched. A, s. 15.

NEGOTIATION OF COLLECTIVE AGREEMENTS

Notice of desire to bargain

16. Following certification or the voluntary recognition by the employer of the trade union as bargaining agent for the employees in the bargaining unit, the trade union shall give the employer written notice of its desire to bargain with a view to making a collective agreement. 1995, c. 1, Sched. A, s. 16.

Obligation to bargain

17. The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement. 1995, c. 1, Sched. A, s. 17.

Appointment of conciliation officer

18. (1) Where notice has been given under section 16 or 59, the Minister, upon the request of either party, shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

Same, where no notice given

(2) Despite the failure of a trade union to give written notice under section 16 or the failure of either party to give written notice under sections 59 and 131, where the parties have met and bargained, the Minister, upon the request of either party, may appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

Same, voluntary recognition

(3) Where an employer and a trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties, the Minister may, upon the request of either party, appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

Second conciliation

(4) Despite anything in this Act, where the Minister has appointed a conciliation officer or a mediator and the parties have failed to enter into a collective agreement within 15 months from the date of such appointment, the Minister may, upon the joint request of the parties, again appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement, and, upon the appointment being made, sections 19 to 36 and 79 to 86 apply, but the appointment is not a bar to an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 18.

Appointment of mediator

19. (1) Where the Minister is required or authorized to appoint a conciliation officer, the Minister may, on the request in writing of the parties, appoint a mediator selected by them jointly before he or she has appointed a conciliation board or has informed the parties that he or she does not consider it advisable to appoint a conciliation board.

Same

(2) Where the Minister has appointed a mediator after a conciliation officer has been appointed, the appointment of the conciliation officer is thereby terminated. 1995, c. 1, Sched. A, s. 19.

Duties and report of conciliation officer

20. (1) Where a conciliation officer is appointed, he or she shall confer with the parties and endeavour to effect a collective agreement and he or she shall, within 14 days from his or her appointment, report the result of his or her endeavour to the Minister.

Extension of 14-day period

(2) The period mentioned in subsection (1) may be extended by agreement of the parties or by the Minister upon the advice of the conciliation officer that a collective agreement may be made within a reasonable time if the period is extended.

Report of settlement

(3) Where the conciliation officer reports to the Minister that the differences between the parties concerning the terms of a collective agreement have been settled, the Minister shall forthwith by notice in writing inform the parties of the report. 1995, c. 1, Sched. A, s. 20.

Conciliation board, appointment of members

21. If the conciliation officer is unable to effect a collective agreement within the time allowed under section 20,
- (a) the Minister shall forthwith by notice in writing request each of the parties, within five days of the receipt of the notice, to recommend one person to be a member of a conciliation board, and upon the receipt of the recommendations or upon the expiration of the five-day period he or she shall appoint two members who in his or her opinion represent the points of view of the respective parties, and the two members so appointed may, within three days after they are appointed, jointly recommend a third person to be a member and chair of the board, and upon the receipt of the recommendation or upon the expiration of the three-day period, he or she shall appoint a third person to be a member and chair of the board; or
 - (b) the Minister shall forthwith by notice in writing inform each of the parties that he or she does not consider it advisable to appoint a conciliation board. 1995, c. 1, Sched. A, s. 21.

Certain persons prohibited as members

22. No person shall act as a member of a conciliation board who has any pecuniary interest in the matters coming before it or who is acting, or has, within a period of six months preceding the date of his or her appointment, acted as solicitor, counsel or agent of either of the parties. 1995, c. 1, Sched. A, s. 22.

Notice to parties of appointment

23. (1) When the members of the conciliation board have been appointed, the Minister shall forthwith give notice of their names to the parties and thereupon the board shall be deemed to have been established.

Presumption of establishment

(2) When notice under subsection (1) has been given, it shall be presumed conclusively that the conciliation board has been established in accordance with this Act, and no order shall be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question the establishment of the conciliation board or the appointment of any of its members, or to review, prohibit or restrain any of its proceedings. 1995, c. 1, Sched. A, s. 23.

Vacancies

24. (1) If a person ceases to be a member of a conciliation board by reason of his or her resignation or death before it has completed its work, the Minister shall appoint a member in his or her place after consulting the party whose point of view was represented by the person.

Appointment of new member in place of member

(2) If in the opinion of the Minister a member of a conciliation board has failed to enter on his or her duties so as to enable it to report to the Minister within a reasonable time after its appointment, the Minister may appoint a member in his or her place after consulting the party whose point of view was represented by the person.

Appointment of new chair

(3) If the chair of a conciliation board is unable to enter on his or her duties so as to enable it to report to the Minister within a reasonable time after its appointment, he or she shall advise the Minister of his or her inability and the Minister may appoint a person to act as chair in his or her place. 1995, c. 1, Sched. A, s. 24.

Terms of reference

25. As soon as a conciliation board has been established, the Minister shall deliver to its chair a statement of the matters referred to it and the Minister may, either before or after its report is made, amend or add to the statement. 1995, c. 1, Sched. A, s. 25.

Oath of Office

26. Each member of a conciliation board shall, before entering upon his or her duties, take and subscribe before a person authorized to administer oaths or before another member of the board, and file with the Minister, an oath in the following form, in English or in French:

I do solemnly swear (or solemnly affirm) that I am not disqualified under section 22 of the *Labour Relations Act, 1995* from acting as a member of a conciliation board and that I will faithfully, truly and impartially, to the best of my knowledge, skill and ability, execute and perform the office of member (or chair) of the conciliation board established to and that I will not, except as I am legally authorized, disclose to any person any of the evidence or other matter brought before the board. So help me God. (omit this phrase in an affirmation)

1995, c. 1, Sched. A, s. 26.

Duties

27. As soon as a conciliation board is established, it shall endeavour to effect agreement between the parties on the matters referred to it. 1995, c. 1, Sched. A, s. 27.

Procedure

28. (1) Subject to this Act, a conciliation board shall determine its own procedure.

Presentation of evidence

(2) A conciliation board shall give full opportunity to the parties to present their evidence and make their submissions. 1995, c. 1, Sched. A, s. 28.

Sittings

29. The chair of a conciliation board shall, after consultation with the other members of the board, fix the time and place of its sittings, and he or she shall notify the parties and the other members of the board of the time and place so fixed. 1995, c. 1, Sched. A, s. 29.

Minister to be informed of first sitting

30. The chair of a conciliation board shall in writing, immediately upon the conclusion of its first sitting, inform the Minister of the date on which the sitting was held. 1995, c. 1, Sched. A, s. 30.

Quorum

31. The chair and one other member of a conciliation board or, in the absence of the chair and with his or her written consent, the other two members constitute a quorum, but, in the absence of one of the members other than the chair, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting. 1995, c. 1, Sched. A, s. 31.

Casting vote

32. If the members of a conciliation board are unable to agree among themselves on matters of procedure or as to the admissibility of evidence, the decision of the chair governs. 1995, c. 1, Sched. A, s. 32.

Power

33. A conciliation board has power,

- (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the board considers requisite to the full investigation and consideration of the matters referred to it in the same manner as a court of record in civil cases;
- (b) to administer oaths and affirmations;

- (c) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;
- (d) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the matters referred to the board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such matters;
- (e) to authorize any person to do anything that the board may do under clause (d) and to report to the board thereon. 1995, c. 1, Sched. A, s. 33.

Report of conciliation board

34. (1) A conciliation board shall report its findings and recommendations to the Minister within 30 days after its first sitting.

Extension of period

- (2) The period mentioned in subsection (1) may be extended,
 - (a) for a further period not exceeding 30 days,
 - (i) by the Minister at the request of the chair of the conciliation board, or
 - (ii) by agreement of the parties; or
 - (b) for a further period beyond the period fixed in clause (a) that the parties may agree upon and as the Minister may approve.

Report

(3) The report of the majority constitutes the report of the conciliation board, but, where there is no majority agreement or where the board is unable to report within the time allowed under subsection (1) or (2), the chair shall notify the Minister in writing that there has been no agreement or that the board is unable to report, as the case may be, and in either case the notification constitutes the report of the board.

Clarification, etc., of report

(4) After a conciliation board has made its report, the Minister may direct it to clarify or amplify any part of its report, and the report shall not be deemed to have been received by the Minister until it has been so clarified or amplified.

Copies of reports to parties

(5) On receipt of the report of the conciliation board or the mediator, the Minister shall forthwith release a copy to each of the parties. 1995, c. 1, Sched. A, s. 34.

Mediator

35. (1) Where a mediator is appointed, he or she shall confer with the parties and endeavour to effect a collective agreement.

Powers

- (2) A mediator has all the powers of a conciliation board under section 33.

Sections 30 and 34 apply

- (3) Sections 30 and 34 apply with necessary modifications to a mediator.

Report

- (4) The report of a mediator has the same effect as the report of a conciliation board. 1995, c. 1, Sched. A, s. 35.

Failure to report

36. Failure of a conciliation officer to report to the Minister within the time provided in this Act does not invalidate the proceedings of the conciliation officer. 1995, c. 1, Sched. A, s. 36.

Industrial inquiry commission

37. (1) The Minister may establish an industrial inquiry commission to inquire into and report to the Minister on any industrial matter or dispute that the Minister considers advisable.

Composition and powers

(2) The industrial inquiry commission shall consist of one or more members appointed by the Minister and the commission shall have all the powers of a conciliation board under section 33.

Remuneration and expenses

(3) The chair and members of the commission shall be paid remuneration and expenses at the same rate as is payable to a chair and members of a conciliation board under this Act. 1995, c. 1, Sched. A, s. 37.

Appointment of special officer

38. (1) Where, at any time during the operation of a collective agreement, the Minister considers that it will promote more harmonious industrial relations between the parties, the Minister may appoint a special officer to confer with the parties and assist them in an examination and discussion of their current relationship or the resolution of anticipated bargaining problems.

Duties of special officer

(2) A special officer appointed under subsection (1) shall confer with the parties and shall report to the Minister within 30 days of his or her appointment and upon the filing of his or her report his or her appointment shall terminate unless it is extended by the Minister.

Qualifications of special officer

(3) Any person knowledgeable in industrial relations may be appointed a special officer, whether or not he or she is an employee of the Crown. 1995, c. 1, Sched. A, s. 38.

Disputes Advisory Committee

39. (1) The Minister may appoint a Disputes Advisory Committee composed of one or more representatives of employers and one or more representatives of employees.

Purpose of Committee

(2) At any time during the course of bargaining, either before or after the commencement of a strike or lock-out, where it appears to the Minister that the normal conciliation and mediation procedures have been exhausted, the Minister may request that the Disputes Advisory Committee be convened to confer with, advise and assist the bargaining parties. 1995, c. 1, Sched. A, s. 39.

Voluntary arbitration

40. (1) Despite any other provision of this Act, the parties may at any time following the giving of notice of desire to bargain under section 16 or 59, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

Powers of arbitrator or board of arbitration

(2) The agreement to arbitrate shall supersede all other dispute settlement provisions of this Act, including those provisions relating to conciliation, mediation, strike and lock-out, and the provisions of subsections 48 (7), (8), (11), (12) and (18) to (20) apply with necessary modifications to the proceedings before the arbitrator or board of arbitration and to its decision under this section.

Effect of agreement

(3) For the purposes of section 67 and section 132, an irrevocable agreement in writing referred to in subsection (1) shall have the same effect as a collective agreement. 1995, c. 1, Sched. A, s. 40.

Where Minister may require ratification vote

41. Where, at any time after the commencement of a strike or lock-out, the Minister is of the opinion that it is in the public interest that the employees in the affected bargaining unit be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the Minister may, on such terms as he or she considers necessary, direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith. 1995, c. 1, Sched. A, s. 41.

Vote on employer's offer

42. (1) Before or after the commencement of a strike or lock-out, the employer of the employees in the affected bargaining unit may request that a vote of the employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties and the Minister shall, and in the construction industry the Minister may, on the terms that he or she considers necessary direct that a vote of the employees to accept or reject the offer be held and thereafter no further such request shall be made.

Time limits and periods not affected

(2) A request for the taking of a vote, or the holding of a vote, under subsection (1) does not abridge or extend any time limits or periods provided for in this Act. 1995, c. 1, Sched. A, s. 42.

First agreement arbitration

43. (1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration. 1995, c. 1, Sched. A, s. 43 (1).

Duty of Board

(2) The Board shall consider and make its decision on an application under subsection (1) within 30 days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether section 17 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of,

- (a) the refusal of the employer to recognize the bargaining authority of the trade union;
- (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- (c) the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or
- (d) any other reason the Board considers relevant. 1995, c. 1, Sched. A, s. 43 (2).

Choice of arbitrator

(3) Where a direction is given under subsection (2), the first collective agreement between the parties shall be settled by a board of arbitration unless within seven days of the giving of the direction the parties notify the Board that they have agreed that the Board arbitrate the settlement. 1995, c. 1, Sched. A, s. 43 (3).

Arbitration by Board

(4) Where the parties give notice to the Board of their agreement that the Board arbitrate the settlement of the first collective agreement, the Board,

- (a) shall appoint a date for and commence a hearing within 21 days of the giving of the notice to the Board; and
- (b) shall determine all matters in dispute and release its decision within 45 days of the commencement of the hearing. 1995, c. 1, Sched. A, s. 43 (4).

Same

(5) The parties to an arbitration by the Board shall jointly pay to the Board for payment into the Consolidated Revenue Fund the amount determined under the regulations for the expense of the arbitration. 1995, c. 1, Sched. A, s. 43 (5).

Private arbitration

(6) Where the parties do not agree that the Board arbitrate the settlement of the first collective agreement, each party, within 10 days of the giving of the direction under subsection (2), shall inform the other party of the name of its appointee to the board of arbitration referred to in subsection (3) and the appointees so selected, within five days of the appointment of the second of them, shall appoint a third person who shall be the chair. 1995, c. 1, Sched. A, s. 43 (6).

Same

(7) If a party fails to make appointment as required by subsection (6) or if the appointees fail to agree upon a chair within the time limited, the appointment shall be made by the Minister upon the request of either party. 1995, c. 1, Sched. A, s. 43 (7).

Same

(8) A board of arbitration appointed under this section shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions and section 116 applies to the board of arbitration, its decision and proceedings as if it were the Board. 1995, c. 1, Sched. A, s. 43 (8).

Same

(9) The remuneration and expenses of the members of a board of arbitration appointed under this section shall be paid as follows:

1. A party shall pay the remuneration and expenses of the member appointed by or on behalf of the party.

2. Each party shall pay one-half of the remuneration and expenses of the chair. 1995, c. 1, Sched. A, s. 43 (9).

Same

(10) Subsections 6 (8), (9), (10), (12), (13), (14), (17) and (18) of the *Hospital Labour Disputes Arbitration Act* and subsections 48 (12) and (18) of this Act apply with necessary modifications to a board of arbitration established under this section. 1995, c. 1, Sched. A, s. 43 (10).

Same

(11) The date of the first hearing of a board of arbitration appointed under this section shall not be later than 21 days after the appointment of the chair. 1995, c. 1, Sched. A, s. 43 (11).

Same

(12) A board of arbitration appointed under this section shall determine all matters in dispute and release its decision within 45 days of the commencement of its hearing of the matter. 1995, c. 1, Sched. A, s. 43 (12).

Mediation

(13) The Minister may appoint a mediator to confer with the parties and endeavour to effect a settlement. 1995, c. 1, Sched. A, s. 43 (13).

Effect of direction on strike or lock-out

(14) The employees in the bargaining unit shall not strike and the employer shall not lock out the employees where a direction has been given under subsection (2) and, where the direction is made during a strike by, or a lock-out of, employees in the bargaining unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lock-out and the employer shall forthwith reinstate the employees in the bargaining unit in the employment they had at the time the strike or lock-out commenced,

- (a) in accordance with any agreement between the employer and the trade union respecting reinstatement of the employees in the bargaining unit; or
- (b) where there is no agreement respecting reinstatement of the employees in the bargaining unit, on the basis of the length of service of each employee in relation to that of the other employees in the bargaining unit employed at the time the strike or lock-out commenced, except as may be directed by an order of the Board made for the purpose of allowing the employer to resume normal operations. 1995, c. 1, Sched. A, s. 43 (14).

Non-application

(15) The requirement to reinstate employees set out in subsection (14) applies despite the fact that replacement employees may be performing the work of employees in the bargaining unit, but subsection (14) does not apply so as to require reinstatement of an employee where, because of the permanent discontinuance of all or part of the business of the employer, the employer no longer has persons engaged in performing work of the same or a similar nature to work which the employee performed before the strike or lock-out. 1995, c. 1, Sched. A, s. 43 (15).

Working conditions not to be altered

(16) Where a direction has been given under subsection (2), the rates of wages and all other terms and conditions of employment and all rights, privileges and duties of the employer, the employees and the trade union in effect at the time notice was given under section 16 shall continue in effect, or, if altered before the giving of the direction, be restored and continued in effect until the first collective agreement is settled. 1995, c. 1, Sched. A, s. 43 (16).

Non-application

(17) Subsection (16) does not apply so as to effect any alteration in rates of wages or in any other term or condition of employment agreed to by the employer and the trade union. 1995, c. 1, Sched. A, s. 43 (17).

Matters to be accepted or considered

(18) In arbitrating the settlement of a first collective agreement under this section, matters agreed to by the parties, in writing, shall be accepted without amendment. 1995, c. 1, Sched. A, s. 43 (18).

Effect of settlement

(19) A first collective agreement settled under this section is effective for a period of two years from the date on which it is settled and it may provide that any of the terms of the agreement, except its term of operation, shall be retroactive to the day that the Board may fix, but not earlier than the day on which notice was given under section 16. 1995, c. 1, Sched. A, s. 43 (19).

Extension of time

(20) The parties, by agreement in writing, or the Minister may extend any time limit set out in this section, despite the expiration of the time. 1995, c. 1, Sched. A, s. 43 (20).

Non-application

(21) This section does not apply to the negotiation of a first collective agreement,

(a) where one of the parties is an employers' organization accredited under section 136 as a bargaining agent for employers; or

(b) where the agreement is a provincial agreement within the meaning of section 151. 1995, c. 1, Sched. A, s. 43 (21).

Application

(22) This section applies to an employer and a trade union where the trade union has acquired or acquires bargaining rights for employees of the employer before or after May 26, 1986, and the bargaining rights have been acquired since January 1, 1984 and continue to exist at the time of an application under subsection (1). 1995, c. 1, Sched. A, s. 43 (22).

Definitions

(23) In subsections (23.1) to (23.4),

“decertification application” means an application for a declaration that a trade union no longer represents the employees in a bargaining unit; (“requête en révocation de l'accréditation”)

“displacement application” means an application for certification by a trade union, other than the trade union that represents the employees in a bargaining unit, as bargaining agent for those employees. (“requête en substitution”) 2000, c. 38, s. 5.

Application of subs. (23.2)

(23.1) Subsection (23.2) applies if,

(a) a decertification application or displacement application has been filed with the Board and before a final decision is made on it an application under subsection (1) is filed with the Board; or

(b) an application under subsection (1) has been filed with the Board and before a final decision is made on it a decertification application or displacement application is filed with the Board. 2000, c. 38, s. 5.

Procedure in dealing with multiple applications

(23.2) The Board shall proceed to deal with the decertification application or displacement application, as the case may be, before dealing with or continuing to deal with the application under subsection (1). 2000, c. 38, s. 5.

When application under subsection (1) to be dismissed

(23.3) If the Board grants the decertification application or displacement application, it shall dismiss the application under subsection (1). 2000, c. 38, s. 5.

When application under subs. (1) proceeds

(23.4) If the Board dismisses the decertification application or displacement application, it shall proceed to deal with the application under subsection (1). 2000, c. 38, s. 5.

Transitional

(23.5) Subsections (23.2) to (23.4) apply with respect to an application referred to in those subsections that was filed with the Board before the day on which the *Labour Relations Amendment Act, 2000* received Royal Assent only if the Board has not made a final decision on that application before that day. 2000, c. 38, s. 5.

Same

(24) An application for a declaration that a trade union no longer represents the employees in the bargaining unit filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsection 63 (2). 1995, c. 1, Sched. A, s. 43 (24).

Same

(25) An application for certification by another trade union as bargaining agent for employees in the bargaining unit filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsections 7 (4), (5) and (6). 1995, c. 1, Sched. A, s. 43 (25).

Procedure

(26) The *Arbitration Act, 1991* does not apply to an arbitration under this section. 1995, c. 1, Sched. A, s. 43 (26).

Mandatory ratification vote

44. (1) A proposed collective agreement that is entered into or memorandum of settlement that is concluded on or after the day on which this section comes into force has no effect until it is ratified as described in subsection (3). 1995, c. 1, Sched. A, s. 44 (1).

Exceptions

(2) Subsection (1) does not apply with respect to a collective agreement,

- (a) imposed by order of the Board or settled by arbitration;
- (b) that reflects an offer accepted by a vote held under section 41 or subsection 42 (1);
- (c) that applies to employees in the construction industry; or
- (d) that applies to employees performing maintenance who are represented by a trade union that, according to trade union practice, pertains to the construction industry if any of the employees were referred to their employment by the trade union. 1995, c. 1, Sched. A, s. 44 (2); 1998, c. 8, s. 6.

Vote

(3) Subject to section 79.1, a proposed collective agreement or memorandum of settlement is ratified if a vote is taken in accordance with subsections 79 (7) to (9) and more than 50 per cent of those voting vote in favour of ratifying the agreement or memorandum. 2000, c. 38, s. 6.

CONTENTS OF COLLECTIVE AGREEMENTS

Recognition provisions

45. (1) Every collective agreement shall be deemed to provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein.

Recognition of accredited employers' organization

(2) Every collective agreement to which an accredited employers' organization is a party shall be deemed to provide that the accredited employers' organization is recognized as the exclusive bargaining agent of the employees in the unit of employers for whom the employers' organization has been accredited. 1995, c. 1, Sched. A, s. 45.

Provision against strikes and lock-outs

46. Every collective agreement shall be deemed to provide that there will be no strikes or lock-outs so long as the agreement continues to operate. 1995, c. 1, Sched. A, s. 46.

Deduction and remittance of union dues

47. (1) Except in the construction industry and subject to section 52, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union, forthwith.

Definition

(2) In subsection (1),

“regular union dues” means,

- (a) in the case of an employee who is a member of the trade union, the dues uniformly and regularly paid by a member of the trade union in accordance with the constitution and by-laws of the trade union, and
- (b) in the case of an employee who is not a member of the trade union, the dues referred to in clause (a), excluding any amount in respect of pension, superannuation, sickness insurance or any other benefit available only to members of the trade union. 1995, c. 1, Sched. A, s. 47.

Arbitration

48. (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable. 1995, c. 1, Sched. A, s. 48 (1).

Same

(2) If a collective agreement does not contain a provision that is mentioned in subsection (1), it shall be deemed to contain a provision to the following effect:

Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party's appointee to an arbitration board. The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chair. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chair within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chair governs.

1995, c. 1, Sched. A, s. 48 (2).

Where arbitration provision inadequate

(3) If, in the opinion of the Board, any part of the arbitration provision, including the method of appointment of the arbitrator or arbitration board, is inadequate, or if the provision set out in subsection (2) is alleged by either party to be unsuitable, the Board may, on the request of either party, modify the provision so long as it conforms with subsection (1), but, until so modified, the arbitration provision in the collective agreement or in subsection (2), as the case may be, applies. 1995, c. 1, Sched. A, s. 48 (3).

Appointment of arbitrator by Minister

(4) Despite subsection (3), if there is failure to appoint an arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator or make the appointments that are necessary to constitute the board of arbitration, as the case may be, and any person so appointed by the Minister shall be deemed to have been appointed in accordance with the collective agreement. 1995, c. 1, Sched. A, s. 48 (4).

Appointment of settlement officer

(5) On the request of either party, the Minister may appoint a settlement officer to endeavour to effect a settlement before the arbitrator or arbitration board appointed under subsection (4) begins to hear the arbitration. However, no appointment shall be made if the other party objects. 1995, c. 1, Sched. A, s. 48 (5); 1998, c. 8, s. 7.

Payment of arbitrators

(6) Where the Minister has appointed an arbitrator or the chair of a board of arbitration under subsection (4), each of the parties shall pay one-half the remuneration and expenses of the person appointed, and, where the Minister has appointed a member of a board of arbitration under subsection (4) on failure of one of the parties to make the appointment, that party shall pay the remuneration and expenses of the person appointed. 1995, c. 1, Sched. A, s. 48 (6).

Time for decision

(7) An arbitrator shall give a decision within 30 days after hearings on the matter submitted to arbitration are concluded. 1995, c. 1, Sched. A, s. 48 (7).

Same, arbitration board

(8) An arbitration board shall give a decision within 60 days after hearings on the matter submitted to arbitration are concluded. 1995, c. 1, Sched. A, s. 48 (8).

Same

- (9) The time described in subsection (7) or (8) for giving a decision may be extended,
- (a) with the consent of the parties to the arbitration; or
 - (b) in the discretion of the arbitrator or arbitration board so long as he, she or it states in the decision the reasons for extending the time. 1995, c. 1, Sched. A, s. 48 (9).

Oral decision

(10) An arbitrator or arbitration board may give an oral decision and, if he, she or it does so, subsection (7) or (8) does not apply and the arbitrator or arbitration board,

- (a) shall give the decision promptly after hearings on the matter are concluded;
- (b) shall give a written decision, without reasons, promptly upon the request of either party; and
- (c) shall give written reasons for the decision within a reasonable period of time upon the request of either party. 1995, c. 1, Sched. A, s. 48 (10).

Orders re decisions

(11) If the arbitrator or arbitration board does not give a decision within the time described in subsection (7) or (8) or does not provide written reasons within the time described in subsection (10), the Minister may,

- (a) make such orders as he or she considers necessary to ensure that the decision or reasons will be given without undue delay; and
- (b) make such orders as he or she considers appropriate respecting the remuneration and expenses of the arbitrator or arbitration board. 1995, c. 1, Sched. A, s. 48 (11).

Powers of arbitrators, chair of arbitration boards, and arbitration boards

(12) An arbitrator or the chair of an arbitration board, as the case may be, has power,

- (a) to require any party to furnish particulars before or during a hearing;
- (b) to require any party to produce documents or things that may be relevant to the matter and to do so before or during the hearing;
- (c) to fix dates for the commencement and continuation of hearings;
- (d) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath in the same manner as a court of record in civil cases; and
- (e) to administer oaths and affirmations,

and an arbitrator or an arbitration board, as the case may be, has power,

- (f) to accept the oral or written evidence as the arbitrator or the arbitration board, as the case may be, in its discretion considers proper, whether admissible in a court of law or not;
- (g) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted to the arbitrator or the arbitration board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such differences;
- (h) to authorize any person to do anything that the arbitrator or arbitration board may do under clause (g) and to report to the arbitrator or the arbitration board thereon;
- (i) to make interim orders concerning procedural matters;
- (j) to interpret and apply human rights and other employment-related statutes, despite any conflict between those statutes and the terms of the collective agreement. 1995, c. 1, Sched. A, s. 48 (12).

Restriction re interim orders

(13) An arbitrator or the chair of an arbitration board shall not make an interim order under clause (12) (i) requiring an employer to reinstate an employee in employment. 1995, c. 1, Sched. A, s. 48 (13).

Power re mediation

(14) An arbitrator or the chair of an arbitration board, as the case may be, may mediate the differences between the parties at any stage in the proceedings with the consent of the parties. If mediation is not successful, the arbitrator or arbitration board retains the power to determine the difference by arbitration. 1995, c. 1, Sched. A, s. 48 (14).

Enforcement power

(15) An arbitrator or the chair of an arbitration board, as the case may be, may enforce the written settlement of a grievance. 1995, c. 1, Sched. A, s. 48 (15).

Extension of time

(16) Except where a collective agreement states that this subsection does not apply, an arbitrator or arbitration board may extend the time for the taking of any step in the grievance procedure under a collective agreement, despite the expiration of the time, where the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the opposite party will not be substantially prejudiced by the extension. 1995, c. 1, Sched. A, s. 48 (16).

Substitution of penalty

(17) Where an arbitrator or arbitration board determines that an employee has been discharged or otherwise disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject-matter of the arbitration, the arbitrator or arbitration board may substitute such other penalty for the discharge or discipline as to the arbitrator or arbitration board seems just and reasonable in all the circumstances. 1995, c. 1, Sched. A, s. 48 (17).

Effect of arbitrator's decision

(18) The decision of an arbitrator or of an arbitration board is binding,

(a) upon the parties;

(b) in the case of a collective agreement between a trade union and an employers' organization, upon the employers covered by the agreement who are affected by the decision;

(c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, upon the members or affiliates of the council and the employer or the employers covered by the agreement, as the case may be, who are affected by the decision; and

(d) upon the employees covered by the agreement who are affected by the decision,

and the parties, employers, trade unions and employees shall do or abstain from doing anything required of them by the decision. 1995, c. 1, Sched. A, s. 48 (18).

Enforcement of arbitration decisions

(19) Where a party, employer, trade union or employee has failed to comply with any of the terms of the decision of an arbitrator or arbitration board, any party, employer, trade union or employee affected by the decision may file in the Superior Court of Justice a copy of the decision, exclusive of the reasons therefor, in the prescribed form, whereupon the decision shall be entered in the same way as a judgment or order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 48 (19); 2000, c. 38, s. 7.

Procedure

(20) The *Arbitration Act, 1991* does not apply to arbitrations under collective agreements. 1995, c. 1, Sched. A, s. 48 (20).

Referral of grievances to a single arbitrator

49. (1) Despite the arbitration provision in a collective agreement or deemed to be included in a collective agreement under section 48, a party to a collective agreement may request the Minister to refer to a single arbitrator, to be appointed by the Minister, any difference between the parties to the collective agreement arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

Request for references

(2) Subject to subsection (3), a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after 30 days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration.

Same

(3) Despite subsection (2), where a difference between the parties to a collective agreement is a difference respecting discharge from or other termination of employment, a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after 14 days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration.

Minister to appoint arbitrator

(4) Where a request is received under subsection (1), the Minister shall appoint a single arbitrator who shall have exclusive jurisdiction to hear and determine the matter referred to him or her, including any question as to whether a matter is arbitrable and any question as to whether the request was timely.

Same

(5) Where a request or more than one request concerns several differences arising under the collective agreement, the Minister may in his or her discretion appoint an arbitrator under subsection (4) to deal with all the differences raised in the request or requests.

Settlement officer

(6) The Minister may appoint a settlement officer to confer with the parties and endeavour to effect a settlement prior to the hearing by an arbitrator appointed under subsection (4).

Powers and duties of arbitrator

(7) An arbitrator appointed under subsection (4) shall commence to hear the matter referred to him or her within 21 days after the receipt of the request by the Minister and the provisions of subsections 48 (7) and (9) to (20) apply with all necessary modifications to the arbitrator, the parties and the decision of the arbitrator.

Oral decisions

(8) Upon the agreement of the parties, the arbitrator shall deliver an oral decision forthwith or as soon as practicable without giving his or her reasons in writing therefor.

Payment of arbitrator

(9) Where the Minister has appointed an arbitrator under subsection (4), each of the parties shall pay one-half of the remuneration and expenses of the person appointed.

Approval of arbitrators, etc.

(10) The Minister may establish a list of approved arbitrators and, for the purpose of advising him or her with respect to persons qualified to act as arbitrators and matters relating to arbitration, the Minister may constitute a labour-management advisory committee composed of a chair to be designated by the Minister and six members, three of whom shall represent employers and three of whom shall represent trade unions, and their remuneration and expenses shall be as the Lieutenant Governor in Council determines. 1995, c. 1, Sched. A, s. 49.

Consensual mediation-arbitration

50. (1) Despite any grievance or arbitration provision in a collective agreement or deemed to be included in the collective agreement under section 48, the parties to the collective agreement may, at any time, agree to refer one or more grievances under the collective agreement to a single mediator-arbitrator for the purpose of resolving the grievances in an expeditious and informal manner.

Prerequisite

(2) The parties shall not refer a grievance to a mediator-arbitrator unless they have agreed upon the nature of any issues in dispute.

Appointment by Minister

(3) The parties may jointly request the Minister to appoint a mediator-arbitrator if they are unable to agree upon one and the Minister shall make the appointment.

Proceedings to begin

(4) Subject to subsection (5), a mediator-arbitrator appointed by the Minister shall begin proceedings within 30 days after being appointed.

Same

(5) The Minister may direct a mediator-arbitrator appointed by him or her to begin proceedings on such date as the parties jointly request.

Mediation

(6) The mediator-arbitrator shall endeavour to assist the parties to settle the grievance by mediation.

Arbitration

(7) If the parties are unable to settle the grievance by mediation, the mediator-arbitrator shall endeavour to assist the parties to agree upon the material facts in dispute and then shall determine the grievance by arbitration.

Same

(8) When determining the grievance by arbitration, the mediator-arbitrator may limit the nature and extent of evidence and submissions and may impose such conditions as he or she considers appropriate.

Time for decision

(9) The mediator-arbitrator shall give a succinct decision within five days after completing proceedings on the grievance submitted to arbitration.

Application

(10) Subsections 48 (12) to (19) apply with respect to a mediator-arbitrator and a settlement, determination or decision under this section. 1995, c. 1, Sched. A, s. 50.

Permissive provisions

51. (1) Despite anything in this Act, but subject to subsection (4), the parties to a collective agreement may include in it provisions,

- (a) for requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement or granting a preference of employment to members of the trade union, or requiring the payment of dues or contributions to the trade union;
- (b) for permitting an employee who represents the trade union that is a party to or is bound by the agreement to attend to the business of the trade union during working hours without deduction of the time so occupied in the computation of the time worked for the employer and without deduction of wages in respect of the time so occupied;
- (c) for permitting the trade union that is a party to or is bound by the agreement the use of the employer's premises for the purposes of the trade union without payment therefor.

Where non-member employee cannot be required to be discharged

(2) No trade union that is a party to a collective agreement containing a provision mentioned in clause (1) (a) shall require the employer to discharge an employee because,

- (a) the employee has been expelled or suspended from membership in the trade union; or
- (b) membership in the trade union has been denied to or withheld from the employee,

for the reason that the employee,

- (c) was or is a member of another trade union;
- (d) has engaged in activity against the trade union or on behalf of another trade union;
- (e) has engaged in reasonable dissent within the trade union;
- (f) has been discriminated against by the trade union in the application of its membership rules; or
- (g) has refused to pay initiation fees, dues or other assessments to the trade union which are unreasonable.

Where subs. (2) does not apply

(3) Subsection (2) does not apply to an employee who has engaged in unlawful activity against the trade union mentioned in clause (1) (a) or an officer, official or agent thereof or whose activity against the trade union or on behalf of another trade union has been instigated or procured by the employee's employer or any person acting on the employer's behalf or whose employer or a person acting on the employer's behalf has participated in such activity or contributed financial or other support to the employee in respect of the activity.

Union security provision in first agreement

(4) A trade union and the employer of the employees concerned shall not enter into a collective agreement that includes provisions requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement unless the trade union has established at the time it entered into the agreement that not less than 55 per cent of the employees in the bargaining unit were members of the trade union, but this subsection does not apply,

- (a) where the trade union has been certified as the bargaining agent of the employees of the employer in the bargaining unit;
- (b) where the trade union has been a party to or bound by a collective agreement with the employer for at least one year;

- (c) where the employer becomes a member of an employer's organization that has entered into a collective agreement with the trade union or council of trade unions containing such a provision and agrees with the trade union or council of trade unions to be bound by such agreement; or
- (d) where the employer and the employer's employees in the bargaining unit are engaged in the construction, alteration, decoration, repair or demolition of a building, structure, road, sewer, water or gas main, pipe line, tunnel, bridge, canal, or other work at the site.

Continuation of permissive provisions

(5) Despite anything in this Act, where the parties to a collective agreement have included in it any of the provisions permitted by subsection (1), any of such provisions may be continued in effect during the period when the parties are bargaining with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement.

Same

(6) Despite anything in this Act, where the parties to a collective agreement have included in it any of the provisions permitted by subsection (1) and the employer who was a party to or was bound by the agreement sells the employer's business within the meaning of section 69, any of the provisions that were included in the collective agreement may be continued in effect during the period when the person to whom the business was sold and the trade union that is the bargaining agent for the person's employees in the appropriate bargaining unit by reason of the sale bargain with a view to the making of a new agreement. 1995, c. 1, Sched. A, s. 51.

Religious objections

52. (1) Where the Board is satisfied that an employee because of his or her religious conviction or belief,
- (a) objects to joining a trade union; or
 - (b) objects to the paying of dues or other assessments to a trade union,

the Board may order that the provisions of a collective agreement of the type mentioned in clause 51 (1) (a) do not apply to the employee and that the employee is not required to join the trade union, to be or continue to be a member of the trade union, or to pay any dues, fees or assessments to the trade union, provided that amounts equal to any initiation fees, dues or other assessments are paid by the employee to or are remitted by the employer to a charitable organization mutually agreed upon by the employee and the trade union, but if the employee and the trade union fail to so agree then to a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada) that may be designated by the Board. 1995, c. 1, Sched. A, s. 52 (1); 2004, c. 16, Sched. D, Table.

Application of subs. (1)

(2) Subsection (1) applies to employees in the employ of an employer at the time a collective agreement containing a provision of the kind mentioned in subsection (1) is first entered into with that employer and only during the life of such collective agreement, and does not apply to employees whose employment commences after the entering into of the collective agreement. 1995, c. 1, Sched. A, s. 52 (2).

OPERATION OF COLLECTIVE AGREEMENTS

Certain agreements not to be treated as collective agreements

53. An agreement between an employer or an employers' organization and a trade union shall be deemed not to be a collective agreement for the purposes of this Act if an employer or employers' organization participated in the formation or administration of the trade union or contributed financial or other support to the trade union. 1995, c. 1, Sched. A, s. 53.

Discrimination prohibited

54. A collective agreement must not discriminate against any person if the discrimination is contrary to the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*. 1995, c. 1, Sched. A, s. 54.

More than one collective agreement prohibited

55. There shall be only one collective agreement at a time between a trade union or council of trade unions and an employer or employers' organization with respect to the employees in the bargaining unit defined in the collective agreement. 1995, c. 1, Sched. A, s. 55.

Binding effect of collective agreements on employers, trade unions and employees

56. A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement. 1995, c. 1, Sched. A, s. 56.

Binding effect of collective agreements: other

57. (1) A collective agreement between an employers' organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon the employers' organization and each person who was a member of the employers' organization at the time the agreement was entered into and on whose behalf the employers' organization bargained with the trade union or council of trade unions as if it was made between each of such persons and the trade union or council of trade unions and upon the employees in the bargaining unit defined in the agreement, and, if any such person ceases to be a member of the employers' organization during the term of operation of the agreement, the person shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.

Duty to disclose

(2) When an employers' organization commences to bargain with a trade union or council of trade unions, it shall deliver to the trade union, or council of trade unions a list of the names of the employers on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members of the employers' organization for whose employees the trade union or council of trade unions is entitled to bargain and to make a collective agreement at that time, except an employer who, either alone or through the employers' organization, has notified the trade union or council of trade unions in writing before the agreement was entered into that the employer will not be bound by a collective agreement between the employers' organization and the trade union or council of trade unions.

Binding effect of collective agreements on members of certified councils

(3) A collective agreement between a certified council of trade unions and an employer is, subject to and for the purposes of this Act, binding upon each trade union that is a constituent union of such a council as if it had been made between each of such trade unions and the employer.

Binding effect of collective agreements on members or affiliates of councils of trade unions

(4) A collective agreement between a council of trade unions, other than a certified council of trade unions, and an employer or an employers' organization is, subject to and for the purposes of this Act, binding upon the council of trade unions and each trade union that was a member of or affiliated with the council of trade unions at the time the agreement was entered into and on whose behalf the council of trade unions bargained with the employer or employers' organization as if it was made between each of such trade unions and the employer or employers' organization, and upon the employees in the bargaining unit defined in the agreement and, if any such trade union ceases to be a member of or affiliated with the council of trade unions during the term of operation of the agreement, it shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the employer or employers' organization, as the case may be.

Duty to disclose

(5) Where a council of trade unions, other than a certified council of trade unions, commences to bargain with an employer or an employers' organization, it shall deliver to the employer or employers' organization a list of the names of the trade unions on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members or affiliates of the council of trade unions for whose employees the respective trade unions are entitled to bargain and to make a collective agreement at that time with the employer or the employers' organization, except a trade union that, either by itself or through the council of trade unions, has notified the employer or employer's organization in writing before the agreement is entered into that it will not be bound by a collective agreement between the council of trade unions and the employer or employers' organization. 1995, c. 1, Sched. A, s. 57.

Minimum term of collective agreements

58. (1) If a collective agreement does not provide for its term of operation or provides for its operation for an unspecified term or for a term of less than one year, it shall be deemed to provide for its operation for a term of one year from the date that it commenced to operate.

Extension of term of collective agreement

(2) Despite subsection (1), the parties may, in a collective agreement or otherwise and before or after the collective agreement has ceased to operate, agree to continue the operation of the collective agreement or any of its provisions for a period of less than one year while they are bargaining for its renewal with or without modifications or for a new agreement, but such continued operation does not bar an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit and the continuation of the collective agreement may be terminated by either party upon 30 days notice to the other party.

Early termination of collective agreements

(3) A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions or this Act without the consent of the Board on the joint application of the parties.

Same

(4) Despite anything in this section, where an employer joins an employers' organization that is a party to a collective agreement with a trade union or council of trade unions and the employer agrees with the trade union or council of trade unions to be bound by the collective agreement between the trade union or council of trade unions and the employers' organization, the agreement ceases to be binding upon the employer and the trade union or council of trade unions at the same time as the agreement between the employers' organization and the trade union or council of trade unions ceases to be binding.

Revision by mutual consent

(5) Nothing in this section prevents the revision by mutual consent of the parties at any time of any provision of a collective agreement other than a provision relating to its term of operation. 1995, c. 1, Sched. A, s. 58.

Notice of desire to bargain for new collective agreement

59. (1) Either party to a collective agreement may, within the period of 90 days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.

Same

(2) A notice given by a party to a collective agreement in accordance with provisions in the agreement relating to its termination or renewal shall be deemed to comply with subsection (1).

Notice of desire for new collective agreement for employers' organization

(3) Where notice is given by or to an employers' organization that has a collective agreement with a trade union or council of trade unions, it shall be deemed to be a notice given by or to each member of the employers' organization who is bound by the agreement or who has ceased to be a member of the employers' organization but has not notified the trade union or council of trade unions in writing that he, she or it has ceased to be a member.

Same

(4) Where notice is given by or to a council of trade unions, other than a certified council of trade unions, that has a collective agreement with an employer or employers' organization, it shall be deemed to be a notice given by or to each member or affiliate of the council of trade unions that is bound by the agreement or that has ceased to be a member or affiliate of the council of trade unions but has not notified the employer or employers' organization in writing that it has ceased to be a member or affiliate. 1995, c. 1, Sched. A, s. 59.

Application of ss. 17 to 36

60. Sections 17 to 36 apply to the bargaining that follows the giving of a notice under section 59. 1995, c. 1, Sched. A, s. 60.

Dissolution of councils of certified trade unions

61. (1) Where a certified council of trade unions is a party to or is bound by a collective agreement, no resolution, by-law or other action by the constituent unions of a certified council of trade unions to dissolve the council or by a constituent union of such a council to withdraw from the council, as the case may be, has effect,

- (a) unless a copy of the resolution, by-law or other action is delivered to the employer or the employers' organization and, in the case of a withdrawal, to the other constituent members and to the council at least 90 days before the collective agreement ceases to operate; and
- (b) until the collective agreement ceases to operate.

Same

(2) Where a certified council of trade unions is not a party to or is not bound by a collective agreement, no resolution, by-law or other action by the constituent unions of a certified council of trade unions to dissolve the council or by a constituent union of such a council to withdraw from the council, as the case may be, has effect until the 90th day after the day on which a copy of such resolution, by-law or other action is delivered to the employer or the employers' organization and, in the case of a withdrawal, to the other constituent members and to the council. 1995, c. 1, Sched. A, s. 61.

TERMINATION OF BARGAINING RIGHTS

Effect of certification

62. (1) If the trade union that applies for certification under subsection 7 (4), (5) or (6) is certified as bargaining agent for any of the employees in the bargaining unit defined in the collective agreement, the trade union that was or is a party to the agreement, as the case may be, forthwith ceases to represent the employees in the bargaining unit determined in the certificate and the agreement ceases to operate in so far as it affects such employees.

Same

(2) If the trade union that applies for certification under subsection 7 (2) is certified as bargaining agent for any of the employees in the bargaining unit defined in the certificate issued to the trade union that was previously certified, the latter trade union forthwith ceases to represent the employees in the bargaining unit defined in the certificate issued to the former trade union. 1995, c. 1, Sched. A, s. 62.

Application for termination

63. (1) If a trade union does not make a collective agreement with the employer within one year after its certification, any of the employees in the bargaining unit determined in the certificate may, subject to section 67, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (1).

Same, agreement

(2) Any of the employees in the bargaining unit defined in a collective agreement may, subject to section 67, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit,

- (a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last three months of its operation;
- (b) in the case of a collective agreement for a term of more than three years, only after the commencement of the 34th month of its operation and before the commencement of the 37th month of its operation and during the three-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last three months of its operation, as the case may be;
- (c) in the case of a collective agreement referred to in clause (a) or (b) that provides that it will continue to operate for any further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, only during the last three months of each year that it so continues to operate or after the commencement of the last three months of its operation, as the case may be. 2000, c. 38, s. 8 (1).

Notice to employer, trade union

(3) The applicant shall deliver a copy of the application to the employer and the trade union by such time as is required under the rules made by the Board and, if there is no rule, not later than the day on which the application is filed with the Board. 1995, c. 1, Sched. A, s. 63 (3).

Evidence

(4) The application filed with the Board shall be accompanied by a list of the names of the employees in the bargaining unit who have expressed a wish not to be represented by the trade union and evidence of the wishes of those employees, but the applicant shall not give this information to the employer or trade union. 1995, c. 1, Sched. A, s. 63 (4).

Direction re representation vote

(5) If the Board determines that 40 per cent or more of the employees in the bargaining unit appear to have expressed a wish not to be represented by the trade union at the time the application was filed, the Board shall direct that a representation vote be taken among the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (5).

Same

(6) The number of employees in the bargaining unit who appear to have expressed a wish not to be represented by the trade union shall be determined with reference only to the information provided in the application and the accompanying information provided under subsection (4). 1995, c. 1, Sched. A, s. 63 (6).

Same

(7) The Board may consider such information as it considers appropriate to determine the number of employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (7).

No hearing

(8) The Board shall not hold a hearing when making a decision under subsection (5). 1995, c. 1, Sched. A, s. 63 (8).

Timing of vote

(9) Unless the Board directs otherwise, the representation vote shall be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the application is filed with the Board. 1995, c. 1, Sched. A, s. 63 (9).

Conduct of vote

(10) The representation vote shall be by ballots cast in such a manner that individuals expressing their choice cannot be identified with the choice made. 1995, c. 1, Sched. A, s. 63 (10).

Sealing of ballot box, etc.

(11) The Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs. 1995, c. 1, Sched. A, s. 63 (11).

Subsequent hearing

(12) After the representation vote has been taken, the Board may hold a hearing if the Board considers it necessary in order to dispose of the application. 1995, c. 1, Sched. A, s. 63 (12).

Exception

(13) When disposing of an application, the Board shall not consider any challenge to the information provided under subsection (4). 1995, c. 1, Sched. A, s. 63 (13).

Declaration of termination following vote

(14) If on the taking of the representation vote more than 50 per cent of the ballots cast are cast in opposition to the trade union, the Board shall declare that the trade union that was certified or that was or is a party to the collective agreement, as the case may be, no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (14).

Dismissal of application

(15) The Board shall dismiss the application unless more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in opposition to the trade union. 1995, c. 1, Sched. A, s. 63 (15).

Same, employer misconduct

(16) Despite subsections (5) and (14), the Board may dismiss the application if the Board is satisfied that the employer or a person acting on behalf of the employer initiated the application or engaged in threats, coercion or intimidation in connection with the application. 1995, c. 1, Sched. A, s. 63 (16).

(16.1) REPEALED: 2005, c. 15, s. 4.

Declaration of termination of abandonment

(17) Upon an application under subsection (1) or (2), where the trade union concerned informs the Board that it does not desire to continue to represent the employees in the bargaining unit, the Board may declare that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 63 (17).

Declaration to terminate agreement

(18) Upon the Board making a declaration under subsection (14) or (17), any collective agreement in operation between the trade union and the employer that is binding upon the employees in the bargaining unit ceases to operate forthwith. 1995, c. 1, Sched. A, s. 63 (18).

Transition

63.1 An employer or person acting on behalf of an employer shall not be found to have initiated an application under section 63 or to have contravened this Act if, during the 30-day period following the coming into force of section 5 of the *Labour Relations Statute Law Amendment Act, 2005*, the employer continues to do anything that was required by subsection (4) of this section, as it read immediately before the coming into force of section 5 of the *Labour Relations Statute Law Amendment Act, 2005*. 2005, c. 15, s. 5.

Fraud

64. (1) If a trade union has obtained a certificate by fraud, the Board may at any time declare that the trade union no longer represents the employees in the bargaining unit and, upon the making of such a declaration, the trade union is not entitled to claim any rights or privileges flowing from certification and, if it has made a collective agreement binding upon the employees in the bargaining unit, the collective agreement is void.

Non-application

(2) Subsection 8 (9) does not apply with respect to an application for a declaration under subsection (1).

Decertification obtained by fraud

(3) If an applicant has obtained a declaration under section 63 by fraud, the Board may at any time rescind the declaration. If the declaration is rescinded, the trade union is restored as the bargaining agent for the employees in the bargaining unit and any collective agreement that, but for the declaration, would have applied with respect to the employees becomes binding as if the declaration had not been made.

Non-application

(4) Subsection 63 (13) does not apply with respect to an application for the rescission under subsection (3) of a declaration. 1995, c. 1, Sched. A, s. 64.

Termination

65. (1) If a trade union fails to give the employer notice under section 16 within 60 days following certification or if it fails to give notice under section 59 and no such notice is given by the employer, the Board may, upon the application of the employer or of any of the employees in the bargaining unit, and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit.

Same, for failure to bargain

(2) Where a trade union that has given notice under section 16 or section 59 or that has received notice under section 59 fails to commence to bargain within 60 days from the giving of the notice or, after having commenced to bargain but before the Minister has appointed a conciliation officer or mediator, allows a period of 60 days to elapse during which it has not sought to bargain, the Board may, upon the application of the employer or of any of the employees in the bargaining unit and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 65.

Termination of bargaining rights after voluntary recognition

66. (1) Where an employer and a trade union that has not been certified as the bargaining agent for a bargaining unit of employees of the employer enter into a collective agreement, or a recognition agreement as provided for in subsection 18 (3), the Board may, upon the application of any employee in the bargaining unit or of a trade union representing any employee in the bargaining unit, during the first year of the period of time that the first collective agreement between them is in operation or, if no collective agreement has been entered into, within one year from the signing of such recognition agreement, declare that the trade union was not, at the time the agreement was entered into, entitled to represent the employees in the bargaining unit.

Powers of Board before disposing of application

(2) Before disposing of an application under subsection (1), the Board may make such inquiry, require the production of such evidence and the doing of such things, or hold such representation votes, as it considers appropriate.

Onus

(3) On an application under subsection (1), the onus of establishing that the trade union was entitled to represent the employees in the bargaining unit at the time the agreement was entered into rests on the parties to the agreement.

Declaration to terminate agreement

(4) Upon the Board making a declaration under subsection (1), the trade union forthwith ceases to represent the employees in the defined bargaining unit in the recognition agreement or collective agreement and any collective agreement in operation between the trade union and the employer ceases to operate forthwith in respect of the employees affected by the application. 1995, c. 1, Sched. A, s. 66.

TIMELINESS OF REPRESENTATION APPLICATIONS

Application for certification or termination

67. (1) Subject to subsection (3), where a trade union has not made a collective agreement within one year after its certification and the Minister has appointed a conciliation officer or a mediator under this Act, no application for certification of a bargaining agent of, or for a declaration that a trade union no longer represents, the employees in the bargaining unit determined in the certificate shall be made until,

- (a) 30 days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator;
- (b) 30 days have elapsed after the Minister has released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board; or

- (c) six months have elapsed after the Minister has released to the parties a notice of a report of the conciliation officer that the differences between the parties concerning the terms of a collective agreement have been settled,

as the case may be.

Same

(2) Where notice has been given under section 59 and the Minister has appointed a conciliation officer or a mediator, no application for certification of a bargaining agent of any of the employees in the bargaining units as defined in the collective agreement and no application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit as defined in the agreement shall be made after the date when the agreement ceased to operate or the date when the Minister appointed a conciliation officer or a mediator, whichever is later, unless following the appointment of a conciliation officer or a mediator, if no collective agreement has been made,

- (a) at least 12 months have elapsed from the date of the appointment of the conciliation officer or a mediator;
- (b) a conciliation board or a mediator has been appointed and 30 days have elapsed after the report of the conciliation board or the mediator has been released by the Minister to the parties; or
- (c) 30 days have elapsed after the Minister has informed the parties that he or she does not consider it desirable to appoint a conciliation board,

whichever is later.

Application for certification or termination during lawful strike

(3) Where a trade union has given notice under section 16 and the employees in the bargaining unit on whose behalf the trade union was certified as bargaining agent thereafter engage in a lawful strike or the employer lawfully locks out the employees, no application for certification of a bargaining agent of, or for a declaration that the trade union no longer represents, the employees in the bargaining unit determined in the certificate shall be made,

- (a) until six months have elapsed after the strike or lock-out commenced; or
- (b) until seven months have elapsed after the Minister has released to the parties the report of the conciliation board or mediator or a notice that the Minister does not consider it advisable to appoint a conciliation board,

whichever occurs first.

Application of subss. (1, 3)

(4) Subsections (1) and (3) apply with necessary modifications to an application made under subsection 7 (3). 1995, c. 1, Sched. A, s. 67.

SUCCESSOR RIGHTS

Declaration of successor union

68. (1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its rights to act as the successor, the Board, in any proceeding before it or on the application of any person or trade union concerned, may declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Act of its predecessor, or the Board may dismiss the application.

Same

(2) Before issuing a declaration under subsection (1), the Board may make such inquiry, require the production of such evidence or hold such representation votes as it considers appropriate.

Same

(3) Where the Board makes an affirmative declaration under subsection (1), the successor shall for the purposes of this Act be conclusively presumed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise, and the employer, the successor and the employees concerned shall recognize such status in all respects. 1995, c. 1, Sched. A, s. 68.

Sale of business

69. (1) In this section,
“business” includes a part or parts thereof; (“entreprise”)

“sells” includes leases, transfers and any other manner of disposition, and “sold” and “sale” have corresponding meanings. (“vend”, “vendu”, “vente”)

Successor employer

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his, her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if the person had been a party thereto and, where an employer sells his, her or its business while an application for certification or termination of bargaining rights to which the employer is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if the person were named as the employer in the application.

Same

(3) Where an employer on behalf of whose employees a trade union or council of trade unions, as the case may be, has been certified as bargaining agent or has given or is entitled to give notice under section 16 or 59, sells his, her or its business, the trade union, or council of trade unions continues, until the Board otherwise declares, to be the bargaining agent for the employees of the person to whom the business was sold in the like bargaining unit in that business, and the trade union or council of trade unions is entitled to give to the person to whom the business was sold a written notice of its desire to bargain with a view to making a collective agreement or the renewal, with or without modifications, of the agreement then in operation and such notice has the same effect as a notice under section 16 or 59, as the case requires.

Powers of Board

(4) Where a business was sold to a person and a trade union or council of trade unions was the bargaining agent of any of the employees in such business or a trade union or council of trade unions is the bargaining agent of the employees in any business carried on by the person to whom the business was sold, and,

- (a) any question arises as to what constitutes the like bargaining unit referred to in subsection (3); or
- (b) any person, trade union or council of trade unions claims that, by virtue of the operation of subsection (2) or (3), a conflict exists between the bargaining rights of the trade union or council of trade unions that represented the employees of the predecessor employer and the trade union or council of trade unions that represents the employees of the person to whom the business was sold,

the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (c) define the composition of the like bargaining unit referred to in subsection (3) with such modification, if any, as the Board considers necessary; and
- (d) amend, to such extent as the Board considers necessary, any bargaining unit in any certificate issued to any trade union or any bargaining unit defined in any collective agreement.

Same

(5) The Board may, upon the application of any person, trade union or council of trade unions concerned, made within 60 days after the successor employer referred to in subsection (2) becomes bound by the collective agreement, or within 60 days after the trade union or council of trade unions has given a notice under subsection (3), terminate the bargaining rights of the trade union or council of trade unions bound by the collective agreement or that has given notice, as the case may be, if, in the opinion of the Board, the person to whom the business was sold has changed its character so that it is substantially different from the business of the predecessor employer.

Same

(6) Despite subsections (2) and (3), where a business was sold to a person who carries on one or more other businesses and a trade union or council of trade unions is the bargaining agent of the employees in any of the businesses and the person intermingles the employees of one of the businesses with those of another of the businesses, the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (a) declare that the person to whom the business was sold is no longer bound by the collective agreement referred to in subsection (2);
- (b) determine whether the employees concerned constitute one or more appropriate bargaining units;
- (c) declare which trade union, trade unions or council of trade unions, if any, shall be the bargaining agent or agents for the employees in the unit or units; and
- (d) amend, to such extent as the Board considers necessary, any certificate issued to any trade union or council of trade unions or any bargaining unit defined in any collective agreement.

Notice to bargain

(7) Where a trade union or council of trade unions is declared to be the bargaining agent under subsection (6) and it is not already bound by a collective agreement with the successor employer with respect to the employees for whom it is declared to be the bargaining agent, it is entitled to give to the employer a written notice of its desire to bargain with a view to making a collective agreement, and the notice has the same effect as a notice under section 16.

Powers of Board before disposing of application

(8) Before disposing of any application under this section, the Board may make such inquiry, may require the production of such evidence and the doing of such things, or may hold such representation votes, as it considers appropriate.

Where employer not required to bargain

(9) Where an application is made under this section, an employer is not required, despite the fact that a notice has been given by a trade union or council of trade unions, to bargain with that trade union or council of trade unions concerning the employees to whom the application relates until the Board has disposed of the application and has declared which trade union or council of trade unions, if any, has the right to bargain with the employer on behalf of the employees concerned in the application.

Effect of notice of declaration

(10) For the purposes of sections 7, 63, 65, 67 and 132, a notice given by a trade union or council of trade unions under subsection (3) or a declaration made by the Board under subsection (6) has the same effect as a certification under section 10.

Successor municipalities

(11) Where one or more municipalities as defined in the *Municipal Affairs Act* are erected into another municipality, or two or more such municipalities are amalgamated, united or otherwise joined together, or all or part of one such municipality is annexed, attached or added to another such municipality, the employees of the municipalities concerned shall be deemed to have been intermingled, and,

- (a) the Board may exercise the like powers as it may exercise under subsections (6) and (8) with respect to the sale of a business under this section;
- (b) the new or enlarged municipality has the like rights and obligations as a person to whom a business is sold under this section and who intermingles the employees of two of the person's businesses; and
- (c) any trade union or council of trade unions concerned has the like rights and obligations as it would have in the case of the intermingling of employees in two or more businesses under this section.

Power of Board to determine whether sale

(12) Where, on any application under this section or in any other proceeding before the Board, a question arises as to whether a business has been sold by one employer to another, the Board shall determine the question and its decision is final and conclusive for the purposes of this Act.

Duty of respondents

(13) Where, on an application under this section, a trade union alleges that the sale of a business has occurred, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation. 1995, c. 1, Sched. A, s. 69.

UNFAIR PRACTICES

Employers, etc., not to interfere with unions

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence. 1995, c. 1, Sched. A, s. 70.

Unions not to interfere with employers' organizations

71. No trade union and no person acting on behalf of a trade union shall participate in or interfere with the formation or administration of an employers' organization or contribute financial or other support to an employers' organization. 1995, c. 1, Sched. A, s. 71.

Employers not to interfere with employees' rights

72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,
- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
 - (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
 - (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act. 1995, c. 1, Sched. A, s. 72.

No interference with bargaining rights

73. (1) No employer, employers' organization or person acting on behalf of an employer or an employers' organization shall, so long as a trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with any person or another trade union or a council of trade unions on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them.

Same

(2) No trade union council of trade unions or person acting on behalf of a trade union or council of trade unions shall, so long as another trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with an employer or an employers' organization on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them. 1995, c. 1, Sched. A, s. 73.

Duty of fair representation by trade union, etc.

74. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be. 1995, c. 1, Sched. A, s. 74.

Duty of fair referral, etc., by trade unions

75. Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, it shall not act in a manner that is arbitrary, discriminatory or in bad faith. 1995, c. 1, Sched. A, s. 75.

Intimidation and coercion

76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act. 1995, c. 1, Sched. A, s. 76.

Persuasion during working hours

77. Nothing in this Act authorizes any person to attempt at the place at which an employee works to persuade the employee during the employee's working hours to become or refrain from becoming or continuing to be a member of a trade union. 1995, c. 1, Sched. A, s. 77.

Strike-breaking misconduct, etc., prohibited

78. (1) No person, employer, employers' organization or person acting on behalf of an employer or employers' organization shall engage in strike-related misconduct or retain the services of a professional strike breaker and no person shall act as a professional strike breaker.

Definitions

(2) For the purposes of subsection (1),

“professional strike breaker” means a person who is not involved in a dispute whose primary object, in the Board's opinion, is to interfere with, obstruct, prevent, restrain or disrupt the exercise of any right under this Act in anticipation of, or during, a lawful strike or lock-out; (“briseur de grève professionnel”)

“strike-related misconduct” means a course of conduct of incitement, intimidation, coercion, undue influence, provocation, infiltration, surveillance or any other like course of conduct intended to interfere with, obstruct, prevent, restrain or disrupt the exercise of any right under this Act in anticipation of, or during, a lawful strike or lock-out. (“inconduite liée à une grève”)

Other rights not affected

(3) Nothing in this section shall be deemed to restrict or limit any right or prohibition contained in any other provision of this Act. 1995, c. 1, Sched. A, s. 78.

Strike or lock-out

79. (1) Where a collective agreement is in operation, no employee bound by the agreement shall strike and no employer bound by the agreement shall lock out such an employee. 1995, c. 1, Sched. A, s. 79 (1).

No agreement

(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and,

- (a) seven days have elapsed after the day the Minister has released or is deemed pursuant to subsection 122 (2) to have released to the parties the report of a conciliation board or mediator; or
- (b) 14 days have elapsed after the day the Minister has released or is deemed pursuant to subsection 122 (2) to have released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board. 1995, c. 1, Sched. A, s. 79 (2).

Mandatory strike vote

(3) If a collective agreement is or has been in operation, no employee shall strike unless a strike vote is taken 30 days or less before the collective agreement expires or at any time after the agreement expires and more than 50 per cent of those voting vote in favour of a strike. 1995, c. 1, Sched. A, s. 79 (3).

Same

(4) Subject to section 79.1, if no collective agreement has been in operation, no employee shall strike unless a strike vote is taken on or after the day on which a conciliation officer is appointed and more than 50 per cent of those voting vote in favour of a strike. 1995, c. 1, Sched. A, s. 79 (4); 2000, c. 38, s. 10.

Exceptions

- (5) Subsections (3) and (4) do not apply,
 - (a) to an employee in the construction industry; or
 - (b) to an employee performing maintenance who is represented by a trade union that, according to trade union practice, pertains to the construction industry if the employee or any of the other employees in the bargaining unit the employee is in were referred to their employment by the trade union. 1998, c. 8, s. 8.

Threatening strike or lock-out

(6) No employee shall threaten an unlawful strike and no employer shall threaten an unlawful lock-out of an employee. 1995, c. 1, Sched. A, s. 79 (6).

Strike or ratification vote to be secret

(7) A strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement taken by a trade union shall be by ballots cast in such a manner that persons expressing their choice cannot be identified with the choice expressed. 1995, c. 1, Sched. A, s. 79 (7).

Right to vote

(8) All employees in a bargaining unit, whether or not the employees are members of the trade union or of any constituent union of a council of trade unions, shall be entitled to participate in a strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement. 1995, c. 1, Sched. A, s. 79 (8).

Opportunity to vote

(9) Any vote mentioned in subsection (7) shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots. If the vote taken is otherwise than by mail, the time and place for voting must be reasonably convenient. 1995, c. 1, Sched. A, s. 79 (9).

First collective agreement ballot questions

79.1 (1) Subsections (2) and (3) apply where no collective agreement has previously been in operation. 2000, c. 38, s. 11.

Ratification vote

(2) A question on a ballot used in a vote to ratify a proposed collective agreement or memorandum of settlement shall be limited to giving the persons entitled to vote a choice between ratifying the proposed collective agreement or memorandum of settlement and not ratifying the proposed collective agreement or memorandum of settlement and shall make no direct or indirect reference to the calling of a strike. 2000, c. 38, s. 11.

Strike vote

(3) A question on a ballot used in a strike vote shall be limited to giving the persons entitled to vote a choice between authorizing the calling of a strike and not authorizing the calling of a strike and shall make no direct or indirect reference to ratification of a proposed collective agreement or memorandum of settlement. 2000, c. 38, s. 11.

Reinstatement of employee

80. (1) Where an employee engaging in a lawful strike makes an unconditional application in writing to the employee's employer within six months from the commencement of the lawful strike to return to work, the employer shall, subject to subsection (2), reinstate the employee in the employee's former employment, on such terms as the employer and employee may agree upon, and the employer in offering terms of employment shall not discriminate against the employee for exercising or have exercised any rights under this Act.

Exceptions

(2) An employer is not required to reinstate an employee who has made an application to return to work in accordance with subsection (1),

- (a) where the employer no longer has persons engaged in performing work of the same or similar nature to work which the employee performed prior to the employee's cessation of work; or
- (b) where there has been a suspension or discontinuance for cause of an employer's operations, or any part thereof, but, if the employer resumes such operations, the employer shall first reinstate those employees who have made an application under subsection (1). 1995, c. 1, Sched. A, s. 80.

Unlawful strike

81. No trade union or council of trade unions shall call or authorize or threaten to call or authorize an unlawful strike and no officer, official or agent of a trade union or council of trade unions shall counsel, procure, support or encourage an unlawful strike or threaten an unlawful strike. 1995, c. 1, Sched. A, s. 81.

Unlawful lock-out

82. No employer or employers' organization shall call or authorize or threaten to call or authorize an unlawful lock-out and no officer, official or agent of an employer or employers' organization shall counsel, procure, support or encourage an unlawful lock-out or threaten an unlawful lock-out. 1995, c. 1, Sched. A, s. 82.

Causing unlawful strikes, lock-outs

83. (1) No person shall do any act if the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike or an unlawful lock-out.

Application of subs. (1)

(2) Subsection (1) does not apply to any act done in connection with a lawful strike or lawful lock-out. 1995, c. 1, Sched. A, s. 83.

Saving

84. Nothing in this Act prohibits any suspension or discontinuance for cause of an employer's operations or the quitting of employment for cause if the suspension, discontinuance or quitting does not constitute a lock-out or strike. 1995, c. 1, Sched. A, s. 84.

Refusal to engage in unlawful strike

85. No trade union shall suspend, expel or penalize in any way a member because the member has refused to engage in or to continue to engage in a strike that is unlawful under this Act. 1995, c. 1, Sched. A, s. 85.

Working conditions may not be altered

86. (1) Where notice has been given under section 16 or section 59 and no collective agreement is in operation, no employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of

employment or any right, privilege or duty, of the employer, the trade union or the employees, and no trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees,

- (a) until the Minister has appointed a conciliation officer or a mediator under this Act, and,
 - (i) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator, or
 - (ii) 14 days have elapsed after the Minister has released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board,as the case may be; or
- (b) until the right of the trade union to represent the employees has been terminated,

whichever occurs first.

Same

(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer or the employees until,

- (a) the trade union has given notice under section 16, in which case subsection (1) applies; or
- (b) the application for certification by the trade union is dismissed or terminated by the Board or withdrawn by the trade union.

Differences may be arbitrated

(3) Where notice has been given under section 59 and no collective agreement is in operation, any difference between the parties as to whether or not subsection (1) of this section was complied with may be referred to arbitration by either of the parties as if the collective agreement was still in operation and section 48 applies with necessary modifications thereto. 1995, c. 1, Sched. A, s. 86.

Protection of witnesses rights

87. (1) No employer, employers' organization or person acting on behalf of an employer or employers' organization shall,
- (a) refuse to employ or continue to employ a person;
 - (b) threaten dismissal or otherwise threaten a person;
 - (c) discriminate against a person in regard to employment or a term or condition of employment; or
 - (d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act.

Same

- (2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall,
 - (a) discriminate against a person in regard to employment or a term or condition of employment; or
 - (b) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act. 1995, c. 1, Sched. A, s. 87.

Removal, etc., of posted notices

88. No person shall wilfully destroy, mutilate, obliterate, alter, deface or remove or cause to be destroyed, mutilated, obliterated, altered, defaced or removed any notice that the Board has required to be posted during the period that the notice is required to be posted. 1995, c. 1, Sched. A, s. 88.

LOCALS UNDER TRUSTEESHIP

Trusteeship over local unions

89. (1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of such subordinate trade union, under the constitution or by-laws of the provincial, national or international trade union is suspended, shall, within 60 days after it has assumed supervision or control over the subordinate trade union, file with the Board a statement in the prescribed form, verified by the affidavit of its principal officers, setting out the terms under which supervision or control is to be exercised and it shall, upon the direction of the Board, file such additional information concerning such supervision and control as the Minister may from time to time require.

Duration of trusteeship

(2) Where a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, such supervision or control shall not continue for more than 12 months from the date of such assumption, but such supervision or control may be continued for a further period of 12 months with the consent of the Board. 1995, c. 1, Sched. A, s. 89.

INFORMATION

Collective agreements to be filed

90. Each party to a collective agreement shall, forthwith after it is made, file one copy with the Minister. 1995, c. 1, Sched. A, s. 90.

Officers, constitution, etc.

91. The Board may direct a trade union, council of trade unions or employers' organization to file with the Board within the time prescribed in the direction a copy of its constitution and by-laws and a statutory declaration of its president or secretary setting forth the names and addresses of its officers. 1995, c. 1, Sched. A, s. 91.

Duty of union to furnish financial statement to members

92. (1) Every trade union shall upon the request of any member furnish the member, without charge, with a copy of the audited financial statement of its affairs to the end of its last fiscal year certified by its treasurer or other officer responsible for the handling and administration of its funds to be a true copy, and, upon the complaint of any member that the trade union has failed to furnish such a statement, the Board may direct the trade union to file with the Registrar of the Board, within such time as the Board may determine, a copy of the audited financial statement of its affairs to the end of its last fiscal year verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds and to furnish a copy of the statement to the members of the trade union that the Board in its discretion may direct, and the trade union shall comply with the direction according to its terms. 1995, c. 1, Sched. A, s. 92 (1).

Complaint that financial statement inadequate

(2) Where a member of a trade union complains that an audited financial statement is inadequate, the Board may inquire into the complaint and the Board may order the trade union to prepare another audited financial statement in a form and containing the particulars that the Board considers appropriate and the Board may further order that the audited financial statement, as rectified, be certified by a person licensed under the *Public Accounting Act, 2004* or a firm whose partners are licensed under that Act. 1995, c. 1, Sched. A, s. 92 (2); 2004, c. 8, s. 46.

92.1 REPEALED: 2005, c. 15, s. 6.

Administrator of various trade union funds

93. (1) In this section,

“administrator” means any trade union, trustee or person responsible for the control, management or disposition of money received or contributed to a vacation pay fund or a welfare benefit or pension plan or fund for the members of a trade union or their survivors or beneficiaries. 1995, c. 1, Sched. A, s. 93 (1).

Annual filing of statement

(2) Every administrator shall file annually with the Minister not later than June 1 in each year or at such other time or times as the Minister may direct, a copy of the audited financial statement certified by a person licensed under the *Public Accounting Act, 2004* or a firm whose partners are licensed under that Act of a vacation pay fund, or a welfare benefit or pension plan or fund setting out its financial condition for the preceding fiscal year and disclosing,

- (a) a description of the coverage provided by the fund or plan;
- (b) the amount contributed by each employer;

- (c) the amounts contributed by the members and the trade union, if any;
- (d) a statement of the assets, specifying the total amount of each type of asset;
- (e) a statement of liabilities, receipts and disbursements;
- (f) a statement of salaries, fees and commissions charged to the fund or plan, to whom paid, in what amount and for what purposes; and
- (g) such further information as the Minister may require. 1995, c. 1, Sched. A, s. 93 (2); 2004, c. 8, s. 46.

Furnishing of copy to member of trade union

(3) The administrator, upon the request in writing of any member of the trade union whose employer has made payments or contributions into the fund or plan, shall furnish to the member without charge a copy of the audited financial statement required to be filed by subsection (2). 1995, c. 1, Sched. A, s. 93 (3).

Where Board may direct compliance

(4) Where an administrator has failed to comply with subsection (2) or (3), upon a certificate of failure so to comply signed by the Minister or upon complaint by the member, the Board may direct the administrator to comply within the time that the Board may determine. 1995, c. 1, Sched. A, s. 93 (4).

Representative for service of process

94. (1) Every trade union and unincorporated employers' organization in Ontario that has members in Ontario shall, within 15 days after it has enrolled its first member, file with the Board a notice in the prescribed form giving the name and address of a person resident in Ontario who is authorized by the trade union or unincorporated employers' organization to accept on its behalf service of process and notices under this Act.

Change in representative

(2) Whenever a trade union or unincorporated employers' organization changes the authorization referred to in subsection (1), it shall file with the Board notice thereof in the prescribed form within 15 days after making such change.

Service of notice

(3) Service on the person named in a notice or the latest notice, as the case may be, filed under subsection (1) is good and sufficient service for the purposes of this Act on the trade union or unincorporated employers' organization that filed the notice. 1995, c. 1, Sched. A, s. 94.

Publications

95. Every publication that deals with the relations between employers or employers' organizations and trade unions or employees shall bear the names and addresses of its printer and its publisher. 1995, c. 1, Sched. A, s. 95.

ENFORCEMENT

Inquiry, alleged contravention

96. (1) The Board may authorize a labour relations officer to inquire into any complaint alleging a contravention of this Act. 1995, c. 1, Sched. A, s. 96 (1).

Duties

(2) The labour relations officer shall forthwith inquire into the complaint and endeavour to effect a settlement of the matter complained of. 1995, c. 1, Sched. A, s. 96 (2).

Report

(3) The labour relations officer shall report the results of his or her inquiry and endeavours to the Board. 1995, c. 1, Sched. A, s. 96 (3).

Remedy for discrimination

(4) Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint of a contravention of this Act and where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the employer, employers' organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such determination, without limiting the generality of the foregoing may include, despite the provisions of any collective agreement, any one or more of,

- (a) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;
- (b) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to rectify the act or acts complained of; or
- (c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employers' organization, trade union, council of trade unions, employee or other person jointly or severally. 1995, c. 1, Sched. A, s. 96 (4).

Burden of proof

(5) On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization. 1995, c. 1, Sched. A, s. 96 (5).

Filing in court

(6) A trade union, council of trade unions, employer, employers' organization or person affected by the determination may file the determination, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 96 (6); 2000, c. 38, s. 13.

Effect of settlement

(7) Where a proceeding under this Act has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed by the parties or their representatives, the settlement is binding upon the parties, the trade union, council of trade unions, employer, employers' organization, person or employee who have agreed to the settlement and shall be complied with according to its terms, and a complaint that the trade union, council of trade unions, employer, employers' organization, person or employee who has agreed to the settlement has not complied with the terms of the settlement shall be deemed to be a complaint under subsection (1). 1995, c. 1, Sched. A, s. 96 (7).

No certification

(8) The Board shall not, under this section, certify a trade union as the bargaining agent of employees in a bargaining unit. 1998, c. 8, s. 9.

"person" defined for purposes of ss. 87, 96

97. For the purposes of section 87 and any complaint made under section 96,

"person" includes any person otherwise excluded by subsection 1 (3). 1995, c. 1, Sched. A, s. 97.

Board power re interim orders

98. (1) On application in a pending proceeding, the Board may,

- (a) make interim orders concerning procedural matters on such terms as it considers appropriate;
- (b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate; and
- (c) subject to subsections (2) and (3), make interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated but whose terms and conditions of employment have been altered or who has been subject to reprisal, penalty or discipline by the employer. 2005, c. 15, s. 7.

Same

(2) The Board may exercise its power under clause (1) (b) or (c) only if the Board determines that all of the following conditions are met:

1. The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.
2. There is a serious issue to be decided in the pending proceeding.
3. The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.

4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding. 2005, c. 15, s. 7.

Same

(3) The Board shall not exercise its powers under clause (1) (b) or (c) if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee. 2005, c. 15, s. 7.

Same

(4) Despite subsection 96 (5), in an application under this section, the burden of proof lies on the applicant. 2005, c. 15, s. 7.

Same

(5) With respect to the Board, the power to make interim orders under this section applies instead of the power under subsection 16.1 (1) of the *Statutory Powers Procedure Act*. 2005, c. 15, s. 7.

Transition

(6) This section applies only in respect of an alteration of terms and conditions of employment or a dismissal, reprisal, penalty or discipline that occurred on or after the day section 7 of the *Labour Relations Statute Law Amendment Act, 2005* comes into force. 2005, c. 15, s. 7.

Same

(7) This section, as it read immediately before the day section 7 of the *Labour Relations Statute Law Amendment Act, 2005* came into force, continues to apply in respect of events that occurred before that date. 2005, c. 15, s. 7.

Jurisdictional, etc., disputes

99. (1) This section applies when the Board receives a complaint,
- (a) that a trade union or council of trade unions, or an agent of either was or is requiring an employer or employers' organization to assign particular work to persons in a particular trade union or in a particular trade, craft or class rather than to persons in another;
 - (b) that an employer was or is assigning work to persons in a particular trade union rather than to persons in another; or
 - (c) that a trade union has failed to comply with its duties under section 74 or 75. 1995, c. 1, Sched. A, s. 99 (1).

Withdrawal of complaint

(2) A complaint described in subsection (1) may be withdrawn by the complainant upon such conditions as the Board may determine. 1995, c. 1, Sched. A, s. 99 (2).

No hearing

- (3) The Board is not required to hold a hearing to determine a complaint under this section. 1995, c. 1, Sched. A, s. 99 (3).

Meeting of representatives

(4) Representatives of the trade union or council of trade unions and of the employer or employers' organization or their substitutes shall promptly meet and attempt to settle the matters raised by a complaint under clause (1) (a) or (b) and shall report the outcome to the Board. 1995, c. 1, Sched. A, s. 99 (4).

Orders

(5) The Board may make any interim or final order it considers appropriate after consulting with the parties. 1995, c. 1, Sched. A, s. 99 (5).

Cease and desist orders

(6) In an interim order or after making an interim order, the Board may order any person, employers' organization, trade union or council of trade unions to cease and desist from doing anything intended or likely to interfere with the terms of an interim order respecting the assignment of work. 1995, c. 1, Sched. A, s. 99 (6).

Alteration of bargaining unit

(7) When making an order or at any time after doing so, the Board may alter a bargaining unit determined in a certificate or defined in a collective agreement. 1995, c. 1, Sched. A, s. 99 (7).

Same

(8) If a collective agreement requires the reference of any difference between the parties arising out of work assignment to a tribunal mutually selected by them, the Board may alter the bargaining unit determined in a certificate or defined in a collective agreement as it considers proper to enable the parties to conform to the decision of the tribunal. 1995, c. 1, Sched. A, s. 99 (8).

Same, conflicting agreements

(9) Where an employer is a party to or is bound by two or more collective agreements and it appears that the description of the bargaining unit in one of the agreements conflicts with the description of the bargaining unit in the other or another of the agreements, the Board may, upon the application of the employer or any of the trade unions concerned, alter the description of the bargaining units in any such agreement as it considers proper, and the agreement or agreements shall be deemed to have been altered accordingly. 1995, c. 1, Sched. A, s. 99 (9).

Filing in court

(10) A party to an interim or final order may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 99 (10); 2000, c. 38, s. 14.

Enforcement

(11) An order that has been filed with the court is enforceable by a person, employers' organization, trade union or council of trade unions affected by it and is enforceable on the day after the date fixed in the order for compliance. 1995, c. 1, Sched. A, s. 99 (11).

Interim orders prevail

(12) A person, employers' organization, trade union or council of trade unions affected by an interim order made by the Board under this section shall comply with it despite any provision of this Act or of any collective agreement relating to the assignment of the work to which the order relates. 1995, c. 1, Sched. A, s. 99 (12).

Same

(13) A person, employers' organization, trade union or council of trade unions who is complying with an interim order made by the Board under this section is deemed not to have violated any provision of this Act or of any collective agreement. 1995, c. 1, Sched. A, s. 99 (13).

Declaration and direction by Board re unlawful strike

100. Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike or that employees engaged in or threatened to engage in an unlawful strike or any person has done or is threatening to do an act that the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike, the Board may so declare and it may direct what action, if any, a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike. 1995, c. 1, Sched. A, s. 100.

Declaration and direction by Board in respect of unlawful lock-out

101. Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that an employer or employers organization called or authorized or threatened to call or authorize an unlawful lock-out or locked out or threatened to lock out employees or that an officer, official or agent of an employer or employers' organization counselled or procured or supported or encouraged an unlawful lock-out or threatened an unlawful lock-out, the Board may so declare and, in addition, in its discretion, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful lock-out or the threat of an unlawful lock-out. 1995, c. 1, Sched. A, s. 101.

Filing in court

102. A party to a direction made under section 100 or 101 may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 102; 2000, c. 38, s. 15.

Claim for damages after unlawful strike or lock-out where no collective agreement

103. (1) Where the Board declares that a trade union or council of trade unions has called or authorized an unlawful strike or that an employer or employers' organization has called or authorized an unlawful lock-out and no collective agreement is

in operation between the trade union or council of trade unions and the employer or employers' organization, as the case may be, the trade union or council of trade unions or employer or employers' organization may, within 15 days of the release of the Board's declaration, but not thereafter, notify the employer or employers' organization or trade union or council of trade unions, as the case may be, in writing of its intention to claim damages for the unlawful strike or lock-out, and the notice shall contain the name of its appointee to an arbitration board.

Appointment of arbitration board

(2) The recipient of the notice shall within five days inform the sender of the notice of the name of its appointee to the arbitration board.

Same

(3) The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chair.

Same

(4) If the recipient of the notice fails to name an appointee, or if the two appointees fail to agree upon a chair within the time limited, the appointment shall be made by the Minister upon the request of either party.

Decision of arbitration board

(5) The arbitration board shall hear and determine the claim for damages including any question as to whether the claim is arbitrable and shall issue a decision and the decision is final and binding upon the parties to the arbitration, and,

- (a) in the case of a council of trade unions, upon the members of affiliates of the council who are affected by the decision; and
- (b) in the case of an employers' organization, upon the employers in the organization who are affected by the decision.

Same

(6) The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chair governs.

Remuneration of members of board

(7) The chair and members of the arbitration board under this section shall be paid remuneration and expenses at the same rate as is payable to a chair and members of a conciliation board under this Act, and the parties to the arbitration are jointly and severally liable for the payment of the fees and expenses.

Procedure of board

(8) In an arbitration under this section, subsections 48 (6), (8), (9), (11) to (13), (19) and (20) apply with necessary modifications. 1995, c. 1, Sched. A, s. 103.

Offences

104. (1) Every person, trade union, council of trade unions or employers' organization that contravenes any provision of this Act or of any decision, determination, interim order, order, direction, declaration or ruling made under this Act is guilty of an offence and on conviction is liable,

- (a) if an individual, to a fine of not more than \$2,000; or
- (b) if a corporation, trade union, council of trade unions or employers' organization, to a fine of not more than \$25,000.

Continued offences

(2) Each day that a person, trade union, council of trade unions or employers' organization contravenes any provision of this Act or of any decision, determination, interim order, order, direction, declaration or ruling made under this Act constitutes a separate offence.

Disposition of fines

(3) Every fine recovered for an offence under this Act shall be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund. 1995, c. 1, Sched. A, s. 104.

Information may be in respect of one or more offences

105. An information in respect of a contravention of this Act may be for one or more offences and no information, warrant, conviction or other step or procedure in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. 1995, c. 1, Sched. A, s. 105.

Parties

106. If a corporation, trade union, council of trade unions or employers' organization is guilty of an offence under this Act, every officer, official or agent thereof who assented to the commission of the offence shall be deemed to be a party to and guilty of the offence. 1995, c. 1, Sched. A, s. 106.

Style of prosecution

107. (1) A prosecution for an offence under this Act may be instituted against a trade union or council of trade unions or employers' organization in the name of the union, council or organization.

Vicarious responsibility

(2) Any act or thing done or omitted by an officer, official or agent of a trade union or council of trade unions or employers' organization within the scope of the officer, official or agent's authority to act on behalf of the union, council or organization shall be deemed to be an act or thing done or omitted by the union, council or organization. 1995, c. 1, Sched. A, s. 107.

Proceedings in Superior Court of Justice

108. Where a trade union, a council of trade unions or an unincorporated employers' organization is affected by a determination of the Board under section 96, an interim order of the Board under section 99 or a direction of the Board under section 100, 101 or 144 or a decision of an arbitrator or arbitration board including a decision under section 103, proceedings to enforce the determination, interim order, direction or decision may be instituted in the Superior Court of Justice by or against the union, council or organization in the name of the union, council or organization, as the case may be. 1995, c. 1, Sched. A, s. 108; 2000, c. 38, s. 16.

Consent

109. (1) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board.

Information

(2) An application for consent to institute a prosecution for an offence under this Act may be made by a trade union, a council of trade unions, a corporation or an employers' organization among others, and, if the consent is given by the Board, the information may be laid by any officer, official or member of the trade union, council of trade unions, corporation or employers' organization among others. 1995, c. 1, Sched. A, s. 109.

ADMINISTRATION

Board

110. (1) The board known as the Ontario Labour Relations Board is continued under the name Ontario Labour Relations Board in English and Commission des relations de travail de l'Ontario in French. 1995, c. 1, Sched. A, s. 110 (1).

Composition and appointment

(2) The Board shall be composed of a chair, one or more vice-chairs and as many members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council. 1995, c. 1, Sched. A, s. 110 (2).

Alternate chair

(3) The Lieutenant Governor in Council shall designate one of the vice-chairs to be the alternate chair. 1995, c. 1, Sched. A, s. 110 (3).

Divisions

(4) The chair or, in the case of his or her absence from the office of the Board or his or her inability to act, the alternate chair shall from time to time assign the members of the Board to its various divisions and may change any such assignment at any time. 1995, c. 1, Sched. A, s. 110 (4).

Construction industry division

(5) One of the divisions of the Board shall be designated by the chair as the construction industry division, and it shall exercise the powers of the Board under this Act in proceedings to which sections 126 to 168 apply, but nothing in this subsection impairs the authority of any other division to exercise such powers. 1995, c. 1, Sched. A, s. 110 (5).

Vacancies

(6) Vacancies in the membership of the Board from any cause may be filled by the Lieutenant Governor in Council. 1995, c. 1, Sched. A, s. 110 (6).

Powers following resignation, etc.

(7) If a member of the Board resigns or his or her appointment expires, the chair of the Board may authorize the member to complete the duties or responsibilities and exercise the powers of a member in connection with any matter in respect of which there was a proceeding in which he or she participated as a member. 1995, c. 1, Sched. A, s. 110 (7).

Oath of office

(8) Each member of the Board shall, before entering upon his or her duties, take and subscribe before the Clerk of the Executive Council and file in his or her office an oath of office in the following form in English or French:

I do solemnly swear (or solemnly affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of chair, (*or vice-chair, or member*) of the Ontario Labour Relations Board and I will not, except in the discharge of my duties, disclose to any person any of the evidence or any other matter brought before the Board. So help me God. (omit this phrase in an affirmation)

1995, c. 1, Sched. A, s. 110 (8).

Quorum

(9) The chair or a vice-chair, one member representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board. 1995, c. 1, Sched. A, s. 110 (9).

May sit in divisions

(10) The Board may sit in two or more divisions simultaneously so long as a quorum of the Board is present in each division. 1995, c. 1, Sched. A, s. 110 (10).

Decisions

(11) The decision of the majority of the members of the Board present and constituting a quorum is the decision of the Board, but, if there is no majority, the decision of the chair or vice-chair governs. 1995, c. 1, Sched. A, s. 110 (11).

Death or incapacity

(12) Despite subsections (9), (10) and (11), if a member representative of either employers or employees dies or, in the opinion of the chair, is unable or unwilling to continue to hear and determine an application, request, complaint, matter or thing, the chair or vice-chair, as the case may be, who was also hearing it may sit alone to hear and determine it and may exercise all of the jurisdiction and powers of the Board when doing so. 1998, c. 8, s. 11 (1).

Same

(13) The chair or vice-chair shall decide whether to sit alone in the circumstances described in subsection (12). 1995, c. 1, Sched. A, s. 110 (13).

When chair or vice-chair may sit alone

(14) Despite subsections (9), (10) and (11), the chair may sit alone or may authorize a vice-chair to sit alone to hear and determine a matter and to exercise all the powers of the Board when doing so,

- (a) if the chair considers it advisable to do so; or
- (b) if the parties consent. 1995, c. 1, Sched. A, s. 110 (14).

Same

(14.1) Despite subsections (9), (10), (11) and (14), the chair shall sit alone or shall authorize a vice-chair to sit alone to hear and determine a matter under section 74 and to exercise all of the powers of the Board when doing so, except when the chair considers it inadvisable for the chair or a vice-chair to sit alone. 2000, c. 38, s. 17 (1).

Same

(15) For the purposes of subsections (14) and (14.1), if the chair is absent or not able to act, the alternate chair may act in his or her stead. 2000, c. 38, s. 17 (2).

Practice and procedure

(16) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions. 1995, c. 1, Sched. A, s. 110 (16).

Rules of practice

(17) The chair may make rules governing the Board's practice and procedure and the exercise of its powers and prescribing such forms as the chair considers advisable. 1998, c. 8, s. 11 (2).

Same

(18) The chair may make rules to expedite proceedings to which the following provisions apply:

0.1 Section 8.1 (Disagreement by employer with union's estimate).

1. Section 13 (right of access) or 98 (interim orders).

2. Section 99 (jurisdictional, etc., disputes).

3. Subsection 114 (2) (status as employee or guard).

4. Sections 126 to 168 (construction industry).

5. Such other provisions as the Lieutenant Governor in Council may by regulation designate. 1995, c. 1, Sched. A, s. 110 (18); 1998, c. 8, s. 11 (3, 4).

Effective date of rules

(19) Rules made under subsection (18) come into force on such dates as the Lieutenant Governor in Council may by order determine. 1995, c. 1, Sched. A, s. 110 (19).

Special provisions

(20) Rules made under subsection (18),

(a) may provide that the Board is not required to hold a hearing;

(b) may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions; and

(c) may authorize the Board to make or cause to be made such examination of records and such other inquiries as it considers necessary in the circumstances. 1995, c. 1, Sched. A, s. 110 (20).

Conflict with *Statutory Powers Procedure Act*

(21) Rules made under subsection (18) apply despite anything in the *Statutory Powers Procedure Act*. 1995, c. 1, Sched. A, s. 110 (21).

Rules not regulations

(22) Rules made under subsection (17) or (18) are not regulations within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1995, c. 1, Sched. A, s. 110 (22); 2006, c. 21, Sched. F, s. 136 (1).

Board, registrar, etc.

(23) The Lieutenant Governor in Council may appoint a registrar, such other officers and such clerks and servants as are required for the purposes of the Board and they shall exercise the powers and perform the duties as are conferred or imposed upon them by the Board. 1995, c. 1, Sched. A, s. 110 (23).

Remuneration

(24) The members, the other officers and the clerks and servants of the Board shall be paid such remuneration as the Lieutenant Governor in Council may determine. 1995, c. 1, Sched. A, s. 110 (24).

Seal

(25) The Board shall have an official seal. 1995, c. 1, Sched. A, s. 110 (25).

Office, sittings

(26) The office of the Board shall be in Toronto, but the Board may sit at other places that it considers expedient. 1995, c. 1, Sched. A, s. 110 (26).

Powers and duties of Board, general

111. (1) The Board shall exercise the powers and perform the duties that are conferred or imposed upon it by or under this Act.

Specific

(2) Without limiting the generality of subsection (1), the Board has power,

- (a) to require any party to furnish particulars before or during a hearing;
- (b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing;
- (c) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce the documents and things that the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases;
- (d) to administer oaths and affirmations;
- (e) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;
- (f) to require persons or trade unions, whether or not they are parties to proceedings before the Board, to post and to keep posted upon their premises in a conspicuous place or places, where they are most likely to come to the attention of all persons concerned, any notices that the Board considers necessary to bring to the attention of such persons in connection with any proceedings before the Board;
- (g) to enter any premises where work is being or has been done by the employees or in which the employer carries on business, whether or not the premises are those of the employer, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any matter and post therein any notice referred to in clause (f);
- (h) to enter upon the premises of employers and conduct representation votes, strike votes and ratification votes during working hours and give such directions in connection with the vote as it considers necessary;
- (i) to authorize any person to do anything that the Board may do under clauses (a) to (h) and to report to the Board thereon;
- (j) to authorize the chair, a vice-chair or a labour relations officer to inquire into any application, request, complaint, matter or thing within the jurisdiction of the Board, or any part of any of them, and to report to the Board thereon;
- (k) to bar an unsuccessful applicant for any period not exceeding one year from the date of the dismissal of the unsuccessful application, or to refuse to entertain a new application by an unsuccessful applicant or by any of the employees affected by an unsuccessful application or by any person or trade union representing the employees within any period not exceeding one year from the date of the dismissal of the unsuccessful application;
- (l) to determine the form in which evidence of membership in a trade union or of signification by employees that they no longer wish to be represented by a trade union shall be presented to the Board on an application for certification or for a declaration terminating bargaining rights, and to refuse to accept any evidence of membership or signification that is not presented in the form so determined;
- (m) to determine the form in which and the time as of which evidence of representation by an employers' organization or of objection by employers to accreditation of an employers' organization or of signification by employers that they no longer wish to be represented by an employers' organization shall be presented to the Board in an application for accreditation or for a declaration terminating bargaining rights of an employers' organization and to refuse to accept any evidence of representation or objection or signification that is not presented in the form and as of the time so determined;
- (n) to determine the form in which and the time as of which any party to a proceeding before the Board must file or present any thing, document or information and to refuse to accept any thing, document or information that is not filed or presented in that form or by that time.

Subsequent applications for certification, etc.

(3) Despite sections 7 and 63, where an application has been made for certification of a trade union as bargaining agent for employees in a bargaining unit or for a declaration that the trade union no longer represents the employees in a bargaining unit and a final decision of the application has not been issued by the Board at the time a subsequent application for the certification or for the declaration is made with respect to any of the employees affected by the original application, the Board may,

- (a) treat the subsequent application as having been made on the date of the making of the original application;
- (b) postpone consideration of the subsequent application until a final decision has been issued on the original application and thereafter consider the subsequent application but subject to any final decision issued by the Board on the original application; or

(c) refuse to entertain the subsequent application.

Determination of union membership

(4) Where the Board is satisfied that a trade union has an established practice of admitting persons to membership without regard to the eligibility requirements of its charter, constitution or by-laws, the Board, in determining whether a person is a member of a trade union, need not have regard for the eligibility requirements.

Additional votes

(5) Where the Board determines that a representation vote is to be taken amongst the employees in a bargaining unit or voting constituency, the Board may hold the additional representation votes as it considers necessary to determine the true wishes of the employees.

Same

(6) Where, in the taking of a representation vote, the Board determines that the employees are to be given a choice between two or more trade unions,

(a) the Board may include on a ballot a choice indicating that an employee does not wish to be represented by a trade union; and

(b) the Board, when it decides to hold the additional representation votes that may be necessary, may eliminate from the choice on the ballot the choice from the previous ballot that has obtained the lowest number of votes cast. 1995, c. 1, Sched. A, s. 111.

Mistakes in names of parties

112. Where in any proceeding before the Board the Board is satisfied that a mistake has been made in good faith with the result that the proper person or trade union has not been named as a party or has been incorrectly named, the Board may order the proper person or trade union to be substituted or added as a party to the proceedings or to be correctly named upon such terms as appear to the Board to be just. 1995, c. 1, Sched. A, s. 112.

Proof of status of trade union

113. Where in any proceeding under this Act the Board has found or finds that an organization of employees is a trade union within the meaning of subsection 1 (1), such finding is proof, in the absence of evidence to the contrary, in any subsequent proceeding under this Act that the organization of employees is a trade union for the purposes of this Act. 1995, c. 1, Sched. A, s. 113.

Jurisdiction

114. (1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

Same

(2) If, in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, a question arises as to whether a person is an employee or as to whether a person is a guard, the question may be referred to the Board and the decision of the Board thereon is final and conclusive for all purposes.

Findings of hearing-officer conclusive

(3) Where the Board has authorized the chair or a vice-chair to make an inquiry under clause 111 (2) (j), his or her findings and conclusions on facts are final and conclusive for all purposes, but nevertheless he or she may, if he or she considers it advisable to do so, reconsider his or her findings and conclusions on facts and vary or revoke any such finding or conclusion. 1995, c. 1, Sched. A, s. 114.

Reference of questions

115. (1) The Minister may refer to the Board any question which in his or her opinion relates to the exercise of his or her powers under this Act and the Board shall report its decision on the question.

Same

(2) If the Minister refers to the Board a question involving the applicability of section 68 (declaration of successor union) or 69 (sale of a business), the Board has the powers it would have if an interested party had applied to the Board for such a

determination and may give such directions as to the conduct of its proceedings as it considers advisable. 1995, c. 1, Sched. A, s. 115.

When no decision, etc., after six months

115.1 (1) This section applies if the Board has commenced a hearing in a proceeding, six months or more have passed since the last day of hearing and a decision, order, direction, declaration or ruling of the Board has not been made. 2000, c. 38, s. 18.

Termination of proceeding

(2) On the application of a party in the proceeding, the chair may terminate the proceeding. 2000, c. 38, s. 18.

Re-institution of proceeding

(3) If a proceeding is terminated according to subsection (2), the chair shall re-institute the proceeding upon such terms and conditions as the chair considers appropriate, subject to subsection (4). 2000, c. 38, s. 18.

Heard by different Board members

(4) Despite subsections 110 (9), (14) and (14.1), the re-instituted proceeding shall be heard by a member or members of the Board, as the case may be, who are different than those who heard the proceeding before its re-institution. 2000, c. 38, s. 18.

Board's orders not subject to review

116. No decision, order, direction, declaration or ruling of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question, review, prohibit or restrain the Board or any of its proceedings. 1995, c. 1, Sched. A, s. 116.

Testimony in civil proceedings, etc.

117. Except with the consent of the Board, no member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil proceeding or in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this Act. 1995, c. 1, Sched. A, s. 117.

Documentary evidence

118. The production in a court of a document purporting to be or to contain a copy of a decision, determination, report, interim order, order, direction, declaration or ruling of the Board, a conciliation board, a mediator, an arbitrator or an arbitration board and purporting to be signed by a member of the Board or its registrar, the chair of the conciliation board, the mediator, the arbitrator or the chair of the arbitration board, as the case may be, is proof, in the absence of evidence to the contrary, of the document without proof of the appointment, authority or signature of the person who signed the document. 1995, c. 1, Sched. A, s. 118.

Powers under the *Canada Labour Code*

118.1 If a regulation under the *Canada Labour Code* incorporates by reference all or part of this Act or a regulation under this Act, the Board and any person having powers under this Act may exercise any powers conferred under the regulation under the *Canada Labour Code*. 1998, c. 8, s. 12.

GENERAL

Secrecy

119. (1) The records of a trade union relating to membership or any records that may disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in a proceeding before the Board is for the exclusive use of the Board and its officers and shall not, except with the consent of the Board, be disclosed, and no person shall, except with the consent of the Board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union. 1995, c. 1, Sched. A, s. 119 (1).

Non-disclosure

- (2) No information or material furnished to or received by a conciliation officer or a mediator,
- (a) under this Act; or
 - (b) in the course of any endeavour that a conciliation officer may make under the direction of the Minister to effect a collective agreement after the Minister,

(i) has released the report of a conciliation board or a mediator, or

(ii) has informed the parties that he or she does not consider it advisable to appoint a conciliation board,

shall be disclosed except to the Minister, the Deputy Minister of Labour, an Assistant Deputy Minister of Labour or the Director of Dispute Resolution Services. 1995, c. 1, Sched. A, s. 119 (2); 2006, c. 19, Sched. M, s. 3 (1); 2009, c. 33, Sched. 20, s. 2 (2).

Same

(3) No report of a conciliation officer shall be disclosed except to the Minister, the Deputy Minister of Labour, an Assistant Deputy Minister of Labour or the Director of Dispute Resolution Services. 1995, c. 1, Sched. A, s. 119 (3); 2006, c. 19, Sched. M, s. 3 (2); 2009, c. 33, Sched. 20, s. 2 (3).

Same, labour relations officers, etc.

(4) Subject to subsection (6), no information or material furnished to or received by a labour relations officer, grievance mediator or other person appointed under this Act to effect the settlement of a dispute or the mediation of a matter shall be disclosed except to the Board or to the Director of Dispute Resolution Services. 1995, c. 1, Sched. A, s. 119 (4); 1998, c. 8, s. 13 (1); 2009, c. 33, Sched. 20, s. 2 (4).

Same

(5) Subject to subsection (6), no report of a labour relations officer, grievance mediator or other person appointed under this Act to effect the settlement of a dispute or the mediation of a matter shall be disclosed except to the Board or to the Director of Dispute Resolution Services. 1995, c. 1, Sched. A, s. 119 (5); 1998, c. 8, s. 13 (2); 2009, c. 33, Sched. 20, s. 2 (5).

Authorization to disclose

(6) The Board or the Director of Dispute Resolution Services, as the case may be, may authorize the disclosure of information, material or reports. 1995, c. 1, Sched. A, s. 119 (6); 1998, c. 8, s. 13 (3); 2009, c. 33, Sched. 20, s. 2 (6).

Competency as a witness

120. (1) The following persons are not competent or compellable witnesses before a court or tribunal respecting any information or material furnished to or received by them while being involved in an endeavour to effect a collective agreement:

1. The Minister.
2. A deputy minister in the Ministry of Labour.
3. An assistant deputy minister of Labour.
4. The Director of Dispute Resolution Services.
5. The chair or a member of a conciliation board.
6. Any other person appointed by the Minister under this Act or authorized in writing by the Director of Dispute Resolution Services. 2000, c. 38, s. 19; 2009, c. 33, Sched. 20, s. 2 (7, 8).

Same

(2) The following persons are not competent or compellable witnesses before a court or tribunal respecting any information or material furnished to or received by them while acting within the scope of their employment under this Act:

1. The Director of Dispute Resolution Services.
2. A person appointed by the Minister under this Act or under a collective agreement to effect the settlement of a dispute or the mediation of a matter. 1995, c. 1, Sched. A, s. 120 (2); 1998, c. 8, s. 14 (2); 2009, c. 33, Sched. 20, s. 2 (9).

Delegation

121. (1) The Minister may delegate in writing to any person the Minister's power to make an appointment, order or direction under this Act.

Proof of appointment, etc.

(2) An appointment, an order or a direction made under this Act that purports to be signed by or on behalf of the Minister shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it without proof of the signature or the position of the person appearing to have signed it. 1995, c. 1, Sched. A, s. 121.

Notice

122. (1) For the purposes of this Act and of any proceedings taken under it, any notice or communication sent through Her Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail. 1995, c. 1, Sched. A, s. 122 (1).

Time of release of documents

(2) A decision, determination, report, interim order, order, direction, declaration or ruling of the Board, a notice from the Minister that he or she does not consider it advisable to appoint a conciliation board, a notice from the Minister of a report of a conciliation board or of a mediator, or a decision of an arbitrator or of an arbitration board,

- (a) if sent by mail and addressed to the person, employers' organization, trade union or council of trade unions concerned at his, her or its last-known address, shall be deemed to have been released on the second day after the day on which it was so mailed; or
- (b) if delivered to a person, employers' organization, trade union or council of trade unions concerned at his, her or its last-known address, shall be deemed to have been released on the day next after the day on which it was so delivered. 1995, c. 1, Sched. A, s. 122 (2).

Failure to receive documents a defence

(3) Proof by a person, employers' organization, trade union or council of trade unions of failure to receive a determination under section 96 or an interim order or direction under section 99 or a direction of the Board under section 100, 101 or 144, or a decision of an arbitrator or of an arbitration board including a decision under section 103 sent by mail and addressed to the person, employers' organization, trade union or council of trade unions at his, her or its last-known address is a defence by the person, employers' organization, trade union or council of trade unions to an application for consent to institute a prosecution or to enforce as an order of the Superior Court of Justice the determination, interim order, direction or decision. 1995, c. 1, Sched. A, s. 122 (3); 2000, c. 38, s. 20.

Second notice of desire to bargain

(4) Where a notice has been given under section 59 by registered mail and the addressee claims that he, she or it has not received the notice, the person, employers' organization, trade union or council of trade unions that gave the notice may give a second notice to the addressee forthwith after he, she or it ascertains that the first notice had not been received, but in no case may the second notice be given more than three months after the day on which the first notice was mailed, and the second notice has the same force and effect for the purposes of this Act as the first notice would have had if it had been received by the addressee. 1995, c. 1, Sched. A, s. 122 (4).

Defects in form; technical irregularities

123. No proceeding under this Act is invalid by reason of any defect of form or any technical irregularity and no proceeding shall be quashed or set aside if no substantial wrong or miscarriage of justice has occurred. 1995, c. 1, Sched. A, s. 123.

Administration cost

124. The expenses incurred in the administration of this Act shall be paid out of the money that is appropriated by the Legislature for the purpose. 1995, c. 1, Sched. A, s. 124.

Remuneration and expenses of conciliation boards, etc.

124.1 (1) The Minister may issue orders providing for and fixing the remuneration and expenses of chairs of conciliation boards, members of conciliation boards, mediators, special officers appointed under section 38 and members of a Disputes Advisory Committee. 2006, c. 19, Sched. M, s. 3 (3).

Same

(2) An order of the Minister under subsection (1) shall not provide for or fix any remuneration or expenses of any person referred to in that subsection who is a public servant employed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 57 (4).

Regulations

125. The Lieutenant Governor in Council may make regulations,

- (a) providing for and regulating the engagement of experts, investigators and other assistants by conciliation boards;
- (b) governing the assignment of arbitrators to conduct arbitrations and the carrying out and completion of the assignments;

- (c) providing for and prescribing a scale of fees and expenses allowable to arbitrators in respect of arbitrations and limiting or restricting the application of such a regulation;
- (d) providing a procedure for the review and determination of disputes concerning the fees and expenses charged or claimed by an arbitrator;
- (e) governing the filing of schedules of fees and expenses by arbitrators, requiring arbitrators to provide parties with a copy of the schedules upon being appointed and requiring arbitrators to charge fees and expenses in accordance with the filed schedules;
- (f) respecting training programs for arbitrators;
- (g) providing for and fixing the remuneration and expenses of chairs and other members of conciliation boards and mediators;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (g) is repealed by the Statutes of Ontario, 2006, chapter 19, Schedule M, subsection 3 (4). See: 2006, c. 19, Sched. M, ss. 3 (4), 8 (2).

- (h) governing the conduct of arbitration hearings and prescribing procedures therefor;
 - (i) requiring the filing with the Ministry of Labour of awards of arbitrators and arbitration boards;
 - (j) prescribing amounts or a method of determining amounts payable under subsection 43 (5) for the expense of an arbitration by the Board;
 - (k) prescribing amounts for the expense of proceedings under section 133 and providing for the adjustment of the amounts in exceptional circumstances;
 - (l) prescribing forms and providing for their use, including the form in which the documents mentioned in sections 48, 96, 99, 102, 103 and 144 shall be filed in the Superior Court of Justice;
- (1.0.1) designating regional employers' organizations for the purposes of section 151;
- (1.1) prescribing the parties to an application under subsection 163.1 (3) or governing the specifying of such parties by the Board;
 - (1.2) designating projects in the construction industry that are not industrial projects as projects that may be the subject of a project agreement under section 163.1 or 163.1.1 and providing for section 163.1 or 163.1.1, as the case may be, to apply with respect to those projects, and prescribing modifications to those provisions for the purpose;
 - (1.3) prescribing, for the purposes of paragraph 6 of subsection 163.1 (9), circumstances in which the Board may declare that a proposed project agreement shall not come into force;
 - (m) respecting any matter necessary or advisable to carry out the intent and purpose of this Act. 1995, c. 1, Sched. A, s. 125; 1998, c. 8, s. 15; 2000, c. 24, s. 1; 2000, c. 38, s. 21.

CONSTRUCTION INDUSTRY

Interpretation

126. (1) In this section and in sections 126.1 to 168,

“council of trade unions” means a council that is formed for the purpose of representing or that according to established bargaining practice represents trade unions as defined in this section; (“conseil de syndicats”)

“employee” includes an employee engaged in whole or in part in off-site work but who is commonly associated in work or bargaining with on-site employees; (“employé”)

“employer” means a person other than a non-construction employer who operates a business in the construction industry, and for purposes of an application for accreditation means an employer other than a non-construction employer for whose employees a trade union or council of trade unions affected by the application has bargaining rights in a particular geographic area and sector or areas or sectors or parts thereof; (“employeur”)

“employers' organization” means an organization that is formed for the purpose of representing or represents employers as defined in this section; (“association patronale”)

“non-construction employer” means an employer who does no work in the construction industry for which the employer expects compensation from an unrelated person; (“employeur extérieur à l'industrie de la construction”)

“sector” means a division of the construction industry as determined by work characteristics and includes the industrial, commercial and institutional sector, the residential sector, the sewers and watermains sector, the roads sector, the heavy engineering sector, the pipeline sector and the electrical power systems sector; (“secteur”)

“trade union” means a trade union that according to established trade union practice pertains to the construction industry. (“syndicat”) 1995, c. 1, Sched. A, s. 126; 1998, c. 8, s. 16; 2000, c. 38, s. 22.

Application of subss. (3, 5)

(2) Subsections (3) and (5) apply with respect to an employer or a non-construction employer where a trade union, council of trade unions or affiliated bargaining agent or employee bargaining agency, as defined in section 151, has bargaining rights in relation to construction work performed by or on behalf of that employer or non-construction employer. 2000, c. 24, s. 2.

Single employer declarations

(3) The following apply if an application is made under subsection 1 (4) for a declaration that two or more entities should be treated as constituting one employer and any of the entities is an employer or a non-construction employer:

1. The Board shall not consider any relationship by way of blood, marriage or adoption between an individual having a direct or indirect involvement with one of the entities and an individual having a direct or indirect involvement with any of the other entities.
2. If the applicant proposes that the entities should be treated as constituting one employer because an individual was a key individual with respect to two or more of them and if the time at which the individual was alleged to have been a key individual with respect to one of the entities is a different time than that at which he or she is alleged to have been a key individual with respect to the others, the Board shall consider,
 - i. the length of any hiatus between when the individual was a key individual with the one entity and when the individual was a key individual with the other entity or entities,
 - ii. whether the first entity with respect to which the individual is alleged to have been a key individual was one with which he or she occupied a formal management role, and
 - iii. whether the first entity with respect to which the individual is alleged to have been a key individual was able to carry on business without substantial disruption or loss when he or she ceased to be involved with that entity. 2000, c. 24, s. 2.

Definition

(4) In subsection (3),

“entity” means a corporation, individual, firm, syndicate or association or any combination of any of them. 2000, c. 24, s. 2.

Sale of a business

(5) In determining whether an employer or a non-construction employer has sold a business, the following apply:

1. The Board shall not consider any relationship by way of blood, marriage or adoption between an individual having a direct or indirect involvement with the employer or non-construction employer that sold the business and an individual having a direct or indirect involvement with the person to whom the business was allegedly sold.
2. If it is alleged that the employer or non-construction employer sold a business because an individual was a key individual in relation both to the alleged seller and to the person to whom the business was allegedly sold and if the time at which the individual was alleged to have been a key individual in relation to the alleged seller is a different time than that at which he or she was alleged to have been a key individual in relation to the person to whom the business was sold, the Board shall consider,
 - i. the length of any hiatus between when the individual was a key individual in relation to the alleged seller and when the individual was a key individual in relation to the person to whom the business was allegedly sold,
 - ii. whether the individual occupied a formal management role with the alleged seller, and
 - iii. whether the alleged seller was able to carry on business without substantial disruption or loss when the individual ceased to be involved with the alleged seller. 2000, c. 24, s. 2.

Construction industry, application

126.1 (1) Sections 126 to 168 set out special rules with respect to the construction industry. 2000, c. 38, s. 23.

Same

(2) Sections 1 to 125 also apply with respect to the construction industry. 2000, c. 38, s. 23.

Resolving conflict

(3) If there is a conflict with respect to the application of provisions of this Act with respect to the construction industry, it shall be resolved as follows:

1. A provision in sections 126 to 144 prevails over a provision in sections 7 to 63 and 68 to 125.
 2. A provision in sections 146 to 150 prevails over any other provision of this Act.
 3. A provision in sections 150.1 to 167 prevails over a provision in sections 7 to 63 and 68 to 144. 2000, c. 38, s. 23.
127. REPEALED: 2000, c. 38, s. 24.

Grandparented non-construction employers

127.1 (1) This section applies with respect to a non-construction employer if, on the day this section comes into force, a trade union represents employees of the non-construction employer employed, or who may be employed, in the construction industry.

Continued application of certain sections

(2) Sections 127 to 168 continue to apply, subject to subsection (3), with respect to the non-construction employer and the employees the trade union represents as if the definition of employer in section 126 included the non-construction employer.

Exception if declaration

(3) If a declaration is made under subsection 127.2 (2) that a trade union no longer represents employees employed, or who may be employed, in the construction industry, subsection (2) of this section ceases to apply with respect to the non-construction employer and those employees. 1998, c. 8, s. 17.

Non-construction employers, application for termination

127.2 (1) This section applies with respect to a trade union that represents employees of a non-construction employer employed, or who may be employed, in the construction industry. 1998, c. 8, s. 17.

Declaration

(2) On the application of a non-construction employer, the Board shall declare that a trade union no longer represents those employees of the non-construction employer employed in the construction industry. 2000, c. 38, s. 25.

Collective agreement ceases to apply

(3) Upon the Board making a declaration under subsection (2), any collective agreement binding the non-construction employer and the trade union ceases to apply with respect to the non-construction employer in so far as the collective agreement applies to the construction industry. 1998, c. 8, s. 17.

Amendment of unit

(4) The Board may re-define the composition of a bargaining unit affected by a declaration under subsection (2) if the bargaining unit also includes employees who are not employed in the construction industry. 1998, c. 8, s. 17.

Application of section

127.3 (1) This section applies if a trade union and an employer have entered into a collective agreement. 2014, c. 10, Sched. 3, s. 1.

Application for certification

(2) Where the collective agreement is for a term of not more than three years, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the last two months of its operation. 2014, c. 10, Sched. 3, s. 1.

Same

(3) Where the collective agreement is for a term of more than three years, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the 35th month of its operation and before the commencement of the 37th month of its operation and during the two-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last two months of its operation, as the case may be. 2014, c. 10, Sched. 3, s. 1.

Same

(4) Where a collective agreement referred to in subsection (2) or (3) provides that it will continue to operate for any further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to renewal, with or without modifications, of the agreement or to the making of a new agreement, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement during the further term or successive terms only during the last two months of each year that it so continues to operate, or after the commencement of the last two months of its operation, as the case may be. 2014, c. 10, Sched. 3, s. 1.

Bargaining units in the construction industry

128. (1) Where a trade union applies for certification as bargaining agent of the employees of an employer, the Board shall determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it shall not confine the unit to a particular project.

Determination of number of members in bargaining unit

(2) In determining whether a trade union to which subsection (1) applies has met the requirements of subsection 8 (2), the Board need not have regard to any increase in the number of employees in the bargaining unit after the application was made. 1995, c. 1, Sched. A, s. 128.

Application for certification without a vote

Election

128.1 (1) A trade union applying for certification as bargaining agent of the employees of an employer may elect to have its application dealt with under this section rather than under section 8. 2005, c. 15, s. 8.

Notice to Board and employer

(2) The trade union shall give written notice of the election,

(a) to the Board, on the date the trade union files the application; and

(b) to the employer, on the date the trade union delivers a copy of the application to the employer. 2005, c. 15, s. 8.

Employer to provide information

(3) Within two days (excluding Saturdays, Sundays and holidays) after receiving notice under subsection (2), the employer shall provide the Board with,

(a) the names of the employees in the bargaining unit proposed in the application, as of the date the application is filed; and

(b) if the employer gives the Board a written description of the bargaining unit that the employer proposes, in accordance with subsection 7 (14), the names of the employees in that proposed bargaining unit, as of the date the application is filed. 2005, c. 15, s. 8.

Matters to be determined

(4) On receiving an application for certification from a trade union that has elected to have its application dealt with under this section, the Board shall determine, as of the date the application is filed and on the basis of the information provided in or with the application and under subsection (3),

(a) the bargaining unit; and

(b) the percentage of employees in the bargaining unit who are members of the trade union. 2005, c. 15, s. 8.

Exception: allegation of contravention, etc.

(5) Nothing in subsection (4) prevents the Board from considering evidence and submissions relating to any allegation that section 70, 72 or 76 has been contravened or that there has been fraud or misrepresentation, if the Board considers it appropriate to consider the evidence and submissions in making a decision under this section. 2005, c. 15, s. 8.

Hearing

(6) The Board may hold a hearing if it considers it necessary in order to make a decision under this section. 2005, c. 15, s. 8.

Dismissal: insufficient membership

(7) The Board shall not certify the trade union as bargaining agent of the employees in the bargaining unit and shall dismiss the application if it is satisfied that fewer than 40 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed. 2005, c. 15, s. 8.

Remedial dismissal

(8) Subsection (9) applies where the trade union or person acting on behalf of the trade union contravenes this Act and, as a result, the membership evidence provided in or with the trade union's application for certification does not likely reflect the true wishes of the employees in the bargaining unit. 2005, c. 15, s. 8.

Same

(9) In the circumstances described in subsection (8), on the application of an interested person, the Board may dismiss the application for certification if no other remedy, including a representation vote directed under clause (13) (b), would be sufficient to counter the effects of the contravention. 2005, c. 15, s. 8.

Bar to reapplying

(10) If the Board dismisses an application for certification under subsection (9), the Board shall not consider another application for certification by the trade union as the bargaining agent for any employee that was in the bargaining unit proposed in the original application until one year after the application is dismissed. 2005, c. 15, s. 8.

Same

(11) Despite subsection (10), the Board may consider an application for certification by the trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2005, c. 15, s. 8.

Board shall direct representation vote

(12) If the Board is satisfied that at least 40 per cent but not more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it shall direct that a representation vote be taken. 2005, c. 15, s. 8.

Board may certify or may direct representation vote

(13) If the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it may,

- (a) certify the trade union as the bargaining agent of the employees in the bargaining unit; or
- (b) direct that a representation vote be taken. 2005, c. 15, s. 8.

Representation votes

(14) If the Board directs that a representation vote be taken,

- (a) the vote shall, unless the Board directs otherwise, be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the direction for a representation vote is made;
- (b) the vote shall be by ballots cast in such a manner that individuals expressing their choice cannot be identified with the choice made;
- (c) the Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs;
- (d) subject to section 11.1, the Board shall certify the trade union as bargaining agent of the employees in the bargaining unit if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union; and
- (e) subject to section 11, the Board shall not certify the trade union as bargaining agent of the employees in the bargaining unit and shall dismiss the application for certification if 50 per cent or fewer of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union. 2005, c. 15, s. 8.

Bar to reapplication

(15) If the Board dismisses an application for certification under clause (14) (e), the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee who was in the bargaining unit proposed in the original application until one year after the original application is dismissed. 2005, c. 15, s. 8.

Exception

(16) Despite subsection (15), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made. 2005, c. 15, s. 8.

Same

(17) Subsection (15) does not apply if the trade union whose application was dismissed is a trade union that the Board is prohibited from certifying under section 15. 2005, c. 15, s. 8.

Meaning of “trade union”

(18) For the purposes of subsections (15) and (16),

“trade union” includes any trade union as defined in section 1, whether or not the trade union is a trade union as defined in section 126. 2005, c. 15, s. 8.

Non-application of certain provisions

(19) Sections 8, 8.1 and 10 do not apply in respect of a certification application that the trade union has elected to have dealt with under this section. 2005, c. 15, s. 8.

Determining bargaining unit and number of members

(20) Section 128 applies with necessary modifications to determinations made under this section. 2005, c. 15, s. 8.

Withdrawal of application: discretionary bar

(21) Subsection 7 (9) applies, with necessary modifications, if the trade union withdraws the application for certification,

- (a) before the Board takes any action under subsection (7), (12) or (13); or
- (b) after the Board directs a representation vote under subsection (12) or clause (13) (b), but before the vote is taken. 2005, c. 15, s. 8.

Second withdrawal: mandatory bar

(22) Subsections 7 (9.1), (9.2) and (9.3) apply, with necessary modifications, if the trade union withdraws an application for certification in the circumstances described in subsection (21) and had withdrawn a previous application for certification not more than six months earlier. 2005, c. 15, s. 8.

Withdrawal of application after vote taken: mandatory bar

(23) Subsections 7 (10), (10.1) and (10.2) apply, with necessary modifications, if the trade union withdraws the application for certification after a representation vote is taken in accordance with the Board’s direction under subsection (12) or clause (13) (b). 2005, c. 15, s. 8.

Industrial, commercial and institutional sector

(24) If an election under this section is made in relation to an application for certification that relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126,

- (a) the references to “trade union” in subsections (1), (2), (4), (7), (8), (10) to (14), (17) and (19) to (23) shall be read as references to the trade unions on whose behalf the application for certification was brought;
- (b) if the Board certifies the trade unions on whose behalf the application for certification was brought as the bargaining agent of the employees in the bargaining unit under clause (13) (a), it shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas;
- (c) if the Board directs that a representation vote be taken and more than 50 per cent of the ballots cast in the representation vote are cast in favour of the trade unions on whose behalf the application was brought, the Board shall certify the trade unions as the bargaining agent of the employees in the bargaining unit and shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas; and

- (d) if the Board dismisses the application for certification under clause (14) (e), the Board shall not consider another application for certification by the employee bargaining agency or the affiliated bargaining agent or agents to certify the trade unions as bargaining agent for the employees in the bargaining unit until one year after the dismissal. 2005, c. 15, s. 8.

Same

(25) For the purposes of subsection (24), the terms “affiliated bargaining agent” and “employee bargaining agency” have the same meanings as in subsection 151 (1). 2005, c. 15, s. 8.

Transition

(26) This section applies in respect of applications made on or after the day section 8 of the *Labour Relations Statute Law Amendment Act, 2005* comes into force. 2005, c. 15, s. 8.

Notice of desire to bargain

129. (1) Where notice has been given by a trade union to an employer under section 16 or by a trade union or a council of trade unions or an employer or employers’ organization under section 59, the parties shall meet within five days from the giving of such notice or within such further period as the parties agree upon.

Extension of 14-day period for conciliation officer’s report

(2) Where the Minister appoints a conciliation officer or a mediator at the request of a trade union, council of trade unions or an employer or employers’ organization to confer with the parties and endeavour to effect a collective agreement binding upon employees of the employer or upon employees of members of the employers’ organization, the period mentioned in subsection 20 (1) may be extended only by agreement of the parties.

Appointment of conciliation board

(3) Where the Minister has appointed a conciliation officer under subsection (2) and the conciliation officer is unable to effect a collective agreement within the time allowed, the Minister shall, unless the parties inform him or her in writing that they desire him or her to appoint a conciliation board, forthwith by notice in writing inform each of the parties that he or she does not consider it advisable to appoint a conciliation board.

When report to be made

(4) Where a conciliation board has been appointed under subsection (3), it shall report its findings and recommendations to the Minister within 14 days after its first sitting, but such period may be extended,

- (a) for a further period not exceeding 30 days by agreement of the parties; or
- (b) for a further period beyond the period fixed in clause (a) as the parties may agree upon and as the Minister may approve. 1995, c. 1, Sched. A, s. 129.

What deemed to be a collective agreement

130. An agreement in writing between an employer or employers’ organization, on the one hand, and a trade union that has been certified as bargaining agent for a unit of employees of the employer, or a trade union or a council of trade unions that is entitled to require the employer or the employers’ organization to bargain with it for the renewal, with or without modifications, of the agreement then in operation or for the making of a new agreement, on the other hand, shall be deemed to be a collective agreement despite the fact that there were no employees in the bargaining unit or units affected at the time the agreement was entered into. 1995, c. 1, Sched. A, s. 130.

Notice of desire to bargain for new collective agreement

131. Each party to a collective agreement between an employer or employers’ organization and a trade union or council of trade unions may, within the period of 90 days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement, and the notice has for all purposes the same effect as a notice under section 59. 1995, c. 1, Sched. A, s. 131.

Application for termination

132. (1) If a trade union does not make a collective agreement with the employer within six months after its certification, any of the employees in the bargaining unit determined in the certificate may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit. 1995, c. 1, Sched. A, s. 132 (1).

Same, agreement

(2) Any of the employees in the bargaining unit defined in a first agreement between an employer and a trade union, where the trade union has not been certified as the bargaining agent of the employees of the employer in the bargaining unit, may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit after the 305th day of its operation and before the 365th day of its operation. 2000, c. 38, s. 26; 2014, c. 10, Sched. 3, s. 2 (1).

Same, agreement

(3) Any of the employees in the bargaining unit defined in a collective agreement other than a first agreement referred to in subsection (2) may, subject to section 67, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit,

- (a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last two months of its operation;
- (b) in the case of a collective agreement for a term of more than three years, only after the commencement of the 35th month of its operation and before the commencement of the 37th month of its operation and during the two-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last two months of its operation, as the case may be; and
- (c) in the case of a collective agreement referred to in clause (a) or (b) that provides that it will continue to operate for any further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, only during the last two months of each year that it so continues to operate or after the commencement of the last two months of its operation, as the case may be. 2014, c. 10, Sched. 3, s. 2 (2).

Referral of grievance to Board

133. (1) Despite the grievance and arbitration provisions in a collective agreement or deemed to be included in a collective agreement under section 48, a party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may refer a grievance concerning the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable, to the Board for final and binding determination. 1995, c. 1, Sched. A, s. 133 (1).

Requirements for referral

(2) A referral under subsection (1) shall be in writing in the prescribed form and may be made at any time after the written grievance has been delivered to the other party. 1998, c. 8, s. 18.

Copy of referral to other party

(3) A party that refers a grievance under subsection (1) shall, at the same time, give a copy of the referral to the other party. 1998, c. 8, s. 18.

Board may refuse

(4) The Board may refuse to accept a referral. 1998, c. 8, s. 18.

Decision to accept or not

(5) In deciding whether or not to accept a referral, the Board is not required to hold a hearing and may appoint a labour relations officer to inquire into the referral and report to the Board. 1998, c. 8, s. 18.

Hearing, etc.

(6) If the Board accepts the referral, the Board shall appoint a date for and hold a hearing within 14 days after receipt of the referral and may appoint a labour relations officer to confer with the parties and endeavour to effect a settlement before the hearing. 1998, c. 8, s. 18.

When hearing not required

(7) The Board is not required to hold a hearing if the responding party does not file any material. 1998, c. 8, s. 18.

If no hearing

(8) If the Board does not hold a hearing in the circumstances described in subsection (7), the Board may determine the matter with reference only to the material filed by the party referring the grievance. 1998, c. 8, s. 18.

Jurisdiction of Board

(9) If the Board accepts the referral, the Board has exclusive jurisdiction to hear and determine the difference or allegation raised in the grievance referred to it, including any question as to whether the matter is arbitrable, and subsections 48 (10)

and (12) to (20) apply with necessary modifications to the Board and to the enforcement of the decision of the Board. 1998, c. 8, s. 18.

Schedule of fees

(10) The Lieutenant Governor in Council may establish a schedule of fees to be charged to parties in proceedings under this section and, without limiting the generality of what can be included in the schedule, the schedule may provide for the following:

1. Fees payable for referring grievances or participating in proceedings.
2. Fees payable for each hearing day, including hearing days scheduled by the Board but not used.
3. Different fees for the referring party and for the responding parties.
4. A single fee for all the responding parties with the amount to be paid by each responding party to be determined by the Board. 1998, c. 8, s. 18.

Same

(11) The schedule of fees may also provide for when the fees are due, to whom the fees shall be paid and what the form of payment must be. 1998, c. 8, s. 18.

No participation if fees unpaid

(12) A party may participate in a proceeding only if the fees payable by the party are paid in accordance with the schedule of fees. 1998, c. 8, s. 18.

Fees ordered, non-participating party

(13) If an award is made against a party who was given notice of but did not participate in proceedings under this section, the Board may order the party to pay the party in whose favour the award is made, an amount not exceeding the fees paid by the party in whose favour the order is made. 1998, c. 8, s. 18.

Same, party not in a position to participate

(14) The Board may order a party who participated in proceedings under this section but who was not in a position to participate on a day on which proceedings were scheduled to pay each of the other parties an amount not exceeding the fees paid by that party. 1998, c. 8, s. 18.

Exception, unreasonable refusal of adjournment

(15) The Board shall not make an order under subsection (14) ordering a party who was not in a position to participate to pay an amount to another party if the other party refused, unreasonably, to consent to an adjournment requested by the party who was not in a position to participate. 1998, c. 8, s. 18.

Fees to Consolidated Revenue Fund

(16) Fees payable by a party to the Board shall be paid to the Board for payment into the Consolidated Revenue Fund. 1998, c. 8, s. 18.

Schedule not a regulation

(17) The schedule of fees is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1998, c. 8, s. 18; 2006, c. 21, Sched. F, s. 136 (1).

Accreditation of employers' organization

134. Where a trade union or council of trade unions has been certified or has been granted voluntary recognition under section 18 as the bargaining agent for a unit of employees of more than one employer in the construction industry or where a trade union or council of trade unions has entered into collective agreements with more than one employer covering a unit of employees in the construction industry, an employers' organization may apply to the Board to be accredited as the bargaining agent for all employers in a particular sector of the industry and in the geographic area described in the said certificates, voluntary recognition documents or collective agreements, as the case may be. 1995, c. 1, Sched. A, s. 134.

Board to determine appropriateness of unit

135. (1) Upon an application for accreditation, the Board shall determine the unit of employers that is appropriate for collective bargaining in a particular geographic area and sector, but the Board need not confine the unit to one geographic area or sector but may, if it considers it advisable, combine areas or sectors or both or parts thereof.

Same

(2) The unit of employers shall comprise all employers as defined in section 126 in the geographic area and sector determined by the Board to be appropriate. 1995, c. 1, Sched. A, s. 135.

Determinations by Board

136. (1) Upon an application for accreditation, the Board shall ascertain,

- (a) the number of employers in the unit of employers on the date of the making of the application who have within one year prior to such date had employees in their employ for whom the trade union or council of trade unions has bargaining rights in the geographic area and sector determined by the Board to be appropriate;
- (b) the number of employers in clause (a) represented by the employers' organization on the date of the making of the application; and
- (c) the number of employees of employers in clause (a) on the payroll of each such employer for the weekly payroll period immediately preceding the date of the application or if, in the opinion of the Board, the payroll period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.

Accreditation

(2) If the Board is satisfied,

- (a) that a majority of the employers in clause (1) (a) is represented by the employers' organization; and
- (b) that such majority of employers employed a majority of the employees in clause (1) (c),

the Board, subject to subsection (3), shall accredit the employers' organization as the bargaining agent of the employers in the unit of employers and for the other employers for whose employees the trade union or council of trade unions may, after the date of the making of the application, obtain bargaining rights through certification or voluntary recognition in the appropriate geographic area and sector.

Authority of employers' organization

(3) Before accrediting an employers' organization under subsection (2), the Board shall satisfy itself that the employers' organization is a properly constituted organization and that each of the employers whom it represents has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.

Same

(4) Where the Board is of the opinion that appropriate authority has not been vested in the employers' organization, the Board may postpone disposition of the application to enable employers represented by the organization to vest the additional or other authority in the organization that the Board considers necessary.

What employers' organization not to be accredited

(5) The Board shall not accredit any employers' organization if any trade union or council of trade unions has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the *Human Rights Code*, or the *Canadian Charter of Rights and Freedoms*. 1995, c. 1, Sched. A, s. 136.

Effect of accreditation

137. (1) Upon accreditation, all rights, duties and obligations under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent apply with necessary modifications to the accredited employers' organization. 1995, c. 1, Sched. A, s. 137 (1).

Effect of accreditation on collective agreements

(2) Upon accreditation, any collective agreement in operation between the trade union or council of trade unions and any employer in clause 136 (1) (a) is binding on the parties thereto only for the remainder of the term of operation of the agreement, regardless of any provision therein respecting its renewal. 1995, c. 1, Sched. A, s. 137 (2).

Same

(3) When any collective agreement mentioned in subsection (2) ceases to operate, the employer shall thereupon be bound by any collective agreement then in existence between the trade union or council of trade unions and the accredited employers' organization or subsequently entered into by the said parties. 1995, c. 1, Sched. A, s. 137 (3).

Same

(4) Where, after the date of the making of an application for accreditation, the trade union or council of trade unions obtains bargaining rights for the employees of an employer through certification or voluntary recognition, that employer is bound by any collective agreement in existence at the time of the certification or voluntary recognition between the trade union or council of trade unions and the applicant employers' organization or subsequently entered into by the said parties. 1995, c. 1, Sched. A, s. 137 (4).

Same

(5) A collective agreement between a trade union or council of trade unions and an employer who, but for the one-year requirement, would have been included in clause 136 (1) (a) is binding on the parties thereto only for the remainder of the term of operation of the agreement regardless of any provisions therein respecting its renewal. 1995, c. 1, Sched. A, s. 137 (5).

Same

(6) Where any collective agreement mentioned in subsection (5) ceases to operate, the employer shall thereupon be bound by any collective agreement then in existence between the trade union or council of trade unions and the accredited employers' organization or subsequently entered into by the said parties. 1995, c. 1, Sched. A, s. 137 (6).

Application of s. 58 (1)

(7) Where, under this section, an employer becomes bound by a collective agreement between a trade union or council of trade unions and an accredited employers' organization after the said agreement has commenced to operate, the agreement ceases to be binding on the employer in accordance with the terms thereof. 1995, c. 1, Sched. A, s. 137 (7); 2000, c. 38, s. 27.

Accredited employers' organization

138. (1) Subsections 57 (1) and (2) do not apply to an accredited employers' organization.

Binding effect of collective agreement on employer

(2) A collective agreement between an accredited employers' organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon the accredited employers' organization and the trade union or council of trade unions, as the case may be, and upon each employer in the unit of employers represented by the accredited employers' organization at the time the agreement was entered into and upon the other employers that may subsequently be bound by the said agreement, as if it was made between each of the employers and the trade union or council of trade unions and, if any such employer ceases to be represented by the accredited employers' organization during the term of operation of the agreement, the employer shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.

Binding effect of collective agreement on employees

(3) A collective agreement between an accredited employers' organization and a trade union or council of trade unions is binding on the employees in the bargaining unit defined in the agreement of any employer bound by the collective agreement. 1995, c. 1, Sched. A, s. 138.

Termination of accreditation

139. (1) If an accredited employers' organization does not make a collective agreement with the trade union or council of trade unions, as the case may be, within one year after its accreditation, any of the employers in the unit of employers determined in the accreditation certificate may apply to the Board only during the two months following the said one year for a declaration that the accredited employers' organization no longer represents the employers in the unit of employers.

Same

(2) Any of the employers in the unit of employers defined in a collective agreement between an accredited employers' organization and a trade union or council of trade unions, as the case may be, may apply to the Board only during the last two months of its operation for a declaration that the accredited employers' organization no longer represents the employers in the unit of employers.

Determination by Board

(3) Upon an application under subsection (1) or (2), the Board shall ascertain,

(a) the number of employers in the unit of employers on the date of the making of the application;

(b) the number of employers in the unit of employers who, within the two-month period immediately preceding the date of the making of the application, have voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and

- (c) the number of employees affected by the application of employers in the unit of employers on the payroll of each employer for the weekly payroll period immediately preceding the date of the making of the application or if, in the opinion of the Board, the payroll period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.

Declaration by Board

(4) If the Board is satisfied,

- (a) that a majority of the employers in clause (3) (a) has voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and
- (b) that such majority of employers employed a majority of the employees in clause (3) (c),

the Board shall declare that the employers' organization that was accredited or that was or is a party to the collective agreement, as the case may be, no longer represents the employers in the unit of employers.

Declaration of termination on abandonment

(5) Upon an application under subsection (1) or (2), when the employers' organization informs the Board that it does not desire to continue to represent the employers in the unit of employers, the Board may declare that the employers' organization no longer represents the employers in the unit.

Effect of declaration

(6) Upon the Board making a declaration under subsection (4) or (5),

- (a) any collective agreement in operation between the trade union or council of trade unions and the employers' organization that is binding upon the employers in the unit of employers ceases to operate forthwith;
- (b) all rights, duties and obligations under this Act of the employers' organization revert with necessary modifications to the individual employers represented by the employers' organization; and
- (c) the trade union or council of trade unions, as the case may be, is entitled to give to any employer in the unit of employers a written notice of its desire to bargain with a view to making a collective agreement, and the notice has the same effect as a notice under section 14. 1995, c. 1, Sched. A, s. 139.

Individual bargaining prohibited

140. (1) No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and no such employer or person acting on behalf of such employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, bargain with each other with respect to such employees or enter into a collective agreement designed or intended to be binding upon such employees and if any such agreement is entered into it is void.

Agreements to provide employees during lawful strike or lock-out prohibited

(2) No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and no such employer or person acting on behalf of the employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, enter into any agreement or understanding, oral or written, that provides for the supply of employees during a legal strike or lock-out, and if any such agreement or understanding is entered into it is void and no such trade union or council of trade unions or person shall supply such employees to the employer.

Saving

(3) Nothing in this Act prohibits an employer, represented by an accredited employers' organization, from continuing or attempting to continue the employer's operations during a strike or lock-out involving employees of employers represented by the accredited employers' organization. 1995, c. 1, Sched. A, s. 140.

Duty of fair representation by employers' organization

141. An accredited employers' organization, so long as it continues to be entitled to represent employers in a unit of employers, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employers in the unit, whether members of the accredited employers' organization or not. 1995, c. 1, Sched. A, s. 141.

Membership in employers' organization

142. Membership in an accredited employers' organization shall not be denied or terminated except for cause which, in the opinion of the Board, is fair and reasonable. 1995, c. 1, Sched. A, s. 142.

Fees

143. An accredited employers' organization shall not charge, levy or prescribe initiation fees, dues or assessments that, in the opinion of the Board, are unreasonable or discriminatory. 1995, c. 1, Sched. A, s. 143.

Direction by Board re unlawful activities

Direction by Board re unlawful strike

144. (1) Where, on the complaint of an interested person, trade union, council of trade unions or employers' organization, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike, or that employees engaged in or threatened to engage in an unlawful strike or any person has done or is threatening to do any act that the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike, it may direct what action, if any, a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike. 1995, c. 1, Sched. A, s. 144 (1).

Direction by Board re unlawful lock-out

(2) Where, on the complaint of an interested person, trade union, council of trade unions or employers' organization, the Board is satisfied that an employer or employers' organization called or authorized or threatened to call or authorize an unlawful lock-out or locked out or threatened to lock out employees or that an officer, official or agent of an employer or employers' organization counselled or procured or supported or encouraged an unlawful lock-out or threatened an unlawful lock-out, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful lock-out or the threat of an unlawful lock-out. 1995, c. 1, Sched. A, s. 144 (2).

Direction by Board re unlawful agreements

(3) Where, on the complaint of an interested person, trade union, council of trade unions, employers' organization, employee bargaining agency or employer bargaining agency, the Board is satisfied that a person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations or employer bargaining agency, bargained for, attempted to bargain for, or concluded any collective agreement or other arrangement affecting employees represented by affiliated bargaining agents other than a provincial agreement as contemplated by subsection 162 (1) or a project agreement under section 163.1, it may direct what action, if any, a person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations, or employer bargaining agency, shall do or refrain from doing with respect to the bargaining for, the attempting to bargain for, or the concluding of a collective agreement or other arrangement other than a provincial agreement as contemplated by subsection 162 (1) or a project agreement under section 163.1. 1995, c. 1, Sched. A, s. 144 (3); 1998, c. 8, s. 19; 2000, c. 38, s. 28 (1).

Filing in court

(4) A party to a direction made under this section may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 144 (4); 2000, c. 38, s. 28 (2).

Sections 146 to 150

145. (1) In sections 146 to 150,

“constitution” means an organizational document governing the establishment or operation of a trade union and includes a charter and by-laws and rules made under a constitution; (“acte constitutif”)

“jurisdiction” includes geographic, sectoral and work jurisdiction; (“jurisdiction”)

“local trade union” means, in relation to a parent trade union, a trade union in Ontario that is affiliated with or subordinate or directly related to the parent trade union and includes a council of trade unions; (“syndicat local”)

“parent trade union” means a provincial, national or international trade union which has at least one affiliated local trade union in Ontario that is subordinate or directly related to it. (“syndicat parent”) 1995, c. 1, Sched. A, s. 145 (1).

(2) REPEALED: 2000, c. 38, s. 29.

Same, trade union constitution

(3) In the event of a conflict between any provision in sections 146 to 150 and any provision in the constitution of a trade union, the provisions in sections 146 to 150 prevail. 1995, c. 1, Sched. A, s. 145 (3).

Employees not in industrial, commercial, institutional sector

146. (1) This section applies with respect to employees in a bargaining unit in the construction industry other than in the industrial, commercial and institutional sector referred to in the definition of “sector” in section 126.

Bargaining rights

(2) If a parent trade union is the bargaining agent for employees described in subsection (1), each of its local trade unions is deemed to be bargaining agent, together with the parent trade union, for employees in the bargaining unit within the jurisdiction of the local trade union.

Party to the collective agreement

(3) If a parent trade union is a party to a collective agreement that applies to employees described in subsection (1), the local trade union is deemed to be a party, together with the parent trade union, to the collective agreement with respect to the jurisdiction of the local trade union.

Council

(4) The Minister may, upon such conditions as the Minister considers appropriate, require a parent trade union and its local trade unions to form a council of trade unions for the purpose of conducting bargaining and concluding a collective agreement,

- (a) if an affected local trade union, parent trade union or employer requests the Minister to do so; and
- (b) if the Minister considers that doing so is necessary to resolve a disagreement between a parent trade union and a local trade union concerning conducting bargaining or concluding a collective agreement.

Rules of operation, etc.

(5) The Minister may make rules governing the formation or operation of the council of trade unions, including the ratification of collective agreements, if the parent trade union and the local trade unions do not make their own rules within 60 days after the Minister’s decision under subsection (4).

Compliance

(6) The parent trade union and the local trade unions shall comply with rules made by the Minister. 1995, c. 1, Sched. A, s. 146.

Jurisdiction of the local trade union

147. (1) A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise.

Notice

(2) The parent trade union shall give the local trade union written notice of an alteration at least 15 days before it comes into effect.

Determination of just cause

(3) On an application relating to this section, the Board shall consider the following when deciding whether there is just cause for an alteration:

1. The trade union constitution.
2. The ability of the local trade union to carry out its duties under this Act.
3. The wishes of the members of the local trade union.
4. Whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems.

Same

(4) The Board is not bound by the trade union constitution when deciding whether there is just cause for an alteration.

Complaint

(5) If a local trade union makes a complaint to the Board concerning the alteration of its jurisdiction by a parent trade union, the alteration shall be deemed not to have been effective until the Board disposes of the matter. 1995, c. 1, Sched. A, s. 147.

Province-wide agreements

148. (1) This section applies if, on May 1, 1992,

- (a) a parent trade union was party to a collective agreement whose geographic scope included the province and which applied to employees described in subsection 146 (1); or
- (b) a parent trade union had given notice to bargain for the renewal of such a collective agreement.

Sections 146 and 147

(2) Sections 146 and 147 do not operate to authorize a local trade union to enter into a separate collective agreement or a separate renewal collective agreement or to alter the geographic scope of the collective agreement. 1995, c. 1, Sched. A, s. 148.

Interference with the local trade union

149. (1) A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control of or otherwise interfere with a local trade union directly or indirectly in such a way that the autonomy of the local trade union is affected.

Same, officials and members

(2) A parent trade union or a council of trade unions shall not, without just cause, remove from office, change the duties of an elected or appointed official of a local trade union or impose a penalty on such an official or on a member of a local trade union.

Board powers

(3) On an application relating to this section, when deciding whether there is just cause, the Board shall consider the trade union constitution but is not bound by it and shall consider such other factors as it considers appropriate.

Orders when just cause

(4) If the Board determines that an action described in subsection (1) was taken with just cause, the Board may make such orders and give such directions as it considers appropriate, including orders respecting the continuation of supervision or control of the local trade union. 1995, c. 1, Sched. A, s. 149.

Administration of benefit plans

150. (1) If benefits are provided under an employment benefit plan primarily to members of one local trade union or to their dependants or beneficiaries, the local trade union is entitled to appoint at least a majority of the trustees who administer the plan, excluding the trustees who are appointed by employers.

Same, more than one local trade union

(2) If benefits are provided under such a plan primarily to members of more than one local trade union or to their dependants or beneficiaries, those local trade unions are entitled together to appoint at least a majority of the trustees who administer the plan, excluding the trustees who are appointed by employers.

Same, members outside Ontario

(3) If, in the circumstances described in subsection (2), benefits are provided to members outside of Ontario or to their dependants or beneficiaries, the local trade unions are entitled together to appoint that proportion of the trustees (excluding trustees appointed by employers) that corresponds to the proportion that the members in Ontario of the local trade unions bear to the total number of members participating in the plan.

Effect of agreement

(4) Subsections (1), (2) and (3) apply despite any provision to the contrary in any agreement or other document.

Appointment process

(5) Unless otherwise agreed by the interested local trade unions, the appointment of trustees under subsection (2) or (3) shall be determined by a majority vote of those local trade unions voting, with each local trade union being entitled to cast a single ballot.

Definition

(6) In this section,

“employment benefit plan” means a plan that provides any type of benefit to an individual or his or her dependants or beneficiaries because of the individual’s employment or his or her membership in a trade union and includes a pension plan or another arrangement whereby money is contributed by or on behalf of the individual for retirement purposes. 1995, c. 1, Sched. A, s. 150.

RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY

Interpretation

Geographic area of application of ss. 150.2 to 150.4

150.1 (1) Sections 150.2, 150.3 and 150.4 apply only with respect to the geographic areas of jurisdiction of the following municipalities:

1. The City of Toronto.
2. The Regional Municipality of Halton.
3. The Regional Municipality of Peel.
4. The Regional Municipality of York.
5. The Regional Municipality of Durham.
6. The Corporation of the County of Simcoe. 2005, c. 15, s. 9.

Definition

(2) In sections 150.2, 150.3 and 150.4,

“residential work” means work performed in the residential sector of the construction industry. 2005, c. 15, s. 9.

Deemed expiry of collective agreements

Collective agreements in existence before April 30, 2007

150.2 (1) A collective agreement between an employer or employers’ organization and a trade union or council of trade unions that applies with respect to residential work shall be deemed to expire with respect to residential work on April 30, 2007 if,

- (a) it is in effect on May 1, 2005, or it comes into effect after May 1, 2005 but before April 30, 2007; and
- (b) it is to expire on a date other than April 30, 2007. 2005, c. 15, s. 9.

First contracts in existence on or after April 30, 2007

(2) A first collective agreement that applies with respect to residential work and comes into effect on or after April 30, 2007 shall be deemed to expire with respect to residential work on the next April 30, calculated triennially from April 30, 2007. 2005, c. 15, s. 9.

Renewal and replacement agreements

(3) Every collective agreement that is a renewal or replacement of a collective agreement to which subsection (1) or (2) applies, or of a collective agreement to which this subsection applies, shall be deemed to expire with respect to residential work on the next April 30, calculated triennially from April 30, 2010. 2005, c. 15, s. 9.

No extension permitted

(4) The parties to a collective agreement described in subsection (1), (2) or (3) may not agree to continue the operation of that agreement with respect to residential work beyond the relevant expiry date and any renewal provision in a collective agreement that purports to do so shall be deemed to be void. 2005, c. 15, s. 9.

Notice of desire to bargain

(5) A notice of desire to bargain for the renewal or replacement of a collective agreement to which subsection (1), (2) or (3) applies may be given on or after January 1 in the year of expiry. 2005, c. 15, s. 9.

Application of subss. (1) to (3)

(6) Subsections (1), (2) and (3) apply even if the collective agreement would have a term of less than one year as a result. 2005, c. 15, s. 9.

Collective agreements not affected re other work

(7) Nothing in this section shall be interpreted to affect the validity of a collective agreement to which this section applies with respect to work other than residential work performed in the geographic areas described in subsection 150.1 (1). 2005, c. 15, s. 9.

Prohibition, strikes and lockouts

Strike

150.3 (1) No individual represented by a trade union or council of trade unions that is seeking to renew or replace a collective agreement that expires on April 30 in a given year according to section 150.2 shall commence or continue a strike after June 15 of that year with respect to residential work. 2005, c. 15, s. 9.

Calling strike

(2) No trade union or council of trade unions that is seeking to renew or replace a collective agreement that expires on April 30 in a given year according to section 150.2 shall call or authorize a strike or the continuation of a strike after June 15 of that year with respect to residential work. 2005, c. 15, s. 9.

Lock-out

(3) No employer or employers' organization that is seeking to renew or replace a collective agreement that expires on April 30 in a given year according to section 150.2 shall commence or continue a lock-out after June 15 of that year with respect to residential work. 2005, c. 15, s. 9.

Calling lock-out

(4) No employer or employers' organization that is seeking to renew or replace a collective agreement that expires on April 30 in a given year according to section 150.2 shall call or authorize a lock-out or the continuation of a lock-out after June 15 of that year with respect to residential work. 2005, c. 15, s. 9.

Arbitration

150.4 (1) Subject to subsection (2), either party to negotiations for the renewal or replacement of a collective agreement that expires on April 30 in a given year according to section 150.2 may, by notice given in accordance with subsection (4), require that the matters in dispute between them be decided by arbitration. 2005, c. 15, s. 9.

Restriction

- (2) A party shall not give notice under subsection (1) until the later of,
- (a) the day on which a strike or lock-out would have been legal had it not been for section 150.3; and
 - (b) June 15 of the year in which the collective agreement that is being renewed or replaced expires. 2005, c. 15, s. 9.

Exception

- (3) Despite subsection (2), notice under subsection (1) may be given at any time after April 30 of the relevant year if,
- (a) notice of desire to bargain has been given; and
 - (b) both parties agree that notice may be given under subsection (1). 2005, c. 15, s. 9.

Notice

- (4) The notice shall be given in writing to the other party and to the Minister. 2005, c. 15, s. 9.

Effect of notice

- (5) If notice is given under subsection (1),
- (a) the parties may jointly appoint an arbitrator or either party may request the Minister in writing to appoint an arbitrator;
 - (b) if subsection (3) applies,
 - (i) the Minister shall not appoint a conciliation officer, a conciliation board or a mediator, and
 - (ii) the appointment of any previously appointed conciliation officer, conciliation board or mediator shall be deemed to be terminated; and
 - (c) subject to subsection (6), all terms and conditions of employment and all rights, privileges and duties that existed under the collective agreement that expired on April 30 of the relevant year shall apply with respect to the employer, the trade union and the employees, as the case may be, during the period beginning on the day on which notice was given and ending on the day,
 - (i) the collective agreement is renewed or replaced, or
 - (ii) the right of the trade union to represent the employees is terminated. 2005, c. 15, s. 9.

Exception

(6) The employer and the trade union may agree to alter a term or condition of employment or a right, privilege or duty referred to in clause (5) (c). 2005, c. 15, s. 9.

Minister to appoint arbitrator

(7) Upon receiving a request under clause (5) (a), the Minister shall appoint an arbitrator. 2005, c. 15, s. 9.

Replacement

(8) If the arbitrator who is appointed is unable or unwilling to perform his or her duties, a new arbitrator shall be appointed in accordance with subsections (5) and (7). 2005, c. 15, s. 9.

Appointment and proceedings not to be questioned

(9) The appointment of a person as an arbitrator under this section shall be conclusively presumed to have been properly made, and no application shall be made to question the appointment or to prohibit or restrain any of the arbitrator's proceedings. 2005, c. 15, s. 9.

Fees and expenses

(10) Each party shall pay one-half of the arbitrator's fees and expenses. 2005, c. 15, s. 9.

Arbitration method and procedure

(11) If the parties do not agree on the method of arbitration or the arbitration procedure, the method or procedure, as the case may be, shall be as prescribed by the regulations. 2005, c. 15, s. 9.

Non-application of *Arbitration Act, 1991*

(12) The *Arbitration Act, 1991* does not apply to an arbitration under this section. 2005, c. 15, s. 9.

Regulations

(13) The Lieutenant Governor in Council may make regulations,

- (a) prescribing a method of arbitration, which may be mediation-arbitration, final offer selection or any other method of arbitration;
- (b) prescribing an arbitration procedure;
- (c) prescribing the powers of an arbitrator;
- (d) prescribing a scale of fees and expenses allowable to arbitrators with respect to their duties under this section and limiting or restricting the application of those fees or expenses;
- (e) providing a procedure for the review and determination of disputes concerning the fees and expenses charged or claimed by an arbitrator;
- (f) governing the filing of schedules of fees and expenses by arbitrators, requiring arbitrators to provide parties with a copy of the schedules upon being appointed and requiring arbitrators to charge fees and expenses in accordance with the filed schedules;
- (g) providing for the circumstances under which the jurisdiction of the arbitrator may be limited where the parties have agreed to some of the matters in dispute;
- (h) prescribing time limits for the commencement of arbitration proceedings or for the rendering of the arbitrator's decision and providing for the extension of those time limits;
- (i) requiring the parties to prepare and execute documents giving effect to the arbitrator's decision, requiring the arbitrator to prepare those documents if the parties fail to do so and providing for the deemed execution of the documents if either or both of the parties do not execute them. 2005, c. 15, s. 9.

Meetings at Director's discretion

150.5 (1) The Director of Dispute Resolution Services may, at his or her discretion, convene meetings of representatives of employers or employers' organizations and of trade unions or councils of trade unions to discuss matters of interest relating to collective bargaining and labour relations in the residential sector of the construction industry. 2005, c. 15, s. 9; 2009, c. 33, Sched. 20, s. 2 (10).

Same

(2) In deciding when and whether to convene a meeting under subsection (1), the Director may consider whether a meeting is necessary or would be beneficial and may consider a request made by a representative. 2005, c. 15, s. 9.

Selection

(3) The representatives invited to attend a meeting convened under subsection (1) shall be selected by the Director of Dispute Resolution Services in his or her sole discretion. 2005, c. 15, s. 9; 2009, c. 33, Sched. 20, s. 2 (11).

Continued application of former provisions

150.6 (1) Former subsections 150.2 (1) to (17), as enacted by the Statutes of Ontario, 2002, chapter 18, Schedule J, section 4, continue to apply, despite their repeal by former subsection 150.2 (18) on April 30, 2005, for the purposes of any arbitration proceedings commenced under that former section 150.2 that are not completed on May 1, 2005. 2005, c. 15, s. 9.

Same

(2) Former subsections 150.2 (1) to (17), as enacted by the Statutes of Ontario, 2000, chapter 24, section 3, continue to apply, despite their repeal on April 30, 2002, for the purposes of any arbitration proceedings commenced under that former section 150.2 that were not completed before April 30, 2002. 2005, c. 15, s. 9.

PROVINCE-WIDE BARGAINING

Interpretation, application, designations

151. (1) In this section and in sections 144 and 153 to 168,

“affiliated bargaining agent” means a bargaining agent that, according to established trade union practice in the construction industry, represents employees who commonly bargain separately and apart from other employees and is subordinate or directly related to, or is, a provincial, national or international trade union, and includes an employee bargaining agency; (“agent négociateur affilié”)

“bargaining”, except when used in reference to an affiliated bargaining agent, means province-wide, multi-employer bargaining in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126; (“négociation”)

“designated regional employers’ organization” means an organization of employers that operate businesses in a particular geographic area in the construction industry if that organization is designated as such by the Minister; (“association patronale régionale désignée”)

“employee bargaining agency” means an organization of affiliated bargaining agents that are subordinate or directly related to the same provincial, national or international trade union, and that may include the parent or related provincial, national or international trade union, formed for purposes that include the representation of affiliated bargaining agents in bargaining and which may be a single provincial, national or international trade union; (“organisme négociateur syndical”)

“employer bargaining agency” means an employers’ organization or group of employers’ organizations formed for purposes that include the representation of employers in bargaining; (“organisme négociateur patronal”)

“provincial agreement” means an agreement in writing covering the whole of the Province of Ontario between a designated or accredited employer bargaining agency that represents employers, on the one hand, and a designated or certified employee bargaining agency that represents affiliated bargaining agents, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer bargaining agency, the employers represented by the employer bargaining agency and for whose employees the affiliated bargaining agents hold bargaining rights, the affiliated bargaining agents represented by the employee bargaining agency, or the employees represented by the affiliated bargaining agents and employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126. (“convention provinciale”) 1995, c. 1, Sched. A, s. 151 (1); 2000, c. 24, s. 4 (1); 2005, c. 15, s. 10.

Deemed recognition of affiliated bargaining agents

(2) Where an employer is represented by a designated or accredited employer bargaining agency, the employer shall be deemed to have recognized all of the affiliated bargaining agents represented by a designated or certified employee bargaining agency that bargains with the employer bargaining agency as the bargaining agents for the purpose of collective bargaining in their respective geographic jurisdictions in respect of the employees of the employer employed in the industrial, commercial or institutional sector of the construction industry, referred to in the definition of “sector” in section 126, except those employees for whom a trade union other than one of the affiliated bargaining agents holds bargaining rights. 1995, c. 1, Sched. A, s. 151 (2).

Designation of regional employers’ organizations

(3) The Minister may, upon the terms and conditions the Minister considers appropriate, designate regional employers' organizations. 2000, c. 24, s. 4 (2).

Non-application

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a designation made under subsection (3). 2000, c. 24, s. 4 (2); 2006, c. 21, Sched. F, s. 136 (1).

152. REPEALED: 2000, c. 38, s. 31.

Powers of Minister

153. (1) The Minister may, upon such terms and conditions as the Minister considers appropriate,

- (a) designate employee bargaining agencies to represent in bargaining provincial units of affiliated bargaining agents, and describe those provincial units;
- (b) despite an accreditation of an employers' organization as the bargaining agent of employers, designate employer bargaining agencies to represent in bargaining provincial units of employers for whose employees affiliated bargaining agents hold bargaining rights, and describe those provincial units. 1995, c. 1, Sched. A, s. 153 (1).

Exclusion of certain bargaining relationships

(2) Where affiliated bargaining agents that are subordinate or directly related to the different provincial, national or international trade unions bargain as a council of trade unions with a single employer bargaining agency for a province-wide collective agreement, the Minister may exclude such bargaining relationships from the designations made under subsection (1), and subsection 162 (2) shall not apply to such exclusion. 1995, c. 1, Sched. A, s. 153 (2).

Minister may convene conference

(3) Where a designation is not made by the Minister of an employee bargaining agency or an employer bargaining agency under subsection (1) within 60 days after October 27, 1977, the Minister may convene a conference of trade unions, councils of trade unions, employers and employers' organizations, as the case may be, for the purpose of obtaining recommendations with respect to the making of a designation. 1995, c. 1, Sched. A, s. 153 (3).

Reference of question

(4) The Minister may refer to the Board any question that arises concerning a designation, or any terms or conditions therein, and the Board shall report to the Minister its decision on the question. 1995, c. 1, Sched. A, s. 153 (4).

Minister may alter, etc., designation

(5) Subject to sections 154 and 155, the Minister may alter, revoke or amend any designation from time to time and may make another designation. 1995, c. 1, Sched. A, s. 153 (5).

Non-application

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a designation made under subsection (1). 1995, c. 1, Sched. A, s. 153 (6); 2006, c. 21, Sched. F, s. 136 (1).

Application to Board by employee bargaining agency

154. (1) During the period between the 120th and the 180th days prior to the termination of a provincial agreement, an employee bargaining agency, whether designated or not, may apply to the Board to be certified to represent in bargaining a provincial unit of affiliated bargaining agents.

Certification by Board

(2) Where the Board is satisfied that a majority of the affiliated bargaining agents falling within the provincial unit is represented by the employee bargaining agency and that the majority of affiliated bargaining agents holds bargaining rights for a majority of employees that would be bound by a provincial agreement, the Board shall certify the employee bargaining agency. 1995, c. 1, Sched. A, s. 154.

Application to Board by employer bargaining agency

155. (1) During the period between the 120th and the 180th days prior to the termination of a provincial agreement, an employer bargaining agency, whether designated or not, may apply to the Board to be accredited to represent in bargaining a provincial unit of employers for whose employees affiliated bargaining agents hold bargaining rights.

Accreditation by Board

(2) Where the Board is satisfied that a majority of employers falling within the provincial unit is represented by the employer bargaining agency and that the majority of employers employ a majority of the employees for whom the affiliated

bargaining agents hold bargaining rights, the Board shall accredit the employer bargaining agency. 1995, c. 1, Sched. A, s. 155.

Employee bargaining agencies, vesting of rights, etc.

156. Where an employee bargaining agency has been designated under section 153 or certified under section 154 to represent a provincial unit of affiliated bargaining agents, all rights, duties and obligations under this Act of the affiliated bargaining agents for which it bargains shall vest in the employee bargaining agency, but only for the purpose of conducting bargaining and, subject to the ratification procedures of the employee bargaining agency, concluding a provincial agreement. 1995, c. 1, Sched. A, s. 156.

Employer bargaining agencies, vesting of rights, etc.

157. Where an employer bargaining agency has been designated under section 153 or accredited under section 155 to represent a provincial unit of employers,

- (a) all rights, duties and obligations under this Act of employers for which it bargains shall vest in the employer bargaining agency, but only for the purpose of conducting bargaining and concluding a provincial agreement; and
- (b) an accreditation heretofore made under section 136 of an employers' organization as bargaining agent of the employers in the industrial, commercial and institutional sector of the construction industry, referred to in the definition of "sector" in section 126, represented or to be represented by the employer bargaining agency is null and void from the time of such designation under section 153 or accreditation under section 155. 1995, c. 1, Sched. A, s. 157.

Bargaining agents in the industrial, commercial and institutional sector

158. (1) An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126 shall be brought by either,

- (a) an employee bargaining agency; or
- (b) one or more affiliated bargaining agents of the employee bargaining agency,

on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (2) or by voluntary recognition.

Saving

(2) Despite subsection 128 (1), a trade union represented by an employee bargaining agency may bring an application for certification in relation to a unit of employees employed in all sectors of a geographic area other than the industrial, commercial and institutional sector and the unit shall be deemed to be a unit of employees appropriate for collective bargaining.

Voluntary recognition agreements

(3) A voluntary recognition agreement in so far as it relates to the industrial, commercial and institutional sector of the construction industry shall be between an employer on the one hand and either,

- (a) an employee bargaining agency;
- (b) one or more affiliated bargaining agents represented by an employee bargaining agency; or
- (c) a council of trade unions on behalf of one or more affiliated bargaining agents affiliated with the council of trade unions,

on the other hand, and shall be deemed to be on behalf of all the affiliated bargaining agents of the employee bargaining agency and the defined bargaining unit in the agreement shall include those employees who would be bound by a provincial agreement.

Exception

(4) Despite subsections (1) and (3), a trade union that is not represented by a designated or certified employee bargaining agency may bring an application for certification or enter into a voluntary recognition agreement on its own behalf. 1995, c. 1, Sched. A, s. 158.

Voting constituency

159. (1) The Board shall determine the voting constituency to be used for a representation vote. 1995, c. 1, Sched. A, s. 159 (1).

Direction for representation vote

(2) If the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the trade unions at the time the application was filed, the Board shall direct that a representation vote be taken among the individuals in the voting constituency. 1995, c. 1, Sched. A, s. 159 (2).

Election under s. 128.1

(3) This section does not apply when an application for certification is being dealt with under section 128.1. 2005, c. 15, s. 11.

Certification after representation vote

160. (1) Subject to section 11.1, the Board shall certify the trade unions on whose behalf an application for certification is brought as the bargaining agent of the employees in the bargaining unit if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade unions. The Board shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas. 1995, c. 1, Sched. A, s. 160 (1); 2005, c. 15, s. 12 (1).

Remedial certification

(2) If the Board certifies the trade unions on whose behalf an application for certification is brought as the bargaining agent of the employees in the bargaining unit under clause 11 (2) (c), the Board shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas. 2005, c. 15, s. 12 (2).

Bar to reapplying

(3) If the Board dismisses an application for certification under this section, the Board shall not consider another application for certification by the employee bargaining agency or the affiliated bargaining agent or agents to certify the trade unions as bargaining agent for the employees in the bargaining unit until one year has elapsed after the dismissal. 1995, c. 1, Sched. A, s. 160 (3).

Election under s. 128.1

(4) This section does not apply when an application for certification is being dealt with under section 128.1. 2005, c. 15, s. 12 (3).

160.1 REPEALED: 2000, c. 24, s. 5 (2).

Termination of collective agreement

161. (1) Subject to subsection (2), any collective agreement in operation on October 27, 1977 in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126 and represented by affiliated bargaining agents is enforceable by and binding on the parties thereto only for the remainder of the term of operation of the agreement, regardless of any provision respecting its renewal. 1995, c. 1, Sched. A, s. 161 (1).

Same

(2) Every collective agreement in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126 and represented by affiliated bargaining agents entered into after January 1, 1977 and before April 30, 1978 shall be deemed to expire not later than April 30, 1978, regardless of any provision respecting its term of operation or its renewal. 1995, c. 1, Sched. A, s. 161 (2); 2000, c. 38, s. 34 (1).

Provincial agreement binding

(3) Where any collective agreement mentioned in subsection (1) ceases to operate, the affiliated bargaining agent, the employer and the employees for whom the affiliated bargaining agent holds bargaining rights shall be bound by the provincial agreement made between an employee bargaining agency representing the affiliated bargaining agent and the employer bargaining agency representing the employer. 1995, c. 1, Sched. A, s. 161 (3).

Same

(4) After April 30, 1978, where an affiliated bargaining agent obtains bargaining rights through certification or voluntary recognition in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126, the employer, the affiliated bargaining agent, and the

employees for whom the affiliated bargaining agent has obtained bargaining rights are bound by the provincial agreement made between an employee bargaining agency representing the affiliated bargaining agent and an employer bargaining agency representing a provincial unit of employers in which the employer would have been included. 1995, c. 1, Sched. A, s. 161 (4).

When provincial agreement ceases to operate

(5) Where, under the provisions of this section, an employer, affiliated bargaining agent or employees become bound by a provincial agreement after the agreement has commenced to operate, the agreement ceases to be binding on the employer, affiliated bargaining agent or employees in accordance with the terms thereof. 1995, c. 1, Sched. A, s. 161 (5); 2000, c. 38, s. 34 (2).

Agency shall make only one agreement

162. (1) An employee bargaining agency and an employer bargaining agency shall make only one provincial agreement for each provincial unit that it represents. 1995, c. 1, Sched. A, s. 162 (1).

No agreement other than provincial agreement

(2) Subject to sections 153, 161, 163.1, 163.2 and 163.3, no person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations or employer bargaining agency shall bargain for, attempt to bargain for, or conclude any collective agreement or other arrangement affecting employees represented by affiliated bargaining agents other than a provincial agreement as contemplated by subsection (1), and any collective agreement or other arrangement that does not comply with subsection (1) is null and void. 1995, c. 1, Sched. A, s. 162 (2); 1998, c. 8, s. 20; 2000, c. 24, s. 6; 2009, c. 33, Sched. 20, s. 2 (12).

Expiry of provincial agreement

(3) Every provincial agreement shall provide for the expiry of the agreement on April 30 calculated triennially from April 30, 1992. 1995, c. 1, Sched. A, s. 162 (3).

Provincial agreements

Non-application of s. 57

163. (1) Section 57 does not apply to a designated or accredited employer bargaining agency or a designated or certified employee bargaining agency.

Provincial agreement binding

(2) A provincial agreement is, subject to and for the purposes of this Act, binding upon the employer bargaining agency, the employers represented by the employer bargaining agency, the employee bargaining agency, the affiliated bargaining agents represented by the employee bargaining agency, the employees represented by the affiliated bargaining agents and employed in the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126, and upon such employers, affiliated bargaining agents and employees as may be subsequently bound by the said agreement.

Parties

(3) Any employee bargaining agency, affiliated bargaining agent, employer bargaining agency and employer bound by a provincial agreement shall be considered to be a party for the purposes of section 133. 1995, c. 1, Sched. A, s. 163.

Project agreements

163.1 (1) A proponent of a construction project or a group of construction projects who believes that the project or projects are economically significant and who wishes to have a project agreement for the project or projects shall do the following:

1. Create a list of potential parties to the agreement, consisting of bargaining agents, subject to subsection (2).
2. Give each bargaining agent on the list a notice that the proponent wishes to have a project agreement and include with the notice a copy of the list, a general description of each of the projects which are proposed to be covered under the agreement and the estimated cost of each project.
3. Give a copy of the notice to each employee bargaining agency to which any of the bargaining agents on the list belong.
4. Give a copy of the notice to each employer bargaining agency that is a party to a provincial agreement by which a bargaining agent on the list is bound.
5. Give the Board a copy of the notice and evidence, in such form as the Board requires, that the notice has been given to each bargaining agent on the list. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (1, 2).

Requirements for list of potential parties

(2) The following apply with respect to the list of potential parties created by the proponent:

1. A bargaining agent may be included on the list only if it is bound by a provincial agreement.
2. A bargaining agent may be included on the list only if the proponent anticipates that any project that is proposed to be covered under the project agreement may include work within the bargaining agent's geographic jurisdiction for which the bargaining agent would select, refer, assign, designate or schedule persons for employment. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (3).

Objection to Board

(3) A bargaining agent on the list may apply to the Board for an order that a project may not be the subject of a project agreement and the following apply with respect to such an application:

1. The application must be made within 14 days after receiving the notice that the proponent wishes to have a project agreement.
2. The parties to the application are the applicant, the proponent and such other persons as may be prescribed under the regulations or as may be specified by the Board in accordance with the regulations.
3. The Board shall dismiss the application if the project is an industrial project in the industrial, commercial and institutional sector of the construction industry.
4. The Board shall dismiss the application if the project is designated in the regulations as a project that may be the subject of a project agreement.
5. If neither paragraph 3 nor 4 apply, the Board shall grant the application and make an order that the project may not be the subject of a project agreement.
6. An order under paragraph 5 does not affect the preparation of another list and the giving of other notices under subsection (1) even if they relate to the same project. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (4, 5).

Contents of project agreement

(4) A project agreement must contain,

- (a) a general description of each project covered under the project agreement; and
- (b) a term providing that the agreement is in effect until every project covered under the agreement is completed or abandoned. 2000, c. 38, s. 35 (6).

Same

(4.1) A project agreement may contain a term providing that additional projects may be added to and governed by the project agreement. 2000, c. 38, s. 35 (6).

Notice of proposed agreement

(5) The proponent may give notice of a proposed project agreement if at least 40 per cent of the bargaining agents on the list agree, in writing, to the giving of the notice. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Who notice given to

(6) If the proponent gives notice under subsection (5), the proponent must give notice to each bargaining agent on the list, and the proponent shall also give a copy of the notice to the Board. 1998, c. 8, s. 21.

Content of notice

(7) A notice under subsection (5) must include,

- (a) a copy of the proposed project agreement; and
- (b) the names of the bargaining agents on the list that have agreed to the giving of the notice. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Approval of agreements

(8) The following apply with respect to the approval of a project agreement:

1. A bargaining agent on the list that wishes to approve or disapprove of the proposed agreement shall do so by giving notice of that approval or disapproval to the proponent within 30 days after receiving notice of the proposed agreement.

2. A bargaining agent that gives notice of approval or disapproval shall also give a copy of the notice to the Board.
3. The proposed agreement is approved if the agreement is approved by at least 60 per cent of the bargaining agents that gave notice, either of approval or disapproval, within the time period for doing so.
4. After the time period for every bargaining agent on the list to approve or disapprove has expired, the proponent shall forthwith determine whether the proposed agreement has been approved.
5. If the proponent determines that the proposed agreement has been approved, the proponent shall forthwith give notice that the proposed agreement has been approved to every bargaining agent on the list and shall give the Board a copy of the notice and evidence, in such form as the Board requires, that the notice has been given to each bargaining agent on the list.
6. If the proponent determines that the proposed agreement has not been approved, the proponent shall forthwith give notice that the proposed agreement has not been approved to every bargaining agent on the list and shall give the Board a copy of the notice. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Challenges to agreement

(9) A bargaining agent on the list that did not give notice of approval of the proposed project agreement may challenge the proposed project agreement by giving notice to the Board within 10 days after the Board receives the evidence described in paragraph 5 of subsection (8) and the following apply with respect to such a challenge:

1. The Board shall make an order either declaring that the proposed project agreement is in force or declaring that the proposed project agreement shall not come into force.
2. Paragraphs 3 and 4 apply if,
 - i. the bargaining agent challenging the proposed project agreement gave notice of disapproval of the project agreement, and
 - ii. the proposed project agreement would result in a reduction in the total wages and benefits, expressed as a rate, of an employee represented by the bargaining agent challenging the project agreement that is larger, proportionally, than the largest reduction that would apply to an employee represented by a bargaining agent that gave notice of approval of the project agreement.
3. In the circumstances described in paragraph 2, the Board shall make an order doing the following, unless the Board considers it inappropriate to do so,
 - i. amending the proposed project agreement so that no reduction in the total wages and benefits, expressed as a rate, of an employee represented by the bargaining agent challenging the project agreement is greater, proportionally, than the largest reduction that would apply to an employee represented by a bargaining agent that gave notice of approval of the project agreement, and
 - ii. declaring that the proposed project agreement, as amended, is in force.
4. In the circumstances described in paragraph 2, if the Board considers it inappropriate to make an order under paragraph 3, the Board may make an order declaring that the proposed project agreement shall not come into force.
5. The Board may make an order declaring that the proposed project agreement shall not come into force if the requirements of subsections (1) to (8) have not been satisfied and the failure to satisfy the requirements affected the bargaining agent challenging the project agreement.
6. In the circumstances prescribed in the regulations, the Board may make an order declaring that the proposed project agreement shall not come into force. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

When agreement comes into force

(10) A project agreement comes into force upon the Board making an order declaring that the proposed project agreement is in force or, if the project agreement is not challenged under subsection (9), upon the expiry of the time period for making such a challenge. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Notice of agreement in force

(11) If the project agreement comes into force, the proponent shall forthwith give notice that the project agreement is in force to the agents and agencies described in subsection (13). 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Notice of order not to come into force

(12) If the Board makes an order declaring that the proposed project agreement shall not come into force, the proponent shall forthwith give notice of that order to the agents and agencies described in subsection (13). 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Who notices given to

(13) The agents and agencies referred to in subsections (11) and (12) are the bargaining agents, employee bargaining agencies and employer bargaining agencies to which notice was given under subsection (1). 1998, c. 8, s. 21.

Effect of agreement

(14) The following apply with respect to projects to which a project agreement applies:

1. The project agreement applies to all construction work on the project that is within the jurisdiction of a bargaining agent on the list.
2. Each applicable provincial agreement, as modified by the project agreement, applies to the construction work on the project, even with respect to employers who would not otherwise be bound by the provincial agreement.
3. Subject to the project agreement, if a provincial agreement ceases to apply while the project agreement is in effect, the provincial agreement that applied when the project agreement was approved applies to the construction work on the project until a new provincial agreement is made. However, this paragraph does not apply with respect to provincial agreements that apply to work that the project agreement does not apply to.
4. No employees performing work to which the project agreement applies shall strike and no employer shall lock-out such employees while the project agreement is in effect even if a strike is called or authorized under subsection 164 (1) or a lock-out is called or authorized under subsection 164 (2).
5. For greater certainty, paragraph 4 does not affect the right to strike of an employee who performs work to which the project agreement does not apply nor does paragraph 4 affect the right of the employer to lock-out such an employee. 1998, c. 8, s. 21; 2000, c. 38, s. 35 (7).

Application of subs. (16)

(15) Subsection (16) applies if,

- (a) a trade union is a bargaining agent that received notice of the coming into force of a project agreement under subsection (11);
- (b) the trade union does not have bargaining rights with respect to employees of an employer; and
- (c) the employer employs members of the trade union to perform work on a project that is governed by that project agreement. 2000, c. 38, s. 35 (8).

No certification or voluntary recognition

(16) Regardless of whether the work the members of the trade union perform is inside or outside of the construction industry, if the circumstances set out in subsection (15) apply,

- (a) the employment of the members of the trade union before the project is completed or abandoned shall not be considered in any application for certification by the trade union with respect to the employer; and
- (b) any agreement under which the employer agrees to employ only members of the trade union for that work before the project is completed or abandoned but not afterwards shall be deemed not to be an agreement voluntarily recognizing the trade union as the exclusive bargaining agent of those employees. 2000, c. 38, s. 35 (8).

Not voluntary recognition

(16.1) A person shall be deemed not to have voluntarily recognized a trade union as an exclusive bargaining agent if,

- (a) the person is a party to an agreement or operates under an agreement under which an employer agrees to employ members of the trade union to perform work, regardless of whether the work is inside or outside of the construction industry;
- (b) the trade union is a bargaining agent to which notice of the coming into force of a project agreement was given under subsection (11); and
- (c) the agreement includes work on a project to which the project agreement applies. 2000, c. 38, s. 35 (8).

Not party to collective agreement

(17) The proponent and, if the proponent is an agent, the person who owns or has an interest in the land for which the project is planned, are not, only by reason of being a party or operating under the project agreement or an agreement that includes work on the project, parties to any collective agreement. 2000, c. 38, s. 35 (8).

Same, project agreement

(17.1) Subsections (15) to (17) apply with respect to agreements entered into before the day subsection 35 (8) of the *Labour Relations Amendment Act, 2000* is proclaimed in force. 2000, c. 38, s. 35 (8).

Definition

(18) In this section,

“proponent” means a person who owns or has an interest in the land for which the project is planned and includes an agent of such a person. 1998, c. 8, s. 21.

Adding new project to agreement

163.1.1 (1) This section applies if,

- (a) the proponent under an existing project agreement believes that a new construction project that is not included in the agreement is economically significant;
- (b) the proponent wishes to add the new project to be governed by the project agreement; and
- (c) the project agreement contains a term providing that additional projects may be added to and governed by the project agreement. 2000, c. 38, s. 36.

Notice to be given

(2) The proponent shall do the following:

1. Give notice that the proponent wishes to add a new project to be governed by an existing project agreement to the bargaining agents, employee bargaining agencies and employer bargaining agencies that received notice under subsection 163.1 (11).
2. Include with the notice a copy of the existing project agreement and a general description of the new project and its estimated cost.
3. Give the Board a copy of the notice and evidence, in the form required by the Board, that the notice has been given to each bargaining agent entitled to receive notice. 2000, c. 38, s. 36.

Challenge

(3) A bargaining agent entitled to receive notice under subsection (2) may apply to the Board for an order that the new project may not be the subject of the project agreement. 2000, c. 38, s. 36.

Same

(4) Subsection 163.1 (3) applies, with necessary modifications, to an application under subsection (3). 2000, c. 38, s. 36.

Application by bargaining agent

(5) A bargaining agent entitled to receive notice under subsection (2) may challenge the proposed addition of the new project to the existing project agreement by giving notice to the Board within 10 days after the Board receives a copy of the notice and evidence under paragraph 3 of subsection (2). 2000, c. 38, s. 36.

Decision of Board

(6) In a challenge under subsection (5), the Board shall make an order declaring that the new project shall not be added to the existing project agreement if the Board makes either of the following findings:

1. The project agreement does not contain a term that additional projects may be added to and governed by the project agreement.
2. The requirements in subsection (2) have not been satisfied and the failure to satisfy the requirements affected the bargaining agent making the challenge. 2000, c. 38, s. 36.

Same

(7) If the Board does not make any of the findings set out in subsection (6), the Board shall dismiss the challenge. 2000, c. 38, s. 36.

Notice that new project added

(8) The proponent may give notice to the bargaining agents, employee bargaining agencies and employer bargaining agencies specified in subsection (2) that the new project has been added to be governed by the project agreement if,

- (a) no application was made under subsection (3) within the time for making such an application;
- (b) no challenge is made under subsection (5) within the time for making such a challenge; or
- (c) the Board has dismissed any applications or challenges made under those subsections. 2000, c. 38, s. 36.

Effect of notice

(9) The following apply upon the proponent giving the notice under subsection (8):

1. The new project is added to the project agreement.
2. Subsections 163.1 (14), (15), (16) and (16.1) apply with respect to the new project on and after the day it is added to the project agreement. 2000, c. 38, s. 36.

Notice that new project not added

(10) If the Board grants an application made under subsection (3) or makes an order under subsection (6), the proponent shall give notice to the bargaining agents, employee bargaining agencies and employer bargaining agencies specified in subsection (2) that the new project has not been added to the project agreement. 2000, c. 38, s. 36.

Previous agreements re more than one project

(11) Multiple projects and the addition of new projects under a project agreement described in subsection (13) shall be governed in accordance with the project agreement and not in accordance with section 163.1 and subsections (1) to (10). 2000, c. 38, s. 36.

Previous agreements deemed valid

(12) The provisions in a project agreement described in subsection (13) dealing with multiple projects and the addition of new projects shall be deemed to be valid. 2000, c. 38, s. 36.

Same

(13) Subsections (11) and (12) apply with respect to a project agreement if notice was given under subsection 163.1 (11) with respect to the project agreement before November 2, 2000. 2000, c. 38, s. 36.

Local modifications to provincial agreement

163.2 (1) An employer bargaining agency that is a party to a provincial agreement may apply to an affiliated bargaining agent that is bound by that agreement to agree to amendments to the agreement which would apply to any of the following:

1. The kind of work performed, which could be all work performed in the industrial, commercial and institutional sector or a specified kind of that work.
2. The market in which it is performed, which could be work performed for all of the industrial, commercial and institutional sector or a specified market in it.
3. The location of the work, which could be work performed in all of the affiliated bargaining agent's geographic jurisdiction or a specified portion of it. 2000, c. 24, s. 7.

Same

(2) A designated regional employers' organization having members who are bound by a provincial agreement may apply to an affiliated bargaining agent that is bound by that agreement to agree to amendments to the agreement which would apply to any of the matters set out in paragraphs 1, 2 and 3 of subsection (1) if at least some of the members of the designated regional employers' organization who are bound by the provincial agreement carry on business in the area covered by the affiliated bargaining agent's geographic jurisdiction. 2000, c. 24, s. 7.

Restriction on timing of application

(3) No application shall be made under subsection (1) or (2) during the period of 120 days before the provincial agreement ceases to operate. 2000, c. 24, s. 7.

Restriction re amendments

(4) The application may seek only amendments that concern the following matters:

1. Wages, including overtime pay and shift differentials.

2. Restrictions on the hiring of employees who are members of another affiliated bargaining agent that is in the same employee bargaining agency as that in which the affiliated bargaining agent is a member but who are not members of the affiliated bargaining agent.
3. Restrictions on an employer's ability to select employees who are members of the affiliated bargaining agent.
4. Accommodation and travel allowances.
5. Requirements respecting the ratio of apprentices to journeypersons employed by an employer.
6. Hours of work and work schedules. 2000, c. 24, s. 7.

Form and content of application

- (5) The application shall be in writing and shall,
 - (a) state the kind of work, the specified market and the location with respect to which the amendments would apply;
 - (b) set out any submissions the applicant believes to be relevant to determine the question of whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage with respect to any of the matters referred to in clause (a); and
 - (c) set out the text of the amendments which are applied for. 2000, c. 24, s. 7.

Service of application

- (6) The applicant shall serve the application on the affiliated bargaining agent and shall serve a copy of it,
 - (a) on the employee bargaining agency of which the affiliated bargaining agent is a member;
 - (b) if the applicant is an employer bargaining agency, on any designated regional employers' organization having members who carry on a business in the area covered by the affiliated bargaining agent's geographic jurisdiction; and
 - (c) if the applicant is a designated regional employers' organization, on the employer bargaining agency that is a party to the provincial agreement and on any other designated regional employers' organization having members who carry on a business in the area covered by the affiliated bargaining agent's geographic jurisdiction. 2000, c. 24, s. 7.

Agreement on amendment

(7) Subject to subsections (8) and (9), if the applicant and the affiliated bargaining agent agree to amend the provincial agreement and the employee bargaining agency of which the affiliated bargaining agent is a member advises the applicant in writing that it approves of the amendments, the provincial agreement is amended accordingly, but only with respect to the kind of work, the market and the location specified in the application. 2000, c. 24, s. 7.

Agreement requirements

- (8) The agreement is not effective unless it is in writing and sets out the text of the amendments. 2000, c. 24, s. 7.

Additional requirement re designated regional employers' organization

(9) If the applicant is a designated regional employers' organization and the employer bargaining agency advises the employee bargaining agency in writing that it approves of the amendments that were agreed to under subsection (7), the provincial agreement shall be deemed to be so amended. 2000, c. 24, s. 7.

Bar to other applications

- (10) If an application has been made to an affiliated bargaining agent under this section, no other application may be made to that agent that would apply, in whole or in part, to the same kind of work with respect to the same market and in the same location,
 - (a) if the work, the market and the location are not the subject of a referral to an arbitrator under section 163.3, until six months and 21 days after the day on which the first application was served on the affiliated bargaining agent; and
 - (b) if the work, the market and the location are the subject of such a referral, until six months after the arbitration proceedings have terminated. 2000, c. 24, s. 7.

Application of section

(11) This section applies only with respect to provincial agreements that come into operation after the day section 7 of the *Labour Relations Amendment Act (Construction Industry)*, 2000 comes into force. 2000, c. 24, s. 7.

Referral to arbitration

163.3 (1) If a provincial agreement that is the subject of an application under section 163.2 is not amended in accordance with that section within 14 days after the day on which the application was served on the affiliated bargaining agent, the applicant may give notice to the bargaining agent that it is referring the matter to a single arbitrator. 2000, c. 24, s. 7.

Notice requirements

- (2) The notice of referral shall be in writing and shall,
 - (a) state the name of the individual whom the organization making the referral nominates as the arbitrator;
 - (b) set out the organization's final offer with respect to the text of the amendments that the organization proposes to be made to the provincial agreement; and
 - (c) be accompanied by copies of those statements and submissions under clauses 163.2 (5) (a) and (b) that were provided with the application made under subsection 163.2 (1) or (2). 2000, c. 24, s. 7.

Restriction re subject matter of amendments

(3) The amendments proposed in the final offer of the organization making the referral may deal only with those provisions of the provincial agreement that concern the matters permitted in the original application, as set out in subsection 163.2 (4). 2000, c. 24, s. 7.

Restriction re subject matter of amendments

(4) The organization making the referral may include in the notice of referral only those submissions that were included in the application under subsection 163.2 (1) or (2). 2000, c. 24, s. 7.

Service of notice

(5) The organization making the referral shall serve the notice of referral and the statements and submissions referred to in clause (2) (c) on the affiliated bargaining agent and shall serve a copy of the notice of referral without those statements and submissions,

- (a) on the employee bargaining agency of which the affiliated bargaining agent is a member;
- (b) if the organization making the referral is an employer bargaining agency, on any designated regional employers' organization having members who carry on a business in the area covered by the affiliated bargaining agent's geographic jurisdiction; and
- (c) if the organization making the referral is a designated regional employers' organization, on the employer bargaining agency that is a party to the provincial agreement and on any other designated regional employers' organization having members who carry on a business in the area covered by the affiliated bargaining agent's geographic jurisdiction. 2000, c. 24, s. 7.

Service of response

(6) Within seven days after being served with a notice of referral, the affiliated bargaining agent,

- (a) shall serve a response on the organization that made the referral; and
- (b) shall serve a copy of the response, without the submissions, if any, referred to in clause (7) (c), on the organizations described in clauses (5) (a), (b) and (c). 2000, c. 24, s. 7.

Form and content of response

(7) The response shall be in writing and,

- (a) shall state whether the affiliated bargaining agent agrees to the appointment of the individual whom the referrer nominated as the arbitrator and, if it does not agree, name the individual whom the affiliated bargaining agent nominates as arbitrator;
- (b) shall set out the affiliated bargaining agent's final offer with respect to the text of the amendments, if any, that it proposes to be made to the provincial agreement; and
- (c) shall set out any submissions that the affiliated bargaining agent believes are relevant to the question of whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage with respect to the kind of work, the market and the location to which the amendments would apply. 2000, c. 24, s. 7.

Joint appointment of arbitrator

(8) If the parties agree on the appointment of an arbitrator, they shall jointly appoint him or her and advise each organization that was served with copies of the notice of referral and response that they have done so. 2000, c. 24, s. 7.

Failure to appoint

(9) If, within seven days after the affiliated bargaining agent is served with a notice of referral under subsection (5), the bargaining agent and the organization making the referral have not appointed an arbitrator, either of them may make a written request to the Minister to appoint an arbitrator. 2000, c. 24, s. 7.

Appointment by Minister

(10) Within two days after receiving a request under subsection (9), the Minister shall appoint an arbitrator and shall inform the affiliated bargaining agent and the organization making the referral of the name and address of the arbitrator. 2000, c. 24, s. 7.

Replacement

(11) If the arbitrator who is appointed is unable or unwilling to perform his or her duties, a new arbitrator shall be appointed in accordance with subsections (8), (9) and (10). 2000, c. 24, s. 7.

Appointment and proceedings not to be questioned

(12) Where an individual has been appointed as an arbitrator under this section, it shall be presumed conclusively that the appointment was properly made and no application shall be made to question the appointment or to prohibit or restrain any of the arbitrator's proceedings. 2000, c. 24, s. 7.

Notice of appointment

(13) Where the Minister appoints an arbitrator, the parties shall advise each organization that was served with copies of the notice of referral and response that the Minister has done so. 2000, c. 24, s. 7.

Notice and response delivered to arbitrator

(14) When the organization making the referral and the affiliated bargaining agent appoint an arbitrator under subsection (8) or receive notice of an appointment under subsection (10), they shall each deliver to the arbitrator copies of the notice of referral and response, respectively. 2000, c. 24, s. 7.

Other organizations

(15) The organization making the referral shall advise the arbitrator of the names and mailing addresses of the organizations that were served with a copy of the notice of referral under clauses (5) (a), (b) or (c). 2000, c. 24, s. 7.

Submission re factual error

(16) If the organization that made the referral to the arbitrator believes that the affiliated bargaining agent's response under subsection (7) contains a factual error, the organization may make a written submission to the arbitrator concerning the alleged error. 2000, c. 24, s. 7.

Restriction

(17) The submission made under subsection (16) shall contain no new arguments in support of the organization's position with respect to the question of whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage. 2000, c. 24, s. 7.

Submission served on affiliated bargaining agent

(18) An organization that makes a written submission to the arbitrator under subsection (16) shall also serve that submission on the affiliated bargaining agent at the same time. 2000, c. 24, s. 7.

Response to submission under subs. (16)

(19) If the organization that made the referral makes a submission under subsection (16), the affiliated bargaining agent may make a written submission to the arbitrator in response and shall also serve a copy of it on the organization at the same time. 2000, c. 24, s. 7.

Restriction

(20) The submission made under subsection (19) shall contain no new arguments in support of the affiliated bargaining agent's position with respect to the question of whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage. 2000, c. 24, s. 7.

Written hearing

(21) After being appointed, the arbitrator shall hold a written hearing. 2000, c. 24, s. 7.

Restriction on what arbitrator may consider

(22) Subject to subsection (23), the arbitrator shall consider only the following when making a decision:

1. The statements and submissions under clauses 163.2 (5) (a) and (b) that were included with the original application under subsection 163.2 (1) or (2), as the case may be.
2. The final offer of the organization making the referral to arbitration.
3. The affiliated bargaining agent's final offer as set out under clause (7) (b).
4. The submissions contained in the affiliated bargaining agent's notice under clause (7) (c). 2000, c. 24, s. 7.

Use of submissions under subs. (16) and (19)

(23) The arbitrator may consider submissions made under subsections (16) and (19) but only with respect to matters of fact. 2000, c. 24, s. 7.

Same

(24) In considering a submission made under subsection (16) or (19), the arbitrator shall not consider any matters of opinion or any new arguments contrary to subsection (17) or (20). 2000, c. 24, s. 7.

Oral, electronic hearings

(25) The arbitrator may convene an oral or electronic hearing if he or she feels it is necessary to do so in order to resolve an issue arising from a submission made under subsection (16) or (19) or in order to resolve any other issue he or she feels cannot be adequately addressed without such a hearing. 2000, c. 24, s. 7.

Failure to serve an organization

(26) If the arbitrator becomes aware that an organization that should have been served with a copy of a notice of referral under subsection (5) or a copy of a response under subsection (6) was not so served, the arbitrator shall arrange for service on that organization. 2000, c. 24, s. 7.

Arbitrator's powers

(27) Subsection 48 (12) applies with necessary modifications with respect to the arbitrator. 2000, c. 24, s. 7.

No amendment of final offers

(28) The arbitrator shall not consider any purported amendment to a final offer. 2000, c. 24, s. 7.

Decision

- (29) After considering the submissions and final offers which he or she may consider under this section, the arbitrator,
- (a) shall determine whether the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage with respect to the kind of work, the market and the location indicated in the application;
 - (b) if the arbitrator finds that the provisions of the provincial agreement render employers who are bound by it at a competitive disadvantage, shall determine whether the competitive disadvantage would be removed if the provincial agreement were amended in accordance with either of the final offers;
 - (c) if amendment of the provincial agreement in accordance with only one of the final offers would remove the competitive disadvantage, shall select that final offer;
 - (d) if amendment of the provincial agreement in accordance with neither of the final offers would remove the competitive disadvantage, shall select the final offer that most reduces the disadvantage; and
 - (e) if amendment of the provincial agreement in accordance with either of the final offers would remove the competitive disadvantage, shall select the final offer that would be less of a deviation from the provincial agreement. 2000, c. 24, s. 7.

Timing of decision

(30) Subject to subsection (32), the arbitrator shall give his or her written decision to the parties and any organizations that were served under subsection (5) or (26) within 12 days after the day on which he or she was appointed. 2000, c. 24, s. 7.

No reasons

(31) The decision shall not include reasons. 2000, c. 24, s. 7.

Extension of time by agreement

(32) The time limit set out in subsection (30) may be extended by agreement of the organization that made the referral, the affiliated bargaining agent and all of the organizations that were served with copies of the notice of referral. 2000, c. 24, s. 7.

Parties to prepare document

(33) If the arbitrator selects a final offer containing amendments to the provincial agreement, the parties to the provincial agreement shall prepare and execute a document giving effect to his or her decision within five days after the organization that made the referral is advised of the arbitrator's decision. 2000, c. 24, s. 7.

When document prepared by arbitrator

(34) If the parties have not prepared and executed a document within the time required by subsection (33), either party may ask the arbitrator to prepare the document and the arbitrator shall do so and provide the document to the organization that made the referral. 2000, c. 24, s. 7.

Deemed execution

(35) If the arbitrator has prepared a document and either party to the provincial agreement has not executed it within five days after the arbitrator provided it to the organization that made the referral, the document shall be deemed to have been executed by both parties. 2000, c. 24, s. 7.

Effective date of amended provincial agreement

(36) The amendments to the provincial agreement, as they appear in the document prepared and executed under subsections (33) to (35), shall be deemed to have come into effect on the day of the arbitrator's decision. 2000, c. 24, s. 7.

Fees and expenses

(37) The organization that made the referral and the affiliated bargaining agent shall each pay one-half of the fees and expenses of the arbitrator. 2000, c. 24, s. 7.

Non-application of *Arbitration Act, 1991*

(38) The *Arbitration Act, 1991* does not apply to an arbitration under this section. 2000, c. 24, s. 7.

Judicial review

(39) On an application for judicial review of the arbitrator's decision, no determination or selection that the arbitrator was required to make under subsection (29) shall be overturned unless the determination or selection was patently unreasonable. 2000, c. 24, s. 7.

Application of section

(40) This section applies only with respect to provincial agreements that come into operation after the day section 7 of the *Labour Relations Amendment Act (Construction Industry), 2000* comes into force. 2000, c. 24, s. 7.

Sections 163.2 and 163.3

163.4 (1) For the purposes of sections 163.2 and 163.3, service may be effected,

- (a) in the case of service on an organization, by personal service on an officer of the organization or by facsimile transmission to the organization;
- (b) in the case of service on an individual, by personal service or by facsimile transmission. 2000, c. 24, s. 7.

Amendment deemed under s. 58 (5)

(2) An amendment to a provincial agreement made in accordance with section 163.2 or 163.3 shall be deemed to be a revision by mutual consent of the parties within the meaning of subsection 58 (5). 2000, c. 24, s. 7.

Where conflict

(3) If there is a conflict between an amendment to a provincial agreement made in accordance with section 163.2 or 163.3 and provisions that are deemed to be included in the provincial agreement under subsection 163.5 (1), the amendment to the provincial agreement prevails. 2000, c. 24, s. 7.

Election

163.5 (1) A provincial agreement shall be deemed to include the following provision with respect to an employer who is bound by it if the employer so elects:

- 1. Up to 75 per cent of the employees who perform work in fulfilling a contract for construction in the industrial, commercial and institutional sector of the construction industry may be individuals who were hired by the employer

without referral from or selection, designation, assignment or scheduling by or the concurrence of the affiliated bargaining agent in whose geographic jurisdiction the work is performed.

2. For the purposes of article 1, no more than 40 per cent of the employees who perform work in fulfilling the contract may be individuals who are not members of the affiliated bargaining agent in whose geographic jurisdiction the work is performed.
3. The percentages set out in articles 1 and 2 must apply with reference to the number of employees of the employer who perform work under the provincial agreement on each day during the period in which the contract is being fulfilled. 2000, c. 24, s. 8.

Scope of election

(2) The election may be made with respect to one or more or all of the construction contracts that the employer fulfils using employees who perform work under the provincial agreement. 2000, c. 24, s. 8.

Manner of election

(3) An election under subsection (1) shall be made by giving written notice of the election to the employee bargaining agency that is party to the provincial agreement. 2000, c. 24, s. 8.

Restriction re: membership in local

(4) Nothing in article 1 of the provision set out in subsection (1) permits an employer to employ an individual who is not a member of the affiliated bargaining agent in whose geographic jurisdiction the work is performed if,

- (a) the provincial agreement would prohibit that employment; and
- (b) the employment of the individual is not permitted under article 2 of the provision. 2000, c. 24, s. 8.

Restriction: membership in affiliate

(5) Nothing in article 2 of the provision set out in subsection (1) permits an employer to employ an individual who is not a member of an affiliated bargaining agent that is subordinate or directly related to the same provincial, national or international trade union as the affiliated bargaining agent in whose geographic jurisdiction the work is performed if the provincial agreement would prohibit that employment. 2000, c. 24, s. 8.

Inconsistency

(6) Subject to subsection 163.4 (3), a provision in a provincial agreement that is inconsistent with an article in the provision set out in subsection (1) is, to the extent of the inconsistency, of no effect. 2000, c. 24, s. 8.

Decreased percentages

(7) An employee bargaining agency and an employer bargaining agency may agree that an employer may not make the election under subsection (1) or may agree to either or both of the following:

1. That article 1 of the provision set out in subsection (1) shall be read as if it referred to a specified percentage less than 75 per cent.
2. That article 2 of the provision set out in subsection (1) shall be read as if it referred to a specified percentage less than 40 per cent. 2000, c. 24, s. 8.

Restriction re: impasse

(8) No strike or lock-out shall be called or authorized because there is a failure to reach an agreement under subsection (7). 2000, c. 24, s. 8.

Increased percentages

- (9) An employee bargaining agency and an employer bargaining agency may agree to any or all of the following:
1. That article 1 of the provision set out in subsection (1) shall be read as if it referred to a specified percentage of more than 75 per cent.
 2. That article 2 of the provision set out in subsection (1) shall be read as if it referred to a specified percentage of more than 40 per cent.
 3. That article 3 of the provision set out in subsection (1) shall be read as if it required the percentages set out in sections 1 and 2 of the provision to be applied with reference to the total number of employees of the employer who perform work under the provincial agreement during the entire period in which the contract is being fulfilled. 2000, c. 24, s. 8.

Non-application of section

(10) This section does not apply with respect to a project agreement made under section 163.1. 2000, c. 24, s. 8; 2000, c. 38, s. 37 (2).

Calling of strikes and lock-outs

Calling of strikes

164. (1) Where an employee bargaining agency desires to call or authorize a lawful strike, all of the affiliated bargaining agents it represents shall call or authorize the strike in respect of all the employees represented by all affiliated bargaining agents affected thereby in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126, and no affiliated bargaining agent shall call or authorize a strike of the employees except in accordance with this subsection.

Calling of lock-outs

(2) Where an employer bargaining agency desires to call or authorize a lawful lock-out, all employers it represents shall call or authorize the lock-out in respect of all employees employed by such employers and represented by all the affiliated bargaining agents affected thereby in the industrial, commercial and institutional sector of the construction industry referred to in the definition of “sector” in section 126 and no employer shall lock out the employees except in accordance with this subsection. 1995, c. 1, Sched. A, s. 164.

Who may vote, employees

165. (1) Where an employee bargaining agency or an affiliated bargaining agent conducts a strike vote relating to a provincial bargaining unit or a vote to ratify a proposed provincial agreement, the only persons entitled to cast ballots in the vote shall be,

- (a) employees in the provincial bargaining unit on the date the vote is conducted; and
- (b) persons who are members of the affiliated bargaining agent or employee bargaining agency and who are not employed in any employment,
 - (i) on the day the vote is conducted, if the vote is conducted at a time when there is no strike or lock-out relating to the provincial bargaining unit, or
 - (ii) on the day before the commencement of the strike or lock-out, if the vote is conducted during a strike or lock-out relating to the provincial bargaining unit. 1995, c. 1, Sched. A, s. 165 (1).

Same, employers

(2) Where an employer bargaining agency or employers’ organization conducts a lock-out vote relating to a provincial bargaining unit or a vote to ratify a proposed provincial agreement, the only employers entitled to cast ballots in the vote shall be employers represented by the employer bargaining agency or employers’ organization that employed,

- (a) on the day the vote is conducted, if the vote is conducted at a time when there is no strike or lock-out relating to the provincial bargaining unit; or
- (b) on the day before the commencement of the strike or lock-out, if the vote is conducted during a strike or lock-out relating to the provincial bargaining unit,

employees who are represented by the employee bargaining agency or an affiliated bargaining agent that would be affected by the lock-out or would be bound by the provincial agreement. 1995, c. 1, Sched. A, s. 165 (2).

No counting until all voting completed

(3) In a vote to ratify a proposed provincial agreement, no ballots shall be counted until the voting is completed throughout the province. 1995, c. 1, Sched. A, s. 165 (3).

Certification of compliance

(4) Within five days after a vote is completed, the employee bargaining agency, affiliated bargaining agent, employers’ organization or employer bargaining agency conducting the vote, as the case may be, shall file with the Minister a declaration in the prescribed form certifying the result of the vote and that it took reasonable steps to secure compliance with subsection (1) or (2), as the case may be, and with subsection (3). 1995, c. 1, Sched. A, s. 165 (4); 2009, c. 33, Sched. 20, s. 2 (13).

Complaints

(5) Where a complaint is made to the Minister that subsection (1), (2) or (3) has been contravened and that the result of a vote has been affected materially thereby, the Minister may, in the Minister’s discretion, refer the matter to the Board. 1995, c. 1, Sched. A, s. 165 (5).

Same

(6) No complaint alleging a contravention of this section shall be made except as may be referred to the Board under subsection (5). 1995, c. 1, Sched. A, s. 165 (6).

Same

(7) No complaint shall be considered by the Minister unless it is received within 10 days after the vote is completed. 1995, c. 1, Sched. A, s. 165 (7).

Declaration and direction by Board

(8) Where, upon a matter being referred to the Board, the Board is satisfied that subsection (1), (2) or (3) has been contravened and that such contravention has affected materially the results of a vote, the Board may so declare and it may direct what action, if any, a person, employer, employers' organization, affiliated bargaining agent, employee bargaining agency or employer bargaining agency shall do or refrain from doing with respect to the vote and the provincial agreement or any related matter and such declaration or direction shall have effect from and after the day the declaration or direction is made. 1995, c. 1, Sched. A, s. 165 (8).

Application re sector

166. (1) A trade union, council of trade unions, or an employer or employers' organization may apply to the Board for a determination of any question that arises as to what sector of the construction industry work performed or to be performed by employees is in. 2000, c. 38, s. 38.

Withdraw application

(2) The applicant may withdraw an application under subsection (1) upon such conditions as the Board may determine. 2000, c. 38, s. 38.

Board to inquire

(3) The Board may inquire into an application made under this section. 2000, c. 38, s. 38.

No hearing

(4) The Board is not required to hold a hearing to make any determination under this section. 2000, c. 38, s. 38.

Meeting of representatives

(5) Representatives of the trade union or council of trade unions and of the employer or employers' organization or their substitutes shall promptly meet and attempt to settle the matters raised in the application and shall report the outcome to the Board. 2000, c. 38, s. 38.

Interim or final order

(6) The Board may make any interim or final order it considers appropriate after consulting with the parties. 2000, c. 38, s. 38.

Cease and desist order

(7) In an interim order or after making an interim order, the Board may order any person, trade union, council of trade unions or employers' organization to cease and desist from doing anything intended or likely to interfere with the terms of an interim order. 2000, c. 38, s. 38.

Filing in court

(8) A party to an interim or final order may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such. 2000, c. 38, s. 38.

When enforceable

(9) An order that has been filed with the court is enforceable by a person, trade union, council of trade unions or employers' organization affected by it on or after the day after the date fixed in the order for compliance. 2000, c. 38, s. 38.

Compliance

(10) A person, trade union, council of trade unions or employers' organization affected by an interim order made by the Board under this section shall comply with it despite any provision of this Act. 2000, c. 38, s. 38.

Effect of compliance

(11) A person, trade union, council of trade unions or employers' organization that is complying with an interim order made by the Board under this section shall be deemed not to have violated any provision of this Act or of any collective agreement by doing so. 2000, c. 38, s. 38.

Bargaining agency not to act in bad faith, etc.

167. (1) A designated or certified employee bargaining agency shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of the affiliated bargaining agents in the provincial unit of affiliated bargaining agents for which it bargains, whether members of the designated or certified employee bargaining agency or not and in the representation of employees, whether members of an affiliated bargaining agent or not.

Same

(2) A designated or accredited employer bargaining agency shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employers in the provincial unit of employers for which it bargains, whether members of the designated or accredited employer bargaining agency or not. 1995, c. 1, Sched. A, s. 167.

Corporation to facilitate ICI bargaining

168. (1) This section applies with respect to a corporation established under a regulation under this section or under a predecessor to this section.

Objects

(2) The objects of the corporation are to facilitate collective bargaining in, and otherwise assist, the industrial, commercial and institutional sector of the construction industry including,

- (a) collecting, analyzing and disseminating information concerning collective bargaining and economic conditions in the industrial, commercial and institutional sector of the construction industry;
- (b) holding conferences involving representatives of the employer bargaining agencies and the employee bargaining agencies; and
- (c) carrying out such additional objects as are prescribed.

Not agency of Crown

(3) The corporation is not an agency of the Crown.

Members of corporation

(4) The members of the corporation shall be appointed in the prescribed manner and shall consist of equal numbers of representatives of labour, management and the Government of Ontario.

Board of directors

(5) The board of directors of the corporation shall be composed of all the members of the corporation.

Funding of corporation

(6) The employer bargaining agencies and the employee bargaining agencies shall make payments to the corporation in accordance with the regulations.

If non-payment

(7) The corporation may make a complaint to the Board alleging a contravention of subsection (6) and section 96 applies with respect to such a complaint.

Regulations

(8) The Lieutenant Governor in Council may make regulations,

- (a) establishing a corporation without share capital;
- (b) governing the corporation including,
 - (i) providing for its dissolution,
 - (ii) governing the appointment of members, and
 - (iii) prescribing additional objects;
- (c) governing the payments to be made to the corporation by the employer bargaining agencies and the employee bargaining agencies including prescribing methods for determining the payments.

Same

(9) A regulation made under subclause (8) (b) (ii) may provide for the selection, by persons or organizations, of persons to be appointed as members. 1995, c. 1, Sched. A, s. 168.

169. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1995, c. 1, Sched. A, s. 169.

Français

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