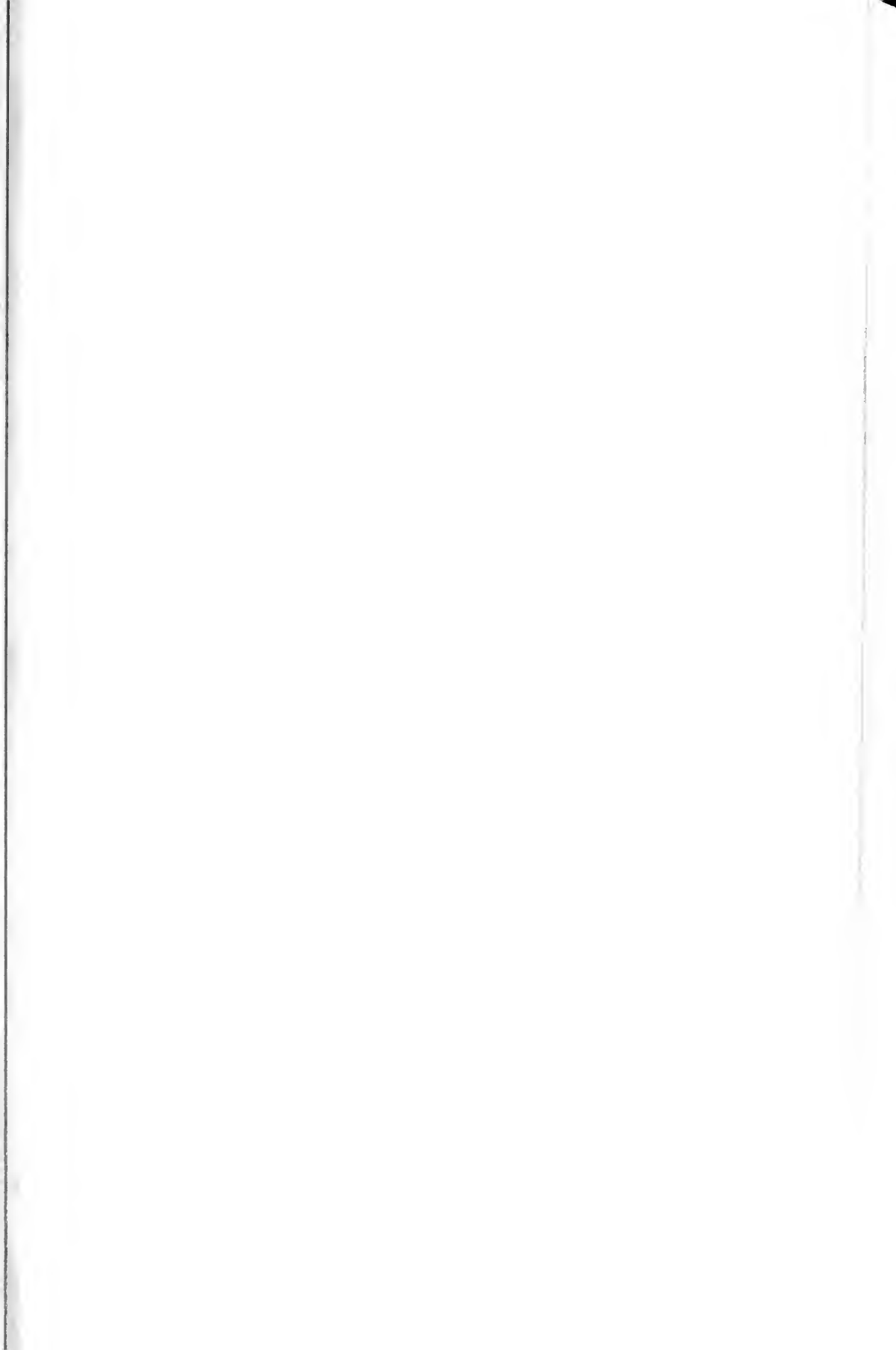
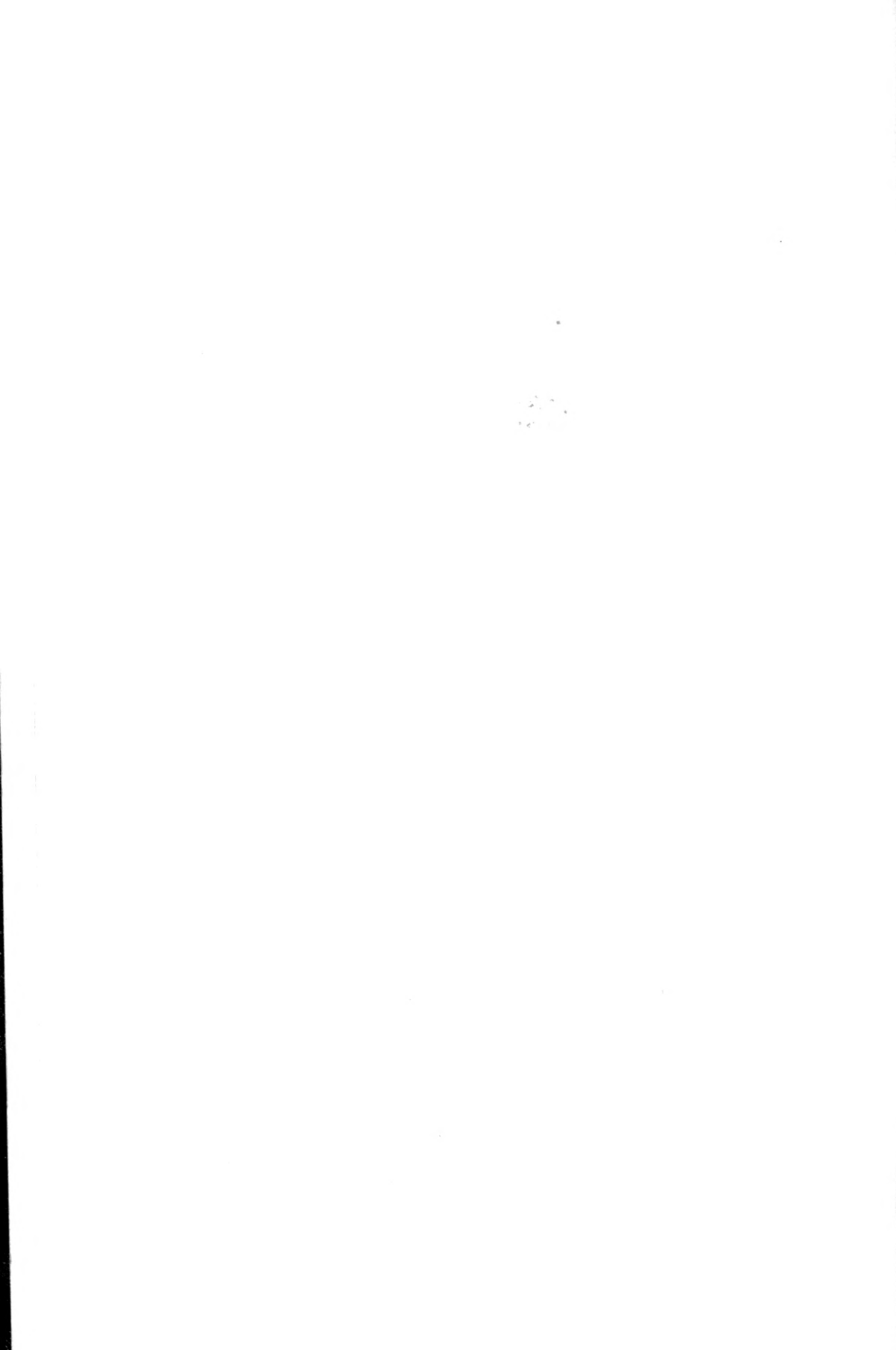


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LEGISLATIVE ASSEMBLY
OF ONTARIO

SECOND SESSION
THIRTY-FIRST PARLIAMENT



BILLS

AS INTRODUCED IN THE HOUSE
TOGETHER WITH
REPRINTS AND THIRD READINGS

SESSION

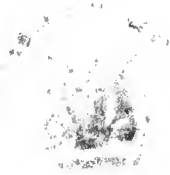
FEBRUARY 21st to JUNE 23rd, 1978

AND

SEPTEMBER 13th, 1978

AND

OCTOBER 23rd to DECEMBER 15th, 1978



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SECOND SESSION

THIRTY-FIRST PARLIAMENT

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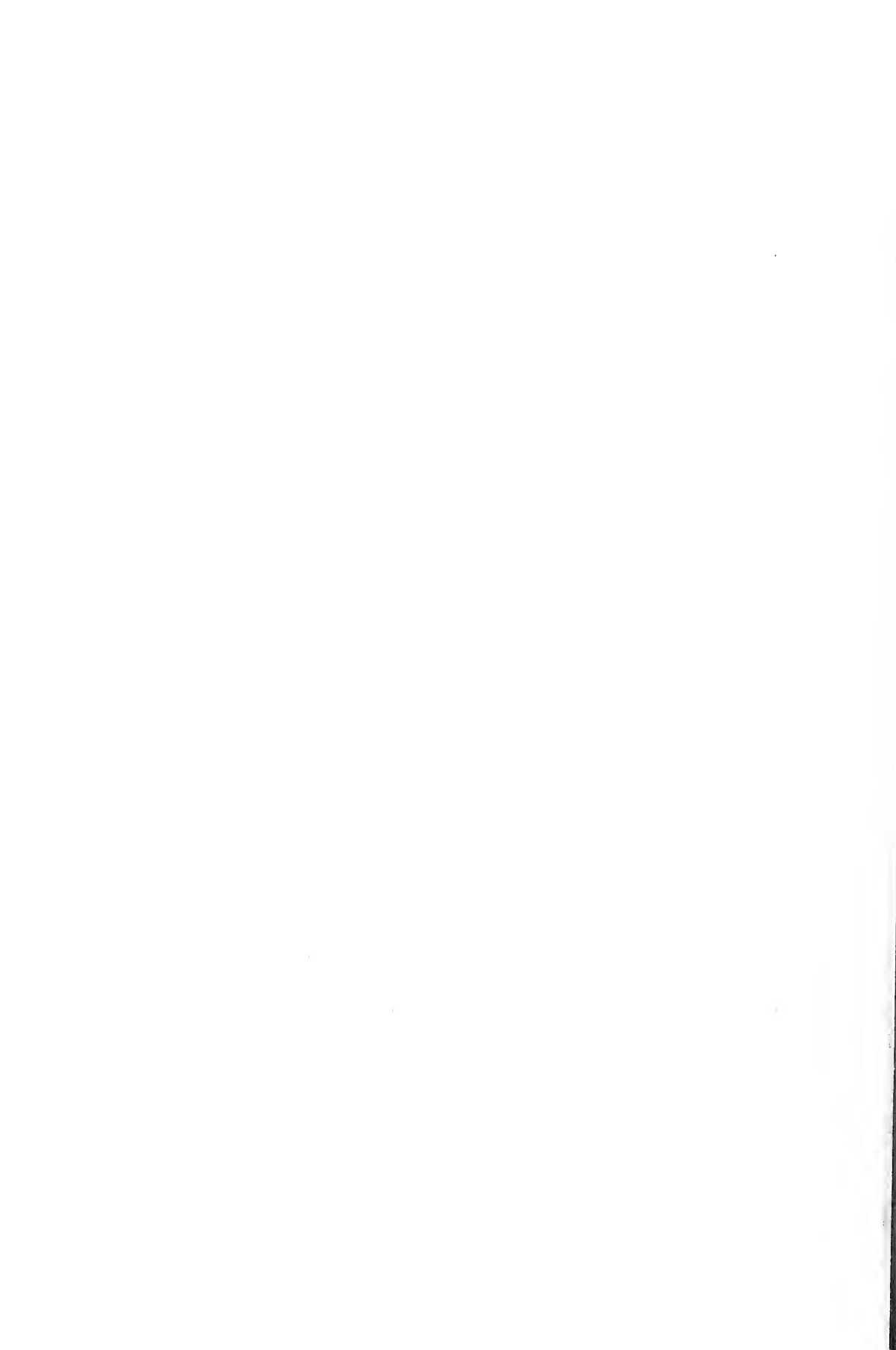
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2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Public Vehicles Act

THE HON. J. W. SNOW
Minister of Transportation and Communications

EXPLANATORY NOTE

Self-explanatory.

BILL 20

1978

An Act to amend The Public Vehicles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Public Vehicles Act*, being chapter 392 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following sections:

26.—(1) The Lieutenant Governor in Council may by order from time to time issue policy statements setting out matters to be considered by the Board when determining questions of public necessity and convenience and the Board shall take such matters into consideration together with such other matters as the Board considers appropriate where the application or reference is made after the policy statement is gazetted.

(2) An order made under subsection 1 shall be published in *The Ontario Gazette*.

27.—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as are referred to it by the Minister and the Board shall report thereon to the Minister.

(2) For the purposes of subsection 1, the Board may hold such hearings as it considers necessary.

2. This Act comes into force on the day it receives Royal Assent.
3. The short title of this Act is *The Public Vehicles Amendment Act, 1978*.

An Act to amend
The Public Vehicles Act

1st Reading

March 2nd, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation
and Communications

(Government Bill)

BILL 20

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Public Vehicles Act

THE HON. J. W. SNOW
Minister of Transportation and Communications



BILL 20

1978

**An Act to amend
The Public Vehicles Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Public Vehicles Act*, being chapter 392 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following sections: ss. 26, 27,
enacted

26.—(1) The Lieutenant Governor in Council may by order Policy
statements from time to time issue policy statements setting out matters to be considered by the Board when determining questions of public necessity and convenience and the Board shall take such matters into consideration together with such other matters as the Board considers appropriate where the application or reference is made after the policy statement is gazetted.

(2) An order made under subsection 1 shall be published Publication in *The Ontario Gazette*.

27.—(1) The Minister may direct the Board to examine Investigation
directed by
Minister and investigate such matters relating to transportation policy as are referred to it by the Minister and the Board shall report thereon to the Minister.

(2) For the purposes of subsection 1, the Board may hold Hearings
by Board such hearings as it considers necessary.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment
3. The short title of this Act is *The Public Vehicles Amendment Act, 1978*. Short title

An Act to amend
The Public Vehicles Act

1st Reading

March 2nd, 1978

2nd Reading

May 16th, 1978

3rd Reading

May 16th, 1978

THE HON. J. W. SNOW
Minister of Transportation
and Communications

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Public Commercial Vehicles Act**

THE HON. J. W. SNOW
Minister of Transportation and Communications

EXPLANATORY NOTES

SECTION 1. Section 1 (*k*) of the Act defines public commercial vehicle, basically, as a commercial vehicle licensed under the Act. The amendment goes on to include a vehicle for which a temporary exemption to licensing has been provided.

SECTION 2.—Subsection 1. Section 2 (1) of the Act prohibits the operation of a commercial vehicle for compensation without proper licences.

Section 2 (2) of the Act provides exceptions to the prohibition found in section 2 (1) of the Act. The list of goods that may be carried without licence is expanded.

Subsection 2. The new section 2 (3) of the Act provides a penalty different from the general penalty found in the Act where the contravention of section 2 (1) of the Act is in operating without an operating licence or in contravention of an operating licence. The fine is increased for subsequent offences by the new section 2 (3a) of the Act.

**An Act to amend
The Public Commercial Vehicles Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *k* of section 1 of *The Public Commercial Vehicles Act*,
being chapter 375 of the Revised Statutes of Ontario, 1970,
as re-enacted by the Statutes of Ontario, 1973, chapter 166,
section 1, is amended by adding at the end thereof "or for
which temporary exemptions have been provided under the
regulations". s. 1 (k),
amended

- 2.—(1) Subsection 2 of section 2 of the said Act, as re-enacted
by the Statutes of Ontario, 1973, chapter 166, section 2,
is repealed and the following substituted therefor: s. 2 (2).
re-enacted
 - (2) Subsection 1 does not apply to the transportation of, Exceptions
 - (a) goods within an urban zone;
 - (b) fresh fruit or fresh vegetables;
 - (c) logs, timber, rough or dressed lumber, wooden ties
and poles, plywood, particle board, waferboard,
fibreboard, veneer, bark, woodchips, shavings, saw-
dust or wood flour;
 - (d) farm or forest produce, other than live stock or
milk, that are the produce of the farm or forest
from which they are being transported;
 - (e) ready mixed concrete;
 - (f) waste, including ashes, garbage, refuse, domestic
waste, industrial waste and municipal refuse;
 - (g) hay, straw, live stock feed, grain, seed, turf, sod,
farm produce containers, fertilizer, manure, pesti-
cides, agricultural limestone or fencing materials;

- (h) blocks made of clay, concrete or cinder, bricks, cement, masonry cement or lime; or
- (i) tile or pipe having a diameter of not less than four inches inside diameter, other than tile or pipe made of steel, cast iron or aluminium.

s. 2.
amended

- (2) The said section 2, as amended by the Statutes of Ontario, 1971, chapter 50, section 71 and 1973, chapter 166, section 2, is further amended by adding thereto the following subsections:

Penalty

(3) Every person to whom subsection 1 applies who operates a commercial vehicle on a highway for the transportation for compensation of goods of another person without an operating licence or in contravention of the terms and conditions of his operating licence is guilty of an offence and on summary conviction is liable,

- (a) for a first offence, to a fine of not less than \$250 and not more than \$5,000; and
- (b) for each subsequent offence, to a fine of not less than \$500 and not more than \$5,000.

Subsequent
offences

(3a) Where a person who has previously been convicted of an offence mentioned in subsection 3 is convicted of the same or any other offence mentioned in subsection 3 within five years after the date of the previous conviction, the offence for which he is last convicted shall be deemed to be a subsequent offence for the purpose of clause *b* of subsection 3.

s. 5(1).
re-enacted

- 3.**—(1) Subsection 1 of section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1975 (2nd Session), chapter 7, section 1, is repealed and the following substituted therefor:

Operating
licence.
issue

- (1) The Minister may issue an operating licence,
- (a) in accordance with a certificate of public necessity and convenience issued by the Board under section 6; or
 - (b) where no such certificate has been issued, for the transportation of goods, other than the transportation referred to in subsection 3 of section 6, within a regional municipality.

s. 5.
amended

- (2) The said section 5, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71 and amended by

SECTION 3.—Subsection 1. Section 5 (1) of the Act presently provides that the Minister may issue an operating licence in accordance with a certificate of public necessity and convenience issued by the Board.

The provision as amended provides that the Minister in certain circumstances may issue an operating licence without a certificate by the Board being issued. The circumstances are set out in the new section 5 (1) (b) of the Act.

Subsection 2. Self-explanatory.

SECTION 4. -Subsection 1. The amendment is complementary to the amendment made by section 3 (1) of the Bill and recognizes the exception made by the new section 5 (1) (b) of the Act.

Subsection 2. The amendment is complementary to section 4 (3) of the Bill.

Subsection 3. The new subsections being added to section 6 of the Act provide for the issuance of a probationary operating licence to persons who have been operating without a licence between September 30, 1974 and October 1, 1976 and are also so operating at the time the application is made.

This privilege would be available to those who apply within 120 days after these provisions come into force.

The probationary licence would be valid for one year after which time the Board would review the matter and either revoke the certificate or issue a new certificate approving a regular operating licence.

1975 (2nd Session), chapter 7, section 1, is further amended by adding thereto the following subsection:

(4) Every operating licence issued by the Minister under this section and every certificate issued by the Board under section 6 which contains a condition having the effect of restricting or prohibiting the transportation of goods to or from any point north of North Bay, including any point north of North Bay on King's Highway No. 11 and all highways connecting with King's Highway No. 11 north of its intersection with King's Highway No. 17 near North Bay, is hereby amended by the deletion of the condition. Condition deleted

- 4.—(1) Subsection 1 of section 6 of the said Act, as re-enacted s. 6 (1).
re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71 and amended by 1975 (2nd Session), chapter 7, section 2, is repealed and the following substituted therefor:

(1) Except for a licence issued pursuant to clause *b* of subsection 1 of section 5, the Minister shall not issue an operating licence to any person unless the Board, upon the application of that person in the prescribed form has, after a hearing of the application as required by *The Ontario Highway Transport Board Act*, approved the issue of the licence to him on the ground that public necessity and convenience warrant the issue of the licence and will be served thereby, and has issued a certificate to that effect to the Minister. Approval of Board
R.S.O. 1970.
c. 316

- (2) Subsection 2 of the said section 6, as amended by the Statutes of Ontario, 1975 (2nd Session), chapter 7, section 2, is further amended by striking out "subsection 3" in the amendment of 1975 (2nd Session) and inserting in lieu thereof "subsections 3 and 11". s. 6 (2).
amended

- (3) The said section 6, as amended by the Statutes of Ontario, 1975 (2nd Session), chapter 7, section 2 and 1976, chapter 22, section 1, is further amended by adding thereto the following subsections: s. 6.
amended

(9) An application for a probationary operating licence or licences may be made to the Board by a person who has not been the holder of an operating licence at any time between the 30th day of September, 1974 and the 1st day of October, 1976. Applicants who operated between September 30, 1974 and October 1, 1976

(10) In support of an application made pursuant to subsection 9, the person making the application shall submit to the Board evidence showing, Evidence in support of application

- (a) that, from the 1st day of October, 1974 to the 30th day of September, 1976, the applicant operated on a continuing basis one or more commercial vehicles transporting goods for compensation where the operation was not restricted to urban zones;
- (b) the number of commercial vehicles operated by the applicant;
- (c) a description of goods carried and names of the consignors of the goods;
- (d) the points of origin and destination of the goods described pursuant to clause *c*;
- (e) that persons named in clause *c* support the application;
- (f) that the applicant is financially capable of continuing to provide such transportation services in accordance with this Act and the regulations and of meeting his financial responsibilities to the persons referred to in clause *e*; and
- (g) that the applicant was on the date of the application carrying on the business of transporting for compensation goods of another person where the operation was not restricted to urban zones.

Issuance of
certificate

(11) The Board, upon hearing an application made pursuant to subsection 9 and being satisfied with regard only to the evidence submitted pursuant to subsection 10, shall issue a certificate or certificates consistent with such evidence approving the issue of a probationary licence or licences, which certificate or certificates shall state the maximum number of commercial vehicles which may be operated.

Issuance of
licence

(12) Notwithstanding subsection 1 and subject to subsection 15, where the Board has issued a certificate or certificates under subsection 11, the Minister shall issue a probationary licence or licences in accordance with the certificate or certificates containing such terms and conditions as set out in the certificate or certificates.

Time limit for
application
under subs. 9

(13) An application pursuant to subsection 9 shall be made no later than 120 days after that subsection comes into force.

Applicant to
file tariff

(14) An applicant under subsection 9 shall file with his application a tariff of tolls showing all the rates and charges

SECTION 5. Section 7 (1) of the Act provides that an operating licence shall not be transferred without the approval of the Minister. The new sections 7 (1a) and 7 (1b) of the Act provide that an operating licence issued pursuant to an application under the new section 5 (1) (b) or 6 (9) of the Act cannot be transferred.

for the transportation of goods in respect of which the transportation is proposed to be provided or offered by the applicant.

(15) Before a licence is issued by the Minister pursuant to a certificate issued by the Board pursuant to subsection 11, the applicant shall file with the Ministry for each motor vehicle that he proposes to operate under the licence, a safety standards certificate issued under *The Highway Traffic Act* not more than thirty days before the date of filing.

Requirements prior to issue of licence

R.S.O. 1970.
c. 202

(16) A probationary operating licence issued under subsection 12 expires,

Validity of probationary operating licence

- (a) upon the Board revoking its certificate pursuant to subsection 17; or
- (b) where the Board issues a new certificate under subsection 17,
 - (i) upon the Minister issuing an operating licence under subsection 1 pursuant to the certificate, or
 - (ii) upon the expiration of three months after the issuance of the new certificate,

whichever first occurs.

(17) The Board shall, not less than one year after the date of issue of a probationary operating licence issued under subsection 12 and as soon after the expiration of the one year as is convenient to the Board, review pursuant to section 17 of *The Ontario Highway Transport Board Act* the certificate with respect to the licence and shall revoke the certificate or issue a new certificate approving the issue of an operating licence.

Review by Board

R.S.O. 1970.
c. 316

5.—(1) Section 7 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by adding thereto the following subsection:

s. 7.
amended

(1a) Notwithstanding subsection 1, no probationary operating licence issued pursuant to an application under subsection 9 of section 6 is transferable.

Exception to subs. 1

(2) The said section 7 is further amended by adding thereto the following subsection:

s. 7.
amended

Exception
to subs. 1

(1*b*) Notwithstanding subsection 1, no operating licence issued pursuant to clause *b* of subsection 1 of section 5 is transferable.

s. 8,
amended

6. Section 8 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by inserting after "licence" in the second line "other than a licence issued pursuant to clause *b* of subsection 1 of section 5".

s. 10,
amended

7.—(1) Section 10 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by striking out "suspend or cancel" in the first and second lines and inserting in lieu thereof "suspend, cancel or refuse to issue".

s. 10,
amended

(2) The said section 10 is further amended by adding thereto the following clause:

(*ba*) where the past conduct of the applicant or licensee or, where the applicant or licensee is a corporation, of its officers or directors affords reasonable grounds for belief that the transportation service will not be operated in accordance with the law and with honesty and integrity.

s. 12 (1),
re-enacted

8.—(1) Subsection 1 of section 12 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71 and amended by 1973, chapter 166, section 5, is repealed and the following substituted therefor:

Issue to
holder of
operating
licence

(1) Subject to subsections 2 and 3 and to section 12*c*, the holder of an operating licence is entitled, upon application to the Minister in the prescribed form and payment of the prescribed fee, to be issued by the Minister vehicle licences for commercial vehicles for operation pursuant to his operating licence.

s. 12,
amended

(2) The said section 12 is further amended by adding thereto the following subsections:

Limit on
licences
issued

(3) No vehicle licence shall be issued for any one commercial vehicle pursuant to an operating licence issued under clause *b* of subsection 1 of section 5 while another such licence in respect of the same vehicle is in force.

Idem

(4) No person shall hold more than one of the following with respect to a specific commercial vehicle:

1. A vehicle licence issued pursuant to an operating licence issued under clause *b* of subsection 1 of section 5.

SECTION 6. Section 8 of the Act provides that the Minister may refer operating licences to the Board. The amendment excludes those operating licences for which a certificate of the Board was not originally required. This is complementary to the new section 5 (1) (b) of the Act.

SECTION 7. Section 10 of the Act empowers the Minister to suspend or cancel an operating licence for any of the causes set out in that section.

The amendment adds the power to refuse to issue a licence in circumstances where the Minister could have suspended or cancelled a licence.

There is also added a further cause for suspending, cancelling or refusing to issue a licence.

SECTION 8. Section 12 (1) of the Act entitles the holder of an operating licence to be issued a vehicle licence for commercial vehicles for operation pursuant to his operating licence. The amendment to section 12 (1) as recast simply adds the reference to subsection 3 to those references already made.

The subsections added provide that only one vehicle licence in respect of any one vehicle can be in force pursuant to an operating licence issued without a certificate of the Board being required.

This limitation would apply whether the operating licence is issued by the Minister under section 5 (1) (b) of the Act or by a regional municipality.

SECTION 9. The amendment has the effect of preventing the transfer of a vehicle licence which has been obtained pursuant to an operating licence issued without a certificate of the Board being obtained.

SECTION 10. The amendment is complementary to section 7 (1) of the Bill.

SECTION 11. The reference to Schedules A and B is being deleted. This is complementary to section 15 of the Bill.

Added to the matters which are to be part of a bill of lading is a statement by the carrier or freight forwarder as to the state of the goods when he received them.

Where a driver or carrier is required to produce a copy of a bill of lading, a memorandum of the bill will no longer suffice, but a "carrier's waybill" may be produced instead.

Where a shipment is carried by more than one vehicle, the carrier must ensure that a bill of lading or a waybill is in each vehicle.

2. A licence for the commercial vehicle issued pursuant to a by-law passed by the council of a regional municipality where the operation of commercial vehicles solely within that regional municipality has been exempted from the provisions of this Act or the regulations by a regulation made under clause v of section 18.

9. Subsection 3 of section 12*a* of the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by inserting after "licence" in the first line "other than a vehicle licence issued pursuant to an operating licence issued under clause *b* of subsection 1 of section 5". s. 12*a* (3),
amended

10. Clause *a* of subsection 1 of section 12*i* of the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is repealed and the following substituted therefor: s. 12*i* (1) (a),
re-enacted

(a) to suspend, cancel or refuse to issue an operating licence under section 10.

11. Subsections 2 to 6 of section 12*n* of the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, are repealed and the following substituted therefor: s. 12*n* (2-6),
re-enacted

(2) A bill of lading shall contain such information as may be prescribed by regulation together with an acknowledgment of receipt by the carrier or the freight forwarder of the goods therein described indicating whether the goods were received in apparent good order and condition and an undertaking to carry the goods for delivery to the consignee or the person entitled to receive the goods and shall be signed in full by, or on behalf of, the issuing carrier or issuing freight forwarder and by the consignor as accepting the terms and conditions contained, or deemed to be contained, therein. Contents

(3) A signed copy of the bill of lading shall be retained by the consignor and by the carrier. Signed copy
to be
retained

(4) Every driver operating a public commercial vehicle shall carry on each trip a copy of the bill of lading and shall produce it when required for inspection by a member of the Ontario Provincial Police Force or an officer of the Ministry. Copy of bill
of lading to
be carried
by driver

(5) Where a carrier is transporting goods on behalf of a freight forwarder, the driver transporting the goods by public commercial vehicle shall carry on each trip a copy of the bill of lading issued by the freight forwarder and shall Idem

produce it when required for inspection by a member of the Ontario Provincial Police Force or an officer of the Ministry.

Carrier's waybill carried in lieu of bill of lading

(6) Notwithstanding subsections 4 and 5, a carrier's waybill, containing such information as may be prescribed by regulation, may be carried by any driver operating a public commercial vehicle or transporting goods on behalf of a freight forwarder and may be produced in lieu of a bill of lading when such is required for inspection by a member of the Ontario Provincial Police Force or an officer of the Ministry.

Carrier's responsibility

(7) Where any shipment of goods is carried on more than one vehicle, the carrier shall ensure that every part of the shipment is accompanied by a copy of the bill of lading or by a waybill referred to in subsection 6.

s. 16. re-enacted

12. Section 16 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 166, section 12, is repealed and the following substituted therefor:

Penalty

16. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on summary conviction, where a penalty for the contravention is not otherwise provided for herein, is liable to a fine of not less than \$150 and not more than \$1,500.

s. 18. amended

13.—(1) Section 18 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 50, section 71, 1973, chapter 166, section 13 and 1975 (2nd Session), chapter 7, section 3, is further amended by adding thereto the following clause:

(j) prescribing the form and contents of a waybill.

s. 18. amended

(2) The said section 18 is further amended by adding thereto the following clauses:

(t) governing the issue and renewal of operating licences and classes of operating licences;

(u) prescribing the qualifications of applicants for and holders of operating licences or any class or classes of operating licences;

(v) exempting from the provisions of this Act or the regulations commercial vehicles or classes thereof operated solely within specified regional municipalities;

SECTION 12. The minimum and maximum general penalties are increased from \$50 and \$1,000, respectively, to \$150 and \$1,500.

SECTION 13.—Subsection 1. Section 18 of the Act refers to the authority to make regulations. The added clause is complementary to sections 11 and 15 of the Bill and is self-explanatory.

Subsection 2. Self-explanatory.

SECTION 14. Self-explanatory.

SECTION 15. Schedules A and B set out conditions deemed to be part of contracts for transportation of goods for compensation.

(w) exempting holders of any class or classes of operating licences from any of the provisions of section 12j or 12n.

14. The said Act is amended by adding thereto the following sections: ss. 19, 20, enacted

19.—(1) The Lieutenant Governor in Council may by order from time to time issue policy statements setting out matters to be considered by the Board when determining questions of public necessity and convenience and the Board shall take such matters into consideration together with such other matters as the Board considers appropriate where the application or reference is made after the policy statement is gazetted. Policy statements

(2) An order made under subsection 1 shall be published in *The Ontario Gazette*. Publication

20.—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as are referred to it by the Minister and the Board shall report thereon to the Minister. Investigation directed by Minister

(2) For the purposes of subsection 1, the Board may hold such hearings as it considers necessary. Hearings by Board

15. Schedules A and B to the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, are repealed. Schedules A and B, repealed

16.—(1) This Act, except subsection 1 of section 3, sections 4, 5 and 6, subsection 1 of section 7 and sections 8, 9, 10, 11, 13 and 15, comes into force on the day it receives Royal Assent. Commencement

(2) Subsection 1 of section 3, sections 4, 5 and 6, subsection 1 of section 7 and sections 8, 9, 10, 11, 13 and 15 come into force on a day to be named by proclamation of the Lieutenant Governor. Idem

17. The short title of this Act is *The Public Commercial Vehicles Amendment Act, 1978*. Short title

An Act to amend
The Public Commercial
Vehicles Act

1st Reading

March 2nd, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications

EXPLANATORY NOTES

SECTION 1. The provision allows a new resident in Ontario thirty days to obtain a motor vehicle permit and licence plates.

SECTION 2. Self-explanatory.

SECTION 3. The provision provides for a probation period for drivers to be regulated by the Lieutenant Governor in Council.

BILL 22

1978

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 12 of *The Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 45, section 7 and 1974, chapter 66, section 7, is further amended by adding thereto the following subsection:

(1a) Upon the owner of a motor vehicle becoming a resident of Ontario, he is exempt from the provisions of sections 6 and 8 for the thirty days immediately following provided he has complied with the provisions of the law of the jurisdiction in which he resided immediately prior to taking up residence in Ontario as to the registration of the motor vehicle and the displays of the registration number thereon, and continues to display the registration number in accordance with that law.

s. 12,
amended

Exemption
from
ss. 6, 8 for
thirty days

2. Section 13 of the said Act, as re-enacted by the Statutes of Ontario, 1973, chapter 167, section 4 and amended by 1974, chapter 123, section 3 and 1977, chapter 54, section 1, is further amended by adding thereto the following subsection:

(4a) The Minister may require as a condition for issuing a driver's licence that the applicant therefor submit to being photographed by equipment provided by the Ministry.

Applicant
for driver's
licence may
be photo-
graphed

3. The said Act is amended by adding thereto the following section:

33a. The Lieutenant Governor in Council may make regulations in respect of drivers' licences issued to probationary drivers,

s. 33a.
enacted

Probation-
ary drivers

(a) defining probationary drivers;

- (b) prescribing the period or periods during which a holder of a driver's licence shall be classed as a probationary driver;
- (c) prescribing the circumstances under which the driver's licence of a probationary driver shall be cancelled or suspended and the length of such suspension or suspensions;
- (d) prescribing circumstances under which a probationary driver may be required to attend before an official of the Ministry for an interview and such examination as may be required;
- (e) prescribing circumstances under which a probationary driver may be required to produce evidence with regard to successful completion of a driver improvement course approved by the Minister.

s. 35 (1),
re-enacted

4.—(1) Subsection 1 of section 35 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Licence
respecting
dealing in
motor
vehicles

(1) No person shall deal in motor vehicles, operate a used car lot or engage in the business of wrecking or dismantling of vehicles without having been licensed so to do by the Ministry in respect of each separate premises used by him for the purpose of such business.

s. 35 (3),
re-enacted

(2) Subsection 3 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Penalty

(3) Every person who deals in motor vehicles or operates a used car lot or engages in the wrecking or dismantling of vehicles without a licence, is guilty of an offence and on summary conviction is liable to a fine of not less than \$10 and not more than \$500.

s. 35 (4),
amended

(3) Subsection 4 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is amended by striking out "required to be licensed" in the fifth line.

s. 35 (6),
re-enacted

(4) Subsection 6 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Suspension
or cancella-
tion of licence
by Minister

(6) The Minister may suspend or cancel the licence issued for dealing in motor vehicles, operating a used car lot, or

SECTION 4. Section 35 of the Act requires a licence to operate a business involving the storing of, dealing in or wrecking of motor vehicles, which business may include a garage business and a used car lot.

The amendments remove the reference to a "garage business" where it would not otherwise come within section 35 (1) of the Act and removes the reference to storing motor vehicles.

Section 35 (4) of the Act allows a constable to enter licensed premises for purposes of investigation and inspection. The amendment will allow him to enter a garage, which now will not require a licence for purposes of investigation and inspection.

SECTION 5. Section 37 (12) of the Act permits certain vehicles referred to therein to carry a red light. The provision as recast adds to this list Ministry vehicles used by officers appointed to carry out the provisions of certain specified Acts. The recast provision also serves to clarify when vehicles may carry a red light.

SECTION 6. Section 65 (1) of the Act limits the width of vehicles on a highway. The amended subsections clarify that the width of the vehicle includes the width of the vehicle and load.

for wrecking or dismantling vehicles, for misconduct or for non-compliance with or infraction of any of the provisions of this Act or of the regulations by the holder of such licence or by any of his employees or for any other reason appearing to him to be sufficient.

- (5) Subsection 7 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (7). re-enacted

(7) The Lieutenant Governor in Council may make regulations controlling and governing the business of dealing in motor vehicles, operating a used car lot, or for wrecking or dismantling of vehicles. Regulations

5. Subsection 12 of section 37 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 14, is repealed and the following substituted therefor: s. 37 (12). re-enacted

(12) In addition to the lighting requirements in this Part, an ambulance, fire department vehicle, police department vehicle, Ministry vehicle operated by an officer appointed to carry out the provisions of this Act, *The Public Vehicles Act* or *The Public Commercial Vehicles Act*, public utility emergency vehicle, school bus or a vehicle while operated by a conservation officer, fishery officer, provincial park officer or mine rescue training officer in the course of his employment, may carry a lamp or lamps that cast a red light only or such other colour of light that may, with the approval of the Ministry, be designated by a by-law of the municipality in which the vehicle is operated, but no other motor vehicle shall carry any lamp that casts a red light to the front. Red light in front
R.S.O. 1970, cc. 392, 375

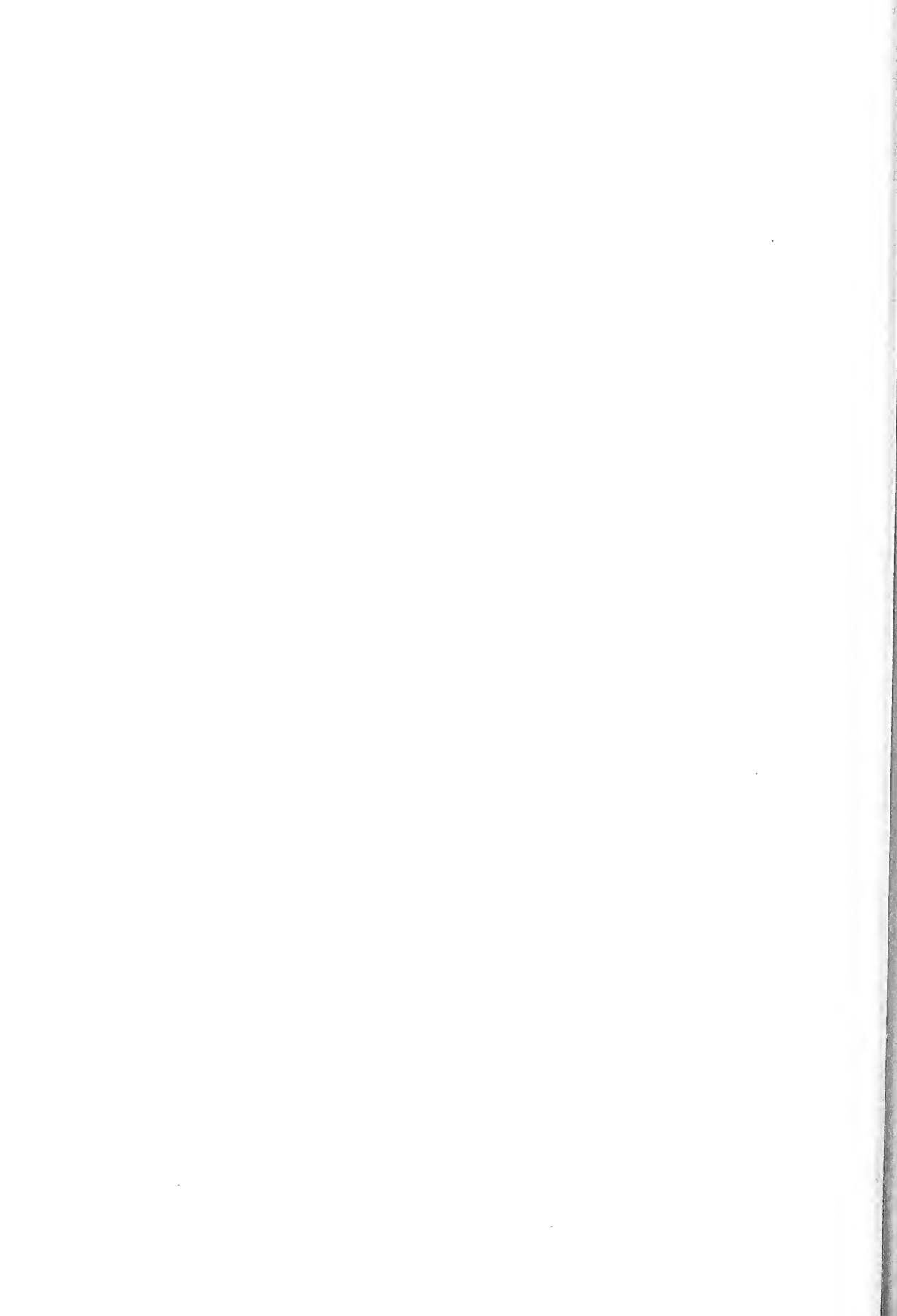
- 6.—(1) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1). amended

- (2) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1). amended

- 7.—(1) This Act, except section 3 and subsection 2 of section 6, comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

- (2) Section 3 comes into force on the 1st day of January, 1979. Idem

- Idem (3) Subsection 2 of section 6 comes into force on the 1st day of April, 1978.
- Short title **8.** The short title of this Act is *The Highway Traffic Amendment Act, 1978*.



An Act to amend
The Highway Traffic Act

1st Reading

March 6th, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

SECTION 1. The provision allows a new resident in Ontario thirty days to obtain a motor vehicle permit and licence plates.

SECTION 2. Self-explanatory.

SECTION 3. The provision provides for a probation period for drivers to be regulated by the Lieutenant Governor in Council.

**An Act to amend
The Highway Traffic Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 12 of *The Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 45, section 7 and 1974, chapter 66, section 7, is further amended by adding thereto the following subsection:

(1a) Upon the owner of a motor vehicle becoming a resident of Ontario, he is exempt from the provisions of sections 6 and 8 for the thirty days immediately following provided he has complied with the provisions of the law of the jurisdiction in which he resided immediately prior to taking up residence in Ontario as to the registration of the motor vehicle and the displays of the registration number thereon, and continues to display the registration number in accordance with that law.

s. 12.
amended
Exemption
from
ss. 6, 8 for
thirty days

2. Section 13 of the said Act, as re-enacted by the Statutes of Ontario, 1973, chapter 167, section 4 and amended by 1974, chapter 123, section 3 and 1977, chapter 54, section 1, is further amended by adding thereto the following subsection:

(4a) The Minister may require as a condition for issuing a driver's licence that the applicant therefor submit to being photographed by equipment provided by the Ministry.

s. 13.
amended
Applicant
for driver's
licence may
be photo-
graphed

3. The said Act is amended by adding thereto the following section:

33a. The Lieutenant Governor in Council may make regulations in respect of drivers' licences issued to probationary drivers,

s. 33a,
enacted
Probationary
drivers

(a) defining probationary drivers;

- (b) prescribing the period or periods during which a holder of a driver's licence shall be classed as a probationary driver;
- (c) prescribing the circumstances under which the driver's licence of a probationary driver shall be cancelled or suspended and the length of such suspension or suspensions;
- (d) prescribing circumstances under which a probationary driver may be required to attend before an official of the Ministry for an interview and such examination as may be required;
- (e) prescribing circumstances under which a probationary driver may be required to produce evidence with regard to successful completion of a driver improvement course approved by the Minister.

s. 35 (1),
re-enacted

4.—(1) Subsection 1 of section 35 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Licence
respecting
dealing in
motor
vehicles

(1) No person shall deal in motor vehicles, operate a used car lot or engage in the business of wrecking or dismantling of vehicles without having been licensed so to do by the Ministry in respect of each separate premises used by him for the purpose of such business.

s. 35 (3),
re-enacted

(2) Subsection 3 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Penalty

(3) Every person who deals in motor vehicles or operates a used car lot or engages in the wrecking or dismantling of vehicles without a licence, is guilty of an offence and on summary conviction is liable to a fine of not less than \$10 and not more than \$500.

s. 35 (4),
re-enacted

(3) Subsection 4 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Right of
entry and
inspection

(4) Any constable or any officer appointed for carrying out the provisions of this Part may enter into any place where motor vehicles or bicycles are stored or dealt in, or into any garage, repair shop, used car lot or premises used for the wrecking or dismantling of vehicles, and make such investigation and inspection as he thinks proper for the purposes of this Part.

SECTION 4. Section 35 of the Act requires a licence to operate a business involving the storing of, dealing in or wrecking of motor vehicles, which business may include a garage business and a used car lot.

The amendments remove the reference to a "garage business" where it would not otherwise come within section 35 (1) of the Act and removes the reference to storing motor vehicles.

Section 35 (4) of the Act allows a constable to enter licensed premises for purposes of investigation and inspection. The provision as re-enacted will allow him to enter a garage, which now will not require a licence for purposes of investigation and inspection; it will further allow him to enter a repair shop.

SECTION 5. Section 37 (12) of the Act permits certain vehicles referred to therein to carry a red light. The provision as recast adds to this list Ministry vehicles used by officers appointed to carry out the provisions of certain specified Acts. The recast provision also serves to clarify when vehicles may carry a red light.

SECTION 6. Section 65 (1) of the Act limits the width of vehicles on a highway. The amended subsections clarify that the width of the vehicle includes the width of the vehicle and load.

- (4) Subsection 6 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (6).
re-enacted

(6) The Minister may suspend or cancel the licence issued for dealing in motor vehicles, operating a used car lot, or for wrecking or dismantling vehicles, for misconduct or for non-compliance with or infraction of any of the provisions of this Act or of the regulations by the holder of such licence or by any of his employees or for any other reason appearing to him to be sufficient. Suspension
or cancella-
tion of licence
by Minister

- (5) Subsection 7 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (7).
re-enacted

(7) The Lieutenant Governor in Council may make regulations controlling and governing the business of dealing in motor vehicles, operating a garage, repair shop or used car lot, or the wrecking or dismantling of vehicles. Regulations

5. Subsection 12 of section 37 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 14, is repealed and the following substituted therefor: s. 37 (12).
re-enacted

(12) In addition to the lighting requirements in this Part, an ambulance, fire department vehicle, police department vehicle, Ministry vehicle operated by an officer appointed to carry out the provisions of this Act, *The Public Vehicles Act* or *The Public Commercial Vehicles Act*, public utility emergency vehicle, school bus or a vehicle while operated by a conservation officer, fishery officer, provincial park officer or mine rescue training officer in the course of his employment, may carry a lamp or lamps that cast a red light only or such other colour of light that may, with the approval of the Ministry, be designated by a by-law of the municipality in which the vehicle is operated, but no other motor vehicle shall carry any lamp that casts a red light to the front. Red light
in front

R.S.O. 1970.
cc. 392, 375

- 6.—(1) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1).
amended

(2) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1).
amended

- Commence-
ment **7.**—(1) This Act, except section 3 and subsection 2 of section 6, comes into force on a day to be named by proclamation of the Lieutenant Governor.
- Idem (2) Section 3 comes into force on the 1st day of January, 1979.
- Idem (3) Subsection 2 of section 6 comes into force on the 1st day of April, 1978.
- Short title **8.** The short title of this Act is *The Highway Traffic Amendment Act, 1978*.





An Act to amend
The Highway Traffic Act

1st Reading

March 6th, 1978

2nd Reading

May 16th, 1978

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

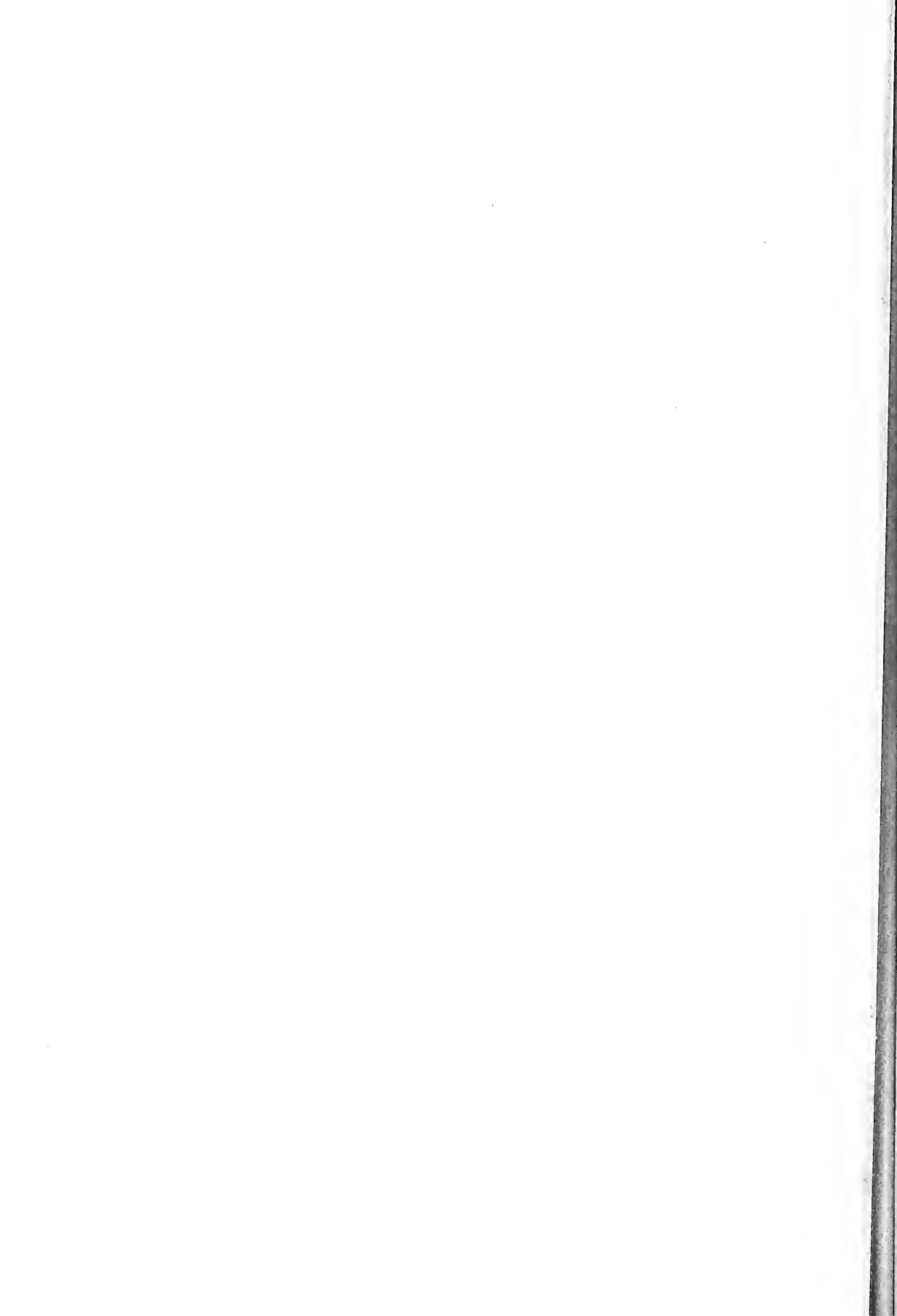
*(Reprinted as amended by the
Committee of the Whole House)*

BILL 22

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications



BILL 22

1978

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 12 of *The Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 45, section 7 and 1974, chapter 66, section 7, is further amended by adding thereto the following subsection:

(1a) Upon the owner of a motor vehicle becoming a resident of Ontario, he is exempt from the provisions of sections 6 and 8 for the thirty days immediately following provided he has complied with the provisions of the law of the jurisdiction in which he resided immediately prior to taking up residence in Ontario as to the registration of the motor vehicle and the displays of the registration number thereon, and continues to display the registration number in accordance with that law.

2. Section 13 of the said Act, as re-enacted by the Statutes of Ontario, 1973, chapter 167, section 4 and amended by 1974, chapter 123, section 3 and 1977, chapter 54, section 1, is further amended by adding thereto the following subsection:

(4a) The Minister may require as a condition for issuing a driver's licence that the applicant therefor submit to being photographed by equipment provided by the Ministry.

3. The said Act is amended by adding thereto the following section:

33a. The Lieutenant Governor in Council may make regulations in respect of drivers' licences issued to probationary drivers,

(a) defining probationary drivers;

- (b) prescribing the period or periods during which a holder of a driver's licence shall be classed as a probationary driver;
- (c) prescribing the circumstances under which the driver's licence of a probationary driver shall be cancelled or suspended and the length of such suspension or suspensions;
- (d) prescribing circumstances under which a probationary driver may be required to attend before an official of the Ministry for an interview and such examination as may be required;
- (e) prescribing circumstances under which a probationary driver may be required to produce evidence with regard to successful completion of a driver improvement course approved by the Minister.

s. 35 (1),
re-enacted

4.—(1) Subsection 1 of section 35 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Licence
respecting
dealing in
motor
vehicles

(1) No person shall deal in motor vehicles, operate a used car lot or engage in the business of wrecking or dismantling of vehicles without having been licensed so to do by the Ministry in respect of each separate premises used by him for the purpose of such business.

s. 35 (3),
re-enacted

(2) Subsection 3 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Penalty

(3) Every person who deals in motor vehicles or operates a used car lot or engages in the wrecking or dismantling of vehicles without a licence, is guilty of an offence and on summary conviction is liable to a fine of not less than \$10 and not more than \$500.

s. 35 (4),
re-enacted

(3) Subsection 4 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor:

Right of
entry and
inspection

(4) Any constable or any officer appointed for carrying out the provisions of this Part may enter into any place where motor vehicles or bicycles are stored or dealt in, or into any garage, repair shop, used car lot or premises used for the wrecking or dismantling of vehicles, and make such investigation and inspection as he thinks proper for the purposes of this Part.

- (4) Subsection 6 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (6),
re-enacted

(6) The Minister may suspend or cancel the licence issued for dealing in motor vehicles, operating a used car lot, or for wrecking or dismantling vehicles, for misconduct or for non-compliance with or infraction of any of the provisions of this Act or of the regulations by the holder of such licence or by any of his employees or for any other reason appearing to him to be sufficient. Suspension
or cancella-
tion of licence
by Minister

- (5) Subsection 7 of the said section 35, as amended by the Statutes of Ontario, 1973, chapter 45, section 13, is repealed and the following substituted therefor: s. 35 (7),
re-enacted

(7) The Lieutenant Governor in Council may make regulations controlling and governing the business of dealing in motor vehicles, operating a garage, repair shop or used car lot, or the wrecking or dismantling of vehicles. Regulations

5. Subsection 12 of section 37 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 45, section 14, is repealed and the following substituted therefor: s. 37 (12),
re-enacted

(12) In addition to the lighting requirements in this Part, an ambulance, fire department vehicle, police department vehicle, Ministry vehicle operated by an officer appointed to carry out the provisions of this Act, *The Public Vehicles Act* or *The Public Commercial Vehicles Act*, public utility emergency vehicle, school bus or a vehicle while operated by a conservation officer, fishery officer, provincial park officer or mine rescue training officer in the course of his employment, may carry a lamp or lamps that cast a red light only or such other colour of light that may, with the approval of the Ministry, be designated by a by-law of the municipality in which the vehicle is operated, but no other motor vehicle shall carry any lamp that casts a red light to the front. Red light
in front

R.S.O. 1970,
cc. 392, 375

- 6.—(1) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1),
amended

- (2) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by inserting after "vehicle" in the first line "including load or contents". s. 65 (1),
amended

Commence- ment	7. —(1) This Act, except section 3 and subsection 2 of section 6, comes into force on a day to be named by proclamation of the Lieutenant Governor.
Idem	(2) Section 3 comes into force on the 1st day of January, 1979.
Idem	(3) Subsection 2 of section 6 comes into force on the 1st day of April, 1978.
Short title	8. The short title of this Act is <i>The Highway Traffic Amendment Act, 1978</i> .



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BILL 22
|
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An Act to amend
The Highway Traffic Act

1st Reading

March 6th, 1978

2nd Reading

May 16th, 1978

3rd Reading

May 16th, 1978

THE HON. J. W. SNOW
Minister of Transportation and
Communications

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications

EXPLANATORY NOTES

SECTION 1.—Subsection 1. Paragraph 15*b* defines “mobile home”. One hundred and two inches are approximately 2.59 metres and 35 feet are approximately 10.6 metres.

Subsection 2. Paragraph 15*c* defines “motor assisted bicycle”. One hundred and twenty pounds are approximately 54.4 kilograms.

SECTION 2. The reference is to the gross weight of a motor vehicle or a trailer. Six thousand pounds are approximately 2,721.5 kilograms.

SECTION 3. The references are to the gross weight of a motor vehicle, bicycle or trailer. Six thousand pounds are approximately 2,721.5 kilograms.

SECTION 4.—Subsection 1. The reference is to distance at which persons or vehicles on a highway are not clearly discernible. Five hundred feet are approximately 152.4 metres.

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 15*b* of subsection 1 of section 1 of *The Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1973, chapter 45, section 1, is amended, s. 1 (1).
par. 15*b*.
amended
- (a) by striking out “102 inches” in the third line and inserting in lieu thereof “2.6 metres”; and
- (b) by striking out “35 feet” in the fourth line and inserting in lieu thereof “eleven metres”.
- (2) Subparagraph ii of paragraph 15*c* of subsection 1 of the said section 1, as re-enacted by the Statutes of Ontario, 1975, chapter 78, section 1, is amended by striking out “120 pounds” and inserting in lieu thereof “fifty-five kilograms”. s. 1 (1).
par. 15*c*.
subpar. ii.
amended
2. Subsection 3 of section 7 of the said Act, as amended by the Statutes of Ontario, 1974, chapter 66, section 3, is further amended by striking out “6,000 pounds” in the second line and inserting in lieu thereof “2,750 kilograms”. s. 7 (3).
amended
- 3.—(1) Subsection 2 of section 36 of the said Act is amended by striking out “6,000 pounds” in the third line and inserting in lieu thereof “2,750 kilograms”. s. 36 (2).
amended
- (2) Subsection 3 of the said section 36 is amended by striking out “6,000 pounds” in the fourth line and inserting in lieu thereof “2,750 kilograms”. s. 36 (3).
amended
- 4.—(1) Subsection 1 of section 37 of the said Act, as re-enacted by the Statutes of Ontario, 1976, chapter 37, section 5, is amended by striking out “500 feet” in the fifth line and inserting in lieu thereof “150 metres”. s. 37 (1).
amended

s. 37 (1c),
amended

- (2) Subsection 1c of the said section 37, as enacted by the Statutes of Ontario, 1976, chapter 37, section 5, is amended by striking out "500 feet" in the third line and inserting in lieu thereof "150 metres".

s. 37 (1d),
amended

- (3) Subsection 1d of the said section 37, as enacted by the Statutes of Ontario, 1976, chapter 37, section 5, is amended by striking out "500 feet" in the ninth line and inserting in lieu thereof "150 metres".

s. 37 (2),
amended

- (4) Subsection 2 of the said section 37 is amended,
- (a) in subclause i of clause *a*, by striking out "500 feet" in the fourth line and inserting in lieu thereof "150 metres";
 - (b) in subclause ii of clause *a*, by striking out "16 square inches" in the sixth and seventh lines and inserting in lieu thereof "100 square centimetres"; and
 - (c) in clause *b*, by striking out "16 square inches" in the fifth and sixth lines and inserting in lieu thereof "100 square centimetres".

s. 37 (3),
amended

- (5) Subsection 3 of the said section 37, as amended by the Statutes of Ontario, 1977, chapter 54, section 6, is further amended by striking out "350 feet" in the sixth line and inserting in lieu thereof "110 metres".

s. 37 (4),
amended

- (6) Subsection 4 of the said section 37, as amended by the Statutes of Ontario, 1976, chapter 37, section 5, is further amended,
- (a) by striking out "30 miles" in the fourth line and inserting in lieu thereof "50 kilometres"; and
 - (b) by striking out "200 feet" in the sixth line and inserting in lieu thereof "sixty metres".

s. 37 (5),
amended

- (7) Subsection 5 of the said section 37 is amended by striking out "300 candle-power" in the third line and inserting in lieu thereof "300 candela".

s. 37 (6),
amended

- (8) Subsection 6 of the said section 37, as amended by the Statutes of Ontario, 1976, chapter 37, section 5, is further amended,
- (a) by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres";

Subsections 2 and 3. The reference is to the distance at which a lighted lamp shall be clearly visible.

Subsection 4. The reference in subclause i of clause *a* is to the distance at which a lighted red light on the rear of a motor vehicle shall be visible.

The references in subclause ii of clause *a* and in clause *b* are to the size of a red reflector or red reflective material. Sixteen square inches are approximately 103 square centimetres.

Subsection 5. The reference is to the driving light produced by lamps on the front of a motor vehicle. Three hundred and fifty feet are approximately equal to 107 metres.

Subsection 6. A reference to 30 miles per hour is converted to a reference to 50 kilometres per hour and a reference to a distance of 200 feet is converted to a reference to sixty metres.

Thirty miles are approximately 48.2 kilometres and 200 feet are approximately 60.9 metres.

Subsection 7. The reference is to the intensity of the beam of light projected by the front lamps of a motor vehicle. The candela is the basic unit of measurement of luminous intensity.

Subsection 8. The subsection deals with clearance lamps. Clause *a* refers to the distance at which persons and vehicles are not clearly discernible. Five hundred feet are approximately 152.4 metres. Clauses *b* and *c* refer to the width of a vehicle. Eighty inches are approximately 2.03 metres. Clause *c* refers to the distance from the side of a vehicle. Six inches are approximately 152.4 millimetres.

Subsection 9. The reference is to the width of a motor vehicle.

Subsection 10. The subsection deals with identification lamps on commercial motor vehicles and combinations of commercial motor vehicles and trailers. The references in clauses *a* and *e* are to distance for the purpose of visibility. The references in clauses *b* and *c* are to the length and width of the vehicle or combination of vehicle and trailer, and the reference in clause *d* is to the spacing of the lamps.

Thirty feet are approximately 9.14 metres.

Six inches are approximately 152.4 millimetres and twelve inches are approximately 304.8 millimetres.

Subsection 11. The subsection deals with side marker lamps. Twenty feet are approximately 6.1 metres.

Subsection 12. The reference is to the size of a lamp. Four inches are 101.6 millimetres.

Subsection 13. The subsection deals with bicycles and tricycles. Ten inches are 254 millimetres and one inch is 25.4 millimetres.

Subsection 14. The subsection deals with the lamp required to illuminate the numbers on the rear number plate of a motor vehicle or trailer.

Subsection 15. The subsection refers to a light that may be used on a motor vehicle that is not in motion. Two hundred feet are approximately 60.9 metres.

Subsection 16. The subsection deals with spotlamps. One hundred feet are approximately 30.4 metres.

Subsections 17 and 18. The reference is to the distance at which persons and vehicles are not clearly discernible.

Subsection 19. The subsection deals with lights for wide vehicles. Ninety-six inches are approximately 2.43 metres.

Subsection 20. This subsection also deals with lights on vehicles.

Subsection 21. This subsection deals with lights on farm tractors and farm equipment.

Subsection 22. The subsection refers to the size of vehicles that are required to have signalling devices. Eighty inches are approximately 2.03 metres and twenty feet are approximately 6.1 metres.

Subsection 23. The subsection deals with the lamp required on snow removal equipment.

- (b) by striking out "80 inches" in the seventh line and inserting in lieu thereof "2.05 metres";
- (c) by striking out "80 inches" in the fifteenth line and inserting in lieu thereof "2.05 metres"; and
- (d) by striking out "6 inches" in the twenty-fourth line and inserting in lieu thereof "160 millimetres".

(9) Subsection 7 of the said section 37 is amended by striking out "80 inches" in the third and fourth lines and inserting in lieu thereof "2.05 metres". s. 37 (7),
amended

(10) Subsection 9 of the said section 37 is amended, s. 37 (9),
amended

- (a) by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres";
- (b) by striking out "30 feet" in the seventh line and inserting in lieu thereof "9.2 metres";
- (c) by striking out "80 inches" in the eighth line and inserting in lieu thereof "2.05 metres";
- (d) by striking out "six nor more than twelve inches" in the twelfth and thirteenth lines and inserting in lieu thereof "150 millimetres nor more than 310 millimetres"; and
- (e) by striking out "500 feet" in the sixteenth line and inserting in lieu thereof "150 metres".

(11) Subsection 11 of the said section 37 is amended, s. 37 (11),
amended

- (a) by striking out "500 feet" in the fifth line, the thirteenth line and the nineteenth line and inserting in lieu thereof in each instance "150 metres"; and
- (b) by striking out "20 feet" in the seventh line and inserting in lieu thereof "6.1 metres".

(12) Subsection 13 of the said section 37 is amended by striking out "4 inches" in the third line and inserting in lieu thereof "102 millimetres". s. 37 (13),
amended

(13) Subsection 14 of the said section 37, as amended by the Statutes of Ontario, 1974, chapter 123, section 11, is further amended, s. 37 (14),
amended

- (a) by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres";

(b) by striking out "ten inches" in the eleventh line and inserting in lieu thereof "250 millimetres"; and

(c) by striking out "one inch" in the eleventh line and inserting in lieu thereof "25 millimetres".

s. 37 (16).
amended

(14) Subsection 16 of the said section 37 is amended,

(a) by striking out "candle-power" in the second line and inserting in lieu thereof "candela"; and

(b) by striking out "500 feet" in the sixth line and inserting in lieu thereof "150 metres".

s. 37 (17).
amended

(15) Subsection 17 of the said section 37 is amended by striking out "200 feet" in the sixth line and inserting in lieu thereof "sixty metres".

s. 37 (19).
amended

(16) Subsection 19 of the said section 37 is amended by striking out "100 feet" in the sixth line and inserting in lieu thereof "thirty metres".

s. 37 (20).
amended

(17) Subsection 20 of the said section 37 is amended by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres".

s. 37 (21).
amended

(18) Subsection 21 of the said section 37 is amended by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres".

s. 37 (22).
amended

(19) Subsection 22 of the said section 37 is amended,

(a) by striking out "500 feet" in the fifth line and in the twelfth line and inserting in lieu thereof in each instance "150 metres"; and

(b) by striking out "96 inches" in the seventh line and inserting in lieu thereof "2.6 metres".

s. 37 (23).
amended

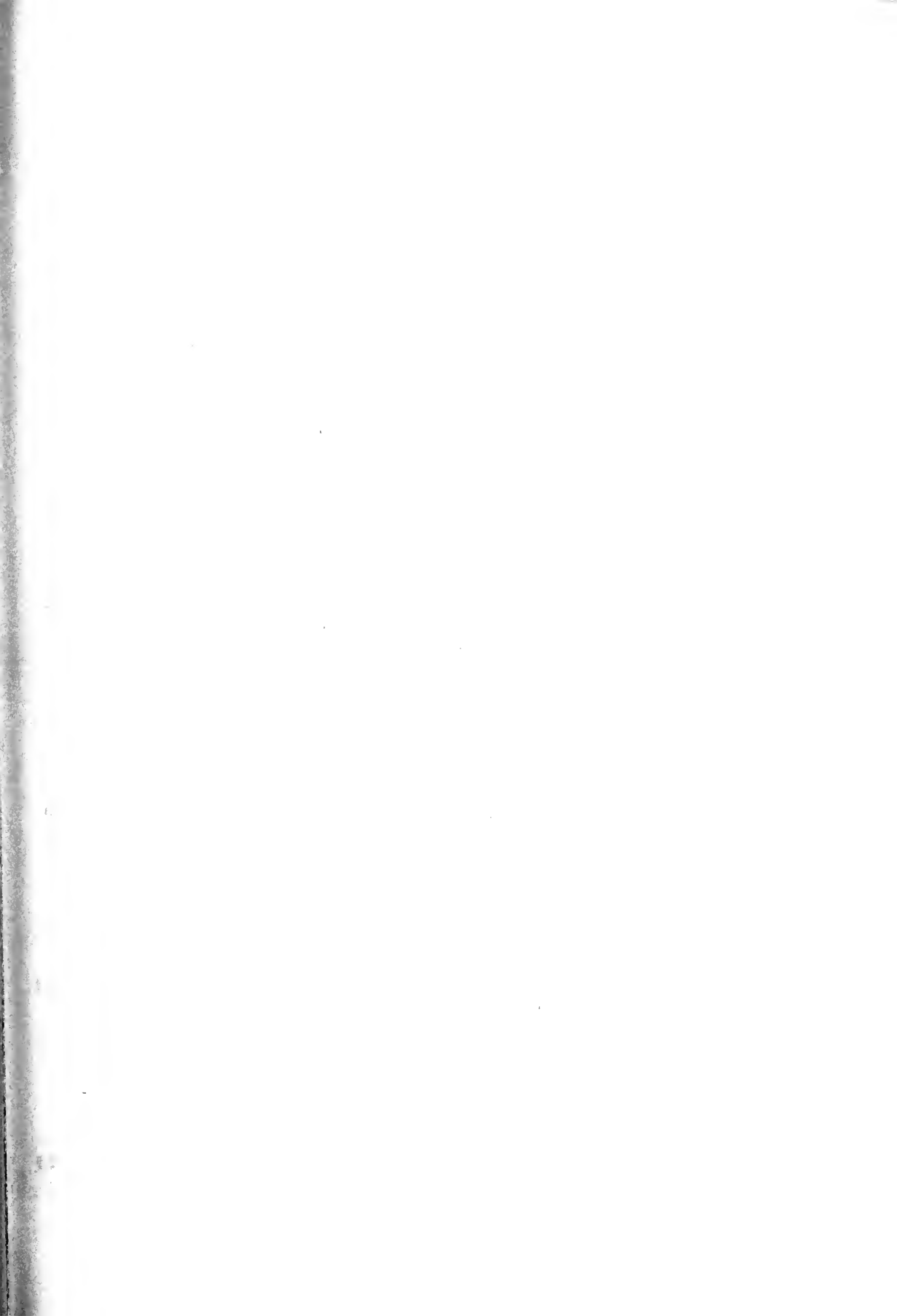
(20) Subsection 23 of the said section 37, as amended by the Statutes of Ontario, 1974, chapter 123, section 11, is further amended by striking out "500 feet" in the seventh line and in the twelfth and thirteenth lines and inserting in lieu thereof in each instance "150 metres".

s. 37 (24).
amended

(21) Subsection 24 of the said section 37 is amended by striking out "500 feet" in the seventh line and inserting in lieu thereof "150 metres".

s. 37 (28).
amended

(22) Subsection 28 of the said section 37 is amended,



SECTION 5. The reference is to the size of the lettering of the words required on a right hand drive vehicle that is not equipped with a signal device. Two inches are 50.8 millimetres.

SECTION 6. The reference is to the gross weight of a trailer or semi-trailer. Three thousand pounds are approximately 1,360.7 kilograms.

SECTION 7. The reference is to a mirror extending from the side of a vehicle. Twelve inches are 304.8 millimetres.

SECTION 8. The references are to the gross weight of self-propelled vehicles and to the distance between the wheel rim and the roadway. Two tons are approximately 1,814 kilograms. One and one-quarter inches are approximately 31.7 millimetres.

SECTION 9. The references are to the size of letters required on a rebuilt tire. One-half inch is approximately twelve millimetres. The amendment reduces the required size of letters.

SECTION 10.—Subsection 1. The reference is to the position of a reflector on the rear of a commercial motor vehicle or trailer. Six inches are approximately 152 millimetres.

Subsection 2. The reference is to the distance at which a rear red light shall be clearly visible. 500 feet are approximately 152 metres.

SECTION 11.—Subsection 1. The references are to the width of a vehicle and to the width of a traction engine. 102-23/64 inches are approximately 2.59 metres. 110-15/64 inches equal approximately 2.79 metres.

(a) by striking out "80 inches" in the second line and inserting in lieu thereof "2.05 metres"; and

(b) by striking out "20 feet" in the third line and inserting in lieu thereof "6.1 metres".

(23) Subsection 30 of the said section 37 is amended by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres". s. 37 (30).
amended

5. Section 38 of the said Act is amended by striking out "two inches" in the fifth line and inserting in lieu thereof "50 millimetres". s. 38.
amended

6. Subsection 3 of section 39 of the said Act is amended by striking out "3,000 pounds" in the first and second lines and inserting in lieu thereof "1,360 kilograms". s. 39 (3).
amended

7. Section 41a of the said Act, as enacted by the Statutes of Ontario, 1977, chapter 54, section 7, is amended by striking out "twelve inches" in the fourth line and inserting in lieu thereof "305 millimetres". s. 41 a.
amended

8. Subsection 1 of section 43 of the said Act is amended, s. 43 (1).
amended

(a) by striking out "two tons" in the second line and inserting in lieu thereof "1,820 kilograms"; and

(b) by striking out "one and one-quarter inches" in the eighth and ninth lines and inserting in lieu thereof "31.5 millimetres".

9.—(1) Subsection 2 of section 45 of the said Act is amended by striking out "one-half inch" in the third line and inserting in lieu thereof "six millimetres". s. 45 (2).
amended

(2) Subsection 3 of the said section 45 is amended by striking out "one-half inch" in the fourth line and inserting in lieu thereof "six millimetres". s. 45 (3).
amended

10.—(1) Subsection 2 of section 61 of the said Act is amended by striking out "six inches" in the second line and inserting in lieu thereof "160 millimetres". s. 61 (2).
amended

(2) Clause a of subsection 3 of the said section 61 is amended by striking out "500 feet" in the fourth line and inserting in lieu thereof "150 metres". s. 61 (3) (a).
amended

11.—(1) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended, s. 65 (1).
amended

- (a) by striking out "102-23/64 inches" in the second line and inserting in lieu thereof "2.6 metres"; and
- (b) by striking out "110-15/64 inches" in the fourth line and inserting in lieu thereof "2.8 metres".

s. 65 (2),
amended

- (2) Subsection 2 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended,

- (a) by striking out "102-23/64 inches" in the second line and in the fifth line and inserting in lieu thereof in each instance "2.6 metres"; and
- (b) by striking out "110-15/64 inches" in the sixth and seventh lines and inserting in lieu thereof "2.8 metres".

s. 65 (4),
amended

- (3) Subsection 4 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by striking out "four inches" in the sixth line and inserting in lieu thereof "102 millimetres".

s. 65 (5),
amended

- (4) Subsection 5 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended,

- (a) by striking out "36 feet 1-1/16 inches" in the third line and inserting in lieu thereof "eleven metres"; and
- (b) by striking out "68 feet 10-49/64 inches" in the fifth and sixth lines and inserting in lieu thereof "twenty-one metres".

s. 65 (6),
amended

- (5) Subsection 6 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by striking out "45 feet 11-11/64 inches" in the third line and inserting in lieu thereof "fourteen metres".

s. 65 (7),
amended

- (6) Subsection 7 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by striking out "41 feet 1/8 inch" in the first line and inserting in lieu thereof "12.5 metres".

s. 65 (8),
amended

- (7) Subsection 8 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by striking out "50 feet" in the third line and inserting in lieu thereof "15.25 metres".

Subsection 2. The references are to the width of load on a vehicle.

Subsection 3. The reference is to the extension of width by a load covering mechanism. Four inches are approximately 101 millimetres.

Subsection 4. The references are to the length of a vehicle and to the length of a combination of vehicles. 36 feet $1\frac{1}{16}$ inches are approximately 10.9 metres. 68 feet $10\frac{49}{64}$ inches are approximately 20.9 metres.

Subsection 5. The reference is to the length of a semi-trailer. 45 feet $11\frac{11}{64}$ inches are approximately 13.9 metres.

Subsection 6. The reference is to the length of a bus. 41 feet $\frac{1}{8}$ inch are approximately 12.49 metres.

Subsection 7. The reference is to the length of a combination of vehicles. Fifty feet are 15.24 metres.

Subsection 8. The reference is to the height of a vehicle including load. 13 feet $7\frac{3}{8}$ inches are approximately 4.149 metres.

SECTION 12. The reference is to a load that overhangs the rear of a vehicle. Four feet ten inches are approximately 1.47 metres.

SECTION 13. Subsection 1 of section 70 of the Act defines terms used in Part VII of the Act.

Clause *b* defines "axle group weight".

Clause *d* defines "axle unit weight".

Clause *g* defines "dual axle". 39.5 inches are approximately one metre.

Clause *h* defines "four axle group". 98.5 inches are approximately 2.5 metres.

Clause *j* defines "gross vehicle weight".

Clause *m* defines "single axle".

Clause *n* defines "tank-truck". Five hundred gallons are approximately 2.27 kilolitres.

Clause *o* defines "three axle group".

Clause *p* defines "triple axle".

Clause *q* defines "two axle group". 78.5 inches are approximately 1.9 metres.

SECTION 14. The subsection deals with weight restrictions on tires.

5.9 inches are approximately 149.8 millimetres.

504 pounds are approximately 228.6 kilograms.

One inch is approximately 25.4 millimetres.

504 pounds per inch is equal to 9 kilograms per millimetre.

616 pounds are approximately 279.4 kilograms.

616 pounds per inch are 11 kilograms per millimetre.

(8) Subsection 9 of the said section 65, as re-enacted by the ^{s. 65 (9).} Statutes of Ontario, 1977, chapter 65, section 2, is ^{amended} amended by striking out "13 feet $7\frac{3}{8}$ inches" in the second line and inserting in lieu thereof "4.15 metres".

12. Subsection 1 of section 67 of the said Act, as re-enacted by ^{s. 67 (1).} the Statutes of Ontario, 1977, chapter 65, section 1, is ^{amended} amended by striking out "4 feet 10 inches" in the second line and inserting in lieu thereof "1.5 metres".

13. Subsection 1 of section 70 of the said Act, as re-enacted by ^{s. 70 (1).} the Statutes of Ontario, 1977, chapter 65, section 3, is ^{amended} amended,

(a) in clause *b*, by striking out "pounds" in the second line and inserting in lieu thereof "kilograms";

(b) in clause *d*, by striking out "pounds" in the second line and inserting in lieu thereof "kilograms";

(c) in clause *g*, by striking out "39.5 inches" in the second line and inserting in lieu thereof "one metre";

(d) in clause *h*, by striking out "98.5 inches" in the sixth line and inserting in lieu thereof "2.5 metres";

(e) in clause *j*, by striking out "pounds" in the second line and inserting in lieu thereof "kilograms";

(f) in clause *m*, by striking out "39.5 inches" in the third line and inserting in lieu thereof "one metre";

(g) in clause *n*, by striking out "500 gallons" in the fourth line and inserting in lieu thereof "2.3 kilolitres";

(h) in clause *o*, by striking out "98.5 inches" in the eighth line and inserting in lieu thereof "2.5 metres";

(i) in clause *p*, by striking out "39.5 inches" in the sixth line and inserting in lieu thereof "one metre";
and

(j) in clause *q*, by striking out "78.5 inches in the sixth line and inserting in lieu thereof "two metres".

14. Subsection 1 of section 71 of the said Act, as re-enacted by ^{s. 71 (1).} the Statutes of Ontario, 1977, chapter 65, section 3, is ^{amended} amended,

- (a) by striking out "5.9 inches" in the second line and inserting in lieu thereof "150 millimetres";
- (b) by striking out "inch" in the third line and inserting in lieu thereof "millimetre";
- (c) by striking out "504 pounds" in the fourth line and inserting in lieu thereof "nine kilograms";
- (d) by striking out "5.9 inches" in the fifth line and inserting in lieu thereof "150 millimetres";
- (e) by striking out "inch" in the sixth line and inserting in lieu thereof "millimetre"; and
- (f) by striking out "616 pounds" in the seventh line and inserting in lieu thereof "eleven kilograms".

s. 72 (1),
amended

15.—(1) Subsection 1 of section 72 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended,

- (a) by striking out "19,800 pounds" in the sixth line and inserting in lieu thereof "9,000 kilograms"; and
- (b) by striking out "22,000 pounds" in the seventh line and inserting in lieu thereof "10,000 kilograms".

s. 72 (2),
amended

(2) Subsection 2 of the said section 72 is amended by striking out "39,600 pounds" in the second and third lines and inserting in lieu thereof "18,000 kilograms".

s. 72 (3),
amended

(3) Subsection 3 of the said section 72 is amended by striking out "59,400 pounds⁵" in the second and third lines and inserting in lieu thereof "27,000 kilograms".

s. 72 (4),
amended

(4) Subsection 4 of the said section 72 is amended by striking out "11,000 pounds" in the third line and inserting in lieu thereof "5,000 kilograms".

s. 74 (2),
amended

16.—(1) Subsection 2 of section 74 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended,

- (a) by striking out "1,000 pounds" in the fourth and fifth lines and inserting in lieu thereof "454 kilograms"; and
- (b) by striking out "140,000 pounds" in the eleventh line and inserting in lieu thereof "63,500 kilograms".

SECTION 15. The section deals with axle unit weights.

19,800 pounds are approximately 8,981 kilograms.

22,000 pounds are approximately 9,979 kilograms.

39,600 pounds are approximately 17,962 kilograms.

59,400 pounds are approximately 26,943 kilograms.

11,000 pounds are approximately 4,989 kilograms.

SECTION 16.—Subsection 1. The reference is to gross vehicle weights. One thousand pounds are approximately 453.5 kilograms. 140,000 pounds are approximately 63,502 kilograms.

Subsection 2. The reference is to weight on a front axle.

SECTION 17. The references are to the weight upon an axle and the spacing between axles.

18,000 pounds are approximately 8,164 kilograms.

7 feet 10 inches are approximately 2.38 metres.

12,100 pounds are approximately 5,488 kilograms.

SECTION 18.—Subsection 1. The subsection refers to a conversion unit used to convert a two axle tractor into a three axle tractor.

15,400 pounds are approximately 6,985 kilograms.

Subsections 2 and 3. The references are to the weight transmitted by an axle.

11,000 pounds are approximately 4,989 kilograms.

16,500 pounds are approximately 7,484 kilograms.

Subsection 4. The references are to the carrying capacity of a vehicle and to the weight upon tires.

2,200 pounds are approximately 997 kilograms.

280 pounds per inch are 5 kilograms per millimetre.

SECTION 19. The section provides penalties for contraventions of specific sections of the Act.

Clause *a*. 100 pounds are approximately 45.3 kilograms.

\$0.91 per hundredweight is approximately \$2 per 100 kilograms.

11,000 pounds are approximately 4,989 kilograms.

Clause *b*. \$1.82 per hundredweight is approximately \$4.01 per 100 kilograms.

16,500 pounds are approximately 7,484 kilograms.

Clause *c*. \$2.73 per hundredweight is approximately \$6.02 per 100 kilograms.

22,000 pounds are approximately 9,979 kilograms.

Clause *d*. \$3.64 per hundredweight is approximately \$8.03 per 100 kilograms.

33,000 pounds are approximately 14,968 kilograms.

Clause *e*. \$4.55 per hundredweight is approximately \$10.04 per 100 kilograms.

- (2) Subsection 7 of the said section 74 is amended by striking out "1,000 pounds" in the fourth and fifth lines and inserting in lieu thereof "454 kilograms". s. 74 (7).
amended

17. Section 76 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended, s. 76.
amended

- (a) by striking out "18,000 pounds" in the third line and inserting in lieu thereof "8,200 kilograms";
- (b) by striking out "7 feet 10 inches" in the fourth line and inserting in lieu thereof "2.4 metres"; and
- (c) by striking out "12,100 pounds" in the fifth line and inserting in lieu thereof "5,500 kilograms".

18.—(1) Subsection 3 of section 77 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended by striking out "15,400 pounds" in the seventh line and inserting in lieu thereof "7,000 kilograms". s. 77 (3).
amended

- (2) Subsection 5 of the said section 77 is amended by striking out "11,000 pounds" in the tenth line and inserting in lieu thereof "5,000 kilograms". s. 77 (5).
amended

- (3) Subsection 6 of the said section 77 is amended by striking out "16,500 pounds" in the tenth line and inserting in lieu thereof "7,500 kilograms". s. 77 (6).
amended

(4) Subsection 7 of the said section 77 is amended, s. 77 (7).
amended

- (a) by striking out "2,200 pounds" in the third line and inserting in lieu thereof "1,000 kilograms";
- (b) by striking out "inch" in the eighth line and inserting in lieu thereof "millimetre"; and
- (c) by striking out "280 pounds" in the eighth and ninth lines and inserting in lieu thereof "five kilograms".

19. Section 79 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended, s. 79.
amended

(a) in clause *a*,

- (i) by striking out "\$0.91 per hundredweight" in the first line and inserting in lieu thereof "\$2 per 100 kilograms", and

- (ii) by striking out "11,000 pounds" in the fourth line and inserting in lieu thereof "5,000 kilograms";

(b) in clause *b*,

- (i) by striking out "\$1.82 per hundredweight" in the first line and inserting in lieu thereof "\$4 per 100 kilograms",
- (ii) by striking out "11,000 pounds" in the third and fourth lines and inserting in lieu thereof "5,000 kilograms", and
- (iii) by striking out "16,500 pounds" in the fourth line and inserting in lieu thereof "7,500 kilograms";

(c) in clause *c*,

- (i) by striking out "\$2.73 per hundredweight" in the first line and inserting in lieu thereof "\$6 per 100 kilograms",
- (ii) by striking out "16,500 pounds" in the third and fourth lines and inserting in lieu thereof "7,500 kilograms", and
- (iii) by striking out "22,000 pounds" in the fourth line and inserting in lieu thereof "10,000 kilograms";

(d) in clause *d*,

- (i) by striking out "\$3.64 per hundredweight" in the first line and inserting in lieu thereof "\$8 per 100 kilograms",
- (ii) by striking out "22,000 pounds" in the third and fourth lines and inserting in lieu thereof "10,000 kilograms", and
- (iii) by striking out "33,000 pounds" in the fourth line and inserting in lieu thereof "15,000 kilograms"; and

(e) in clause *e*,

- (i) by striking out "\$4.55 per hundredweight" in the first line and inserting in lieu thereof "\$10 per 100 kilograms", and

SECTION 20. The tables set out axle spacings, axle group spacings and maximum allowable weights for the purposes of sections 72 and 73 of the Act.

- (ii) by striking out "33,000 pounds" in the third and fourth lines and inserting in lieu thereof "15,000 kilograms".

20. Tables 1 and 2 to Part VII of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, and Tables 3, 4 and 5 to the said Part VII, as enacted by the said section 3, are repealed and the following substituted therefor: ^{Part VII, Tables 1-5, re-enacted}

TABLE 1

MAXIMUM ALLOWABLE WEIGHT FOR DUAL AXLE

COLUMN ONE	COLUMN TWO
Axle Spacing (Metres)	Maximum Allowable Weight (Kilograms)
1.0 to less than 1.2	15,400
1.2 to less than 1.3	16,800
1.3 to less than 1.4	17,200
1.4 to less than 1.5	17,500
1.5 to less than 1.6	17,900
1.6 to less than 1.7	18,300
1.7 to less than 1.8	18,700
1.8 or more	19,100

TABLE 2
MAXIMUM ALLOWABLE WEIGHT FOR
TRIPLE AXLE

COLUMN ONE	COLUMN TWO
Axle Spacing (Metres)	Maximum Allowable Weight (Kilograms)
2.0 to less than 2.4	19,500
2.4 to less than 2.8	21,300
2.8 to less than 2.9	21,700
2.9 to less than 3.0	22,000
3.0 to less than 3.1	22,400
3.1 to less than 3.2	22,700
3.2 to less than 3.3	23,100
3.3 to less than 3.4	23,400
3.4 to less than 3.5	23,800
3.5 to less than 3.6	24,100
3.6 to less than 3.7	24,400
3.7 to less than 3.8	24,800
3.8 to less than 3.9	25,100
3.9 to less than 4.0	25,500
4.0 to less than 4.1	25,800
4.1 to less than 4.2	26,200
4.2 to less than 4.3	26,500
4.3 to less than 4.4	26,900
4.4 to less than 4.5	27,200
4.5 to less than 4.6	27,600
4.6 to less than 4.7	27,900
4.7 to less than 4.8	28,300
4.8 or more	28,600

TABLE 3
MAXIMUM ALLOWABLE WEIGHT FOR
TWO AXLE GROUP

COLUMN ONE	COLUMN TWO
Axle Group Spacing (Metres)	Maximum Allowable Weight (Kilograms)
1.0 to less than 1.2	15,000
1.2 to less than 1.3	16,300
1.3 to less than 1.4	16,700
1.4 to less than 1.5	17,000
1.5 to less than 1.6	17,400
1.6 to less than 1.7	17,800
1.7 to less than 1.8	18,200
1.8 to less than 1.9	18,600
1.9 to less than 2.0	19,100

TABLE 4

MAXIMUM ALLOWABLE WEIGHT FOR
THREE AXLE GROUP

COLUMN ONE	COLUMN TWO
Axle Group Spacing (Metres)	Maximum Allowable Weight (Kilograms)
2.0 to less than 2.4	19,000
2.4 to less than 2.6	20,400
2.6 to less than 2.8	21,000
2.8 to less than 2.9	21,400
2.9 to less than 3.0	21,700
3.0 to less than 3.1	22,000
3.1 to less than 3.2	22,400
3.2 to less than 3.3	22,700
3.3 to less than 3.4	23,000
3.4 to less than 3.5	23,400
3.5 to less than 3.6	23,700
3.6 to less than 3.7	24,000
3.7 to less than 3.8	24,400
3.8 to less than 3.9	24,700
3.9 to less than 4.0	25,000
4.0 to less than 4.1	25,400
4.1 to less than 4.2	25,700
4.2 to less than 4.3	26,000
4.3 to less than 4.4	26,400
4.4 to less than 4.5	26,700
4.5 to less than 4.6	27,000
4.6 to less than 4.7	27,400
4.7 to less than 4.8	27,700
4.8 to less than 4.9	28,000
4.9 to less than 5.0	28,300
5.0 or more	28,600

TABLE 5
 MAXIMUM ALLOWABLE WEIGHT FOR
 FOUR AXLE GROUP

COLUMN ONE	COLUMN TWO
Axle Group Spacing (Metres)	Maximum Allowable Weight (Kilograms)
Less than 3.6	23,500
3.6 to less than 3.7	23,900
3.7 to less than 3.8	24,200
3.8 to less than 3.9	24,600
3.9 to less than 4.0	24,900
4.0 to less than 4.1	25,300
4.1 to less than 4.2	25,700
4.2 to less than 4.3	26,000
4.3 to less than 4.4	26,400
4.4 to less than 4.5	26,700
4.5 to less than 4.6	27,100
4.6 to less than 4.7	27,500
4.7 to less than 4.8	27,800
4.8 to less than 4.9	28,200
4.9 to less than 5.0	28,500
5.0 to less than 5.1	28,900
5.1 to less than 5.2	29,300
5.2 to less than 5.3	29,600
5.3 to less than 5.4	30,000
5.4 to less than 5.5	30,300
5.5 to less than 5.6	30,700
5.6 to less than 5.7	31,100
5.7 to less than 5.8	31,400
5.8 to less than 5.9	31,800
5.9 to less than 6.0	32,100
6.0 to less than 6.1	32,500
6.1 to less than 6.2	32,900
6.2 to less than 6.3	33,200
6.3 to less than 6.4	33,600
6.4 to less than 6.5	33,900
6.5 to less than 6.6	34,300
6.6 to less than 6.7	34,700
6.7 to less than 6.8	35,000
6.8 to less than 6.9	35,400
6.9 to less than 7.0	35,700
7.0 to less than 7.1	36,100
7.1 to less than 7.2	36,500
7.2 to less than 7.3	36,800
7.3 to less than 7.4	37,200
7.4 to less than 7.5	37,600
7.5 or more	38,000

Commence-
ment

21. This Act comes into force on the 1st day of April, 1978.

Short title

22. The short title of this Act is *The Highway Traffic Amendment Act, 1978*.

An Act to amend
The Highway Traffic Act

1st Reading

March 6th, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(Government Bill)

BILL 23

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraph 15*b* of subsection 1 of section 1 of *The Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1973, chapter 45, section 1, is amended,

s. 1 (1),
par. 15*b*,
amended

(a) by striking out “102 inches” in the third line and inserting in lieu thereof “2.6 metres”; and

(b) by striking out “35 feet” in the fourth line and inserting in lieu thereof “eleven metres”.

(2) Subparagraph ii of paragraph 15*c* of subsection 1 of the said section 1, as re-enacted by the Statutes of Ontario, 1975, chapter 78, section 1, is amended by striking out “120 pounds” and inserting in lieu thereof “fifty-five kilograms”.

s. 1 (1),
par. 15*c*,
subpar. ii,
amended

2. Subsection 3 of section 7 of the said Act, as amended by the Statutes of Ontario, 1974, chapter 66, section 3, is further amended by striking out “6,000 pounds” in the second line and inserting in lieu thereof “2,750 kilograms”.

s. 7 (3),
amended

3.—(1) Subsection 2 of section 36 of the said Act is amended by striking out “6,000 pounds” in the third line and inserting in lieu thereof “2,750 kilograms”.

s. 36 (2),
amended

(2) Subsection 3 of the said section 36 is amended by striking out “6,000 pounds” in the fourth line and inserting in lieu thereof “2,750 kilograms”.

s. 36 (3),
amended

4.—(1) Subsection 1 of section 37 of the said Act, as re-enacted by the Statutes of Ontario, 1976, chapter 37, section 5, is amended by striking out “500 feet” in the fifth line and inserting in lieu thereof “150 metres”.

s. 37 (1),
amended

- s. 37 (1c),
amended
- (2) Subsection 1c of the said section 37, as enacted by the Statutes of Ontario, 1976, chapter 37, section 5, is amended by striking out "500 feet" in the third line and inserting in lieu thereof "150 metres".
- s. 37 (1d),
amended
- (3) Subsection 1d of the said section 37, as enacted by the Statutes of Ontario, 1976, chapter 37, section 5, is amended by striking out "500 feet" in the ninth line and inserting in lieu thereof "150 metres".
- s. 37 (2),
amended
- (4) Subsection 2 of the said section 37 is amended,
- (a) in subclause i of clause a, by striking out "500 feet" in the fourth line and inserting in lieu thereof "150 metres";
- (b) in subclause ii of clause a, by striking out "16 square inches" in the sixth and seventh lines and inserting in lieu thereof "100 square centimetres"; and
- (c) in clause b, by striking out "16 square inches" in the fifth and sixth lines and inserting in lieu thereof "100 square centimetres".
- s. 37 (3),
amended
- (5) Subsection 3 of the said section 37, as amended by the Statutes of Ontario, 1977, chapter 54, section 6, is further amended by striking out "350 feet" in the sixth line and inserting in lieu thereof "110 metres".
- s. 37 (4),
amended
- (6) Subsection 4 of the said section 37, as amended by the Statutes of Ontario, 1976, chapter 37, section 5, is further amended,
- (a) by striking out "30 miles" in the fourth line and inserting in lieu thereof "50 kilometres"; and
- (b) by striking out "200 feet" in the sixth line and inserting in lieu thereof "sixty metres".
- s. 37 (5),
amended
- (7) Subsection 5 of the said section 37 is amended by striking out "300 candle-power" in the third line and inserting in lieu thereof "300 candela".
- s. 37 (6),
amended
- (8) Subsection 6 of the said section 37, as amended by the Statutes of Ontario, 1976, chapter 37, section 5, is further amended,
- (a) by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres";

- (b) by striking out "80 inches" in the seventh line and inserting in lieu thereof "2.05 metres";
 - (c) by striking out "80 inches" in the fifteenth line and inserting in lieu thereof "2.05 metres"; and
 - (d) by striking out "6 inches" in the twenty-fourth line and inserting in lieu thereof "160 millimetres".
- (9) Subsection 7 of the said section 37 is amended by striking out "80 inches" in the third and fourth lines and inserting in lieu thereof "2.05 metres". s. 37 (7),
amended
- (10) Subsection 9 of the said section 37 is amended, s. 37 (9),
amended
- (a) by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres";
 - (b) by striking out "30 feet" in the seventh line and inserting in lieu thereof "9.2 metres";
 - (c) by striking out "80 inches" in the eighth line and inserting in lieu thereof "2.05 metres";
 - (d) by striking out "six nor more than twelve inches" in the twelfth and thirteenth lines and inserting in lieu thereof "150 millimetres nor more than 310 millimetres"; and
 - (e) by striking out "500 feet" in the sixteenth line and inserting in lieu thereof "150 metres".
- (11) Subsection 11 of the said section 37 is amended, s. 37 (11),
amended
- (a) by striking out "500 feet" in the fifth line, the thirteenth line and the nineteenth line and inserting in lieu thereof in each instance "150 metres"; and
 - (b) by striking out "20 feet" in the seventh line and inserting in lieu thereof "6.1 metres".
- (12) Subsection 13 of the said section 37 is amended by striking out "4 inches" in the third line and inserting in lieu thereof "102 millimetres". s. 37 (13),
amended
- (13) Subsection 14 of the said section 37, as amended by the Statutes of Ontario, 1974, chapter 123, section 11, is further amended, s. 37 (14),
amended
- (a) by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres";

- (b) by striking out "ten inches" in the eleventh line and inserting in lieu thereof "250 millimetres"; and
- (c) by striking out "one inch" in the eleventh line and inserting in lieu thereof "25 millimetres".
- s. 37 (16),
amended (14) Subsection 16 of the said section 37 is amended,
- (a) by striking out "candle-power" in the second line and inserting in lieu thereof "candela"; and
- (b) by striking out "500 feet" in the sixth line and inserting in lieu thereof "150 metres".
- s. 37 (17),
amended (15) Subsection 17 of the said section 37 is amended by striking out "200 feet" in the sixth line and inserting in lieu thereof "sixty metres".
- s. 37 (19),
amended (16) Subsection 19 of the said section 37 is amended by striking out "100 feet" in the sixth line and inserting in lieu thereof "thirty metres".
- s. 37 (20),
amended (17) Subsection 20 of the said section 37 is amended by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres".
- s. 37 (21),
amended (18) Subsection 21 of the said section 37 is amended by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres".
- s. 37 (22),
amended (19) Subsection 22 of the said section 37 is amended,
- (a) by striking out "500 feet" in the fifth line and in the twelfth line and inserting in lieu thereof in each instance "150 metres"; and
- (b) by striking out "96 inches" in the seventh line and inserting in lieu thereof "2.6 metres".
- s. 37 (23),
amended (20) Subsection 23 of the said section 37, as amended by the Statutes of Ontario, 1974, chapter 123, section 11, is further amended by striking out "500 feet" in the seventh line and in the twelfth and thirteenth lines and inserting in lieu thereof in each instance "150 metres".
- s. 37 (24),
amended (21) Subsection 24 of the said section 37 is amended by striking out "500 feet" in the seventh line and inserting in lieu thereof "150 metres".
- s. 37 (28),
amended (22) Subsection 28 of the said section 37 is amended,

(a) by striking out "80 inches" in the second line and inserting in lieu thereof "2.05 metres"; and

(b) by striking out "20 feet" in the third line and inserting in lieu thereof "6.1 metres".

(23) Subsection 30 of the said section 37 is amended by striking out "500 feet" in the fifth line and inserting in lieu thereof "150 metres". s. 37 (30), amended

5. Section 38 of the said Act is amended by striking out "two inches" in the fifth line and inserting in lieu thereof "50 millimetres". s. 38, amended

6. Subsection 3 of section 39 of the said Act is amended by striking out "3,000 pounds" in the first and second lines and inserting in lieu thereof "1,360 kilograms". s. 39 (3), amended

7. Section 41a of the said Act, as enacted by the Statutes of Ontario, 1977, chapter 54, section 7, is amended by striking out "twelve inches" in the fourth line and inserting in lieu thereof "305 millimetres". s. 41 a, amended

8. Subsection 1 of section 43 of the said Act is amended, s. 43 (1), amended

(a) by striking out "two tons" in the second line and inserting in lieu thereof "1,820 kilograms"; and

(b) by striking out "one and one-quarter inches" in the eighth and ninth lines and inserting in lieu thereof "31.5 millimetres".

9.—(1) Subsection 2 of section 45 of the said Act is amended by striking out "one-half inch" in the third line and inserting in lieu thereof "six millimetres". s. 45 (2), amended

(2) Subsection 3 of the said section 45 is amended by striking out "one-half inch" in the fourth line and inserting in lieu thereof "six millimetres". s. 45 (3), amended

10.—(1) Subsection 2 of section 61 of the said Act is amended by striking out "six inches" in the second line and inserting in lieu thereof "160 millimetres". s. 61 (2), amended

(2) Clause a of subsection 3 of the said section 61 is amended by striking out "500 feet" in the fourth line and inserting in lieu thereof "150 metres". s. 61 (3) (a), amended

11.—(1) Subsection 1 of section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended, s. 65 (1), amended

- (a) by striking out "102-23/64 inches" in the second line and inserting in lieu thereof "2.6 metres"; and
- (b) by striking out "110-15/64 inches" in the fourth line and inserting in lieu thereof "2.8 metres".
- s. 65 (2).
amended
- (2) Subsection 2 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended,
- (a) by striking out "102-23/64 inches" in the second line and in the fifth line and inserting in lieu thereof in each instance "2.6 metres"; and
- (b) by striking out "110-15/64 inches" in the sixth and seventh lines and inserting in lieu thereof "2.8 metres".
- s. 65 (4).
amended
- (3) Subsection 4 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by striking out "four inches" in the sixth line and inserting in lieu thereof "102 millimetres".
- s. 65 (5).
amended
- (4) Subsection 5 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended,
- (a) by striking out "36 feet 1-1/16 inches" in the third line and inserting in lieu thereof "eleven metres"; and
- (b) by striking out "68 feet 10-49/64 inches" in the fifth and sixth lines and inserting in lieu thereof "twenty-one metres".
- s. 65 (6).
amended
- (5) Subsection 6 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by striking out "45 feet 11-11/64 inches" in the third line and inserting in lieu thereof "fourteen metres".
- s. 65 (7).
amended
- (6) Subsection 7 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by striking out "41 feet 1/8 inch" in the first line and inserting in lieu thereof "12.5 metres".
- s. 65 (8).
amended
- (7) Subsection 8 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by striking out "50 feet" in the third line and inserting in lieu thereof "15.25 metres".

- (8) Subsection 9 of the said section 65, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 2, is amended by striking out "13 feet 7 $\frac{3}{8}$ inches" in the second line and inserting in lieu thereof "4.15 metres". ^{s. 65 (9), amended}
- 12.** Subsection 1 of section 67 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 1, is amended by striking out "4 feet 10 inches" in the second line and inserting in lieu thereof "1.5 metres". ^{s. 67 (1), amended}
- 13.** Subsection 1 of section 70 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended, ^{s. 70 (1), amended}
- (a) in clause *b*, by striking out "pounds" in the second line and inserting in lieu thereof "kilograms";
 - (b) in clause *d*, by striking out "pounds" in the second line and inserting in lieu thereof "kilograms";
 - (c) in clause *g*, by striking out "39.5 inches" in the second line and inserting in lieu thereof "one metre";
 - (d) in clause *h*, by striking out "98.5 inches" in the sixth line and inserting in lieu thereof "2.5 metres";
 - (e) in clause *j*, by striking out "pounds" in the second line and inserting in lieu thereof "kilograms";
 - (f) in clause *m*, by striking out "39.5 inches" in the third line and inserting in lieu thereof "one metre";
 - (g) in clause *n*, by striking out "500 gallons" in the fourth line and inserting in lieu thereof "2.3 kilolitres";
 - (h) in clause *o*, by striking out "98.5 inches" in the eighth line and inserting in lieu thereof "2.5 metres";
 - (i) in clause *p*, by striking out "39.5 inches" in the sixth line and inserting in lieu thereof "one metre";
and
 - (j) in clause *q*, by striking out "78.5 inches in the sixth line and inserting in lieu thereof "two metres".
- 14.** Subsection 1 of section 71 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended, ^{s. 71 (1), amended}

- (a) by striking out "5.9 inches" in the second line and inserting in lieu thereof "150 millimetres";
- (b) by striking out "inch" in the third line and inserting in lieu thereof "millimetre";
- (c) by striking out "504 pounds" in the fourth line and inserting in lieu thereof "nine kilograms";
- (d) by striking out "5.9 inches" in the fifth line and inserting in lieu thereof "150 millimetres";
- (e) by striking out "inch" in the sixth line and inserting in lieu thereof "millimetre"; and
- (f) by striking out "616 pounds" in the seventh line and inserting in lieu thereof "eleven kilograms".

s. 72 (1),
amended

15.—(1) Subsection 1 of section 72 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended,

- (a) by striking out "19,800 pounds" in the sixth line and inserting in lieu thereof "9,000 kilograms"; and
- (b) by striking out "22,000 pounds" in the seventh line and inserting in lieu thereof "10,000 kilograms".

s. 72 (2),
amended

(2) Subsection 2 of the said section 72 is amended by striking out "39,600 pounds" in the second and third lines and inserting in lieu thereof "18,000 kilograms".

s. 72 (3),
amended

(3) Subsection 3 of the said section 72 is amended by striking out "59,400 pounds" in the second and third lines and inserting in lieu thereof "27,000 kilograms".

s. 72 (4),
amended

(4) Subsection 4 of the said section 72 is amended by striking out "11,000 pounds" in the third line and inserting in lieu thereof "5,000 kilograms".

s. 74 (2),
amended

16.—(1) Subsection 2 of section 74 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended,

- (a) by striking out "1,000 pounds" in the fourth and fifth lines and inserting in lieu thereof "454 kilograms"; and
- (b) by striking out "140,000 pounds" in the eleventh line and inserting in lieu thereof "63,500 kilograms".

- (2) Subsection 7 of the said section 74 is amended by striking out "1,000 pounds" in the fourth and fifth lines and inserting in lieu thereof "454 kilograms". s. 74 (7).
amended

17. Section 76 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended, s. 76.
amended

- (a) by striking out "18,000 pounds" in the third line and inserting in lieu thereof "8,200 kilograms";
- (b) by striking out "7 feet 10 inches" in the fourth line and inserting in lieu thereof "2.4 metres"; and
- (c) by striking out "12,100 pounds" in the fifth line and inserting in lieu thereof "5,500 kilograms".

18.—(1) Subsection 3 of section 77 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended by striking out "15,400 pounds" in the seventh line and inserting in lieu thereof "7,000 kilograms". s. 77 (3).
amended

- (2) Subsection 5 of the said section 77 is amended by striking out "11,000 pounds" in the tenth line and inserting in lieu thereof "5,000 kilograms". s. 77 (5).
amended

- (3) Subsection 6 of the said section 77 is amended by striking out "16,500 pounds" in the tenth line and inserting in lieu thereof "7,500 kilograms". s. 77 (6).
amended

(4) Subsection 7 of the said section 77 is amended, s. 77 (7).
amended

- (a) by striking out "2,200 pounds" in the third line and inserting in lieu thereof "1,000 kilograms";
- (b) by striking out "inch" in the eighth line and inserting in lieu thereof "millimetre"; and
- (c) by striking out "280 pounds" in the eighth and ninth lines and inserting in lieu thereof "five kilograms".

19. Section 79 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 65, section 3, is amended, s. 79.
amended

(a) in clause *a*,

- (i) by striking out "\$0.91 per hundredweight" in the first line and inserting in lieu thereof "\$2 per 100 kilograms", and

- (ii) by striking out "11,000 pounds" in the fourth line and inserting in lieu thereof "5,000 kilograms";

(b) in clause b,

- (i) by striking out "\$1.82 per hundredweight" in the first line and inserting in lieu thereof "\$4 per 100 kilograms",
- (ii) by striking out "11,000 pounds" in the third and fourth lines and inserting in lieu thereof "5,000 kilograms", and
- (iii) by striking out "16,500 pounds" in the fourth line and inserting in lieu thereof "7,500 kilograms";

(c) in clause c,

- (i) by striking out "\$2.73 per hundredweight" in the first line and inserting in lieu thereof "\$6 per 100 kilograms",
- (ii) by striking out "16,500 pounds" in the third and fourth lines and inserting in lieu thereof "7,500 kilograms", and
- (iii) by striking out "22,000 pounds" in the fourth line and inserting in lieu thereof "10,000 kilograms";

(d) in clause d,

- (i) by striking out "\$3.64 per hundredweight" in the first line and inserting in lieu thereof "\$8 per 100 kilograms",
- (ii) by striking out "22,000 pounds" in the third and fourth lines and inserting in lieu thereof "10,000 kilograms", and
- (iii) by striking out "33,000 pounds" in the fourth line and inserting in lieu thereof "15,000 kilograms"; and

(e) in clause e,

- (i) by striking out "\$4.55 per hundredweight" in the first line and inserting in lieu thereof "\$10 per 100 kilograms", and

- (ii) by striking out "33,000 pounds" in the third and fourth lines and inserting in lieu thereof "15,000 kilograms".

20. Tables 1 and 2 to Part VII of the said Act, as re-enacted by ^{Part VII,} the Statutes of Ontario, 1977, chapter 65, section 3, and ^{Tables 1-5,} re-enacted Tables 3, 4 and 5 to the said Part VII, as enacted by the said section 3, are repealed and the following substituted therefor:

TABLE 1

MAXIMUM ALLOWABLE WEIGHT FOR DUAL AXLE

COLUMN ONE	COLUMN TWO
Axle Spacing (Metres)	Maximum Allowable Weight (Kilograms)
1.0 to less than 1.2	15,400
1.2 to less than 1.3	16,800
1.3 to less than 1.4	17,200
1.4 to less than 1.5	17,500
1.5 to less than 1.6	17,900
1.6 to less than 1.7	18,300
1.7 to less than 1.8	18,700
1.8 or more	19,100

TABLE 2
 MAXIMUM ALLOWABLE WEIGHT FOR
 TRIPLE AXLE

COLUMN ONE	COLUMN TWO
Axle Spacing (Metres)	Maximum Allowable Weight (Kilograms)
2.0 to less than 2.4	19,500
2.4 to less than 2.8	21,300
2.8 to less than 2.9	21,700
2.9 to less than 3.0	22,000
3.0 to less than 3.1	22,400
3.1 to less than 3.2	22,700
3.2 to less than 3.3	23,100
3.3 to less than 3.4	23,400
3.4 to less than 3.5	23,800
3.5 to less than 3.6	24,100
3.6 to less than 3.7	24,400
3.7 to less than 3.8	24,800
3.8 to less than 3.9	25,100
3.9 to less than 4.0	25,500
4.0 to less than 4.1	25,800
4.1 to less than 4.2	26,200
4.2 to less than 4.3	26,500
4.3 to less than 4.4	26,900
4.4 to less than 4.5	27,200
4.5 to less than 4.6	27,600
4.6 to less than 4.7	27,900
4.7 to less than 4.8	28,300
4.8 or more	28,600

TABLE 3
 MAXIMUM ALLOWABLE WEIGHT FOR
 TWO AXLE GROUP

COLUMN ONE	COLUMN TWO
Axle Group Spacing (Metres)	Maximum Allowable Weight (Kilograms)
1.0 to less than 1.2	15,000
1.2 to less than 1.3	16,300
1.3 to less than 1.4	16,700
1.4 to less than 1.5	17,000
1.5 to less than 1.6	17,400
1.6 to less than 1.7	17,800
1.7 to less than 1.8	18,200
1.8 to less than 1.9	18,600
1.9 to less than 2.0	19,100

TABLE 4

MAXIMUM ALLOWABLE WEIGHT FOR
THREE AXLE GROUP

COLUMN ONE	COLUMN TWO
Axle Group Spacing (Metres)	Maximum Allowable Weight (Kilograms)
2.0 to less than 2.4	19,000
2.4 to less than 2.6	20,400
2.6 to less than 2.8	21,000
2.8 to less than 2.9	21,400
2.9 to less than 3.0	21,700
3.0 to less than 3.1	22,000
3.1 to less than 3.2	22,400
3.2 to less than 3.3	22,700
3.3 to less than 3.4	23,000
3.4 to less than 3.5	23,400
3.5 to less than 3.6	23,700
3.6 to less than 3.7	24,000
3.7 to less than 3.8	24,400
3.8 to less than 3.9	24,700
3.9 to less than 4.0	25,000
4.0 to less than 4.1	25,400
4.1 to less than 4.2	25,700
4.2 to less than 4.3	26,000
4.3 to less than 4.4	26,400
4.4 to less than 4.5	26,700
4.5 to less than 4.6	27,000
4.6 to less than 4.7	27,400
4.7 to less than 4.8	27,700
4.8 to less than 4.9	28,000
4.9 to less than 5.0	28,300
5.0 or more	28,600

TABLE 5
 MAXIMUM ALLOWABLE WEIGHT FOR
 FOUR AXLE GROUP

COLUMN ONE	COLUMN TWO
Axle Group Spacing (Metres)	Maximum Allowable Weight (Kilograms)
Less than 3.6	23,500
3.6 to less than 3.7	23,900
3.7 to less than 3.8	24,200
3.8 to less than 3.9	24,600
3.9 to less than 4.0	24,900
4.0 to less than 4.1	25,300
4.1 to less than 4.2	25,700
4.2 to less than 4.3	26,000
4.3 to less than 4.4	26,400
4.4 to less than 4.5	26,700
4.5 to less than 4.6	27,100
4.6 to less than 4.7	27,500
4.7 to less than 4.8	27,800
4.8 to less than 4.9	28,200
4.9 to less than 5.0	28,500
5.0 to less than 5.1	28,900
5.1 to less than 5.2	29,300
5.2 to less than 5.3	29,600
5.3 to less than 5.4	30,000
5.4 to less than 5.5	30,300
5.5 to less than 5.6	30,700
5.6 to less than 5.7	31,100
5.7 to less than 5.8	31,400
5.8 to less than 5.9	31,800
5.9 to less than 6.0	32,100
6.0 to less than 6.1	32,500
6.1 to less than 6.2	32,900
6.2 to less than 6.3	33,200
6.3 to less than 6.4	33,600
6.4 to less than 6.5	33,900
6.5 to less than 6.6	34,300
6.6 to less than 6.7	34,700
6.7 to less than 6.8	35,000
6.8 to less than 6.9	35,400
6.9 to less than 7.0	35,700
7.0 to less than 7.1	36,100
7.1 to less than 7.2	36,500
7.2 to less than 7.3	36,800
7.3 to less than 7.4	37,200
7.4 to less than 7.5	37,600
7.5 or more	38,000

Commence-
ment

21. This Act comes into force on the 1st day of April, 1978.

Short title

22. The short title of this Act is *The Highway Traffic Amendment Act, 1978*.

An Act to amend
The Highway Traffic Act

1st Reading

March 6th, 1978

2nd Reading

March 28th, 1978

3rd Reading

March 28th, 1978

THE HON. J. W. SNOW
Minister of Transportation and
Communications

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to authorize the Raising of Money on
the Credit of the Consolidated Revenue Fund**

THE HON. W. D. MCKEOUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs

EXPLANATORY NOTE

The Bill authorizes the borrowing of moneys not otherwise authorized by any other Act.

The principal borrowings authorized under *The Loan Act* in recent years have been:

1. Borrowings from the Canada Pension Plan.
2. The Ontario Treasury Bill program.
3. CMHC Waste Control Loans.
4. Federal-Provincial-Municipal Loan programs.

The authorization in the Bill of \$1.1 billion is intended to cover the following estimated borrowing requirements:

1. Canada Pension Plan borrowings through to May, 1979.
2. Repayment of Ontario debt maturities.
3. Temporary in-year financing, as necessary.

BILL 24

1978

An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The Lieutenant Governor in Council is hereby authorized to raise from time to time by way of loan in any manner provided by *The Financial Administration Act* such sum or sums of money as are considered necessary for discharging any indebtedness or obligation of Ontario, for making any payments authorized or required by any Act to be made out of the Consolidated Revenue Fund or for reimbursing the Consolidated Revenue Fund for any moneys expended for any of such purposes, provided that the principal amount of any securities issued and temporary loans raised under the authority of this Act shall not exceed in the aggregate \$1,100,000,000.

Loans up to
\$1,100,000,000
R.S.O. 1970,
c. 166

(2) The sum or sums of money authorized to be raised by subsection 1 for the purposes mentioned therein shall be in addition to all sums of money authorized to be raised by way of loan under any other Act.

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is *The Ontario Loan Act*, 1978.

Short title

An Act to authorize the Raising of
Money on the Credit of the Consolidated
Revenue Fund

1st Reading

March 7th, 1978

2nd Reading

3rd Reading

THE HON. W. D. McKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

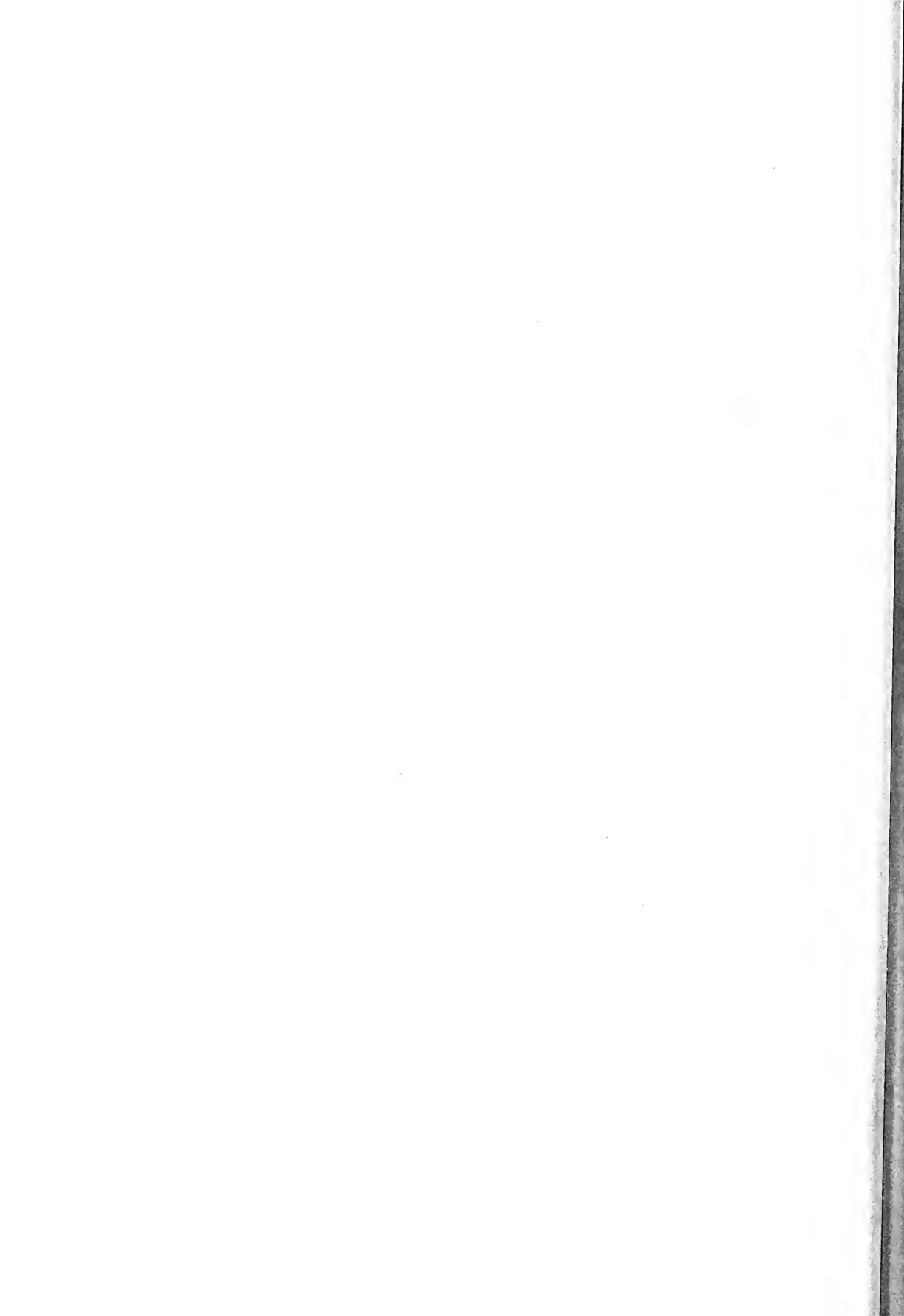
(Government Bill)

BILL 24

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to authorize the Raising of Money on
the Credit of the Consolidated Revenue Fund**

THE HON. W. D. McKEGUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs



BILL 24

1978

An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The Lieutenant Governor in Council is hereby authorized to raise from time to time by way of loan in any manner provided by *The Financial Administration Act* such sum or sums of money as are considered necessary for discharging any indebtedness or obligation of Ontario, for making any payments authorized or required by any Act to be made out of the Consolidated Revenue Fund or for reimbursing the Consolidated Revenue Fund for any moneys expended for any of such purposes, provided that the principal amount of any securities issued and temporary loans raised under the authority of this Act shall not exceed in the aggregate \$1,100,000,000.

Loans up to
\$1,100,000,000

R.S.O. 1970,
c. 166

(2) The sum or sums of money authorized to be raised by subsection 1 for the purposes mentioned therein shall be in addition to all sums of money authorized to be raised by way of loan under any other Act.

Idem

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is *The Ontario Loan Act*, 1978.

Short title

An Act to authorize the Raising of
Money on the Credit of the Consolidated
Revenue Fund

1st Reading

March 7th, 1978

2nd Reading

April 25th, 1978

3rd Reading

April 25th, 1978

THE HON. W. D. MCKEUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Tobacco Tax Act

THE HON. L. MAECK
Minister of Revenue

EXPLANATORY NOTES

SECTION 1. This amendment increases the tax on cigarettes, cigars and other tobacco products. For example, on a package of 20 cigarettes, the tax is increased from 19.2¢ to 22¢. The same proportionate increase in tax will apply to packages containing more or less than 20 cigarettes.

On pipe tobacco and tobacco products, other than cigars and cigarettes, the tax increases from thirty-five one-hundredths of 1 cent per gram to four-tenths of 1 cent for each gram or part thereof.

For each cigar the retail price of which (before tax) is 7 cents or less, the tax remains at 2 cents for each cigar.

For each cigar the retail price of which (before tax) is more than 7 cents but not more than 10 cents, the tax is increased from 4 cents to 5 cents.

For each cigar the retail price of which (before tax) is more than 10 cents but not more than 15 cents, the tax is increased from 6 cents to 7 cents.

For each cigar the retail price of which (before tax) is more than 15 cents but not more than 90 cents, the tax on the first 15 cents of the retail price increases from 6 cents to 7 cents, and the tax on each additional 5 cents or part thereof of the retail price remains at 2 cents to a maximum of 39 cents tax on each cigar the retail price of which is more than 90 cents.

An Act to amend The Tobacco Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 2 of *The Tobacco Tax Act*, being ^{s. 2(1),} chapter 463 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1977, chapter 11, section 1, is repealed and the following substituted therefor:

(1) Every consumer shall pay to Her Majesty in right of ^{Tax on} Ontario a tax computed as follows:

- (a) one and one-tenth cents on every cigarette purchased by him;
- (b) four-tenths of 1 cent on every gram or part thereof of any tobacco, other than cigarettes or cigars, purchased by him;
- (c) 2 cents on every cigar purchased by him for a price at retail of not more than 7 cents;
- (d) 5 cents on every cigar purchased by him for a price at retail of more than 7 cents but not more than 10 cents;
- (e) 7 cents on every cigar purchased by him for a price at retail of more than 10 cents but not more than 15 cents, and thereafter, an additional 2 cents for each additional 5 cents or part thereof that the price at retail of a cigar purchased by him exceeds 15 cents and does not exceed 90 cents; and
- (f) 39 cents on every cigar purchased by him for a price at retail of more than 90 cents.

s. 8 (3) (a),
re-enacted

2. Clause *a* of subsection 3 of section 8 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 11, section 3, is repealed and the following substituted therefor:

(a) \$1,000; or

.

s. 9 (1) (d),
amended

3. Clause *d* of subsection 1 of section 9 of the said Act is amended by striking out "an audit of" in the first line and inserting in lieu thereof "an audit or".

Commence-
ment

4.—(1) This Act, except sections 1 and 2, comes into force on the day it receives Royal Assent.

Idem

(2) Section 1 shall be deemed to have come into force on the 8th day of March, 1978.

Idem

(3) Section 2 comes into force on the 1st day of April, 1978.

Short title

5. The short title of this Act is *The Tobacco Tax Amendment Act, 1978*.

SECTION 2. The amendment increases from \$700 to \$1,000 the maximum annual compensation that may be paid to collectors who, as agents of the Minister, collect the tax imposed by the Act. The increase applies with respect to tax collected on and after April 1, 1978.

SECTION 3. The amendment corrects a typographical error in the statute.



An Act to amend
The Tobacco Tax Act

1st Reading

March 7th, 1978

2nd Reading

3rd Reading

THE HON. L. MAECK
Minister of Revenue

(Government Bill)

BILL 25

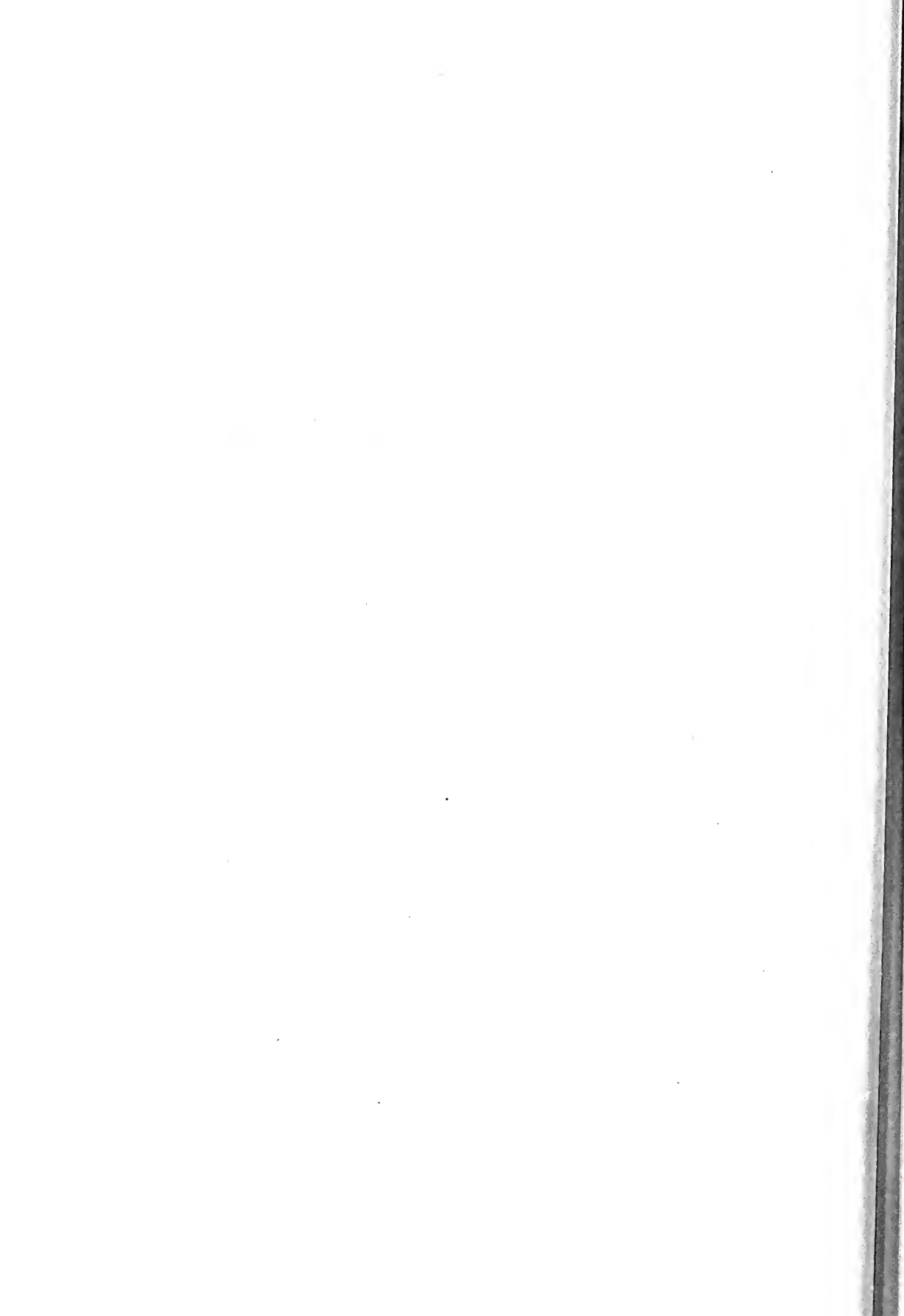
2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Tobacco Tax Act

THE HON. L. MAECK
Minister of Revenue

T O R O N T O

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO



An Act to amend The Tobacco Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 2 of *The Tobacco Tax Act*, being ^{s. 2(1),} chapter 463 of the Revised Statutes of Ontario, 1970, as _{re-enacted} re-enacted by the Statutes of Ontario, 1977, chapter 11, section 1, is repealed and the following substituted therefor:

(1) Every consumer shall pay to Her Majesty in right of Ontario a tax computed as follows: ^{Tax on consumer}

- (a) one and one-tenth cents on every cigarette purchased by him;
- (b) four-tenths of 1 cent on every gram or part thereof of any tobacco, other than cigarettes or cigars, purchased by him;
- (c) 2 cents on every cigar purchased by him for a price at retail of not more than 7 cents;
- (d) 5 cents on every cigar purchased by him for a price at retail of more than 7 cents but not more than 10 cents;
- (e) 7 cents on every cigar purchased by him for a price at retail of more than 10 cents but not more than 15 cents, and thereafter, an additional 2 cents for each additional 5 cents or part thereof that the price at retail of a cigar purchased by him exceeds 15 cents and does not exceed 90 cents; and
- (f) 39 cents on every cigar purchased by him for a price at retail of more than 90 cents.

s. 8 (3) (a),
re-enacted

2. Clause *a* of subsection 3 of section 8 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 11, section 3, is repealed and the following substituted therefor:

(a) \$1,000; or

.

s. 9 (1) (d),
amended

3. Clause *d* of subsection 1 of section 9 of the said Act is amended by striking out "an audit of" in the first line and inserting in lieu thereof "an audit or".

Commence-
ment

- 4.—(1) This Act, except sections 1 and 2, comes into force on the day it receives Royal Assent.

Idem

- (2) Section 1 shall be deemed to have come into force on the 8th day of March, 1978.

Idem

- (3) Section 2 comes into force on the 1st day of April, 1978.

Short title

5. The short title of this Act is *The Tobacco Tax Amendment Act, 1978*.

An Act to amend
The Tobacco Tax Act

1st Reading

March 7th, 1978

2nd Reading

March 28th, 1978

3rd Reading

March 28th, 1978

THE HON. L. MAECK
Minister of Revenue

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Income Tax Act

THE HON. L. MAECK
Minister of Revenue

EXPLANATORY NOTES

SECTION 1. The amendment provides that the rate of Ontario income tax of 44 per cent of basic federal tax, which first became applicable in the 1977 taxation year, will also apply to the 1978 taxation year. The clause to be re-enacted now reads:

(i) 44 per cent in respect of the 1977 taxation year.

SECTION 2.—Subsection 1. The words to be deleted by the amendment will have the effect of restricting to \$25 the occupancy cost that can be claimed by any principal taxpayer in a taxation year for the part of the year that he or she resides in a prescribed students' residence, whether or not the principal taxpayer is a full-time student. The restriction to \$25 relates to the property tax credit claim that may be made by an individual, and the students' residences that are prescribed are those for which full property taxes are not paid to the municipality where the residence is located. The effect of the amendment is that those who occupy a students' residence and are not students will be restricted to the same claim for property tax credits as are the student occupants of the residence.

Section 6b (3), (showing underlined the words to be deleted) as it now reads is set out below:

(3) Where, during the taxation year, the principal residence of a principal taxpayer who is a full-time student at a college, university or school of nursing is in a students' residence that is prescribed in the regulations, the occupancy cost for every principal taxpayer so resident shall be deemed to be \$25 for that portion of the taxation year during which a prescribed students' residence was the principal residence of the principal taxpayer.

Subsection 2. The amendment to subsection 11 of section 6b of the Act provides the same four year period for claiming tax credits as applies to claims for refunds of federal and Ontario income tax. Section 6b (11), (showing underlined the words to be replaced) as it now reads is set out below:

(11) Where it is established to the Minister's satisfaction that, in respect of a particular taxation year, an individual was entitled to a deduction under subsection 2 exceeding the amount of the deduction allowed to him under subsection 2 for that taxation year, the amount of such excess (hereinafter called the "additional deduction") may be deducted from the individual's tax otherwise payable under this Act that is payable at the time of or next after the establishing of the amount of the additional deduction, and if the amount of the additional deduction, together with the amount of any deduction under subsection 2 to which the individual is then entitled, exceeds the tax otherwise payable under this Act by the individual at the time of or next after the establishing of the amount of the additional deduction, the amount of such excess shall be paid to the individual by the Treasurer in accordance with subsection 5, provided that no claim to establish an additional deduction may be made after four years from the day of mailing of a notice of assessment of tax payable under this Act for the particular taxation year with respect to which the additional deduction is sought to be established or from the day of mailing of a notice that no tax under this Act is payable for such particular taxation year.

SECTION 3. This amendment is required under the terms of the Income Tax Collection Agreement between Canada and Ontario to provide uniformity between the Ontario and federal statutes. The amendment reflects a change made to section 163 of the Federal Act in December of 1977. The amendment clarifies that the penalty for intentionally understating the amount of income tax payable applies whether or not the taxpayer declared any tax to be payable in the return that he filed.

An Act to amend The Income Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *i* of subsection 3 of section 3 of *The Income Tax Act*, s. 3 (3) (i), re-enacted being chapter 217 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1977, chapter 6, section 1, is repealed and the following substituted therefor:
 - (i) 44 per cent in respect of the 1977 and 1978 taxation years.
- 2.—(1) Subsection 3 of section 6*b* of the said Act, as re-enacted s. 6*b* (3), amended by the Statutes of Ontario, 1972, chapter 146, section 2, is amended by striking out “who is a full-time student at a college, university or school of nursing” in the second and third lines.
 - (2) Subsection 11 of the said section 6*b*, as enacted by the s. 6*b* (11), amended Statutes of Ontario, 1974, chapter 91, section 2, is amended by striking out all the words after “subsection 5” in the sixteenth line and inserting in lieu thereof “provided that no claim to establish a deduction or an additional deduction under this section may be made after four years from the end of the particular taxation year with respect to which a deduction under subsection 2 could first have been made”.
3. Subsection 1 of section 17 of the said Act is repealed and s. 17 (1), re-enacted the following substituted therefor:
 - (1) Every person who, knowingly or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made or has participated in, assented to or acquiesced in the making of, an incorrect statement or omission (in this section referred to as a “false statement”) in a return, certificate, statement or answer (in this section referred to as a “return”) Statements or omissions in return

filed or made in respect of a taxation year as required by or under this Act or a regulation, is liable to a penalty of 25 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable by him under this Act if his taxable income for the year were computed by adding to the taxable income reported by him in his return for the year that portion of his understatement of income for the year that is reasonably attributable to the false statement,

exceeds,

- (b) the tax for the year that would have been payable by him under this Act had his tax payable for the year been assessed on the basis of the information provided in his return for the year.

Interpre-
tation

(1a) For the purposes of subsection 1, the taxable income reported by a person in his return for a taxation year shall be deemed not to be less than nil and the "understatement of income for a year" of a person has the meaning assigned to that expression in subsection 2.1 of section 163 of the Federal Act.

s. 52 (8) (b),
amended

4. Clause *b* of subsection 8 of section 52 of the said Act is amended by striking out "section" in the second line and inserting in lieu thereof "subsection".

1977,
c. 6, s. 5,
re-enacted

5. Section 5 of *The Income Tax Amendment Act, 1977*, being chapter 6, is repealed and the following substituted therefor:

Commence-
ment

5.—(1) This Act, except subsection 3 of section 1, shall be deemed to have come into force on the 1st day of January, 1977.

Idem

(2) Subsection 3 of section 1 shall be deemed to have come into force on the 1st day of January, 1976 and to apply to the 1976 and subsequent taxation years.

Commence-
ment

- 6.—(1) This Act, except sections 1, 2 and 5, comes into force on the day it receives Royal Assent.

Idem

(2) Section 1 and subsection 1 of section 2 shall be deemed to have come into force on the 1st day of January, 1978.

Idem

(3) Subsection 2 of section 2 and section 5 shall be deemed to have come into force on the 1st day of January, 1977.

Short title

7. The short title of this Act is *The Income Tax Amendment Act, 1978*.

SECTION 4. The amendment corrects an erroneous reference in section 52 of the Act. Section 52 (8) (b), prior to this amendment, reads:

(b) shall be the amount calculated by the Minister to be the amount required to be paid under section 4.

SECTION 5. The amendment corrects the application date of the amendment made in 1977 to the method of computing the foreign tax credit for an Ontario resident. To maintain consistency with the *Income Tax Act* (Canada), the amendment must apply to the 1976 and subsequent taxation years and not, as now is the case, only to the 1977 and subsequent taxation years.

An Act to amend
The Income Tax Act

1st Reading

March 7th, 1978

2nd Reading

3rd Reading

THE HON. L. MAECK
Minister of Revenue

(Government Bill)

BILL 26

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Income Tax Act

THE HON. L. MAECK
Minister of Revenue

An Act to amend The Income Tax Act

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1. Clause *i* of subsection 3 of section 3 of *The Income Tax Act*, s. 3 (3) (i), re-enacted being chapter 217 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1977, chapter 6, section 1, is repealed and the following substituted therefor:
 - (i) 44 per cent in respect of the 1977 and 1978 taxation years.
- 2.—(1) Subsection 3 of section 6*b* of the said Act, as re-enacted s. 6*b* (3), amended by the Statutes of Ontario, 1972, chapter 146, section 2, is amended by striking out “who is a full-time student at a college, university or school of nursing” in the second and third lines.
 - (2) Subsection 11 of the said section 6*b*, as enacted by the s. 6*b* (11), amended Statutes of Ontario, 1974, chapter 91, section 2, is amended by striking out all the words after “subsection 5” in the sixteenth line and inserting in lieu thereof “provided that no claim to establish a deduction or an additional deduction under this section may be made after four years from the end of the particular taxation year with respect to which a deduction under subsection 2 could first have been made”.
3. Subsection 1 of section 17 of the said Act is repealed and s. 17 (1), re-enacted the following substituted therefor:
 - (1) Every person who, knowingly or under circumstances Statements or omissions in return amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made or has participated in, assented to or acquiesced in the making of, an incorrect statement or omission (in this section referred to as a “false statement”) in a return, certificate, statement or answer (in this section referred to as a “return”)

filed or made in respect of a taxation year as required by or under this Act or a regulation, is liable to a penalty of 25 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable by him under this Act if his taxable income for the year were computed by adding to the taxable income reported by him in his return for the year that portion of his understatement of income for the year that is reasonably attributable to the false statement,

exceeds,

- (b) the tax for the year that would have been payable by him under this Act had his tax payable for the year been assessed on the basis of the information provided in his return for the year.

Interpre-
tation

(1a) For the purposes of subsection 1, the taxable income reported by a person in his return for a taxation year shall be deemed not to be less than nil and the "understatement of income for a year" of a person has the meaning assigned to that expression in subsection 2.1 of section 163 of the Federal Act.

s. 52 (8) (b),
amended

4. Clause *b* of subsection 8 of section 52 of the said Act is amended by striking out "section" in the second line and inserting in lieu thereof "subsection".

1977,
c. 6, s. 5,
re-enacted

5. Section 5 of *The Income Tax Amendment Act, 1977*, being chapter 6, is repealed and the following substituted therefor:

Commence-
ment

5.—(1) This Act, except subsection 3 of section 1, shall be deemed to have come into force on the 1st day of January, 1977.

Idem

(2) Subsection 3 of section 1 shall be deemed to have come into force on the 1st day of January, 1976 and to apply to the 1976 and subsequent taxation years.

Commence-
ment

- 6.—(1) This Act, except sections 1, 2 and 5, comes into force on the day it receives Royal Assent.

Idem

(2) Section 1 and subsection 1 of section 2 shall be deemed to have come into force on the 1st day of January, 1978.

Idem

(3) Subsection 2 of section 2 and section 5 shall be deemed to have come into force on the 1st day of January, 1977.

Short title

7. The short title of this Act is *The Income Tax Amendment Act, 1978*.





An Act to amend
The Income Tax Act

1st Reading

March 7th, 1978

2nd Reading

April 18th, 1978

3rd Reading

April 18th, 1978

THE HON. L. MAECK
Minister of Revenue

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Retail Sales Tax Act

THE HON. L. MAECK
Minister of Revenue

EXPLANATORY NOTES

GENERAL

The Bill enacts proposals in the Treasurer's Budget,

- (a) to repeal the exemption presently available for railway rolling stock and repairs thereto;
- (b) to extend the thermal insulation and energy conservation exemption to cover storm windows and storm doors; and
- (c) to exempt from tax the rental price of rooms in hotels, motels, etc., and the price of meals sold with the rental of a room on "the American plan", if the meal is served or the room occupied during the period commencing March 8th, 1978 and ending December 31st, 1979.

In addition, the Bill proposes amendments to clarify the application of the Act to the consumption of catalogues, price lists and promotional material given away to encourage sales or the use of services provided by the distributor.

SECTION 1. Subsections 1, 2, 4, 5 and 6 deal with the application of the Act to property or services that are given away to encourage the use of a business enterprise or product. Subsection 4 enacts the definition of "promotional distribution", and defines a "promotional distributor" to be a person resident in, or carrying on business in, Ontario who provides to others in Ontario goods or services for less than their full fair value or full price of admission, and does so as a "promotional distribution". Subsection 5 provides that "purchaser" on whom tax is imposed by the Act includes a promotional distributor to the extent that the value of the goods or services he distributes exceeds what the recipient is required to pay for receiving them. Subsections 1, 2 and 6 amend the definition of "admission", "consumption" and "sale" so that they will include promotional distributions.

Subsection 3 of section 1 amends the definition of "fair value", which is the basis on which tax under the Act is imposed, to make it clear that tax is payable on mailing, delivery or handling charges charged by a vendor to a purchaser on the sale of merchandise. This amendment will provide equality of treatment whether such charges are shown separately by the vendor or are simply borne by him as part of the cost of sales reflected in his selling price.

BILL 27

1978

An Act to amend The Retail Sales Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 1 of section 1 of *The Retail Sales Tax Act*, s. 1, par. 1, amended being chapter 415 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1973, chapter 23, section 1, is amended by adding at the end thereof “and any entry that is provided to a place of amusement as a promotional distribution”.
- (2) Paragraph 3 of the said section 1 is amended by adding s. 1, par. 3, amended at the end thereof “and includes the provision by way of promotional distribution of any tangible personal property or taxable service”.
- (3) Clause *b* of paragraph 4 of the said section 1 is repealed s. 1, par. 4 (b), re-enacted and the following substituted therefor:
 - (*b*) the cost of, or charges for, customs, excise, mailing, handling, delivery or transportation, whether or not such are shown separately in the books of the vendor or on any invoices or in the computation of the sale price.
- (4) The said section 1, as amended by the Statutes of s. 1, amended Ontario, 1973, chapter 23, section 1, 1975, chapter 9, section 1, 1976, chapter 23, section 1, 1976, chapter 82, section 1 and 1977, chapter 13, section 1, is further amended by adding thereto the following paragraphs:
 - 8a. “promotional distribution” means the provision by any person to others of any tangible personal property, taxable service or admission to a place of amusement (other than any provision thereof that is prescribed by the Minister to be excluded

from the application of this paragraph) that is, in the opinion of the Minister, provided for any one or more of the following purposes:

- (a) To promote or encourage attendance at, or patronage of, any place of amusement, business, undertaking or enterprise.
- (b) To describe, or to promote or encourage the purchase, consumption or use of, any goods, wares, services or property of any kind.
- (c) To furnish to any person any directory, listing or compilation of persons, places, prices, services, commodities, places of business or users of any service.
- (d) For any function, use or purpose prescribed by the Minister to be a promotional distribution.

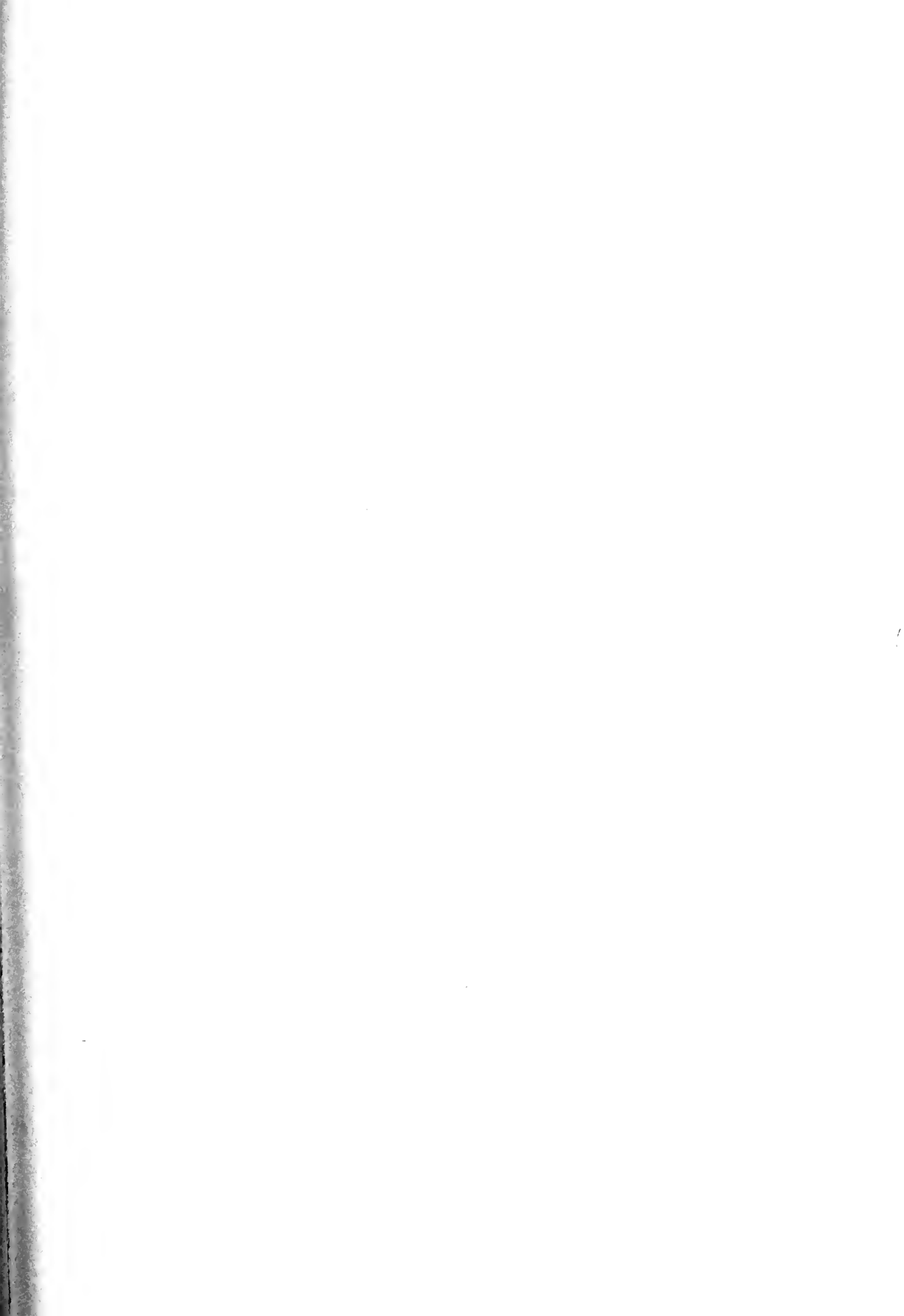
8b. "promotional distributor" means any person who is a resident of, or carries on business in, Ontario and who, by way of promotional distribution, provides or causes to be provided to any person in Ontario any tangible personal property, taxable service or admission to a place of amusement the full fair value or full price of admission of which is not specifically charged to, and required to be paid by, the person to whom such tangible personal property, taxable service or admission to a place of amusement is provided.

s. 1, par. 9,
amended

- (5) Paragraph 9 of the said section 1, as re-enacted by the Statutes of Ontario, 1976, chapter 82, section 1, is amended by adding at the end thereof "and includes also a promotional distributor to the extent that the full fair value or full price of admission of any tangible personal property, taxable service or admission to a place of amusement provided by way of promotional distribution exceeds any payment specifically made therefor by the person to whom such property, service or admission is so provided".

s. 1, par. 13,
amended

- (6) Paragraph 13 of the said section 1, as amended by the Statutes of Ontario, 1975, chapter 9, section 1, 1976, chapter 23, section 1 and 1976, chapter 82, section 1, is further amended by adding thereto the following clause:



SECTION 2.—Subsection 1. This amendment adds to the exemption for thermal insulation and energy conservation materials an exemption for storm doors and storm windows.

Subsection 2. The amendment repeals paragraph 41 of subsection 1 of section 5 of the Act which exempted from tax “railway rolling stock and repairs thereto”. From March 8th, 1978, the acquisition of railway rolling stock and of parts to repair such rolling stock will be taxable.

The new paragraphs 41 and 41*a* enacted in place of the repealed paragraph provide an exemption for transient accommodation and prepared meals sold under the American plan if the accommodation is occupied or the meal served in the period March 8th, 1978 to and including December 31st, 1979. “Transient accommodation” is defined by the Act to include the letting of lodging in hotels, motels, etc., for a continuous period of less than one month.

Subsection 3. The amendment ensures that the recipient of a promotional distribution is exempt from tax under the Act on the amount by which the value of the goods or services that he receives exceeds anything that he is required to pay to receive the promotional distribution. The recipient will be liable to tax on any amount paid for the promotional distribution, and the person who makes the promotional distribution will be taxable on the amount by which the value of the goods or services distributed exceeds what the recipient is required to pay for them.

The clarification of the Act with respect to its application to promotional distributions is necessary because of a decision earlier this year of the Supreme Court of Canada and the interpretation given in that decision to the analogous provisions of a statute of the Province of New Brunswick. The amendments proposed in this Bill with respect to promotional distributions are intended to preserve the application of the Act to such transactions, and for that reason the amendments are retroactive to January 1st, 1975 in order to maintain the interpretation of the Act on the basis of which it had been administered in previous years.

(h) the provision by way of promotional distribution of any tangible personal property or taxable service,

2.—(1) Paragraph 24b of subsection 1 of section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 13, section 4, is amended by adding thereto the following clause: s. 5 (1), par. 24b.
amended

(aa) storm windows and storm doors, as defined by the Minister.

(2) Paragraph 41 of subsection 1 of the said section 5 is repealed and the following substituted therefor: s. 5 (1), par. 41.
re-enacted

41. the occupancy of transient accommodation during the period commencing on the 8th day of March, 1978 and ending with the 31st day of December, 1979, provided that occupancy for any period of twenty-four hours or less that includes any part of the 7th day of March, 1978 is not entitled to the exemption conferred by this paragraph, and occupancy for any period of twenty-four hours or less that includes any part of the 31st day of December, 1979 is entitled to the exemption conferred by this paragraph;

41a. prepared meals served during the period commencing on the 8th day of March, 1978 and ending with the 31st day of December, 1979, if such prepared meals are provided together with transient accommodation in the said period for one charge for both meals and accommodation under the system commonly known as "the American plan".

(3) The said section 5, as amended by the Statutes of Ontario, 1972, chapter 21, section 1, 1973, chapter 23, section 4, 1974, chapter 7, section 2, 1975, chapter 9, section 4, 1976, chapter 23, section 3, 1976, chapter 82, section 3 and 1977, chapter 13, section 4, is further amended by adding thereto the following subsection: s. 5.
amended

(4) A person in Ontario to whom any tangible personal property, taxable service or admission to a place of amusement is provided by way of promotional distribution is, with respect to his consumption or use thereof or with respect to the price of admission thereof, exempt from the tax imposed by this Act on the amount by which the full Exemption
for recipient
of
promotional
distribution

fair value or full price of admission thereof exceeds any payment that is made by him solely and specifically for the receipt by him of the tangible personal property, taxable service or admission to a place of amusement so provided and that is not referable to the purchase, consumption or use by him of any other property, right or service.

- | | |
|-------------------|--|
| Commence-
ment | 3. —(1) This Act, except sections 1 and 2, comes into force on the day it receives Royal Assent. |
| Idem | (2) Subsections 1, 2, 4, 5 and 6 of section 1 and subsection 3 of section 2 shall be deemed to have come into force on the 1st day of January, 1975. |
| Idem | (3) Subsection 3 of section 1 and subsections 1 and 2 of section 2 shall be deemed to have come into force on the 8th day of March, 1978. |
| Short title | 4. The short title of this Act is <i>The Retail Sales Tax Amendment Act, 1978</i> . |

An Act to amend
The Retail Sales Tax Act

1st Reading

March 7th, 1978

2nd Reading

3rd Reading

THE HON. L. MAECK
Minister of Revenue

(Government Bill)

BILL 27

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Retail Sales Tax Act

THE HON. L. MAECK
Minister of Revenue



BILL 27

1978

An Act to amend The Retail Sales Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 1 of section 1 of *The Retail Sales Tax Act*, s. 1, par. 1, amended being chapter 415 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1973, chapter 23, section 1, is amended by adding at the end thereof “and any entry that is provided to a place of amusement as a promotional distribution”.
- (2) Paragraph 3 of the said section 1 is amended by adding s. 1, par. 3, amended at the end thereof “and includes the provision by way of promotional distribution of any tangible personal property or taxable service”.
- (3) Clause *b* of paragraph 4 of the said section 1 is repealed s. 1, par. 4 (b), re-enacted and the following substituted therefor:
- (b) the cost of, or charges for, customs, excise, mailing, handling, delivery or transportation, whether or not such are shown separately in the books of the vendor or on any invoices or in the computation of the sale price.
- (4) The said section 1, as amended by the Statutes of s. 1, amended Ontario, 1973, chapter 23, section 1, 1975, chapter 9, section 1, 1976, chapter 23, section 1, 1976, chapter 82, section 1 and 1977, chapter 13, section 1, is further amended by adding thereto the following paragraphs:
- 8a. “promotional distribution” means the provision by any person to others of any tangible personal property, taxable service or admission to a place of amusement (other than any provision thereof that is prescribed by the Minister to be excluded

from the application of this paragraph) that is, in the opinion of the Minister, provided for any one or more of the following purposes:

- (a) To promote or encourage attendance at, or patronage of, any place of amusement, business, undertaking or enterprise.
- (b) To describe, or to promote or encourage the purchase, consumption or use of, any goods, wares, services or property of any kind.
- (c) To furnish to any person any directory, listing or compilation of persons, places, prices, services, commodities, places of business or users of any service.
- (d) For any function, use or purpose prescribed by the Minister to be a promotional distribution.

8b. "promotional distributor" means any person who is a resident of, or carries on business in, Ontario and who, by way of promotional distribution, provides or causes to be provided to any person in Ontario any tangible personal property, taxable service or admission to a place of amusement the full fair value or full price of admission of which is not specifically charged to, and required to be paid by, the person to whom such tangible personal property, taxable service or admission to a place of amusement is provided.

s. 1, par. 9,
amended

- (5) Paragraph 9 of the said section 1, as re-enacted by the Statutes of Ontario, 1976, chapter 82, section 1, is amended by adding at the end thereof "and includes also a promotional distributor to the extent that the full fair value or full price of admission of any tangible personal property, taxable service or admission to a place of amusement provided by way of promotional distribution exceeds any payment specifically made therefor by the person to whom such property, service or admission is so provided".

s. 1, par. 13,
amended

- (6) Paragraph 13 of the said section 1, as amended by the Statutes of Ontario, 1975, chapter 9, section 1, 1976, chapter 23, section 1 and 1976, chapter 82, section 1, is further amended by adding thereto the following clause:

(h) the provision by way of promotional distribution of any tangible personal property or taxable service,

2.—(1) Paragraph 24*b* of subsection 1 of section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 13, section 4, is amended by adding thereto the following clause:

s. 5 (1), par. 24*b*.
amended

(*aa*) storm windows and storm doors, as defined by the Minister.

(2) Paragraph 41 of subsection 1 of the said section 5 is repealed and the following substituted therefor:

s. 5 (1), par. 41.
re-enacted

41. the occupancy of transient accommodation during the period commencing on the 8th day of March, 1978 and ending with the 31st day of December, 1979, provided that occupancy for any period of twenty-four hours or less that includes any part of the 7th day of March, 1978 is not entitled to the exemption conferred by this paragraph, and occupancy for any period of twenty-four hours or less that includes any part of the 31st day of December, 1979 is entitled to the exemption conferred by this paragraph;

41*a*. prepared meals served during the period commencing on the 8th day of March, 1978 and ending with the 31st day of December, 1979, if such prepared meals are provided together with transient accommodation in the said period for one charge for both meals and accommodation under the system commonly known as "the American plan".

(3) The said section 5, as amended by the Statutes of Ontario, 1972, chapter 21, section 1, 1973, chapter 23, section 4, 1974, chapter 7, section 2, 1975, chapter 9, section 4, 1976, chapter 23, section 3, 1976, chapter 82, section 3 and 1977, chapter 13, section 4, is further amended by adding thereto the following subsection:

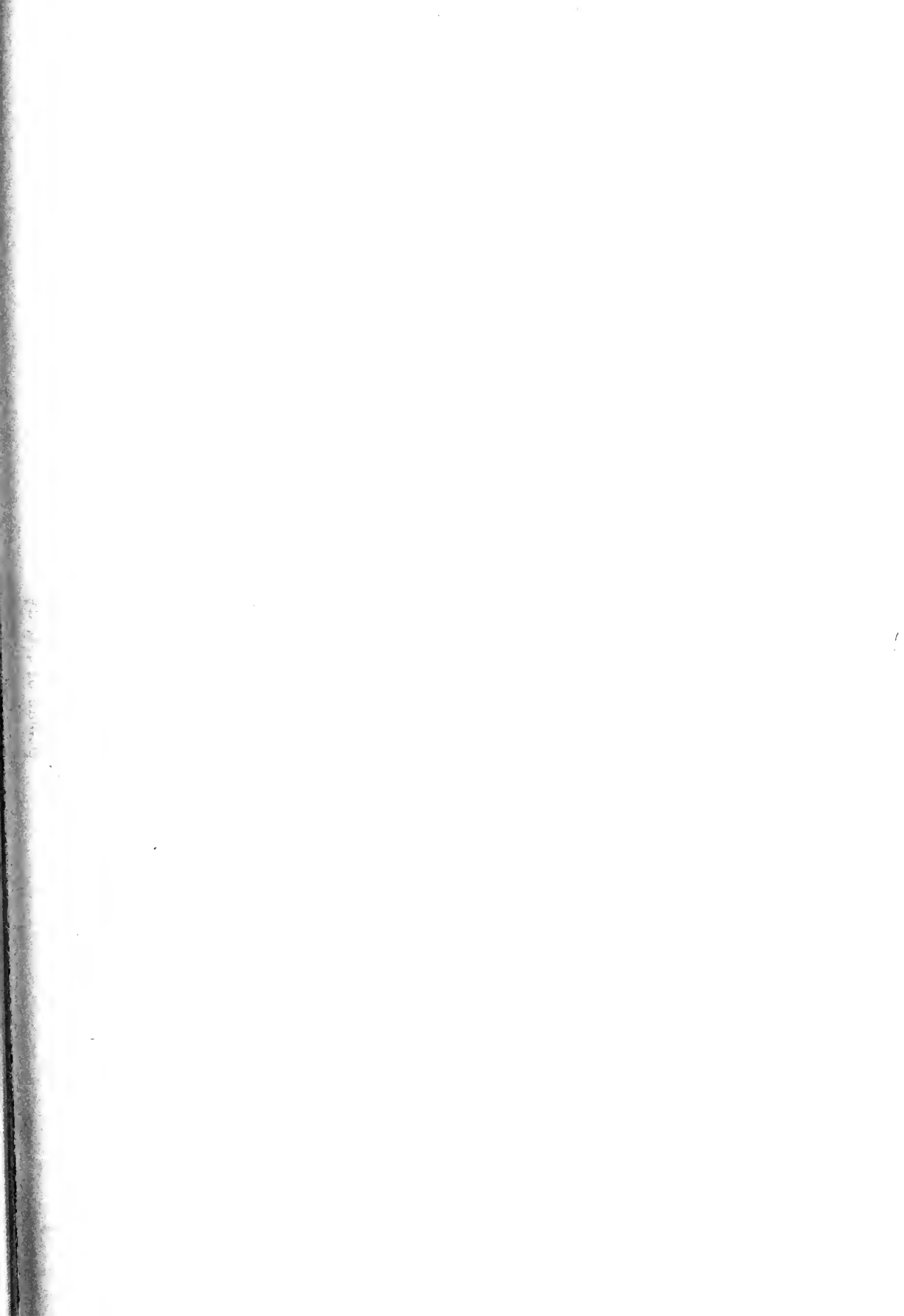
s. 5.
amended

(4) A person in Ontario to whom any tangible personal property, taxable service or admission to a place of amusement is provided by way of promotional distribution is, with respect to his consumption or use thereof or with respect to the price of admission thereof, exempt from the tax imposed by this Act on the amount by which the full

Exemption
for recipient
of
promotional
distribution

fair value or full price of admission thereof exceeds any payment that is made by him solely and specifically for the receipt by him of the tangible personal property, taxable service or admission to a place of amusement so provided and that is not referable to the purchase, consumption or use by him of any other property, right or service.

- | | |
|-------------------|--|
| Commence-
ment | 3. —(1) This Act, except sections 1 and 2, comes into force on the day it receives Royal Assent. |
| Idem | (2) Subsections 1, 2, 4, 5 and 6 of section 1 and subsection 3 of section 2 shall be deemed to have come into force on the 1st day of January, 1975. |
| Idem | (3) Subsection 3 of section 1 and subsections 1 and 2 of section 2 shall be deemed to have come into force on the 8th day of March, 1978. |
| Short title | 4. The short title of this Act is <i>The Retail Sales Tax Amendment Act, 1978</i> . |



An Act to amend
The Retail Sales Tax Act

1st Reading

March 7th, 1978

2nd Reading

March 28th, 1978

3rd Reading

March 28th, 1978

THE HON. L. MAECK
Minister of Revenue

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Corporations Tax Act, 1972**

THE HON. L. MAECK
Minister of Revenue

EXPLANATORY NOTES

SECTION 1. This section amends section 1 of the Act in order to clarify the application of the *Income Tax Act* (Canada) for the purposes of the Act.

Subsection 1 amends clause *d* of subsection 2 of section 1 of the Act by adding a reference therein to section 248 of the *Income Tax Act* (Canada) to make it clear that the definitions contained in that section of that Act are applicable for the purposes of this Act.

Subsection 2 amends subsection 6 of section 1 of the Act in order to make it clear that not only sections but also any other provisions (including subsections, subdivisions and divisions) of the *Income Tax Act* (Canada) that are adopted for the purposes of the Act are adopted as amended from time to time.

SECTION 2. This section re-enacts subsection 2 of section 12 of the Act in order to clarify the application of section 3 of the *Income Tax Act* (Canada) for the purposes of the Act. In addition, this section enacts a new subsection 3 to section 12 of the Act in order to make it clear that where a corporation becomes subject to the tax imposed on income under the Act, any amounts deducted or deductible under the *Income Tax Act* (Canada) for previous years will be deemed to have been deducted or deductible for those years for the purposes of the Act.

BILL 28

1978

**An Act to amend
The Corporations Tax Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subclause iv of clause *d* of subsection 2 of section 1 of *The Corporations Tax Act, 1972*, being chapter 143, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 1, is amended by striking out “section 138” in the third line and inserting in lieu thereof “sections 138 and 248”. s. 1 (2) (d) (iv),
amended

(2) Subsection 6 of the said section 1 is amended by striking out “sections” in the first line and inserting in lieu thereof “provisions”. s. 1 (6),
amended

2. Subsection 2 of section 12 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 6, is repealed and the following substituted therefor: s. 12 (2),
re-enacted

(2) In the application of the said section 3 for the purposes of this Act, the reference in paragraph *c* thereof to “subdivision *e*” shall be deemed to be a reference to Subdivision D of Division B of Part II of this Act, and the reference in the said section to “this Part” shall be deemed to be a reference to Part II of this Act. Interpre-
tation

(3) Subject to subsection 4 of section 14, for the purpose of computing the income and taxable income of a corporation for a taxation year any amount deducted or deductible by the corporation under a provision of the *Income Tax Act* (Canada) in computing its income for a previous taxation year in respect of which the corporation was not subject to the tax imposed by Part II of this Act is deemed, unless otherwise provided in the said Part II, to have been deducted or deductible, as the case may be, under the corresponding provision of this Act in computing its income or taxable income, as the case may be, for that previous taxation year. Corpora-
tion that
becomes
subject to
this Act
R.S.C. 1952,
c. 148

s. 13.
amended

3. Section 13 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 7, is amended by adding thereto the following subsection:

Interpre-
tation

(2) In the application of the said section 4 for the purposes of this Act, the references therein to "this Part" shall be deemed to be references to Part II of this Act.

s. 14 (4) (a),
amended

- 4.—(1) Clause *a* of subsection 4 of section 14 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "subsections 7.1 and 10" in the first line and inserting in lieu thereof "subsection 10".

s. 14 (4) (b),
re-enacted

- (2) Clause *b* of subsection 4 of the said section 14 is repealed and the following substituted therefor:

Application
of
R.S.C. 1952,
c. 148,
s. 13 (7.1)

(b) the reference in subsection 7.1 of the said section 13 to "section 65" shall be deemed to be a reference to the said section 65 and to section 19 of this Act.

s. 15 (4) (c) (i),
repealed

5. Subclause *i* of clause *c* of subsection 4 of section 15 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed.

s. 18 (2),
re-enacted

6. Subsection 2 of section 18 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed and the following substituted therefor:

Application
of subs. 1

(2) Subsection 1 does not apply to allow a deduction in computing the income of a corporation for a taxation year if the corporation, at the end of the year or at any time in the immediately following year,

(a) was exempt from tax under any provision of this Part; or

(b) was not resident in Canada and ceased to have a permanent establishment in Canada.

s. 20 (1) (b),
re-enacted

- 7.—(1) Clause *b* of subsection 1 of section 20 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed and the following substituted therefor:

(b) of that aggregate, an amount equal to its income for the taxation year if no deduction were allowed under this subsection or section 19, minus the deductions allowed for the taxation year by sections 112 and 113 of the *Income Tax Act* (Canada) as made applicable by section 29 of this Act.

R.S.C. 1952,
c. 148

SECTION 3. This section adds subsection 2 to section 13 of the Act in order to clarify the application of section 4 of the *Income Tax Act* (Canada) for the purposes of this Act.

SECTION 4. Subsections 1 and 2 of this section amend subsection 4 of section 14 in order to parallel the federal treatment of depreciable property for the purchase of which a corporation has received governmental assistance of any kind. Subsection 1 removes from clause *a* of subsection 4 of section 14 of the Act the reference to subsection 7.1 of section 13 of the *Income Tax Act* (Canada), thereby making the said subsection 7.1 applicable for the purposes of the Act. At the same time, subsection 2 repeals clause *b* of subsection 4 of section 14 of the Act, which had been enacted in lieu of subsection 7.1 of section 13 of the *Income Tax Act* (Canada). As a result, governmental assistance in the form of "deductions from tax" (i.e. tax credits) will result in a reduction of the capital cost of the property for the purpose of calculating capital cost allowance.

SECTION 5. This section amends clause *c* of subsection 4 of section 15 of the Act, relating to the determination of the adjusted cost base of property by repealing subclause *i* thereof so that the corresponding federal provision will be applicable. This amendment is complementary to the amendments contained in subsections 1 and 2 of section 4 of the Bill.

SECTION 6. This section amends subsection 2 of section 18 of the Act, relating to reserves to be claimed in respect of the disposition of resource property where the consideration is not due until a subsequent year, in order to parallel the recent amendment to the corresponding section of the *Income Tax Act* (Canada). The amendment clarifies the circumstances in which the reserve will not be allowed. A corporation will now be able to claim the reserve if at the end of the year of the disposition and at all times in the subsequent year it had a permanent establishment in Canada, even if it was not resident in Canada; previously, if at any time in the year of disposition or in the following year the corporation was not resident in Canada, it could not claim the reserve.

SECTION 7. Subsections 1 and 2 amend subsections 1 and 2 of section 20 of the Act, relating to exploration and development expenses, in order to clarify the order of deductions under that section. These amendments make it clear that the other deductions permitted under section 20 of the Act are to be claimed prior to any deduction being claimed under subsections 1 to 3 of section 20. These amendments parallel the recent amendments to the corresponding sections of the *Income Tax Act* (Canada).

- (2) Clause *b* of subsection 2 of the said section 20 is repealed ^{s. 20 (2) (b),} and the following substituted therefor: _{re-enacted}

(*b*) of that aggregate, the greater of,

(i) such amount as the corporation may claim, not exceeding 20 per cent of the aggregate determined under clause *a*, and

(ii) the aggregate of,

(A) such part of its income for the taxation year as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells in Canada or to the production of minerals from mines in Canada,

(B) its income for the taxation year from royalties in respect of an oil or gas well in Canada or a mine in Canada, and

(C) the aggregate of amounts each of which is an amount, in respect of a Canadian resource property or a property referred to in subclause ii of clause *a* of subsection 3 of section 16 or clause *c* of subsection 3 of section 16 that has been disposed of by it, equal to the amount, if any, by which,

1. the amount included in computing its income for the taxation year by virtue of subsection 3 of section 16 in respect of the disposition of the property,

exceeds,

2. the amount deducted under section 18 in respect of the property in computing its income for the taxation year,

if no deduction were allowed for the taxation year under this subsection, subsection 3 or section 19.

s. 20 (14) (b)
(iii),
re-enacted

(3) Subclause iii of clause *b* of subsection 14 of the said section 20 is repealed and the following substituted therefor:

R.S.C. 1952,
c. 148

(iii) notwithstanding paragraph *m* of subsection 1 of section 18 of the *Income Tax Act* (Canada), as that section applies to this Act by virtue of section 14 of this Act, the cost to the corporation of a Canadian resource property, but for greater certainty not including any payment made to any of the persons referred to in any of the subparagraphs i to iii of the said paragraph *m* for the preservation of a person's rights in respect of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired by the corporation after 1971, and not including a payment to which the said paragraph *m* applied by virtue of subparagraph v thereof.

s. 27,
amended

8. Section 27 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by adding thereto the following subsection:

Exception

(2a) For the purposes of this Act, paragraph *d* of subsection 1 of section 96 of the *Income Tax Act* (Canada) shall apply as though the paragraph read as follows:

(d) each income or loss of the partnership for a taxation year were computed as if no deduction were permitted by subsection 1 of section 19, section 20 or the provisions of *The Corporations Tax Application Rules, 1972* relating to exploration and development expenses.

s. 46 (1),
amended

9. Subsection 1 of section 46 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by inserting after "138" in the fifth line "138.1,".

s. 48,
re-enacted

10. Section 48 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed and the following substituted therefor:

Amounts to
be included
in com-
puting
policy-
holder's
income

48. Section 138.1 and subsection 2 of section 142 of the *Income Tax Act* (Canada) are, in so far as they apply to corporations, applicable for the purposes of this Act.

Subsection 3 re-enacts subclause iii of paragraph *b* of subsection 14 of section 20 of the Act and its effect is to make that subclause applicable to amounts paid or payable after the 6th day of May, 1974.

SECTION 8. This section amends section 27 of the Act relating to partnerships in order to provide that paragraph *d* of subsection 1 of section 96 of the *Income Tax Act* (Canada) is not applicable for the purposes of the Act and to enact the provision (corresponding to the former paragraph *d* of subsection 1 of section 96) which will apply in lieu thereof. As a result, on the disposition of a Canadian resource property by a partnership, the proceeds of disposition will be included in the income of the partnership; under the recent amendment to the *Income Tax Act* (Canada) such proceeds would not be included.

SECTION 9. This section amends subsection 1 of section 46 of the Act, relating to insurance companies, in order to provide that the new section 138.1 of the *Income Tax Act* (Canada), relating to segregated funds in respect of life insurance policies, will be applicable for the purposes of the Act.

SECTION 10. This section re-enacts section 48 of the Act in order to make the new section 138.1 of the *Income Tax Act* (Canada) applicable for the purposes of the Act in so far as that section relates to corporations that are policyholders of insurance companies. In addition, this section enacts a new section 48*a* of the Act in order to provide that the new section 143 of the *Income Tax Act* (Canada), relating to communal organizations, is applicable for the purposes of the Act.

SECTION 11. This section adds a new subsection 3 to section 126 of the Act in order to provide special rules for determining the paid-up capital of corporations registered under *The Loan and Trust Corporations Act*. This amendment is complementary to the amendment contained in section 13 of the Bill.

SECTION 12. This section re-enacts subsection 2a of section 127 of the Act, relating to deductions from paid-up capital, and the interpretation of certain terms used in that part of the Act, in order to provide that subsections 1 and 2 of that section are not applicable to the new subsection 3 of section 126 relating to loan and trust corporations. This amendment is complementary to the amendments contained in sections 11 and 13 of the Bill.

SECTION 13. This section re-enacts subsection 2 of section 131 of the Act, relating to the rate of tax on the paid-up capital, in order to provide that for corporations registered under *The Loan and Trust Corporations Act* the rate will be three-fifths of one per cent of the amount taxable. These corporations will therefore be paying tax on paid-up capital at the same rate as is paid by banks. This amendment will come into force on the 8th day of March, 1978 with a proration for the taxation year that commences prior to the 8th day of March, 1978 and that ends on or after that date.

SECTION 14. This section re-enacts subsection 2 of section 132 of the Act, relating to the deduction from the tax on paid-up capital in respect of taxable paid-up capital employed outside Ontario, in order to make that subsection applicable to corporations registered under *The Loan and Trust Corporations Act*. This amendment is complementary to the amendment contained in section 13 of the Bill.

Communal Organizations

48a. Section 143 of the *Income Tax Act* (Canada) is, in so far as it applies to corporations, applicable for the purposes of this Act. Application of R.S.C. 1952, c. 148, s. 143

11. Section 126 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 42, section 11, 1977, chapter 16, section 3 and 1977, chapter 58, sections 9 and 26, is further amended by adding thereto the following subsection: s. 126, amended

(3) Notwithstanding subsection 1, the taxable paid-up capital of a corporation registered under *The Loan and Trust Corporations Act* for a taxation year is its taxable paid-up capital as it stood at the close of the taxation year, and includes, Taxable paid-up capital of loan and trust corporations R.S.O. 1970, c. 254

(a) its paid-up capital stock;

(b) its earned capital and any other surplus; and

(c) all its reserves, whether created from income or otherwise, except any reserve, the creation of which is allowed as a charge against income under the provisions of Part II.

12. Subsection 2a of section 127 of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 42, section 12, is repealed and the following substituted therefor: s. 127 (2a), re-enacted

(2a) Subsections 1 and 2 do not apply to any corporation to which subsection 2 or 3 of section 126 applies. Exception

13. Subsection 2 of section 131 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 16, section 4 and amended by 1977, chapter 58, section 26, is repealed and the following substituted therefor: s. 131 (2), re-enacted

(2) The tax payable under this Part by a bank or a corporation registered under *The Loan and Trust Corporations Act* for a taxation year calculated upon its taxable paid-up capital, in this subsection referred to as the "amount taxable" is three-fifths of 1 per cent of the amount taxable. Rate of capital tax on banks and loan and trust corporations R.S.O. 1970, c. 254

14. Subsection 2 of section 132 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 16, section 4, is repealed and the following substituted therefor: s. 132 (2), re-enacted

(2) There may be deducted from the tax otherwise payable under this Part by a bank or a corporation registered Idem

R.S.O. 1970,
c. 254

under *The Loan and Trust Corporations Act* for a taxation year an amount equal to three-fifths of 1 per cent of that portion of its taxable paid-up capital that is deemed to be used by the bank or the corporation registered under *The Loan and Trust Corporations Act* in the taxation year in each jurisdiction outside Ontario determined under rules prescribed by the regulations.

s. 143 (1),
re-enacted

15.—(1) Subsection 1 of section 143 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 32, section 18 and 1977, chapter 58, section 26, is repealed and the following substituted therefor:

Insurance
corporations

(1) Every insurance corporation shall pay a tax of,

(a) 2 per cent calculated on the gross premiums payable, under contracts of accident insurance, life insurance and sickness insurance; and

(b) 3 per cent calculated on the gross premiums payable, under any other contract of insurance,

to the corporation or its agent or agents during the taxation year in respect of business transacted in Ontario (other than premiums in respect of reinsurance ceded to the corporation by other insurance corporations and considerations for annuities), after deducting from such premiums the amount of,

(c) the cash value of dividends credited to policyholders; and

(d) the premiums returned.

s. 143 (1a),
re-enacted,
s. 143 (1b),
repealed

(2) Subsections 1a and 1b of the said section 143, as enacted by the Statutes of Ontario, 1976, chapter 32, section 18, are repealed and the following substituted therefor:

Interpre-
tation

(1a) For the purposes of subsection 1, "accident insurance", "life insurance" and "sickness insurance" have the respective meanings given to those expressions by section 1 of *The Insurance Act*.

R.S.O. 1970,
c. 224

s. 146 (4),
re-enacted

16. Subsection 4 of section 146 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 58, section 26, is repealed and the following substituted therefor:

Statements
or omissions
in return

(4) Where a person, acting or purporting to act on behalf of a corporation, knowingly, or under circumstances amount-

SECTION 15.—Subsection 1. Re-enacts subsection 1 of section 143 of the Act, relating to the premiums tax on insurance corporations, in order to reduce the rate of tax to 2 per cent in respect of premiums payable under contracts of accident insurance, life insurance and sickness insurance. The rate will remain at 3 per cent on the premiums on any other contract of insurance which was previously taxable at that rate. This amendment will come into force on the 8th day of March, 1978, with a proration in respect of a taxation year that commences before that date and that ends on or after that date.

Subsection 2. The amendments are complementary to subsection 1.

SECTION 16. This section re-enacts subsection 4 of section 146 of the Act, relating to the penalty for false statements in returns and in other statements or documents required under the Act, in order to clarify the amount of the understatement of tax on which the 25 per cent penalty will apply. These amendments parallel the recent amendments to the corresponding section of the *Income Tax Act* (Canada).

SECTION 17. This section amends section 148 of the Act in order to provide that instalments of tax will be required to be made monthly rather than bi-monthly. This change will come into force on July 1, 1978 effective for taxation years commencing on or after that date.

ing to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made or has participated in, assented to or acquiesced in the making of, an incorrect statement or omission (in this subsection referred to as a "false statement") in a return, certificate, statement or answer (in this subsection referred to as a "return") filed or made in respect of a taxation year as required by or under this Act or the regulations, the corporation is liable to a penalty of 25 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable by it under this Act if its taxable income or other subject of tax for the year were computed by adding to the taxable income or other subject of tax reported by it in its return for the year that portion of the understatement of income or the understatement of any other subject of tax, for the year, that is reasonably attributable to the false statement;

exceeds,

- (b) the tax for the year that would have been payable by it under this Act had the tax payable for the year been assessed on the basis of the information provided in its return for the year.

(5) For the purposes of subsection 4, the taxable income reported by a corporation in its return for a taxation year shall be deemed not to be less than nil and the "understatement of income" for a year shall be determined in accordance with the rules provided in subsection 2.1 of section 163 of the *Income Tax Act* (Canada).

Interpre-
tation

R.S.C. 1952,
c. 148

17.—(1) Clause *a* of subsection 3 of section 148 of the said Act, as re-enacted by the Statutes of Ontario, 1975, chapter 17, section 54, is repealed and the following substituted therefor:

s. 148 (3) (a),
re-enacted

(a) on or before,

- (i) the last day of each month of the taxation year in respect of which the tax is payable, an instalment equal to one-twelfth of the tax payable as estimated by it at the rates for the taxation year on,

(A) its estimated taxable income and other subject of tax for the taxation year,
or

(B) its taxable income and other subject of tax for the immediately preceding taxation year; or

(ii) the last day of each of the first two months of the taxation year in respect of which the tax is payable an instalment equal to one-twelfth of the tax payable as estimated by it, at the rates for the taxation year, on its taxable income and other subject of tax for the second taxation year preceding the taxation year, and on or before the last day of each of the following ten months of the taxation year an instalment equal to one-tenth of the amount remaining after deducting the amount computed pursuant to this subclause in respect of the first two months of the taxation year from the tax payable as estimated by it at the rates for the taxation year on its taxable income and other subject of tax for the immediately preceding taxation year; and

s. 148 (5),
re-enacted

(2) Subsection 5 of the said section 148, as enacted by the Statutes of Ontario, 1976, chapter 32, section 19 and amended by 1977, chapter 58, section 16, is repealed and the following substituted therefor:

Mutual fund
corporations

(5) Notwithstanding clause *a* of subsection 3, the amount payable by a mutual fund corporation to the Treasurer of Ontario on or before the last day of any month of the taxation year in respect of which the tax is payable, shall be deemed to be the amount, if any, by which,

(a) the amount so payable otherwise determined under that subsection,

exceeds,

(b) one-twelfth of the corporation's capital gains refund for the year, as determined under section 41.

s. 149 (1),
re-enacted

18.—(1) Subsection 1 of section 149 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 58, section 26, is repealed and the following substituted therefor:

Interest on
unpaid tax

(1) Where the amount paid on account of the tax payable by a corporation for a taxation year is less than the amount

SECTION 18. Subsection 1 amends subsection 1 of section 149 of the Act and adds a new subsection 1a to section 149 relating to interest on unpaid taxes, in order to provide that interest under that section will commence from the date on which the final payment of tax is required to be made under the Act (two months after the end of the taxation year or, for small business corporations, three months after the end of the taxation year). At present, the interest under that section commences from the last date for filing the return under the Act (six months after the end of the taxation year).

Subsection 2 re-enacts subsection 5 of section 149 of the Act relating to interest on unpaid instalments and is complementary to the amendments made by section 17 of the Bill.

SECTION 19. This section re-enacts subsections 1a and 1b of section 150 of the Act and adds a new subsection 1c to section 150, relating to the determination by the Minister of the losses of a corporation, in order to parallel the recent amendments to the corresponding section of the *Income Tax Act* (Canada). As a result of these amendments, the Minister may make the determination only at the request of the corporation, and must make the determination if the corporation requests it, and, subject to any redetermination by the Minister and any notice of objection or appeal, the determination will be binding on both the corporation and the Minister.

of tax payable for the taxation year, the corporation liable to pay the tax shall pay interest on the difference between,

- (a) the amount of tax payable for the taxation year; and
- (b) the amount paid on account of the tax payable for the taxation year,

from the day on which the balance of the tax payable is required to be paid pursuant to clause *b* of subsection 3 of section 148 to the day of payment of the tax, at such rate as is prescribed by the regulations.

(1a) For the purposes of subsection 1, the “amount paid on account of the tax payable” is the amount paid by the corporation on account of the tax payable for the taxation year minus any amounts refunded to the corporation or any amounts applied to other liability of the corporation pursuant to section 152. ^{Interpretation}

(2) Subsection 5 of the said section 149, as amended by the Statutes of Ontario, 1977, chapter 58, section 26, is repealed and the following substituted therefor: ^{s. 149 (5), re-enacted}

(5) For the purpose of calculating interest under subsection 2, where a corporation is required to pay a part or instalment of tax for a taxation year pursuant to subsection 3 of section 148, the corporation shall be deemed to have been liable to pay the part or instalment determined under, ^{Interest on unpaid tax}

- (a) sub-subclause A of subclause i of clause *a* of subsection 3 of section 148;
- (b) sub-subclause B of subclause i of clause *a* of subsection 3 of subsection 148; or
- (c) subclause ii of clause *a* of subsection 3 of section 148,

whichever method gives the least amount required to be paid.

19. Subsections 1a and 1b of section 150 of the said Act, as enacted by the Statutes of Ontario, 1977, chapter 58, section 18, are repealed and the following substituted therefor: ^{s. 150 (1a, 1b), re-enacted}

(1a) Where the Minister ascertains the amount of a corporation's non-capital loss, net capital loss or restricted farm loss for a taxation year and that amount is different from the amount reported by the corporation in its return of income for that year, the Minister shall, at the request of ^{Determination of losses}

the corporation, determine, with all due dispatch, the amount of the corporation's non-capital loss, net capital loss or restricted farm loss, as the case may be, and shall send a notice of determination to the corporation that delivered the return.

Provisions
applicable
R.S.C. 1952,
c. 148

(1b) The provisions of paragraph *l* of subsection 1 of section 56 and paragraph *o* of section 60 of the *Income Tax Act* (Canada), as those paragraphs apply by virtue of sections 16 and 17, respectively, of this Act, and the provisions of this Part, as they relate to an assessment or reassessment and to assessing tax and reassessing tax, are applicable, *mutatis mutandis*, to a determination or redetermination and to determining and redetermining amounts under this Part, except that subsections 1 and 2 are not applicable to determinations made under subsection 1a and, for greater certainty, an original determination of a corporation's non-capital loss, net capital loss or restricted farm loss for a taxation year may be made by the Minister only at the request of the corporation.

Determina-
tion binding

(1c) For greater certainty, where the Minister makes a determination of the amount of a corporation's non-capital loss, net capital loss or restricted farm loss for a taxation year, as the case may be, subject to the corporation's rights of objection and appeal in respect of the determination and subject to any redetermination by the Minister, the determination is binding on both the Minister and the corporation for the purposes of calculating the taxable income of the corporation in any other year.

s. 152 (3),
re-enacted

20. Subsection 3 of section 152 of the said Act is repealed and the following substituted therefor:

Interest on
overpay-
ments

(3) Where an amount in respect of an overpayment is refunded or applied under this section on other liability, interest at such rate as is prescribed by the regulations shall be paid or applied thereon for the period commencing with the later of,

(a) the day on which the overpayment arose; and

(b) the day on or before which the balance of the tax payable for the taxation year is required to be paid pursuant to clause *b* of subsection 3 of section 148,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

SECTION 20. This section re-enacts subsection 3 of section 152 of the Act, relating to interest on overpayments of tax in order to provide that one of the dates for commencement of interest under that subsection will be the day on which the final payment of the tax for the taxation year is required to be made under the Act rather than the last day for filing the return. The credit interest on overpayments of tax will therefore in many cases commence earlier than under the existing provision.

SECTION 21. This section re-enacts subsection 1 of section 153 of the Act, relating to credit interest on overpaid instalments, in order to provide that one of the dates prior to which the overpayment must be made in order for the subsection to be applicable will be the day on which the final payment of the tax for the taxation year is required to be made under the Act rather than the last day for filing the return. This amendment is complementary to the amendment contained in section 20 of the Bill.

21. Subsection 1 of section 153 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 58, section 20, is repealed and the following substituted therefor: s. 153 (1),
re-enacted

(1) Where instalments of tax as required by subsection 3 of section 148 are overpaid at any time prior to, Credit
interest on
overpaid
instalments

(a) the day on or before which the balance of the tax payable for the taxation year is required to be paid pursuant to clause *b* of subsection 3 of section 148; or

(b) the day on which a refund was made upon assessment where such assessment is made before the day referred to in clause *a*,

whichever is earlier, interest at such rate as is prescribed for the purpose of subsection 3 of section 152 shall be allowed on the amount of the overpayment.

22.—(1) Section 1, subsection 2 of section 12 of the said Act, as enacted by section 2 of this Act, and sections 3 and 8 shall be deemed to have come into force on the 8th day of December, 1977. Commence-
ment and
Application

(2) Subsection 1 of section 18, and sections 19, 20 and 21 come into force on the day this Act receives Royal Assent. Idem

(3) Sections 4 and 5 shall be deemed to have come into force on the 8th day of March, 1978, and apply to property acquired and expenses incurred after the 7th day of March, 1978. Idem

(4) Subsection 3 of section 12 of the said Act, as enacted by section 2 of this Act, section 6 of this Act, and section 48a of the said Act, as enacted by section 10 of this Act, shall be deemed to have come into force on the 1st day of January, 1977 and apply to corporations in respect of all taxation years ending after 1976. Idem

(5) Subsections 1 and 2 of section 7 shall be deemed to have come into force on the 7th day of May, 1974, and apply to corporations in respect of all taxation years ending after the 6th day of May, 1974. Idem

(6) Subsection 3 of section 7 shall be deemed to have come into force on the 7th day of May, 1974, and applies to amounts paid or payable after the 6th day of May, 1974 in respect of the period after that date. Idem

- Idem (7) Section 9 of this Act, and section 48 of the said Act, as re-enacted by section 10 of this Act, shall be deemed to have come into force on the 1st day of January, 1978 and apply to corporations in respect of all taxation years ending after 1977.
- Idem (8) Sections 11, 12, 13 and 14 shall be deemed to have come into force on the 8th day of March, 1978 and apply to corporations in respect of all taxation years ending after the 7th day of March, 1978, except that with respect to the taxation year ending after the 7th day of March, 1978, and that includes that day, the following rules apply:
- (a) determine the amount of tax payable under Part III of the said Act as that Part stood on the 7th day of March, 1978 on the assumption that that Part as it so stood was applicable to that taxation year;
 - (b) determine the proportion of the amount determined under clause *a* that the number of days of that taxation year prior to the 8th day of March, 1978 bears to the total number of days of that taxation year;
 - (c) determine the amount of tax payable under Part III of the said Act, as amended by sections 11, 12, 13 and 14 of this Act, on the assumption that that Part as so amended was applicable for that taxation year;
 - (d) determine the proportion of the amount determined under clause *c* that the number of days of that taxation year that follow the 7th day of March, 1978 bears to the total number of days of that taxation year;
 - (e) determine the aggregate of the amounts determined under clauses *b* and *d* in respect of the corporation,
- and the aggregate determined under clause *e* is the amount payable by the corporation under Part III of the said Act, as amended by this Act, for its taxation year that ends after the 7th day of March, 1978, and that includes that day.
- Idem (9) Section 15 shall be deemed to have come into force on the 8th day of March, 1978 and applies to corporations in respect of all taxation years ending after the 7th day of March, 1978, except that with respect to the taxation

year ending after the 7th day of March and that includes that day, the following rules apply:

- (a) determine the tax payable under section 143 of the said Act as that section stood on the 7th day of March, 1978 on the assumption that that section as it so stood was applicable to that taxation year;
- (b) determine the proportion of the amount determined under clause *a* that the number of days of that taxation year prior to the 8th day of March, 1978 bears to the total number of days of that taxation year;
- (c) determine the amount of tax payable under section 143 of the said Act, as amended by section 15 of this Act, on the assumption that that section as so amended was applicable for that taxation year;
- (d) determine the proportion of the amount determined under clause *c* that the number of days of that taxation year that follow the 7th day of March, 1978 bears to the total number of days of that taxation year;
- (e) determine the aggregate of the amounts determined under clauses *b* and *d* in respect of the corporation,

and the aggregate determined under clause *e* is the amount payable by the corporation under section 143 of the said Act, as amended by this Act, for its taxation year that ends after the 7th day of March, 1978, and that includes that day.

- (10) Section 16 shall be deemed to have come into force on ^{Idem} the 1st day of April, 1977.
- (11) Section 17 and subsection 2 of section 18 come into force ^{Idem} on the 1st day of July, 1978 and apply to corporations in respect of all taxation years commencing on or after that date.

23. The short title of this Act is *The Corporations Tax Amendment Act, 1978.* ^{Short title}

An Act to amend
The Corporations Tax Act, 1972

1st Reading

March 7th, 1978

2nd Reading

3rd Reading

THE HON. L. MAECK
Minister of Revenue

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Corporations Tax Act, 1972**

THE HON. L. MAECK
Minister of Revenue

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

SECTION 1. This section amends section 1 of the Act in order to clarify the application of the *Income Tax Act* (Canada) for the purposes of the Act.

Subsection 1 amends clause *d* of subsection 2 of section 1 of the Act by adding a reference therein to section 248 of the *Income Tax Act* (Canada) to make it clear that the definitions contained in that section of that Act are applicable for the purposes of this Act.

Subsection 2 amends subsection 6 of section 1 of the Act in order to make it clear that not only sections but also any other provisions (including subsections, subdivisions and divisions) of the *Income Tax Act* (Canada) that are adopted for the purposes of the Act are adopted as amended from time to time.

SECTION 2. The re-enactment of clause *c* of subsections 2 and 3 of section 2 of the Act restores the words "that was property situated in Ontario as prescribed by regulation" that were inadvertently omitted from those clauses when they were re-enacted in 1977.

**An Act to amend
The Corporations Tax Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subclause iv of clause *d* of subsection 2 of section 1 of *The Corporations Tax Act, 1972*, being chapter 143, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 1, is amended by striking out “section 138” in the third line and inserting in lieu thereof “sections 138 and 248”. s. 1 (2) (d) (iv),
amended
- (2) Subsection 6 of the said section 1 is amended by striking out “sections” in the first line and inserting in lieu thereof “provisions”. s. 1 (6),
amended
- 2.—(1) Clause *c* of subsection 2 of section 2 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 2, is repealed and the following substituted therefor: s. 2 (2) (c),
re-enacted
- (c) disposed of taxable Canadian property, within the meaning given to that expression by subsection 1 of section 248 of the *Income Tax Act* (Canada) if the reference in that definition to section 2 of that Act were a reference to this section, that was property situated in Ontario as prescribed by regulation; or R.S.C. 1952,
c. 148
-
- (2) Clause *c* of subsection 3 of the said section 2, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 2, is repealed and the following substituted therefor: s. 2 (3) (c),
re-enacted
- (c) disposed of taxable Canadian property, within the meaning given to that expression by subsection 1 of section 248 of the *Income Tax Act* (Canada) if the

reference in that definition to section 2 of that Act were a reference to this section, that was property situated in Ontario as prescribed by regulation; or

s. 12 (2),
re-enacted

3. Subsection 2 of section 12 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 6, is repealed and the following substituted therefor:

Interpre-
tation

(2) In the application of the said section 3 for the purposes of this Act, the reference in paragraph *c* thereof to "sub-division *e*" shall be deemed to be a reference to Subdivision D of Division B of Part II of this Act, and the reference in the said section to "this Part" shall be deemed to be a reference to Part II of this Act.

Corpora-
tion that
becomes
subject to
this Act
R.S.C. 1952,
c. 148

(3) Subject to subsection 4 of section 14, for the purpose of computing the income and taxable income of a corporation for a taxation year any amount deducted or deductible by the corporation under a provision of the *Income Tax Act* (Canada) in computing its income for a previous taxation year in respect of which the corporation was not subject to the tax imposed by Part II of this Act is deemed, unless otherwise provided in the said Part II, to have been deducted or deductible, as the case may be, under the corresponding provision of this Act in computing its income or taxable income, as the case may be, for that previous taxation year.

s. 13,
amended

4. Section 13 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 7, is amended by adding thereto the following subsection:

Interpre-
tation

(2) In the application of the said section 4 for the purposes of this Act, the references therein to "this Part" shall be deemed to be references to Part II of this Act.

s. 14 (4) (a),
amended

- 5.—(1) Clause *a* of subsection 4 of section 14 of the said Act as re-enacted by the Statutes of Ontario, 1977, chapter 58 section 8, is amended by striking out "subsections 7.1 and 10" in the first line and inserting in lieu thereof "sub section 10".

s. 14 (4) (b),
re-enacted

- (2) Clause *b* of subsection 4 of the said section 14 is repealed and the following substituted therefor:

Application
of
R.S.C. 1952,
c. 148,
s. 13 (7.1)

(b) the reference in subsection 7.1 of the said section 14 to "section 65" shall be deemed to be a reference to the said section 65 and to section 19 of this Act.

SECTION 3. This section re-enacts subsection 2 of section 12 of the Act in order to clarify the application of section 3 of the *Income Tax Act* (Canada) for the purposes of the Act. In addition, this section enacts a new subsection 3 to section 12 of the Act in order to make it clear that where a corporation becomes subject to the tax imposed on income under the Act, any amounts deducted or deductible under the *Income Tax Act* (Canada) for previous years will be deemed to have been deducted or deductible for those years for the purposes of the Act.

SECTION 4. This section adds subsection 2 to section 13 of the Act in order to clarify the application of section 4 of the *Income Tax Act* (Canada) for the purposes of this Act.

SECTION 5. Subsections 1 and 2 of this section amend subsection 4 of section 14 in order to parallel the federal treatment of depreciable property for the purchase of which a corporation has received governmental assistance of any kind. Subsection 1 removes from clause *a* of subsection 4 of section 14 of the Act the reference to subsection 7.1 of section 13 of the *Income Tax Act* (Canada), thereby making the said subsection 7.1 applicable for the purposes of the Act. At the same time, subsection 2 repeals clause *b* of subsection 4 of section 14 of the Act, which had been enacted in lieu of subsection 7.1 of section 13 of the *Income Tax Act* (Canada). As a result, governmental assistance in the form of "deductions from tax" (i.e. tax credits) will result in a reduction of the capital cost of the property for the purpose of calculating capital cost allowance.

SECTION 6. This section amends clause *c* of subsection 4 of section 15 of the Act, relating to the determination of the adjusted cost base of property by repealing subclause *i* thereof so that the corresponding federal provision will be applicable. This amendment is complementary to the amendments contained in subsections 1 and 2 of section 5 of the Bill.

SECTION 7. This section amends subsection 2 of section 18 of the Act, relating to reserves to be claimed in respect of the disposition of resource property where the consideration is not due until a subsequent year, in order to parallel the recent amendment to the corresponding section of the *Income Tax Act* (Canada). The amendment clarifies the circumstances in which the reserve will not be allowed. A corporation will now be able to claim the reserve if at the end of the year of the disposition and at all times in the subsequent year it had a permanent establishment in Canada, even if it was not resident in Canada; previously, if at any time in the year of disposition or in the following year the corporation was not resident in Canada, it could not claim the reserve.

SECTION 8. Subsections 1 and 2 amend subsections 1 and 2 of section 20 of the Act, relating to exploration and development expenses, in order to clarify the order of deductions under that section. These amendments make it clear that the other deductions permitted under section 20 of the Act are to be claimed prior to any deduction being claimed under subsections 1 to 3 of section 20. These amendments parallel the recent amendments to the corresponding sections of the *Income Tax Act* (Canada).

6. Subclause i of clause c of subsection 4 of section 15 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed. s. 15 (4) (c) (i), repealed

7. Subsection 2 of section 18 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed and the following substituted therefor: s. 18 (2), re-enacted

(2) Subsection 1 does not apply to allow a deduction in computing the income of a corporation for a taxation year if the corporation, at the end of the year or at any time in the immediately following year, Application of subs. 1

(a) was exempt from tax under any provision of this Part; or

(b) was not resident in Canada and ceased to have a permanent establishment in Canada.

8.—(1) Clause b of subsection 1 of section 20 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed and the following substituted therefor: s. 20 (1) (b), re-enacted

(b) of that aggregate, an amount equal to its income for the taxation year if no deduction were allowed under this subsection or section 19, minus the deductions allowed for the taxation year by sections 112 and 113 of the *Income Tax Act* (Canada) as made applicable by section 29 of this Act. R.S.C. 1952, c. 148

(2) Clause b of subsection 2 of the said section 20 is repealed and the following substituted therefor: s. 20 (2) (b), re-enacted

(b) of that aggregate, the greater of,

(i) such amount as the corporation may claim, not exceeding 20 per cent of the aggregate determined under clause a, and

(ii) the aggregate of,

(A) such part of its income for the taxation year as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells in Canada or to the production of minerals from mines in Canada,

(B) its income for the taxation year from royalties in respect of an oil or gas

well in Canada or a mine in Canada,
and

(C) the aggregate of amounts each of which is an amount, in respect of a Canadian resource property or a property referred to in subclause ii of clause *a* of subsection 3 of section 16 or clause *c* of subsection 3 of section 16 that has been disposed of by it, equal to the amount, if any, by which,

1. the amount included in computing its income for the taxation year by virtue of subsection 3 of section 16 in respect of the disposition of the property,

exceeds,

2. the amount deducted under section 18 in respect of the property in computing its income for the taxation year,

if no deduction were allowed for the taxation year under this subsection, subsection 3 or section 19.

s. 20 (14) (b)
(iii),
re-enacted

(3) Subclause iii of clause *b* of subsection 14 of the said section 20 is repealed and the following substituted therefor:

R.S.C. 1952,
c. 148

(iii) notwithstanding paragraph *m* of subsection 1 of section 18 of the *Income Tax Act* (Canada), as that section applies to this Act by virtue of section 14 of this Act, the cost to the corporation of a Canadian resource property, but for greater certainty not including any payment made to any of the persons referred to in any of the subparagraphs i to iii of the said paragraph *m* for the preservation of a person's rights in respect of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired by the corporation after 1971, and not including a payment to which the said paragraph *m* applied by virtue of subparagraph v thereof.

Subsection 3 re-enacts subclause iii of clause *b* of subsection 14 of section 20 of the Act and its effect is to make that subclause applicable to amounts paid or payable after the 6th day of May, 1974.

SECTION 9. This section amends section 27 of the Act relating to partnerships in order to provide that paragraph *d* of subsection 1 of section 96 of the *Income Tax Act* (Canada) is not applicable for the purposes of the Act and to enact the provision (corresponding to the former paragraph *d* of subsection 1 of section 96) which will apply in lieu thereof. As a result, on the disposition of a Canadian resource property by a partnership, the proceeds of disposition will be included in the income of the partnership; under the recent amendment to the *Income Tax Act* (Canada) such proceeds would not be included.

SECTION 10. This section amends subsection 1 of section 46 of the Act, relating to insurance companies, in order to provide that the new section 138.1 of the *Income Tax Act* (Canada), relating to segregated funds in respect of life insurance policies, will be applicable for the purposes of the Act.

SECTION 11. This section re-enacts section 48 of the Act in order to make the new section 138.1 of the *Income Tax Act* (Canada) applicable for the purposes of the Act in so far as that section relates to corporations that are policyholders of insurance companies. In addition, this section enacts a new section 48*a* of the Act in order to provide that the new section 143 of the *Income Tax Act* (Canada), relating to communal organizations, is applicable for the purposes of the Act.

SECTION 12. This section adds a new subsection 3 to section 126 of the Act in order to provide special rules for determining the paid-up capital of corporations registered under *The Loan and Trust Corporations Act*. This amendment is complementary to the amendment contained in section 14 of the Bill.

9. Section 27 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by adding thereto the following subsection: s. 27.
amended

(2a) For the purposes of this Act, paragraph *d* of subsection 1 of section 96 of the *Income Tax Act* (Canada) shall apply as though the paragraph read as follows: Exception

- (d) each income or loss of the partnership for a taxation year were computed as if no deduction were permitted by subsection 1 of section 19, section 20 or the provisions of *The Corporations Tax Application Rules, 1972* relating to exploration and development expenses.

10. Subsection 1 of section 46 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by inserting after "138" in the fifth line "138.1,". s. 46 (1).
amended

11. Section 48 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed and the following substituted therefor: s. 48.
re-enacted

48. Section 138.1 and subsection 2 of section 142 of the *Income Tax Act* (Canada) are, in so far as they apply to corporations, applicable for the purposes of this Act. Amounts to be included in computing policy-holder's income

Communal Organizations

48a. Section 143 of the *Income Tax Act* (Canada) is, in so far as it applies to corporations, applicable for the purposes of this Act. Application of R.S.C. 1952, c. 148, s. 143

12. Section 126 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 42, section 11, 1977, chapter 16, section 3 and 1977, chapter 58, sections 9 and 26, is further amended by adding thereto the following subsection: s. 126.
amended

(3) Notwithstanding subsection 1, the taxable paid-up capital of a corporation registered under *The Loan and Trust Corporations Act* for a taxation year is its taxable paid-up capital as it stood at the close of the taxation year, and includes, Taxable paid-up capital of loan and trust corporations R.S.O. 1970, c. 254

(a) its paid-up capital stock;

(b) its earned, capital and any other surplus; and

(c) all its reserves, whether created from income or otherwise, except any reserve, the creation of which is allowed as a charge against income under the provisions of Part II.

s. 127 (2a),
re-enacted

13. Subsection 2a of section 127 of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 42, section 12, is repealed and the following substituted therefor:

Exception

(2a) Subsections 1 and 2 do not apply to any corporation to which subsection 2 or 3 of section 126 applies.

s. 131 (2),
re-enacted

14. Subsection 2 of section 131 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 16, section 4 and amended by 1977, chapter 58, section 26, is repealed and the following substituted therefor:

Rate of
capital tax
on banks and
loan and
trust
corporations
R.S.O. 1970,
c. 254

(2) The tax payable under this Part by a bank or a corporation registered under *The Loan and Trust Corporations Act* for a taxation year calculated upon its taxable paid-up capital, in this subsection referred to as the "amount taxable" is three-fifths of 1 per cent of the amount taxable.

s. 132 (2),
re-enacted

15. Subsection 2 of section 132 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 16, section 4, is repealed and the following substituted therefor:

Idem

(2) There may be deducted from the tax otherwise payable under this Part by a bank or a corporation registered under *The Loan and Trust Corporations Act* for a taxation year an amount equal to three-fifths of 1 per cent of that portion of its taxable paid-up capital that is deemed to be used by the bank or the corporation registered under *The Loan and Trust Corporations Act* in the taxation year in each jurisdiction outside Ontario determined under rules prescribed by the regulations.

s. 143 (1),
re-enacted

16.—(1) Subsection 1 of section 143 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 32, section 18 and 1977, chapter 58, section 26, is repealed and the following substituted therefor:

Insurance
corporations

(1) Every insurance corporation shall pay a tax of,

(a) 2 per cent calculated on the gross premiums payable, under contracts of accident insurance, life insurance and sickness insurance; and

(b) 3 per cent calculated on the gross premiums payable, under any other contract of insurance,

SECTION 13. This section re-enacts subsection 2a of section 127 of the Act, relating to deductions from paid-up capital, and the interpretation of certain terms used in that part of the Act, in order to provide that subsections 1 and 2 of that section are not applicable to the new subsection 3 of section 126 relating to loan and trust corporations. This amendment is complementary to the amendments contained in sections 12 and 14 of the Bill.

SECTION 14. This section re-enacts subsection 2 of section 131 of the Act, relating to the rate of tax on the paid-up capital, in order to provide that for corporations registered under *The Loan and Trust Corporations Act* the rate will be three-fifths of one per cent of the amount taxable. These corporations will therefore be paying tax on paid-up capital at the same rate as is paid by banks. This amendment will come into force on the 8th day of March, 1978 with a proration for the taxation year that commences prior to the 8th day of March, 1978 and that ends on or after that date.

SECTION 15. This section re-enacts subsection 2 of section 132 of the Act, relating to the deduction from the tax on paid-up capital in respect of taxable paid-up capital employed outside Ontario, in order to make that subsection applicable to corporations registered under *The Loan and Trust Corporations Act*. This amendment is complementary to the amendment contained in section 14 of the Bill.

SECTION 16.—Subsection 1. Re-enacts subsection 1 of section 143 of the Act, relating to the premiums tax on insurance corporations, in order to reduce the rate of tax to 2 per cent in respect of premiums payable under contracts of accident insurance, life insurance and sickness insurance. The rate will remain at 3 per cent on the premiums on any other contract of insurance which was previously taxable at that rate. This amendment will come into force on the 8th day of March, 1978, with a proration in respect of a taxation year that commences before that date and that ends on or after that date.

Subsection 2. The amendments are complementary to subsection 1.

SECTION 17. This section re-enacts subsection 4 of section 146 of the Act, relating to the penalty for false statements in returns and in other statements or documents required under the Act, in order to clarify the amount of the understatement of tax on which the 25 per cent penalty will apply. These amendments parallel the recent amendments to the corresponding section of the *Income Tax Act* (Canada).

to the corporation or its agent or agents during the taxation year in respect of business transacted in Ontario (other than premiums in respect of reinsurance ceded to the corporation by other insurance corporations and considerations for annuities), after deducting from such premiums the amount of,

- (c) the cash value of dividends credited to policyholders; and
- (d) the premiums returned.

(2) Subsections 1a and 1b of the said section 143, as enacted by the Statutes of Ontario, 1976, chapter 32, section 18, are repealed and the following substituted therefor:

s. 143 (1a).
re-enacted.
s. 143 (1b).
repealed

(1a) For the purposes of subsection 1, "accident insurance", "life insurance" and "sickness insurance" have the respective meanings given to those expressions by section 1 of *The Insurance Act*.

Interpre-
tation

R.S.O. 1970.
c. 224

17. Subsection 4 of section 146 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 58, section 26, is repealed and the following substituted therefor:

s. 146 (4).
re-enacted

(4) Where a person, acting or purporting to act on behalf of a corporation, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made or has participated in, assented to or acquiesced in the making of, an incorrect statement or omission (in this subsection referred to as a "false statement") in a return, certificate, statement or answer (in this subsection referred to as a "return") filed or made in respect of a taxation year as required by or under this Act or the regulations, the corporation is liable to a penalty of 25 per cent of the amount, if any, by which,

Statements
or omissions
in return

- (a) the tax for the year that would be payable by it under this Act if its taxable income or other subject of tax for the year were computed by adding to the taxable income or other subject of tax reported by it in its return for the year that portion of the understatement of income or the understatement of any other subject of tax, for the year, that is reasonably attributable to the false statement;

exceeds,

- (b) the tax for the year that would have been payable by it under this Act had the tax payable for the year been assessed on the basis of the information provided in its return for the year.

Interpre-
tation

(5) For the purposes of subsection 4, the taxable income reported by a corporation in its return for a taxation year shall be deemed not to be less than nil and the "understatement of income" for a year shall be determined in accordance with the rules provided in subsection 2.1 of section 163 of the *Income Tax Act* (Canada).

R.S.C. 1952,
c. 148

s. 148 (3) (a),
re-enacted

18.—(1) Clause *a* of subsection 3 of section 148 of the said Act, as re-enacted by the Statutes of Ontario, 1975, chapter 17, section 64, is repealed and the following substituted therefor:

(a) on or before,

- (i) the last day of each month of the taxation year in respect of which the tax is payable, an instalment equal to one-twelfth of the tax payable as estimated by it at the rates for the taxation year on,

(A) its estimated taxable income and other subject of tax for the taxation year, or

(B) its taxable income and other subject of tax for the immediately preceding taxation year; or

- (ii) the last day of each of the first two months of the taxation year in respect of which the tax is payable an instalment equal to one-twelfth of the tax payable as estimated by it, at the rates for the taxation year, on its taxable income and other subject of tax for the second taxation year preceding the taxation year, and on or before the last day of each of the following ten months of the taxation year an instalment equal to one-tenth of the amount remaining after deducting the amount computed pursuant to this subclause in respect of the first two months of the taxation year from the tax payable as estimated by it at the rates for the taxation year on its taxable income and

SECTION 18 This section amends section 148 of the Act in order to provide that instalments of tax will be required to be made monthly rather than bi-monthly. This change will come into force on July 1, 1978 effective for taxation years commencing on or after that date.

SECTION 19. Subsection 1 amends subsection 1 of section 149 of the Act and adds a new subsection 1*a* to section 149 relating to interest on unpaid taxes, in order to provide that interest under that section will commence from the date on which the final payment of tax is required to be made under the Act (two months after the end of the taxation year or, for small business corporations, three months after the end of the taxation year). At present, the interest under that section commences from the last date for filing the return under the Act (six months after the end of the taxation year).

other subject of tax for the immediately preceding taxation year; and

- (2) Subsection 5 of the said section 148, as enacted by the Statutes of Ontario, 1976, chapter 32, section 19 and amended by 1977, chapter 58, section 16, is repealed and the following substituted therefor: s. 148 (5). re-enacted

(5) Notwithstanding clause *a* of subsection 3, the amount payable by a mutual fund corporation to the Treasurer of Ontario on or before the last day of any month of the taxation year in respect of which the tax is payable, shall be deemed to be the amount, if any, by which, Mutual fund corporations

- (a) the amount so payable otherwise determined under that subsection,

exceeds,

- (b) one-twelfth of the corporation's capital gains refund for the year, as determined under section 41.

- 19.**—(1) Subsection 1 of section 149 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 58, section 26, is repealed and the following substituted therefor: s. 149 (1). re-enacted

(1) Where the amount paid on account of the tax payable by a corporation for a taxation year is less than the amount of tax payable for the taxation year, the corporation liable to pay the tax shall pay interest on the difference between, Interest on unpaid tax

- (a) the amount of tax payable for the taxation year; and

- (b) the amount paid on account of the tax payable for the taxation year,

from the day on which the balance of the tax payable is required to be paid pursuant to clause *b* of subsection 3 of section 148 to the day of payment of the tax, at such rate as is prescribed by the regulations.

(1a) For the purposes of subsection 1, the "amount paid on account of the tax payable" is the amount paid by the corporation on account of the tax payable for the taxation year minus any amounts refunded to the corporation or any amounts applied to other liability of the corporation pursuant to section 152. Interpretation

s. 149 (5).
re-enacted

(2) Subsection 5 of the said section 149, as amended by the Statutes of Ontario, 1977, chapter 58, section 26, is repealed and the following substituted therefor:

Interest on
unpaid tax

(5) For the purpose of calculating interest under subsection 2, where a corporation is required to pay a part or instalment of tax for a taxation year pursuant to subsection 3 of section 148, the corporation shall be deemed to have been liable to pay the part or instalment determined under,

(a) sub-subclause A of subclause i of clause *a* of subsection 3 of section 148;

(b) sub-subclause B of subclause i of clause *a* of subsection 3 of section 148; or

(c) subclause ii of clause *a* of subsection 3 of section 148,

whichever method gives the least amount required to be paid.

s. 150 (1a, 1b).
re-enacted

20. Subsections 1a and 1b of section 150 of the said Act, as enacted by the Statutes of Ontario, 1977, chapter 58, section 18, are repealed and the following substituted therefor:

Determina-
tion of
losses

(1a) Where the Minister ascertains the amount of a corporation's non-capital loss, net capital loss or restricted farm loss for a taxation year and that amount is different from the amount reported by the corporation in its return of income for that year, the Minister shall, at the request of the corporation, determine, with all due dispatch, the amount of the corporation's non-capital loss, net capital loss or restricted farm loss, as the case may be, and shall send a notice of determination to the corporation that delivered the return.

Provisions
applicable
R.S.C. 1952,
c. 148

(1b) The provisions of paragraph 1 of subsection 1 of section 56 and paragraph *o* of section 60 of the *Income Tax Act* (Canada), as those paragraphs apply by virtue of sections 16 and 17, respectively, of this Act, and the provisions of this Part, as they relate to an assessment or reassessment and to assessing tax and reassessing tax, are applicable, *mutatis mutandis*, to a determination or redetermination and to determining and redetermining amounts under this Part, except that subsections 1 and 2 are not applicable to determinations made under subsection 1a and, for greater certainty, an original determination of a corporation's non-capital loss, net capital loss or restricted farm loss for a taxation year may be made by the Minister only at the request of the corporation.

Subsection 2 re-enacts subsection 5 of section 149 of the Act relating to interest on unpaid instalments and is complementary to the amendments made by section 18 of the Bill.

SECTION 20. This section re-enacts subsections 1a and 1b of section 150 of the Act and adds a new subsection 1c to section 150, relating to the determination by the Minister of the losses of a corporation, in order to parallel the recent amendments to the corresponding section of the *Income Tax Act* (Canada). As a result of these amendments, the Minister may make the determination only at the request of the corporation, and must make the determination if the corporation requests it, and, subject to any redetermination by the Minister and any notice of objection or appeal, the determination will be binding on both the corporation and the Minister.

SECTION 21. This section re-enacts subsection 3 of section 152 of the Act, relating to interest on overpayments of tax in order to provide that one of the dates for commencement of interest under that subsection will be the day on which the final payment of the tax for the taxation year is required to be made under the Act rather than the last day for filing the return. The credit interest on overpayments of tax will therefore in many cases commence earlier than under the existing provision.

SECTION 22. This section re-enacts subsection 1 of section 153 of the Act, relating to credit interest on overpaid instalments, in order to provide that one of the dates prior to which the overpayment must be made in order for the subsection to be applicable will be the day on which the final payment of the tax for the taxation year is required to be made under the Act rather than the last day for filing the return. This amendment is complementary to the amendment contained in section 21 of the Bill.

(1c) For greater certainty, where the Minister makes a determination of the amount of a corporation's non-capital loss, net capital loss or restricted farm loss for a taxation year, as the case may be, subject to the corporation's rights of objection and appeal in respect of the determination and subject to any redetermination by the Minister, the determination is binding on both the Minister and the corporation for the purposes of calculating the taxable income of the corporation in any other year. Determination binding

21. Subsection 3 of section 152 of the said Act is repealed and the following substituted therefor: s. 152 (3), re-enacted

(3) Where an amount in respect of an overpayment is refunded or applied under this section on other liability, interest at such rate as is prescribed by the regulations shall be paid or applied thereon for the period commencing with the later of, Interest on overpayments

(a) the day on which the overpayment arose; and

(b) the day on or before which the balance of the tax payable for the taxation year is required to be paid pursuant to clause *b* of subsection 3 of section 148,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

22. Subsection 1 of section 153 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 58, section 20, is repealed and the following substituted therefor: s. 153 (1), re-enacted

(1) Where instalments of tax as required by subsection 3 of section 148 are overpaid at any time prior to, Credit interest on overpaid instalments

(a) the day on or before which the balance of the tax payable for the taxation year is required to be paid pursuant to clause *b* of subsection 3 of section 148; or

(b) the day on which a refund was made upon assessment where such assessment is made before the day referred to in clause *a*,

whichever is earlier, interest at such rate as is prescribed for the purpose of subsection 3 of section 152 shall be allowed on the amount of the overpayment.

Commence-
ment and
Application

- 23.**—(1) Sections 1 and 2, subsection 2 of section 12 of the said Act, as enacted by section 3 of this Act, and sections 4 and 9 shall be deemed to have come into force on the 8th day of December, 1977.
- Idem (2) Subsection 1 of section 19, and sections 20, 21 and 22 come into force on the day this Act receives Royal Assent.
- Idem (3) Sections 5 and 6 shall be deemed to have come into force on the 8th day of March, 1978, and apply to property acquired and expenses incurred after the 7th day of March, 1978.
- Idem (4) Subsection 3 of section 12 of the said Act, as enacted by section 3 of this Act, section 7 of this Act, and section 48a of the said Act, as enacted by section 11 of this Act, shall be deemed to have come into force on the 1st day of January, 1977 and apply to corporations in respect of all taxation years ending after 1976.
- Idem (5) Subsections 1 and 2 of section 8 shall be deemed to have come into force on the 7th day of May, 1974, and apply to corporations in respect of all taxation years ending after the 6th day of May, 1974.
- Idem (6) Subsection 3 of section 8 shall be deemed to have come into force on the 7th day of May, 1974, and applies to amounts paid or payable after the 6th day of May, 1974 in respect of the period after that date.
- Idem (7) Section 10 of this Act, and section 48 of the said Act, as re-enacted by section 11 of this Act, shall be deemed to have come into force on the 1st day of January, 1978 and apply to corporations in respect of all taxation years ending after 1977.
- Idem (8) Sections 12, 13, 14 and 15 shall be deemed to have come into force on the 8th day of March, 1978 and apply to corporations in respect of all taxation years ending after the 7th day of March, 1978, except that with respect to the taxation year ending after the 7th day of March, 1978, and that includes that day, the following rules apply:
- (a) determine the amount of tax payable under Part III of the said Act as that Part stood on the 7th day of March, 1978 on the assumption that that Part as it so stood was applicable to that taxation year;
- (b) determine the proportion of the amount determined under clause a that the number of days of that

taxation year prior to the 8th day of March, 1978 bears to the total number of days of that taxation year;

- (c) determine the amount of tax payable under Part III of the said Act, as amended by sections 12, 13, 14 and 15 of this Act, on the assumption that that Part as so amended was applicable for that taxation year;
- (d) determine the proportion of the amount determined under clause *c* that the number of days of that taxation year that follow the 7th day of March, 1978 bears to the total number of days of that taxation year;
- (e) determine the aggregate of the amounts determined under clauses *b* and *d* in respect of the corporation,

and the aggregate determined under clause *e* is the amount payable by the corporation under Part III of the said Act, as amended by this Act, for its taxation year that ends after the 7th day of March, 1978, and that includes that day.

- (9) Section 16 shall be deemed to have come into force on ^{Idem} the 8th day of March, 1978 and applies to corporations in respect of all taxation years ending after the 7th day of March, 1978, except that with respect to the taxation year ending after the 7th day of March and that includes that day, the following rules apply:

- (a) determine the tax payable under section 143 of the said Act as that section stood on the 7th day of March, 1978 on the assumption that that section as it so stood was applicable to that taxation year;
- (b) determine the proportion of the amount determined under clause *a* that the number of days of that taxation year prior to the 8th day of March, 1978 bears to the total number of days of that taxation year;
- (c) determine the amount of tax payable under section 143 of the said Act, as amended by section 16 of this Act, on the assumption that that section as so amended was applicable for that taxation year;
- (d) determine the proportion of the amount determined under clause *c* that the number of days of

that taxation year that follow the 7th day of March, 1978 bears to the total number of days of that taxation year;

- (e) determine the aggregate of the amounts determined under clauses *b* and *d* in respect of the corporation,

and the aggregate determined under clause *e* is the amount payable by the corporation under section 143 of the said Act, as amended by this Act, for its taxation year that ends after the 7th day of March, 1978, and that includes that day.

Idem (10) Section 17 shall be deemed to have come into force on the 1st day of April, 1977.

Idem (11) Section 18 and subsection 2 of section 19 come into force on the 1st day of July, 1978 and apply to corporations in respect of all taxation years commencing on or after that date.

Short title **24.** The short title of this Act is *The Corporations Tax Amendment Act, 1978*.

An Act to amend
The Corporations Tax Act, 1972

1st Reading

March 7th, 1978

2nd Reading

April 18th, 1978

3rd Reading

THE HON. L. MAECK
Minister of Revenue

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 28

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Corporations Tax Act, 1972**

THE HON. L. MAECK
Minister of Revenue



BILL 28

1978

**An Act to amend
The Corporations Tax Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subclause iv of clause *d* of subsection 2 of section 1 of *The Corporations Tax Act, 1972*, being chapter 143, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 1, is amended by striking out “section 138” in the third line and inserting in lieu thereof “sections 138 and 248”. s. 1 (2) (d) (iv),
amended
- (2) Subsection 6 of the said section 1 is amended by striking out “sections” in the first line and inserting in lieu thereof “provisions”. s. 1 (6),
amended
- 2.—(1) Clause *c* of subsection 2 of section 2 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 2, is repealed and the following substituted therefor: s. 2 (2) (c),
re-enacted
- (c) disposed of taxable Canadian property, within the meaning given to that expression by subsection 1 of section 248 of the *Income Tax Act* (Canada) if the reference in that definition to section 2 of that Act were a reference to this section, that was property situated in Ontario as prescribed by regulation; or R.S.C. 1952,
c. 148
-
- (2) Clause *c* of subsection 3 of the said section 2, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 2, is repealed and the following substituted therefor: s. 2 (3) (c),
re-enacted
- (c) disposed of taxable Canadian property, within the meaning given to that expression by subsection 1 of section 248 of the *Income Tax Act* (Canada) if the

reference in that definition to section 2 of that Act were a reference to this section, that was property situated in Ontario as prescribed by regulation; or

s. 12 (2),
re-enacted

- 3.** Subsection 2 of section 12 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 6, is repealed and the following substituted therefor:

Interpre-
tation

(2) In the application of the said section 3 for the purposes of this Act, the reference in paragraph *c* thereof to "sub-division *e*" shall be deemed to be a reference to Subdivision D of Division B of Part II of this Act, and the reference in the said section to "this Part" shall be deemed to be a reference to Part II of this Act.

Corpora-
tion that
becomes
subject to
this Act
R.S.C. 1952,
c. 148

(3) Subject to subsection 4 of section 14, for the purpose of computing the income and taxable income of a corporation for a taxation year any amount deducted or deductible by the corporation under a provision of the *Income Tax Act* (Canada) in computing its income for a previous taxation year in respect of which the corporation was not subject to the tax imposed by Part II of this Act is deemed, unless otherwise provided in the said Part II, to have been deducted or deductible, as the case may be, under the corresponding provision of this Act in computing its income or taxable income, as the case may be, for that previous taxation year.

s. 13,
amended

- 4.** Section 13 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 7, is amended by adding thereto the following subsection:

Interpre-
tation

(2) In the application of the said section 4 for the purposes of this Act, the references therein to "this Part" shall be deemed to be references to Part II of this Act.

s. 14 (4) (a),
amended

- 5.—(1)** Clause *a* of subsection 4 of section 14 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "subsections 7.1 and 10" in the first line and inserting in lieu thereof "subsection 10".

s. 14 (4) (b),
re-enacted

- (2) Clause *b* of subsection 4 of the said section 14 is repealed and the following substituted therefor:

Application
of
R.S.C. 1952,
c. 148,
s. 13 (7.1)

(b) the reference in subsection 7.1 of the said section 13 to "section 65" shall be deemed to be a reference to the said section 65 and to section 19 of this Act.

6. Subclause i of clause c of subsection 4 of section 15 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed. s. 15 (4) (c) (i).
repealed

7. Subsection 2 of section 18 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed and the following substituted therefor: s. 18 (2),
re-enacted

(2) Subsection 1 does not apply to allow a deduction in computing the income of a corporation for a taxation year if the corporation, at the end of the year or at any time in the immediately following year, Application
of subs. 1

(a) was exempt from tax under any provision of this Part; or

(b) was not resident in Canada and ceased to have a permanent establishment in Canada.

8.—(1) Clause b of subsection 1 of section 20 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed and the following substituted therefor: s. 20 (1) (b),
re-enacted

(b) of that aggregate, an amount equal to its income for the taxation year if no deduction were allowed under this subsection or section 19, minus the deductions allowed for the taxation year by sections 112 and 113 of the *Income Tax Act* (Canada) as made applicable by section 29 of this Act. R.S.C. 1952,
c. 148

(2) Clause b of subsection 2 of the said section 20 is repealed and the following substituted therefor: s. 20 (2) (b),
re-enacted

(b) of that aggregate, the greater of,

(i) such amount as the corporation may claim, not exceeding 20 per cent of the aggregate determined under clause a, and

(ii) the aggregate of,

(A) such part of its income for the taxation year as may reasonably be regarded as attributable to the production of petroleum or natural gas from wells in Canada or to the production of minerals from mines in Canada,

(B) its income for the taxation year from royalties in respect of an oil or gas

well in Canada or a mine in Canada,
and

(C) the aggregate of amounts each of which is an amount, in respect of a Canadian resource property or a property referred to in subclause ii of clause *a* of subsection 3 of section 16 or clause *c* of subsection 3 of section 16 that has been disposed of by it, equal to the amount, if any, by which,

1. the amount included in computing its income for the taxation year by virtue of subsection 3 of section 16 in respect of the disposition of the property,

exceeds,

2. the amount deducted under section 18 in respect of the property in computing its income for the taxation year,

if no deduction were allowed for the taxation year under this subsection, subsection 3 or section 19.

s. 20 (14) (b)
(iii),
re-enacted

(3) Subclause iii of clause *b* of subsection 14 of the said section 20 is repealed and the following substituted therefor:

R.S.C. 1952,
c. 148

(iii) notwithstanding paragraph *m* of subsection 1 of section 18 of the *Income Tax Act* (Canada), as that section applies to this Act by virtue of section 14 of this Act, the cost to the corporation of a Canadian resource property, but for greater certainty not including any payment made to any of the persons referred to in any of the subparagraphs i to iii of the said paragraph *m* for the preservation of a person's rights in respect of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired by the corporation after 1971, and not including a payment to which the said paragraph *m* applied by virtue of subparagraph v thereof.

9. Section 27 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by adding thereto the following subsection: s. 27, amended

(2a) For the purposes of this Act, paragraph *d* of subsection 1 of section 96 of the *Income Tax Act* (Canada) shall apply as though the paragraph read as follows: Exception

(d) each income or loss of the partnership for a taxation year were computed as if no deduction were permitted by subsection 1 of section 19, section 20 or the provisions of *The Corporations Tax Application Rules, 1972* relating to exploration and development expenses.

10. Subsection 1 of section 46 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by inserting after "138" in the fifth line "138.1,". s. 46 (1), amended

11. Section 48 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is repealed and the following substituted therefor: s. 48, re-enacted

48. Section 138.1 and subsection 2 of section 142 of the *Income Tax Act* (Canada) are, in so far as they apply to corporations, applicable for the purposes of this Act. Amounts to be included in computing policy-holder's income

Communal Organizations

48a. Section 143 of the *Income Tax Act* (Canada) is, in so far as it applies to corporations, applicable for the purposes of this Act. Application of R.S.C. 1952, c. 148, s. 143

12. Section 126 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 42, section 11, 1977, chapter 16, section 3 and 1977, chapter 58, sections 9 and 26, is further amended by adding thereto the following subsection: s. 126, amended

(3) Notwithstanding subsection 1, the taxable paid-up capital of a corporation registered under *The Loan and Trust Corporations Act* for a taxation year is its taxable paid-up capital as it stood at the close of the taxation year, and includes, Taxable paid-up capital of loan and trust corporations R.S.O. 1970, c. 254

(a) its paid-up capital stock;

(b) its earned, capital and any other surplus; and

(c) all its reserves, whether created from income or otherwise, except any reserve, the creation of which is allowed as a charge against income under the provisions of Part II.

s. 127 (2a),
re-enacted

13. Subsection 2a of section 127 of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 42, section 12, is repealed and the following substituted therefor:

Exception

(2a) Subsections 1 and 2 do not apply to any corporation to which subsection 2 or 3 of section 126 applies.

s. 131 (2),
re-enacted

14. Subsection 2 of section 131 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 16, section 4 and amended by 1977, chapter 58, section 26, is repealed and the following substituted therefor:

Rate of
capital tax
on banks and
loan and
trust
corporations
R.S.O. 1970,
c. 254

(2) The tax payable under this Part by a bank or a corporation registered under *The Loan and Trust Corporations Act* for a taxation year calculated upon its taxable paid-up capital, in this subsection referred to as the "amount taxable" is three-fifths of 1 per cent of the amount taxable.

s. 132 (2),
re-enacted

15. Subsection 2 of section 132 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 16, section 4, is repealed and the following substituted therefor:

Idem

(2) There may be deducted from the tax otherwise payable under this Part by a bank or a corporation registered under *The Loan and Trust Corporations Act* for a taxation year an amount equal to three-fifths of 1 per cent of that portion of its taxable paid-up capital that is deemed to be used by the bank or the corporation registered under *The Loan and Trust Corporations Act* in the taxation year in each jurisdiction outside Ontario determined under rules prescribed by the regulations.

s. 143 (1),
re-enacted

16.—(1) Subsection 1 of section 143 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 32, section 18 and 1977, chapter 58, section 26, is repealed and the following substituted therefor:

Insurance
corporations

(1) Every insurance corporation shall pay a tax of,

(a) 2 per cent calculated on the gross premiums payable, under contracts of accident insurance, life insurance and sickness insurance; and

(b) 3 per cent calculated on the gross premiums payable, under any other contract of insurance,

to the corporation or its agent or agents during the taxation year in respect of business transacted in Ontario (other than premiums in respect of reinsurance ceded to the corporation by other insurance corporations and considerations for annuities), after deducting from such premiums the amount of,

- (c) the cash value of dividends credited to policyholders; and
- (d) the premiums returned.

(2) Subsections 1a and 1b of the said section 143, as enacted by the Statutes of Ontario, 1976, chapter 32, section 18, are repealed and the following substituted therefor:

s. 143 (1a),
re-enacted,
s. 143 (1b),
repealed

(1a) For the purposes of subsection 1, "accident insurance", "life insurance" and "sickness insurance" have the respective meanings given to those expressions by section 1 of *The Insurance Act*.

Interpretation

R.S.O. 1970,
c. 224

17. Subsection 4 of section 146 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 58, section 26, is repealed and the following substituted therefor:

s. 146 (4),
re-enacted

(4) Where a person, acting or purporting to act on behalf of a corporation, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made or has participated in, assented to or acquiesced in the making of, an incorrect statement or omission (in this subsection referred to as a "false statement") in a return, certificate, statement or answer (in this subsection referred to as a "return") filed or made in respect of a taxation year as required by or under this Act or the regulations, the corporation is liable to a penalty of 25 per cent of the amount, if any, by which,

Statements
or omissions
in return

- (a) the tax for the year that would be payable by it under this Act if its taxable income or other subject of tax for the year were computed by adding to the taxable income or other subject of tax reported by it in its return for the year that portion of the understatement of income or the understatement of any other subject of tax, for the year, that is reasonably attributable to the false statement;

exceeds,

- (b) the tax for the year that would have been payable by it under this Act had the tax payable for the year been assessed on the basis of the information provided in its return for the year.

Interpre-
tation

(5) For the purposes of subsection 4, the taxable income reported by a corporation in its return for a taxation year shall be deemed not to be less than nil and the "understatement of income" for a year shall be determined in accordance with the rules provided in subsection 2.1 of section 163 of the *Income Tax Act* (Canada).

R.S.C. 1952,
c. 148

s. 148 (3) (a),
re-enacted

18.—(1) Clause *a* of subsection 3 of section 148 of the said Act, as re-enacted by the Statutes of Ontario, 1975, chapter 17, section 64, is repealed and the following substituted therefor:

(a) on or before,

(i) the last day of each month of the taxation year in respect of which the tax is payable, an instalment equal to one-twelfth of the tax payable as estimated by it at the rates for the taxation year on,

(A) its estimated taxable income and other subject of tax for the taxation year,
or

(B) its taxable income and other subject of tax for the immediately preceding taxation year; or

(ii) the last day of each of the first two months of the taxation year in respect of which the tax is payable an instalment equal to one-twelfth of the tax payable as estimated by it, at the rates for the taxation year, on its taxable income and other subject of tax for the second taxation year preceding the taxation year, and on or before the last day of each of the following ten months of the taxation year an instalment equal to one-tenth of the amount remaining after deducting the amount computed pursuant to this subclause in respect of the first two months of the taxation year from the tax payable as estimated by it at the rates for the taxation year on its taxable income and

other subject of tax for the immediately preceding taxation year; and

- (2) Subsection 5 of the said section 148, as enacted by the Statutes of Ontario, 1976, chapter 32, section 19 and amended by 1977, chapter 58, section 16, is repealed and the following substituted therefor: ^{s. 148 (5), re-enacted}

(5) Notwithstanding clause *a* of subsection 3, the amount payable by a mutual fund corporation to the Treasurer of Ontario on or before the last day of any month of the taxation year in respect of which the tax is payable, shall be deemed to be the amount, if any, by which, ^{Mutual fund corporations}

- (a) the amount so payable otherwise determined under that subsection,

exceeds,

- (b) one-twelfth of the corporation's capital gains refund for the year, as determined under section 41.

- 19.**—(1) Subsection 1 of section 149 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 58, section 26, is repealed and the following substituted therefor: ^{s. 149 (1), re-enacted}

(1) Where the amount paid on account of the tax payable by a corporation for a taxation year is less than the amount of tax payable for the taxation year, the corporation liable to pay the tax shall pay interest on the difference between, ^{Interest on unpaid tax}

- (a) the amount of tax payable for the taxation year; and

- (b) the amount paid on account of the tax payable for the taxation year,

from the day on which the balance of the tax payable is required to be paid pursuant to clause *b* of subsection 3 of section 148 to the day of payment of the tax, at such rate as is prescribed by the regulations.

(1a) For the purposes of subsection 1, the "amount paid on account of the tax payable" is the amount paid by the corporation on account of the tax payable for the taxation year minus any amounts refunded to the corporation or any amounts applied to other liability of the corporation pursuant to section 152. ^{Interpretation}

s. 149 (5),
re-enacted

(2) Subsection 5 of the said section 149, as amended by the Statutes of Ontario, 1977, chapter 58, section 26, is repealed and the following substituted therefor:

Interest on
unpaid tax

(5) For the purpose of calculating interest under subsection 2, where a corporation is required to pay a part or instalment of tax for a taxation year pursuant to subsection 3 of section 148, the corporation shall be deemed to have been liable to pay the part or instalment determined under,

(a) sub-subclause A of subclause i of clause *a* of subsection 3 of section 148;

(b) sub-subclause B of subclause i of clause *a* of subsection 3 of section 148; or

(c) subclause ii of clause *a* of subsection 3 of section 148,

whichever method gives the least amount required to be paid.

s. 150 (1a, 1b),
re-enacted

20. Subsections 1*a* and 1*b* of section 150 of the said Act, as enacted by the Statutes of Ontario, 1977, chapter 58, section 18, are repealed and the following substituted therefor:

Determina-
tion of
losses

(1*a*) Where the Minister ascertains the amount of a corporation's non-capital loss, net capital loss or restricted farm loss for a taxation year and that amount is different from the amount reported by the corporation in its return of income for that year, the Minister shall, at the request of the corporation, determine, with all due dispatch, the amount of the corporation's non-capital loss, net capital loss or restricted farm loss, as the case may be, and shall send a notice of determination to the corporation that delivered the return.

Provisions
applicable
R.S.C. 1952,
c. 148

(1*b*) The provisions of paragraph *l* of subsection 1 of section 56 and paragraph *o* of section 60 of the *Income Tax Act* (Canada), as those paragraphs apply by virtue of sections 16 and 17, respectively, of this Act, and the provisions of this Part, as they relate to an assessment or reassessment and to assessing tax and reassessing tax, are applicable, *mutatis mutandis*, to a determination or redetermination and to determining and redetermining amounts under this Part, except that subsections 1 and 2 are not applicable to determinations made under subsection 1*a* and, for greater certainty, an original determination of a corporation's non-capital loss, net capital loss or restricted farm loss for a taxation year may be made by the Minister only at the request of the corporation.

(1c) For greater certainty, where the Minister makes a determination of the amount of a corporation's non-capital loss, net capital loss or restricted farm loss for a taxation year, as the case may be, subject to the corporation's rights of objection and appeal in respect of the determination and subject to any redetermination by the Minister, the determination is binding on both the Minister and the corporation for the purposes of calculating the taxable income of the corporation in any other year. Determination binding

- 21.** Subsection 3 of section 152 of the said Act is repealed and the following substituted therefor: s. 152 (3), re-enacted

(3) Where an amount in respect of an overpayment is refunded or applied under this section on other liability, interest at such rate as is prescribed by the regulations shall be paid or applied thereon for the period commencing with the later of, Interest on overpayments

- (a) the day on which the overpayment arose; and
- (b) the day on or before which the balance of the tax payable for the taxation year is required to be paid pursuant to clause *b* of subsection 3 of section 148,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

- 22.** Subsection 1 of section 153 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 58, section 20, is repealed and the following substituted therefor: s. 153 (1), re-enacted

(1) Where instalments of tax as required by subsection 3 of section 148 are overpaid at any time prior to, Credit interest on overpaid instalments

- (a) the day on or before which the balance of the tax payable for the taxation year is required to be paid pursuant to clause *b* of subsection 3 of section 148; or
- (b) the day on which a refund was made upon assessment where such assessment is made before the day referred to in clause *a*,

whichever is earlier, interest at such rate as is prescribed for the purpose of subsection 3 of section 152 shall be allowed on the amount of the overpayment.

- Commence-
ment and
Application
- 23.**—(1) Sections 1 and 2, subsection 2 of section 12 of the said Act, as enacted by section 3 of this Act, and sections 4 and 9 shall be deemed to have come into force on the 8th day of December, 1977.
- Idem
- (2) Subsection 1 of section 19, and sections 20, 21 and 22 come into force on the day this Act receives Royal Assent.
- Idem
- (3) Sections 5 and 6 shall be deemed to have come into force on the 8th day of March, 1978, and apply to property acquired and expenses incurred after the 7th day of March, 1978.
- Idem
- (4) Subsection 3 of section 12 of the said Act, as enacted by section 3 of this Act, section 7 of this Act, and section 48a of the said Act, as enacted by section 11 of this Act, shall be deemed to have come into force on the 1st day of January, 1977 and apply to corporations in respect of all taxation years ending after 1976.
- Idem
- (5) Subsections 1 and 2 of section 8 shall be deemed to have come into force on the 7th day of May, 1974, and apply to corporations in respect of all taxation years ending after the 6th day of May, 1974.
- Idem
- (6) Subsection 3 of section 8 shall be deemed to have come into force on the 7th day of May, 1974, and applies to amounts paid or payable after the 6th day of May, 1974 in respect of the period after that date.
- Idem
- (7) Section 10 of this Act, and section 48 of the said Act, as re-enacted by section 11 of this Act, shall be deemed to have come into force on the 1st day of January, 1978 and apply to corporations in respect of all taxation years ending after 1977.
- Idem
- (8) Sections 12, 13, 14 and 15 shall be deemed to have come into force on the 8th day of March, 1978 and apply to corporations in respect of all taxation years ending after the 7th day of March, 1978, except that with respect to the taxation year ending after the 7th day of March, 1978, and that includes that day, the following rules apply:
- (a) determine the amount of tax payable under Part III of the said Act as that Part stood on the 7th day of March, 1978 on the assumption that that Part as it so stood was applicable to that taxation year;
- (b) determine the proportion of the amount determined under clause *a* that the number of days of that

taxation year prior to the 8th day of March, 1978 bears to the total number of days of that taxation year;

- (c) determine the amount of tax payable under Part III of the said Act, as amended by sections 12, 13, 14 and 15 of this Act, on the assumption that that Part as so amended was applicable for that taxation year;
- (d) determine the proportion of the amount determined under clause *c* that the number of days of that taxation year that follow the 7th day of March, 1978 bears to the total number of days of that taxation year;

- (e) determine the aggregate of the amounts determined under clauses *b* and *d* in respect of the corporation,

and the aggregate determined under clause *e* is the amount payable by the corporation under Part III of the said Act, as amended by this Act, for its taxation year that ends after the 7th day of March, 1978, and that includes that day.

- (9) Section 16 shall be deemed to have come into force on ^{Idem} the 8th day of March, 1978 and applies to corporations in respect of all taxation years ending after the 7th day of March, 1978, except that with respect to the taxation year ending after the 7th day of March and that includes that day, the following rules apply:

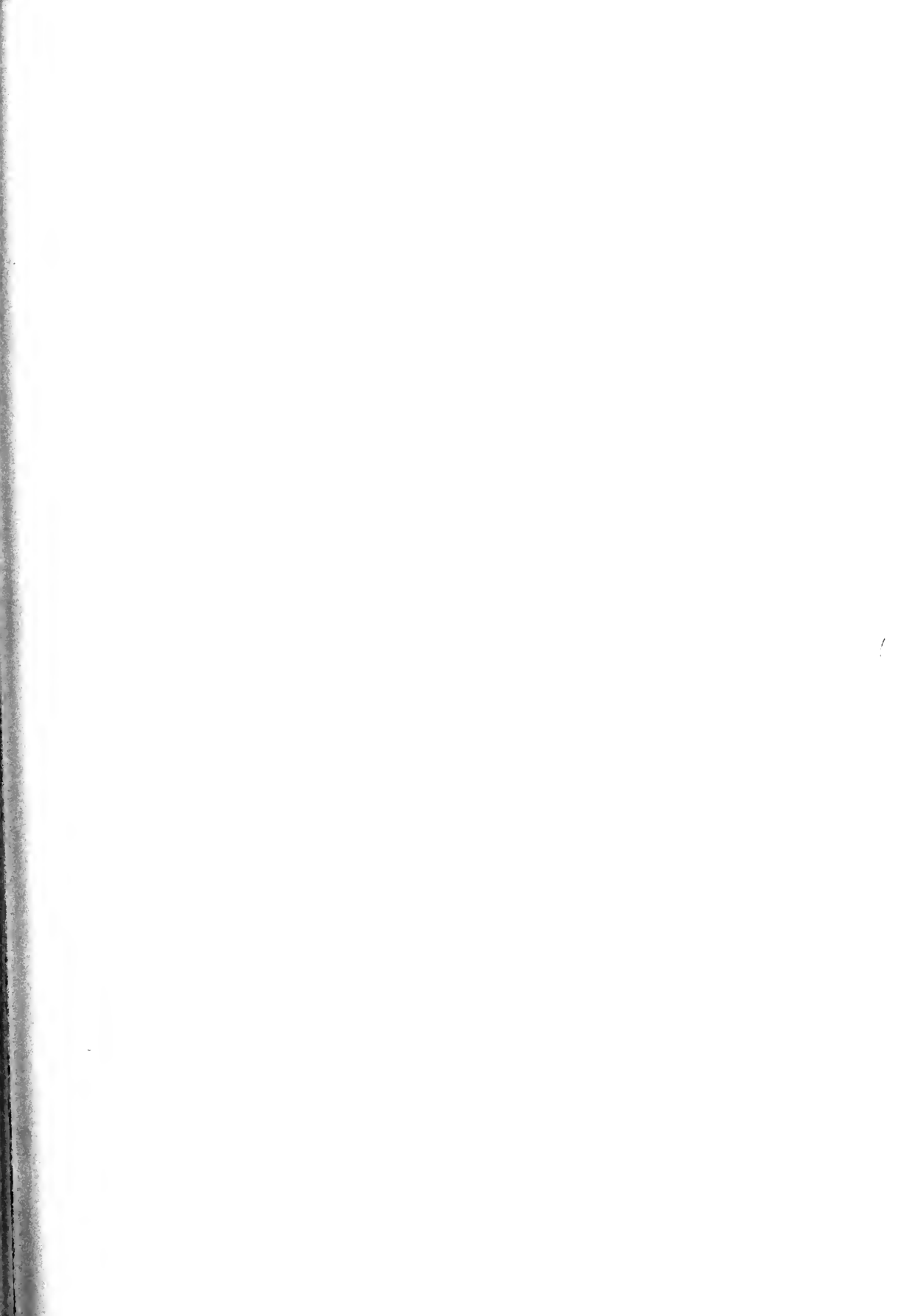
- (a) determine the tax payable under section 143 of the said Act as that section stood on the 7th day of March, 1978 on the assumption that that section as it so stood was applicable to that taxation year;
- (b) determine the proportion of the amount determined under clause *a* that the number of days of that taxation year prior to the 8th day of March, 1978 bears to the total number of days of that taxation year;
- (c) determine the amount of tax payable under section 143 of the said Act, as amended by section 16 of this Act, on the assumption that that section as so amended was applicable for that taxation year;
- (d) determine the proportion of the amount determined under clause *c* that the number of days of

that taxation year that follow the 7th day of March, 1978 bears to the total number of days of that taxation year;

- (e) determine the aggregate of the amounts determined under clauses *b* and *d* in respect of the corporation,

and the aggregate determined under clause *e* is the amount payable by the corporation under section 143 of the said Act, as amended by this Act, for its taxation year that ends after the 7th day of March, 1978, and that includes that day.

- Idem (10) Section 17 shall be deemed to have come into force on the 1st day of April, 1977.
- Idem (11) Section 18 and subsection 2 of section 19 come into force on the 1st day of July, 1978 and apply to corporations in respect of all taxation years commencing on or after that date.
- Short title **24.** The short title of this Act is *The Corporations Tax Amendment Act, 1978*.



An Act to amend
The Corporations Tax Act, 1972

1st Reading

March 7th, 1978

2nd Reading

April 18th, 1978

3rd Reading

April 25th, 1978

THE HON. L. MAECK
Minister of Revenue

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Mining Tax Act, 1972**

THE HON. F. S. MILLER
Minister of Natural Resources

EXPLANATORY NOTES

SECTION 1. The section adds the definition of a "social asset" and is complementary to subsections 1 and 5 of section 2 of the Bill.

SECTION 2.—Subsection 1. The subsection adds clause *ea* to the deductions permitted to be made under subsection 3 of section 3 of the Act. A mine operator is permitted to deduct the proportion of operating and maintenance expenses of social assets attributable to mining operations provided that those expenses are not otherwise deductible under any other provision of the Act or the regulations. In computing the amount of operating and maintenance expenses, there must be deducted the amount of all rents, fees, grants and other payments received during the year in respect of the operation of the social asset. This amendment is retroactive to April 9, 1974.

Subsection 2. Clause *k* of subsection 3 of section 3 of the Act now reads as follows:

- (*k*) *an allowance for depreciation in each taxation year of not less than 5 per cent and not more than 15 per cent of the cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings until the full cost thereof has been allowed as an expense under this clause, but where the mining plant, machinery, equipment and buildings or any part thereof have been disposed of by the operator, the proceeds from such disposal shall be applied to reduce the cost to such person of any additions thereto made in the taxation year, and where such proceeds exceed the cost of such additions, the excess shall be applied to reduce the balance remaining to be depreciated of such assets acquired in previous years, and where no such balance remains to be depreciated, the excess shall be applied to reduce deductions otherwise allowable under this subsection, and where any such disposal is made at any time after the close of mining operations, the tax for the last taxation year shall be reassessed for the purpose of depreciation recovery where applicable.*

The amendment removes the mandatory minimum deduction for depreciation of not less than 5 per cent of the capital cost. The 15 per cent allowance for depreciation is now provided for under subclause *i* of the new clause *k*.

BILL 29

1978

**An Act to amend
The Mining Tax Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Mining Tax Act, 1972*, being chapter 140, ^{s. 1.} as amended by the Statutes of Ontario, 1974, chapter 132, section 1, is further amended by adding thereto the following clause:

(*ib*) "social asset" means an asset that is incidental and ancillary to mining and processing operations and that relates directly to the provision of housing, recreational and service facilities, provided that the asset,

(i) is necessary to attract or retain employees, and

(ii) is available for the use of all employees.

- 2.—(1) Subsection 3 of section 3 of the said Act, as amended ^{s. 3(3),} by the Statutes of Ontario, 1974, chapter 132, section 2, ^{amended} is further amended by adding thereto the following clause:

(*ea*) the proportion of the operating and maintenance expenses related to social assets in Ontario that is directly attributable to the mining operations after deducting therefrom all rents, fees, grants and other payments received during the taxation year by the mine operator in connection therewith, to the extent that such expenses are not otherwise deductible under the regulations.

- (2) Clause *k* of subsection 3 of the said section 3 is repealed ^{s. 3(3) (k),} and the following substituted therefor: ^{re-enacted}

(*k*) subject to subsections 3*a*, 3*b* and 3*c*,

- (i) an allowance for depreciation in each taxation year of not more than 15 per cent of the capital cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings,
- (ii) notwithstanding subclause i, an allowance for depreciation in each taxation year not exceeding 30 per cent of the capital cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings acquired after the 9th day of April, 1974, that has not been used previously in mining operations, and
- (iii) notwithstanding subclause i or ii, an allowance for depreciation in each taxation year on mining plant, machinery, equipment and buildings acquired at arm's length for use in a new mine or a major expansion of an existing mine after the 7th day of March, 1978 and before the completion of the project in an amount equal to the lesser of,
 - A. the profits for the taxation year from such new mine or major expansion of an existing mine, and
 - B. the undepreciated capital cost to the mine operator of the mining plant, machinery, equipment and buildings at the end of the taxation year before making any deduction under this subclause for the taxation year,

until the full cost thereof has been allowed as an expense under this clause.

s. 3 (3) (l),
repealed

- (3) Clause *l* of subsection 3 of the said section 3, as re-enacted by the Statutes of Ontario, 1974, chapter 132, section 2 is repealed.

s. 3 (3) (n),
amended

- (4) Clause *n* of subsection 3 of the said section 3, as re-enacted by the Statutes of Ontario, 1974, chapter 132, section 2 is amended by striking out "at least 15 per cent and" in the first and second lines.

s. 3,
amended

- (5) The said section 3 is amended by adding thereto the following subsection:

Subclause ii of the new clause *k* incorporates certain provisions of clause *l* of subsection 3 of section 3 of the Act which is repealed by subsection 3 of this section of the Bill.

Subclause iii of the new clause *k* provides that in the case of a new mine or major expansion of an existing mine occurring after the 7th day of March, 1978, qualifying mining assets may be written off at a 100 per cent rate against the profits derived from those operations. This accelerated depreciation will effectively exempt the profits from a new mine, or a major expansion of an existing mine, in Ontario from the mining tax until the additional capital investment related to these operations is recovered by the operator. Assets will qualify for depreciation only if they are purchased at arm's length.

Subsection 3. The provisions of the repealed clause *l* are now contained in subclause ii of clause *k* of subsection 3 of section 3 of the Act, as set out in subsection 2 of this section of the Bill, and in the new subsections 6 and 7 of section 3 of the Act, as set out in subsection 8 of this section of the Bill.

The clause that is being repealed now reads as follows:

(l) notwithstanding clause k, an allowance for depreciation in each taxation year not exceeding 30 per cent of the cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings acquired after the 9th day of April, 1974 that has not been used previously in mining operations until the full cost thereof has been allowed as an expense under this clause, but where the mining plant, machinery, equipment and buildings or any part thereof have been disposed of by the operator, the proceeds from such disposal shall be applied to reduce the cost to such person of any additions thereto made in the taxation year, and where such proceeds exceed the cost of such additions, the excess shall be applied to reduce the balance remaining to be depreciated of such assets acquired in previous years, and where no such balance remains to be depreciated, the excess shall be applied to reduce deductions otherwise allowable under this subsection, and where any such disposal is made at any time after the close of mining operations, the tax for the last taxation year shall be reassessed for the purpose of depreciation recovery where applicable.

Subsection 4. The amendment removes the present 15 per cent minimum deduction for exploration and development expenses.

Subsection 5. The new subsection provides that, notwithstanding the provisions of clause *k* of subsection 3 of section 3 of the Act, making an allowance for depreciation on all assets relating to mining operations, no allowance for depreciation is permitted to be made in respect of social assets. This amendment is retroactive to April 9, 1974.

Subsection 6. Two new subsections are added to section 3 of the Act.

Subsection 3*b* provides that two conditions precedent must be met before accelerated depreciation of 100 per cent may be written off against the profits from a new mine or major expansion of an existing mine under section 3 (3) (*k*) (iii) of the Act.

1. A new mine or major expansion of an existing mine must be designated by the Minister.
2. The mine operator must elect treatment as a new mine or major expansion of an existing mine under the provisions of section 3 (3) (*k*) (iii) of the Act.

Subsection 3c is added to specify how and when an election must be made under subsection 3b. The election must be made in the return under section 6 of the Act in which a claim for depreciation under section 3 (3) (k) (iii) of the Act is first made. The election is binding upon the person by whom it is made and may not subsequently be altered or revoked.

Subsection 7. The amendment is complementary to section 3 of the Bill.

Subsection 8. Four new subsections are added to section 3 of the Act. Subsection 6 provides for the calculation of the undepreciated capital cost for the purposes of clause k of section 3 (3) of the Act and to facilitate the calculation of the amount of recaptured depreciation to be included in profits pursuant to the new subsection 7.

Subsection 7 provides for the recapture of depreciation allowance deducted in calculating taxable profits for prior years where the operator disposes of any of the mining assets. The provisions in clauses k and l of section 3 (3) of the Act, prior to the amendments in subsection 2 of section 2 of the Bill, required that the proceeds from such disposition be used to reduce the cost of additions, undepreciated balance and deductions otherwise allowable but did not require that any excess be added to taxable profits. This amendment will require that the excess of proceeds of disposition over the undepreciated capital cost be included in profits but recapture will not apply to a realization of an amount in excess of the capital cost of the property.

Subsection 8 provides that where the mining assets are not acquired or disposed of at arm's length, the Minister may determine the capital cost or proceeds of disposition to prevent an artificial step-up in the capital cost which may be depreciated pursuant to clause k of section 3 (3) of the Act.

Subsection 9 is added to provide that in determining whether or not a transaction is "at arm's length", the provisions of section 251 of the *Income Tax Act* (Canada) apply.

(3a) Notwithstanding clause *k* of subsection 3, no allowance for depreciation on any asset that is a social asset shall be deducted under subsection 3. Depreciation on social assets not allowed

(6) The said section 3 is further amended by adding thereto the following subsections: s. 3, amended

(3b) No allowance for depreciation shall be made under subclause iii of clause *k* of subsection 3 unless, Qualification of new mine or major expansion

(a) the new mine or major expansion of an existing mine has been designated by the Minister for the purposes of this subsection; and

(b) the operator or other person liable to pay the tax under this Act has elected that the project be treated as a new mine or a major expansion of an existing mine under subclause iii of clause *k* of subsection 3.

(3c) An election under clause *b* of subsection 3b shall be made in the return delivered under section 6 in which the first claim for depreciation is made for the new mine or the major expansion of an existing mine under subclause iii of clause *k* of subsection 3 and shall be binding upon the person by whom it is made and shall not subsequently be altered or revoked When election to be made

(7) Clause *a* of subsection 4 of the said section 3 is repealed and the following substituted therefor: s. 3(4)(a), re-enacted

(a) the cost of mining plant, machinery, equipment and buildings except as provided in subsection 3 and in section 3a.

(8) The said section 3 is further amended by adding thereto the following subsections: s. 3, amended

(6) The undepreciated capital cost of the mining plant, machinery, equipment and buildings, herein referred to as "the assets", at any time means the amount by which the aggregate of, Recapture

(a) the capital cost to the operator of the assets acquired before that time; and

(b) all amounts included in profits by virtue of subsection 7 for a taxation year ending prior to that time,

exceeds the aggregate of,

- (c) the total depreciation deducted for the assets by the operator before that time; and
- (d) for each disposition of any asset or part thereof, the lesser of,
 - (i) the proceeds of disposition of that asset or part, and
 - (ii) the capital cost to the operator of that asset or part.

Idem

(7) Where, at the end of a taxation year, the aggregate of all amounts determined under clauses *c* and *d* of subsection 6 exceeds the aggregate of all amounts determined under clauses *a* and *b* of subsection 6, the excess shall be included in computing the profits for the taxation year.

Minister may make determination

(8) Where mining plant, machinery, equipment or buildings or any part thereof were not acquired or disposed of at arm's length and the Minister considers it necessary or advisable, he may determine in accordance with the regulations the capital cost to the operator and the proceeds of disposition of the mining plant, machinery, equipment and buildings for the purposes of this section.

Meaning of "at arm's length"
R.S.C. 1952, c. 148

(9) For the purposes of this section, the rules determining "at arm's length" in section 251 of the *Income Tax Act* (Canada) apply with necessary modifications.

s. 3a, enacted

3. The said Act is amended by adding thereto the following section:

Interpretation

3a.—(1) In this section,

- (a) "agent" means an agent of Ontario Hydro for the purpose of receiving on behalf of Ontario Hydro any uranium pursuant to a subsequent contract;
- (b) "Ontario Hydro" includes its successors and assigns;
- (c) "original contract" means any contract entered into with Ontario Hydro and approved by the Lieutenant Governor in Council prior to the 8th day of March, 1978 to supply uranium to Ontario Hydro;
- (d) "specified uranium undertaking" means any undertaking in Ontario carried out pursuant to an original or subsequent contract to supply uranium to Ontario Hydro and includes any other undertaking that may be prescribed by the regulations;

SECTION 3. A new section 3a is added to the Act. Generally, this section provides that the new deductions permitted by the various amendments contained in section 2 of the Bill are not to apply to certain uranium undertakings.

Subsection 1 is interpretative. The major definition is that of a "specified uranium undertaking". This is an undertaking carried out pursuant to an original contract (a contract entered into prior to the 8th day of March, 1978 to supply uranium to Ontario Hydro) or pursuant to a subsequent contract (a contract entered into on or after the 8th day of March, 1978 between a uranium supplier under the original contract and any other person, relating to the rights under the original contract to supply uranium to Ontario Hydro). Other undertakings may be prescribed by the regulations.

Subsection 2 provides that no deduction in respect of operating and maintenance expenses of social assets permitted under clause *ea* of section 3 (3) of the Act, added by subsection 1 of section 2 of the Bill shall be made in respect of a specified uranium undertaking.

Subsection 3 provides that an allowance for depreciation on mining assets in each year of not less than 5 per cent shall be made under subclause *i* of clause *k* of section 3 (3) of the Act for the proportion of the depreciation that is attributable to the operation of a specified uranium undertaking.

Subsection 4 provides that the new allowance for 100 per cent accelerated depreciation applicable to a new mine or major expansion of an existing mine under subclause *iii* of clause *k* of section 3 (3) of the Act is not applicable for the proportion of depreciation on the mining assets that is attributable to the operation of a specified uranium undertaking.

Subsection 5 provides that at least 15 per cent of the exploration and development expenses permitted under clause *n* of section 3 (3) of the Act must be deducted for the proportion of exploration and development expenses that is attributable to the operation of a specified uranium undertaking.

SECTION 4. Three new subsections are added to section 7 of the Act.

Subsection 1*a* provides that where a mine operator does not make a tax return or a remittance as required under section 6 of the Act, or if the return or remittance is not substantiated by his records, the mine assessor may make his own assessment of any tax, interest or penalties payable by the mine operator.

(e) "subsequent contract" means any contract to supply uranium to Ontario Hydro or any of its agents entered into on or after the 8th day of March, 1978,

(i) made with a party, other than Ontario Hydro, that was a party to the original contract, or

(ii) granting, transferring or assigning any rights under the original contract to supply uranium to Ontario Hydro;

(f) "undertaking" means any mining or processing operation that produces uranium.

(2) Notwithstanding clause *ea* of subsection 3 of section 3, no deduction shall be made under that clause for the proportion of expenses that is attributable to a specified uranium undertaking. No deduction for certain operating expenses

(3) Notwithstanding subclause *i* of clause *k* of subsection 3 of section 3, an allowance under that clause for depreciation in each taxation year shall be not less than 5 per cent and not more than 15 per cent of the capital cost to the operator computed at the close of a taxation year of the mining plant, machinery, equipment and buildings that is attributable to the operation of a specified uranium undertaking. Allowance for depreciation

(4) Notwithstanding subclause *iii* of clause *k* of subsection 3 of section 3, no allowance under that clause for depreciation shall be allowed for the proportion of depreciation on any mining plant, machinery, equipment or buildings that is attributable to the operation of a specified uranium undertaking. No allowance for proportion of depreciation attributable to specified uranium undertaking

(5) Notwithstanding clause *n* of subsection 3 of section 3, at least 15 per cent and not more than 100 per cent of the exploration and development expenditures permitted under subclauses *i* and *ii* of that clause shall be deducted for the proportion of exploration and development expenses that is attributable to the operation of a specified uranium undertaking. No deduction for exploration and development expenditures

4. Section 7 of the said Act is amended by adding thereto the following subsections: s. 7. amended

(1a) Where an operator fails to make a return under section 6 or a remittance as required under this Act or the regulations or if his returns are not substantiated by his records and any information furnished under this Act, the Assessment where no return

mine assessor may assess the tax, interest or penalties payable by the operator.

Notice of
assessment

(1*b*) Where the mine assessor has made an assessment under subsection 1*a*, he may send to the operator or person liable to pay the tax a notice of assessment requiring that the amount of the assessment made under subsection 1*a* be paid to the Minister within one month after the mailing of the notice of assessment, whether or not the assessment is appealed under this Act.

Assessment
deemed valid

(4) An assessment, subject to being varied or vacated on an appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

s. 7*a*.
enacted

5. The said Act is further amended by adding thereto the following section:

Reassessment

7*a*. The mine assessor may at any time assess tax, interest or penalties, or notify in writing any person by whom a return or other subject of tax for a taxation year has been filed that no tax is payable for the taxation year, and may,

(*a*) at any time, if the operator or person filing the return,

(i) has made any misrepresentation or committed any fraud in filing the return or supplying any information under this Act, or

(ii) has failed to file the financial information with the return required to be filed under section 6, or

(iii) has been negligent in supplying any information under this Act, or

(iv) has filed with the Minister a waiver in a prescribed form within four years from the date of mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year; and

(*b*) within four years from the date referred to in sub-clause iv of clause *a*, in any other case,

Subsection 1*b* provides that where an assessment is made under subsection 1*a*, the mine assessor may send a notice of assessment to the mine operator requiring payment of the amount of the assessment. Where such a notice is sent, payment must be made to the Minister within thirty days after the mailing of the notice.

Subsection 4 provides that, subject to an assessment being varied or vacated on appeal and subject to reassessment, an assessment is deemed valid and binding notwithstanding the fact that it may contain any error, defect or omission.

SECTION 5. This section adds a new section 7*a* to the Act. Section 7*a* provides that the mine assessor may reassess tax, interest or penalties against a mine operator for a period of up to four years after the date of an original assessment. Where there has been a misrepresentation, a failure to file information required under the Act, or negligence on the part of the mine operator in filing a return, the mine assessor may reassess tax in any year. This provision allowing reassessment for a period back four years is the same as the period allowed under the *Income Tax Act* (Canada).

SECTION 6. This section adds a new section 11a to the Act. Subsection 1 provides for the confidentiality of all information communicated under the Act. Subsection 2 imposes a fine of not more than \$200 for the contravention of the confidentiality provisions. Subsection 3 permits the Minister of Natural Resources to enter into agreements with the Government of Canada or the government of any province to exchange information and to allow access to information obtained under the various taxing statutes of those jurisdictions.

SECTION 7. The new subsection provides for a penalty based on the difference between the initial tax paid two months after the end of the taxation year and the tax payable as set out in the notice of assessment sent to the person liable to pay the tax.

SECTION 8. This section amends section 23 (1) of the Act which is the authority of the Lieutenant Governor in Council to make regulations.

Subsection 1 clarifies the authority to make regulations relating to a determination by the mine assessor under section 3 (3) (c) of the Act in appraising the value of mineral substances at the pits mouth.

Subsection 2 enlarges the authority to make regulations to provide for the manner in which the mine assessor is to make his calculations, the recapture on the sale of depreciated assets, the manner in which capital cost and proceeds of disposition are to be determined, the methods to be used in computing deductions available or attributable to a specified uranium undertaking, and to authorize the prescribing of an undertaking as a specified uranium undertaking.

reassess or make additional assessments or assess a tax, interest or penalties, as the circumstances require.

6. The said Act is further amended by adding thereto the following section: s. 11a,
enacted

11a.—(1) No person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act or allow any such person to inspect or have access to any written statement furnished under this Act. Confiden-
tiality

(2) Every person who contravenes any provision of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. Penalty

(3) Notwithstanding subsection 1, the Minister may, for the purpose of aiding in an investigation for taxation purposes under this or any other Act, enter into an agreement with the Government of Canada or of any province under which officers of such government will be allowed access to information obtained or any written statement furnished under this Act and officers of the Government of Ontario will be allowed access to information obtained or any written statement furnished under any Act of such government. Agreements
to exchange
information

7. Section 15 of the said Act is amended by adding thereto the following subsection: s. 15,
amended

(4a) Where the amount of tax paid under subsection 1 of section 2 is less than the amount payable as shown in the notice of assessment sent under section 7, the person liable to pay the tax shall pay a penalty of 10 per cent of the outstanding balance of tax and such additional amount shall for all purposes be deemed to be a tax payable under this Act. Penalty

- 8.—(1) Clause *c* of subsection 1 of section 23 of the said Act is repealed and the following substituted therefor: s. 23 (1) (c),
re-enacted

(c) determining the amounts to be included or allowed as deductions by the mine assessor in appraising the value of mineral substances at the pits mouth for the purposes of clause *c* of subsection 3 of section 3.

- (2) Clauses *ca* and *cb* of subsection 1 of the said section 23, as enacted by the Statutes of Ontario, 1974, chapter 132, section 3, are repealed and the following substituted therefor: s. 23 (1) (ca, cb),
re-enacted

- (ca) prescribing the manner of determining and the matters to be taken into account in determining whether or not,
 - (i) there is to be disaggregation of a mine under subsection 2a of section 3, and
 - (ii) there is a mine project that is a new mine or a major expansion of an existing mine for the purposes of subclause iii of clause k of subsection 3 of section 3;
- (cb) prescribing or determining anything that, by this Act, is required or permitted to be prescribed or determined by the regulations;
- (cc) providing for the manner of determining the time at which a mine project is complete or a mine is brought into active operation;
- (cd) authorizing and providing for the recapture of depreciation where such recapture is not otherwise authorized and provided for in this Act;
- (ce) providing for the manner of determining the capital cost and proceeds of disposition for the purposes of subsection 8 of section 3 and the regulations;
- (cf) prescribing the methods to be used in calculating the proportion of allowances and deductions available or attributable to a specified uranium undertaking;
- (cg) prescribing an undertaking as a specified uranium undertaking.

Commence-
ment

9.—(1) This Act, except section 1 and subsections 1 and 5 of section 2, shall be deemed to have come into force on the 8th day of March, 1978.

Idem

(2) Section 1 and subsections 1 and 5 of section 2 shall be deemed to have come into force on the 9th day of April, 1974.

Short title

10. The short title of this Act is *The Mining Tax Amendment Act, 1978*.

SECTION 9. This section provides for the coming into force of the Act.



BILL 29

An Act to amend
The Mining Tax Act, 1972

1st Reading

March 7th, 1978

2nd Reading

3rd Reading

THE HON. F. S. MILLER
Minister of Natural Resources

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Mining Tax Act, 1972**

THE HON. J. A. C. AULD
Minister of Natural Resources and Minister of Energy

(Reprinted as amended by the Committee of the Whole House)

- (i) an allowance for depreciation in each taxation year of not more than 15 per cent of the capital cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings,
- (ii) notwithstanding subclause i, an allowance for depreciation in each taxation year not exceeding 30 per cent of the capital cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings acquired after the 9th day of April, 1974, that has not been used previously in mining operations, and
- (iii) notwithstanding subclause i or ii, an allowance for depreciation in each taxation year on mining plant, machinery, equipment and buildings acquired at arm's length for use in a new mine or a major expansion of an existing mine after the 7th day of March, 1978 and before the completion of the project in an amount not exceeding the lesser of,
 - A. the profits for the taxation year from such new mine or major expansion of an existing mine, and
 - B. the undepreciated capital cost to the mine operator of the mining plant, machinery, equipment and building at the end of the taxation year before making any deduction under this subclause for the taxation year,

until the full cost thereof has been allowed as an expense under this clause.

s. 3 (3) (l),
repealed

- (3) Clause *l* of subsection 3 of the said section 3, as re-enacted by the Statutes of Ontario, 1974, chapter 132, section 3, is repealed.

s. 3 (3) (n),
amended

- (4) Clause *n* of subsection 3 of the said section 3, as re-enacted by the Statutes of Ontario, 1974, chapter 132, section 3, is amended by striking out "at least 15 per cent and" in the first and second lines.

s. 3,
amended

- (5) The said section 3 is amended by adding thereto the following subsection:

Subclause ii of the new clause *k* incorporates certain provisions of clause *l* of subsection 3 of section 3 of the Act which is repealed by subsection 3 of this section of the Bill.

Subclause iii of the new clause *k* provides that in the case of a new mine or major expansion of an existing mine occurring after the 7th day of March, 1978, qualifying mining assets may be written off at a 100 per cent rate against the profits derived from those operations. This accelerated depreciation will effectively exempt the profits from a new mine, or a major expansion of an existing mine, in Ontario from the mining tax until the additional capital investment related to these operations is recovered by the operator. Assets will qualify for depreciation only if they are purchased at arm's length.

Subsection 3. The provisions of the repealed clause *l* are now contained in subclause ii of clause *k* of subsection 3 of section 3 of the Act, as set out in subsection 2 of this section of the Bill, and in the new subsections 6 and 7 of section 3 of the Act, as set out in subsection 8 of this section of the Bill.

The clause that is being repealed now reads as follows:

(l) notwithstanding clause k, an allowance for depreciation in each taxation year not exceeding 30 per cent of the cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings acquired after the 9th day of April, 1974 that has not been used previously in mining operations until the full cost thereof has been allowed as an expense under this clause, but where the mining plant, machinery, equipment and buildings or any part thereof have been disposed of by the operator, the proceeds from such disposal shall be applied to reduce the cost to such person of any additions thereto made in the taxation year, and where such proceeds exceed the cost of such additions, the excess shall be applied to reduce the balance remaining to be depreciated of such assets acquired in previous years, and where no such balance remains to be depreciated, the excess shall be applied to reduce deductions otherwise allowable under this subsection, and where any such disposal is made at any time after the close of mining operations, the tax for the last taxation year shall be reassessed for the purpose of depreciation recovery where applicable.

Subsection 4. The amendment removes the present 15 per cent minimum deduction for exploration and development expenses.

Subsection 5. The new subsection provides that, notwithstanding the provisions of clause *k* of subsection 3 of section 3 of the Act, making an allowance for depreciation on all assets relating to mining operations, no allowance for depreciation is permitted to be made in respect of social assets. This amendment is retroactive to April 9, 1974.

Subsection 6. Two new subsections are added to section 3 of the Act.

Subsection 3*b* provides that two conditions precedent must be met before accelerated depreciation of 100 per cent may be written off against the profits from a new mine or major expansion of an existing mine under section 3 (3) (*k*) (iii) of the Act.

1. A new mine or major expansion of an existing mine must be designated by the Minister.
2. The mine operator must elect treatment as a new mine or major expansion of an existing mine under the provisions of section 3 (3) (*k*) (iii) of the Act.

Subsection 3c is added to specify how and when an election must be made under subsection 3b. The election must be made in the return under section 6 of the Act in which a claim for depreciation under section 3 (3) k) (iii) of the Act is first made. The election is binding upon the person by whom it is made and may not subsequently be altered or revoked.

Subsection 7. The amendment is complementary to section 3 of the Bill.

Subsection 8. Four new subsections are added to section 3 of the Act. Subsection 6 provides for the calculation of the undepreciated capital cost for the purposes of clause k of section 3 (3) of the Act and to facilitate the calculation of the amount of recaptured depreciation to be included in profits pursuant to the new subsection 7.

Subsection 7 provides for the recapture of depreciation allowance deducted in calculating taxable profits for prior years where the operator disposes of any of the mining assets. The provisions in clauses k and l of section 3 (3) of the Act, prior to the amendments in subsection 2 of section 2 of the Bill, required that the proceeds from such disposition be used to reduce the cost of additions, undepreciated balance and deductions otherwise allowable but did not require that any excess be added to taxable profits. This amendment will require that the excess of proceeds of disposition over the undepreciated capital cost be included in profits but recapture will not apply to a realization of an amount in excess of the capital cost of the property.

Subsection 8 provides that where the mining assets are not acquired or disposed of at arm's length, the Minister may determine the capital cost or proceeds of disposition to prevent an artificial step-up in the capital cost which may be depreciated pursuant to clause k of section 3 (3) of the Act.

Subsection 9 is added to provide that in determining whether or not a transaction is "at arm's length", the provisions of section 251 of the *Income Tax Act* (Canada) apply.

(3a) Notwithstanding clause *k* of subsection 3, no allowance for depreciation on any asset that is a social asset shall be deducted under subsection 3. Depreciation on social assets not allowed

(6) The said section 3 is further amended by adding thereto the following subsections: s. 3, amended

(3b) No allowance for depreciation shall be made under subclause iii of clause *k* of subsection 3 unless, Qualification of new mine or major expansion

(a) the new mine or major expansion of an existing mine has been designated by the Minister for the purposes of this subsection; and

(b) the operator or other person liable to pay the tax under this Act has elected that the project be treated as a new mine or a major expansion of an existing mine under subclause iii of clause *k* of subsection 3.

(3c) An election under clause *b* of subsection 3b shall be made in the return delivered under section 6 in which the first claim for depreciation is made for the new mine or the major expansion of an existing mine under subclause iii of clause *k* of subsection 3 and shall be binding upon the person by whom it is made and shall not subsequently be altered or revoked. When election to be made

(7) Clause *a* of subsection 4 of the said section 3 is repealed and the following substituted therefor: s. 3 (4) (a), re-enacted

(a) the cost of mining plant, machinery, equipment and buildings except as provided in subsection 3 and in section 3a.

(8) The said section 3 is further amended by adding thereto the following subsections: s. 3, amended

(6) The undepreciated capital cost of the mining plant, machinery, equipment and buildings, herein referred to as "the assets", at any time means the amount by which the aggregate of, Recapture

(a) the capital cost to the operator of the assets acquired before that time; and

(b) all amounts included in profits by virtue of subsection 7 for a taxation year ending prior to that time,

exceeds the aggregate of,

- (c) the total depreciation deducted for the assets by the operator before that time; and
- (d) for each disposition of any asset or part thereof, the lesser of,
 - (i) the proceeds of disposition of that asset or part, and
 - (ii) the capital cost to the operator of that asset or part.

Idem

(7) Where, at the end of a taxation year, the aggregate of all amounts determined under clauses *c* and *d* of subsection 6 exceeds the aggregate of all amounts determined under clauses *a* and *b* of subsection 6, the excess shall be included in computing the profits for the taxation year.

Minister may make determination

(8) Where mining plant, machinery, equipment or buildings or any part thereof were not acquired or disposed of at arm's length and the Minister considers it necessary or advisable, he may determine in accordance with the regulations the capital cost to the operator and the proceeds of disposition of the mining plant, machinery, equipment and buildings for the purposes of this section.

Meaning of "at arm's length"
R.S.C. 1952, c. 148

(9) For the purposes of this section, the rules determining "at arm's length" in section 251 of the *Income Tax Act* (Canada) apply with necessary modifications.

s. 3a, enacted

3. The said Act is amended by adding thereto the following section:

Interpretation

3a.—(1) In this section,

- (a) "agent" means an agent of Ontario Hydro for the purpose of receiving on behalf of Ontario Hydro any uranium pursuant to a subsequent contract;
- (b) "Ontario Hydro" includes its successors and assigns;
- (c) "original contract" means any contract entered into with Ontario Hydro and approved by the Lieutenant Governor in Council subsequent to the 31st day of December, 1977 and prior to the 8th day of March, 1978 to supply uranium to Ontario Hydro;
- (d) "specified uranium undertaking" means any undertaking in Ontario carried out pursuant to an original or subsequent contract to supply uranium to Ontario Hydro and includes any other undertaking that may be prescribed by the regulations;

SECTION 3. A new section 3*a* is added to the Act. Generally, this section provides that the new deductions permitted by the various amendments contained in section 2 of the Bill are not to apply to certain uranium undertakings.

Subsection 1 is interpretative. The major definition is that of a "specified uranium undertaking". This is an undertaking carried out pursuant to an original contract (a contract entered into prior to the 8th day of March, 1978 to supply uranium to Ontario Hydro) or pursuant to a subsequent contract (a contract entered into on or after the 8th day of March, 1978 between a uranium supplier under the original contract and any other person, relating to the rights under the original contract to supply uranium to Ontario Hydro). Other undertakings may be prescribed by the regulations.

Subsection 2 provides that no deduction in respect of operating and maintenance expenses of social assets permitted under clause *ea* of section 3 (3) of the Act, added by subsection 1 of section 2 of the Bill shall be made in respect of a specified uranium undertaking.

Subsection 3 provides that an allowance for depreciation on mining assets in each year of not less than 5 per cent shall be made under subclause *i* of clause *k* of section 3 (3) of the Act for the proportion of the depreciation that is attributable to the operation of a specified uranium undertaking.

Subsection 4 provides that the new allowance for 100 per cent accelerated depreciation applicable to a new mine or major expansion of an existing mine under subclause *iii* of clause *k* of section 3 (3) of the Act is not applicable for the proportion of depreciation on the mining assets that is attributable to the operation of a specified uranium undertaking.

Subsection 5 provides that at least 15 per cent of the exploration and development expenses permitted under clause *n* of section 3 (3) of the Act must be deducted for the proportion of exploration and development expenses that is attributable to the operation of a specified uranium undertaking.

SECTION 4. Three new subsections are added to section 7 of the Act.

Subsection 1*a* provides that where a mine operator does not make a tax return or a remittance as required under section 6 of the Act, or if the return or remittance is not substantiated by his records, the mine assessor may make his own assessment of any tax, interest or penalties payable by the mine operator.

(e) "subsequent contract" means any contract to supply uranium to Ontario Hydro or any of its agents entered into on or after the 8th day of March, 1978,

(i) made with a party, other than Ontario Hydro, that was a party to the original contract, or

(ii) granting, transferring or assigning any rights under the original contract to supply uranium to Ontario Hydro;

(f) "undertaking" means any mining or processing operation that produces uranium.

(2) Notwithstanding clause *ea* of subsection 3 of section 3, no deduction shall be made under that clause for the proportion of expenses that is attributable to a specified uranium undertaking. No deduction for certain operating expenses

(3) Notwithstanding subclause *i* of clause *k* of subsection 3 of section 3, an allowance under that clause for depreciation in each taxation year shall be not less than 5 per cent and not more than 15 per cent of the capital cost to the operator computed at the close of a taxation year of the mining plant, machinery, equipment and buildings that is attributable to the operation of a specified uranium undertaking. Allowance for depreciation

(4) Notwithstanding subclause *iii* of clause *k* of subsection 3 of section 3, no allowance under that clause for depreciation shall be allowed for the proportion of depreciation on any mining plant, machinery, equipment or buildings that is attributable to the operation of a specified uranium undertaking. No allowance for proportion of depreciation attributable to specified uranium undertaking

(5) Notwithstanding clause *n* of subsection 3 of section 3, at least 15 per cent and not more than 100 per cent of the exploration and development expenditures permitted under subclauses *i* and *ii* of that clause shall be deducted for the proportion of exploration and development expenses that is attributable to the operation of a specified uranium undertaking. Deduction for exploration and development expenditures

4. Section 7 of the said Act is amended by adding thereto the following subsections: s. 7, amended

(1a) Where an operator fails to make a return under section 6 or a remittance as required under this Act or the regulations or if his returns are not substantiated by his records and any information furnished under this Act, the Assessment where no return

mine assessor may assess the tax, interest or penalties payable by the operator.

Notice of
assessment

(1*b*) Where the mine assessor has made an assessment under subsection 1*a*, he may send to the operator or person liable to pay the tax a notice of assessment requiring that the amount of the assessment made under subsection 1*a* be paid to the Minister within one month after the mailing of the notice of assessment, whether or not the assessment is appealed under this Act.

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Assessment
deemed valid

(4) An assessment, subject to being varied or vacated on an appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

s. 7*a*,
enacted

5. The said Act is further amended by adding thereto the following section:

Reassessment

7*a*. The mine assessor may at any time assess tax, interest or penalties, or notify in writing any person by whom a return for a taxation year has been filed that no tax is payable for the taxation year, and may,

(*a*) at any time, if the operator or person filing the return,

- (i) has made any misrepresentation or committed any fraud in filing the return or supplying any information under this Act, or
- (ii) has failed to file the financial information with the return required to be filed under section 6, or
- (iii) has been negligent in supplying any information under this Act, or
- (iv) has filed with the Minister a waiver in a prescribed form within four years from the date of mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year; and

(*b*) within four years from the date referred to in sub-clause iv of clause *a*, in any other case,

Subsection 1*b* provides that where an assessment is made under subsection 1*a*, the mine assessor may send a notice of assessment to the mine operator requiring payment of the amount of the assessment. Where such a notice is sent, payment must be made to the Minister within thirty days after the mailing of the notice.

Subsection 4 provides that, subject to an assessment being varied or vacated on appeal and subject to reassessment, an assessment is deemed valid and binding notwithstanding the fact that it may contain any error, defect or omission.

SECTION 5. This section adds a new section 7*a* to the Act. Section 7*a* provides that the mine assessor may reassess tax, interest or penalties against a mine operator for a period of up to four years after the date of an original assessment. Where there has been a misrepresentation, a failure to file information required under the Act, or negligence on the part of the mine operator in filing a return, the mine assessor may reassess tax in any year. This provision allowing reassessment for a period back four years is the same as the period allowed under the *Income Tax Act* (Canada).

SECTION 6. This section adds a new section 11*a* to the Act. Subsection 1 provides for the confidentiality of all information communicated under the Act. Subsection 2 imposes a fine of not more than \$200 for the contravention of the confidentiality provisions. Subsection 3 permits the Minister of Natural Resources to enter into agreements with the Government of Canada or the government of any province to exchange information and to allow access to information obtained under the various taxing statutes of those jurisdictions.

SECTION 7. The new subsection provides for a penalty based on the difference between the initial tax paid two months after the end of the taxation year and the tax payable as set out in the notice of assessment sent to the person liable to pay the tax.

SECTION 8. This section amends section 23 (1) of the Act which is the authority of the Lieutenant Governor in Council to make regulations.

Subsection 1 clarifies the authority to make regulations relating to a determination by the mine assessor under section 3 (3) (c) of the Act in appraising the value of mineral substances at the pits mouth.

Subsection 2 enlarges the authority to make regulations to provide for the manner in which the mine assessor is to make his calculations, the recapture on the sale of depreciated assets, the manner in which capital cost and proceeds of disposition are to be determined, the methods to be used in computing deductions available or attributable to a specified uranium undertaking, and to authorize the prescribing of an undertaking as a specified uranium undertaking.

reassess or make additional assessments or assess a tax, interest or penalties, as the circumstances require.

6. The said Act is further amended by adding thereto the following section: s. 11a.
enacted

11a.—(1) No person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act or allow any such person to inspect or have access to any written statement furnished under this Act. Confiden-
tiality

(2) Every person who contravenes any provision of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. Penalty

(3) Notwithstanding subsection 1, the Minister may, for the purpose of aiding in an investigation for taxation purposes under this or any other Act, enter into an agreement with the Government of Canada or of any province under which officers of such government will be allowed access to information obtained or any written statement furnished under this Act and officers of the Government of Ontario will be allowed access to information obtained or any written statement furnished under any Act of such government. Agreements
to exchange
information

7. Section 15 of the said Act is amended by adding thereto the following subsection: s. 15.
amended

(4a) Every person who wilfully fails to comply with this Act at the time or times provided, Penalty

(a) by failing to make a payment of tax under section 2;

(b) by making a payment of tax under section 2 that is an unreasonable estimate of the tax payable by him or is a deliberately underestimated amount of the tax payable by him; or

(c) by failing to file a return as required by section 6,

is liable to a penalty of 10 per cent of the amount by which the amount of tax payable as shown in the notice of assessment sent under section 7 exceeds the amount of tax, if any, paid under section 2, and such additional amount shall for all purposes be deemed to be a tax payable under this Act.

- 8.—(1) Clause *c* of subsection 1 of section 23 of the said Act is repealed and the following substituted therefor: s. 23 (1) (c),
re-enacted

(c) determining the amounts to be included or allowed as deductions by the mine assessor in appraising the value of mineral substances at the pits mouth for the purposes of clause *c* of subsection 3 of section 3.

s. 23 (1) (*ca, cb*),
re-enacted

(2) Clauses *ca* and *cb* of subsection 1 of the said section 23, as enacted by the Statutes of Ontario, 1974, chapter 132, section 3, are repealed and the following substituted therefor:

(*ca*) prescribing the manner of determining and the matters to be taken into account in determining whether or not,

(i) there is to be disaggregation of a mine under subsection 2*a* of section 3, and

(ii) there is a mine project that is a new mine or a major expansion of an existing mine for the purposes of subclause iii of clause *k* of subsection 3 of section 3;

(*cb*) prescribing or determining anything that, by this Act, is required or permitted to be prescribed or determined by the regulations;

(*cc*) providing for the manner of determining the time at which a mine project is complete or a mine is brought into active operation;

(*cd*) authorizing and providing for the recapture of depreciation where such recapture is not otherwise authorized and provided for in this Act;

(*ce*) providing for the manner of determining the capital cost and proceeds of disposition for the purposes of subsection 8 of section 3 and the regulations;

(*cf*) prescribing the methods to be used in calculating the proportion of allowances and deductions available or attributable to a specified uranium undertaking;

(*cg*) prescribing an undertaking as a specified uranium undertaking.

Commence-
ment

9.—(1) This Act, except section 1 and subsections 1 and 5 of section 2, shall be deemed to have come into force on the 8th day of March, 1978.

SECTION 9. This section provides for the coming into force of the Act.

(2) Section 1 and subsections 1 and 5 of section 2 shall be ^{Idem} deemed to have come into force on the 10th day of April, 1974.

10. The short title of this Act is *The Mining Tax Amendment Act*, Short title 1978.

An Act to amend
The Mining Tax Act, 1972

1st Reading

March 7th, 1978

2nd Reading

December 12th, 1978

3rd Reading

THE HON. J. A. C. AULD
Minister of Natural Resources and
Minister of Energy

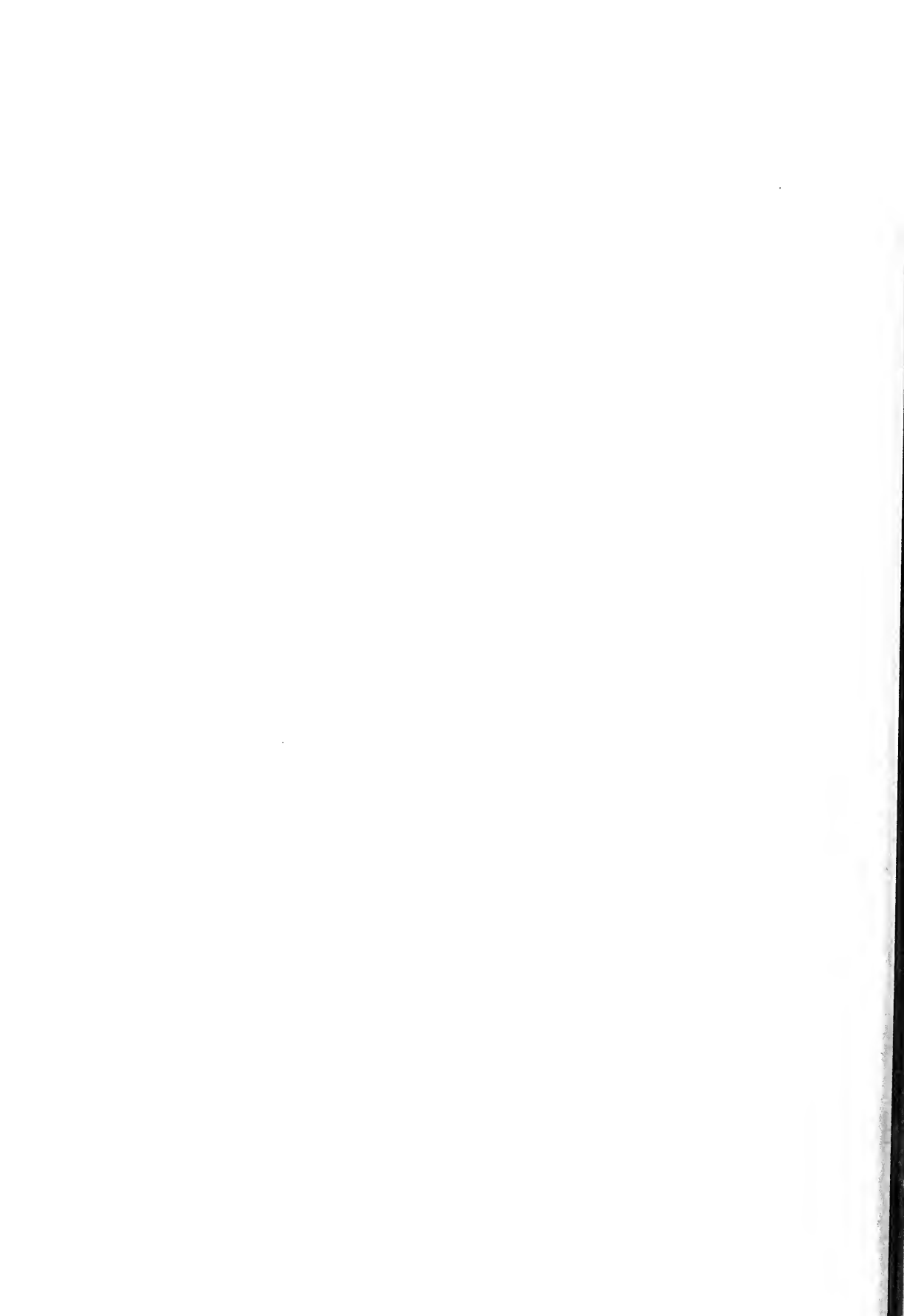
*(Reprinted as amended by the
Committee of the Whole House)*

BILL 29

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Mining Tax Act, 1972**

THE HON. J. A. C. AULD
Minister of Natural Resources and Minister of Energy



**An Act to amend
The Mining Tax Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Mining Tax Act, 1972*, being chapter 140, as amended by the Statutes of Ontario, 1974, chapter 132, section 1, is further amended by adding thereto the following clause: ^{s.1. amended}

(ib) "social asset" means an asset that is incidental and ancillary to mining and processing operations and that relates directly to the provision of housing, recreational and service facilities, provided that the asset,

(i) is necessary to attract or retain employees, and

(ii) is available for the use of all employees.

- 2.—(1) Subsection 3 of section 3 of the said Act, as amended ^{s.3(3). amended} by the Statutes of Ontario, 1974, chapter 132, section 2, is further amended by adding thereto the following clause:

(ea) the proportion of the operating and maintenance expenses related to social assets in Ontario that is directly attributable to the mining operations after deducting therefrom all rents, fees, grants and other payments received during the taxation year by the mine operator in connection therewith, to the extent that such expenses are not otherwise deductible under the regulations.

- (2) Clause *k* of subsection 3 of the said section 3 is repealed ^{s.3(3)(k), re-enacted} and the following substituted therefor:

(*k*) subject to subsections 3*a*, 3*b* and 3*c*,

- (i) an allowance for depreciation in each taxation year of not more than 15 per cent of the capital cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings,
- (ii) notwithstanding subclause i, an allowance for depreciation in each taxation year not exceeding 30 per cent of the capital cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings acquired after the 9th day of April, 1974, that has not been used previously in mining operations, and
- (iii) notwithstanding subclause i or ii, an allowance for depreciation in each taxation year on mining plant, machinery, equipment and buildings acquired at arm's length for use in a new mine or a major expansion of an existing mine after the 7th day of March, 1978 and before the completion of the project in an amount not exceeding the lesser of,
 - A. the profits for the taxation year from such new mine or major expansion of an existing mine, and
 - B. the undepreciated capital cost to the mine operator of the mining plant, machinery, equipment and building at the end of the taxation year before making any deduction under this subclause for the taxation year,

until the full cost thereof has been allowed as an expense under this clause.

s. 3 (3) (l),
repealed

- (3) Clause *l* of subsection 3 of the said section 3, as re-enacted by the Statutes of Ontario, 1974, chapter 132, section 3, is repealed.

s. 3 (3) (n),
amended

- (4) Clause *n* of subsection 3 of the said section 3, as re-enacted by the Statutes of Ontario, 1974, chapter 132, section 3, is amended by striking out "at least 15 per cent and" in the first and second lines.

s. 3,
amended

- (5) The said section 3 is amended by adding thereto the following subsection:

(3a) Notwithstanding clause *k* of subsection 3, no allowance for depreciation on any asset that is a social asset shall be deducted under subsection 3. Depreciation on social assets not allowed

(6) The said section 3 is further amended by adding thereto the following subsections: s. 3, amended

(3b) No allowance for depreciation shall be made under subclause iii of clause *k* of subsection 3 unless, Qualification of new mine or major expansion

(a) the new mine or major expansion of an existing mine has been designated by the Minister for the purposes of this subsection; and

(b) the operator or other person liable to pay the tax under this Act has elected that the project be treated as a new mine or a major expansion of an existing mine under subclause iii of clause *k* of subsection 3.

(3c) An election under clause *b* of subsection 3b shall be made in the return delivered under section 6 in which the first claim for depreciation is made for the new mine or the major expansion of an existing mine under subclause iii of clause *k* of subsection 3 and shall be binding upon the person by whom it is made and shall not subsequently be altered or revoked. When election to be made

(7) Clause *a* of subsection 4 of the said section 3 is repealed and the following substituted therefor: s. 3 (4) (a), re-enacted

(a) the cost of mining plant, machinery, equipment and buildings except as provided in subsection 3 and in section 3a.

(8) The said section 3 is further amended by adding thereto the following subsections: s. 3, amended

(6) The undepreciated capital cost of the mining plant, machinery, equipment and buildings, herein referred to as "the assets", at any time means the amount by which the aggregate of, Recapture

(a) the capital cost to the operator of the assets acquired before that time; and

(b) all amounts included in profits by virtue of subsection 7 for a taxation year ending prior to that time,

exceeds the aggregate of,

- (c) the total depreciation deducted for the assets by the operator before that time; and
- (d) for each disposition of any asset or part thereof, the lesser of,
 - (i) the proceeds of disposition of that asset or part, and
 - (ii) the capital cost to the operator of that asset or part.

Idem

(7) Where, at the end of a taxation year, the aggregate of all amounts determined under clauses *c* and *d* of subsection 6 exceeds the aggregate of all amounts determined under clauses *a* and *b* of subsection 6, the excess shall be included in computing the profits for the taxation year.

Minister may make determination

(8) Where mining plant, machinery, equipment or buildings or any part thereof were not acquired or disposed of at arm's length and the Minister considers it necessary or advisable, he may determine in accordance with the regulations the capital cost to the operator and the proceeds of disposition of the mining plant, machinery, equipment and buildings for the purposes of this section.

Meaning of "at arm's length"
R.S.C. 1952, c. 148

(9) For the purposes of this section, the rules determining "at arm's length" in section 251 of the *Income Tax Act* (Canada) apply with necessary modifications.

s. 3a, enacted

3. The said Act is amended by adding thereto the following section:

Interpretation

3a.—(1) In this section,

- (a) "agent" means an agent of Ontario Hydro for the purpose of receiving on behalf of Ontario Hydro any uranium pursuant to a subsequent contract;
- (b) "Ontario Hydro" includes its successors and assigns;
- (c) "original contract" means any contract entered into with Ontario Hydro and approved by the Lieutenant Governor in Council subsequent to the 31st day of December, 1977 and prior to the 8th day of March, 1978 to supply uranium to Ontario Hydro;
- (d) "specified uranium undertaking" means any undertaking in Ontario carried out pursuant to an original or subsequent contract to supply uranium to Ontario Hydro and includes any other undertaking that may be prescribed by the regulations;

(e) "subsequent contract" means any contract to supply uranium to Ontario Hydro or any of its agents entered into on or after the 8th day of March, 1978,

(i) made with a party, other than Ontario Hydro, that was a party to the original contract, or

(ii) granting, transferring or assigning any rights under the original contract to supply uranium to Ontario Hydro;

(f) "undertaking" means any mining or processing operation that produces uranium.

(2) Notwithstanding clause *ea* of subsection 3 of section 3, No deduction for certain operating expenses no deduction shall be made under that clause for the proportion of expenses that is attributable to a specified uranium undertaking.

(3) Notwithstanding subclause *i* of clause *k* of subsection 3 Allowance for depreciation of section 3, an allowance under that clause for depreciation in each taxation year shall be not less than 5 per cent and not more than 15 per cent of the capital cost to the operator computed at the close of a taxation year of the mining plant, machinery, equipment and buildings that is attributable to the operation of a specified uranium undertaking.

(4) Notwithstanding subclause *iii* of clause *k* of subsection 3 No allowance for proportion of depreciation attributable to specified uranium undertaking of section 3, no allowance under that clause for depreciation shall be allowed for the proportion of depreciation on any mining plant, machinery, equipment or buildings that is attributable to the operation of a specified uranium undertaking.

(5) Notwithstanding clause *n* of subsection 3 of section 3, Deduction for exploration and development expenditures at least 15 per cent and not more than 100 per cent of the exploration and development expenditures permitted under subclauses *i* and *ii* of that clause shall be deducted for the proportion of exploration and development expenses that is attributable to the operation of a specified uranium undertaking.

4. Section 7 of the said Act is amended by adding thereto the s. 7, amended following subsections:

(1a) Where an operator fails to make a return under section 6 or a remittance as required under this Act or the regulations or if his returns are not substantiated by his records and any information furnished under this Act, the Assessment where no return

mine assessor may assess the tax, interest or penalties payable by the operator.

Notice of
assessment

(1*b*) Where the mine assessor has made an assessment under subsection 1*a*, he may send to the operator or person liable to pay the tax a notice of assessment requiring that the amount of the assessment made under subsection 1*a* be paid to the Minister within one month after the mailing of the notice of assessment, whether or not the assessment is appealed under this Act.

Assessment
deemed valid

(4) An assessment, subject to being varied or vacated on an appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

s. 7*a*,
enacted

5. The said Act is further amended by adding thereto the following section:

Reassessment

7*a*. The mine assessor may at any time assess tax, interest or penalties, or notify in writing any person by whom a return for a taxation year has been filed that no tax is payable for the taxation year, and may,

(*a*) at any time, if the operator or person filing the return,

(i) has made any misrepresentation or committed any fraud in filing the return or supplying any information under this Act, or

(ii) has failed to file the financial information with the return required to be filed under section 6, or

(iii) has been negligent in supplying any information under this Act, or

(iv) has filed with the Minister a waiver in a prescribed form within four years from the date of mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year; and

(*b*) within four years from the date referred to in sub-clause iv of clause *a*, in any other case,

reassess or make additional assessments or assess a tax, interest or penalties, as the circumstances require.

6. The said Act is further amended by adding thereto the following section: s. 11a, enacted

11a.—(1) No person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act or allow any such person to inspect or have access to any written statement furnished under this Act. Confidentiality

(2) Every person who contravenes any provision of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$200. Penalty

(3) Notwithstanding subsection 1, the Minister may, for the purpose of aiding in an investigation for taxation purposes under this or any other Act, enter into an agreement with the Government of Canada or of any province under which officers of such government will be allowed access to information obtained or any written statement furnished under this Act and officers of the Government of Ontario will be allowed access to information obtained or any written statement furnished under any Act of such government. Agreements to exchange information

7. Section 15 of the said Act is amended by adding thereto the following subsection: s. 15, amended

(4a) Every person who wilfully fails to comply with this Act at the time or times provided, Penalty

(a) by failing to make a payment of tax under section 2;

(b) by making a payment of tax under section 2 that is an unreasonable estimate of the tax payable by him or is a deliberately underestimated amount of the tax payable by him; or

(c) by failing to file a return as required by section 6,

is liable to a penalty of 10 per cent of the amount by which the amount of tax payable as shown in the notice of assessment sent under section 7 exceeds the amount of tax, if any, paid under section 2, and such additional amount shall for all purposes be deemed to be a tax payable under this Act.

- 8.—(1) Clause *c* of subsection 1 of section 23 of the said Act is repealed and the following substituted therefor: s. 23 (1) (c), re-enacted

- (c) determining the amounts to be included or allowed as deductions by the mine assessor in appraising the value of mineral substances at the pits mouth for the purposes of clause *c* of subsection 3 of section 3.

s. 23 (1) (*ca, cb*).
re-enacted

- (2) Clauses *ca* and *cb* of subsection 1 of the said section 23, as enacted by the Statutes of Ontario, 1974, chapter 132, section 3, are repealed and the following substituted therefor:

- (*ca*) prescribing the manner of determining and the matters to be taken into account in determining whether or not,
 - (i) there is to be disaggregation of a mine under subsection 2*a* of section 3, and
 - (ii) there is a mine project that is a new mine or a major expansion of an existing mine for the purposes of subclause iii of clause *k* of subsection 3 of section 3;
- (*cb*) prescribing or determining anything that, by this Act, is required or permitted to be prescribed or determined by the regulations;
- (*cc*) providing for the manner of determining the time at which a mine project is complete or a mine is brought into active operation;
- (*cd*) authorizing and providing for the recapture of depreciation where such recapture is not otherwise authorized and provided for in this Act;
- (*ce*) providing for the manner of determining the capital cost and proceeds of disposition for the purposes of subsection 8 of section 3 and the regulations;
- (*cf*) prescribing the methods to be used in calculating the proportion of allowances and deductions available or attributable to a specified uranium undertaking;
- (*cg*) prescribing an undertaking as a specified uranium undertaking.

Commence-
ment

- 9.—(1) This Act, except section 1 and subsections 1 and 5 of section 2, shall be deemed to have come into force on the 8th day of March, 1978.

(2) Section 1 and subsections 1 and 5 of section 2 shall be ^{Idem} deemed to have come into force on the 10th day of April, 1974.

10. The short title of this Act is *The Mining Tax Amendment Act*, ^{Short title} 1978.

An Act to amend
The Mining Tax Act, 1972

1st Reading

March 7th, 1978

2nd Reading

December 12th, 1978

3rd Reading

December 13th, 1978

THE HON. J. A. C. AULD
Minister of Natural Resources and
Minister of Energy

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Municipal Elections Act, 1977**

THE HON. W. D. McKEOUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs

EXPLANATORY NOTES

SECTION 1. Section 9 of the Act now reads as follows:

- 9.—(1) *Notwithstanding any other general or special Act and except where otherwise specifically provided in this Act, the term of office of all offices, the election to which is governed by this Act, shall be two years, commencing on the first day of December in an election year.*
- (2) *The holders of offices hold office until their successors are elected and the newly elected council or local board is organized.*

The Municipal Elections Act, 1972 (that governed the regular municipal elections held in 1976) provided for a two-year term of office commencing on the 1st day of January, 1977. Members elected in that year would accordingly hold office until the 31st day of December, 1978.

The proposed new subsection 2 of section 9 is designed to make it clear that members of councils and local boards whose term of office would normally expire on December 31st, 1978, will now leave office on the last day of November, 1978. Provision is also made for a proportionate reduction in the annual allowance of members whose remuneration is paid on that basis. Subsection 3 of section 9 as proposed is unchanged from the present subsection 2.

SECTION 2. The clause proposed to be re-enacted prescribes who may sign the nomination papers of a candidate. It now reads as follows:

- (a) *shall be signed by at least ten electors whose names are entered, or entitled to be entered under section 33, in the polling lists of electors entitled to vote in an election to such office.*

The re-enactment would change the reference to "polling list" to "preliminary list", as the polling list may not have been prepared by the time nomination papers may be filed and provides for the taking of an affidavit in the case of those electors whose names are not on the preliminary list but are otherwise entitled to vote.

SECTION 3. Subsection 5 of section 37 of the Act now reads as follows:

- (5) *Where the number of candidates for an office who are nominated at the end of nomination day is not sufficient to fill the number of vacancies to which the candidates may be elected, on the Wednesday following nomination day the clerk may, between the hours of 9.00 o'clock in the forenoon and 5.00 o'clock in the afternoon, receive and certify additional nominations for the office in respect of which there was an insufficient number of candidates.*

The proposed re-enactment is designed to express more clearly the procedure that is to be followed where, at the end of nomination day, fewer candidates have been nominated than the number of vacancies to be filled. Those candidates that have been nominated are to be declared elected by the clerk in the usual way on the Tuesday following nomination day (under s. 40 (1)). On the Wednesday, additional nominations may be filed for the vacancies still to be filled, and if they are, the clerk is to follow the same procedure *mutatis mutandis* as with nominations filed on nomination day. If the additional nominations filed are not greater than the vacancies still to be filled, the clerk on the Thursday is to declare those candidates elected (under s. 40 (1a)).

**An Act to amend
The Municipal Elections Act, 1977**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 9 of *The Municipal Elections Act, 1977*, s. 9 (2), re-enacted being chapter 62, is repealed and the following substituted therefor:

(2) The term of office of members of a council or local board who hold office on the 30th day of November, 1978, and whose term of office but for this subsection would expire with the 31st day of December, 1978, shall, subject to subsection 3, expire with the 30th day of November, 1978, and where such members are paid an annual allowance, the allowance for the year 1978 shall be reduced proportionately. Expiry of term of office and proportional reduction in annual allowances

(3) The holders of offices hold office until their successors are elected and the newly elected council or local board is organized. Until new council organized

2. Clause *a* of subsection 1 of section 36 of the said Act is s. 36 (1)(a), re-enacted repealed and the following substituted therefor:

(a) shall be signed by at least ten electors, either whose names are entered in the preliminary list of electors or who have furnished to the clerk an affidavit in the prescribed form that they are entitled to vote in the election to such office.

3. Subsection 5 of section 37 of the said Act is s. 37 (5), re-enacted repealed and the following substituted therefor:

(5) Where the number of candidates for an office who are nominated at the end of nomination day is not sufficient to fill the number of vacancies to which candidates may Where number of candidates nominated insufficient

be elected, subsection 1 of section 40 respecting acclamation applies to those candidates, but additional nominations for the remaining vacancies in the office in respect of which there was an insufficient number of candidates may be filed in the office of the clerk on the Wednesday following nomination day between the hours of 9.00 o'clock in the forenoon and 5.00 o'clock in the afternoon and the provisions of subsection 4 apply, with the necessary modifications, as though the additional nomination papers had been filed on nomination day.

s. 40 (1),
re-enacted

- 4. Subsection 1 of section 40 of the said Act is repealed and the following substituted therefor:

Acclama-
tion

(1) If no more candidates are nominated at the end of nomination day for any office than the number to be elected, the clerk shall forthwith after 5 o'clock in the afternoon of the day following nomination day declare that candidate or those candidates duly elected.

Idem

(1a) In the case where additional nominations have been filed under subsection 5 of section 37 and the additional number of candidates nominated is not more than the remaining number of vacancies for which the additional candidates were nominated, the clerk shall forthwith after 5 o'clock in the afternoon of the Thursday following nomination day, declare that candidate or those candidates duly elected.

s. 55 (1),
par. 4,
re-enacted

- 5. Paragraph 4 of subsection 1 of section 55 of the said Act is repealed and the following substituted therefor:

- 4. If voting by such person is objected to by any candidate or scrutineer, the deputy returning officer shall enter the objection or cause it to be entered on the polling list maintained by the poll clerk, by writing opposite the name of such person the

words "*Objected to by*
(name of candidate on whose behalf the objection was made)" and the deputy returning officer shall require the person in respect of whom the objection was made to take the prescribed oath.

s. 92 (5),
re-enacted

- 6. Subsection 5 of section 92 of the said Act is repealed and the following substituted therefor:

Idem
R.S.O. 1970,
c. 32

(5) Where in the year following an election year the annual enumeration under *The Assessment Act* has, not less than sixty days prior to the holding of the new election, been

SECTION 4. The amendments proposed are complementary to those in section 3 of the Bill.

SECTION 5. The paragraph as it now reads provides that the name of the objecting candidate be indicated on the prescribed oath. To do so is not feasible as the oath is orally administered. As re-enacted the name of the objecting candidate will be shown on the polling list opposite the name of the person to whom objection is taken.

SECTION 6. Section 92 of the Act provides for the procedure to be followed when a new (as opposed to a "regular") election is required to be held. In most instances, the polling list prepared for the last regular election is to be used as the preliminary list for the new election and is subject to revision in the usual way, subject to the application of certain rules respecting the extension of the qualification period for electors. The procedure respecting the revision of the list is set out in subsection 4 of section 92. Subsection 5 of section 92 sets out the procedure where, before the date of the new election, the annual enumeration under *The Assessment Act* has been completed. In that case, a new preliminary list based on that enumeration is to be used as the preliminary list for the new election. The re-enactment of subsection 5 is designed to make it clear that the rules (with necessary modification) respecting the extension of the qualification period apply with respect to the revision of that list. Subsection 4 of section 92 as it now reads and subsection 5 as it will read as re-enacted and showing underlined the words being added are set out below:

(4) Unless a new preliminary list of electors has been furnished by the assessment commissioner under subsection 5, the preliminary list to be used for preparation of the polling list for a new election shall be the polling list prepared for the last regular election, which shall be subject to revision as if it were a preliminary list of electors and sections 24 to 30 apply mutatis mutandis to the printing or reproduction of the list and to the revision of the list, subject to the following rules:

- 1. Where a new election is required under clause a of section 38 or subsection 3 of section 40, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period of following such qualification period terminating on the Thursday following the polling day for the last regular election.*
- 2. Where a new election is required under section 111, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the receipt by the clerk of the municipality of the copy of the judgment under subsection 6 of section 111.*
- 3. Where a vacancy otherwise occurs and the council of the municipality or a school board for which the clerk is required to hold elections requires an election to be held to fill the vacancy, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the directive, by-law or notice specified in clause a, b or c of subsection 1.*

4. *Where a by-law or question is to be submitted to the electors, the period during which a person may qualify as an elector entitled to vote on the by-law or question, as the case may be, shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the order of the Ontario Municipal Board given under section 262 of The Municipal Act.*
- (5) *Where in the year following an election year the annual enumeration under The Assessment Act has, not less than sixty days prior to the holding of the new election, been completed for the municipality or municipalities in which the new election is to be held, the assessment commissioner shall, within fourteen days of a request by the clerk or clerks of such municipality or municipalities, furnish a new preliminary list of electors based on such annual enumeration and in accordance with the requirements of this Act pertaining to the preparation of such lists and such preliminary list shall for all purposes, including revision by the clerk, be the preliminary list of electors for the new election and the revision shall be subject to the rule set out in paragraph 2, 3 or 4 of subsection 4, as the case requires, except that in the application of the relevant rule the qualification period expressed therein as "the period of qualification specified under section 12 or 13" shall be deemed instead to be the period in the year following the election year during which the enumeration was taken under section 23 of The Assessment Act.*

SECTION 7. The amendment is intended to make it clear that in the application of the relevant rule under section 92 governing the qualification period for electors entitled to vote on a question submitted under *The Liquor Licence Act, 1975*, the date of the approval of the Liquor Licence Board to the fixing of the date for taking the vote is to stand in the place of the date of the order of the Municipal Board fixing the date for the taking of the vote on a by-law or any other question that may be submitted to the electors.

completed for the municipality or municipalities in which the new election is to be held, the assessment commissioner shall, within fourteen days of a request by the clerk or clerks of such municipality or municipalities, furnish a new preliminary list of electors based on such annual enumeration and in accordance with the requirements of this Act pertaining to the preparation of such lists and such preliminary list shall for all purposes, including revision by the clerk, be the preliminary list of electors for the new election and the revision shall be subject to the rule set out in paragraph 2, 3 or 4 of subsection 4, as the case requires, except that in the application of the relevant rule the qualification period expressed therein as "the period of qualification specified under section 12 or 13" shall be deemed instead to be the period in the year following the election year during which the enumeration was taken under section 23 of *The Assessment Act*.

R.S.O. 1970,
c. 32

7. Subsection 2 of section 32 of *The Liquor Licence Act, 1975*, being chapter 40, as re-enacted by the Statutes of Ontario, 1977, chapter 62, section 124, is repealed and the following substituted therefor:

1975, c. 40,
s. 32 (2),
re-enacted

(2) Where the vote is held on a day other than the date set for the election of members to the council of the municipality, for the purpose of determining the period during which a person may qualify as an elector entitled to vote on the question, the reference in paragraph 4 of subsection 4 of section 92 of *The Municipal Elections Act, 1977*, to the order of the Ontario Municipal Board given under section 262 of *The Municipal Act* shall be deemed to be a reference to the date of the approval given by the Board as required by section 31 of this Act.

Qualifica-
tion period
for
determining
eligibility
of electors

1977, c. 62

R.S.O. 1970,
c. 284

8. This Act comes into force on the day it receives Royal Assent.
9. The short title of this Act is *The Municipal Elections Amendment Act, 1978*.

Commence-
ment

Short title

An Act to amend
The Municipal Elections Act, 1977

1st Reading

March 9th, 1978

2nd Reading

3rd Reading

THE HON. W. D. McKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Municipal Elections Act, 1977**

THE HON. W. D. McKEOUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

SECTION 1. Section 9 of the Act now reads as follows:

9.—(1) *Notwithstanding any other general or special Act and except where otherwise specifically provided in this Act, the term of office of all offices, the election to which is governed by this Act, shall be two years, commencing on the first day of December in an election year.*

(2) *The holders of offices hold office until their successors are elected and the newly elected council or local board is organized.*

The Municipal Elections Act, 1972 (that governed the regular municipal elections held in 1976) provided for a two-year term of office commencing on the 1st day of January, 1977. Members elected in that year would accordingly hold office until the 31st day of December, 1978.

The proposed new subsection 2 of section 9 is designed to make it clear that members of councils and local boards whose term of office would normally expire on December 31st, 1978, will now leave office on the last day of November, 1978. Provision is also made for a proportionate reduction in the annual allowance of members whose remuneration is paid on that basis. Subsection 3 of section 9 as proposed is unchanged from the present subsection 2.

SECTION 2. The clause proposed to be re-enacted prescribes who may sign the nomination papers of a candidate. It now reads as follows:

(a) *shall be signed by at least ten electors whose names are entered, or entitled to be entered under section 33, in the polling lists of electors entitled to vote in an election to such office.*

The re-enactment would change the reference to "polling list" to "preliminary list", as the polling list may not have been prepared by the time nomination papers may be filed and provides for the taking of an affidavit in the case of those electors whose names are not on the preliminary list but are otherwise entitled to vote.

SECTION 3. Subsection 5 of section 37 of the Act now reads as follows:

(5) *Where the number of candidates for an office who are nominated at the end of nomination day is not sufficient to fill the number of vacancies to which the candidates may be elected, on the Wednesday following nomination day the clerk may, between the hours of 9.00 o'clock in the forenoon and 5.00 o'clock in the afternoon, receive and certify additional nominations for the office in respect of which there was an insufficient number of candidates.*

The proposed re-enactment is designed to express more clearly the procedure that is to be followed where, at the end of nomination day, fewer candidates have been nominated than the number of vacancies to be filled. Those candidates that have been nominated are to be declared elected by the clerk in the usual way on the Tuesday following nomination day (under s. 40 (1)). On the Wednesday, additional nominations may be filed for the vacancies still to be filled, and if they are, the clerk is to follow the same procedure *mutatis mutandis* as with nominations filed on nomination day. If the additional nominations filed are not greater than the vacancies still to be filled, the clerk on the Thursday is to declare those candidates elected (under s. 40 (1a)).

**An Act to amend
The Municipal Elections Act, 1977**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 9 of *The Municipal Elections Act, 1977*, s. 9 (2), re-enacted being chapter 62, is repealed and the following substituted therefor:
 - (2) The term of office of members of a council or local board who hold office on the 30th day of November, 1978, and whose term of office but for this subsection would expire with the 31st day of December, 1978, shall, subject to subsection 3, expire with the 30th day of November, 1978, and where such members are paid an annual allowance, the allowance for the year 1978 shall be reduced proportionately. Expiry of term of office and proportional reduction in annual allowances
 - (3) The holders of offices hold office until their successors are elected and the newly elected council or local board is organized. Until new council organized
2. Clause *a* of subsection 1 of section 36 of the said Act is s. 36 (1) (a), re-enacted repealed and the following substituted therefor:
 - (a) shall be signed by at least ten electors, either whose names are entered in the preliminary list of electors or who have furnished to the clerk an affidavit in the prescribed form that they are entitled to vote in the election to such office.
3. Subsection 5 of section 37 of the said Act is s. 37 (5), re-enacted repealed and the following substituted therefor:
 - (5) Where the number of candidates for an office who are nominated at the end of nomination day is not sufficient to fill the number of vacancies to which candidates may Where number of candidates nominated insufficient

be elected, subsection 1 of section 40 respecting acclamation applies to those candidates, but additional nominations for the remaining vacancies in the office in respect of which there was an insufficient number of candidates may be filed in the office of the clerk on the Wednesday following nomination day between the hours of 9.00 o'clock in the forenoon and 5.00 o'clock in the afternoon and the provisions of subsection 4 apply, with the necessary modifications, as though the additional nomination papers had been filed on nomination day.

s. 40 (1),
re-enacted

- 4. Subsection 1 of section 40 of the said Act is repealed and the following substituted therefor:

Acclama-
tion

(1) If no more candidates are nominated at the end of nomination day for any office than the number to be elected, the clerk shall forthwith after 5 o'clock in the afternoon of the day following nomination day declare that candidate or those candidates duly elected.

Idem

(1a) In the case where additional nominations have been filed under subsection 5 of section 37 and the additional number of candidates nominated is not more than the remaining number of vacancies for which the additional candidates were nominated, the clerk shall forthwith after 5 o'clock in the afternoon of the Thursday following nomination day, declare that candidate or those candidates duly elected.

s. 55 (1),
par. 4,
re-enacted

- 5. Paragraph 4 of subsection 1 of section 55 of the said Act is repealed and the following substituted therefor:

- 4. If voting by such person is objected to by any candidate or scrutineer, the deputy returning officer shall enter the objection or cause it to be entered on the polling list maintained by the poll clerk, by writing opposite the name of such person the

words "*Objected to by*
(name of candidate on whose behalf the objection was made)" and the deputy returning officer shall require the person in respect of whom the objection was made to take the prescribed oath.

s. 92 (5),
re-enacted

- 6. Subsection 5 of section 92 of the said Act is repealed and the following substituted therefor:

Idem
R.S.O. 1970,
c. 32

(5) Where in the year following an election year the annual enumeration under *The Assessment Act* has, not less than sixty days prior to the holding of the new election, been

SECTION 4. The amendments proposed are complementary to those in section 3 of the Bill.

SECTION 5. The paragraph as it now reads provides that the name of the objecting candidate be indicated on the prescribed oath. To do so is not feasible as the oath is orally administered. As re-enacted the name of the objecting candidate will be shown on the polling list opposite the name of the person to whom objection is taken.

SECTION 6. Section 92 of the Act provides for the procedure to be followed when a new (as opposed to a "regular") election is required to be held. In most instances, the polling list prepared for the last regular election is to be used as the preliminary list for the new election and is subject to revision in the usual way, subject to the application of certain rules respecting the extension of the qualification period for electors. The procedure respecting the revision of the list is set out in subsection 4 of section 92. Subsection 5 of section 92 sets out the procedure where, before the date of the new election, the annual enumeration under *The Assessment Act* has been completed. In that case, a new preliminary list based on that enumeration is to be used as the preliminary list for the new election. The re-enactment of subsection 5 is designed to make it clear that the rules (with necessary modification) respecting the extension of the qualification period apply with respect to the revision of that list. Subsection 4 of section 92 as it now reads and subsection 5 as it will read as re-enacted and showing underlined the words being added are set out below:

(4) *Unless a new preliminary list of electors has been furnished by the assessment commissioner under subsection 5, the preliminary list to be used for preparation of the polling list for a new election shall be the polling list prepared for the last regular election, which shall be subject to revision as if it were a preliminary list of electors and sections 24 to 30 apply mutatis mutandis to the printing or reproduction of the list and to the revision of the list, subject to the following rules:*

1. *Where a new election is required under clause a of section 38 or subsection 3 of section 40, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period of following such qualification period terminating on the Thursday following the polling day for the last regular election.*
2. *Where a new election is required under section 111, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the receipt by the clerk of the municipality of the copy of the judgment under subsection 6 of section 111.*
3. *Where a vacancy otherwise occurs and the council of the municipality or a school board for which the clerk is required to hold elections requires an election to be held to fill the vacancy, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the directive, by-law or notice specified in clause a, b or c of subsection 1.*

4. Where a by-law or question is to be submitted to the electors, the period during which a person may qualify as an elector entitled to vote on the by-law or question, as the case may be, shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the order of the Ontario Municipal Board given under section 262 of The Municipal Act.

(5) Where in the year following an election year the annual enumeration under The Assessment Act has, not less than sixty days prior to the holding of the new election, been completed for the municipality or municipalities in which the new election is to be held, the assessment commissioner shall, within fourteen days of a request by the clerk or clerks of such municipality or municipalities, furnish a new preliminary list of electors based on such annual enumeration and in accordance with the requirements of this Act pertaining to the preparation of such lists and such preliminary list shall for all purposes, including revision by the clerk, be the preliminary list of electors for the new election and the revision shall be subject to the rule set out in paragraph 2, 3 or 4 of subsection 4, as the case requires, except that in the application of the relevant rule the qualification period expressed therein as "the period of qualification specified under section 12 or 13" shall be deemed instead to be the period in the year following the election year during which the enumeration was taken under section 23 of The Assessment Act.

SECTION 8. The amendment is intended to make it clear that in the application of the relevant rule under section 92 governing the qualification period for electors entitled to vote on a question submitted under *The Liquor Licence Act, 1975*, the date of the approval of the Liquor Licence Board to the fixing of the date for taking the vote is to stand in the place of the date of the order of the Municipal Board fixing the date for the taking of the vote on a by-law or any other question that may be submitted to the electors.

completed for the municipality or municipalities in which the new election is to be held, the assessment commissioner shall, within fourteen days of a request by the clerk or clerks of such municipality or municipalities, furnish a new preliminary list of electors based on such annual enumeration and in accordance with the requirements of this Act pertaining to the preparation of such lists and such preliminary list shall for all purposes, including revision by the clerk, be the preliminary list of electors for the new election and the revision shall be subject to the rule set out in paragraph 2, 3 or 4 of subsection 4, as the case requires, except that in the application of the relevant rule the qualification period expressed therein as "the period of qualification specified under section 12 or 13" shall be deemed instead to be the period in the year following the election year during which the enumeration was taken under section 23 of *The Assessment Act*.

R.S.O. 1970,
c. 32

7. Subsection 3 of section 117 of the said Act is amended by striking out "104" in the third line and inserting in lieu thereof "106".

s. 117 (3),
amended

8. Subsection 2 of section 32 of *The Liquor Licence Act, 1975*, being chapter 40, as re-enacted by the Statutes of Ontario, 1977, chapter 62, section 124, is repealed and the following substituted therefor:

1975, c. 40,
s. 32 (2),
re-enacted

(2) Where the vote is held on a day other than the date set for the election of members to the council of the municipality, for the purpose of determining the period during which a person may qualify as an elector entitled to vote on the question, the reference in paragraph 4 of subsection 4 of section 92 of *The Municipal Elections Act, 1977*, to the order of the Ontario Municipal Board given under section 262 of *The Municipal Act* shall be deemed to be a reference to the date of the approval given by the Board as required by section 31 of this Act.

Qualifica-
tion period
for
determining
eligibility
of electors

1977, c. 62

R.S.O. 1970,
c. 284

9. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

10. The short title of this Act is *The Municipal Elections Amendment Act, 1978*.

Short title

An Act to amend
The Municipal Elections Act, 1977

1st Reading

March 9th, 1978

2nd Reading

March 28th, 1978

3rd Reading

THE HON. W. D. McKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 30

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Municipal Elections Act, 1977**

THE HON. W. D. McKEOUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs

BILL 30

1978

**An Act to amend
The Municipal Elections Act, 1977**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 9 of *The Municipal Elections Act, 1977*,^{s. 9 (2), re-enacted} being chapter 62, is repealed and the following substituted therefor:
 - (2) The term of office of members of a council or local board who hold office on the 30th day of November, 1978, and whose term of office but for this subsection would expire with the 31st day of December, 1978, shall, subject to subsection 3, expire with the 30th day of November, 1978, and where such members are paid an annual allowance, the allowance for the year 1978 shall be reduced proportionately.^{Expiry of term of office and proportional reduction in annual allowances}
 - (3) The holders of offices hold office until their successors are elected and the newly elected council or local board is organized.^{Until new council organized}
2. Clause *a* of subsection 1 of section 36 of the said Act is repealed and the following substituted therefor:^{s. 36 (1) (a), re-enacted}
 - (a) shall be signed by at least ten electors, either whose names are entered in the preliminary list of electors or who have furnished to the clerk an affidavit in the prescribed form that they are entitled to vote in the election to such office.
3. Subsection 5 of section 37 of the said Act is repealed and the following substituted therefor:^{s. 37 (5), re-enacted}
 - (5) Where the number of candidates for an office who are nominated at the end of nomination day is not sufficient to fill the number of vacancies to which candidates may^{Where number of candidates nominated insufficient}

be elected, subsection 1 of section 40 respecting acclamation applies to those candidates, but additional nominations for the remaining vacancies in the office in respect of which there was an insufficient number of candidates may be filed in the office of the clerk on the Wednesday following nomination day between the hours of 9.00 o'clock in the forenoon and 5.00 o'clock in the afternoon and the provision of subsection 4 apply, with the necessary modifications, although the additional nomination papers had been filed on nomination day.

s. 40 (1),
re-enacted

- 4. Subsection 1 of section 40 of the said Act is repealed and the following substituted therefor:

Acclama-
tion

(1) If no more candidates are nominated at the end of nomination day for any office than the number to be elected the clerk shall forthwith after 5 o'clock in the afternoon of the day following nomination day declare that candidate or those candidates duly elected.

Idem

(1a) In the case where additional nominations have been filed under subsection 5 of section 37 and the additional number of candidates nominated is not more than the remaining number of vacancies for which the additional candidates were nominated, the clerk shall forthwith after 5 o'clock in the afternoon of the Thursday following nomination day, declare that candidate or those candidates duly elected.

s. 55 (1),
par. 4,
re-enacted

- 5. Paragraph 4 of subsection 1 of section 55 of the said Act is repealed and the following substituted therefor:

- 4. If voting by such person is objected to by any candidate or scrutineer, the deputy returning officer shall enter the objection or cause it to be entered on the polling list maintained by the poll clerk by writing opposite the name of such person the

words "Objected to by"
(name of candidate on whose behalf the objection was made)" and the deputy returning officer shall require the person in respect of whom the objection was made to take the prescribed oath.

s. 92 (5),
re-enacted

- 6. Subsection 5 of section 92 of the said Act is repealed and the following substituted therefor:

Idem
R.S.O. 1970,
c. 32

(5) Where in the year following an election year the annual enumeration under *The Assessment Act* has, not less than sixty days prior to the holding of the new election, been

completed for the municipality or municipalities in which the new election is to be held, the assessment commissioner shall, within fourteen days of a request by the clerk or clerks of such municipality or municipalities, furnish a new preliminary list of electors based on such annual enumeration and in accordance with the requirements of this Act pertaining to the preparation of such lists and such preliminary list shall for all purposes, including revision by the clerk, be the preliminary list of electors for the new election and the revision shall be subject to the rule set out in paragraph 2, 3 or 4 of subsection 4, as the case requires, except that in the application of the relevant rule the qualification period expressed therein as "the period of qualification specified under section 12 or 13" shall be deemed instead to be the period in the year following the election year during which the enumeration was taken under section 23 of *The Assessment Act*.

R.S.O. 1970,
c. 32

7. Subsection 3 of section 117 of the said Act is amended by striking out "104" in the third line and inserting in lieu thereof "106". s. 117 (3),
amended
8. Subsection 2 of section 32 of *The Liquor Licence Act, 1975*, being chapter 40, as re-enacted by the Statutes of Ontario, 1977, chapter 62, section 124, is repealed and the following substituted therefor: 1975, c. 40,
s. 32 (2),
re-enacted

(2) Where the vote is held on a day other than the date set for the election of members to the council of the municipality, for the purpose of determining the period during which a person may qualify as an elector entitled to vote on the question, the reference in paragraph 4 of subsection 4 of section 92 of *The Municipal Elections Act, 1977*, to the order of the Ontario Municipal Board given under section 262 of *The Municipal Act* shall be deemed to be a reference to the date of the approval given by the Board as required by section 31 of this Act. Qualifica-
tion period
for
determining
eligibility
of electors

1977, c. 62

R.S.O. 1970,
c. 284

9. This Act comes into force on the day it receives Royal Assent. Commence-
ment
10. The short title of this Act is *The Municipal Elections Amendment Act, 1978*. Short title



An Act to amend
The Municipal Elections Act, 1977

1st Reading

March 9th, 1978

2nd Reading

March 28th, 1978

3rd Reading

March 30th, 1978

THE HON. W. D. McKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Ministry of Government Services Act, 1973**

THE HON. L. HENDERSON
Minister of Government Services

EXPLANATORY NOTE

Sections 6, 10 and 13 of the Act are revised to clarify the authority of the staff of the Ministry in carrying out the responsibilities of the Ministry.

**An Act to amend
The Ministry of Government Services Act, 1973**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsections 1 and 2 of section 6 of *The Ministry of Government Services Act, 1973*, being chapter 2, as amended by the Statutes of Ontario, 1974, chapter 36, section 3, are repealed and the following substituted therefor: s. 6 (1, 2),
re-enacted

(1) It is the responsibility of the Minister and he has power, in accordance with section 8, to acquire, lease and dispose of public works. Responsi-
bility of
Minister

(2) It is the responsibility of the Ministry, and the officers, clerks and servants of the Ministry have power, under the direction of the Minister and the Deputy Minister, Responsi-
bility of
Ministry

- (a) to design, construct, renovate, service, maintain, repair, furnish, equip, manage and administer premises, buildings and structures that are public works;
- (b) to determine the public works or parts thereof that are open to the public and to manage and administer such public works or parts including,
- (i) regulating vehicular and pedestrian traffic,
 - (ii) setting apart any building, premises or structure that is a public work, or any part thereof, for a limited use, and
 - (iii) collecting fees fixed by the Minister for parking in any area set aside for parking in, on or under any public work, and the Minister may fix such fees;

- (c) to develop and manage common services for increasing the effectiveness, efficiency and economy of ministries and agencies of the Government;
- (d) to establish specifications and standards concerning the acquisition of commodities, furnishings and equipment by the Government, the cataloguing of commodities, furnishings and equipment and the maintenance, storage and disposal of commodities, furnishings and equipment;
- (e) to acquire by purchase, lease or otherwise, commodities, furnishings, equipment and services required by the Government, to store all or any of such commodities, furnishings and equipment and to dispose of all or any of such commodities, furnishings and equipment; and
- (f) to provide such other services as the Lieutenant Governor in Council assigns.

s. 10,
amended

- 2.** Section 10 of the said Act is amended by adding thereto the following subsection:

Idem

(2) The officers, clerks and servants of the Ministry under the direction of the Minister and the Deputy Minister may enter into contracts or agreements for and in the name of the Crown to carry out the responsibilities of the Ministry under this Act.

s. 13,
re-enacted

- 3.** Section 13 of the said Act is repealed and the following substituted therefor:

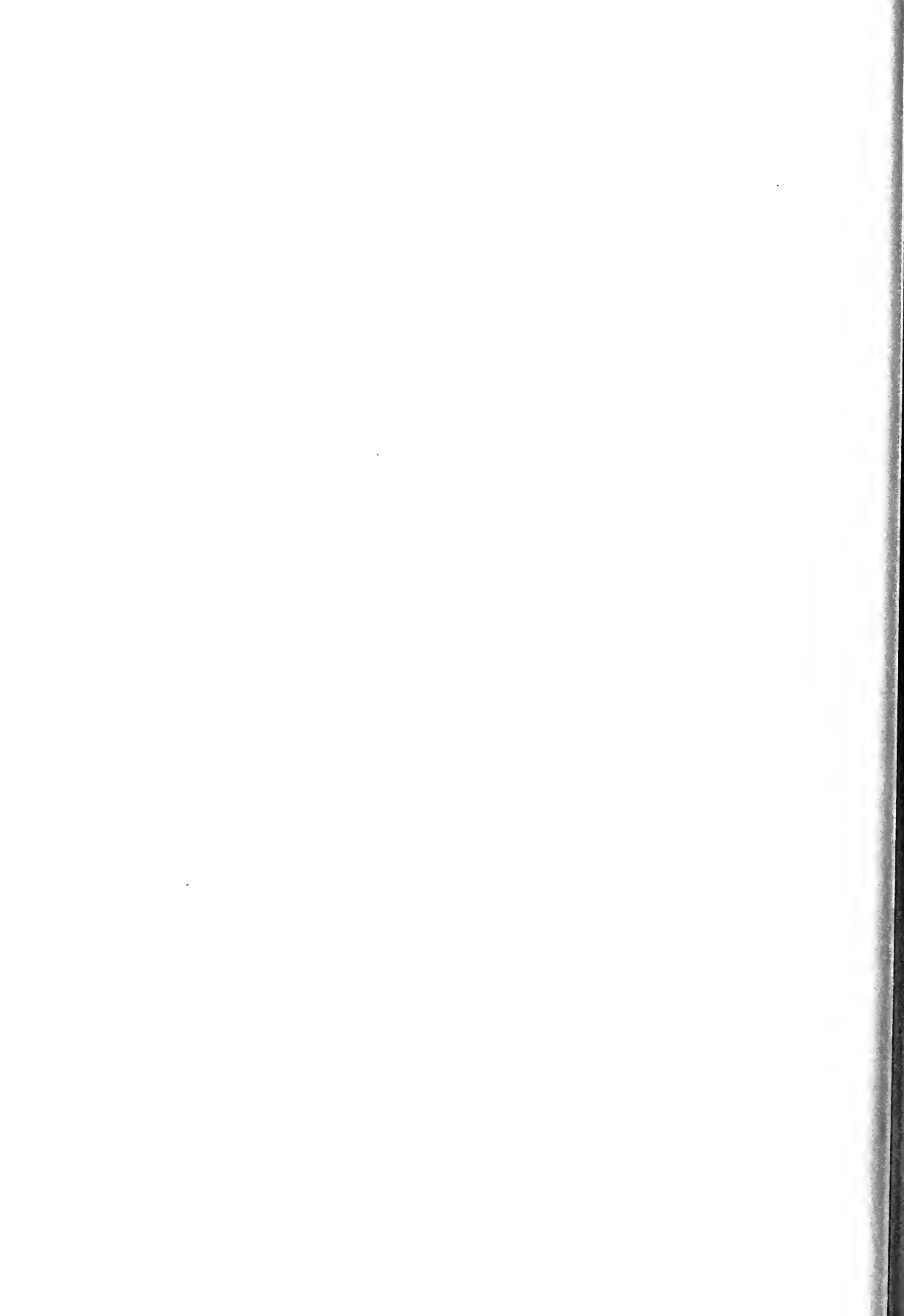
Tenders

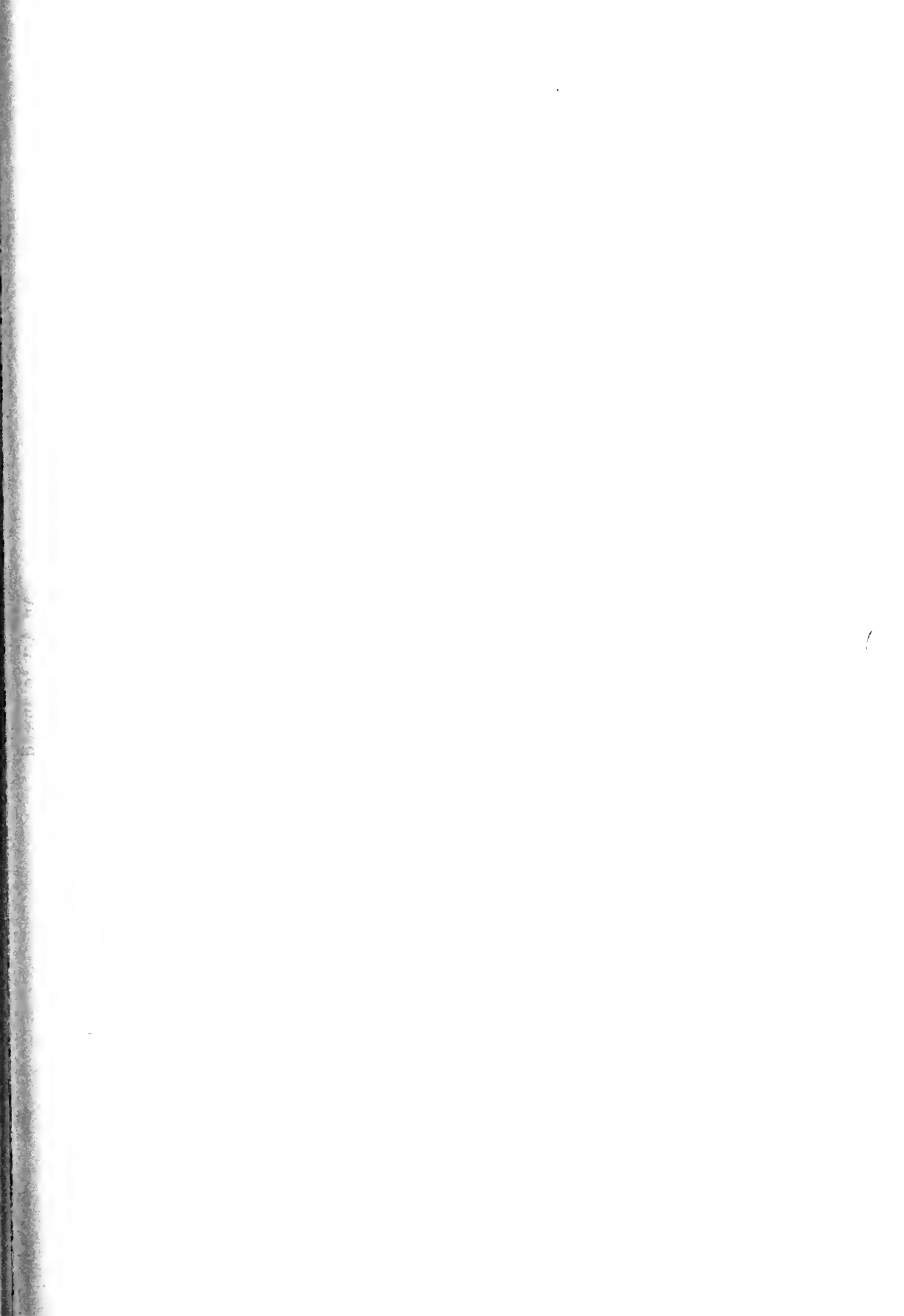
13. Before a contract is entered into for and in the name of the Crown in respect of the construction, renovation or repair of a public work, the Ministry shall invite tenders therefor except,

- (a) in cases of emergency where in the opinion of the Minister delay would be damaging; or
- (b) where the estimated cost of the work is less than \$10,000,

and the Minister shall report all cases referred to in clause a to the Legislature forthwith, if it is in session or, if not at the next ensuing session.

4. This Act comes into force on the day it receives Royal Assent. Commence-
ment
5. The short title of this Act is *The Ministry of Government Services Amendment Act, 1978*. Short title





An Act to amend
The Ministry of Government
Services Act, 1973

1st Reading

March 9th, 1978

2nd Reading

3rd Reading

THE HON. L. HENDERSON
Minister of Government Services

(Government Bill)

BILL 31

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Ministry of Government Services Act, 1973

THE HON. L. HENDERSON
Minister of Government Services

BILL 31

1978

**An Act to amend
The Ministry of Government Services Act, 1973**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsections 1 and 2 of section 6 of *The Ministry of Government Services Act, 1973*, being chapter 2, as amended by the Statutes of Ontario, 1974, chapter 36, section 3, are repealed and the following substituted therefor: s. 6 (1. 2).
re-enacted

(1) It is the responsibility of the Minister and he has power, in accordance with section 8, to acquire, lease and dispose of public works. Responsi-
bility of
Minister

(2) It is the responsibility of the Ministry, and the officers, clerks and servants of the Ministry have power, under the direction of the Minister and the Deputy Minister, Responsi-
bility of
Ministry

- (a) to design, construct, renovate, service, maintain, repair, furnish, equip, manage and administer premises, buildings and structures that are public works;
- (b) to determine the public works or parts thereof that are open to the public and to manage and administer such public works or parts including,
- (i) regulating vehicular and pedestrian traffic,
 - (ii) setting apart any building, premises or structure that is a public work, or any part thereof, for a limited use, and
 - (iii) collecting fees fixed by the Minister for parking in any area set aside for parking in, on or under any public work, and the Minister may fix such fees;

- (c) to develop and manage common services for increasing the effectiveness, efficiency and economy of ministries and agencies of the Government;
- (d) to establish specifications and standards concerning the acquisition of commodities, furnishings and equipment by the Government, the cataloguing of commodities, furnishings and equipment and the maintenance, storage and disposal of commodities, furnishings and equipment;
- (e) to acquire by purchase, lease or otherwise, commodities, furnishings, equipment and services required by the Government, to store all or any of such commodities, furnishings and equipment and to dispose of all or any of such commodities, furnishings and equipment; and
- (f) to provide such other services as the Lieutenant Governor in Council assigns.

s. 10.
amended

- 2.** Section 10 of the said Act is amended by adding thereto the following subsection:

Idem

(2) The officers, clerks and servants of the Ministry under the direction of the Minister and the Deputy Minister may enter into contracts or agreements for and in the name of the Crown to carry out the responsibilities of the Ministry under this Act.

s. 13.
re-enacted

- 3.** Section 13 of the said Act is repealed and the following substituted therefor:

Tenders

13. Before a contract is entered into for and in the name of the Crown in respect of the construction, renovation or repair of a public work, the Ministry shall invite tenders therefor except,

- (a) in cases of emergency where in the opinion of the Minister delay would be damaging; or
- (b) where the estimated cost of the work is less than \$10,000,

and the Minister shall report all cases referred to in clause *a* to the Legislature forthwith, if it is in session or, if not, at the next ensuing session.

4. This Act comes into force on the day it receives Royal Assent. Commence-
ment
5. The short title of this Act is *The Ministry of Government Services Amendment Act, 1978*. Short title



An Act to amend
The Ministry of Government
Services Act, 1973

1st Reading

March 9th, 1978

2nd Reading

April 18th, 1978

3rd Reading

May 2nd, 1978

THE HON. L. HENDERSON
Minister of Government Services

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Health Insurance Act, 1972

MR. WARNER

EXPLANATORY NOTE

The Bill repeals provisions of *The Health Insurance Act, 1972* that authorize the Lieutenant Governor in Council to establish the cost of premiums by regulation.

BILL 32

1978

**An Act to amend
The Health Insurance Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 12 of *The Health Insurance Act, 1972*, being chapter 91, is repealed. s. 12,
repealed
2. Clause *h* of subsection 1 of section 51 of the said Act is repealed. s. 51 (1) (*h*),
repealed
3. Notwithstanding sections 1 and 2, the premiums for insured services in force on the day preceding the day this Act comes into force shall continue to apply until such premiums are altered by statute. Premium
rates
continued
4. This Act comes into force on the day it receives Royal Assent. Commence-
ment
5. The short title of this Act is *The Health Insurance Amendment Act, 1978*. Short title

An Act to amend
The Health Insurance Act, 1972

1st Reading

March 13th, 1978

2nd Reading

3rd Reading

MR. WARNER

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Land Titles Act

THE HON. R. McMURTRY
Attorney General

EXPLANATORY NOTES

The amendments are complementary to the Family Law Reform Bills and are designed to recognize changes in the law relating to family relationships.

SECTION 1. The amendment adds an interest to which registered land is subject.

SECTION 2. The provision being repealed deals with "ownership to uses". This legal device should have no further application.

SECTION 3. The provision being repealed refers to instances where the wife of a registered owner of land is not entitled to dower. This provision will now be redundant.

BILL 33

1978

An Act to amend The Land Titles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 51 of *The Land Titles Act*, being chapter 234 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1972, chapter 132, section 13, is further amended by adding thereto the following paragraph:
 - 4a. Any right under Part III of *The Family Law Reform Act, 1978*, of the spouse of the person registered as owner. s. 51 (1),
amended
1978, c.
2. Subsections 8 and 9 of section 96 of the said Act are repealed. s. 96 (8, 9),
repealed
3. Section 132 of the said Act is repealed. s. 132,
repealed
4. This Act comes into force on the 31st day of March, 1978. Commence-
ment
5. The short title of this Act is *The Land Titles Amendment Act, 1978*. Short title

An Act to amend
The Land Titles Act

1st Reading

March 16th, 1978

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(Government Bill)

BILL 33

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Land Titles Act

THE HON. R. MCMURTRY
Attorney General

BILL 33

1978

An Act to amend The Land Titles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 51 of *The Land Titles Act*, being chapter 234 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1972, chapter 132, section 13, is further amended by adding thereto the following paragraph:
 - 4a. Any right under Part III of *The Family Law Reform Act, 1978*, of the spouse of the person registered as owner. s. 51 (1), amended
1978, c.
2. Subsections 8 and 9 of section 96 of the said Act are repealed. s. 96 (8, 9), repealed
3. Section 132 of the said Act is repealed. s. 132, repealed
4. This Act comes into force on the 31st day of March, 1978. Commencement
5. The short title of this Act is *The Land Titles Amendment Act, 1978*. Short title

An Act to amend
The Land Titles Act

1st Reading

March 16th, 1978

2nd Reading

March 28th, 1978

3rd Reading

March 28th, 1978

THE HON. R. MCMURTRY
Attorney General

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Registry Act

THE HON. R. MCMURTRY
Attorney General

EXPLANATORY NOTES

The amendments are complementary to the Family Law Reform Bills and are designed to recognize changes in the law relating to family relationships in so far as these changes affect documents registered in the Registry Office.

SECTION 1. "Will" has been redefined.

SECTION 2. Section 42 of the Act deals with the affidavits to be executed when documents are registered in the Registry Office. The concept of "spouse", as defined in *The Family Law Reform Act, 1978* (Bill 59), has been substituted for that of a wife and a married man.

An Act to amend The Registry Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *o* of section 1 of *The Registry Act*, being chapter 409 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor: s. 1 (o), re-enacted

(o) "will" means a will as defined in *The Succession Law Reform Act, 1977*. 1977, c. 40

- 2.—(1) Section 42 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, section 4 and 1972, chapter 133, section 16, is further amended by adding thereto the following subsection: s. 42, amended

(4a) For the purposes of subsections 5 and 6, "spouse" means "spouse" as defined in clause *f* of section 1 of *The Family Law Reform Act, 1978*. Interpretation 1978, c. ...

- (2) Subsections 5 and 6 of the said section 42 are repealed and the following substituted therefor: s. 42 (5, 6), re-enacted

(5) A deed, conveyance, mortgage, lease, assignment of lease, release, or quit claim that is made by a person, other than a corporation, in which no one joins as a spouse, shall not be registered unless there is made on or securely attached to it an affidavit by that person, or if the document is executed by an attorney, by that attorney, deposing whether the person was a spouse at the time of the execution of the instrument. Affidavit as to spousal status

(6) A deed, conveyance, mortgage, lease, assignment of lease, release, or quit claim that is made by a person and in which another person joins as a spouse shall not be registered unless there is made on or securely attached to it an affidavit by such person, or his or her spouse, or, if the Affidavit by spouses

document is executed by an attorney, by that attorney, deposing that they were spouses of one another at the time of execution of the instrument.

s. 42 (9),
amended

- (3) Subsection 9 of the said section 42 is amended by adding thereto the following clause:

(aa) to a spouse who, not as an owner and party, consents to or joins in an instrument for the purposes of section 42 of *The Family Law Reform Act, 1978*.

1978, c. . . .

s. 42 (10),
re-enacted

- (4) Subsection 10 of the said section 42, as amended by the Statutes of Ontario, 1972, chapter 133, section 16, is repealed and the following substituted therefor:

(10) Subsections 5 and 6 do not apply to a person executing an instrument in his capacity as Public Trustee, Official Guardian, trustee in bankruptcy, executor or administrator who is not selling for the purpose of paying debts of the estate, committee of a mentally incompetent person, sheriff, trustee of a religious institution or trustee of a school board and any other person who may be designated by regulation.

When
subss. 5, 6
do not apply

s. 102 (1),
amended

3. Subsection 1 of section 102 of the said Act is amended by adding thereto the following clause:

(qa) designating persons for the purposes of subsection 10 of section 42.

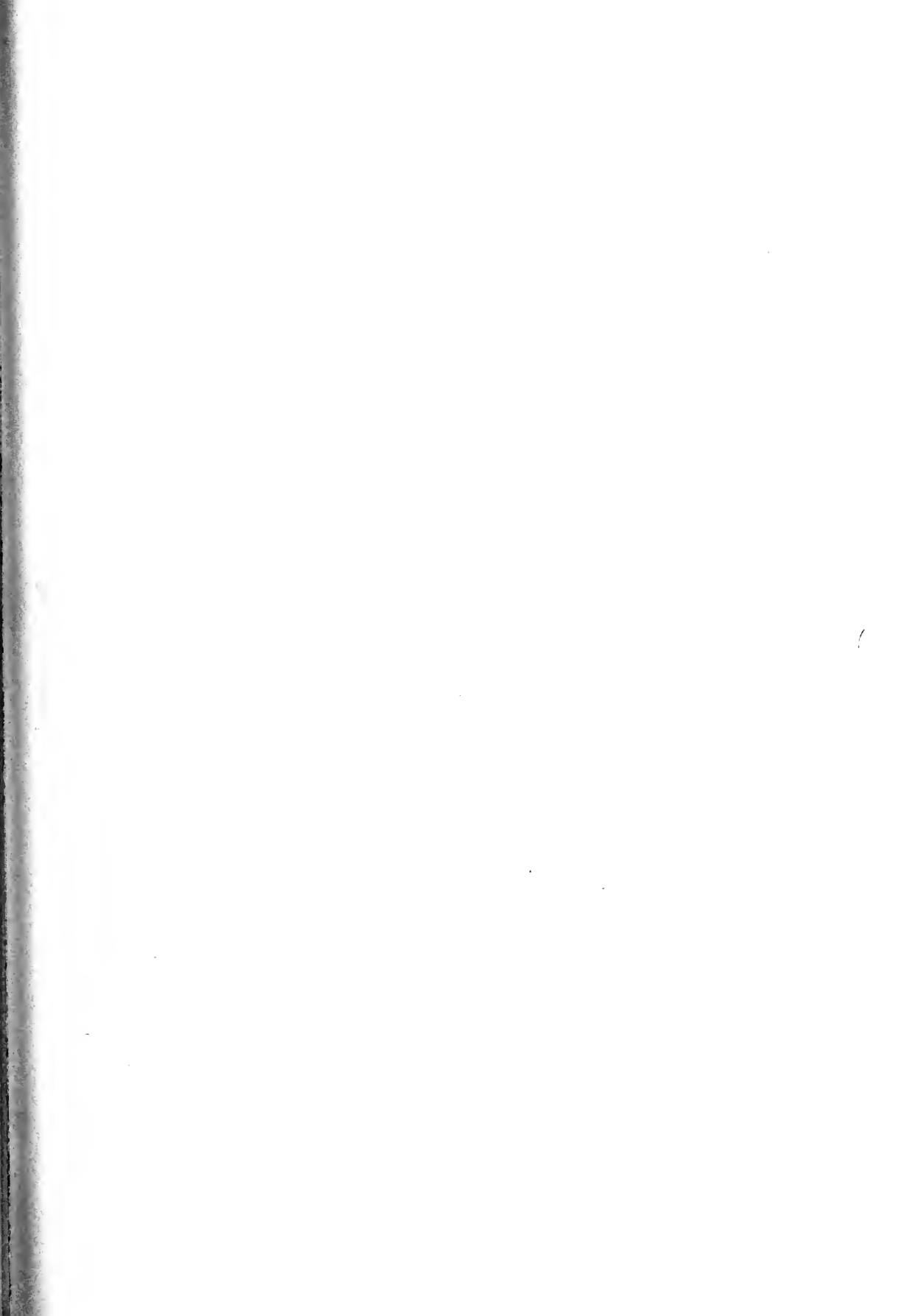
Commence-
ment

4. This Act comes into force on the 31st day of March, 1978.

Short title

5. The short title of this Act is *The Registry Amendment Act, 1978*.

SECTION 3. Complementary to the re-enactment of section 42 (10).



An Act to amend
The Registry Act

1st Reading

March 16th, 1978

2nd Reading

3rd Reading

THE HON. R. McMURTRY
Attorney General

(Government Bill)

BILL 34

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Registry Act

THE HON. R. MCMURTRY
Attorney General



An Act to amend The Registry Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *o* of section 1 of *The Registry Act*, being chapter 409 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor: s. 1 (o),
re-enacted

(o) "will" means a will as defined in *The Succession Law Reform Act, 1977*. 1977, c. 40

- 2.—(1) Section 42 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, section 4 and 1972, chapter 133, section 16, is further amended by adding thereto the following subsection: s. 42,
amended

(4a) For the purposes of subsections 5 and 6, "spouse" means "spouse" as defined in clause *f* of section 1 of *The Family Law Reform Act, 1978*. Interpre-
tation
1978, c. ...

- (2) Subsections 5 and 6 of the said section 42 are repealed and the following substituted therefor: s. 42 (5, 6),
re-enacted

(5) A deed, conveyance, mortgage, lease, assignment of lease, release, or quit claim that is made by a person, other than a corporation, in which no one joins as a spouse, shall not be registered unless there is made on or securely attached to it an affidavit by that person, or if the document is executed by an attorney, by that attorney, deposing whether the person was a spouse at the time of the execution of the instrument. Affidavit as
to spousal
status

(6) A deed, conveyance, mortgage, lease, assignment of lease, release, or quit claim that is made by a person and in which another person joins as a spouse shall not be registered unless there is made on or securely attached to it an affidavit by such person, or his or her spouse, or, if the Affidavit
by spouses

document is executed by an attorney, by that attorney, deposing that they were spouses of one another at the time of execution of the instrument.

s. 42 (9),
amended

- (3) Subsection 9 of the said section 42 is amended by adding thereto the following clause:

(aa) to a spouse who, not as an owner and party, consents to or joins in an instrument for the purposes of section 42 of *The Family Law Reform Act, 1978*.

1978, c. . . .

s. 42 (10),
re-enacted

- (4) Subsection 10 of the said section 42, as amended by the Statutes of Ontario, 1972, chapter 133, section 16, is repealed and the following substituted therefor:

(10) Subsections 5 and 6 do not apply to a person executing an instrument in his capacity as Public Trustee, Official Guardian, trustee in bankruptcy, executor or administrator who is not selling for the purpose of paying debts of the estate, committee of a mentally incompetent person, sheriff, trustee of a religious institution or trustee of a school board and any other person who may be designated by regulation.

When
subss. 5, 6
do not apply

s. 102 (1),
amended

3. Subsection 1 of section 102 of the said Act is amended by adding thereto the following clause:

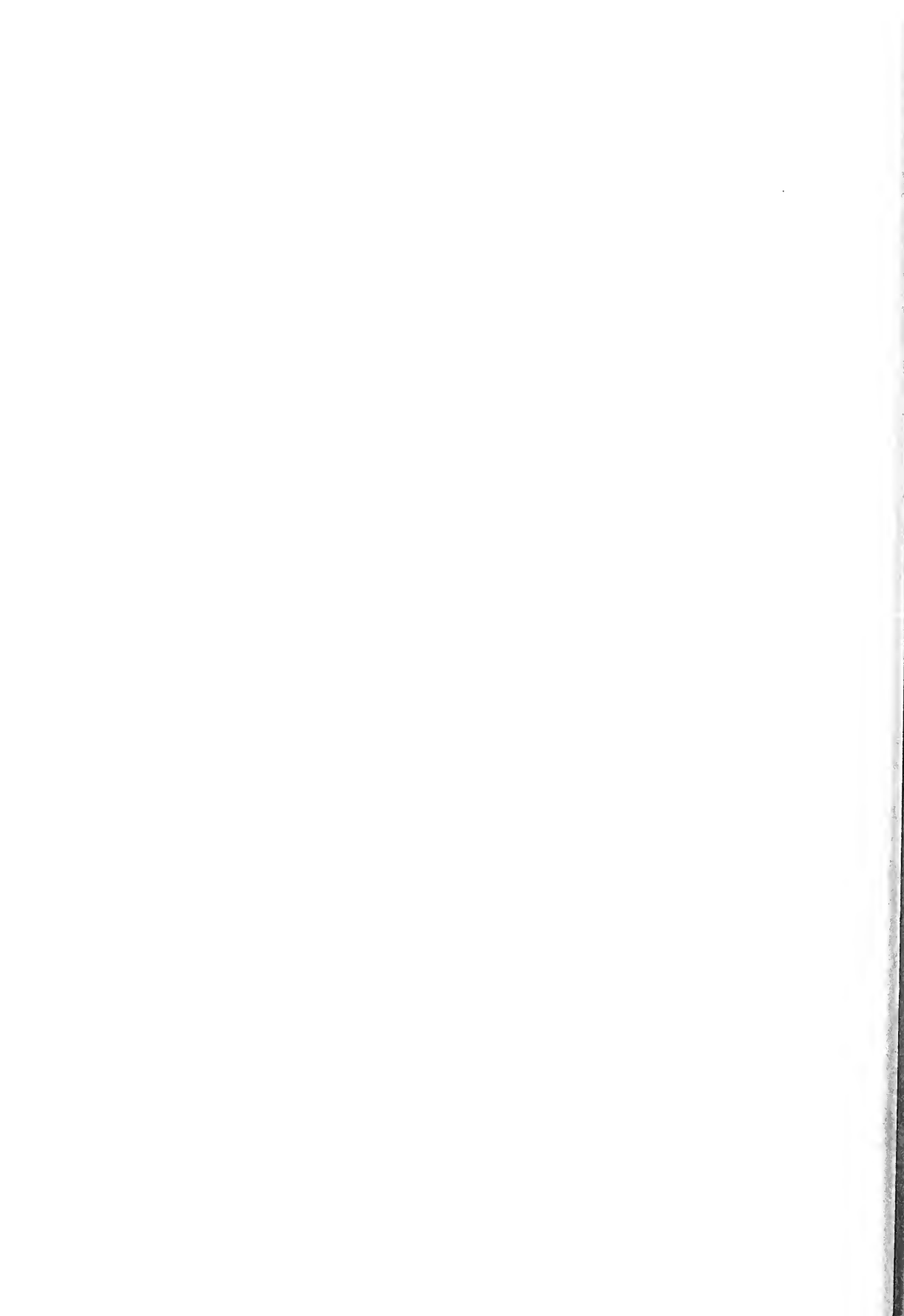
(qa) designating persons for the purposes of subsection 10 of section 42.

Commence-
ment

4. This Act comes into force on the 31st day of March, 1978.

Short title

5. The short title of this Act is *The Registry Amendment Act, 1978*.



An Act to amend
The Registry Act

1st Reading

March 16th, 1978

2nd Reading

March 28th, 1978

3rd Reading

March 28th, 1978

THE HON. R. MCMURTRY
Attorney General

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Crown Timber Act

THE HON. F. S. MILLER
Minister of Natural Resources

EXPLANATORY NOTES

SECTION 1. Subsection 2 of section 6 of the Act now reads as follows:

- (2) *Every licensee shall pay annually a forest protection charge and a management charge in respect of the productive lands comprised in the licensed area.*

The amendment reduces the two charges to one charge to be known as an area charge.

SECTION 2.—Subsection 1. Clause *i* of subsection 1 of section 46 of the Act now reads as follows:

46.—(1) *Every person who,*

.

- (i) *makes or avails himself of any false statement or oath with respect to any matter under this Act, is liable to a penalty of not less than \$100 and not more than \$500.*

The amendment extends the liability to a penalty to any matter under the regulations.

Subsection 2. Subsection 2 of the said section 46, exclusive of the clauses, now reads as follows:

- (2) *Where in the opinion of the Minister a person is liable to a penalty under subsection 1, he may give notice to the person by registered mail,*

.

The operation of the subsection is extended to penalties under the regulations.

Subsection 3. Clause *a* of subsection 3 of the said section 46 now reads as follows:

- (a) *to determine whether such person is liable to a penalty under subsection 1; and*

.

The re-enactment of the clause is complementary to subsection 2.

An Act to amend The Crown Timber Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsection 2 of section 6 of *The Crown Timber Act*, being ^{s. 6 (2), re-enacted} chapter 102 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor:

(2) Every licensee shall pay annually an area charge in respect of the productive lands comprised in the licensed area. ^{Area charge}

- 2.—(1) Clause *i* of subsection 1 of section 46 of the said Act is ^{s. 46 (1) (i), re-enacted} repealed and the following substituted therefor:

(i) makes or avails himself of any false statement or oath with respect to any matter under this Act or the regulations, is liable to a penalty or not less than \$100 and not more than \$500.

- (2) Subsection 2 of the said section 46, exclusive of the clauses, is repealed and the following substituted therefor: ^{s. 46 (2), amended}

(2) Where in the opinion of the Minister a person is liable to a penalty under subsection 1 or the regulations, he may give notice to the person by registered mail, ^{Demand for penalty}

- (3) Clause *a* of subsection 3 of the said section 46 is repealed and the following substituted therefor: ^{s. 46 (3) (a), re-enacted}

(a) to determine whether such person is liable to a penalty under subsection 1 or the regulations, and

s. 49.
re-enacted

3. Section 49 of the said Act is repealed and the following substituted therefor:

Regula-
tions re
Crown
charges

49. Notwithstanding anything in this Act or any general or special Act or in any order, regulation, agreement or licence, any regulation made under clause *c* or *d* of section 51 may be made to come into force on the 1st day of April immediately preceding its filing or on any day subsequent to that 1st day of April.

Determina-
tion of
Crown dues

49a. Unless otherwise provided in the regulations, the Crown dues to be paid in respect of timber by a licensee or class of licensee are those Crown dues fixed or determined under the regulations in force at the time the timber is measured, notwithstanding that the timber is cut before the regulations come into force.

s. 51 (*c*),
re-enacted

- 4.—(1) Clause *c* of section 51 of the said Act is repealed and the following substituted therefor:

(*c*) fixing the amount of area charge and other charges to be paid in respect of licensed areas.

s. 51 (*d*, *e*),
re-enacted

- (2) Clauses *d* and *e* of the said section 51 are repealed and the following substituted therefor:

(*d*) fixing or determining the Crown dues to be paid by a licensee or class of licensee in respect of any kind or class of timber, other than killed or damaged timber, cut under licence and, without limiting the generality of the foregoing, such regulations may provide for,

- (i) the fixing or determining of Crown dues by a formula employing any index number existing before or coming into existence after the regulations come into force, of any price index, or any average of any such index numbers,
- (ii) a method of categorizing any licensee or class of licensee in respect of the application of any such formula,
- (iii) any forfeiture or suspension considered necessary to administer effectively any such method,
- (iv) the filing of any certificate, affidavit and other material considered necessary for the purposes of any such method,

SECTION 3. Section 49 of the Act now reads as follows:

49.—(1) *Notwithstanding anything in this Act or any general or special Act or in any order in council or regulation or in any agreement or licence made or granted under any of them, the Lieutenant Governor in Council may make regulations increasing or decreasing the Crown dues payable in respect of any kind or class of timber or increasing or decreasing the annual forest protection charge or management charge payable in respect of licensed areas, and any such regulation shall be made to take effect on the 1st day of April immediately preceding or at such subsequent time as is specified in the regulation.*

(2) *Where by the terms of a licence a price is fixed for any kind or class of timber and such price is stated to be inclusive of Crown dues or a price is fixed without reference to Crown dues, such price shall be deemed to be increased or decreased from time to time, as the case may be, by the amount whereby Crown dues are increased or decreased under subsection 1.*

The present subsection 1 is re-enacted to complement section 1 of the Bill and to clarify its application in respect of the effective date of regulations increasing or decreasing Crown dues and area charges.

Subsection 2 is repealed. It no longer applies to the manner in which prices are fixed in Crown timber licences.

The new section 49a provides that the time timber is measured is the material time in determining Crown dues to be paid.

SECTION 4.—Subsection 1. Clause *c* of section 51 of the Act now reads as follows:

51. *The Lieutenant Governor in Council may make regulations,*

.

(c) *fixing the amounts of forest protection charge, management charge and other charges to be paid in respect of licensed areas.*

The re-enactment of clause *c* is complementary to section 1 of the Bill.

Subsection 2. Clause *d* of the said section 51 now reads as follows:

(d) *fixing the Crown dues to be paid in respect of each species of timber, other than damaged timber, cut under licence.*

The re-enacted clause is expanded to provide for the fixing or determining of Crown dues by a formula employing index numbers of any price index published by Statistics Canada. Regulations may also be made to provide a method of categorizing licensees in respect of the application of any such formula.

Clause *e* of the said section 51 now reads as follows:

(e) *fixing the times at which Crown charges are payable and the rate of interest to be charged on overdue accounts.*

The clause is expanded to provide for compound interest and its calculation.



(v) determining when a licensee shall be deemed to have failed or neglected to file any such certificate, affidavit or other material, and

(vi) informing licensees of Crown dues determined by any formula ;

(e) fixing the times at which Crown charges are payable and the rate and kind of interest to be charged on overdue accounts and prescribing the method of calculating or compounding any such interest.

5.—(1) This Act, except section 1 and subsection 1 of section 4, ^{Commence-}comes into force on the day it receives Royal Assent. _{ment}

(2) Section 1 and subsection 1 of section 4 come into force ^{Idem} on the 1st day of April, 1978.

6. The short title of this Act is *The Crown Timber Amendment Act, 1978*. ^{Short title}

An Act to amend
The Crown Timber Act

1st Reading

March 14th, 1978

2nd Reading

3rd Reading

THE HON. F. S. MILLER
Minister of Natural Resources

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Crown Timber Act

THE HON. F. S. MILLER
Minister of Natural Resources

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

SECTION 1. Subsection 2 of section 6 of the Act now reads as follows:

- (2) *Every licensee shall pay annually a forest protection charge and a management charge in respect of the productive lands comprised in the licensed area.*

The amendment reduces the two charges to one charge to be known as an area charge.

SECTION 2. The subsection is re-enacted to set out the matters that may be agreed upon in order to promote and maintain the productivity of a licensed area.

SECTION 3.—Subsection 1. Clause *i* of subsection 1 of section 46 of the Act now reads as follows:

46.—(1) *Every person who,*

-*
- (i) *makes or avails himself of any false statement or oath with respect to any matter under this Act, is liable to a penalty of not less than \$100 and not more than \$500.*

The amendment extends the liability to a penalty to any matter under the regulations.

Subsection 2. Subsection 2 of the said section 46, exclusive of the clauses, now reads as follows:

- (2) *Where in the opinion of the Minister a person is liable to a penalty under subsection 1, he may give notice to the person by registered mail,*
-*

The operation of the subsection is extended to penalties under the regulations.

An Act to amend The Crown Timber Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 6 of *The Crown Timber Act*, being chapter 102 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor: s. 6 (2), re-enacted

(2) Every licensee shall pay annually an area charge in respect of the productive lands comprised in the licensed area. Area charge

2. Subsection 4 of section 25 of the said Act is repealed and the following substituted therefor: s. 25 (4), re-enacted

(4) The Minister may enter into an agreement with a licensee for the promotion and maintenance of the productivity of the licensed area by establishing, regenerating and tending forests and employing silvicultural cutting systems to regenerate forests. Minister may enter into agreements

- 3.—(1) Clause *i* of subsection 1 of section 46 of the said Act is repealed and the following substituted therefor: s. 46 (1) (i), re-enacted

(i) makes or avails himself of any false statement or oath with respect to any matter under this Act or the regulations, is liable to a penalty of not less than \$100 and not more than \$500.

- (2) Subsection 2 of the said section 46, exclusive of the clauses, is repealed and the following substituted therefor: s. 46 (2), amended

(2) Where in the opinion of the Minister a person is liable to a penalty under subsection 1 or the regulations, he may give notice to the person by registered mail, Demand for penalty

s. 46 (3) (a),
re-enacted

(3) Clause *a* of subsection 3 of the said section 46 is repealed and the following substituted therefor:

(a) to determine whether such person is liable to a penalty under subsection 1 or the regulations, and

.

s. 49,
re-enacted

4. Section 49 of the said Act is repealed and the following substituted therefor:

Regula-
tions re
Crown
charges

49. Notwithstanding anything in this Act or any general or special Act or in any order, regulation, agreement or licence, any regulation made under clause *c* or *d* of section 51 may be made to come into force on the 1st day of April immediately preceding its filing or on any day subsequent to that 1st day of April.

Determina-
tion of
Crown dues

49a. Unless otherwise provided in the regulations, the Crown dues to be paid in respect of timber by a licensee or class of licensee are those Crown dues fixed or determined under the regulations in force at the time the timber is measured, notwithstanding that the timber is cut before the regulations come into force.

s. 51 (c),
re-enacted

5.—(1) Clause *c* of section 51 of the said Act is repealed and the following substituted therefor:

(c) fixing the amount of area charge and other charges to be paid in respect of licensed areas.

s. 51 (d, e),
re-enacted

(2) Clauses *d* and *e* of the said section 51 are repealed and the following substituted therefor:

(d) fixing or determining the Crown dues to be paid by a licensee or class of licensee in respect of any kind or class of timber, other than killed or damaged timber, cut under licence and, without limiting the generality of the foregoing, such regulations may provide for,

(i) the fixing or determining of Crown dues by a formula employing any index number existing before or coming into existence after the regulations come into force, of any price index, or any average of any such index numbers,

(ii) a method of categorizing any licensee or class of licensee in respect of the application of any such formula,

Subsection 3. Clause *a* of subsection 3 of the said section 46 now reads as follows:

- (a) *to determine whether such person is liable to a penalty under subsection 1; and*

The re-enactment of the clause is complementary to subsection 2.

SECTION 4. Section 49 of the Act now reads as follows:

49.—(1) *Notwithstanding anything in this Act or any general or special Act or in any order in council or regulation or in any agreement or licence made or granted under any of them, the Lieutenant Governor in Council may make regulations increasing or decreasing the Crown dues payable in respect of any kind or class of timber or increasing or decreasing the annual forest protection charge or management charge payable in respect of licensed areas, and any such regulation shall be made to take effect on the 1st day of April immediately preceding or at such subsequent time as is specified in the regulation.*

- (2) *Where by the terms of a licence a price is fixed for any kind or class of timber and such price is stated to be inclusive of Crown dues or a price is fixed without reference to Crown dues, such price shall be deemed to be increased or decreased from time to time, as the case may be, by the amount whereby Crown dues are increased or decreased under subsection 1.*

The present subsection 1 is re-enacted to complement section 1 of the Bill and to clarify its application in respect of the effective date of regulations increasing or decreasing Crown dues and area charges.

Subsection 2 is repealed. It no longer applies to the manner in which prices are fixed in Crown timber licences.

The new section 49a provides that the time timber is measured is the material time in determining Crown dues to be paid.

SECTION 5.—Subsection 1. Clause *c* of section 51 of the Act now reads as follows:

51. *The Lieutenant Governor in Council may make regulations,*

- (c) *fixing the amounts of forest protection charge, management charge and other charges to be paid in respect of licensed areas.*

The re-enactment of clause *c* is complementary to section 1 of the Bill.

Subsection 2. Clause *d* of the said section 51 now reads as follows:

- (d) *fixing the Crown dues to be paid in respect of each species of timber, other than damaged timber, cut under licence.*

The re-enacted clause is expanded to provide for the fixing or determining of Crown dues by a formula employing index numbers of any price index published by Statistics Canada. Regulations may also be made to provide a method of categorizing licensees in respect of the application of any such formula.

Clause *e* of the said section 51 now reads as follows :

(e) fixing the times at which Crown charges are payable and the rate of interest to be charged on overdue accounts.

The clause is expanded to provide for compound interest and its calculation.

- (iii) any forfeiture or suspension considered necessary to administer effectively any such method,
 - (iv) the filing of any certificate, affidavit and other material considered necessary for the purposes of any such method,
 - (v) determining when a licensee shall be deemed to have failed or neglected to file any such certificate, affidavit or other material, and
 - (vi) informing licensees of Crown dues determined by any formula;
- (e) fixing the times at which Crown charges are payable and the rate and kind of interest to be charged on overdue accounts and prescribing the method of calculating or compounding any such interest.

6.—(1) This Act, except section 1 and subsection 1 of section 5, ^{Commence-} comes into force on the day it receives Royal Assent.

(2) Section 1 and subsection 1 of section 5 shall be deemed ^{Idem} to have come into force on the 1st day of April, 1978.

7. The short title of this Act is *The Crown Timber Amendment Act, 1978*. ^{Short title}

An Act to amend
The Crown Timber Act

1st Reading

March 14th, 1978

2nd Reading

May 30th, 1978

3rd Reading

THE HON. F. S. MILLER
Minister of Natural Resources

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 35

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Crown Timber Act

THE HON. F. S. MILLER
Minister of Natural Resources

An Act to amend The Crown Timber Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 6 of *The Crown Timber Act*, being chapter 102 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor: s. 6 (2).
re-enacted

(2) Every licensee shall pay annually an area charge in respect of the productive lands comprised in the licensed area. Area
charge

2. Subsection 4 of section 25 of the said Act is repealed and the following substituted therefor: s. 25 (4).
re-enacted

(4) The Minister may enter into an agreement with a licensee for the promotion and maintenance of the productivity of the licensed area by establishing, regenerating and tending forests and employing silvicultural cutting systems to regenerate forests. Minister
may enter
into
agreements

- 3.—(1) Clause *i* of subsection 1 of section 46 of the said Act is repealed and the following substituted therefor: s. 46 (1) (i).
re-enacted

(i) makes or avails himself of any false statement or oath with respect to any matter under this Act or the regulations, is liable to a penalty of not less than \$100 and not more than \$500.

- (2) Subsection 2 of the said section 46, exclusive of the clauses, is repealed and the following substituted therefor: s. 46 (2).
amended

(2) Where in the opinion of the Minister a person is liable to a penalty under subsection 1 or the regulations, he may give notice to the person by registered mail, Demand for
penalty

s. 46 (3) (a),
re-enacted

(3) Clause *a* of subsection 3 of the said section 46 is repealed and the following substituted therefor:

(a) to determine whether such person is liable to a penalty under subsection 1 or the regulations, and

s. 49,
re-enacted

4. Section 49 of the said Act is repealed and the following substituted therefor:

Regulations re
Crown charges

49. Notwithstanding anything in this Act or any general or special Act or in any order, regulation, agreement or licence, any regulation made under clause *c* or *d* of section 51 may be made to come into force on the 1st day of April immediately preceding its filing or on any day subsequent to that 1st day of April.

Determination of
Crown dues

49a. Unless otherwise provided in the regulations, the Crown dues to be paid in respect of timber by a licensee or class of licensee are those Crown dues fixed or determined under the regulations in force at the time the timber is measured, notwithstanding that the timber is cut before the regulations come into force.

s. 51 (c),
re-enacted

5.—(1) Clause *c* of section 51 of the said Act is repealed and the following substituted therefor:

(c) fixing the amount of area charge and other charges to be paid in respect of licensed areas.

s. 51 (d, e),
re-enacted

(2) Clauses *d* and *e* of the said section 51 are repealed and the following substituted therefor:

(d) fixing or determining the Crown dues to be paid by a licensee or class of licensee in respect of any kind or class of timber, other than killed or damaged timber, cut under licence and, without limiting the generality of the foregoing, such regulations may provide for,

(i) the fixing or determining of Crown dues by a formula employing any index number existing before or coming into existence after the regulations come into force, of any price index, or any average of any such index numbers,

(ii) a method of categorizing any licensee or class of licensee in respect of the application of any such formula,

- (iii) any forfeiture or suspension considered necessary to administer effectively any such method,
- (iv) the filing of any certificate, affidavit and other material considered necessary for the purposes of any such method,
- (v) determining when a licensee shall be deemed to have failed or neglected to file any such certificate, affidavit or other material, and
- (vi) informing licensees of Crown dues determined by any formula;

(e) fixing the times at which Crown charges are payable and the rate and kind of interest to be charged on overdue accounts and prescribing the method of calculating or compounding any such interest.

6.—(1) This Act, except section 1 and subsection 1 of section 5, ^{Commence-}comes into force on the day it receives Royal Assent.

(2) Section 1 and subsection 1 of section 5 shall be deemed ^{Idem} to have come into force on the 1st day of April, 1978.

7. The short title of this Act is *The Crown Timber Amendment Act, 1978* ^{Short title}.

An Act to amend
The Crown Timber Act

1st Reading

March 14th, 1978

2nd Reading

May 30th, 1978

3rd Reading

June 23rd, 1978

THE HON. F. S. MILLER
Minister of Natural Resources

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Legislative Assembly Act**

MR. WILLIAMS

EXPLANATORY NOTE

The amendment would require a person who holds office as a member of a council of a municipality and whose term of office is not yet three-quarters expired to resign his office on official nomination day if he wishes to be elected to the Assembly.

**An Act to amend
The Legislative Assembly Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 8a of *The Legislative Assembly Act*, being chapter 240 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1972, chapter 131, section 1, is repealed and the following substituted therefor:

8a.—(1) In this section,

Interpre-
tation

(a) “nomination day” means the nomination day stated in the writ for election under section 7 of *The Election Act*;

R.S.O. 1970,
c. 142

(b) “municipal office” means a position as a member of the council of any municipality, including a district, area, metropolitan or regional municipality, or of a local board, as defined in *The Municipal Affairs Act*, of a municipality.

R.S.O. 1970,
c. 118

(2) Subject to subsections 3 and 4, a person who is a candidate for election to or a member of the Assembly is not eligible to hold municipal office.

Candidate
member
ineligible to
hold muni-
cipal office

(3) Every person who holds a municipal office and is nominated as a candidate for election to the Assembly forfeits the municipal office on nomination day unless the term of the office is more than three-quarters complete on that day.

Where
candidate
ineligible
on nomina-
tion day

(4) A person who, while a candidate, continues to hold a municipal office and is elected a member of the Assembly forfeits the municipal office on the day that the return of the election of that person to the Assembly is published in *The Ontario Gazette* under section 127 of *The Election Act*.

When
elected
candidate
ineligible

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Legislative Assembly Amendment Act, 1978*.



An Act to amend
The Legislative Assembly Act

1st Reading

March 14th, 1978

2nd Reading

3rd Reading

MR. WILLIAMS

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Public Hospitals Act

MR. WILLIAMS

EXPLANATORY NOTE

The Bill establishes several requirements relating to the composition of the boards of public hospitals. The Bill provides that the number of appointed directors who have a vote shall not exceed one-quarter of the elected directors. In addition, the Bill establishes certain criteria for membership in a hospital corporation and guarantees a member's right to vote in the hospital corporation.

An Act to amend The Public Hospitals Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Public Hospitals Act*, being chapter 378 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: s. 8a,
enacted

8a.—(1) In this section,

Interpre-
tation

- (a) “local municipality” means a city, borough, town, village and township;
- (b) “locality” means a territory without municipal organization;
- (c) “resident” means a person who is actually resident in a local municipality or locality.

(2) Subject to section 9 and the regulations under this Act, the board of a hospital shall be elected from among the members of the hospital corporation. Board
elected by
members

(3) A person is eligible to be a member of a hospital corporation if that person is, Eligibility
for
member-
ship

- (a) a resident of the local municipality or locality in which the hospital is situated;
- (b) a resident of a local municipality or locality adjacent to the local municipality or locality in which the hospital is situated.

(4) Where payment of a membership fee is required for membership in a hospital corporation, the fee shall be the same for all members and shall not exceed ten dollars per annum. Member-
ship fee

- One class of member (5) A hospital corporation shall have one class of member and each member shall have one vote.
- Limit on staff directors (6) The number of directors, whether elected or appointed, who are members of the medical, dental, nursing or administrative staffs of the hospital, or who enjoy hospital privileges at the hospital, shall not exceed at any time one-quarter of the number of directors of the hospital.
- Conflict R.S.O. 1970, c. 89 (7) In the event of a conflict between any provision of this section and any provision of *The Corporations Act*, the provision of this section applies.
- s. 9. re-enacted **2.** Section 9 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 90, section 8, is repealed and the following substituted therefor:
- By-laws 9.—(1) A hospital shall pass by-laws prescribed by the regulations, subject to the approval of the Minister.
- Idem (2) A hospital shall pass, amend or revise its by-laws and submit them to the Minister after receiving notice to do so as prescribed by the regulations.
- Idem (3) No by-law, or amendment to or revision of a by-law made under subsection 2, has any force or effect until it is approved by the Lieutenant Governor in Council upon the recommendation of the Minister.
- Election of directors (4) Notwithstanding *The Corporations Act*, a hospital may provide by by-law for the election and retirement of directors but the election of directors shall take place in each year at a general meeting of members and the terms of office of the elected directors shall be for a period extending to the day of the general meeting in the following year.
- Appointed directors (5) Notwithstanding *The Corporations Act*, a hospital may by by-law provide for the appointment by its board of one or more classes of directors and in any such by-law the board may fix the number, qualifications and tenure of office of the directors in each class and shall state whether the directors in each class have voting rights, but where the by-law provides an appointed director with a right to vote the director may vote in person but not by proxy.
- Limitation (6) The number of directors with a right to vote appointed by the board shall not exceed at any time one-eighth the number of elected directors of the board.

(7) Notwithstanding *The Corporations Act*, upon the recommendation of the Minister, the Lieutenant Governor in Council may appoint one or more provincial hospital representatives to the board of a hospital for a term of office of not more than three years and such provincial hospital representatives shall have all the rights and responsibilities of elected directors.

Provincial
hospital
representa-
tives
R.S.O. 1970,
c. 89

(8) The number of directors with voting rights appointed by the board plus the number of provincial hospital representatives appointed by the Lieutenant Governor in Council shall not exceed at any time one-quarter the number of elected directors.

Limitation

(9) Members of the board who are members by virtue of their office shall not have a right to vote.

Ex officio
directors

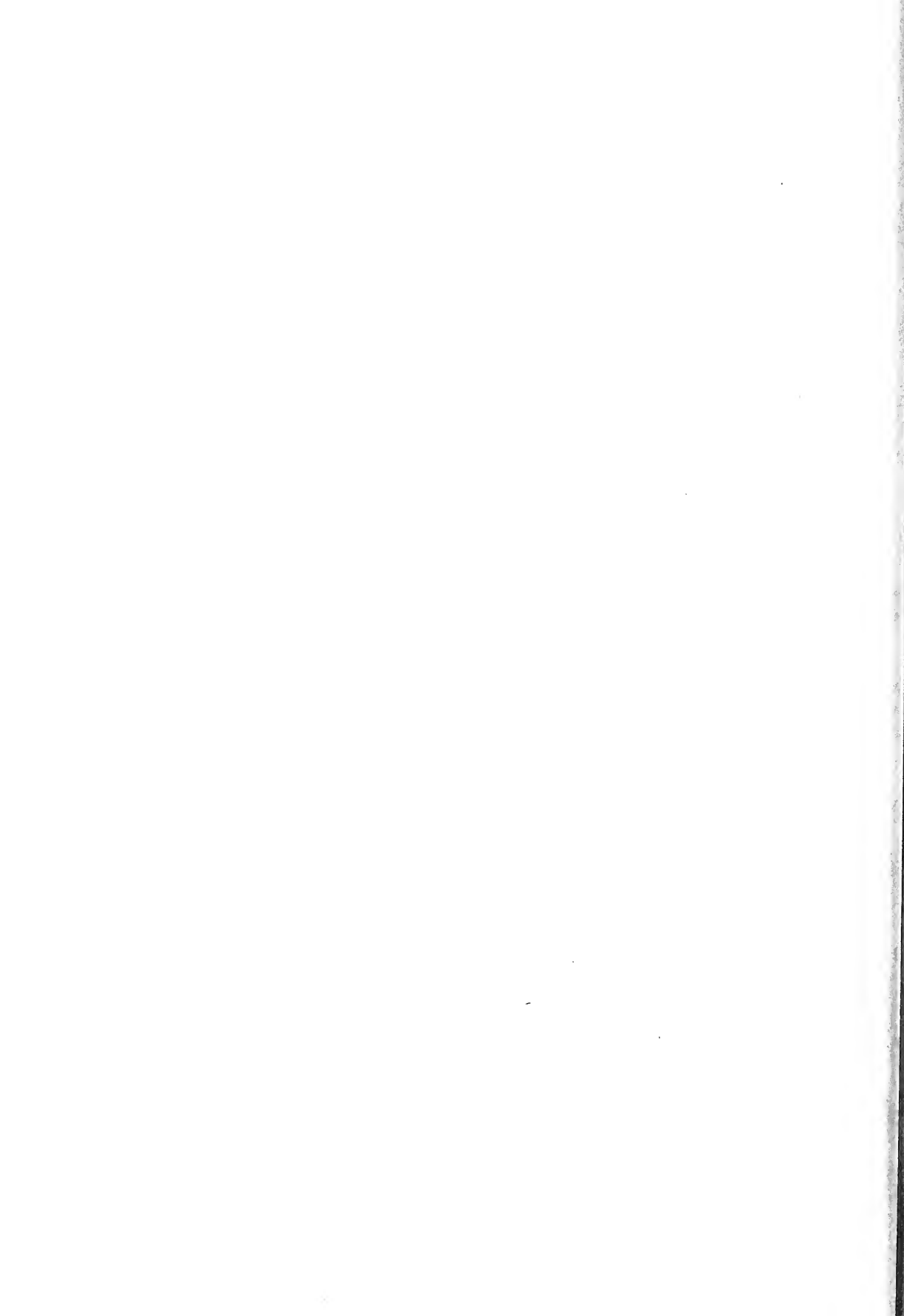
(10) Any director who is serving as an appointed director on the day preceding the day *The Public Hospitals Amendment Act, 1977* comes into force shall continue to have the rights and privileges attached to the appointment and such director shall be deemed not to be a member of the board for the purposes of this section until the term of appointment expires.

Transition

3. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
4. The short title of this Act is *The Public Hospitals Amendment Act, 1978*.

Commence-
ment

Short title



An Act to amend
The Public Hospitals Act

1st Reading

March 14th, 1978

2nd Reading

3rd Reading

MR. WILLIAMS

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act respecting Family Day

MR. WILLIAMS

EXPLANATORY NOTE

The purpose of this Bill is to provide for a public holiday known as Family Day. Family Day is established as a day to celebrate the institution of the family and will be held on a day to be named by the Lieutenant Governor.

BILL 38

1978

An Act respecting Family Day

WHEREAS the family is a source of values that are ^{Preamble} essential to the existence of a peaceful and healthy society;

AND WHEREAS the family, as the focal point of daily life, offers mutual help, comfort and support to each of its members;

AND WHEREAS it is public policy in Ontario to preserve and strengthen the family as the basic unit of society;

AND WHEREAS, since some social and economic influences threaten to fragment the family, it is desirable that every citizen honour the family by reflecting upon the benefits and obligations that he or she shares as a family member;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. There shall be one day in every year, on a day to be ^{Family Day} named by proclamation of the Lieutenant Governor, that is known as Family Day and this day shall be celebrated as a public holiday throughout the Province of Ontario.

2. This Act comes into force on the day it receives ^{Commence-} Royal Assent. _{ment}

3. The short title of this Act is *The Family Day Act, 1978*. ^{Short title}

An Act respecting
Family Day

1st Reading

March 14th, 1978

2nd Reading

3rd Reading

MR. WILLIAMS

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Labour Relations Act

MR. WILLIAMS

EXPLANATORY NOTE

The Bill requires a trade union to provide additional information about its financial affairs to members and to the Ontario Labour Relations Board. The union must prepare a statement of salaries, expenses, fees and commissions and a statement of investments to be provided to its members. An audited financial report must be filed annually with the Board and the members of the trade union may obtain copies of the statement from the union upon request and without charge.

In addition, the Bill limits the amount of union funds provided by Ontario members that may be transferred outside of Canada and requires that investments made of union funds be of a type authorized by *The Trustee Act* and *The Pension Benefits Act*.

An Act to amend The Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 76 of *The Labour Relations Act*, being chapter 232 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1975, chapter 76, section 19, is repealed and the following substituted therefor:

76.—(1) Every trade union shall file with the Board within six months from the end of its fiscal year a financial statement of its affairs to the end of that fiscal year consisting of,

- (a) a balance sheet showing the assets and liabilities of the union as at the end of the fiscal year;
- (b) a statement of income and expenditure for the fiscal year; and
- (c) a statement of surplus for the fiscal year, and

upon the request of any member shall provide the member with a copy of the financial statement without charge.

(2) The financial statement shall be accompanied at the time of filing by an auditor's report thereon signed by the auditor and stating whether in his opinion the financial statement presents fairly the financial position of the union and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any.

(3) Every trade union local shall provide to each of its members without charge and file with the Board within six months from the end of its fiscal year,

- (a) a statement of salaries, expenses, fees and commissions paid from union funds to its elected officers disclosing to whom the payments were made, in what amount and for what purposes; and
- (b) a statement of investments describing separately each investment made with union funds.

Idem

(4) Every trade union that has a national or regional office located in Ontario shall provide to each of its members without charge and file with the Board within six months from the end of its fiscal year the statements referred to in subsection 3 in respect of the trade union's national or regional officers and its investments.

Where
financial
statement
inadequate

(5) Where the Board, for any reason, determines that a statement referred to in this section is inadequate, the Board may order the trade union to prepare another statement in a form and containing such particulars as the Board considers appropriate.

Offence

(6) A trade union that fails to provide or file financial statements or information as and when required by this section is guilty of an offence under this Act, and every officer, executive or agent of the union who directed, authorized, assented to, acquiesced in or participated in the offence is a party to and guilty of the offence.

s. 76b,
enacted

2. The said Act is amended by adding thereto the following section:

Invest-
ments

R.S.O. 1970,
cc. 470, 342

76b.—(1) A trade union shall not make an investment of union funds unless the investment belongs to a class of investment authorized by or under *The Trustee Act* or *The Pension Benefits Act*.

Funds to
be spent in
Canada

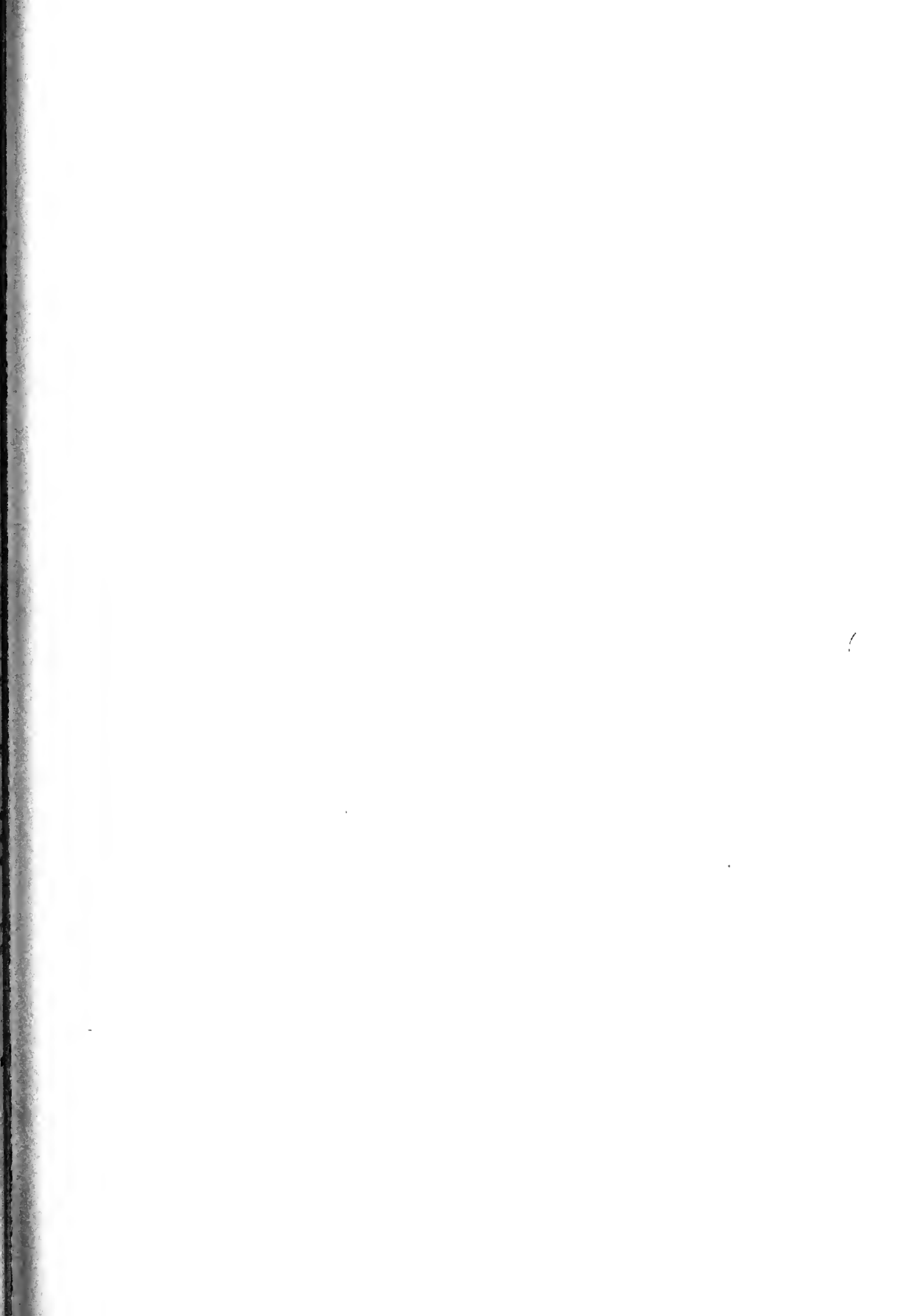
(2) No trade union shall pay, transfer or invest outside of Canada more than 15 per cent of the funds received by it from union members residing in Ontario.

Commence-
ment

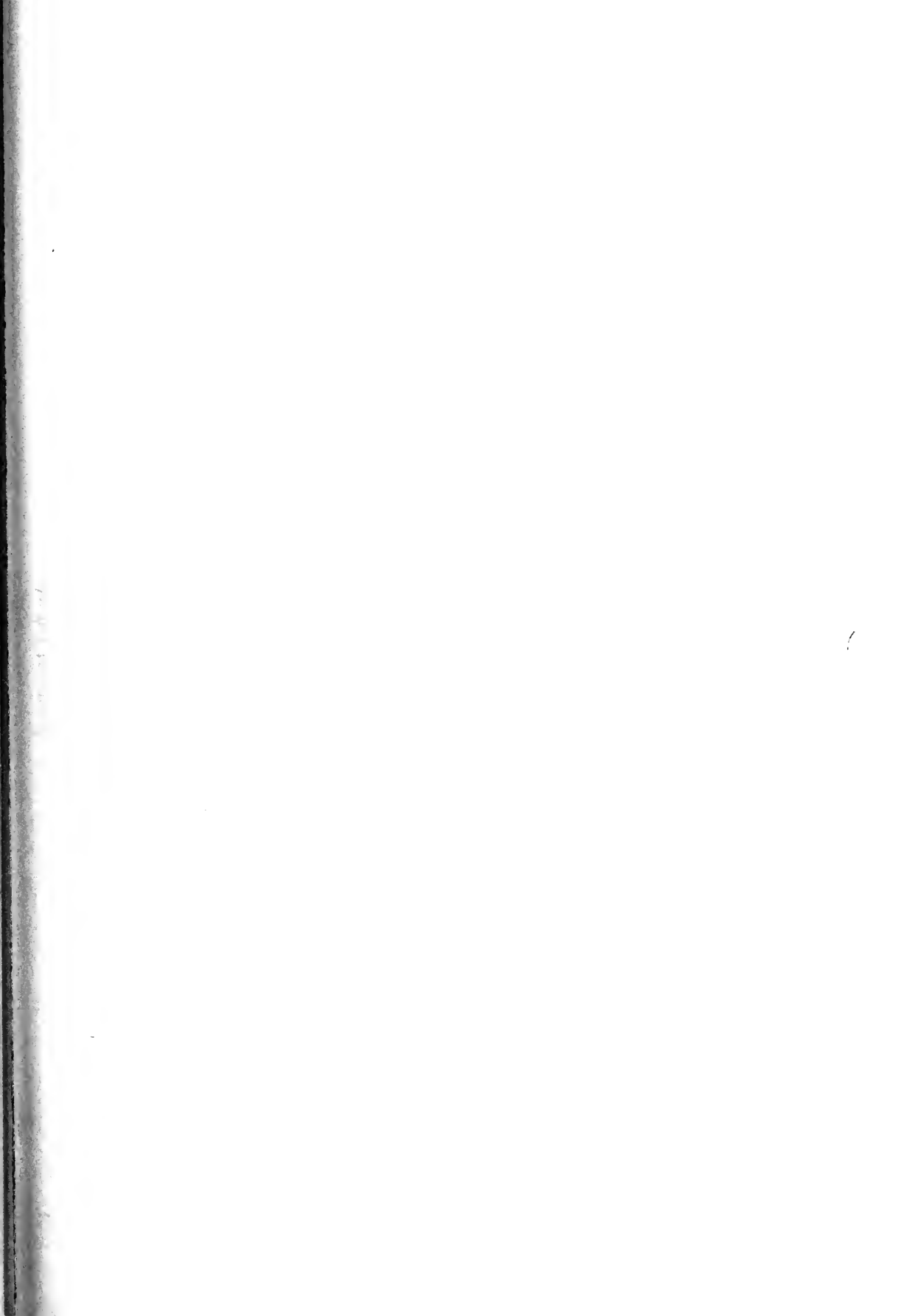
3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is *The Labour Relations Amendment Act, 1978*.







An Act to amend
The Labour Relations Act

1st Reading

March 14th, 1978

2nd Reading

3rd Reading

MR. WILLIAMS

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to provide for the
Economic Equality of the Sexes**

MRS. CAMPBELL

EXPLANATORY NOTE

The Bill provides a remedy to an individual against an employer who is the recipient of public funds and who discriminates in employment practices on the basis of the sex of that individual. The Bill permits a person to apply to a court for an order suspending the payment of public funds to an employer who discriminates in that manner. The employer may apply to a court to terminate the order when the employer is no longer conducting such discriminatory practices.

BILL 40

1978

An Act to provide for the Economic Equality of the Sexes

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "association" means an unincorporated association;
- (b) "person" means an individual person;
- (c) "Treasurer" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs.

2. No public funds shall be paid to any person, corporation, association or undertaking that discriminates in employment practices on the basis of sex in a manner contrary to *The Ontario Human Rights Code*.

Prohibition

R.S.O. 1970,
c. 318

3.—(1) Any person who feels aggrieved by discrimination may apply to a judge of the Supreme Court for an order enjoining the Treasurer from paying public funds to a person, corporation, association or undertaking named in the application and the judge may so order where the judge is of the opinion that the named person, corporation, association or undertaking is discriminating in the manner referred to in section 2.

Restraining
order

(2) A person, corporation, association or undertaking named in an application under subsection 1 is a party to proceedings under this Act.

Idem

(3) A judge of the Supreme Court, upon application therefor, may by order terminate an order made under subsection 1 where the judge is satisfied that the person, corporation, association or undertaking named in the order is no longer discriminating in employment practices on the basis of sex contrary to *The Ontario Human Rights Code*.

Termination
of order

Conflict
R.S.O. 1970,
c. 365

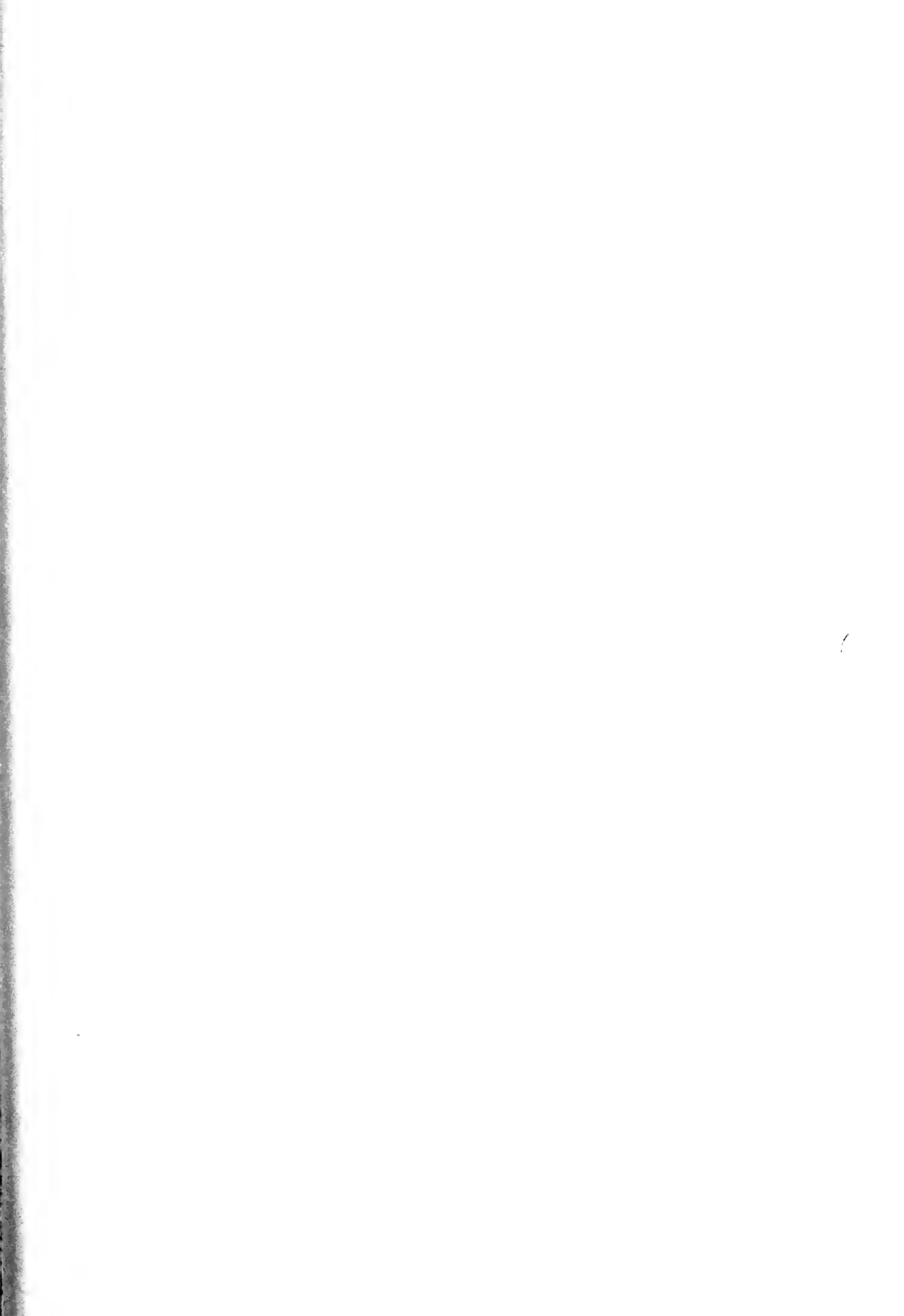
4. This Act applies notwithstanding *The Proceedings Against the Crown Act* or any other Act.

Commence-
ment

5. This Act comes into force on the 1st day of July, 1978.

Short title

6. The short title of this Act is *The Equal Opportunity Act, 1978*.







An Act to provide for the
Economic Equality of the Sexes

1st Reading

March 14th, 1978

2nd Reading

3rd Reading

MRS. CAMPBELL

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Public Commercial Vehicles Act**

THE HON. J. W. SNOW
Minister of Transportation and Communications

EXPLANATORY NOTES

SECTION 1. The provision makes it an offence for a person shipping goods to hire a transporter whom the shipper knows does not have the necessary licence.

SECTION 2.—Subsection 1. Section 15c (1) of the Act presently gives an officer of the Ministry authority to examine business records and documents of a holder of an operating licence in respect of a public commercial vehicle business. The amendment extends this authority to include the holder of a freight forwarder's licence.

Subsection 2. Section 15c (2) and (3) of the Act presently authorize the Minister to appoint persons to investigate possible contravention of the Act. Section 15c (3) sets out the power to examine documents, etc., and to enter business premises.

The basic change in the provisions as recast is that the power to examine documents and enter business premises will apply when an investigator believes on reasonable and probable grounds that there is a contravention of the Act. Presently they apply when the Minister so believes.

Subsections 3, 4, 5, 6. The changes are ones in wording made necessary by section 2 (2) of the Bill. There are no substantive changes.

BILL 41

1978

**An Act to amend
The Public Commercial Vehicles Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Public Commercial Vehicles Act*, being chapter 375 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: s. 2a,
enacted

2a. Where, under the provisions of this Act, a licence is required for the transportation of goods, no person shall hire, directly or indirectly, or participate in an arrangement to hire a person to transport such goods by means of a commercial vehicle knowing that the person hired, by, for or on behalf of whom the commercial vehicle is operated, is not the holder of the required licence. Hiring of
unlicensed
commercial
vehicle

- 2.—(1) Subsection 1 of section 15c of the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by inserting after "vehicles" in the fourth line "or of the holder of a freight forwarder's licence relating to his business as a freight forwarder". s. 15c (1),
amended

- (2) Subsections 2 and 3 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, are repealed and the following substituted therefor: s. 15c (2, 3),
re-enacted

(2) The Minister may appoint one or more officers of the Ministry as investigators for the purpose of carrying out investigations to ascertain compliance with this Act and the regulations thereunder. Appointment
of
investigators

(3) Where an investigator appointed under subsection 2 believes on reasonable and probable grounds that any person has contravened any of the provisions of this Act or the regulations, he may inquire into and examine the affairs of that person and may, Examination
of records,
etc.

- (a) upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents and things relevant to the purported contravention; and
- (b) inquire into negotiations and transactions made by or on behalf of or in relation to such person relating to the transportation of goods or the use of commercial vehicles or that are otherwise relevant to the subject-matter of the investigation,

and for the purpose of the inquiry, the investigator has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

1971. c. 49

s. 15c (4),
amended

- (3) Subsection 4 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, is amended by striking out "a person appointed to make an investigation under this section" in the first and second lines and inserting in lieu thereof "an investigator appointed under subsection 2".

s. 15c (5),
re-enacted

- (4) Subsection 5 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, is repealed and the following substituted therefor:

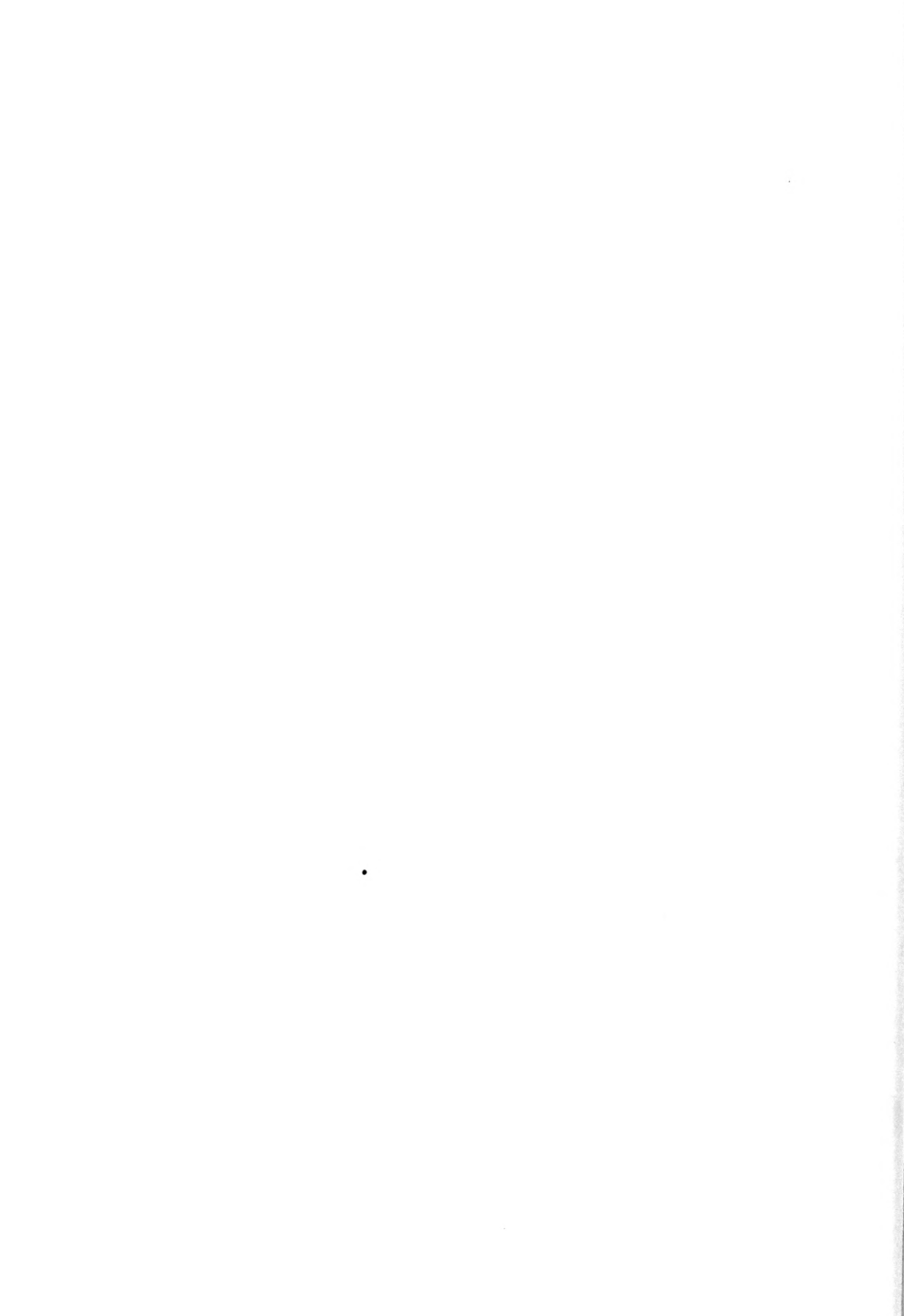
Issuance
of order

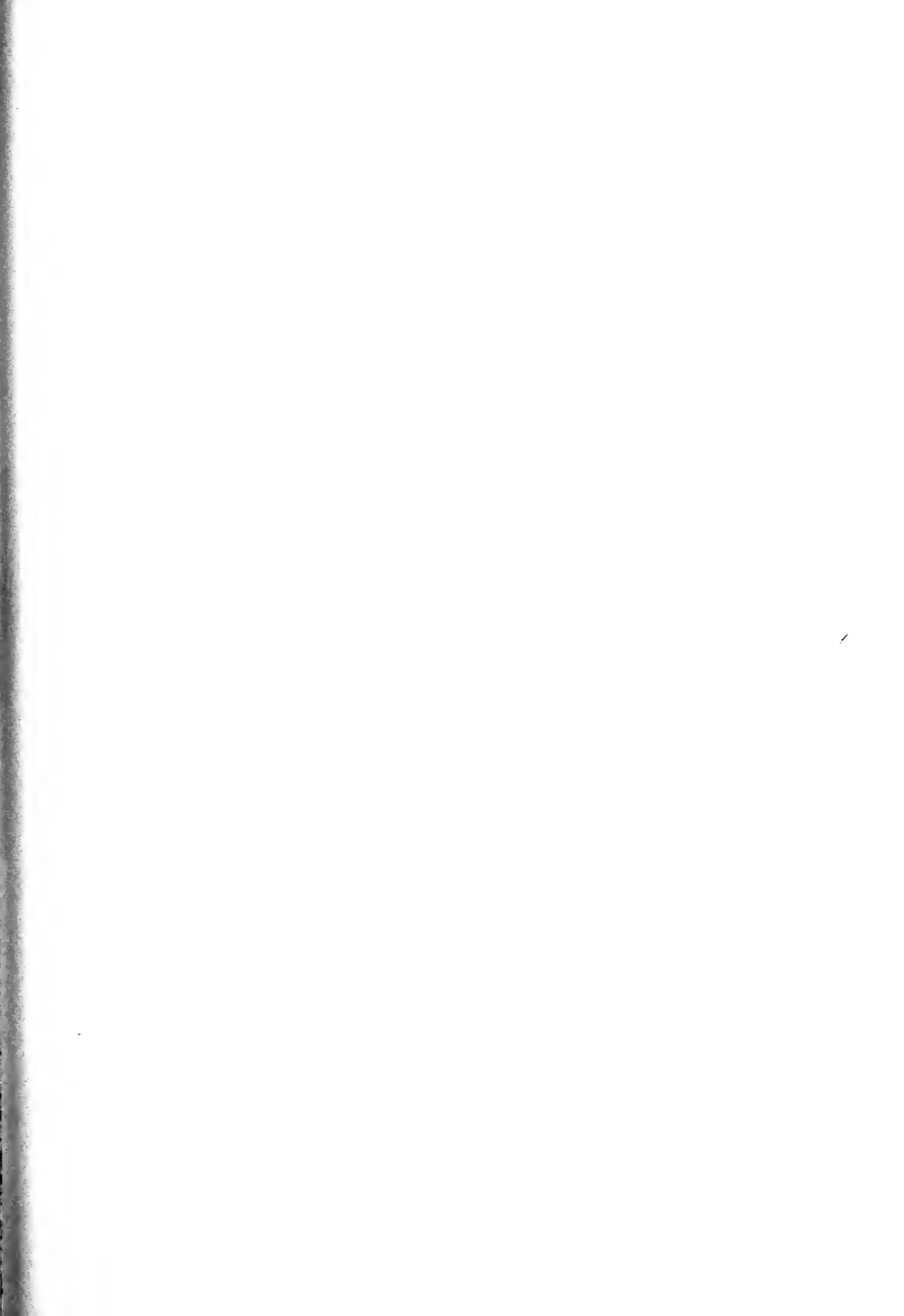
(5) Where a provincial judge is satisfied upon an *ex parte* application by an investigator appointed under subsection 2 that there are reasonable grounds for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 3, issue an order authorizing the investigator, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the investigator to make the search at night.

s. 15c (6),
amended

- (5) Subsection 6 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, is amended by striking out "Any person making an investigation under this section" in the first and second lines and inserting in lieu thereof "An investigator appointed under subsection 2".

- (6) Subsection 7 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, is amended by striking out "person" in the second line and inserting in lieu thereof "investigator". <sup>s. 15c(7).
amended</sup>
3. This Act comes into force on the day it receives Royal Assent. <sup>Commence-
ment</sup>
4. The short title of this Act is *The Public Commercial Vehicles Amendment Act, 1978*. ^{Short title}





An Act to amend
The Public Commercial Vehicles Act

1st Reading

March 16th, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications

EXPLANATORY NOTE

This provision permits the Registrar to order the vehicle plates and permits of an out-of-province vehicle to be seized where there is misconduct or contravention of *The Highway Traffic Act*, *The Public Vehicles Act* or *The Public Commercial Vehicles Act* by the owner or lessee of the vehicle.

The appeal provisions of section 29 of the Act would be available to any person whose plates and permits were so seized.

BILL 42

1978

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 27 of *The Highway Traffic Act*, being chapter 202 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection:

(4) The Registrar may, at any time for misconduct or contravention of the provisions of this Act, *The Public Vehicles Act* or *The Public Commercial Vehicles Act* or of any regulation thereunder by an owner or lessee of one or more motor vehicles or trailers for which permits have been issued by a jurisdiction or jurisdictions other than the Province of Ontario, order that the permit and number plates issued for such vehicle or vehicles be seized and any constable or any officer appointed for carrying out the provisions of this Act or the enforcement of *The Public Vehicles Act* or *The Public Commercial Vehicles Act* may seize the permit and number plates and deliver them to the Ministry which shall return them to the authority that issued them.
2. This Act comes into force on the day it receives Royal Assent.
3. The short title of this Act is *The Highway Traffic Amendment Act, 1978*.

s. 27,
amended

Power to
seize out-of-
province
permits and
plates
R.S.O. 1970,
cc. 392, 375

Commence-
ment

Short title

An Act to amend
The Highway Traffic Act

1st Reading

March 16th, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(Government Bill)

BILL 42

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications

BILL 42

1978

**An Act to amend
The Highway Traffic Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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s. 27.
amended

Power to
seize out-of-
province
permits and
plates
R.S.O. 1970,
cc. 392, 375

2. This Act comes into force on the day it receives Royal Assent.
3. The short title of this Act is *The Highway Traffic Amendment Act, 1978*.

Commence-
ment

Short title

An Act to amend
The Highway Traffic Act

1st Reading

March 16th, 1978

2nd Reading

May 2nd, 1978

3rd Reading

May 2nd, 1978

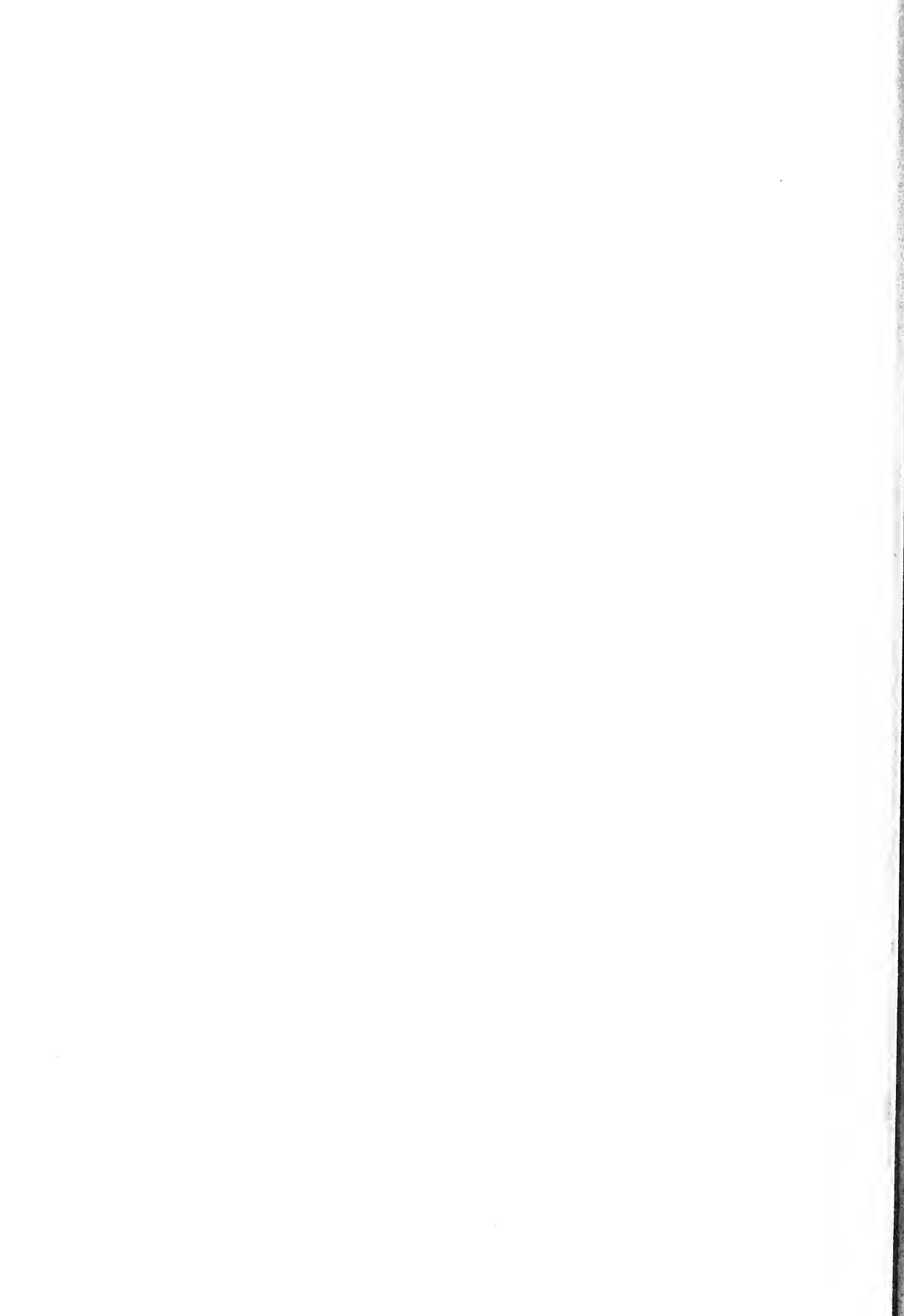
THE HON. J. W. SNOW
Minister of Transportation and
Communications

BILL 43

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act for granting to Her Majesty certain additional sums
of money for the Public Service for the fiscal year ending
the 31st day of March, 1978**

THE HON. W. D. McKEOUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs



BILL 43

1978

An Act for granting to Her Majesty certain additional sums of money for the Public Service for the fiscal year ending the 31st day of March, 1978

MOST GRACIOUS SOVEREIGN:

WHEREAS it appears by messages from the Honourable Preamble
Pauline M. McGibbon, Lieutenant Governor of the Province of Ontario, and the estimates accompanying the same, that the sums mentioned in the Schedule to this Act are required to defray certain charges and expenses of the public service of this Province, not otherwise provided for, for the fiscal year ending the 31st day of March, 1978; may it therefore please Your Majesty that it be enacted and it is hereby enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, as follows:

1.—(1) In addition to the sum of \$12,349,226,300 granted by *The Supply Act, 1977*, there may be paid out of the Consolidated Revenue Fund a sum not exceeding in the whole \$145,263,000 to be applied towards defraying the several charges and expenses of the public service, not otherwise provided for, from the 1st day of April, 1977, to the 31st day of March, 1978, as set forth in the Schedule to this Act, and, subject to subsection 2, such sum shall be paid and applied only in accordance with the votes and items of the supplementary estimates upon which the Schedule is based. \$145,263,000 granted for fiscal year 1977-78 1977, c. 71

(2) Where, in the fiscal year ending the 31st day of March, 1978, powers and duties are assigned and transferred from one Minister of the Crown to another Minister of the Crown, the appropriate sums in the votes and items of the estimates upon which the Schedule is based that are approved to defray the charges and expenses of the public service in the exercise and performance of such powers and duties, may be assigned and transferred from time to time as required by Exception

certificate of the Management Board of Cabinet to the ministry administered by the minister to whom the powers and duties are so assigned and transferred.

Accounting
for
expenditure

2. The due application of all moneys expended under this Act shall be accounted for to Her Majesty.

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is *The Supply Act, 1978*.

SCHEDULE

Agriculture and Food	\$ 2,739,000
Education	107,189,000
Government Services	31,335,000
Northern Affairs	2,500,000
Treasury, Economics and Intergovernmental Affairs	1,500,000
Total	<u>\$145,263,000</u>







An Act for granting to Her Majesty certain additional sums of money for the Public Service for the fiscal year ending the 31st day of March, 1978

1st Reading

March 16th, 1978

2nd Reading

March 16th, 1978

3rd Reading

March 16th, 1978

THE HON. W. D. McKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Education Act, 1974

MR. SWEENEY

EXPLANATORY NOTE

The purpose of the Bill is to provide for the establishment by the province of schools for children with severe learning disabilities. The Bill requires the Minister to make an annual report concerning the facilities and services provided for these children and the report shall be referred to a standing committee for review.

BILL 44

1978

An Act to amend The Education Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Education Act, 1974*, being chapter 109, is amended by adding thereto the following section: s. 3a,
enacted

3a. The Minister shall, after the close of each year, submit to the Lieutenant Governor in Council a report upon the efforts of the Ministry to establish schools and provide facilities and services to pupils with severe learning disabilities and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session and the report shall then be referred to a standing committee of the Assembly. Annual
report re
pupils with
severe
learning
disabilities

2. Clause s of subsection 1 of section 8 of the said Act is repealed and the following substituted therefor: s. 8 (1) (s),
re-enacted

(s) in respect of schools for the deaf and the blind and schools for pupils with severe learning disabilities, determine the number of terms and the dates upon which each term begins and ends.

3. The said Act is further amended by adding thereto the following section: s. 12a,
enacted

12a.—(1) Subject to the approval of the Lieutenant Governor in Council, the Minister shall establish, maintain and operate one or more schools for pupils with severe learning disabilities. Schools for
pupils with
severe
learning
disabilities

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may, in addition to his powers under section 10, make regulations with respect to such schools for pupils with severe learning disabilities, Regulations

- (a) prescribing the terms and conditions upon which pupils may,
 - (i) be admitted to, and remain in, a school,
 - (ii) reside in homes approved by a superintendent, and
 - (iii) be discharged from a school;
- (b) authorizing the Minister to appoint a committee to determine any question concerning the eligibility for admission of an applicant;
- (c) authorizing a superintendent to establish rules in respect of pupils admitted to the school;
- (d) authorizing a superintendent to dismiss a pupil and prescribing procedures in respect thereof;
- (e) authorizing the Minister to provide training for, and certification of, teachers of pupils with severe learning disabilities;
- (f) designating the name of each school established under this section.

s. 20 (3),
re-enacted

- 4.** Subsection 3 of section 20 of the said Act is repealed and the following substituted therefor:

Idem

(3) The fact that a child is blind, deaf, mentally handicapped or suffering from a severe learning disability is not of itself an unavoidable cause under clause *b* of subsection 2 if the child is eligible for admission to the Ontario School for the Blind, an Ontario School for the Deaf, or school or class for trainable retarded children or a school for children with severe learning disabilities.

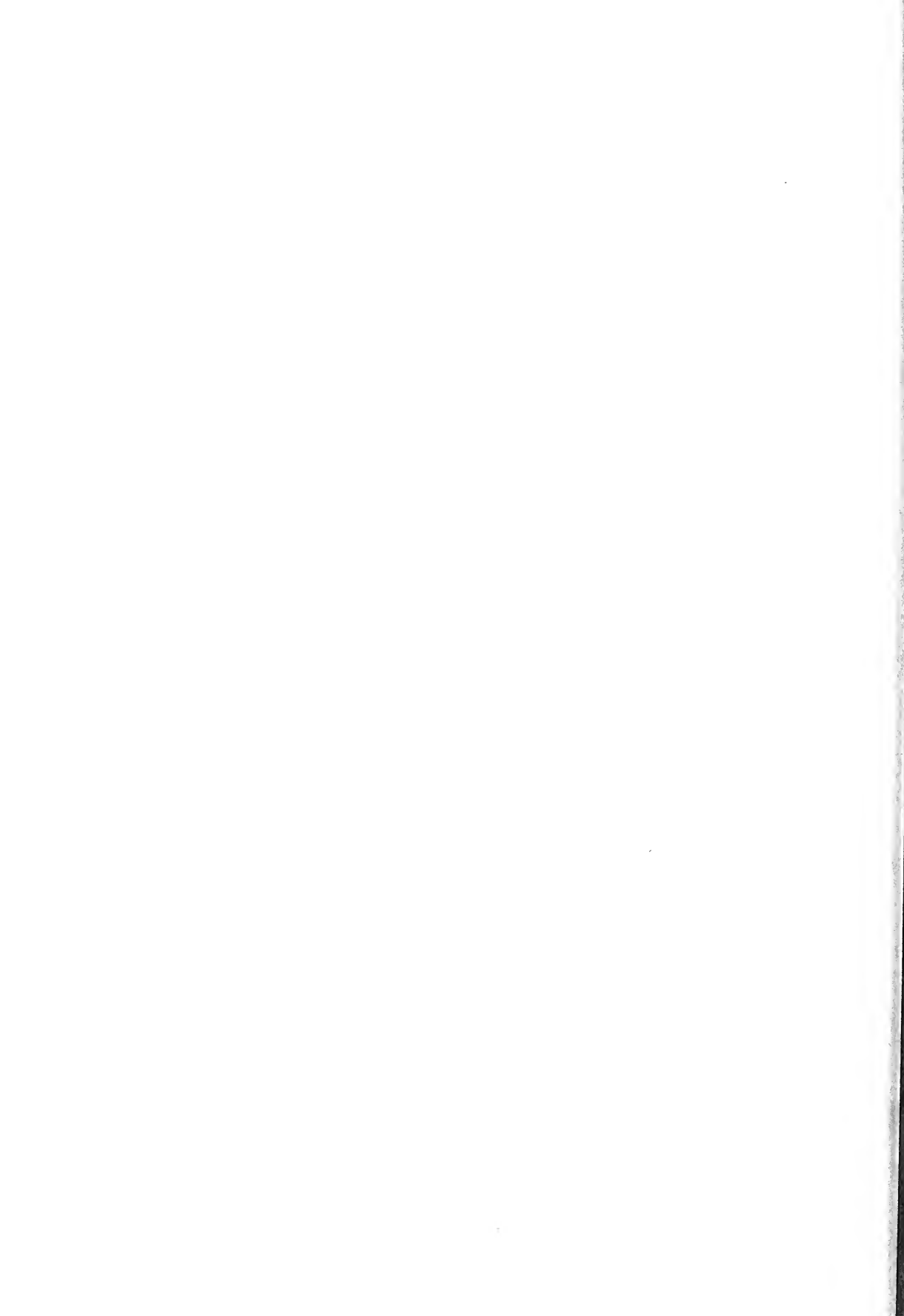
Commence-
ment

- 5.** This Act comes into force on the day it receives Royal Assent.

Short title

- 6.** The short title of this Act is *The Education Amendment Act, 1978*.







An Act to amend
The Education Act, 1974

1st Reading

March 16th, 1978

2nd Reading

3rd Reading

MR. SWEENEY

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Consumer Protection Act

MR. BLUNDY

EXPLANATORY NOTE

The Bill provides for warnings in rental contracts as to whether or not loss of or damage to the goods rented is included in the rental fee. The warnings also point out that the person renting the goods may be responsible for loss of or damage to the rented goods where no insurance is included.

BILL 45

1978

An Act to amend The Consumer Protection Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Consumer Protection Act*, being chapter 82 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: s. 47a,
enacted

47a.—(1) Where a person enters into a contract for the rental of goods, the owner of the goods or his agent, as the case may be, shall inform the person as to whether or not insurance for loss of or damage to the goods is included in the rental fee. Whether
insurance
included in
rental fee

(2) Where a contract referred to in subsection 1 is a written contract, the contract shall have printed on it in bold face type in the manner prescribed in the regulations, a warning as to whether or not insurance for loss of or damage to the goods is included in the rental fee. Warning

(3) Where a contract referred to in subsection 1 does not include insurance for loss of or damage to the goods as part of the rental fee, the owner of the goods or his agent shall inform the person renting the goods that the person may be responsible for loss of or damage to the goods rented. Responsi-
bility for
loss or
damage

(4) Where a contract referred to in subsection 3 is a written contract, the contract shall have printed on it in bold face type in the manner prescribed in the regulations, a warning that the person renting the goods may be responsible for loss of or damage to the goods rented. Warning

2. Section 49 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 50, section 23, is further amended by adding thereto the following clause: s. 49,
amended

(p) prescribing the manner in which the warnings referred to in section 47a shall be printed on rental contracts.

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is *The Consumer Protection Amendment Act, 1978*.







An Act to amend
The Consumer Protection Act

1st Reading

March 16th, 1978

2nd Reading

3rd Reading

MR. BLUNDY

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Workmen's Compensation Act

MR. LAUGHREN

EXPLANATORY NOTE

The purpose of the Bill is to increase and index the level of benefits payable under *The Workmen's Compensation Act*. In addition, the Bill removes the ceiling on average earnings and provides for a new ceiling based on the calculation of a maximum wage rate. The Bill also provides for the continued payment of disability compensation for five years following the death of a recipient where the amount of the disability compensation exceeds the amount that would otherwise be paid to dependants as a dependant's allowance.

An Act to amend The Workmen's Compensation Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clauses *c*, *d* and *f* as re-enacted by the Statutes of Ontario, 1974, chapter 70, section 1, and clause *e* as re-enacted by the Statutes of Ontario, 1973, chapter 46, section 1, of subsection 1 of section 36 of *The Workmen's Compensation Act*, being chapter 505 of the Revised Statutes of Ontario, 1970, are repealed and the following substituted therefor:
- (c) where the widow or a widower is the sole dependant, a monthly payment of \$400;
- (d) where the dependants are a widow or a widower and one or more children, a monthly payment of \$400 with an additional monthly payment of \$100 for each child under the age of eighteen years;
- (e) where the dependants are children, a monthly payment of \$100 to each child under the age of eighteen years;
- (f) where the dependants are persons other than those mentioned in clauses *c*, *d* and *e*, a sum reasonable and proportionate to the pecuniary loss to such dependants occasioned by the death, to be determined by the Board, but not exceeding in the whole \$400 per month.

s. 36 (1)
(c, d, e, f),
re-enacted

2. The said Act is amended by adding thereto the following section:

s. 43a,
enacted

43a. The Board shall, as soon as possible after the 1st day of September in each year, review the wages and salaries

Maximum
wage rate

earned by workers who suffered injury and to whom compensation was paid during the preceding year and whenever such review indicates that 10 per cent or more of such workers were earning in excess of the maximum wage rate at the time of such review, the Board shall by order increase such maximum wage rate for accidents occurring on and after the first day of the succeeding calendar year by the appropriate number of increments of \$1,000 as is sufficient to reduce the number of workers whose salaries exceed the maximum wage rate below 10 per cent of the workers who suffered injury and to whom compensation was paid during the period under review.

s. 44 (1),
re-enacted

3. Subsection 1 of section 44 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 173, section 1, and 1975, chapter 47, section 10, is repealed and the following substituted therefor:

How average
earnings to
be computed

(1) Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the employee was remunerated, but not so as in any case to exceed the maximum wage rate as determined by the Board under section 43a.

ss. 45a, 45b,
enacted

4. The said Act is further amended by adding thereto the following sections:

Compensation
indexed

45a. The amounts payable as compensation under this Part shall be adjusted on the 1st day of January and the 1st day of July in each year by a percentage amount equal to the percentage increase in the average industrial wage for Ontario during the preceding six month period as indicated by the Industrial Composite Average Weekly Wages and Salaries for Ontario published by Statistics Canada and the initial adjustment shall reflect the percentage increase in the average industrial wage since the 1st day of July, 1975.

Disability
compensation
continued

45b.—(1) Where death results from an injury in respect of which compensation for disability has been awarded to an employee and the amount of such compensation is greater than the amount payable under section 36, an amount equal to the compensation for disability, including any adjustments authorized to be made from time to time, shall be paid instead of the amount payable under section 36 for a period of five years following the death of the injured employee and the compensation shall be paid in the same manner and subject to the same conditions as compensation paid under section 36.

(2) Upon the termination of the five year period referred to in subsection 1, each dependant shall be paid compensation pursuant to section 36. ^{Compensation continued}

5. This Act comes into force on the day it receives Royal Assent. ^{Commencement}
6. The short title of this Act is *The Workmen's Compensation Amendment Act, 1978*. ^{Short title}





An Act to amend
The Workmen's Compensation Act

1st Reading

March 28th, 1978

2nd Reading

3rd Reading

MR. LAUGHREN

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act respecting the Age of Mandatory Retirement

MR. LELUK

EXPLANATORY NOTES

The purpose of the Bill is to ensure that no person shall be required to retire before reaching the age of seventy where the person is willing and capable of performing his or her job.

SECTION 1. *The Employment Standards Act, 1974* is amended to prohibit an employer from including mandatory retirement below the age of seventy as a term or condition of a benefit plan offered to employees.

SECTION 2. *The Ontario Human Rights Code* is amended to specifically prevent an employer from establishing a mandatory retirement age below the age of seventy as a term or condition of employment. The Code is also amended to limit the scope of a provision creating an exception for mandatory retirement policies from the prohibition against discrimination on the basis of age in employment practices.

An Act respecting the Age of Mandatory Retirement

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Section 34 of *The Employment Standards Act, 1974*, ^{1974, c. 112, s. 34,} being chapter 112, is amended by adding thereto the ^{amended} following subsection:

(2a) No employer or person acting directly on behalf of ^{Mandatory retirement age} an employer shall provide, furnish or offer any fund, plan, arrangement or benefit that includes, as a term or condition thereof, a requirement that the employee shall retire upon attaining a specified retirement age, by reason only of having attained that age, where the retirement age is less than seventy years.

- (2) Subsection 3 of the said section 34 is amended by adding ^{s. 34 (3),} at the end thereof "or 2a". ^{amended}

- (3) Subsection 4 of the said section 34 is amended by in- ^{s. 34 (4),}serting after "2" in the fourth line "or 2a". ^{amended}

- 2.—(1) Section 4 of *The Ontario Human Rights Code*, being ^{R.S.O. 1970, c. 318, s. 4,} chapter 318 of the Revised Statutes of Ontario, 1970, ^{amended} as re-enacted by the Statutes of Ontario, 1972, chapter 119, section 5 and amended by 1974, chapter 73, sections 2 and 3, is further amended by adding thereto the following subsection:

(10) Nothing in subsection 9 shall be construed to authorize ^{Mandatory retirement age} a term or condition in a superannuation or pension fund or plan that requires an employee to retire upon attaining a specified retirement age, by reason only of having attained that age, where the retirement age is less than seventy years.

s. 4b,
enacted

- (2) The said Act is amended by adding thereto the following section:

Mandatory
retirement

4b. No person shall, as a term or condition of employment, require an employee to retire upon attaining a specified retirement age, by reason only of having attained that age, where the retirement age is less than seventy years.

s. 19 (a),
re-enacted

- (3) Clause *a* of section 19 of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 119, section 14, is repealed and the following substituted therefor:

(a) "age" means any age of forty years or more and less than seventy years.

R.S.O. 1970,
c. 342, s. 21,
amended

3. Section 21 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 113, section 4, is further amended by adding thereto the following subsections:

Mandatory
retirement
provision

(10a) A pension plan filed for registration in accordance with section 18 shall not require, as a term or condition thereof, that an employee shall retire upon attaining a specified retirement age, by reason only of having attained that age, where the retirement age is less than seventy years.

Plans
amended

(10b) Every pension plan filed for registration prior to the day *The Age of Retirement Act, 1978* comes into force that requires, as a term or condition thereof, the retirement of an employee at an age less than seventy years shall be deemed to require retirement at seventy years of age.

R.S.O. 1970,
c. 386, s. 17,
re-enacted

4. Section 17 of *The Public Service Act*, being chapter 386 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1972, chapter 96, section 5, is repealed and the following substituted therefor:

Age of
retirement

17. Every civil servant shall retire at the end of the month in which he attains the age of seventy years, but where, in the opinion of the Commission, special circumstances exist and where his deputy minister so requests in writing, he may be reappointed by the Lieutenant Governor in Council for one or more periods not exceeding one year at a time thereafter.

Commence-
ment

5. This Act comes into force on the 1st day of January, 1979.

Short title

6. The short title of this Act is *The Age of Retirement Act, 1978*.

SECTION 3. *The Pension Benefits Act* is amended to prevent the registration of a pension plan containing a term or condition requiring the retirement of persons under the age of seventy.

SECTION 4. *The Public Service Act* is amended to raise the age of mandatory retirement from sixty-five years to seventy years.





An Act respecting the
Age of Mandatory Retirement

1st Reading

March 28th, 1978

2nd Reading

3rd Reading

MR. LELUK

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting Commodity Boards and
Marketing Agencies**

THE HON. W. NEWMAN
Minister of Agriculture and Food

EXPLANATORY NOTES

SECTION 1 is an interpretation section and is complementary to sections 2 and 5 of the Bill.

SECTION 2.— Subsection 1. Subsection 2 of section 2 of the *Agricultural Products Marketing Act* (Canada) now reads as follows:

(2) *The Governor in Council may by order grant to any board or agency mentioned in subsection (1) authority,*

(a) *in relation to the powers granted to such board or agency under the laws of any province with respect to the marketing of any agricultural product locally within the province, and*

(b) *in relation to the powers that may be granted to such board or agency under this Act with respect to the marketing of any agricultural product in interprovincial and export trade,*

to fix, impose and collect levies or charges from persons engaged in the production or marketing of the whole or any part of any agricultural product and for such purpose to classify such persons into groups and fix the levies or charges payable by the members of the different groups in different amounts, to use such levies or charges for the purposes of such board or agency, including the creation of reserves, and the payment of expenses and losses resulting from the sale or disposal of any such agricultural product, and the equalization or adjustment among producers of any agricultural product of moneys realized from the sale thereof during such period or periods of time as the board or agency may determine.

Paragraph e(vi) of section 2 of the *Farm Products Marketing Agencies Act* (Canada) now reads as follows:

(e) *“marketing plan” means a plan relating to the promotion, regulation and control of the marketing of any regulated product in interprovincial or export trade that includes provision for all or any of the following:*

(vi) *the imposition and collection by the appropriate agency of levies or charges from persons engaged in the growing or production of the regulated product or the marketing thereof and for such purposes classifying those persons into groups and specifying the levies or charges, if any, payable by the members of each such group.*

The Supreme Court of Canada in a judgment pronounced on the 19th day of January, 1978 held that section 2 (2) (a) of the *Agricultural Products Marketing Act* (Canada) is *ultra vires* the Parliament of Canada and that section 2(e) (vi) of the *Farm Products Marketing Agencies Act* (Canada) applies to marketing only in interprovincial or export trade.

The Court further held that the legislature of a province may validly enact legislation authorizing a commodity board to fix, impose and collect levies or charges respecting the marketing of a regulated product locally within the province and inferred that such authority may be granted to a marketing agency of Canada.

This subsection empowers the Lieutenant Governor in Council to grant such authority.

BILL 48

1978

An Act respecting Commodity Boards and Marketing Agencies

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "commodity board" means a local board under *The Farm Products Marketing Act* or a marketing board under *The Milk Act*; R.S.O. 1970,
cc. 162, 273
- (b) "marketing agency" means a marketing agency of Canada that is authorized to exercise powers of regulation in relation to the marketing of a regulated product in interprovincial or export trade and that has been granted authority to regulate the marketing of the regulated product locally within Ontario;
- (c) "regulated product" means a natural product of agriculture that is regulated by a commodity board or a marketing agency.

2.—(1) The Lieutenant Governor in Council may, by regulation, grant to any commodity board or marketing agency in relation to the marketing of any regulated product locally within Ontario, authority to fix, impose and collect levies or charges from persons engaged in the production or marketing of the whole or any part of the regulated product and for such purpose to classify such persons into groups and fix the levies or charges payable by the members of the different groups in different amounts, and to use such levies or charges for the purposes of such commodity board or marketing agency, including the creation of reserves, the payment of expenses and losses resulting from the sale or disposal of any such regulated product, and the equalization or adjustment among producers of any

Lieutenant
Governor
in Council
may grant
authority
re levies
or charges

regulated product of moneys realized from the sale thereof during such period or periods of time as the commodity board or marketing agency may determine.

Regulation
may require
deduction
of levies
or charges

(2) The Lieutenant Governor in Council may in a regulation made under subsection 1 require any person who receives a regulated product to deduct from the moneys payable for the regulated product any levies or charges payable to a commodity board or marketing agency by the person from whom he receives the regulated product and to forward such levies or charges to the commodity board or marketing agency or its agent designated for that purpose.

Authority
of commodity
board or
marketing
agency to
make
regulations,
etc.

(3) Where the Lieutenant Governor in Council authorizes a commodity board or marketing agency to exercise any of the powers mentioned in subsection 1, the commodity board or marketing agency, in the exercise of such powers, may make regulations or orders or issue directions.

Authority
may be
revoked

(4) The Lieutenant Governor in Council may, by regulation, revoke any authority granted under subsection 1.

Regulations

3. The Lieutenant Governor in Council may make regulations prescribing the terms and conditions governing the granting and revocation of authority under section 2 and generally may make regulations in respect of any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Offence

4.—(1) Every person who fails to comply with or contravenes any of the provisions of any regulation or order made or of any direction issued under this Act is guilty of an offence and on summary conviction is liable for a first offence to a fine of not more than \$500 and for a subsequent offence to a fine of not more than \$5,000.

Onus

(2) In any prosecution or action under this Act, the act or omission complained of, in respect of which the prosecution or action was instituted shall, unless the accused or defendant proves the contrary, be deemed to relate to the marketing of a regulated product locally within Ontario.

Levies
or charges
deemed
validly
imposed or
collected
or may be
collected
R.S.C. 1970,
c. A-7
1970-71-72,
c. 65 (Can.)

5. All levies or charges heretofore imposed or collected by a commodity board or a marketing agency pursuant to or purporting to be pursuant to the *Agricultural Products Marketing Act* (Canada) or the *Farm Products Marketing Agencies Act* (Canada) in respect of regulated products marketed locally within Ontario shall be deemed to have been imposed or collected pursuant to a regulation made under this Act and such levies or charges are hereby declared

Subsection 2 provides that a regulation made under subsection 1 may require the deduction of levies or charges from moneys payable for a regulated product.

Subsection 3 empowers a commodity board or marketing agency to make regulations or orders or issue directions in the exercise of any power granted to it under subsection 1.

Subsection 4 provides for the revocation of any authority granted under subsection 1.

SECTION 3 authorizes the Lieutenant Governor in Council to make regulations generally and for the purposes of section 2.

SECTION 4. Subsection 1 creates an offence and provides a penalty therefor.

Subsection 2 deems that, unless the accused or defendant proves the contrary, an act or omission complained of in a prosecution or action relates to marketing locally within Ontario.

SECTION 5. The section validates levies or charges heretofore imposed or collected and authorizes the collection of levies or charges imposed but not collected.



to have been validly imposed or collected and, where they were imposed but not collected, may be collected as if they had been imposed under this Act.

6. This Act comes into force on the day it receives Royal ^{Commence-} Assent.
_{ment}

7. The short title of this Act is *The Commodity Boards* ^{Short title}
and Marketing Agencies Act, 1978.

An Act respecting
Commodity Boards and Marketing
Agencies

1st Reading

March 30th, 1978

2nd Reading

3rd Reading

THE HON. W. NEWMAN
Minister of Agriculture and Food

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting Commodity Boards and
Marketing Agencies**

THE HON. W. NEWMAN
Minister of Agriculture and Food

(Reprinted as amended by the Resources Development Committee)

EXPLANATORY NOTES

SECTION 1 is an interpretation section and is complementary to sections 2 and 5 of the Bill.

SECTION 2.—Subsection 1. Subsection 2 of section 2 of the *Agricultural Products Marketing Act* (Canada) now reads as follows:

(2) *The Governor in Council may by order grant to any board or agency mentioned in subsection (1) authority,*

(a) *in relation to the powers granted to such board or agency under the laws of any province with respect to the marketing of any agricultural product locally within the province, and*

(b) *in relation to the powers that may be granted to such board or agency under this Act with respect to the marketing of any agricultural product in interprovincial and export trade,*

to fix, impose and collect levies or charges from persons engaged in the production or marketing of the whole or any part of any agricultural product and for such purpose to classify such persons into groups and fix the levies or charges payable by the members of the different groups in different amounts, to use such levies or charges for the purposes of such board or agency, including the creation of reserves, and the payment of expenses and losses resulting from the sale or disposal of any such agricultural product, and the equalization or adjustment among producers of any agricultural product of moneys realized from the sale thereof during such period or periods of time as the board or agency may determine.

Paragraph *e(vi)* of section 2 of the *Farm Products Marketing Agencies Act* (Canada) now reads as follows:

(e) “*marketing plan*” means a plan relating to the promotion, regulation and control of the marketing of any regulated product in interprovincial or export trade that includes provision for all or any of the following:

(vi) *the imposition and collection by the appropriate agency of levies or charges from persons engaged in the growing or production of the regulated product or the marketing thereof and for such purposes classifying those persons into groups and specifying the levies or charges, if any, payable by the members of each such group.*

The Supreme Court of Canada in a judgment pronounced on the 19th day of January, 1978 held that section 2 (2) (a) of the *Agricultural Products Marketing Act* (Canada) is *ultra vires* the Parliament of Canada and that section 2(e) (vi) of the *Farm Products Marketing Agencies Act* (Canada) applies to marketing only in interprovincial or export trade.

The Court further held that the legislature of a province may validly enact legislation authorizing a commodity board to fix, impose and collect levies or charges respecting the marketing of a regulated product locally within the province and inferred that such authority may be granted to a marketing agency of Canada.

This subsection empowers the Lieutenant Governor in Council to grant such authority.

BILL 48

1978

An Act respecting Commodity Boards and Marketing Agencies

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "commodity board" means a local board under *The Farm Products Marketing Act* or a marketing board under *The Milk Act*;

R.S.O. 1970,
cc. 162, 273

(b) "marketing agency" means a marketing agency of Canada that is authorized to exercise powers of regulation in relation to the marketing of a regulated product in interprovincial or export trade and that has been granted authority to regulate the marketing of the regulated product locally within Ontario;

(c) "regulated product" means a natural product of agriculture that is regulated by a commodity board or a marketing agency.

2.—(1) The Lieutenant Governor in Council may, by regulation, grant to any commodity board or marketing agency in relation to the marketing of any regulated product locally within Ontario, authority to fix, impose and collect levies or charges from persons engaged in the production or marketing of the whole or any part of the regulated product and for such purpose to classify such persons into groups and fix the levies or charges payable by the members of the different groups in different amounts, and to use such levies or charges for the purposes of such commodity board or marketing agency, including the creation of reserves, the payment of expenses and losses resulting from the sale or disposal of any such regulated product, and the equalization or adjustment among producers of any

Lieutenant
Governor
in Council
may grant
authority
re levies
or charges

regulated product of moneys realized from the sale thereof during such period or periods of time as the commodity board or marketing agency may determine.

Regulation may require deduction of levies or charges

(2) The Lieutenant Governor in Council may in a regulation made under subsection 1 require any person who receives a regulated product to deduct from the moneys payable for the regulated product any levies or charges payable to a commodity board or marketing agency by the person from whom he receives the regulated product and to forward such levies or charges to the commodity board or marketing agency or its agent designated for that purpose.

Authority of commodity board or marketing agency to make regulations, etc.

(3) Where the Lieutenant Governor in Council authorizes a commodity board or marketing agency to exercise any of the powers mentioned in subsection 1, the commodity board or marketing agency, in the exercise of such powers, may make regulations or orders or issue directions.

Authority may be revoked

(4) The Lieutenant Governor in Council may, by regulation, revoke any authority granted under subsection 1.

Regulations

3. The Lieutenant Governor in Council may make regulations prescribing the terms and conditions governing the granting and revocation of authority under section 2 and generally may make regulations in respect of any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Offence

4.—(1) Every person who fails to comply with or contravenes any of the provisions of any regulation or order made or of any direction issued under this Act is guilty of an offence and on summary conviction is liable for a first offence to a fine of not more than \$500 and for a subsequent offence to a fine of not more than \$5,000.

Onus

(2) In any prosecution or action under this Act, the act or omission complained of, in respect of which the prosecution or action was instituted shall, unless the accused or defendant proves the contrary, be deemed to relate to the marketing of a regulated product locally within Ontario.

Levies or charges deemed validly imposed or collected or may be collected
R.S.C. 1970, c. A-7
1970-71-72, c. 65 (Can.)



5. All levies or charges heretofore imposed or collected by,

(a) a commodity board, the Canadian Turkey Marketing Agency or the Canadian Egg Marketing Agency pursuant to or purporting to be pursuant to the *Agricultural Products Marketing Act* (Canada) or the *Farm Products Marketing Agencies Act* (Canada); or

Subsection 2 provides that a regulation made under subsection 1 may require the deduction of levies or charges from moneys payable for a regulated product.

Subsection 3 empowers a commodity board or marketing agency to make regulations or orders or issue directions in the exercise of any power granted to it under subsection 1.

Subsection 4 provides for the revocation of any authority granted under subsection 1.

SECTION 3 authorizes the Lieutenant Governor in Council to make regulations generally and for the purposes of section 2.

SECTION 4. Subsection 1 creates an offence and provides a penalty therefor.

Subsection 2 deems that, unless the accused or defendant proves the contrary, an act or omission complained of in a prosecution or action relates to marketing locally within Ontario.

SECTION 5. The section validates levies or charges heretofore imposed or collected and authorizes the collection of levies or charges imposed but not collected.



- (b) after the 19th day of January, 1978, a commodity board, the Canadian Turkey Marketing Agency or the Canadian Egg Marketing Agency,

in respect of regulated products marketed locally within Ontario shall be deemed to have been imposed or collected pursuant to a regulation made under this Act and such levies or charges are hereby declared to have been validly imposed or collected and, where they were imposed but not collected, may be collected as if they had been imposed under this Act.

6. This Act comes into force on the day it receives Royal Assent. ^{Commence-}_{ment}

7. The short title of this Act is *The Commodity Boards and Marketing Agencies Act, 1978*. ^{Short title}

An Act respecting
Commodity Boards and Marketing
Agencies

1st Reading

March 30th, 1978

2nd Reading

May 2nd, 1978

3rd Reading

THE HON. W. NEWMAN
Minister of Agriculture and Food

*(Reprinted as amended by the
Resources Development Committee)*

BILL 48

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting Commodity Boards and
Marketing Agencies**

THE HON. W. NEWMAN
Minister of Agriculture and Food



BILL 48

1978

An Act respecting Commodity Boards and Marketing Agencies

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "commodity board" means a local board under *The Farm Products Marketing Act* or a marketing board under *The Milk Act*; R.S.O. 1970,
cc. 162, 273
- (b) "marketing agency" means a marketing agency of Canada that is authorized to exercise powers of regulation in relation to the marketing of a regulated product in interprovincial or export trade and that has been granted authority to regulate the marketing of the regulated product locally within Ontario;
- (c) "regulated product" means a natural product of agriculture that is regulated by a commodity board or a marketing agency.

2.—(1) The Lieutenant Governor in Council may, by regulation, grant to any commodity board or marketing agency in relation to the marketing of any regulated product locally within Ontario, authority to fix, impose and collect levies or charges from persons engaged in the production or marketing of the whole or any part of the regulated product and for such purpose to classify such persons into groups and fix the levies or charges payable by the members of the different groups in different amounts, and to use such levies or charges for the purposes of such commodity board or marketing agency, including the creation of reserves, the payment of expenses and losses resulting from the sale or disposal of any such regulated product, and the equalization or adjustment among producers of any

Lieutenant
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regulated product of moneys realized from the sale thereof during such period or periods of time as the commodity board or marketing agency may determine.

Regulation may require deduction of levies or charges

(2) The Lieutenant Governor in Council may in a regulation made under subsection 1 require any person who receives a regulated product to deduct from the moneys payable for the regulated product any levies or charges payable to a commodity board or marketing agency by the person from whom he receives the regulated product and to forward such levies or charges to the commodity board or marketing agency or its agent designated for that purpose.

Authority of commodity board or marketing agency to make regulations, etc.

(3) Where the Lieutenant Governor in Council authorizes a commodity board or marketing agency to exercise any of the powers mentioned in subsection 1, the commodity board or marketing agency, in the exercise of such powers, may make regulations or orders or issue directions.

Authority may be revoked

(4) The Lieutenant Governor in Council may, by regulation, revoke any authority granted under subsection 1.

Regulations

3. The Lieutenant Governor in Council may make regulations prescribing the terms and conditions governing the granting and revocation of authority under section 2 and generally may make regulations in respect of any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Offence

4.—(1) Every person who fails to comply with or contravenes any of the provisions of any regulation or order made or of any direction issued under this Act is guilty of an offence and on summary conviction is liable for a first offence to a fine of not more than \$500 and for a subsequent offence to a fine of not more than \$5,000.

Onus

(2) In any prosecution or action under this Act, the act or omission complained of, in respect of which the prosecution or action was instituted shall, unless the accused or defendant proves the contrary, be deemed to relate to the marketing of a regulated product locally within Ontario.

Levies or charges deemed validly imposed or collected or may be collected
R.S.C. 1970, c. A-7
1970-71-72, c. 65 (Can.)

5. All levies or charges heretofore imposed or collected by,

(a) a commodity board, the Canadian Turkey Marketing Agency or the Canadian Egg Marketing Agency pursuant to or purporting to be pursuant to the *Agricultural Products Marketing Act* (Canada) or the *Farm Products Marketing Agencies Act* (Canada); or

(b) after the 19th day of January, 1978, a commodity board, the Canadian Turkey Marketing Agency or the Canadian Egg Marketing Agency,

in respect of regulated products marketed locally within Ontario shall be deemed to have been imposed or collected pursuant to a regulation made under this Act and such levies or charges are hereby declared to have been validly imposed or collected and, where they were imposed but not collected, may be collected as if they had been imposed under this Act.

6. This Act comes into force on the day it receives Royal ^{Commence-} Assent._{ment}

7. The short title of this Act is *The Commodity Boards* ^{Short title} *and Marketing Agencies Act, 1978.*





An Act respecting
Commodity Boards and Marketing
Agencies

1st Reading

March 30th, 1978

2nd Reading

May 2nd, 1978

3rd Reading

June 19th, 1978

THE HON. W. NEWMAN
Minister of Agriculture and Food

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Municipal Act

THE HON. R. MCMURTRY
Attorney General

EXPLANATORY NOTES

GENERAL

The Bill confers power on all municipalities to pass by-laws licensing, regulating and governing adult entertainment parlours (defined broadly in the Bill as premises in which are provided goods or services designed to appeal to erotic or sexual appetites or inclinations).

Certain additional powers are also granted in respect of the authority to license and regulate body-rub parlours now found in section 368a of the Act.

In addition, the Bill raises the maximum fines that may be levied for contravention of such by-laws and establishes a procedure for the closing, for a period of up to two years, of premises in respect of which any person has been convicted of a breach of any by-law licensing and regulating body-rub parlours or adult entertainment parlours.

SECTION 1. Section 368a of the Act now reads as follows:

368a.—(1) By-laws may be passed by the councils of all municipalities for licensing, regulating, governing and inspecting body-rub parlours and for revoking or suspending any such licence and for limiting the number of licences to be granted, in accordance with subsection 3.

(2) A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices posted or used for the purpose of promoting body-rub parlours or for the prohibition of such signs, advertising, or advertising devices.

(3) A by-law passed under this section may define the area or areas of the municipality in which body-rub parlours may or may not operate and may limit the number of licences to be granted in respect of body-rub parlours in any such area or areas in which they are permitted.

(4) A by-law passed under this section may provide that no premises in which a body-rub parlour is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law.

(5) Where a medical officer of health or a public health inspector acting under his direction, or a peace officer, has reason to suspect that a breach of any provision of a by-law passed under this section has occurred in respect of a body-rub parlour, he may enter such body-rub parlour, at any time of the night or day, for purposes of carrying out the enforcement of a by-law passed under this section.

(6) For the purposes of this section,

(a) "body-rub" includes the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person's body or part thereof but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario; and

An Act to amend The Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 2 of section 368a of *The Municipal Act*, s. 368a (2), re-enacted being chapter 284 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1975, chapter 56, section 8, is repealed and the following substituted therefor:

(2) A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting body-rub parlours or for the prohibition of such signs, advertising, or advertising devices. Signs, advertising, etc.

- (2) Subsection 3 of the said section 368a is amended by adding at the commencement thereof "Notwithstanding subsection 6 of section 246". s. 368a (3), amended

- (3) The said section 368a is amended by adding thereto the following subsections: s. 368a, amended

(5a) A by-law passed under this section may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under this section from permitting any person under an age specified in the by-law to enter or remain in the body-rub parlour or any part thereof. Age restriction

(5b) For the purpose of any prosecution or proceeding under a by-law passed under this section, the holding out to the public that services described in this section are provided in premises or any part thereof, is admissible in evidence as *prima facie* proof that the premises or part thereof is a body-rub parlour. Prima facie proof

Other powers not affected

(5c) Nothing in this section affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

s. 368b, enacted

2. The said Act is amended by adding thereto the following section:

Licensing, regulating, etc., adult entertainment parlours

368b.—(1) By-laws may be passed by the councils of all municipalities for licensing, regulating, governing, classifying and inspecting adult entertainment parlours or any class or classes thereof and for revoking or suspending any such licence and for limiting the number of such licences to be granted, in accordance with subsection 3.

Signs, advertising, etc.

(2) A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting adult entertainment parlours or any class or classes thereof or for the prohibition of such signs, advertising or advertising devices.

Defined areas, limitation on numbers

(3) Notwithstanding subsection 6 of section 246, a by-law passed under this section may define the area or areas of the municipality in which adult entertainment parlours or any class or classes thereof may or may not operate and may limit the number of licences to be granted in respect of adult entertainment parlours or any class or classes thereof in any such area or areas in which they are permitted.

Construction and equipment of premises

(4) A by-law passed under this section may provide that no premises in which an adult entertainment parlour is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law.

Entry

(5) Where a medical officer of health or a public health inspector acting under his direction, or a peace officer, has reason to suspect that a breach of any provision of a by-law passed under this section has occurred in respect of an adult entertainment parlour, he may enter such adult entertainment parlour, at any time of the night or day, for purposes of carrying out the enforcement of a by-law passed under this section.

Hours of operation

(6) Notwithstanding subsection 2a of section 246 and section 355, a by-law passed under this section may regulate the hours of operation of adult entertainment parlours or any class or classes thereof.

(b) *“body-rub parlour” includes any premises or part thereof where a body-rub is performed, offered or solicited in pursuance of a trade, calling, business or occupation, but does not include any premises or part thereof where the body-rubs performed are for the purpose of medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario.*

The re-enactment of subsection 2 of section 368a adds “any printed matter, oral or other communication or thing” to the description of advertising or promotional matters that may be regulated.

The amendment to subsection 3 of section 368a is to make it clear that body-rub parlours may be prohibited from operating in a defined area even if one or more are located in that area at the time the by-law comes into force.

Subsections 5a, 5b and 5c are added to enlarge and clarify the powers conferred in respect of licensing and regulating body-rub parlours.

SECTION 2. The new section 368b confers on all municipalities the power to license, regulate, govern, classify and inspect in the manner specified adult entertainment parlours as defined in the section.



(7) A by-law passed under this section may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under this section from permitting any person under an age specified in the by-law to enter or remain in the adult entertainment parlour or any part thereof. Age
restriction

(8) By-laws passed under this section do not apply to premises or trades, callings, businesses or occupations carried on in premises licensed under *The Theatres Act* or licensed under *The Liquor Licence Act, 1975* or licensed under a by-law passed under section 368a of this Act. Non-
application
of by-laws
R.S.O. 1970,
c. 459
1975, c. 40

(9) In this section,

Interpre-
tation

- (a) "adult entertainment parlour" means any premises or part thereof in which is provided goods or services appealing to or designed to appeal to, erotic or sexual appetites or inclinations;
- (b) "goods" includes books, magazines, pictures, slides, film, phonograph records, prerecorded magnetic tape and any other reading, viewing or listening matter;
- (c) "to provide" when used in relation to goods includes to sell, offer to sell or display for sale, by retail or otherwise such goods, and "providing" and "provision" have corresponding meanings;
- (d) "to provide" when used in relation to services includes to furnish, perform, solicit, or give such services and "providing" and "provision" have corresponding meanings;
- (e) "services" includes activities, facilities, performances, exhibitions, viewings and encounters;
- (f) "services designed to appeal to erotic or sexual appetites or inclinations" includes,
 - (i) services of which a principal feature or characteristic is the nudity or partial nudity of any person,
 - (ii) services in respect of which the word "nude", "naked", "topless", "bottomless", "sexy" or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement.

*Prima
facie
proof*

(10) For the purpose of any prosecution or proceeding under a by-law passed under this section, the holding out to the public that goods or services described in this section are provided in premises, or any part thereof, is admissible in evidence as *prima facie* proof that the premises or part thereof is an adult entertainment parlour.

Other
powers not
affected

(11) Nothing in this section affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

ss. 466a,
470a, 470b,
enacted

3. The said Act is further amended by adding thereto the following sections:

Statement
of clerk,
etc., as to
licensing or
non-
licensing

466a. For the purpose of any prosecution or proceeding under a by-law for licensing, regulating, governing, classifying or inspecting any trade, calling, business or occupation, a statement as to the licensing or non-licensing of any premises or person in respect of any trade, calling, business or occupation, purporting to be signed by the clerk of a municipality or of a regional or metropolitan municipality or by the chief administrative officer of a board of commissioners of police or of a licensing commission, is, without proof of the office or signature of the said clerk or officer, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in such prosecution or proceeding.

Offence

470a.—(1) A by-law passed under section 368a or 368b may provide that every person who contravenes the by-law, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and on summary conviction is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year, or to both.

Corpora-
tion,
maximum
penalty

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed on the corporation is \$25,000 and not as provided therein.

Order
closing
premises

470b.—(1) Where a person is convicted of carrying on or engaging in, on, in or in respect of any premises or part thereof, a trade, calling, business or occupation, without a licence required by a by-law passed under section 368a or 368b, the court shall order that the premises or part thereof be closed to any use for any period not exceeding two years.

Idem

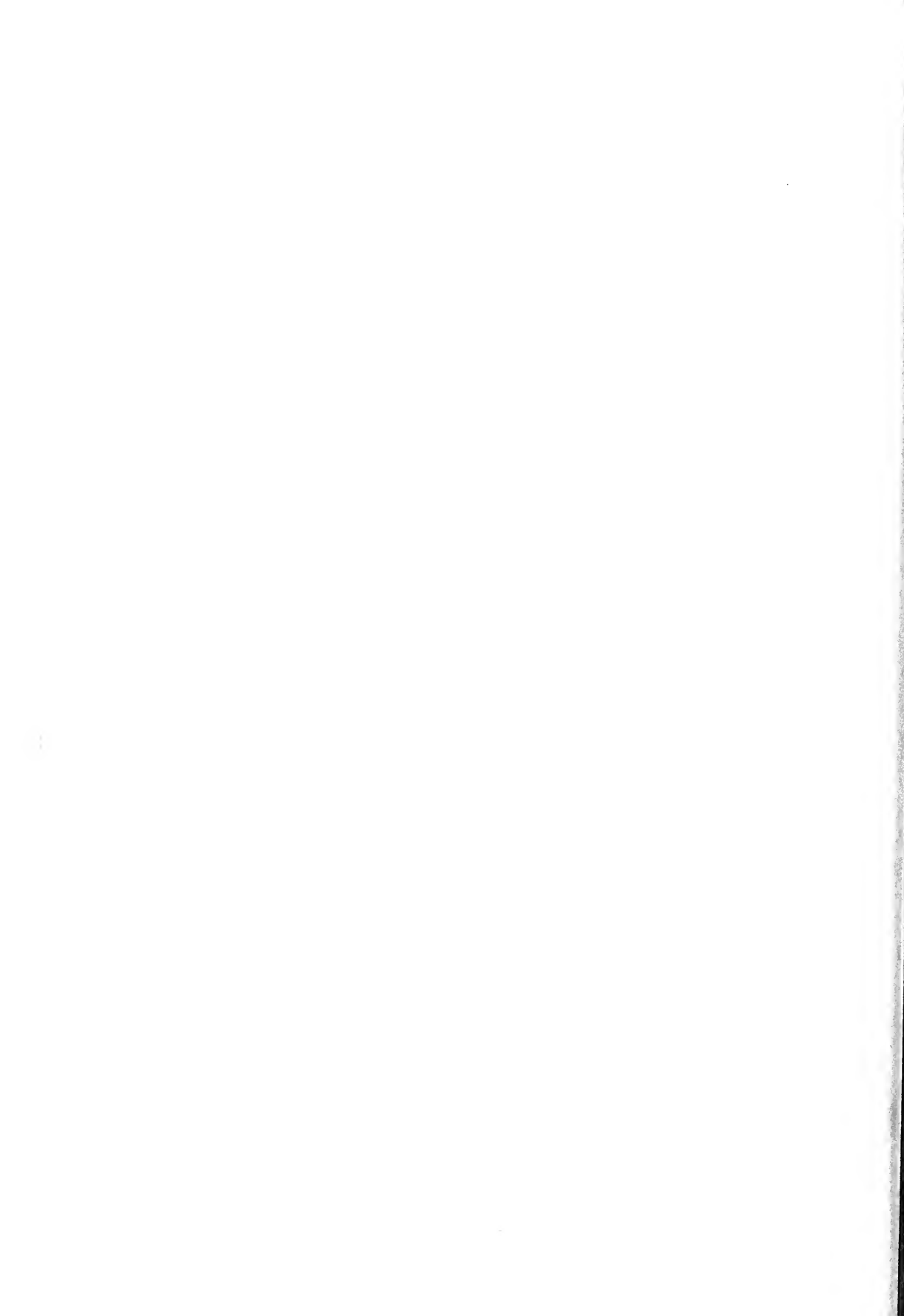
(2) Where a person is convicted of a contravention of a by-law passed under section 368a or 368b, other than

SECTION 3. The new section 466a provides that the signed statement of the clerk or other chief administrative officer as to the licensing or non-licensing of any premises or person is *prima facie* proof of the facts stated therein for the purposes of any prosecution under a by-law licensing or regulating any trade, calling, business or occupation.

The new section 470a provides that by-laws licensing and regulating body-rub parlours or adult entertainment parlours may provide for a fine of up to \$10,000 in the case of an individual or \$25,000 in the case of a corporation for a contravention of the by-law. Generally, under section 466, the maximum fine that may be levied is \$1,000.

The new section 470b provides, under the circumstances set out therein, for the issue of a court order closing premises for a period of up to two years where a person has been convicted, in respect of those premises, of a contravention of a by-law licensing and regulating body-rub parlours or adult entertainment parlours. Such a closing order **must** be issued where the conviction is for carrying on the business without a licence. It **may** be issued where the conviction is for some other breach of the by-law. Following such an order, the police force having jurisdiction in the area is to bar entry to all entrances to the premises, so long as the order remains in effect. Where such a closing order has been made, a county or district court may, on application of a person who has an interest in the premises, suspend the closing order on the posting of a cash bond of at least \$10,000, such bond being liable to forfeiture if a subsequent conviction is registered. Where the court is satisfied there has been or will be a *bona fide* change in ownership of closed premises and that the new owner can ensure there will be no further contraventions of the by-law, the court may, on application therefor, discharge the closing order.

Where an appeal is taken against a closing order or against the conviction that resulted in the closing order being made, the appellant may apply for a suspension of the closing order or application may be made for a discharge of the closing order, but the fact such an appeal has been commenced does not of itself stay the closing order.



carrying on or engaging in a trade, calling, business or occupation without a licence so to do, and the court decides that the owner or other person occupying the premises or part thereof in respect of which the conviction was made knew or ought to have known of the conduct which formed the subject-matter of the conviction or of any pattern of similar conduct, the court may order that the premises or part thereof be closed to any use for any period not exceeding two years.

(3) Upon the application by originating notice of motion of any person who has an interest in the premises ordered closed under subsection 1 or 2 and upon, ^{Suspension of closing order}

- (a) being satisfied that the use to which the premises will be put will not be in contravention of any by-law passed under section 368a or 368b; and
- (b) the posting by the applicant of a cash bond in the sum of \$10,000 or such greater sum as the court determines, for such term as the court determines, for the purpose of assuring that the premises will not be used in contravention of any such by-law,

the court may make an order suspending any order made under subsection 1 or 2 for such period and upon such conditions as are specified by the court.

(4) Where, upon application brought by originating notice of motion, the court is satisfied that, ^{Discharge of closing order}

- (a) there has been or will be a *bona fide* change in effective ownership of the premises subsequent to the commission of an offence described in subsection 1 or 2; and
- (b) the new owner satisfies the court that he can ensure that there will be no contravention of any by-law passed under section 368a or 368b,

the court may discharge an order made under subsection 1 or 2.

(5) Where an order is made under subsection 1 or 2, the police force responsible for policing in the municipality or regional or metropolitan municipality, shall bar entry to all entrances to the premises or part or parts thereof named in the order until the order has been suspended or discharged pursuant to this section. ^{Barring of entry}

Forfeiture
of bond

(6) Where an order made under subsection 1 or 2 is suspended under subsection 3 and a person is thereafter convicted of an offence for contravention of a by-law passed under section 368*a* or 368*b* in respect of the premises or part thereof referred to in the order, a judge of the county or district court may, upon summary application, order the forfeiture of the bond and the payment to the Crown of the proceeds and may order that the suspension of the order be lifted and that the order be reinstated.

No appeal

(7) No appeal lies from an order made under subsection 6.

Service of
notice

(8) The municipality or metropolitan or regional municipality which passed a by-law described in subsection 1 or 2, the contravention of which was the basis for an order made under the provisions of either such subsection, is a party to any proceedings instituted under subsection 3, 4 or 6 in respect of such order, and shall be served in accordance with the rules of the court with a copy of the notice initiating the proceedings.

Where
by-law
deemed
passed by
council

(9) For the purposes of subsection 8, where the by-law under which the conviction was made was passed by a board of commissioners of police or by a licensing commission for a municipality, or regional or metropolitan municipality, as the case may be, the by-law shall be deemed to have been passed by the council of the municipality or regional or metropolitan municipality, as the case may be.

Application
for sus-
pension or
discharge of
closing
order

(10) Where an appeal is taken from an order made under subsection 1 or 2 or from a conviction in respect of which the order was made, the appellant may apply under subsection 3 for an order suspending the order made under subsection 1 or 2 until the disposition of the matter under appeal, or any person may apply under subsection 4 for a discharge of the order, but the fact that such an appeal is commenced does not stay the order.

Term of
closing
order

(11) An order made under subsection 1 or 2 shall take effect upon the pronouncement thereof and shall remain in effect during the term of the order, except to the extent that it is suspended pursuant to subsection 3 or until it is discharged pursuant to subsection 4.

Description
of premises

(12) The description of any premises or part thereof affected by an order made under subsection 1 or 2 shall be sufficiently made in such order by reference to the municipal address of such premises.

(13) An order made under subsection 1 or 2 may be registered in the land registry office in which the title to the place described in the order is recorded. ^{Registration}

(14) In subsections 1 and 2, "court" means a "summary conviction court" or an "appeal court" as defined by *The Summary Convictions Act*, and in subsections 3 and 4, "court" means the county or district court of the county or district in which the premises are situate. ^{Interpretation} ^{R.S.O. 1970, c. 460}

4. This Act comes into force on the day it receives Royal Assent. ^{Commencement}
5. The short title of this Act is *The Municipal Amendment Act, 1978*. ^{Short title}





An Act to amend
The Municipal Act

1st Reading

March 30th, 1978

2nd Reading

3rd Reading

THE HON. R. McMURTRY
Attorney General

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Municipal Act

THE HON. R. MCMURTRY
Attorney General

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

GENERAL

The Bill confers power on all municipalities to pass by-laws licensing, regulating and governing adult entertainment parlours (defined broadly in the Bill as premises in which are provided goods or services designed to appeal to erotic or sexual appetites or inclinations).

Certain additional powers are also granted in respect of the authority to license and regulate body-rub parlours now found in section 368a of the Act.

In addition, the Bill raises the maximum fines that may be levied for contravention of such by-laws and establishes a procedure for the closing, for a period of up to two years, of premises in respect of which any person has been convicted of a breach of any by-law licensing and regulating body-rub parlours or adult entertainment parlours.

SECTION 1. Section 368a of the Act now reads as follows:

368a.—(1) *By-laws may be passed by the councils of all municipalities for licensing, regulating, governing and inspecting body-rub parlours and for revoking or suspending any such licence and for limiting the number of licences to be granted, in accordance with subsection 3.*

(2) *A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices posted or used for the purpose of promoting body-rub parlours or for the prohibition of such signs, advertising, or advertising devices.*

(3) *A by-law passed under this section may define the area or areas of the municipality in which body-rub parlours may or may not operate and may limit the number of licences to be granted in respect of body-rub parlours in any such area or areas in which they are permitted.*

(4) *A by-law passed under this section may provide that no premises in which a body-rub parlour is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law.*

(5) *Where a medical officer of health or a public health inspector acting under his direction, or a peace officer, has reason to suspect that a breach of any provision of a by-law passed under this section has occurred in respect of a body-rub parlour, he may enter such body-rub parlour, at any time of the night or day, for purposes of carrying out the enforcement of a by-law passed under this section.*

(6) *For the purposes of this section,*

(a) *“body-rub” includes the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person’s body or part thereof but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario; and*

An Act to amend The Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 2 of section 368a of *The Municipal Act*, s. 368a (2).
being chapter 284 of the Revised Statutes of Ontario, re-enacted
1970, as enacted by the Statutes of Ontario, 1975,
chapter 56, section 8, is repealed and the following
substituted therefor:
- (2) A by-law passed under this section may provide for Signs,
regulating the placement, construction, size, nature and advertising,
and character of signs, advertising, and advertising devices, etc.
including any printed matter, oral or other communication
or thing, posted or used for the purpose of promoting body-
rub parlours or for the prohibition of such signs, advertising,
or advertising devices.
- (2) Subsection 3 of the said section 368a is amended by s. 368a (3).
adding at the commencement thereof “Notwithstanding amended
subsection 6 of section 246”.
- (3) The said section 368a is amended by adding thereto the s. 368a.
following subsections: amended
- (5a) A by-law passed under this section may prohibit any Age
person carrying on or engaged in the trade, calling, business restriction
or occupation for which a licence is required under this
section from permitting any person under the age of
eighteen years to enter or remain in the body-rub parlour or
any part thereof.
- (5b) For the purpose of any prosecution or proceeding under Prima
a by-law passed under this section, the holding out to the facie
public that services described in this section are provided proof
in premises or any part thereof, is admissible in evidence as
prima facie proof that the premises or part thereof is a body-
rub parlour.

Other powers not affected

(5c) Nothing in this section affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

s. 368b, enacted

2. The said Act is amended by adding thereto the following section:

Licensing, regulating, etc., adult entertainment parlours

368b.—(1) By-laws may be passed by the councils of all municipalities for licensing, regulating, governing, classifying and inspecting adult entertainment parlours or any class or classes thereof and for revoking or suspending any such licence and for limiting the number of such licences to be granted, in accordance with subsection 3.

Signs, advertising, etc.

(2) A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting adult entertainment parlours or any class or classes thereof or for the prohibition of such signs, advertising or advertising devices.

Defined areas, limitation on numbers

(3) Notwithstanding subsection 6 of section 246, a by-law passed under this section may define the area or areas of the municipality in which adult entertainment parlours or any class or classes thereof may or may not operate and may limit the number of licences to be granted in respect of adult entertainment parlours or any class or classes thereof in any such area or areas in which they are permitted.

Construction and equipment of premises

(4) A by-law passed under this section may provide that no premises in which an adult entertainment parlour is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law.

Entry

(5) Where a medical officer of health or a public health inspector acting under his direction, or a peace officer, has reason to suspect that a breach of any provision of a by-law passed under this section has occurred in respect of an adult entertainment parlour, he may enter such adult entertainment parlour, at any time of the night or day, for purposes of carrying out the enforcement of a by-law passed under this section.

Hours of operation

(6) Notwithstanding subsection 2a of section 246 and section 355, a by-law passed under this section may regulate the hours of operation of adult entertainment parlours or any class or classes thereof.

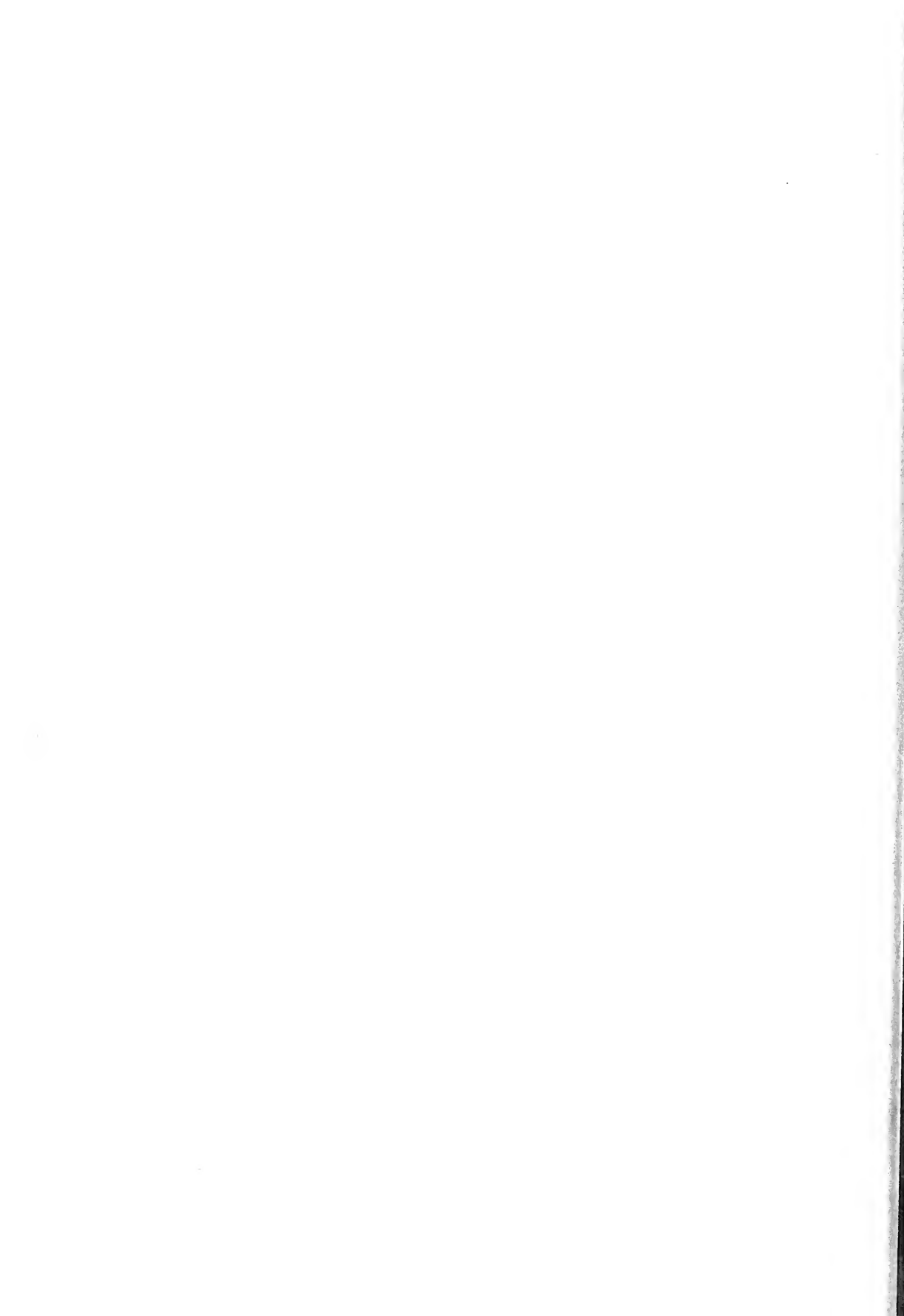
(b) *“body-rub parlour” includes any premises or part thereof where a body-rub is performed, offered or solicited in pursuance of a trade, calling, business or occupation, but does not include any premises or part thereof where the body-rubs performed are for the purpose of medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario.*

The re-enactment of subsection 2 of section 368a adds “any printed matter, oral or other communication or thing” to the description of advertising or promotional matters that may be regulated.

The amendment to subsection 3 of section 368a is to make it clear that body-rub parlours may be prohibited from operating in a defined area even if one or more are located in that area at the time the by-law comes into force.

Subsections 5a, 5b and 5c are added to enlarge and clarify the powers conferred in respect of licensing and regulating body-rub parlours.

SECTION 2. The new section 368b confers on all municipalities the power to license, regulate, govern, classify and inspect in the manner specified adult entertainment parlours as defined in the section.



(7) A by-law passed under this section may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under this section from permitting any person under the age of eighteen years to enter or remain in the adult entertainment parlour or any part thereof. Age restriction

(8) By-laws passed under this section do not apply to premises or trades, callings, businesses or occupations carried on in premises licensed under *The Theatres Act* or licensed under *The Liquor Licence Act, 1975* or licensed under a by-law passed under section 368a of this Act. Non-application of by-laws
R.S.O. 1970,
c. 459
1975, c. 40

(9) In this section, Interpretation

- (a) "adult entertainment parlour" means any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations;
- (b) "goods" includes books, magazines, pictures, slides, film, phonograph records, prerecorded magnetic tape and any other reading, viewing or listening matter;
- (c) "to provide" when used in relation to goods includes to sell, offer to sell or display for sale, by retail or otherwise such goods, and "providing" and "provision" have corresponding meanings;
- (d) "to provide" when used in relation to services includes to furnish, perform, solicit, or give such services and "providing" and "provision" have corresponding meanings;
- (e) "services" includes activities, facilities, performances, exhibitions, viewings and encounters;
- (f) "services designed to appeal to erotic or sexual appetites or inclinations" includes,
 - (i) services of which a principal feature or characteristic is the nudity or partial nudity of any person,
 - (ii) services in respect of which the word "nude", "naked", "topless", "bottomless", "sexy" or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement.

*Prima
facie
proof*

(10) For the purpose of any prosecution or proceeding under a by-law passed under this section, the holding out to the public that goods or services described in this section are provided in premises, or any part thereof, is admissible in evidence as *prima facie* proof that the premises or part thereof is an adult entertainment parlour.

Other
powers not
affected

(11) Nothing in this section affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

ss. 466a,
470a, 470b,
enacted

3. The said Act is further amended by adding thereto the following sections:

Statement
of clerk,
etc., as to
licensing or
non-
licensing

466a. For the purpose of any prosecution or proceeding under a by-law for licensing, regulating, governing, classifying or inspecting any trade, calling, business or occupation, a statement as to the licensing or non-licensing of any premises or person in respect of any trade, calling, business or occupation, purporting to be signed by the clerk of a municipality or of a regional or metropolitan municipality or by the chief administrative officer of a board of commissioners of police or of a licensing commission, is, without proof of the office or signature of the said clerk or officer, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in such prosecution or proceeding.

Offence

470a.—(1) A by-law passed under section 368a or 368b may provide that every person who contravenes the by-law, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and on summary conviction is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year, or to both.

Corpora-
tion,
maximum
penalty

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed on the corporation is \$25,000 and not as provided therein.

Order
closing
premises

470b.—(1) Where a person is convicted of carrying on or engaging in, on, in or in respect of any premises or part thereof, a trade, calling, business or occupation, without a licence required by a by-law passed under section 368a or 368b, the court shall order that the premises or part thereof be closed to any use for any period not exceeding two years.

Idem

(2) Where a person is convicted of a contravention of a by-law passed under section 368a or 368b, other than

SECTION 3. The new section 466a provides that the signed statement of the clerk or other chief administrative officer as to the licensing or non-licensing of any premises or person is *prima facie* proof of the facts stated therein for the purposes of any prosecution under a by-law licensing or regulating any trade, calling, business or occupation.

The new section 470a provides that by-laws licensing and regulating body-rub parlours or adult entertainment parlours may provide for a fine of up to \$10,000 in the case of an individual or \$25,000 in the case of a corporation for a contravention of the by-law. Generally, under section 466, the maximum fine that may be levied is \$1,000.

The new section 470b provides, under the circumstances set out therein, for the issue of a court order closing premises for a period of up to two years where a person has been convicted, in respect of those premises, of a contravention of a by-law licensing and regulating body-rub parlours or adult entertainment parlours. Such a closing order **must** be issued where the conviction is for carrying on the business without a licence. It **may** be issued where the conviction is for some other breach of the by-law. Following such an order, the police force having jurisdiction in the area is to bar entry to all entrances to the premises, so long as the order remains in effect. Where such a closing order has been made, a county or district court may, on application of a person who has an interest in the premises, suspend the closing order on the posting of a cash bond of at least \$10,000, such bond being liable to forfeiture if a subsequent conviction is registered. Where the court is satisfied there has been or will be a *bona fide* change in ownership of closed premises and that the new owner can ensure there will be no further contraventions of the by-law, the court may, on application therefor, discharge the closing order.

Where an appeal is taken against a closing order or against the conviction that resulted in the closing order being made, the appellant may apply for a suspension of the closing order or application may be made for a discharge of the closing order, but the fact such an appeal has been commenced does not of itself stay the closing order.



carrying on or engaging in a trade, calling, business or occupation without a licence so to do, and the court decides that the owner or other person occupying the premises or part thereof in respect of which the conviction was made knew or ought to have known of the conduct which formed the subject-matter of the conviction or of any pattern of similar conduct, the court may order that the premises or part thereof be closed to any use for any period not exceeding two years.

(3) Upon the application by originating notice of motion of any person who has an interest in the premises ordered closed under subsection 1 or 2 and upon, ^{Suspension of closing order}

- (a) being satisfied that the use to which the premises will be put will not be in contravention of any by-law passed under section 368a or 368b; and
- (b) the posting by the applicant of a cash bond in the sum of \$10,000 or such greater sum as the court determines, for such term as the court determines, for the purpose of assuring that the premises will not be used in contravention of any such by-law,

the court may make an order suspending any order made under subsection 1 or 2 for such period and upon such conditions as are specified by the court.

(4) Where, upon application brought by originating notice of motion, the court is satisfied that, ^{Discharge of closing order}

- (a) there has been or will be a *bona fide* change in effective ownership of the premises subsequent to the commission of an offence described in subsection 1 or 2; and
- (b) the new owner satisfies the court that he can ensure that there will be no contravention of any by-law passed under section 368a or 368b,

the court may discharge an order made under subsection 1 or 2.

(5) Where an order is made under subsection 1 or 2, the police force responsible for policing in the municipality or regional or metropolitan municipality, shall bar entry to all entrances to the premises or part or parts thereof named in the order until the order has been suspended or discharged pursuant to this section. ^{Barring of entry}

Forfeiture
of bond

(6) Where an order made under subsection 1 or 2 is suspended under subsection 3 and a person is thereafter convicted of an offence for contravention of a by-law passed under section 368*a* or 368*b* in respect of the premises or part thereof referred to in the order, a judge of the county or district court may, upon summary application, order the forfeiture of the bond and the payment to the Crown of the proceeds and may order that the suspension of the order be lifted and that the order be reinstated.

No appeal

(7) No appeal lies from an order made under subsection 6.

Service of
notice

(8) The municipality or metropolitan or regional municipality which passed a by-law described in subsection 1 or 2, the contravention of which was the basis for an order made under the provisions of either such subsection, is a party to any proceedings instituted under subsection 3, 4 or 6 in respect of such order, and shall be served in accordance with the rules of the court with a copy of the notice initiating the proceedings.

Where
by-law
deemed
passed by
council

(9) For the purposes of subsection 8, where the by-law under which the conviction was made was passed by a board of commissioners of police or by a licensing commission for a municipality, or regional or metropolitan municipality, as the case may be, the by-law shall be deemed to have been passed by the council of the municipality or regional or metropolitan municipality, as the case may be.

Application
for sus-
pension or
discharge of
closing
order

(10) Where an appeal is taken from an order made under subsection 1 or 2 or from a conviction in respect of which the order was made, the appellant may apply under subsection 3 for an order suspending the order made under subsection 1 or 2 until the disposition of the matter under appeal, or any person may apply under subsection 4 for a discharge of the order, but the fact that such an appeal is commenced does not stay the order.

Term of
closing
order

(11) An order made under subsection 1 or 2 shall take effect upon the pronouncement thereof and shall remain in effect during the term of the order, except to the extent that it is suspended pursuant to subsection 3 or until it is discharged pursuant to subsection 4.

Description
of premises

(12) The description of any premises or part thereof affected by an order made under subsection 1 or 2 shall be sufficiently made in such order by reference to the municipal address of such premises.

(13) An order made under subsection 1 or 2 may be registered in the land registry office in which the title to the place described in the order is recorded. ^{Registration}

(14) In subsections 1 and 2, "court" means a "summary conviction court" or an "appeal court" as defined by *The Summary Convictions Act*, and in subsections 3 and 4, "court" means the county or district court of the county or district in which the premises are situate. <sup>Interpre-
tation
R.S.O. 1970,
c. 450</sup>

4. This Act comes into force on the day it receives Royal Assent. <sup>Commence-
ment</sup>
5. The short title of this Act is *The Municipal Amendment Act, 1978*. ^{Short title}





An Act to amend
The Municipal Act

1st Reading

March 30th, 1978

2nd Reading

April 18th, 1978

3rd Reading

THE HON. R. MCMURTRY
Attorney General

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 49

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 2 of section 368a of *The Municipal Act*, s. 368a (2),
being chapter 284 of the Revised Statutes of Ontario, re-enacted
1970, as enacted by the Statutes of Ontario, 1975,
chapter 56, section 8, is repealed and the following
substituted therefor:

(2) A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting body-rub parlours or for the prohibition of such signs, advertising, or advertising devices. Signs,
advertising,
etc.

- (2) Subsection 3 of the said section 368a is amended by adding at the commencement thereof "Notwithstanding subsection 6 of section 246". s. 368a (3),
amended

- (3) The said section 368a is amended by adding thereto the following subsections: s. 368a,
amended

(5a) A by-law passed under this section may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under this section from permitting any person under the age of eighteen years to enter or remain in the body-rub parlour or any part thereof. Age
restriction

(5b) For the purpose of any prosecution or proceeding under a by-law passed under this section, the holding out to the public that services described in this section are provided in premises or any part thereof, is admissible in evidence as *prima facie* proof that the premises or part thereof is a body-rub parlour. *Prima
facie
proof*

Other powers not affected

(5c) Nothing in this section affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

s. 368b, enacted

2. The said Act is amended by adding thereto the following section:

Licensing, regulating, etc., adult entertainment parlours

368b.—(1) By-laws may be passed by the councils of all municipalities for licensing, regulating, governing, classifying and inspecting adult entertainment parlours or any class or classes thereof and for revoking or suspending any such licence and for limiting the number of such licences to be granted, in accordance with subsection 3.

Signs, advertising, etc.

(2) A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting adult entertainment parlours or any class or classes thereof or for the prohibition of such signs, advertising or advertising devices.

Defined areas, limitation on numbers

(3) Notwithstanding subsection 6 of section 246, a by-law passed under this section may define the area or areas of the municipality in which adult entertainment parlours or any class or classes thereof may or may not operate and may limit the number of licences to be granted in respect of adult entertainment parlours or any class or classes thereof in any such area or areas in which they are permitted.

Construction and equipment of premises

(4) A by-law passed under this section may provide that no premises in which an adult entertainment parlour is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law.

Entry

(5) Where a medical officer of health or a public health inspector acting under his direction, or a peace officer, has reason to suspect that a breach of any provision of a by-law passed under this section has occurred in respect of an adult entertainment parlour, he may enter such adult entertainment parlour, at any time of the night or day, for purposes of carrying out the enforcement of a by-law passed under this section.

Hours of operation

(6) Notwithstanding subsection 2a of section 246 and section 355, a by-law passed under this section may regulate the hours of operation of adult entertainment parlours or any class or classes thereof.

(7) A by-law passed under this section may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under this section from permitting any person under the age of eighteen years to enter or remain in the adult entertainment parlour or any part thereof.

Age
restriction

(8) By-laws passed under this section do not apply to premises or trades, callings, businesses or occupations carried on in premises licensed under *The Theatres Act* or licensed under *The Liquor Licence Act, 1975* or licensed under a by-law passed under section 368a of this Act.

Non-
application
of by-laws
R.S.O. 1970,
c. 459
1975, c. 40

(9) In this section,

Interpre-
tation

- (a) "adult entertainment parlour" means any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations;
- (b) "goods" includes books, magazines, pictures, slides, film, phonograph records, prerecorded magnetic tape and any other reading, viewing or listening matter;
- (c) "to provide" when used in relation to goods includes to sell, offer to sell or display for sale, by retail or otherwise such goods, and "providing" and "provision" have corresponding meanings;
- (d) "to provide" when used in relation to services includes to furnish, perform, solicit, or give such services and "providing" and "provision" have corresponding meanings;
- (e) "services" includes activities, facilities, performances, exhibitions, viewings and encounters;
- (f) "services designed to appeal to erotic or sexual appetites or inclinations" includes,
 - (i) services of which a principal feature or characteristic is the nudity or partial nudity of any person,
 - (ii) services in respect of which the word "nude", "naked", "topless", "bottomless", "sexy" or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement.

*Prima
facie
proof*

(10) For the purpose of any prosecution or proceeding under a by-law passed under this section, the holding out to the public that goods or services described in this section are provided in premises, or any part thereof, is admissible in evidence as *prima facie* proof that the premises or part thereof is an adult entertainment parlour.

Other
powers not
affected

(11) Nothing in this section affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

ss. 466a,
470a, 470b,
enacted

3. The said Act is further amended by adding thereto the following sections:

Statement
of clerk,
etc., as to
licensing or
non-
licensing

466a. For the purpose of any prosecution or proceeding under a by-law for licensing, regulating, governing, classifying or inspecting any trade, calling, business or occupation, a statement as to the licensing or non-licensing of any premises or person in respect of any trade, calling, business or occupation, purporting to be signed by the clerk of a municipality or of a regional or metropolitan municipality or by the chief administrative officer of a board of commissioners of police or of a licensing commission, is, without proof of the office or signature of the said clerk or officer, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in such prosecution or proceeding.

Offence

470a.—(1) A by-law passed under section 368a or 368b may provide that every person who contravenes the by-law, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and on summary conviction is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year, or to both.

Corpora-
tion,
maximum
penalty

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed on the corporation is \$25,000 and not as provided therein.

Order
closing
premises

470b.—(1) Where a person is convicted of carrying on or engaging in, on, in or in respect of any premises or part thereof, a trade, calling, business or occupation, without a licence required by a by-law passed under section 368a or 368b, the court shall order that the premises or part thereof be closed to any use for any period not exceeding two years.

Idem

(2) Where a person is convicted of a contravention of a by-law passed under section 368a or 368b, other than

carrying on or engaging in a trade, calling, business or occupation without a licence so to do, and the court decides that the owner or other person occupying the premises or part thereof in respect of which the conviction was made knew or ought to have known of the conduct which formed the subject-matter of the conviction or of any pattern of similar conduct, the court may order that the premises or part thereof be closed to any use for any period not exceeding two years.

(3) Upon the application by originating notice of motion of any person who has an interest in the premises ordered closed under subsection 1 or 2 and upon, ^{Suspension of closing order}

- (a) being satisfied that the use to which the premises will be put will not be in contravention of any by-law passed under section 368a or 368b; and
- (b) the posting by the applicant of a cash bond in the sum of \$10,000 or such greater sum as the court determines, for such term as the court determines, for the purpose of assuring that the premises will not be used in contravention of any such by-law,

the court may make an order suspending any order made under subsection 1 or 2 for such period and upon such conditions as are specified by the court.

(4) Where, upon application brought by originating notice of motion, the court is satisfied that, ^{Discharge of closing order}

- (a) there has been or will be a *bona fide* change in effective ownership of the premises subsequent to the commission of an offence described in subsection 1 or 2; and
- (b) the new owner satisfies the court that he can ensure that there will be no contravention of any by-law passed under section 368a or 368b,

the court may discharge an order made under subsection 1 or 2.

(5) Where an order is made under subsection 1 or 2, the police force responsible for policing in the municipality or regional or metropolitan municipality, shall bar entry to all entrances to the premises or part or parts thereof named in the order until the order has been suspended or discharged pursuant to this section. ^{Barring of entry}

Forfeiture
of bond

(6) Where an order made under subsection 1 or 2 is suspended under subsection 3 and a person is thereafter convicted of an offence for contravention of a by-law passed under section 368a or 368b in respect of the premises or part thereof referred to in the order, a judge of the county or district court may, upon summary application, order the forfeiture of the bond and the payment to the Crown of the proceeds and may order that the suspension of the order be lifted and that the order be reinstated.

No appeal

(7) No appeal lies from an order made under subsection 6.

Service of
notice

(8) The municipality or metropolitan or regional municipality which passed a by-law described in subsection 1 or 2, the contravention of which was the basis for an order made under the provisions of either such subsection, is a party to any proceedings instituted under subsection 3, 4 or 6 in respect of such order, and shall be served in accordance with the rules of the court with a copy of the notice initiating the proceedings.

Where
by-law
deemed
passed by
council

(9) For the purposes of subsection 8, where the by-law under which the conviction was made was passed by a board of commissioners of police or by a licensing commission for a municipality, or regional or metropolitan municipality, as the case may be, the by-law shall be deemed to have been passed by the council of the municipality or regional or metropolitan municipality, as the case may be.

Application
for sus-
pension or
discharge of
closing
order

(10) Where an appeal is taken from an order made under subsection 1 or 2 or from a conviction in respect of which the order was made, the appellant may apply under subsection 3 for an order suspending the order made under subsection 1 or 2 until the disposition of the matter under appeal, or any person may apply under subsection 4 for a discharge of the order, but the fact that such an appeal is commenced does not stay the order.

Term of
closing
order

(11) An order made under subsection 1 or 2 shall take effect upon the pronouncement thereof and shall remain in effect during the term of the order, except to the extent that it is suspended pursuant to subsection 3 or until it is discharged pursuant to subsection 4.

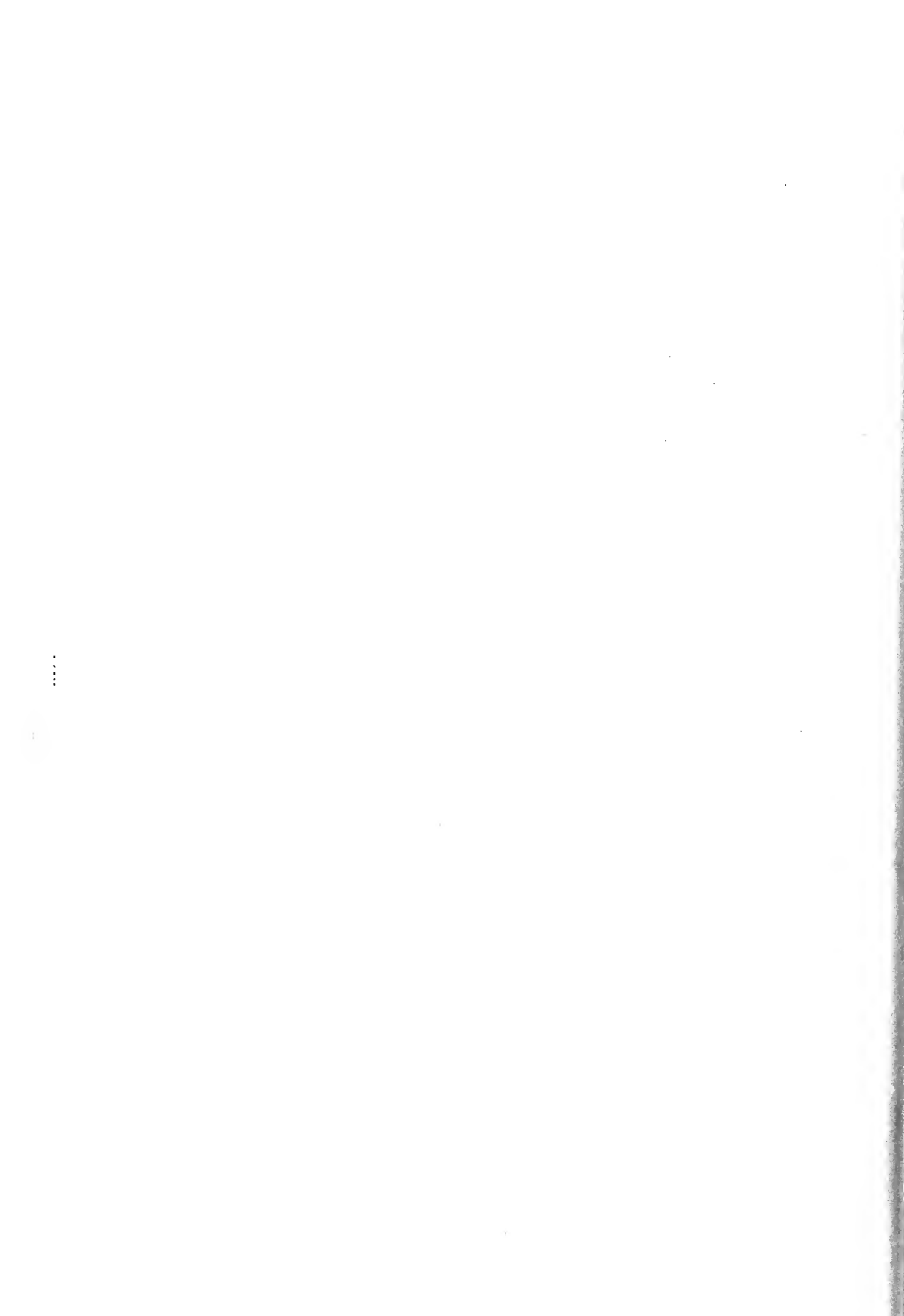
Description
of premises

(12) The description of any premises or part thereof affected by an order made under subsection 1 or 2 shall be sufficiently made in such order by reference to the municipal address of such premises.

(13) An order made under subsection 1 or 2 may be registered in the land registry office in which the title to the place described in the order is recorded. ^{Registration}

(14) In subsections 1 and 2, "court" means a "summary conviction court" or an "appeal court" as defined by *The Summary Convictions Act*, and in subsections 3 and 4, "court" means the county or district court of the county or district in which the premises are situate. ^{Interpretation} ^{R.S.O. 1970, c. 450}

4. This Act comes into force on the day it receives Royal Assent. ^{Commencement}
5. The short title of this Act is *The Municipal Amendment Act, 1978*. ^{Short title}





An Act to amend
The Municipal Act

1st Reading

March 30th, 1978

2nd Reading

April 18th, 1978

3rd Reading

April 25th, 1978

THE HON. R. MCMURTRY
Attorney General

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Landlord and Tenant Act**

THE HON. R. McMURTRY
Attorney General

EXPLANATORY NOTE

The Bill is complementary to the Bill to amend *The Municipal Act* that confers additional powers on municipalities respecting body-rub parlours and adult entertainment parlours.

Subsection 2 of section 18 of the Act as it is proposed to be amended is set out below showing underlined the words to be added:

- (2) *In every such demise there shall be deemed to be included an agreement that if the tenant or any other person is convicted of keeping a disorderly house within the meaning of the Criminal Code (Canada) on the demised premises or any part thereof, or carries on or engages in, on the demised premises or any part thereof, any trade, calling, business or occupation for which a licence is required under a by-law passed under section 368a or 368b of The Municipal Act for licensing, regulating or governing such trade, calling, business or occupation, except under the authority of a licence issued under such by-law, it is lawful for the landlord at any time thereafter to re-enter into the demised premises or any part thereof and to have again, repossess and enjoy the same as of his former estate.*

The effect is to deem that in every lease of commercial premises there is contained an agreement that if the tenant carries on in the leased premises a business requiring a licence by a by-law passed to license and regulate body-rub parlours or adult entertainment parlours, and does not have such licence, the landlord may terminate the lease and re-enter on the premises.

BILL 50

1978

**An Act to amend
The Landlord and Tenant Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 18 of *The Landlord and Tenant Act*, ^{s. 18 (2),} amended being chapter 236 of the Revised Statutes of Ontario, 1970, is amended by inserting after "thereof" in the fourth line "or carries on or engages in, on the demised premises or any part thereof, any trade, calling, business or occupation for which a licence is required under a by-law passed under section 368a or 368b of *The Municipal Act* for licensing, regulating or governing such trade, calling, business or occupation, except under the authority of a licence issued under such by-law".
2. This Act comes into force on the day it receives Royal Assent. ^{Commence-}ment
3. The short title of this Act is *The Landlord and Tenant Amend-* Short title
ment Act, 1978.

An Act to amend
The Landlord and Tenant Act

1st Reading

March 30th, 1978

2nd Reading

3rd Reading

THE HON. R. McMURTRY
Attorney General

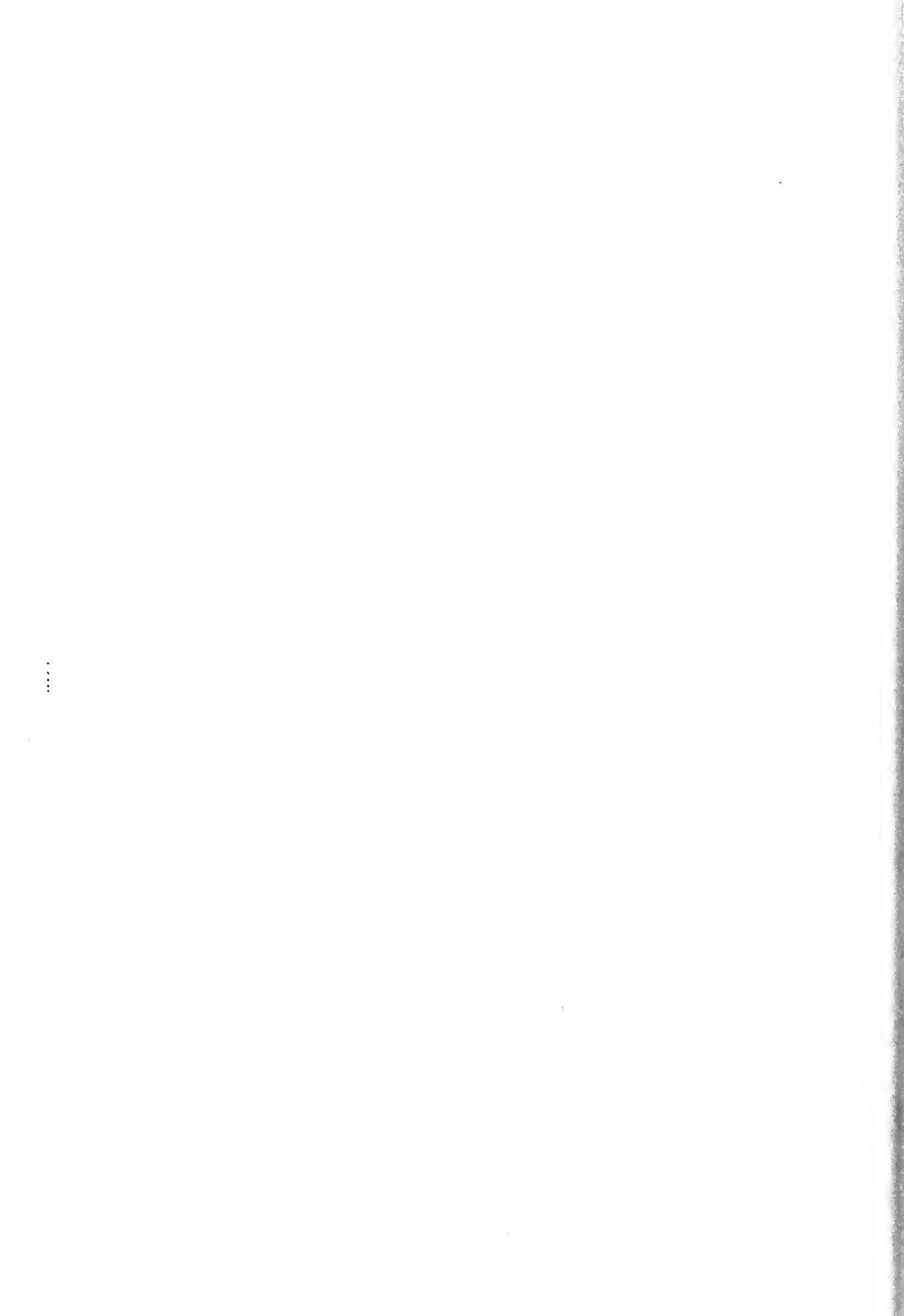
(Government Bill)

BILL 50

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Landlord and Tenant Act**

THE HON. R. McMURTRY
Attorney General



BILL 50

1978

**An Act to amend
The Landlord and Tenant Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 18 of *The Landlord and Tenant Act*,<sup>s. 18 (2).
amended</sup> being chapter 236 of the Revised Statutes of Ontario, 1970, is amended by inserting after "thereof" in the fourth line "or carries on or engages in, on the demised premises or any part thereof, any trade, calling, business or occupation for which a licence is required under a by-law passed under section 368a or 368b of *The Municipal Act* for licensing, regulating or governing such trade, calling, business or occupation, except under the authority of a licence issued under such by-law".
2. This Act comes into force on the day it receives Royal Assent.<sup>Commence-
ment</sup>
3. The short title of this Act is *The Landlord and Tenant Amend-
ment Act, 1978*.^{Short title}

An Act to amend
The Landlord and Tenant Act

1st Reading

March 30th, 1978

2nd Reading

April 25th, 1978

3rd Reading

April 25th, 1978

THE HON. R. McMURTRY
Attorney General

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act respecting Occupiers' Liability

MR. LAWLOR

EXPLANATORY NOTE

The Bill replaces the common law as to an occupier's duty of care, replacing the common law distinctions between duties to invitees, licensees, trespassers and child trespassers with one common duty of care applied to the circumstances of each case.

The Bill is in the form recommended by The Uniform Law Conference of Canada.

BILL 51

1978

An Act respecting Occupiers' Liability

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "occupier" means,

- (i) a person who is in physical possession of premises, or
- (ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter the premises,

and, for the purposes of this Act, there may be more than one occupier of the same premises;

(b) "premises" includes,

- (i) land and structures or either of them, excepting portable structures and equipment other than those described in subclause iii,
- (ii) ships and vessels,
- (iii) trailers and portable structures designed or used for a residence, business, or shelter,
- (iv) railway locomotives, railway cars, vehicles, and aircraft while not in operation.

2. Subject to subsection 4 of section 3, and sections 4 and 9, the provisions of this Act determine the care that

Application
of Act

an occupier is required to show toward persons entering on the premises in respect of dangers to them, or to their property on the premises, or to the property on the premises of persons who have not themselves entered on the premises, that are due to the state of the premises, or to anything done or omitted to be done on the premises, and for which he is in law responsible.

Occupiers' duty of care

3.—(1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that any person, and his property on the premises, and any property on the premises of a person, whether or not that person himself enters on the premises, will be reasonably safe in using the premises.

Idem

(2) The duty of care referred to in subsection 1 applies in relation to,

- (a) the condition of the premises; or
- (b) activities on the premises; or
- (c) the conduct of third parties on the premises.

Where no duty of care

(3) Notwithstanding subsection 1, an occupier has no duty of care to a person in respect of risks willingly accepted by that person as his own risks.

Higher standard of care preserved

(4) Nothing in this section relieves an occupier of premises of a duty to exercise, in a particular case, a higher standard of care which, in that case, is incumbent upon him by virtue of an enactment or rule of law imposing special standards of care on particular classes of persons.

Contracting out

4.—(1) Subject to subsections 2, 3 and 4, where an occupier is permitted by law to extend, restrict, modify, or exclude his duty of care to any person by express agreement, or by express stipulation or notice, the occupier shall take reasonable steps to bring such extension, restriction, modification, or exclusion to the attention of that person.

Idem

(2) Subsection 1 does not apply to a person,

- (a) who is not privy to the express agreement;
- (b) who is empowered or permitted to enter or use the premises without the consent or permission of the occupier.

(3) Where an occupier is bound by contract to permit persons who are not privy to the contract to enter or use the premises, the duty of care of the occupier to such persons shall, notwithstanding anything to the contrary in that contract, not be restricted, modified or excluded thereby. ^{Duty owed to persons not privy to contract}

(4) This section applies to express contracts entered into before or after the commencement of this section. ^{Applicable to express contracts}

5.—(1) Notwithstanding subsection 1 of section 3, where damage is caused by the negligence of an independent contractor engaged by the occupier, the occupier is not on that account liable under this Act if, in all the circumstances, ^{Independent contractors}

(a) the occupier exercised reasonable care in the selection and supervision of the independent contractor; and

(b) it was reasonable that the work that the independent contractor was engaged to do should have been undertaken.

(2) Subsection 1 shall not be construed as restricting or excluding the liability of an occupier for the negligence of his independent contractor imposed by any other Act. ^{Idem}

(3) Where there is damage under the circumstances set out in subsection 1, and there is more than one occupier of the premises, each occupier is entitled to rely on the provisions of subsection 1. ^{Idem}

6.—(1) Where premises are occupied or used by virtue of a tenancy under which a landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to show toward any person who, or whose property, may be on the premises the same care in respect of risks arising from any failure on his part in carrying out his responsibility, as is required by virtue of this Act to be shown by an occupier of premises toward persons entering on or using them. ^{Landlord and tenant relationship}

(2) Where premises are occupied by virtue of a sub-tenancy, subsection 1 applies to any landlord who is responsible for the maintenance or repair of the premises comprised in the sub-tenancy. ^{Sub-tenancy}

(3) For the purposes of this section, a landlord shall not be deemed to be in default in his duty under subsection 1 unless his default is such as to be actionable at the suit of the occupier. ^{Idem}

- Other duties preserved (4) Nothing in this section shall be construed as relieving a landlord of any duty he may have apart from this section.
- Idem (5) For the purposes of this section, obligations imposed by any enactment in respect of a tenancy shall be deemed to be imposed by the tenancy, and "tenancy" includes a statutory tenancy, an implied tenancy, and any contract conferring the right of occupation, and "landlord" shall be construed accordingly.
- Application of section (6) This section applies to tenancies created before or after the commencement of this section.
- Application of R.S.O. 1970, c. 296 **7.** *The Negligence Act* applies to this Act.
- Crown bound R.S.O. 1970, c. 365 **8.**—(1) Except as otherwise provided in subsection 2, the Crown is bound by this Act, and *The Proceedings Against the Crown Act* applies.
- Idem (2) Notwithstanding subsection 1, this Act does not apply to the Crown or to a municipality where the Crown or the municipality is the occupier of a public highway or public road.
- Not to affect certain relationships **9.** This Act does not apply to or affect,
 - (a) the liability of an employer in respect of his duties to his employee; or
 - (b) the liability of any person by virtue of a contract for the hire of, or for the carriage for reward of persons or property in, any vehicle, vessel, aircraft, or other means of transport; or
 - (c) the liability of any person under *The Innkeepers Act*; or
 - (d) the liability of any person by virtue of a contract of bailment.
- R.S.O. 1970, c. 223
- No retro-activity **10.** Subject to subsection 3 of section 4 and subsection 6 of section 6, this Act applies only in respect of a cause of action arising after this Act comes into force.
- Commence-ment **11.** This Act comes into force on the day it receives Royal Assent.
- Short title **12.** The short title of this Act is *The Occupiers' Liability Act, 1978*.

An Act respecting Occupiers' Liability

1st Reading

March 30th, 1978

2nd Reading

3rd Reading

MR. LAWLOR

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to provide for Class Actions

MR. LAWLOR

EXPLANATORY NOTE

The purpose of this Bill is to provide a statutory procedure whereby one or more persons may sue a defendant in the form of a class action.

The Bill is designed to achieve this purpose by permitting a person who wishes to sue on behalf of a class to apply for a court order authorizing the class action. Once the order is obtained, the action proceeds as a class action, and the final judgment binds all members of the class, except those who have been excluded, as well as the parties to the action.

BILL 52

1978

An Act to provide for Class Actions

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, "Court" means the Supreme Court of Ontario. ^{Interpre-}
^{ta-}
^{tion}

2.—(1) Where a person has a cause of action involving ^{Class}
^{action} questions of law or fact that are common to a class of persons, he may commence the action as representative party on behalf of the class.

(2) An action under subsection 1 shall not be main- ^{Order}
^{required} tained as a class action unless the person or persons suing as representative party has obtained an order of the Court permitting the action to proceed as a class action.

3.—(1) A representative party may apply to the Court ^{Where order}
^{to be} for an order referred to in section 2, and the Court may ^{granted} make the order where it is satisfied that,

- (a) the claims of the representative party are typical of the claims of the class;
- (b) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members;
- (c) a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and
- (d) the representative party is acting in good faith and it is *prima facie* in the interests of the class that the action be maintained as a class action.

(2) The Court shall not refuse to make an order under ^{Where order}
^{not to be} this section on the ground only that, ^{denied}

- (a) the relief claimed in the action includes a claim for damages;
- (b) the relief claimed in the action arises out of or relates to separate contracts or transactions made with or entered into between members of the class and the defendant; or
- (c) any damages claimed for members of the class will require individual action.

Content
of order

- (3) An order under subsection 1 shall,
- (a) define the class on whose behalf the claim is brought;
 - (b) describe briefly the nature of the claim made and of the relief sought;
 - (c) state the questions of law or fact that are common to the class; and
 - (d) specify a date before which members of the class may exclude themselves from the class.

Variation
of order

(4) An order made under this section may be varied from time to time or rescinded by the Court if it thinks it fit and just to do so before judgment in the action.

Notice of
class action

4.—(1) Where an order is made under section 3, the Court may direct that notice in manner and form satisfactory to the Court be given to the members of the class or any of them advising them of the proceedings and of the date before which members of the class may exclude themselves from the class.

Statement
of desire
for exclu-
sion from
the class

(2) Where a person has notice that he is a member of a class on behalf of which a representative party is suing, he shall be excluded from the class by filing with the Court a statement of his desire to be excluded, in writing signed by him prior to the date specified in the order under section 3, and may be excluded, in the discretion of the Court, where the statement is filed subsequent to the date specified in the order and prior to judgment.

Judgment

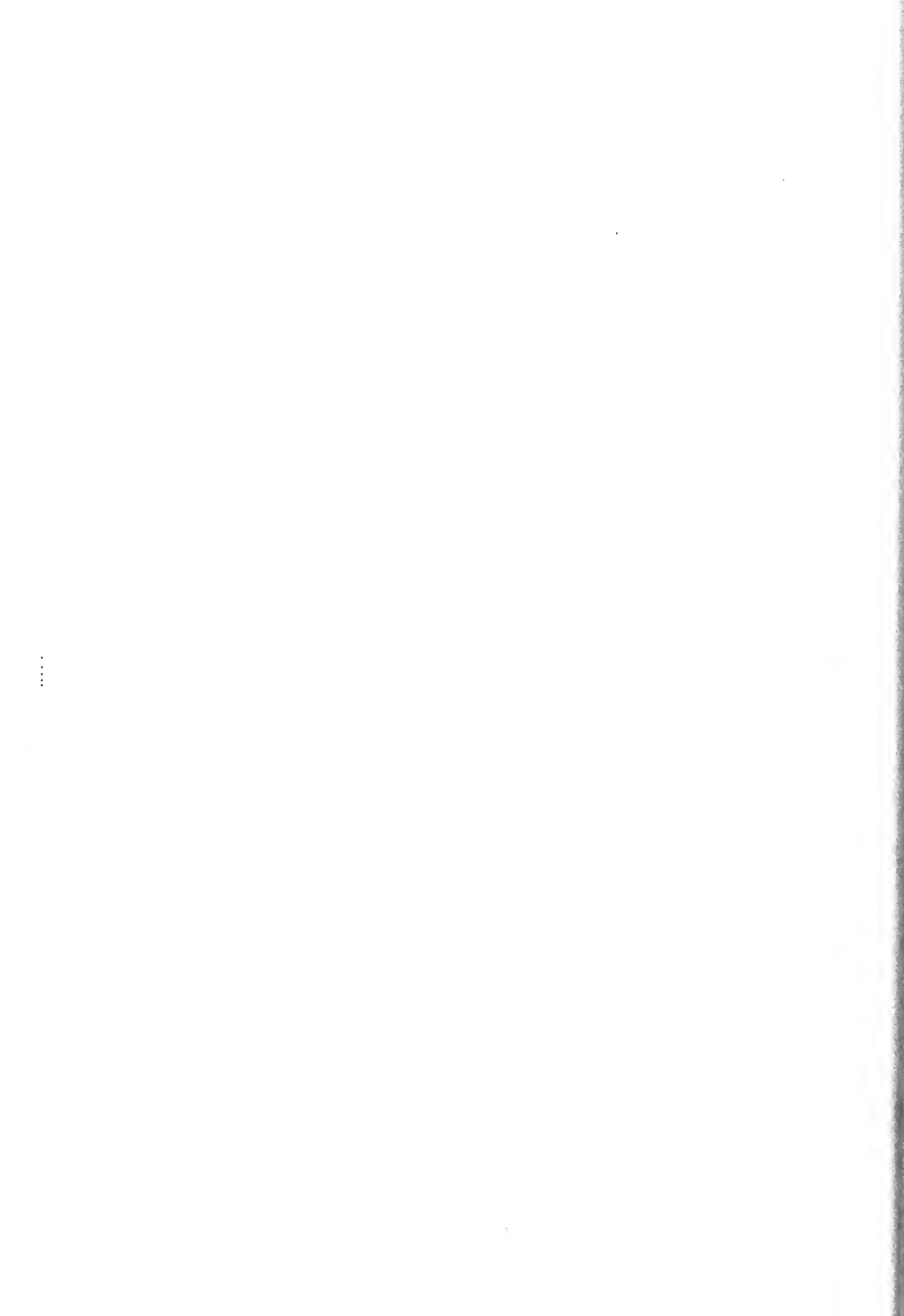
5.—(1) The judgment in a class action constitutes a final judgment between each member of the class who was not excluded under section 4 and each person against whom the class action was taken in respect of those matters set out in the order under section 3.

(2) Notwithstanding anything in subsection 1, the Court ^{idem} may provide in the judgment for subsequent determination of the amount of compensation for loss or damage suffered by members of the class or any other issues.

6. An action maintained as a class action shall not be discontinued, settled or dismissed for want of prosecution without the approval of the Court, and, if the Court determines that the interests of the class may be substantially affected by such discontinuance, settlement or dismissal, the Court may direct that notice in manner, form and content satisfactory to the Court shall be given. ^{Discontinuance, settlement, etc.}

7. This Act comes into force on the day it receives Royal ^{Commence-} Assent. _{ment}

8. The short title of this Act is *The Class Actions Act, 1978*. ^{Short title}





An Act to provide
for Class Actions

1st Reading

March 30th, 1978

2nd Reading

3rd Reading

MR. LAWLOR

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to provide for Freedom of Information

MR. LAWLOR

EXPLANATORY NOTE

The purpose of this Bill is to provide members of the public with access to Government information. The Bill is designed to allow maximum accessibility to Government documents while, at the same time, recognizing that it is in the public interest that certain types of information not be disclosed. Where a disagreement arises as to whether or not certain information should be disclosed, the Bill provides a mechanism for resolving the dispute.

BILL 53

1978

An Act to provide for Freedom of Information

WHEREAS, for the furtherance of democratic principles ^{Preamble} and practices in the Province of Ontario, it is right and expedient that the fullest and most objective disclosure of government programs, policies, activities and operations be openly declared and made available;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "governmental organization" means the Executive Council, a ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof;
- (b) "public document" means any document, record, book, paper, report, order, decision, map photograph, film, card, tape, recording, minutes, statistical compilation or part thereof of form or character prepared or received by a governmental organization as a result of the spending of public moneys, and includes,
 - (i) final opinions, including concurring and dissenting opinions made in the adjudication of cases,
 - (ii) statements of policy and interpretations of policy,
 - (iii) administrative staff manuals and instructions of staff which affect members of the public,
 - (iv) any account, voucher, tender or contract dealing with receipt or expenditure of public funds.

Public access
to documents

2. Subject to section 3, any person may request in writing from a governmental organization any public document or, where the request reasonably identifies a subject-matter, a list of public documents affecting the subject-matter and, upon receiving the request, the governmental organization shall make available as soon as possible such document or list of documents for examination or copying.

Exceptions

3.—(1) The following public documents are exempt from the provisions of section 2:

1. Documents, the release of which would be detrimental to the security of Ontario or Canada.
2. Documents in respect of international relations, the release of which would be detrimental to the conduct of Canada's foreign relations or Ontario's relations with other countries.
3. Documents, the release of which would be detrimental to the conduct of federal-provincial relations or the relations of the provinces with one another.
4. Documents, the release of which would constitute a clearly unwarranted invasion of personal privacy.
5. Documents relating to negotiations leading up to a contract unless the contract has been executed or the negotiations have been concluded.
6. Documents relating to policy decisions under consideration but not yet finalized.
7. Documents relating to an investigation or inquiry in the administration of justice, but does not include legal opinions or advice prepared or received by a governmental organization unless the document containing the legal opinion or advice is expressly designated as privileged by the Executive Council or the Attorney General.
8. Documents that are excluded from disclosure by statute.
9. Minutes of the Executive Council and its committees.
10. Any proceedings before a court of justice or a judicial inquiry.

11. Any matter which may be exempted by the regulations.

(2) Any regulation made under this Act exempting a public document from disclosure does not have effect until it has been referred to the Standing Committee on Regulations and reported by the Committee to the Legislative Assembly.

4.—(1) Where a person makes a request under section 2 and receives no response from the governmental organization within a reasonable time or, for any reason, considers the response inadequate, the person may apply to the Ombudsman, under *The Ombudsman Act, 1975*, for a review.

(2) The provisions of *The Ombudsman Act, 1975* in respect of the investigation of complaints apply to an application under this section *mutatis mutandis*.

(3) Where the Ombudsman is of the opinion that it is in the public interest that a document be released, a list produced or further disclosure provided, in addition to his powers under *The Ombudsman Act, 1975*, the Ombudsman may direct the governmental organization to make such compliance with the request as he thinks fit.

5.—(1) After a decision is made by the Ombudsman under section 4, the person making the request or the governmental organization to which the request is addressed may apply to a judge of the High Court for an order determining whether or not a public document, list or further disclosure should be provided.

(2) Where a governmental organization claims an exemption under section 3, it may file a statement of particulars in a sealed envelope with the court in support of its claim.

(3) At any stage in the proceedings, the judge may order that the statement of particulars be resealed or disclosed in whole or in part to the other party or otherwise dealt with as he thinks fit.

6. In any proceeding before the Ombudsman or a court under this Act, the Crown shall pay all of the costs of a person making a request under section 2, unless, in the opinion of the Ombudsman or the court, the request is made for a frivolous or vexatious purpose.

Release of documents by Lieutenant Governor in Council

7. Notwithstanding section 3, the Lieutenant Governor in Council may order the release of a public document which is exempt where the release of the document is in the public interest.

Regulations

8. The Lieutenant Governor in Council may make regulations,

- (a) exempting any document or class of document from the application of this Act;
- (b) prescribing the times and places at which public documents are available for examination or copying;
- (c) prescribing the terms and conditions under which public documents or lists of public documents are released;
- (d) prescribing the costs to be paid for the release or copying of a public document;
- (e) prescribing forms and providing for their use;
- (f) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Commencement

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is *The Freedom of Information Act, 1978*.



An Act to provide for
Freedom of Information

1st Reading

March 30th, 1978

2nd Reading

3rd Reading

MR. LAWLOR

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act respecting Predator Control in Ontario

MR. RIDDELL

EXPLANATORY NOTE

The purpose of the Bill is to authorize the establishment of local predator control committees throughout Ontario to develop methods and procedures to protect live stock and poultry from destruction by predators. A committee is established for each predator control area designated by the Minister, and, the committee, within one year of its establishment, must prepare a predator control plan for approval by the Minister. The Bill requires every predator control committee to regularly review the predator control plan and to report to the Minister on an annual basis concerning whether the plan has been effective in reducing the level of predator activity.

...

BILL 54

1978

An Act respecting Predator Control in Ontario

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Minister" means the Minister of Agriculture and Food;
- (b) "predator" means a wolf of the species *Canis lupus* L. or *Canis latrans* Say or any cross breed thereof or a dog.

2.—(1) The Minister may, by order, designate areas of land in Ontario as predator control areas.

Predator
control
areas

(2) Each area of land designated by the Minister under subsection 1 shall be composed predominantly of land that is used for agricultural purposes.

Agricultural
land

(3) The Minister shall establish a predator control committee for each designated predator control area, which committee shall be composed of members appointed by the Minister as follows:

Predator
control
committee

1. One representative of the Ministry of Agriculture and Food.
2. One representative of the Ministry of Natural Resources.
3. One representative of each local municipality situated in the predator control area.
4. One representative of the live stock and poultry producers carrying on business in the predator control area.

- Chairman (4) The chairman of a predator control committee shall be the member appointed as the representative from the Ministry of Agriculture and Food.
- Predator control plan **3.**—(1) Every predator control committee shall, within one year from the day of its establishment, prepare and file with the Minister a predator control plan setting forth methods and procedures designed to protect live stock and poultry from destruction by predators in the predator control area.
- Review (2) No predator control committee shall make any payment in respect of predator control until a predator control plan for the area has been approved by the Minister.
- Amendment (3) Every predator control committee shall make an annual review of the predator control plan and may amend the plan from time to time with the approval of the Minister.
- Annual report **4.** Every predator control committee shall submit a report to the Minister after the end of each calendar year concerning predator control methods and procedures in the predator control area and such report shall include a report on the level and nature of current predator activity, the amount of compensation paid by the committee, if any, during the preceding twelve month period, and an assessment of the effectiveness of the predator control plan in protecting live stock and poultry.
- Commencement **5.** This Act comes into force on the day it receives Royal Assent.
- Short title **6.** The short title of this Act is *The Predator Control Act, 1978*.







An Act respecting
Predator Control in Ontario

1st Reading

April 4th, 1978

2nd Reading

3rd Reading

MR. RIDDELL

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Education Act, 1974

MR. DUKSZTA

EXPLANATORY NOTE

The purpose of the Bill is to provide for heritage language instruction in Ontario. The Bill sets forth a procedure for the establishment of heritage language programs in order that a heritage language may be taught as a subject of instruction or as a language of instruction. When a school board decides to institute a heritage language program, the Bill requires that a local heritage language advisory committee be established to provide continuing advice to the board concerning the nature and content of the heritage language program. In the case of a dispute between the board and the advisory committee, the Bill provides that the matter in dispute may be referred to the Minister for determination.

An Act to amend The Education Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *f* of subsection 1 of section 229 of *The Education Act, 1974*, being chapter 109, is repealed and the following substituted therefor: s. 229 (1) (f), re-enacted

(*f*) in instruction and in all communications with pupils in regard to discipline and the management of the school, to use English or another language that will be understood by the pupil, except in respect of a language that is being taught as one of the subjects in the course of study. language of instruction

2. The said Act is amended by adding thereto the following Part: Part XI-A (ss. 271a-271f), enacted

PART XI-A

HERITAGE LANGUAGE INSTRUCTION

271a. In this Part,

Interpre-
tation

- (*a*) "board" means a board of education, public school board, secondary school board or separate school board;
- (*b*) "board area" means the area in which a board has jurisdiction;
- (*c*) "heritage language" means a language other than English or French;
- (*d*) "student" means any person who has a right to attend a school in a board area in which the person is qualified to be a resident pupil.

Purpose

271*b*. The purpose of this Part is,

- (*a*) to provide students with the opportunity to study a heritage language as a subject of instruction in order to preserve or establish links with a heritage language community; and
- (*b*) to provide students with instruction in a heritage language as a means of transition to learning and working in the English or French language.

Heritage language classes

271*c*.—(1) A board may establish and maintain classes for the purpose of providing a heritage language as a subject of instruction or as a language of instruction for the purpose of transition to English or French.

Heritage language as a subject of instruction

(2) Where, after the first school day in September and on or before the first day of April next following, written evidence is presented to a board that a number of students resident in the board area and directly related to a heritage language community has elected to be taught the heritage language as a subject of instruction, the board shall forthwith determine whether students can be assembled for this purpose in one or more classes of twenty or more and, where the board determines that such students can be so assembled, it shall provide the language as a subject of instruction in such classes or groups.

When classes to be held

(3) The board shall provide the heritage language as a curriculum subject for academic credit during the regular school day where the board determines that one or more classes or groups of twenty or more students can be assembled for the purpose and the board may establish such other classes at such times and locations as the board considers necessary to meet the needs of the heritage language community.

Admission to classes

(4) Upon determining that a heritage language shall be taught as a subject of instruction, a board may permit students who have no direct relationship to the heritage language community to receive instruction in the language.

French, English as heritage languages

(5) For the purposes of this section, French shall be deemed to be a heritage language except where the number of English-speaking students of a board is fewer than the number of students of the board for whom French is the language of instruction, in which case English shall be deemed to be a heritage language.

271d.—(1) Where, after the first school day in September and on or before the first day of April next following, written evidence is presented to a board that a number of students resident in the board area whose mother tongue is a heritage language has elected to be taught in the heritage language as a language of instruction for the purpose of transition to English or French, the board shall forthwith determine whether students can be assembled for this purpose in one or more classes or groups of twenty or more and, where the board determines that such students can be so assembled, it shall provide the language as a language of instruction in such classes or groups. ^{Transition classes}

(2) English or French shall be a subject of instruction in all grades in which a heritage language is a language of instruction. ^{Instruction in English or French}

271e.—(1) Where a board establishes, extends or decides to establish or extend a class, group or program in which a heritage language is a subject of instruction or a language of instruction, the board shall, within two months of the establishment, extension or decision to establish or extend by resolution, establish an advisory committee and provide for the holding of election of members thereof. ^{Advisory committee}

(2) No person is eligible to be a member of an advisory committee unless the heritage language in respect of which the committee is established is the mother tongue of that person. ^{Membership on advisory committee}

(3) The advisory committee is responsible for developing proposals designed to meet the educational and cultural needs of students and community members who speak or wish to study the heritage language and for such purpose may make recommendations in respect of, ^{Recommendations}

- (a) the establishment, operation and management of heritage language instructional programs;
- (b) the use of the heritage language and of the English and French languages in heritage language instructional programs;
- (c) the recruitment and appointment of the required teaching, supervisory and administrative personnel;
- (d) the establishment of the course of study and the use of textbooks;
- (e) the establishment of attendance areas for heritage language instructional programs;

- (f) the provision of transportation for pupils;
- (g) the entering into agreements with other boards in respect of the provision of instruction in the heritage language and supervising and consultative services;
- (h) the development and establishment of adult education programs;
- (i) the use of any facility and means necessary to meet the educational and cultural needs of the heritage language community;
- (j) the provision of summer school programs; and
- (k) any other matter pertaining to heritage language education.

Committee
report
to board

(4) The committee shall report at each regular meeting of the board.

Board to
seek
advice of
committee

(5) The board shall seek the advice of the committee on all matters affecting the establishment, program, administration and termination of heritage language classes, groups or programs before any final decision regarding such matters is taken by the board.

Consider-
ation of
recommen-
dations
by board

(6) The board shall consider any recommendation submitted to it in writing by the committee and shall not refuse its approval without having given the committee an opportunity to be heard by the board or by any committee of the board to which such recommendation is referred and, where a board refuses a recommendation of the committee, it shall, within thirty days after receiving the recommendation of the committee, forward to the committee written reasons for its refusal.

Referral
to
Minister

271f.—(1) Upon receipt of a refusal and the reasons therefor under subsection 5, the committee may, by motion, refer the matter to the Minister, in which case it shall send to the Minister and to the board copies of the motion, the recommendation of the committee and the written reasons of the board for its refusal.

Deferral
of action
by board

(2) When a matter is referred to the Minister, the board concerned shall defer action thereon until the matter has been resolved.

Written
reasons

(3) The Minister shall provide written reasons to the committee and the board in respect of a decision made on a matter referred to the Minister by the committee.

3. This Act comes into force on the day it receives Royal Assent. Commence-
ment
4. The short title of this Act is *The Education Amendment Act*, Short title 1978.

An Act to amend
The Education Act, 1974

1st Reading

April 4th, 1978

2nd Reading

3rd Reading

MR. DUKSZTA

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Compensation for Victims of Crime Act, 1971**

MR. KENNEDY

EXPLANATORY NOTE

The purpose of the Bill is to extend the eligibility for compensation under *The Compensation for Victims of Crime Act, 1971* to persons who have been imprisoned for an offence and whose convictions are subsequently quashed.

The circumstances under which such a person would be eligible for compensation are set out in the new subsection 2 of section 5. The person must have been convicted and imprisoned after having pleaded not guilty to the offence with which he was charged. Under the new subsection 2 of section 6 an application for compensation can be made when the decision quashing the conviction becomes final.

As set out in the new subsection 3 of section 7, the victim would receive compensation for expenses actually incurred and pecuniary losses resulting from the imprisonment.

In determining compensation, the Board, as set out in subsection 2 of section 17, must consider all of the circumstances surrounding the charge, conviction and quashing of the conviction including the behaviour of the victim.

Under the new subsection 6 of section 19, the Board may award a lump sum payment of up to \$15,000 to the victim.

Other amendments contained in the Bill are complementary to the above-noted amendments.

BILL 56

1978

**An Act to amend
The Compensation for Victims of Crime Act, 1971**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *g* of subsection 1 of section 1 of *The Compensation for Victims of Crime Act, 1971*, being chapter 51, is repealed and the following substituted therefor: s. 1 (1) (g),
re-enacted

(g) "victim" means a person injured or killed in the circumstances set out in subsection 1 of section 5 or a person who is convicted of an offence and committed to prison and whose conviction is subsequently quashed in the circumstances set out in subsection 2 of section 5.

2. Section 5 of the said Act is amended by adding thereto the following subsection: s. 5,
amended

(2) Where a person is charged in Ontario with an offence under a Statute of Canada or Ontario, and having pleaded not guilty, is convicted and committed to prison and the conviction is subsequently quashed, the Board, on application therefor, may make an order that it, in its discretion exercised in accordance with this Act, considers proper for the payment of compensation to the victim. Compensation to
imprisoned
persons

- 3.—(1) Section 6 of the said Act is amended by inserting after "compensation" in the first line "under subsection 1 of section 5". s. 6,
amended

- (2) The said section 6 is further amended by adding thereto the following subsections: s. 6,
amended

(2) An application for compensation under subsection 2 of section 5 shall not be made until the date on which the decision or order quashing the conviction becomes final and shall be made within one year of that date. Idem

Final
decision

(3) For the purposes of subsection 2, a decision or order quashing a conviction becomes final when the guilt or innocence of the victim has been finally determined and no further right of appeal or right to apply for leave to appeal remains.

s. 7 (1),
amended

4.—(1) Subsection 1 of section 7 of the said Act is amended by adding at the commencement thereof "In an application under subsection 1 of section 5".

s. 7,
amended

(2) The said section 7 is amended by adding thereto the following subsection:

Idem

(3) In an application under subsection 2 of section 5, compensation may be awarded for,

(a) expenses actually and reasonably incurred as a result of the victim's imprisonment; and

(b) pecuniary loss incurred by the victim as a result of the victim's imprisonment during the period of imprisonment.

s. 17,
re-enacted

5. Section 17 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 34, section 1, is repealed and the following substituted therefor:

Considera-
tions of
Board

17.—(1) In determining whether to make an order for compensation under subsection 1 of section 5 and the amount thereof, the Board shall have regard to all relevant circumstances, including any behaviour of the victim that may have directly or indirectly contributed to his injury or death.

Idem

(2) In determining whether to make an order for compensation under subsection 2 of section 5 and the amount thereof, the Board shall have regard to all relevant circumstances surrounding the charge, conviction and quashing of the conviction including the behaviour of the victim.

Idem

(3) The Board may, in its discretion, refuse to make an order for compensation under subsection 1 of section 5 where it is satisfied that the applicant has refused reasonable co-operation with, or failed to report promptly the offence to, a law enforcement agency.

Idem

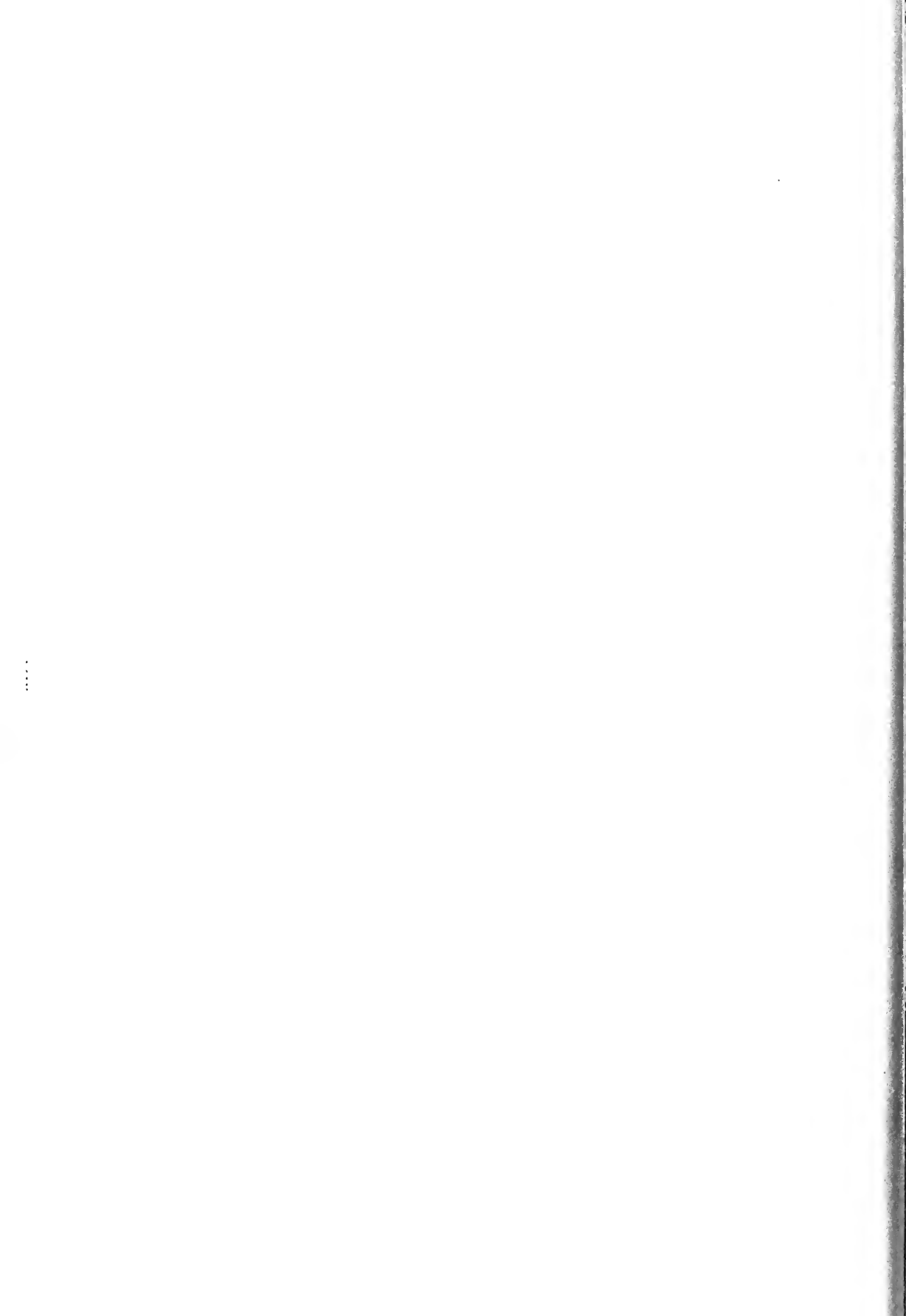
(4) In assessing pecuniary loss, the Board shall take into consideration any benefit, compensation or indemnity payable to the applicant from any source.

6. Section 19 of the said Act is amended by adding thereto the following subsection: s. 19,
amended

(6) The amount awarded by the Board to be paid in respect of an application under subsection 2 of section 5 shall not exceed \$15,000 and the amount awarded shall be paid in a lump sum. Maximum
awards for
victim in
application
under
s. 5 (2)

7. This Act comes into force on the day it receives Royal Assent. Commence-
ment

8. The short title of this Act is *The Compensation for Victims of Crime Amendment Act, 1978*. Short title





An Act to amend
The Compensation for Victims
of Crime Act, 1971

1st Reading

April 6th, 1978

2nd Reading

3rd Reading

MR. KENNEDY

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting Proceedings on
behalf of Children who are Maltreated**

MR. ELGIE

EXPLANATORY NOTE

The purpose of the Bill is to specifically authorize the Official Guardian to act as next friend and to bring proceedings on behalf of a child who has been physically or emotionally maltreated by his or her parent or some other person. The Bill places a duty upon the Official Guardian to bring proceedings to obtain compensation for the child unless the Official Guardian decides that, in the circumstances, it is not in the best interests of the child.

The Bill also requires that a children's aid society or Crown attorney shall report information to the Official Guardian concerning possible cases of physical or emotional maltreatment where the society or Crown attorney has reasonable and probable cause to believe that maltreatment has occurred.

The Bill substitutes the concept of physical or emotional maltreatment in place of the concept of ill-treatment in *The Child Welfare Act*.

BILL 57

1978

An Act respecting Proceedings on behalf of Children who are Maltreated

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: R.S.O. 1970,
c. 228,
s. 107a,
enacted

107a. Where the Official Guardian is of the opinion that an infant has a cause of action against one or more persons or another right of recovery by reason of physical or emotional maltreatment inflicted upon the infant, the Official Guardian shall institute and conduct a proceeding as next friend for the recovery of damages or other compensation in respect of injuries sustained by the infant unless, in the circumstances, such a proceeding would not be in the best interests of the infant. Maltreated
children

- 2.—(1) Subsection 1 of section 40 of *The Child Welfare Act*, being chapter 64 of the Revised Statutes of Ontario, 1970, is amended by striking out "ill-treatment" in the third line and inserting in lieu thereof "physical or emotional maltreatment". R.S.O. 1970,
c. 64, s. 40 (1),
amended

- (2) Section 41 of the said Act is repealed and the following substituted therefor: s. 41,
re-enacted

41.—(1) Every person having information of the abandonment, desertion, physical or emotional maltreatment or need for protection of a child shall report the information to a children's aid society or Crown attorney. Reporting
maltreatment
of child

(2) Subsection 1 applies notwithstanding that the information is confidential or privileged, and no action shall be instituted against the informant unless the giving of the information is done maliciously or without reasonable and probable cause. Privilege
abolished

Report to
Official
Guardian

(3) A children's aid society or Crown attorney that has reasonable and probable cause to believe that a child has been physically or emotionally maltreated shall report the information to the Official Guardian.

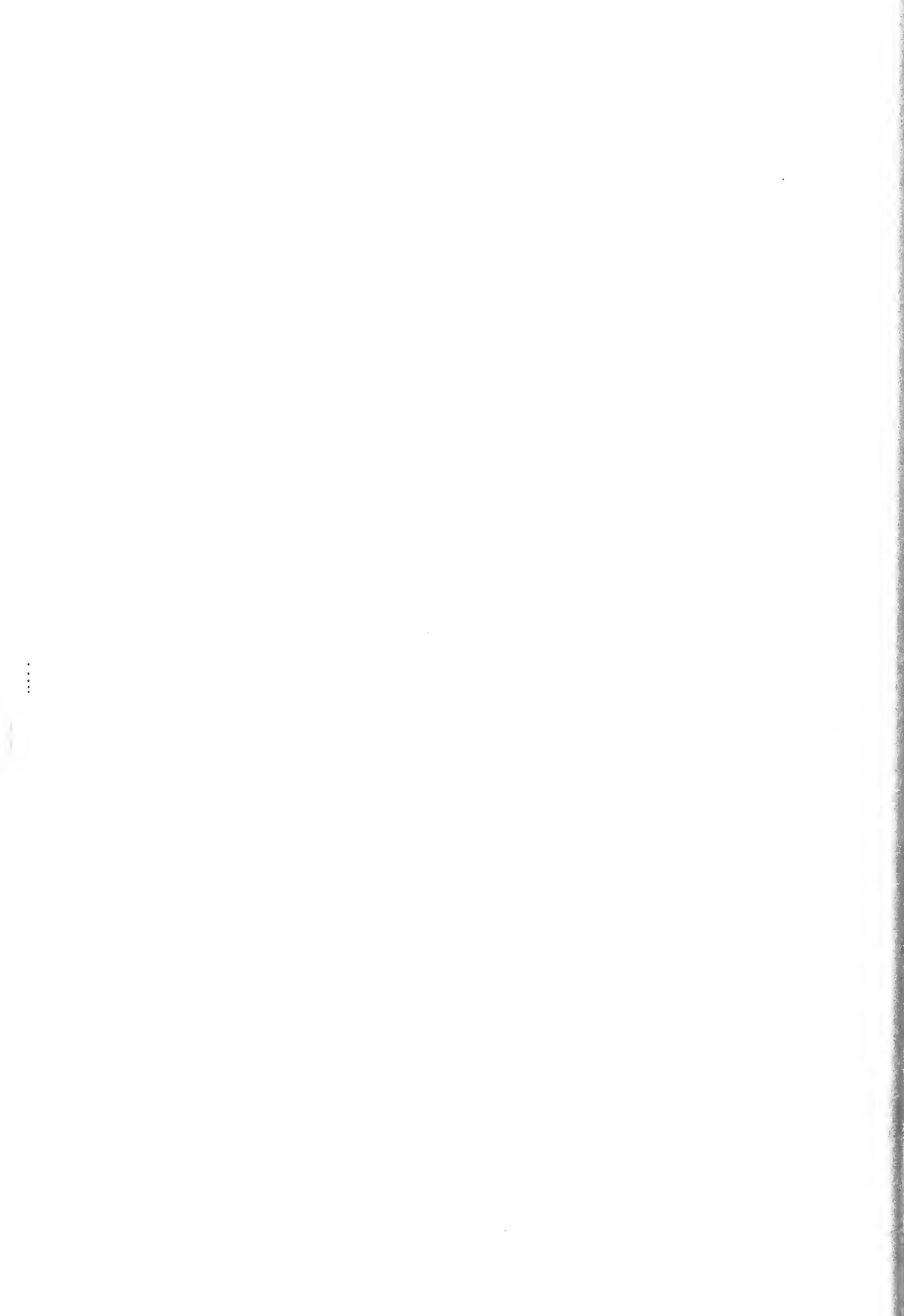
Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is *The Children's Rights Act, 1978*.







An Act respecting Proceedings on
behalf of Children who are Maltreated

1st Reading

April 10th, 1978

2nd Reading

3rd Reading

MR. ELGIE

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to relieve Persons from Liability
in respect of voluntary Emergency
Medical and First Aid Services**

MR. HAGGERTY

EXPLANATORY NOTE

The purpose of this Bill is to relieve persons from liability in respect of voluntary emergency first aid assistance or medical services rendered at or near the scene of an accident or other sudden emergency.

BILL 58

1978

**An Act to relieve Persons from Liability
in respect of voluntary Emergency
Medical and First Aid Services**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "physician" means a medical practitioner licensed under Part III of *The Health Disciplines Act, 1974*; 1974, c. 47
- (b) "registered nurse" means a person who is the holder of a certificate as a registered nurse issued under Part IV of *The Health Disciplines Act, 1974*.

2. Where, in respect of a person who is ill, injured or unconscious as the result of an accident or other emergency,

Relief
from
liability
for
damages

- (a) a physician or registered nurse voluntarily and without expectation of compensation or reward renders emergency medical services or first aid assistance and the services or assistance are not rendered at a hospital or other place having adequate medical facilities and equipment; or
- (b) a person other than a person mentioned in clause *a* voluntarily renders emergency first aid assistance and the assistance is rendered at the immediate scene of the accident or emergency,

the physician, registered nurse or other person shall not be liable for damages for injuries to or the death of such person alleged to have been caused by an act or omission on his or her part in rendering the medical services or first aid assistance, unless it is established that the injuries or death were caused by the gross negligence of the physician, registered nurse or other person.

Act does
not apply
to normal
medical
services

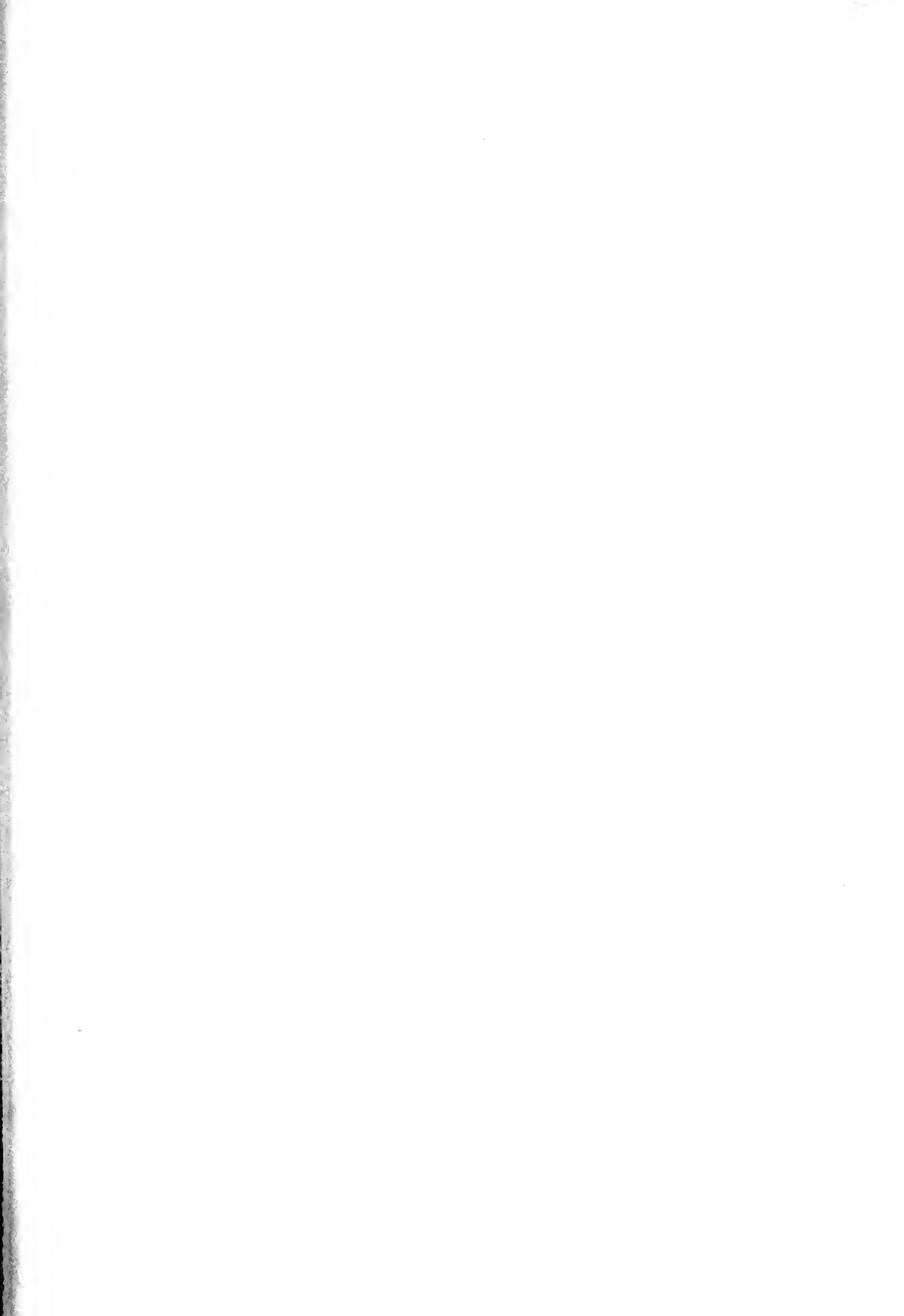
3. Nothing in section 2 shall be construed to relieve a physician from liability for damages for injuries to or the death of any person caused by an act or omission on the part of the physician in respect of medical services rendered by him in the normal and ordinary course of his practice and not under the circumstances set forth in section 2.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is *The Good Samaritan Act, 1978*.





An Act to relieve Persons from Liability in
respect of voluntary Emergency Medical
and First Aid Services

1st Reading

April 10th, 1978

2nd Reading

3rd Reading

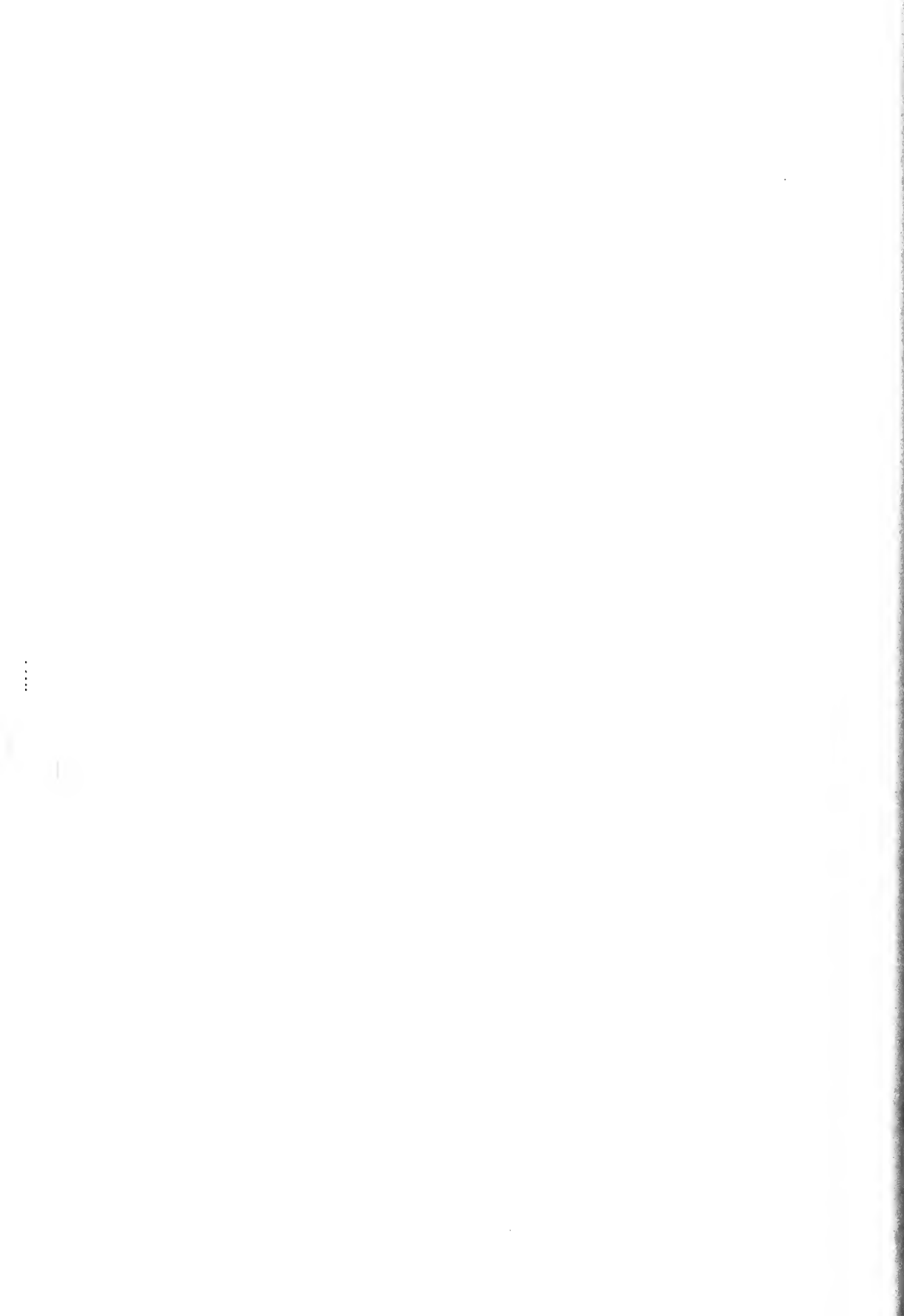
MR. HAGGERTY

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to reform the Law respecting
Property Rights and Support Obligations between
Married Persons and in other Family Relationships**

THE HON. R. MCMURTRY
Attorney General



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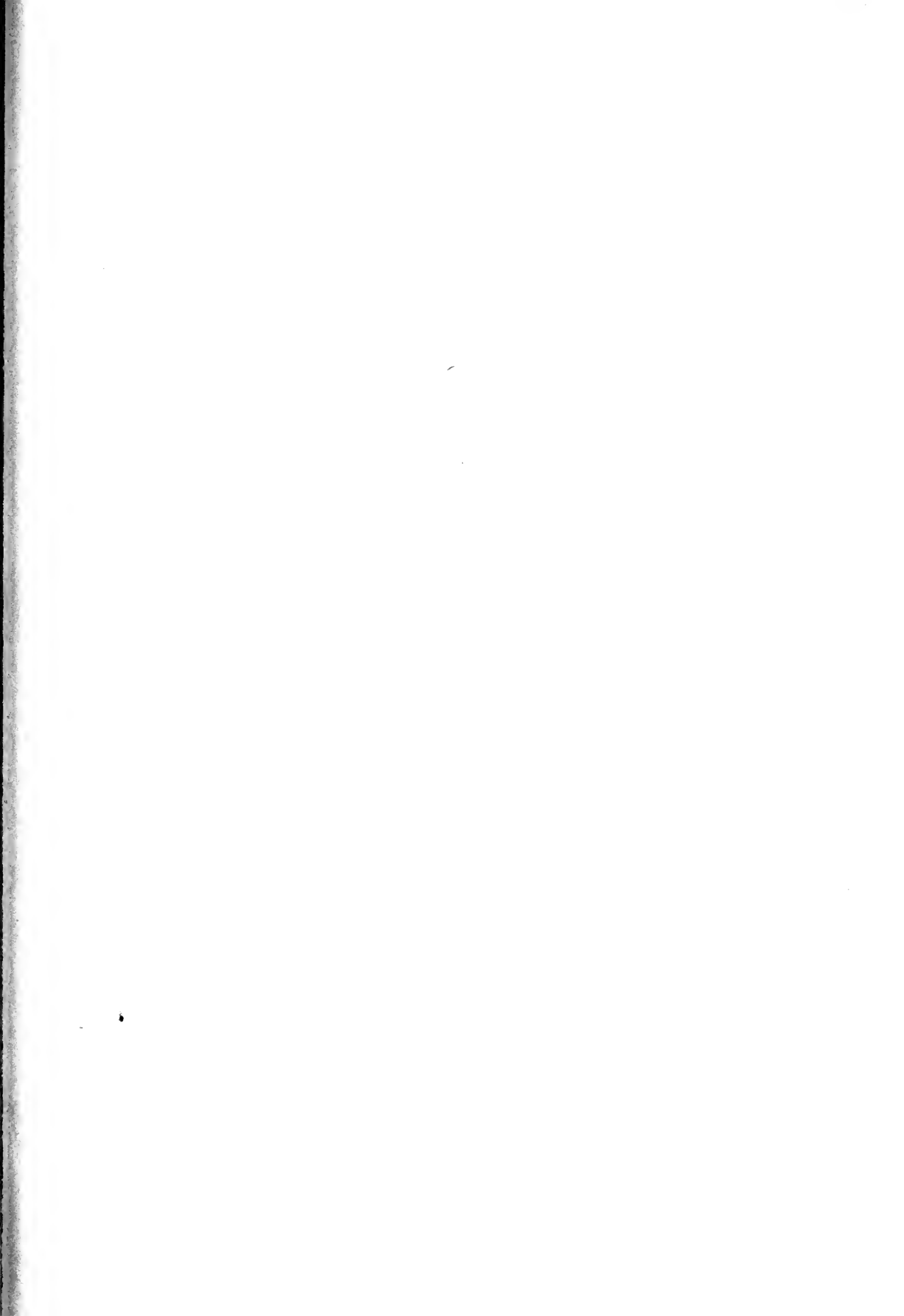
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EXPLANATORY NOTES

SECTION 1. The definition of "child" allows children born outside marriage and persons treated as a child of the family to claim support from their parents under Part II or to benefit from an order respecting property under section 5 (1) (d).

The definition of "court" permits claims under Parts I to IV to be brought in the new Unified Family Court, a provincial court (family division), a county or district court or the Supreme Court.

The definition of "parent" corresponds with the meaning of "child".

The definition of "spouse" ensures that parties to a marriage subsequently found to be void are covered by this Act.

BILL 59

1978

**An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships**

WHEREAS, it is desirable to encourage and strengthen ^{Preamble} the role of the family in society;

AND WHEREAS for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership;

AND WHEREAS in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership; and to provide for other mutual obligations in family relationships:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "child" means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a person whom the parent has demonstrated a settled intention to treat as a child of his or her family, but does not include a child placed in a foster home for consideration by a person having lawful custody; R.S.O. 1970,
c. 64
- (b) "cohabit" means to live together in a conjugal relationship, whether within or outside marriage;
- (c) "court" means a provincial court (family division), the Unified Family Court, a county or district court or the Supreme Court;

- (d) "domestic contract" means a domestic contract as defined in Part IV;
- (e) "parent" means the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, but does not include a person in whose home a child was placed as a foster child for consideration by a person having lawful custody;
- (f) "spouse" means either of a man and woman who,
- (i) are married to each other,
 - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity,
 - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

Combining of
application

2.—(1) Where, in an application under any provision of this Act, it appears to the court that for the appropriate determination of the affairs of the spouses it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court considers appropriate.

All
proceedings
in one court

(2) Except as otherwise provided, where an application is made to a court under this Act, no person who is a party to the proceeding shall make an application under this Act to any other court, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

Applications

(3) An application under this Act may be made in the manner prescribed by the rules of the court or in another proceeding.

Capacity
of minors

(4) A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian *ad litem* and give any consent required or authorized by this Act.

Extension
of times

(5) The court may extend the time for bringing an application under this Act where the court is satisfied that,

SECTION 2. Subsection 1 permits a court to adjourn the hearing of a claim under this Act where it finds that all of the issues necessary for it to make a proper decision have not been determined. For example, an application to divide property could be adjourned to allow the bringing of a support application, and the two applications could be heard together.

Subsection 2 requires all claims under this Act between the same parties to be brought in the same court, and allows the transfer of an application to another court if the first court does not have jurisdiction to deal with all the issues.

Subsection 5 allows a court to permit an application after the time period prescribed by the Act expires.

Subsection 7 allows the court to make orders on the consent of the parties, without the need for a hearing.

Subsection 9 provides that a domestic contract (marriage contract, cohabitation agreement or separation agreement) made under Part IV prevails over the provisions of Parts I to III, subject to the limitation of sections 18 (3) and 55.

SECTION 3. The provincial court (family division) does not have jurisdiction under this Part.

The definition of "family assets" includes property held for the benefit of a spouse by a corporation, trust, power of appointment or revocable gift. The definition does not include land around the matrimonial home where that land is used for farming or other business purposes and is not reasonably necessary to the use of the home as a residence. The definition also excludes any property specified in a domestic contract as not being a family asset.

- (a) there are *prima facie* grounds for relief;
- (b) the delay has been incurred in good faith and has resulted from circumstances not reasonably within the control of the applicant; and
- (c) no substantial prejudice or hardship will result to any person affected by reason of the delay.

(6) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing. Closed
hearings

(7) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act. Consent
orders

(8) Any matter provided for in a domestic contract may be incorporated in an order made under this Act. Incorporation
of contract
in order

(9) Where a domestic contract makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in this Act. Act subject
to contracts

PART I

FAMILY PROPERTY

3. In this Part, Interpre-
tation

- (a) "court" means a court as defined in section 1 but does not include a provincial court (family division);
- (b) "family assets" means a matrimonial home as determined under Part III and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for household, educational, recreational, social or aesthetic purposes, and includes,
 - (i) money in an account with a chartered bank, savings office, credit union or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,

- (ii) where property owned by a corporation or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property,
- (iii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself, if the property would be a family asset if it were owned by the spouse, and
- (iv) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include property that the spouses have agreed by a domestic contract is not to be included in the family assets;

- (c) "property" means real or personal property or any interest therein.

Division of
family
assets

4.—(1) Subject to subsection 3, where a decree *nisi* of divorce is pronounced or a marriage is declared a nullity or where the spouses are separated and there is no reasonable prospect of the resumption of cohabitation, each spouse is entitled to have the family assets divided in equal shares notwithstanding the ownership of the assets by the spouses as determinable for other purposes and notwithstanding any order under section 6.

Application
to court

(2) The court may, upon the application of a person who is the spouse of another, determine any matter respecting the division of family assets between them.

Variation
of division

(3) The court may make a division of family assets resulting in shares that are not equal where the court is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to,

- (a) any agreement other than a domestic contract;

SECTION 4. This section gives a spouse the right to have the family assets divided where the marriage has broken down. The division can be accomplished by agreement or by court order. The family assets will be divided equally notwithstanding which spouse is the owner of them, even though that ownership has been determined under section 6, unless one of the spouses can satisfy the court that an equal division of family assets would be inequitable in view of the enumerated factors. Once satisfied, the court can divide the family assets unequally or divide other property of the spouse, including business property. The underlying purpose of the section is set out in subsection 5.

SECTION 5 allows an application to court to determine the mechanics of the division of the family assets or other property subject to division. The powers of the court include the power to order partition or sale. Recourse to *The Partition Act* will be unnecessary.

- (b) the duration of the period of cohabitation under the marriage;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the date when the property was acquired;
- (e) the extent to which property was acquired by one spouse by inheritance or by gift; or
- (f) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares.

(4) Where, in the opinion of the court, a spouse has unreasonably impoverished the family assets or the result of a division of the family assets would be inequitable in all the circumstances having regard to the considerations set out in clauses *a* to *f* of subsection 3, the court may make a division of any property that is not a family asset.

Property
other than
family
assets

(5) The purpose of this section is to recognize that inherent in the marital relationship there is mutual contribution by the spouses, whether financial or otherwise, to the family welfare, entitling each spouse to an equal division of the family assets upon termination of the marriage, subject to the equitable considerations set out in subsections 3 and 4.

Purpose

5. In an application under section 4, the court may order, *Idem*

- (a) that the title to any specified property directed to a spouse in the division be transferred to or in trust for or vested in the spouse whether absolutely, for life or for a term of years;
- (b) the partition or sale of any property;
- (c) that payment be made out of the proceeds of sale to one or both spouses, and the amount thereof;
- (d) that any property forming part of the share of either or both spouses be transferred to or in trust for or vested in a child to whom a spouse owes an obligation to provide support;
- (e) that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property; and

- (f) that either spouse pay to the other such sum as is set out in the order for the purpose of adjusting the division,

and may make such other orders or directions as are ancillary thereto.

Determin-
ation of
questions of
title between
married
persons

6. Any person may apply to the court for the determination of any question between that person and his or her spouse or former spouse as to the ownership or right to possession of any particular property, except where an application or an order has been made respecting the property under section 4 or 5, and the court may,

- (a) declare the ownership or right to possession;
- (b) where the property has been disposed of, order payment in compensation for the interest of either party;
- (c) order that the property be partitioned or sold for the purpose of realizing the interests therein; and
- (d) order that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property,

and may make such other orders or directions as are ancillary thereto.

Contribution
to property

7. Where one spouse or former spouse has contributed work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property, other than family assets, in which the other has or had an interest, upon application, the court may by order,

- (a) direct the payment of an amount in compensation therefor; or
- (b) award a share of the interest of the other spouse or former spouse in the property appropriate to the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. 1975, c. 41, s. 1 (3) (c), *amended*.

SECTION 6. This section is based on and replaces section 12 of *The Married Women's Property Act*. It allows applications to determine ownership or the right to possession of particular pieces of property, and is not restricted to a marriage breakdown situation. This section is not available where an application under section 4 has been made in respect of the same property. The court may order compensation for a spouse if the other has disposed of the property in question. The court has the power to order partition, so that recourse to *The Partition Act* will not be necessary.

SECTION 7. Is based on section 1 (3) (c) of *The Family Law Reform Act, 1975* and extends that provision so as to allow the court to recognize the spouse's contribution to particular property.

SECTION 9. This section provides a mechanism for enforcing an order charging property.

SECTION 11. This provision formerly appeared as section 1 (3) (d) of *The Family Law Reform Act, 1975*.

SECTION 12. This Part applies to persons married and to property owned when this Act comes into force, except where the spouses have already started a court proceeding over property rights.

8. In or pending an application under section 4, 6 or 7, the court may make such interim order as it considers necessary for restraining the dissipation of the property and for the possession, delivering up, safekeeping and preservation of the property.

Interim
orders for
preservation

9. Where a court orders security for the performance of any obligation under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

Realization
of security

10. Where an order made under this Part affects real property, the order does not affect the acquisition of an interest in the real property by a person in good faith without notice of the order, unless the order is registered in the proper land registry office.

Registration
of orders

11.—(1) The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that,

Presump-
tions

- (a) the fact that property is placed or taken in the name of spouses as joint tenants is *prima facie* proof that each spouse is intended to have a one-half beneficial interest in the property; and
- (b) money on deposit in a chartered bank, savings office, credit union or trust company in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause a. 1975, c. 41, s. 1 (3) (d), *amended*.

(2) Subsection 1 applies notwithstanding that the event giving rise to the presumption occurred before this section comes into force.

Application

12. This Part applies notwithstanding that,

Application
of Part

- (a) the spouses entered into the marriage before this Part comes into force; or
- (b) the property in issue was acquired before this Part comes into force,

but does not apply in respect of property rights to which a claim has been made in a proceeding that was commenced before this Part comes into force.

Conflict
of laws

13.—(1) The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of Ontario.

Idem

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the land is situated, but where the law of Ontario is applicable respecting the division of family assets, the value of the property may be taken into consideration for the purposes of section 4.

PART II

SUPPORT OBLIGATIONS

Interpre-
tation

14. In this Part,

(a) “dependant” means a person to whom another has an obligation to provide support under this Part;

(b) “spouse” means a spouse as defined in section 1, and includes,

(i) either of a man and woman not being married to each other who have cohabited,

1. continuously for a period of not less than five years, or

2. in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year, and

(ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force.

Obligation
of spouses
for support

15. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.

SECTION 13. This Part will apply to spouses who do not have a marriage contract [see section 2 (9)] and whose last common habitual residence was in Ontario or who never had a common habitual residence. Where the spouses' last common habitual residence was outside Ontario, the ownership of their movable property and their right to divide family assets will be governed by the law of that other jurisdiction.

The ownership of spouses' land is governed by the law of the place where the land is situated. Where this Part applies to the spouses, land outside Ontario cannot be ordered sold or partitioned by the court. However, the court can take the value of that land into account and give a smaller share of movable property or land in Ontario to the spouse who owns the foreign land, in order to adjust the division of family assets.

SECTION 14. The definition of "spouse" is broadened to include a "common law" spouse as defined.

SECTION 15. This section creates an obligation on spouses to be self-supporting and to support the other spouse, depending on ability to provide support and the needs of the other spouse. Matrimonial misconduct will no longer be the basis for making or denying an award of support, but see section 18 (5).

SECTION 16. The parental obligation to support a child is extended beyond the age of 16 years where the child is unable to provide himself with necessities of life because of illness, disability or other cause, which would include attendance at school or university, where reasonable. This wording is borrowed from the *Divorce Act* (Canada).

SECTION 17. A corresponding obligation is placed on children over the age of 18 to support their parents when in need, in accordance with ability. This section replaces the existing *Parents' Maintenance Act*, which imposes a similar obligation.

SECTION 18. A parent, or a public agency or children's aid society providing welfare or family benefits will be able to claim support for a dependant.

Subsection 4 contains a check-list to assist the court in determining the needs of the dependant and the ability to pay of the person from whom support is claimed. The court is directed to take into consideration any loss of earning capacity or opportunity for advancement occasioned by the responsibilities assumed during cohabitation and may include assistance to a spouse to attain financial independence.

16. Every parent has an obligation, to the extent the parent is capable of doing so, to provide education and support, in accordance with need, for his or her child who is unmarried and, Obligation of parent to support child

- (a) is under the age of sixteen years; or
- (b) is of the age of sixteen years or over and in the charge of a parent but unable, by reason of illness, disability or other cause, to withdraw from the charge of his or her parents or to provide himself or herself with necessaries.

17. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for and provided support for the child, to the extent that the child is capable of doing so. Obligation of child to support parent

18.—(1) A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof. Order for support

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant or by, Applicants

- (a) the Ministry of Community and Social Services in the name of the Minister;
- (b) a municipal corporation, including a metropolitan, district or regional municipality, but not including an area municipality thereof; or
- (c) a children's aid society,

where the Ministry, municipality or society is providing an allowance or benefit in respect of the support of the dependant.

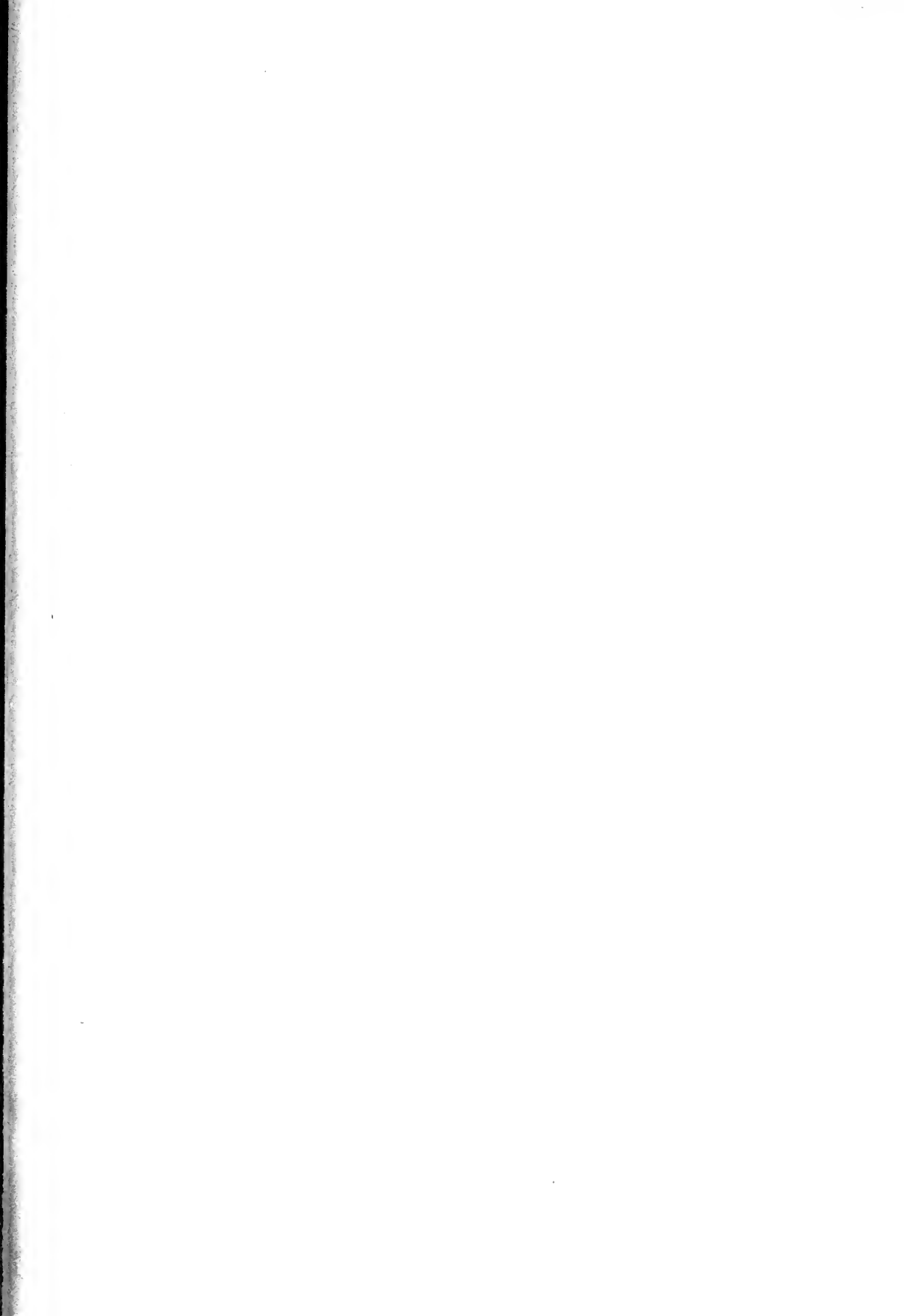
(3) The court may set aside a provision for support in a domestic contract or paternity agreement and may determine and order support in an application under subsection 1 notwithstanding that the contract or agreement contains an express provision excluding the application of this section, Setting aside domestic contract

- (a) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable;
- (b) where the provision for support is to a spouse who qualifies for an allowance for support out of public money; or
- (c) where there has been default in the payment of support under the contract or agreement.

Determin-
ation of
amount

(4) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity;
- (b) the capacity of the dependant to provide for his or her own support;
- (c) the capacity of the respondent to provide support;
- (d) the age and the physical and mental health of the dependant and of the respondent;
- (e) the length of time the dependant and respondent cohabited;
- (f) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures;
- (h) the legal obligation of the respondent to provide support for any other person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;
- (j) a contribution by the dependant to the realization of the career potential of the respondent;
- (k) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education;
- (l) where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities assumed during cohabitation; and
- (m) any other source of support for the dependant other than out of public money.



SECTION 19. The court has broad powers to make the most suitable order or combination of orders regarding support, including the making of both periodic and lump sum orders and the granting of security to ensure payments. The court can also order the respondent to reimburse a public agency for payments it has made to the dependant. The court can provide for the dependant's support after the respondent's death.

If the order is not expressed to survive the respondent, it terminates on death and only 12 months arrears are enforceable.

A support order may be assigned to a public agency paying benefits to the dependant. This allows the agency to continue the steady income of the dependant and leaves the burden of enforcement and the risk of non-payment on the agency.

(5) The obligation to provide support exists without regard ^{Conduct} to the conduct of the spouse requiring the support, but the court may limit the amount of support having regard to a course of conduct that is an obvious and gross repudiation of the relationship.

19.—(1) In an application under section 18, the court ^{Powers of court} may order,

- (a) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;
- (c) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) any matter authorized to be ordered under clauses *a* to *d* of subsection. 1 of section 45 and subject to subsection 3 thereof;
- (e) that all or any of the moneys payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant;
- (f) the payment of support to be made in respect of any period before the date of the order;
- (g) the payment to an agency referred to in subsection 2 of section 18 of any amount in reimbursement for an allowance or benefit granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order;
- (h) the payment of expenses in respect of the pre-natal care and birth of a child;
- (i) that the obligation and liability for support continue after the death of the respondent and be a debt of his or her estate for such period as is fixed in the order;
- (j) that a spouse who has a policy of life insurance as defined in Part V of *The Insurance Act* desig- ^{R.S.O. 1970.} _{c. 224}

nate the other spouse or a child as the beneficiary irrevocably; and

(k) the securing of payment under the order, by a charge on property or otherwise.

Limitation
on
jurisdiction
of family
court

(2) A provincial court (family division) shall not make an order under clause *b*, *c* or *j* of subsection 1 except for the provision of necessities or preventing the dependant from becoming a public charge.

Interim
orders

(3) Where an application is made under section 18, the court may make such interim order as the court considers appropriate.

Assignment
of support

(4) An order for support is assignable to an agency referred to in subsection 2 of section 18.

Termination
of support
order on
death

(5) Unless an order to provide support otherwise provides, it terminates upon the death of the person having the obligation to provide support, and the liability for amounts under the order coming due and unpaid in the preceding twelve months is a debt of his or her estate.

Effect of
divorce
proceedings
R.S.C. 1970,
c. D-8

20.—(1) Where an action for divorce is commenced under the *Divorce Act* (Canada), any application for support or custody under this Part that has not been determined is stayed except by leave of the court.

Idem

(2) Where a marriage is terminated by a decree absolute of divorce or declared a nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms.

Review and
variation
of orders

21.—(1) Where an order for support has been made or confirmed and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent or evidence has become available that was not available on the previous hearing, the court may, upon the application of any person named in the order or referred to in subsection 2 of section 18, discharge, vary or suspend any term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all of the arrears or any interest due thereon and make such other order under section 19 as the court considers appropriate in the circumstances referred to in section 18.

SECTION 20. To avoid having the issue of support before two different courts, an application under this Part is stayed when a divorce is sought and any support order will be made under the *Divorce Act* (Canada). Where support is not before the trial judge as an issue in a divorce, an order under this Part survives the divorce. Under existing law, provincial orders in favour of a child continue but those in favour of a spouse do not.

SECTION 21. An order for support may be varied or ended if there has been a material change of circumstances or new evidence becomes available. The court also has power to wipe out arrears and interest.

If the original order was made by a county or district court, both the original court and another county or district court have jurisdiction to vary the order. The same provision is available for variation by one provincial court (family division) of an order made by another provincial court (family division).

This section applies to the variation of support orders made before this Act takes effect.

SECTION 22. A proposed sale of assets that would defeat a claim or an order for payment of support may be restrained by court order.

SECTION 23. Disclosure of financial information will be required of both the applicant and the person from whom support is claimed in order to ascertain need and ability to pay. The court will have discretion to make the disclosure confidential.

SECTION 25. Where appropriate, a provincial court (family division) or the Unified Family Court can make a provisional order against a respondent who lives outside the judicial district and who fails to appear at the hearing. The order is sent to the court having jurisdiction where the respondent lives and has no effect unless that court confirms it. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

(2) An application under subsection 1 shall be made to ^{Court} the court that made the order or to a co-ordinate court in another part of Ontario.

(3) No application under subsection 1 shall be made ^{Limitation on applications for review} within six months after the making of the order for support or the disposition of any other application under subsection 1 in respect of the same order, except by leave of the court.

(4) This section applies to orders for maintenance or ^{Existing orders} alimony made before this section comes into force or in a proceeding commenced before this section comes into force.

22. In or pending an application under section 18 or ^{Restraining orders} appearance to a notice under section 28, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support.

23.—(1) Where an application is made under section ^{Statement of financial affairs} 18 or 21, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of financial information in the manner and form prescribed by the rules of the court.

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a ^{Order for sealing statement} statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

24. Where an application is made under section 18 ^{Absconding respondent or debtor} or a notice is issued under section 28 and a judge of the court is satisfied that the respondent or debtor is about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent or debtor.

25.—(1) Where an application is made under section 18 ^{Provisional orders} or 21 in a provincial court (family division) or the Unified Family Court and,

(a) the respondent in the application fails to appear;

(b) it appears to the court that the respondent resides in a locality in Ontario that is outside the territorial jurisdiction of the court; and

(c) in the circumstances of the case, the court is of the opinion that the issues can be adequately determined by proceeding under this section,

the court may proceed in the absence of the respondent and without the statement of the financial affairs of the respondent required by section 23 and in place of a final order may make an order for support that is provisional only and the order has no effect until it is confirmed by the provincial court (family division) or the Unified Family Court in the locality in which the respondent resides.

Transmission for hearing (2) Where a provisional order is made under subsection 1, the court making the order shall send to the court having jurisdiction in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court.

Show cause (3) The court to which the documents and records are sent under subsection 2 shall cause them to be served upon the respondent together with a notice to file with the court the statement of financial affairs required by section 23 and to appear and show cause why the provisional order should not be confirmed.

Confirmation of order (4) At the hearing, the respondent may raise any defence that might have been raised in the original proceedings, but, if on appearing the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with such variation as the court considers proper having regard to all the evidence.

Adjournment for further evidence (5) Where the respondent appears before the court and satisfies the court that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may so remit the case and adjourn the proceedings for that purpose.

Where order not confirmed (6) Where the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court that made the order together with a statement of the reasons for so doing, and in that event the court that made the order may dispose of the application in such manner as it considers proper.

Certificates as evidence (7) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the office or



SECTION 26. In order to start a support application or to enforce a support order, the applicant may obtain an order requiring a person such as an employer or public agency, including the Province of Ontario, to provide access to its records for the sole purpose of obtaining the address of a person ordered to pay support.

SECTION 27. This section allows support orders made in any court to be filed for enforcement in the new Unified Family Court or the provincial court (family division). It replaces section 25 of *The Provincial Courts Act*. This section recognizes the administrative practice whereby court officials automatically enforce orders in family court.

The provincial court (family division) will have power to enforce support orders by execution and garnishment. Formerly support orders were enforceable in small claims court only up to the monetary jurisdiction of that court.

Garnishee and attachment orders may be obtained against the Crown for support.

signature of the clerk, admissible in evidence in a court to which it is transmitted under this section as *prima facie* proof of the authenticity of the copy.

(8) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have had if the order had been made under section 19. Right of appeal

26.—(1) Where it appears to a court that,

Access to records

(a) for the purpose of bringing an application under this Part; or

(b) for the purpose of the enforcement of an order for support, custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts of the proposed respondent or person against whom the order is made, the court may order any person or public agency to provide the court with such particulars of the address as are contained in the records in its custody and the person or agency shall provide to the court such particulars as it is able to provide.

(2) This section binds the Crown in right of Ontario.

Section binds Crown

27.—(1) The clerk of the Unified Family Court or of a provincial court (family division), upon the request of a person entitled to support under an order for support or maintenance enforceable in Ontario or other persons or agency mentioned in subsection 2 of section 18 and upon the filing of such material as is prescribed by the rules may enforce the order. Enforcement of orders by family court clerk

(2) A provincial court (family division) and the judges thereof have the power to issue execution and garnishment and enforce orders under subsection 1 in the same manner as small claims courts and the judges thereof, but without monetary limitation. Powers of court for enforcement

(3) Notwithstanding section 25 of *The Proceedings Against the Crown Act*, an attachment under subsection 1 of section 30 and any other execution, garnishment or attachment or process in the nature thereof for the payment of an amount owing or accruing under an order for support or maintenance, may be issued against the Crown. Crown subject to attachment for support R.S.O. 1970, c. 365

Examination
of debtor

28.—(1) Where there is default in payment under an order for support or maintenance, a clerk of the Unified Family Court or a provincial court (family division) may require the debtor, upon notice,

(a) to file a statement of financial information referred to in section 23;

(b) submit to an examination as to assets and means; and

(c) appear before the court to explain the default.

Compelling
attendance

(2) If the debtor fails to appear as required after being served with a notice, or if the court is satisfied that the debtor cannot be served or intends to leave Ontario without appearing as required after being served, the court giving the notice may issue a warrant for the arrest of the debtor for the purpose of compelling attendance.

Penalty
for
default

29.—(1) Where the debtor fails to satisfy the court that the default is owing to his inability to pay, the court may order imprisonment for a term of not more than three months.

Conditions
of sentence

(2) The order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and the order for imprisonment may provide for the imprisonment to be served intermittently.

Attachment
of wages

30.—(1) Where the court considers it appropriate in a proceeding under section 28, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order and to pay the amounts deducted into court, and section 7 of *The Wages Act* does not apply.

R.S.O. 1970,
c. 486

Priority
of order

(2) An order under subsection 1 has priority over any other seizure or attachment of wages arising before or after the service of the order.

Security
for
payment

31. Where the court considers it appropriate in a proceeding under section 28, the court may order the debtor to give security for the payment of support or charge any property of the debtor therewith.

SECTION 28. Where a debtor under an order defaults, the debtor can be required to disclose financial particulars and appear before the court to explain the default. The debtor can be arrested if about to abscond. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

SECTION 29. This procedure exists under *The Deserted Wives' and Children's Maintenance Act*. The power to imprison is made flexible enough to allow for a conditional or intermittent sentence.

SECTION 30. This section is new. It allows a court order for a continuing deduction at source by the employer in order to satisfy a support order. The attachment would have priority over any other seizure of wages. See also sections 76 and 84.

SECTION 32. This section provides a mechanism for enforcing a secured support order by selling the security.

SECTION 33. While living together, either spouse may pledge the credit of the other for necessities unless this authority is specifically withdrawn by notice to the creditor. Both spouses are then jointly liable to the creditor. Similarly, under subsection 2, a creditor may recover necessities provided to a child under 16 from both the parents and the child. The liability as between the spouses, or between parent and child, is determined in accordance with need and ability to pay as set out in sections 15, 16 and 17.

Subsection 4 abolishes the common law agency of cohabitation and agency of necessity, which applied only in favour of a wife.

SECTION 34. This section provides a civil remedy to prevent a spouse from continually harassing and interfering with the other.

SECTION 35. This section provides for the making of a custody order or interim order in favour of either parent in the best interests of the child. The custody order need not be tied to a support order, as is now the case under section 3 of *The Deserted Wives' and Children's Maintenance Act*.

32. Where a court orders security for the payment of support under this Part or charges property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

Realization
of security

33.—(1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessaries of life, except where the spouse has notified the third party that he or she has withdrawn the authority.

Pledging
credit for
necessaries

(2) Where a person is entitled to recover against a minor under sixteen years of age in respect of the provision of necessaries for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

Liability
for
necessaries
of minor

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Recovery
between
persons
jointly
liable

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband.

Common
law
supplanted

34. Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate.

Order
restraining
harassment

35.—(1) Upon application, the court may order that either parent or any person have custody of or access to a child in accordance with the best interests of the child and may at any time alter, vary or discharge the order.

Custody of
children

(2) An application to alter, vary or discharge the order shall be made to the court that made the order or to a co-ordinate court in another part of Ontario.

Court

(3) Where an application is made under subsection 1, the court may make such interim order as the court considers appropriate.

Interim
orders

(4) This section applies to orders for custody or access made under *The Deserted Wives' and Children's Maintenance Act*.

Application
to orders
under
R.S.O. 1970,
c. 128

Appeal
from
provincial
court (family
division)

36. An appeal lies from an order of the provincial court (family division) under this Part to the county or district court in the county or district in which the provincial court (family division) is situated.

Contempt
of orders of
provincial
court (family
division)

37.—(1) In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed three months.

Conditions
of
imprison-
ment

(2) An order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

PART III

MATRIMONIAL HOME

Interpre-
tation

38. In this Part, “property” means real or personal property.

Matrimonial
home

39.—(1) Property in which a person has an interest and that is or has been occupied by the person and his or her spouse as their family residence is their matrimonial home.

More
than one
matrimonial
home

(2) Subsection 1 applies notwithstanding that its application results in more than one matrimonial home.

Ownership
of shares

(3) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection 1.

Residence
on farm-
land, etc.

(4) Where property that includes a matrimonial home is normally used for a purpose other than residential only, the matrimonial home is only such portion of the property as may reasonably be regarded as necessary to the use and enjoyment of the residence.

Right to
possession

40.—(1) A spouse is equally entitled to any right of possession of the other spouse in a matrimonial home.

Termination
of right to
possession

(2) Subject to an order of the court under this or any other Act, a right of a spouse to possession by virtue of subsection 1 ceases upon the spouse ceasing to be a spouse.

SECTION 36. Appeals are provided for in Acts governing the Supreme Court and county courts. This section is necessary because *The Provincial Courts Act* does not contain provisions for appeals. The appeal procedure will be set out in the rules.

SECTION 37. This section gives a provincial court (family division) the power to punish contempt of its orders under this Part. The Supreme Court and county courts already have such power.

SECTION 38. This Part extends to mobile homes, trailers, houseboats, etc.

SECTION 39. Where the family has or had two or more homes, this Part applies to all the family residences, subject to section 41. The definition of "matrimonial home" includes a home rented by the family and a unit in a co-operative housing development.

Where the property on which a matrimonial home is used for a purpose that is more than residential, such as for farming or other business purposes, only the surrounding land reasonably necessary for use of the residence is affected by this Part.

SECTION 40. Notwithstanding which spouse owns the home, both spouses are equally entitled to possession. The equal right to possession may be altered by a court order under section 45.

SECTION 41. The spouses may jointly designate one or more properties as matrimonial homes, and thereupon this Part ceases to apply to any property other than those designated. The designation must be registered.

SECTION 42. A spouse may not sell, lease, mortgage or otherwise deal with the matrimonial home unless the non-owning spouse's consent in writing is obtained, a court dispenses with the consent under section 44 or another home has been designated as the matrimonial home. If a spouse deals with the home without consent, the transaction can be set aside unless an innocent third party holds the interest at that time. The affidavit of a spouse is sufficient protection for a bona fide purchaser.

41.—(1) Both spouses may, by instrument in the form prescribed by the regulations, designate any property that is a matrimonial home and, upon the registration of the instrument and while there is a designation made by the spouses under this subsection that is not cancelled, any other property that would qualify as a matrimonial home under section 39 and that is not similarly designated ceases to be a matrimonial home.

Registered
designation
of
matrimonial
home

(2) The property that is designated as a matrimonial home under subsection 1 may include any property contiguous to the matrimonial home that is described for the purpose in the instrument.

Extent of
designation

(3) The designation of a matrimonial home under subsection 1 is cancelled upon the registration or deposit of,

Cancellation
of
designation

(a) an instrument in the form prescribed by the regulations executed by both spouses;

(b) a decree absolute of divorce or judgment of nullity;

(c) an order under section 45 cancelling the designation; or

(d) proof of death of one of the spouses.

(4) Upon the cancellation of the designation of a property under subsection 3, the property ceases to be a matrimonial home under section 39.

Effect of
cancellation

(5) Upon there ceasing to be a designation under subsection 1, section 39 applies in respect of property that is a matrimonial home.

Revival
of
matrimonial
homes

42.—(1) No spouse shall dispose of or encumber any interest in a matrimonial home unless,

Alienation of
matrimonial
home

(a) the other spouse joins in the instrument or consents to the transaction;

(b) the transaction is authorized by court order or an order has been made releasing the property as a matrimonial home;

(c) the property is not designated as a matrimonial home under section 41 and an instrument designating another property as a matrimonial home of the spouses is registered under section 41 and not cancelled.

Setting
aside
transaction

(2) Where a spouse disposes of or encumbers an interest in a matrimonial home in contravention of subsection 1, the transaction may be set aside on an application under section 44 unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice that the property was at the time of the disposition, agreement or encumbrance a matrimonial home.

Proof that
property
not a
matrimonial
home

(3) For the purposes of subsection 2, an affidavit of the person making the disposition or encumbrance,

- (a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;
- (b) verifying that the property has never been occupied by the person and his or her spouse as their matrimonial home; or
- (c) where the property is not designated under section 41, verifying that an instrument designating another property as a matrimonial home of the person and his or her spouse is registered under section 41 and not cancelled,

shall, in the absence of actual notice by a spouse to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home.

Liens
arising by
operation
of law
R.S.O. 1970,
c. 239

(4) This section does not apply to the acquisition of an interest in property by operation of law or of a lien under section 18 of *The Legal Aid Act*.

Right of
redemption
and to
notice

43.—(1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of section 40 has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

Service of
notice

(2) Any notice to which a spouse is entitled by virtue of subsection 1 shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the person to whom notice is to be given at his or her usual or last known address or, where none, the address of the matrimonial home, and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

SECTION 43. The non-owning spouse is protected by requiring landlords, mortgagees and other lienholders to accept payment from and give notice to that spouse as if he or she were an owner.

SECTION 45. The court has power to grant exclusive possession of part or all of the home and contents, but is not to exercise the power unless satisfied that other provision for shelter is inadequate in the circumstances.

(3) Where a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection 1, the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

Effect of
payments
made by
spouse

44. The court may, on the application of a spouse or person having an interest in property, by order,

Powers of
court
respecting
alienation

- (a) determine whether or not property is the matrimonial home and, if so, its extent;
- (b) authorize the disposition or encumbrance of the matrimonial home where the court finds that the spouse whose consent is required,
 - (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of other comparable accommodation or payment in place thereof as the court considers appropriate;

- (c) dispense with any notice required to be given under section 43; and
- (d) direct the setting aside of any transaction disposing of or encumbering an interest in the matrimonial home without the required consent and the reversioning of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.

45.—(1) Notwithstanding the ownership of a matrimonial home and its contents, and notwithstanding section 40, the court on application may by order,

Order for
possession of
matrimonial
home

- (a) direct that one spouse be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs and release any other property that is a matrimonial home from the application of this Part;
- (b) direct a spouse to whom exclusive possession of a matrimonial home is given to pay such periodic

payments to the other spouse as is prescribed in the order;

- (c) direct that the contents of a matrimonial home, or any part thereof, remain in the home for the use of the person given possession;
- (d) fix the obligation to repair and maintain the matrimonial home or to pay other liabilities arising in respect thereof;
- (e) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home subject to the right to exclusive possession of the other spouse as ordered; and
- (f) where a false declaration is given under subsection 3 of section 42, direct the substitution of other real property for the matrimonial home or the setting aside of money or security to stand in place thereof, subject to such terms and conditions as the court considers appropriate.

Temporary possession

(2) An order may be made under subsection 1 for temporary relief or pending the bringing or disposition of another application under this Act.

Order where no property interest

(3) An order for exclusive possession under subsection 1 shall not be made in favour of a spouse unless, in the opinion of the court, other provision for shelter is not adequate in the circumstances or it is in the best interests of a child to do so.

Limitation on jurisdiction of family court

(4) A provincial court (family division) shall not make an order under clause *b* or *d* of section 44 or clause *e* or *f* of subsection 1.

Variation of order

46. Upon the application of a person named in an order made under clause *a*, *b*, *c* or *d* of subsection 1 of section 45 and where the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

Interim order for preservation of property

47. In an application under this Part, the court may make such interim order as it considers necessary for the delivering up, safekeeping and preservation of the matrimonial home or its contents.

Registration of order
R.S.O. 1970,
cc. 409, 234

48. An order made under this Part is registrable against land under *The Registry Act* and *The Land Titles Act*.

SECTION 48. An order for possession may be registered against the land so as to provide notice to third parties.

SECTION 49. This Part applies to all matrimonial homes in Ontario, whether or not the spouses have a marriage contract (see section 55) and whether or not the spouses are otherwise subject to Ontario property law (see section 12). This Part covers persons married and matrimonial homes acquired before this Act comes into force, except where a spouse has applied for an order for possession before this Act is in effect.

SECTIONS 50 TO 53. This Part overcomes the common law rule which held that marriage contracts contemplating a future separation or divorce were void.

The sections create a general category called "domestic contracts", which is made up of marriage contracts, cohabitation agreements and separation agreements. Cohabitation agreements are akin to marriage contracts, but the parties are not married. Only a separation agreement may provide for custody of or access to children.

Court approval must be given to the marriage contract of a minor capable of entering into a marriage. Similarly, court approval is required where a committee enters into a domestic contract on behalf of a spouse who becomes mentally incompetent.

49.—(1) This Part applies to matrimonial homes that are ^{Application} _{of Part} situated in Ontario.

(2) This Part applies notwithstanding that, Idem

- (a) the spouses entered into the marriage before this Part comes into force; or
- (b) the matrimonial home was acquired before this Part comes into force,

but does not apply to proceedings respecting possession of a matrimonial home that were commenced before this Part comes into force.

PART IV

DOMESTIC CONTRACTS

50. In this Part, Interpre-
tation

- (a) “cohabitation agreement” means an agreement entered into under section 52;
- (b) “domestic contract” means a marriage contract, separation agreement or cohabitation agreement;
- (c) “marriage contract” means an agreement entered into under section 51;
- (d) “separation agreement” means an agreement entered into under section 53.

51. Two persons may enter into an agreement, before ^{Marriage} _{contracts} their marriage or during their marriage while cohabiting, in which they agree on their respective rights and obligations under the marriage or upon separation or the annulment or dissolution of the marriage or upon death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

Cohabitation
agreements

52.—(1) A man and a woman who are cohabiting and not married to one another may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit or death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

Effect of
marriage on
agreement

(2) Where the parties to an agreement entered into under subsection 1 subsequently marry, the agreement continues in force subject to any further agreement under this Part.

Separation
agreements

53. A man and woman who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of and access to their children; and
- (e) any other matter in the settlement of their affairs.

Form of
contract

54.—(1) A domestic contract and any agreement to amend or rescind a domestic contract are void unless made in writing and signed by the persons to be bound and witnessed.

Capacity
of minor

(2) A minor who has capacity to contract marriage has capacity to enter into a marriage contract or separation agreement that is approved by the court, whether the approval is given before or after the contract is entered into.

Agreement
on behalf of
mentally
incompetent

(3) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or, if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a domestic contract or



SECTION 55. Before separation, a spouse may not contract out of the right to control dealings with the matrimonial home or obtain possession of it. Any provision in a domestic contract respecting a child is to be enforced only if in the child's best interests. Subsection 3 invalidates a *dum casta* clause. See also section 18 (3).

Domestic contracts will also be invalid for any reason that would void another kind of contract, such as fraud, duress or undue influence.

Where a provision is held void, the court will determine under the ordinary law of contract whether the provision can be severed so as to allow enforcement of the remainder of the contract.

SECTION 56. Where a third party makes a gift to either or both spouses, subject to the condition that they do not dispose of it without his consent, and this provision is contained in a marriage contract, the person making the gift can enforce the provision notwithstanding that he was not a party to the original contract.

SECTION 57. A marriage contract may be subject to foreign law. If it is valid under either the foreign law or Ontario law, it will be recognized in Ontario. However, no marriage contract will be enforced to the extent that it contradicts section 55 or 18 (3).

SECTION 58. This section replaces the provisions for affiliation agreements formerly found in Part III of *The Child Welfare Act*. That Part is repealed by section 73.

give any waiver or consent under this Act on behalf of the mentally incompetent person.

55.—(1) Any provision in a marriage contract purporting to limit the rights of a spouse under Part III in respect of a matrimonial home is void. Rights re matrimonial home excepted

(2) In the determination of any matter respecting the support, education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child. Subject to best interests of child

(3) A provision in a separation agreement whether made before or after this section comes into force whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another. Dum casta clauses

56. Where a domestic contract provides that specific gifts made to one or both parties are not disposable or encumberable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision. Rights of donors of gifts

57. The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that, Contracts made outside Ontario

(a) a contract for which the proper law is that of a jurisdiction other than Ontario, is also valid and enforceable in Ontario if entered into in accordance with the internal law of Ontario; and

(b) subsection 3 of section 18 and section 55 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario.

58.—(1) Where a man and a woman who are not spouses enter into an agreement for the payment of the expenses of prenatal care and birth in respect of a child or for the support of a child or for both, on the application of a party to the agreement or a children's aid society made to a provincial court (family division) or the Unified Family Court, the court may incorporate the agreement in an order, and Part II applies to the order in the same manner as if it were an order for support made under that Part. Paternity agreements

(2) Where an application is made under subsection 1 and a judge of the court is satisfied that the respondent is 1 Absconding respondent

about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent.

Application to pre-existing agreements

(3) This section applies to agreements referred to in subsection 1 that were made before this Part comes into force.

Application of Act to pre-existing contracts

59.—(1) A separation agreement or marriage contract validly made before this Part comes into force shall be deemed to be a domestic contract for the purposes of this Act.

Contracts entered into before Part comes into force

(2) Where a domestic contract is entered into in accordance with this Part before this Part comes into force and,

(a) the contract or any part would be valid if entered into after this Part comes into force; and

(b) the contract or part is entered into in contemplation of the coming into force of this Part,

the contract or part is not invalid for the reason only that it was entered into before this Part comes into force.

Idem

(3) Where pursuant to an understanding or agreement entered into before this Part comes into force by spouses who are living separate and apart, property is transferred, between them, the transfer is effective as if made pursuant to a domestic contract.

PART V

DEPENDANTS' CLAIM FOR DAMAGES

Right of dependants to sue in tort

60.—(1) Where a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part II, children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1970, c. 164, s. 3 (1), *amended*.

Contributory negligence

(2) In an action under subsection 1, the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. *New*.

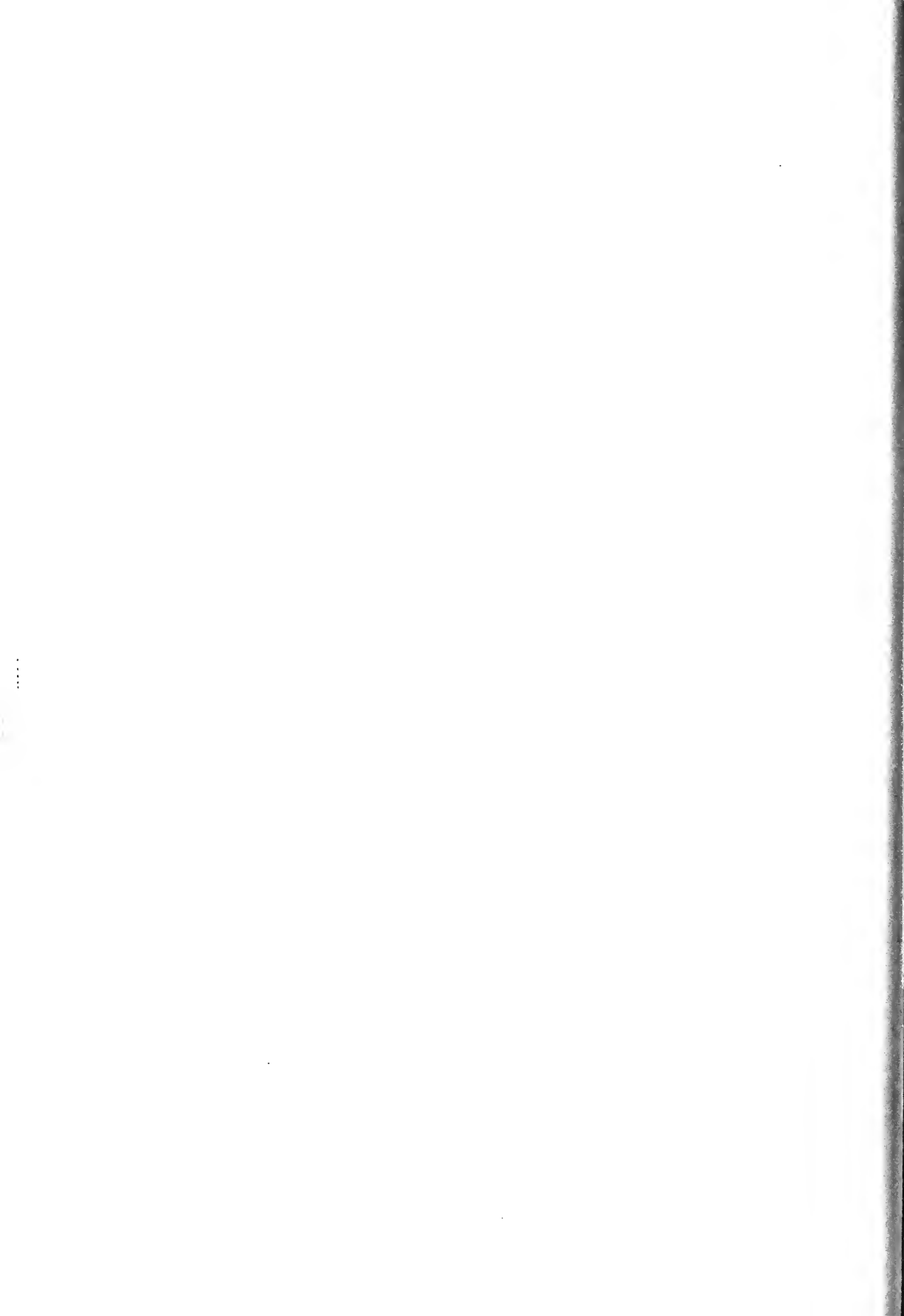
SECTION 59. Separation agreements and marriage contracts entered into before this Act comes into force are valid, and subsisting affiliation agreements and separation agreements are preserved.

SECTIONS 60 TO 64. This Part replaces *The Fatal Accidents Act* and extends that Act to cover non-fatal injuries, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. It also replaces the actions for loss of consortium and loss of services of a child (see section 69).

With the abolition of the husband's property in the services of his wife and the parent's property in the services of a child, and the creation of a new, qualified obligation of support under this Act, a new basis is created on which family members can recover expenses they incur for the benefit of an injured person. This section will allow them to recover the same kind of pecuniary loss as can now be recovered under *The Fatal Accidents Act*.

Section 60 extends the right to claim to a broader class of related person than under *The Fatal Accidents Act*. Subsection 2 codifies the case law under *The Fatal Accidents Act*.

The following sections are based on the provisions of that Act and require all claimants to join in one action. Insurance payments are not to be considered in assessing damages. The \$800 limit on funeral expenses is removed to allow recovery of reasonable funeral expenses actually incurred.



(3) Not more than one action lies under subsection 1 for and in respect of the same occurrence, and no such action shall be brought after the expiration of two years from the time the cause of action arose. R.S.O. 1970, c. 164, s. 5; 1975, c. 38, s. 1.

One action
and
limitation
of actions

61.—(1) An action under subsection 1 of section 60 in respect of a person who is killed shall be commenced by and in the name of the executor or administrator of the deceased for the benefit of the persons entitled to recover under subsection 1 of section 60. R.S.O. 1970, c. 164, s. 3, *part, amended.*

Executor to
sue where
death

(2) If there is no executor or administrator of the deceased, or if there is an executor or administrator and no such action is, within six months after the death of the deceased, brought by the executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by the executor or administrator.

When action
may be
brought by
persons
beneficially
interested

(3) Every action so brought is for the benefit of the same persons and is subject to the same regulations and procedure, as nearly as may be, as if it were brought by the executor or administrator. R.S.O. 1970, c. 164, s. 7.

Regulations
and pro-
cedure in
such case

62.—(1) Where an action is commenced under section 60, the plaintiff shall, in his statement of claim, name and join the claim of any other person who is entitled to maintain an action under section 60 in respect of the same injury or death and thereupon such person becomes a party to the action.

Joining
claims

(2) A person who commences an action under section 60 shall file with the statement of claim an affidavit stating that to the best of his knowledge, information and belief the persons named in the statement of claim are the only persons who are entitled or claim to be entitled to damages under section 60. R.S.O. 1970, c. 164, s. 6 (1, 2), *amended.*

Affidavit

63.—(1) The defendant may pay into court one sum of money as compensation for his fault or neglect to all persons entitled to compensation without specifying the shares into which it is to be divided. R.S.O. 1970, c. 164, s. 4.

How money
may be paid
into court

(2) Where the compensation has not been otherwise apportioned, a judge may, upon application, apportion it among the persons entitled.

Apportion-
ment

When pay-
ment may
be
postponed (3) The judge may in his discretion postpone the distribu-
tion of money to which minors are entitled and may direct
payment from the undivided fund. R.S.O. 1970, c. 164, s. 8.

Assessment
of damages,
insurance

64.—(1) In assessing the damages in an action brought
under this Part, the court shall not take into account any
sum paid or payable as a result of the death or injury under
a contract of insurance.

Funeral
expenses

(2) For the purposes of this Part, damages may be
awarded for reasonable expenses actually incurred for the
burial of the person in respect of whose death the action
is brought. R.S.O. 1970, c. 164, s. 3 (2, 3), *amended*.

PART VI

AMENDMENTS TO THE COMMON LAW AND STATUTE LAW

Unity of legal
personality
abolished

65.—(1) For all purposes of the law of Ontario, a
married man has a legal personality that is independent,
separate and distinct from that of his wife and a married
woman has a legal personality that is independent, separate
and distinct from that of her husband.

Capacity of
married
person

(2) A married person has and shall be accorded legal
capacity for all purposes and in all respects as if such person
were an unmarried person. 1975, c. 41, s. 1 (1, 2).

Idem

- (3) Without limiting the generality of subsections 1 and 2,
- (a) each of the parties to a marriage has the like
right of action in tort against the other as if they
were not married;
 - (b) a married woman is capable of acting as guardian
ad litem or next friend as if she were an unmarried
woman; 1975, c. 41, s. 1 (3), *part*.
 - (c) the same rules shall be applied to determine the
domicile of a married woman as for a married man.

Purpose
of subss.
1, 2

(4) The purpose of subsections 1 and 2 is to make the
same law apply, and apply equally, to married men and
married women and to remove any difference therein result-
ing from any common law rule or doctrine, and subsections 1
and 2 shall be so construed. 1975, c. 41, s. 1 (4).

Actions
between
parent and
child

66. No person shall be disentitled from bringing an
action or other proceeding against another for the reason

SECTION 65. This section formerly appeared as section 1 (1, 2, 4) of *The Family Law Reform Act, 1975*. Subsection 3 (c) is new.

SECTION 66. This section formerly appeared as section 3 of *The Family Law Reform Act, 1975*.

SECTION 67. This section formerly appeared as section 4 of *The Family Law Reform Act, 1975*.

SECTION 68. The domicile of a minor is no longer dependent automatically on the domicile of the father alone. A minor who is or has been married is capable of acquiring a domicile as if an adult.

SECTION 69. This section abolishes several old and little used common law actions, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. The loss of consortium and loss of services actions are replaced by sections 60 to 64. Subsection 5 results from the abolition of the seduction action.

only that they stand in the relationship of parent and child.
1975, c. 41, s. 3.

67. No person shall be disentitled from recovering damages in respect of injuries incurred for the reason only that the injuries were incurred before his birth. 1975, c. 41, s. 4. Recovery for prenatal injuries

68.—(1) Subject to subsection 2, a child who is a minor, Domicile of minors

(a) takes the domicile of his or her parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;

(c) takes the domicile of the father, where the domicile of the child cannot be determined under clause *a* or *b*; or

(d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause *c*.

(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age. Idem

69.—(1) No action shall be brought for criminal conversation or for any damages resulting therefrom or from adultery. Criminal conversation abolished

(2) No action shall be brought by a married person for the enticement or harbouring of the spouse of such person or for any damages resulting therefrom. Enticement and harbouring of spouse abolished

(3) No action shall be brought by a married person for the loss of the consortium of his or her spouse or for any damages resulting therefrom. Loss of consortium abolished

(4) No action shall be brought by a parent for the enticement, harbouring, seduction or loss of services of his or her child or for any damages resulting therefrom. Enticement, harbouring, seduction, loss of services of child abolished

(5) *The Seduction Act*, being chapter 428 of the Revised Statutes of Ontario, 1970 and paragraph 30 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed. R.S.O. 1970, c. 428; 1971, c. 98, Sched., par. 30, repealed

R.S.O. 1970,
c. 228, s. 59,
amended

(6) Section 59 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by striking out "criminal conversation, seduction" in the first line.

Dower
abolished

70.—(1) The common law right of a widow to dower is hereby abolished.

R.S.O. 1970,
c. 135;
1971, c. 98,
Sched.,
par. 11,
repealed

(2) *The Dower Act*, being chapter 135 of the Revised Statutes of Ontario, 1970, and paragraph 11 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 152, s. 28 (2),
repealed

(3) Subsection 2 of section 28 of *The Execution Act*, being chapter 152 of the Revised Statutes of Ontario, 1970, is repealed.

Vested
right to
dower

(4) Subsections 1, 2 and 3 do not apply in respect of a right to dower that has vested before subsections 1 and 2 come into force.

Refund of
indemnity
held by
accountant
for dower

(5) Where money has been paid into court as an indemnity in respect of a right to dower that has not vested before this section comes into force, the husband of the person in respect of whose dower right the money was paid into court is entitled to be paid the money upon application to the accountant of the court, without order.

Alimony
abolished

71.—(1) The right of a married woman to alimony under any law existing before this section comes into force is hereby abolished.

Continuation
of action
commenced

(2) Where an action for alimony is commenced before subsection 1 comes into force and no evidence has been heard in the action before this Act comes into force, other than in respect of an interim order, the action shall be deemed to be an application under Part II subject to such directions as the court considers appropriate.

Polygamous
marriages

72. This Act applies to persons whose marriage was actually or potentially polygamous if the marriage was celebrated in a jurisdiction whose system of law recognizes the marriage as valid.

R.S.O. 1970,
c. 64, s. 27 (4),
amended

73.—(1) Subsection 4 of section 27 of *The Child Welfare Act*, being chapter 64 of the Revised Statutes of Ontario, 1970, is amended by striking out "*The Deserted Wives' and Children's Maintenance Act*" and inserting in lieu thereof "Part II of *The Family Law Reform Act, 1978*".

SECTION 70. Because of the rights conferred on husbands and wives under Parts I and III, dower is abolished. Subsection 4 preserves vested rights of dower where the husband dies before this Act comes into force. Where money has been paid into court in respect of an inchoate dower interest, the husband is entitled to recover the money. Subsections 2 and 3 repeal statutory references to dower.

The widower's right of curtesy is abolished by *The Succession Law Reform Act, 1977*.

SECTION 71. The alimony action is abolished, as it is replaced by Part II. Applications to vary existing alimony orders are to be made under section 21. Alimony actions that have not come to trial are converted into applications for support under Part II.

SECTION 72. The obligations and remedies under this Act are not denied for the reason that the marriage is polygamous.

SECTION 73. Part III of *The Child Welfare Act* is replaced by Part II and section 58.

SECTION 74. *The Children's Maintenance Act* is replaced by Part II.

SECTION 75. The amendment is consequential to section 30 (2).

SECTION 76. *The Deserted Wives' and Children's Maintenance Act* is replaced by Part II.

SECTION 77. *The Employment Standards Act, 1974* is amended to extend the protection against dismissal or suspension in respect of garnishment of wages to cover attachment of wages under section 30 of this Act.

SECTION 78. Sections 1 to 4 of *The Family Law Reform Act, 1975* are incorporated in or replaced by this Act. See sections 6, 7, 65, 66 and 67.

SECTION 79. *The Fatal Accidents Act* is incorporated in sections 60 to 64.

SECTION 80. Provisions of *The Infants Act* relating to support and marriage contracts are repealed, as they are replaced by Part II and Part IV, respectively.

(2) Part III of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, Schedule, paragraph 6, subparagraph ii, 1972, chapter 109, section 6, 1973, chapter 75, section 5 and 1975, chapter 1, sections 25, 26, 27 and 28, is repealed. Part III,
repealed

74. *The Children's Maintenance Act*, being chapter 67 of the Revised Statutes of Ontario, 1970 and subsection 2 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, are repealed. R.S.O. 1970,
c. 67;
1971, c. 98,
s. 18 (2),
repealed

75. Section 4 of *The Creditors Relief Act*, being chapter 97 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: R.S.O. 1970,
c. 97, s. 4 (9),
amended

(9) This section does not apply to an attachment made under section 30 of *The Family Law Reform Act*, 1978. 1978, c. ...
exempted

76. *The Deserted Wives' and Children's Maintenance Act*, being chapter 128 of the Revised Statutes of Ontario, 1970, subsection 1 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, and *The Deserted Wives' and Children's Maintenance Amendment Act*, 1973, being chapter 133, are repealed. R.S.O. 1970,
c. 128,
1971, c. 98,
s. 18 (1);
1973, c. 133,
repealed

77. Section 9 of *The Employment Standards Act*, 1974, being chapter 112, is repealed and the following substituted therefor: 1974, c. 122,
s. 9,
re-enacted

9. No employer shall dismiss or suspend an employee on the ground that garnishment proceedings are or may be taken against the employee or that an attachment order under section 30 of *The Family Law Reform Act*, 1978 has been or may be made against the employee. Garnish-
ment or
attachment
of wages
1978, c. ...

78. Sections 1, 2, 3 and 4 of *The Family Law Reform Act*, 1975, being chapter 41, are repealed. 1975, c. 41,
ss. 1-4,
repealed

79. *The Fatal Accidents Act*, being chapter 164 of the Revised Statutes of Ontario, 1970, *The Fatal Accidents Amendment Act*, 1973, being chapter 16, and *The Fatal Accidents Amendment Act*, 1975, being chapter 38, are repealed. R.S.O. 1970,
c. 164;
1973, c. 16;
1975, c. 38,
repealed

80.—(1) *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by striking out, R.S.O. 1970,
c. 222,
amended

(a) subsection 4, subsection 4a, as enacted by the Statutes of Ontario, 1971, chapter 98, section 18, and subsection 5 of section 1;

(b) subsection 2 of section 2;

(c) sections 10, 13 and 14; and

(d) section 15, as re-enacted by the Statutes of Ontario, 1971, chapter 98, section 16.

R.S.O. 1970,
c. 228, s. 81,
repealed

(2) *The Age of Majority and Accountability Act, 1971*, being chapter 98, is amended by striking out,

(a) section 10;

(b) subsection 3 of section 18; and

(c) subparagraph i of paragraph 14 of the Schedule.

R.S.O. 1970,
c. 228, s. 81,
repealed

81.—(1) Subject to subsection 2, section 81 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is repealed.

Continu-
ance for
existing
judgments

(2) The provision repealed by subsection 1 remains in force in respect of a judgment for alimony in an action commenced before this section comes into force.

R.S.O. 1970,
c. 262, ss. 1, 12,
repealed

82. Sections 1 and 12 of *The Married Women's Property Act*, being chapter 262 of the Revised Statutes of Ontario, 1970, are repealed.

R.S.O. 1970,
c. 265, ss. 1-5,
8;
1971, c. 98,
s. 18 (4),
repealed

83. Sections 1, 2, 3, 4, 5 and 8 of *The Matrimonial Causes Act*, being chapter 265 of the Revised Statutes of Ontario, 1970 and subsection 4 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 336,
repealed

84. *The Parents' Maintenance Act*, being chapter 336 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,
c. 342,
s. 24,
amended

85. Section 24 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970 is amended by adding thereto the following subsection:

Application
of subs. 1

(2) Subsection 1 does not apply to the execution, seizure or attachment of moneys payable under a pension plan in satisfaction of an order for support under *The Family Law Reform Act, 1978*.

1978, c. . . .

SECTION 81. The repeal of section 81 of *The Judicature Act*, which allows the registration of alimony orders against land, results from the abolition of alimony in section 71.

SECTION 82. The remaining sections of *The Married Women's Property Act* are repealed, as they are replaced by sections 6 and 7.

SECTION 83. Provisions of *The Matrimonial Causes Act* relating to support on the annulment of a marriage are repealed, as they are replaced by Part II.

SECTION 84. *The Parents' Maintenance Act* is replaced by Part II.

SECTION 85. *The Pension Benefits Act* is amended to make pensions available to satisfy a support order.

SECTION 86. The repealed provision allows support orders made in the Supreme Court to be filed for enforcement in the provincial court (family division). This is provided for in section 27. The repealed provision remains in force for orders made in actions begun before this Act comes into force.

SECTION 87. This amendment is made to bring the terminology in *The Reciprocal Enforcement of Maintenance Act* into line with that used in this Act.

SECTION 88. The provision of *The Statute of Frauds* relating to marriage contracts is replaced by section 54 (1).

SECTION 89. No action or proceeding under the repealed or abolished provisions may be begun after this Act comes into force.

86.—(1) Subject to subsection 2, section 25 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 369, s. 25, repealed

(2) Every order or judgment filed under section 25 of *The Provincial Courts Act* before subsection 1 comes into force shall be deemed to have been filed under section 27 of this Act with the request therein mentioned. Transition for existing orders R.S.O. 1970, c. 369

87.—(1) *The Reciprocal Enforcement of Maintenance Orders Act*, being chapter 403 of the Revised Statutes of Ontario, 1970, is amended by striking out “summons” in each case where it appears and inserting in lieu thereof “notice of application”. R.S.O. 1970, c. 403, amended

(2) Subsection 3 of section 2 of the said Act is amended by striking out “*The Deserted Wives’ and Children’s Maintenance Act*” and inserting in lieu thereof “Part II of *The Family Law Reform Act, 1978*”. Idem s. 3 (2), amended

88. Section 4 of *The Statute of Frauds*, being chapter 444 of the Revised Statutes of Ontario, 1970, is amended by striking out “any agreement made upon consideration of marriage, or upon” in the fifth and sixth lines. R.S.O. 1970, c. 444, s. 4, amended

89. Sections 69, 73, 74, 76, 79, 80, 82, 83 and 84 apply in all cases when they come into force except in cases where an action or proceeding was commenced under the abolished, repealed or amended provision before that date. Application of ss. 69, 73, 74, 76, 79, 80, 82, 83 and 84

GENERAL

90. The Lieutenant Governor in Council may make regulations respecting any matter required to be or referred to as prescribed by the regulations. Regulations

91. This Act comes into force on the 31st day of March, 1978. Commencement

92. The short title of this Act is *The Family Law Reform Act, 1978*. Short title

An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships

1st Reading

February 21st, 1978

2nd Reading

February 21st, 1978

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to reform the Law respecting
Property Rights and Support Obligations between
Married Persons and in other Family Relationships**

THE HON. R. MCMURTRY
Attorney General

(Reprinted as amended by the Administration of Justice Committee)



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EXPLANATORY NOTES

SECTION 1. The definition of "child" allows children born outside marriage and persons treated as a child of the family to claim support from their parents under Part II or to benefit from an order respecting property under section 6 (*d*).

The definition of "court" permits claims under Parts I to IV to be brought in the new Unified Family Court, a provincial court (family division), a county or district court or the Supreme Court.

The definition of "parent" corresponds with the meaning of "child".

The definition of "spouse" ensures that parties to a marriage subsequently found to be void are covered by this Act.

BILL 59

1978

**An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships**

WHEREAS, it is desirable to encourage and strengthen ^{Preamble} the role of the family in society;

AND WHEREAS for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership;

AND WHEREAS in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership; and to provide for other mutual obligations in family relationships, including the equitable sharing by parents of responsibility for their children:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "child" means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a person whom the parent has demonstrated a settled intention to treat as a child of his or her family, but does not include a child placed in a foster home for consideration by a person having lawful custody; R.S.O. 1970,
c. 64
- (b) "cohabit" means to live together in a conjugal relationship, whether within or outside marriage;
- (c) "court" means a provincial court (family division), the Unified Family Court, a county or district court or the Supreme Court;

- (d) "domestic contract" means a domestic contract as defined in Part IV;
- (e) "parent" means the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, but does not include a person in whose home a child was placed as a foster child for consideration by a person having lawful custody;
- (f) "spouse" means either of a man and woman who,
- (i) are married to each other,
 - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity, or
 - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

Combining of
application

2.—(1) Where, in an application under any provision of this Act, it appears to the court that for the appropriate determination of the affairs of the spouses it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court considers appropriate.

All
proceedings
in one court

(2) Except as otherwise provided, where an application is made to a court under this Act, no person who is a party to the proceeding shall make an application under this Act to any other court, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

Applications

(3) An application under this Act may be made in the manner prescribed by the rules of the court or in another proceeding.

Capacity
of minors

(4) A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian *ad litem* and give any consent required or authorized by this Act.

Extension
of times

(5) The court may extend any time prescribed by this Act where the court is satisfied that,

SECTION 2. Subsection 1 permits a court to adjourn the hearing of a claim under this Act where it finds that all of the issues necessary for it to make a proper decision have not been determined. For example, an application to divide property could be adjourned to allow the bringing of a support application, and the two applications could be heard together.

Subsection 2 requires all claims under this Act between the same parties to be brought in the same court, and allows the transfer of an application to another court if the first court does not have jurisdiction to deal with all the issues.

Subsection 5 allows a court to permit extensions of times prescribed by the Act.

Subsection 7 allows the court to make orders on the consent of the parties, without the need for a hearing.

Subsection 9 provides that a domestic contract (marriage contract, cohabitation agreement or separation agreement) made under Part IV prevails over the provisions of Parts I to III, subject to the limitation of sections 18 (4) and 55.

Subsection 10 requires registration of orders affecting title to real property.

SECTION 3. The provincial court (family division) does not have jurisdiction under this Part.

The definition of "family assets" includes property held for the benefit of a spouse by a corporation, trust, power of appointment or revocable gift. The definition does not include land around the matrimonial home where that land is used for farming or other business purposes and is not reasonably necessary to the use of the home as a residence. The definition also excludes any property specified in a domestic contract as not being a family asset.

- (a) there are *prima facie* grounds for relief;
- (b) relief is unavailable because of delay that has been incurred in good faith; and
- (c) no substantial prejudice or hardship will result to any person affected by reason of the delay.

(6) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing. Closed hearings

(7) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act, subject to the duty of the court to have regard to the best interests of children affected. Consent orders

(8) Any matter provided for in a domestic contract may be incorporated in an order made under this Act. Incorporation of contract in order

(9) Where a domestic contract makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in this Act. Act subject to contracts

(10) Where an order made under this Act affects real property, the order does not affect the acquisition of an interest in the real property by a person in good faith without notice of the order, unless the order is registered in the proper land registry office. Registration of orders

PART I

FAMILY PROPERTY

3. In this Part, Interpretation

- (a) "court" means a court as defined in section 1 but does not include a provincial court (family division);
- (b) "family assets" means a matrimonial home as determined under Part III and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for household, educational, recreational, social or aesthetic purposes, and includes,

- (i) money in an account with a chartered bank, savings office, credit union or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,
- (ii) where property owned by a corporation or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property,
- (iii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself, if the property would be a family asset if it were owned by the spouse, and
- (iv) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include property that the spouses have agreed by a domestic contract is not to be included in the family assets;

- (c) "property" means real or personal property or any interest therein.

Division of
family
assets

4.—(1) Subject to subsection 4, where a decree *nisi* of divorce is pronounced or a marriage is declared a nullity or where the spouses are separated and there is no reasonable prospect of the resumption of cohabitation, each spouse is entitled to have the family assets divided in equal shares notwithstanding the ownership of the assets by the spouses as determinable for other purposes and notwithstanding any order under section 7.

Application
to court

(2) The court may, upon the application of a person who is the spouse of another, determine any matter respecting the division of family assets between them.

Effect of
death of
spouse

(3) The rights under subsection 1 are personal as between the spouses but any application commenced under subsection

SECTION 4. This section gives a spouse the right to have the family assets divided where the marriage has broken down. The division can be accomplished by agreement or by court order. The family assets will be divided equally notwithstanding which spouse is the owner of them, even though that ownership has been determined under section 7, unless one of the spouses can satisfy the court that an equal division of family assets would be inequitable in view of the enumerated factors. Once satisfied, the court can divide the family assets unequally or divide other property of the spouse, including business property. The underlying purpose of the section is set out in subsection 6.

SECTION 5. A statement of property is required on an application for division of family assets in the same manner as a statement of financial information under section 23 on an application for support.

2 before the death of a spouse may be continued by or against the estate of the deceased spouse.

(4) The court may make a division of family assets resulting in shares that are not equal where the court is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to, Variation of division


- (a) any agreement other than a domestic contract;
- (b) the duration of the period of cohabitation under the marriage;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the date when the property was acquired;
- (e) the extent to which property was acquired by one spouse by inheritance or by gift; or
- (f) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares.

(5) Where, in the opinion of the court, a spouse has unreasonably impoverished the family assets or the result of a division of the family assets would be inequitable in all the circumstances having regard to the considerations set out in clauses *a* to *f* of subsection 4, the court may make a division of any property that is not a family asset. Property other than family assets

(6) The purpose of this section is to recognize that inherent in the marital relationship there is mutual contribution by the spouses, whether financial or otherwise, to the family welfare, entitling each spouse to an equal division of the family assets upon termination of the marriage, subject to the equitable considerations set out in subsections 4 and 5. Purpose

5.—(1) Where an application is made under section 4, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of all property of the party in the manner and form prescribed by the rules of the court. Statement of property

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the Order for sealing statement

hearing be treated as confidential and not form part of the public record. 

Idem

6. In an application under section 4, the court may order,

- (a) that the title to any specified property directed to a spouse in the division be transferred to or in trust for or vested in the spouse whether absolutely, for life or for a term of years;
- (b) the partition or sale of any property;
- (c) that payment be made out of the proceeds of sale to one or both spouses, and the amount thereof;
- (d) that any property forming part of the share of either or both spouses be transferred to or in trust for or vested in a child to whom a spouse owes an obligation to provide support;
- (e) that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property; and
- (f) that either spouse pay to the other such sum as is set out in the order for the purpose of adjusting the division,

and may make such other orders or directions as are ancillary thereto.

Determin-
ation of
questions of
title between
married
persons

7. Any person may apply to the court for the determination of any question between that person and his or her spouse or former spouse as to the ownership or right to possession of any particular property, except where an application or an order has been made respecting the property under section 4 or 6, and the court may,

- (a) declare the ownership or right to possession;
- (b) where the property has been disposed of, order payment in compensation for the interest of either party;
- (c) order that the property be partitioned or sold for the purpose of realizing the interests therein; and
- (d) order that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property,

SECTION 6 allows an application to court to determine the mechanics of the division of the family assets or other property subject to division. The powers of the court include the power to order partition or sale. Recourse to *The Partition Act* will be unnecessary.

SECTION 7. This section is based on and replaces section 12 of *The Married Women's Property Act*. It allows applications to determine ownership or the right to possession of particular pieces of property, and is not restricted to a marriage breakdown situation. This section is not available where an application under section 4 has been made in respect of the same property. The court may order compensation for a spouse if the other has disposed of the property in question. The court has the power to order partition, so that recourse to *The Partition Act* will not be necessary.

SECTION 8. Is based on section 1 (3) (c) of *The Family Law Reform Act, 1975* and extends that provision so as to allow the court to recognize the spouse's contribution to particular property.

SECTION 9. This section provides a mechanism for enforcing an order charging property.

SECTION 11. This provision formerly appeared as section 1 (3) (d) of *The Family Law Reform Act, 1975*.

and may make such other orders or directions as are ancillary thereto.

8. Where one spouse or former spouse has contributed Contribution to property work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property, other than family assets, in which the other has or had an interest, upon application, the court may by order,

- (a) direct the payment of an amount in compensation therefor; or
- (b) award a share of the interest of the other spouse or former spouse in the property appropriate to the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. 1975, c. 41, s. 1 (3) (c), *amended*.

9. In or pending an application under section 4, 7 or 8, the court may make such interim order as it considers necessary for restraining the dissipation of the property and for the possession, delivering up, safekeeping and preservation of the property. Interim orders for preservation

10. Where a court orders security for the performance of any obligation under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. Realization of security

11.—(1) The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that, Presumptions

- (a) the fact that property is placed or taken in the name of spouses as joint tenants is *prima facie* proof that each spouse is intended to have on a severance of the joint tenancy a one-half beneficial interest in the property; and
- (b) money on deposit in a chartered bank, savings office, credit union or trust company in the name of both

spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause *a.* 1975, c. 41, s. 1 (3) (*d.*), *amended.*

Application (2) Subsection 1 applies notwithstanding that the event giving rise to the presumption occurred before this section comes into force.

Application of Part

12. This Part applies notwithstanding that,

(a) the spouses entered into the marriage before this Part comes into force; or

(b) the property in issue was acquired before this Part comes into force,

but does not apply in respect of property rights to which a claim has been made in a proceeding that was commenced before this Part comes into force.

Conflict of laws

13.—(1) The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of Ontario.

Idem

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the land is situated, but where the law of Ontario is applicable respecting the division of family assets, the value of the property may be taken into consideration for the purposes of section 4.

PART II

SUPPORT OBLIGATIONS

Interpretation

14. In this Part,

(a) “dependant” means a person to whom another has an obligation to provide support under this Part;

(b) “spouse” means a spouse as defined in section 1, and in addition includes,

(i) either of a man and woman not being married to each other who have cohabited,

1. continuously for a period of not less than five years, or

SECTION 12. This Part applies to persons married and to property owned when this Act comes into force, except where the spouses have already started a court proceeding over property rights.

SECTION 13. This Part will apply to spouses who do not have a marriage contract [see section 2 (9)] and whose last common habitual residence was in Ontario or who never had a common habitual residence. Where the spouses' last common habitual residence was outside Ontario, the ownership of their movable property and their right to divide family assets will be governed by the law of that other jurisdiction.

The ownership of spouses' land is governed by the law of the place where the land is situated. Where this Part applies to the spouses, land outside Ontario cannot be ordered sold or partitioned by the court. However, the court can take the value of that land into account and give a smaller share of movable property or land in Ontario to the spouse who owns the foreign land, in order to adjust the division of family assets.

SECTION 14. The definition of "spouse" is broadened to include a "common law" spouse as defined.

SECTION 15. This section creates an obligation on spouses to be self-supporting and to support the other spouse, depending on ability to provide support and the needs of the other spouse. Matrimonial misconduct will no longer be the basis for making or denying an award of support, but see section 18 (6).

SECTION 16. A parent has an obligation to support a child up to 18 years of age unless the child is over sixteen years and has withdrawn from parental control.

SECTION 17. A corresponding obligation is placed on children of the age of 18 or over to support their parents when in need, in accordance with ability. This section replaces the existing *Parents' Maintenance Act*, which imposes a similar obligation.

SECTION 18. A parent, or a public agency or children's aid society providing welfare or family benefits will be able to claim support for a dependant.

Subsection 5 contains a check-list to assist the court in determining the needs of the dependant and the ability to pay of the person from whom support is claimed. The court is directed to take into consideration any loss of earning capacity or opportunity for advancement occasioned by the responsibilities assumed during cohabitation and may include assistance to a spouse to attain financial independence.

2. in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year, and

- (ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force.

15. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so. Obligation of spouses for support

16.—(1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide education and support, in accordance with need, for his or her child who is unmarried and is under the age of eighteen years. Obligation of parent to support child

(2) The obligation under subsection 1 does not extend to a child who, being of the age of sixteen years or over, has withdrawn from parental control. Idem

17. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for and provided support for the child, to the extent that the child is capable of doing so. Obligation of child to support parent

18.—(1) A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof. Order for support

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant or under subsection 3. Applicants

(3) An application for an order for the support of a dependant who is a spouse may be made by, Idem

- (a) the Ministry of Community and Social Services in the name of the Minister; or
- (b) a municipal corporation, including a metropolitan, district or regional municipality, but not including an area municipality thereof,

if the Ministry or municipality is providing an allowance or benefit in respect of the support of the dependant. Idem

Setting aside
domestic
contract

(4) The court may set aside a provision for support in a domestic contract or paternity agreement and may determine and order support in an application under subsection 1 notwithstanding that the contract or agreement contains an express provision excluding the application of this section,

- (a) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable;
- (b) where the provision for support is to a spouse who qualifies for an allowance for support out of public money; or
- (c) where there has been default in the payment of support under the contract or agreement.

Determin-
ation of
amount

(5) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity;
- (b) the capacity of the dependant to provide for his or her own support;
- (c) the capacity of the respondent to provide support;
- (d) the age and the physical and mental health of the dependant and of the respondent;
- (e) the length of time the dependant and respondent cohabited;
- (f) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures;
- (h) the legal obligation of the respondent to provide support for any other person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;



SECTION 19. The court has broad powers to make the most suitable order or combination of orders regarding support, including the making of both periodic and lump sum orders and the granting of security to ensure payments. The court can also order the respondent to reimburse a public agency for payments it has made to the dependant. The court can provide for the dependant's support after the respondent's death.

If the order is not expressed to survive the respondent, it terminates on death and only 12 months arrears are enforceable.

A support order may be assigned to a public agency paying benefits to the dependant. This allows the agency to continue the steady income of the dependant and leaves the burden of enforcement and the risk of non-payment on the agency.

- (j) a contribution by the dependant to the realization of the career potential of the respondent;
- (k) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education;
- (l) where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities assumed during cohabitation;
- (m) where the dependant is a spouse, whether the dependant has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents;
- (n) where the dependant is a spouse, whether the dependant has undertaken to assist in the continuation of a program of education for a child who is of the age of eighteen years or over and unable for that reason to withdraw from the charge of his or her parents;
- (o) where the dependant is a spouse, any house-keeping, child care or other domestic service performed by the spouse for the family, in the same way as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings therefrom to the support of the family; and
- (p) any other legal right of the dependant to support other than out of public money.

(6) The obligation to provide support for a spouse exists ^{Conduct} without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

19.—(1) In an application under section 18, the court ^{Powers of court} may order,

- (a) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;

- (c) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) any matter authorized to be ordered under clauses *a* to *d* of subsection 1 of section 45 and subject to subsection 3 thereof;
- (e) that all or any of the moneys payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant;
- (f) the payment of support to be made in respect of any period before the date of the order;
- (g) the payment to an agency referred to in subsection 3 of section 18 of any amount in reimbursement for an allowance or benefit granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order;
- (h) the payment of expenses in respect of the prenatal care and birth of a child;
- (i) that the obligation and liability for support continue after the death of the respondent and be a debt of his or her estate for such period as is fixed in the order;
- (j) that a spouse who has a policy of life insurance as defined in Part V of *The Insurance Act* designate the other spouse or a child as the beneficiary irrevocably; and
- (k) the securing of payment under the order, by a charge on property or otherwise.

R.S.O. 1970.
c. 224

Limitation
on
jurisdiction
of family
court

(2) A provincial court (family division) shall not make an order under clause *b*, *c*, *j* or *k* of subsection 1 except for the provision of necessities or preventing the dependant from becoming a public charge.

Interim
orders

(3) Where an application is made under section 18, the court may make such interim order as the court considers appropriate.

Assignment
of support

(4) An order for support is assignable to an agency referred to in subsection 3 of section 18.



SECTION 20. To avoid having the issue of support before two different courts, an application under this Part is stayed when a divorce is sought and any support order will be made under the *Divorce Act* (Canada). Where support is not before the trial judge as an issue in a divorce, an order under this Part survives the divorce. Under existing law, provincial orders in favour of a child continue but those in favour of a spouse do not.

SECTION 21. An order for support may be varied or ended if there has been a material change of circumstances or new evidence becomes available. The court also has power to wipe out arrears and interest.

If the original order was made by a county or district court, both the original court and another county or district court have jurisdiction to vary the order. The same provision is available for variation by one provincial court (family division) of an order made by another provincial court (family division).

This section applies to the variation of support orders made before this Act takes effect.

SECTION 22. A proposed sale of assets that would defeat a claim or an order for payment of support may be restrained by court order.

(5) Unless an order to provide support otherwise provides, it terminates upon the death of the person having the obligation to provide support, and the liability for amounts under the order coming due and unpaid in the preceding twelve months is a debt of his or her estate. Termination of support order on death

20.—(1) Where an action for divorce is commenced under the *Divorce Act* (Canada), any application for support or custody under this Part that has not been determined is stayed except by leave of the court. Effect of divorce proceedings R.S.C. 1970. c. D-8

(2) Where a marriage is terminated by a decree absolute of divorce or declared a nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms. Idem

21.—(1) Where an order for support has been made or confirmed and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent or evidence has become available that was not available on the previous hearing, the court may, upon the application of any person named in the order or referred to in subsection 3 of section 18, discharge, vary or suspend any term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all of the arrears or any interest due thereon and make such other order under section 19 as the court considers appropriate in the circumstances referred to in section 18. Review and variation of orders

(2) An application under subsection 1 shall be made to the court that made the order or to a co-ordinate court in another part of Ontario. Court

(3) No application under subsection 1 shall be made within six months after the making of the order for support or the disposition of any other application under subsection 1 in respect of the same order, except by leave of the court. Limitation on applications for review

(4) This section applies to orders for maintenance or alimony made before this section comes into force or in a proceeding commenced before this section comes into force. Existing orders

22. In or pending an application under section 18 or appearance to a notice under section 28, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support. Restraining orders

Statement
of financial
affairs

23.—(1) Where an application is made under section 18 or 21, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of financial information in the manner and form prescribed by the rules of the court.

Order for
sealing
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

Absconding
respondent
or debtor

24. Where an application is made under section 18 or a notice is issued under section 28 and a judge of the court is satisfied that the respondent or debtor is about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent or debtor.

Provisional
orders

25.—(1) Where an application is made under section 18 or 21 in a provincial court (family division) or the Unified Family Court and,

- (a) the respondent in the application fails to appear;
- (b) it appears to the court that the respondent resides in a locality in Ontario that is outside the territorial jurisdiction of the court; and
- (c) in the circumstances of the case, the court is of the opinion that the issues can be adequately determined by proceeding under this section,

the court may proceed in the absence of the respondent and without the statement of the financial affairs of the respondent required by section 23 and in place of a final order may make an order for support that is provisional only and the order has no effect until it is confirmed by the provincial court (family division) or the Unified Family Court in the locality in which the respondent resides.

Transmission
for hearing

(2) Where a provisional order is made under subsection 1, the court making the order shall send to the court having jurisdiction in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court.

Show
cause

(3) The court to which the documents and records are sent under subsection 2 shall cause them to be served upon

SECTION 23. Disclosure of financial information will be required of both the applicant and the person from whom support is claimed in order to ascertain need and ability to pay. The court will have discretion to make the disclosure confidential.

SECTION 25. Where appropriate, a provincial court (family division) or the Unified Family Court can make a provisional order against a respondent who lives outside the judicial district and who fails to appear at the hearing. The order is sent to the court having jurisdiction where the respondent lives and has no effect unless that court confirms it. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

SECTION 26. In order to start a support application or to enforce a support order, the applicant may obtain an order requiring a person such as an employer or public agency, including the Province of Ontario, to provide access to its records for the sole purpose of obtaining the address of a person ordered to pay support.

the respondent together with a notice to file with the court the statement of financial affairs required by section 23 and to appear and show cause why the provisional order should not be confirmed.

(4) At the hearing, the respondent may raise any defence that might have been raised in the original proceedings, but, if on appearing the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with such variation as the court considers proper having regard to all the evidence. Confirmation of order

(5) Where the respondent appears before the court and satisfies the court that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may so remit the case and adjourn the proceedings for that purpose. Adjournment for further evidence

(6) Where the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court that made the order together with a statement of the reasons for so doing, and in that event the court that made the order may dispose of the application in such manner as it considers proper. Where order not confirmed

(7) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the office or signature of the clerk, admissible in evidence in a court to which it is transmitted under this section as *prima facie* proof of the authenticity of the copy. Certificates as evidence

(8) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have had if the order had been made under section 19. Right of appeal

26.—(1) Where it appears to a court that,

Access to records

- (a) for the purpose of bringing an application under this Part; or
- (b) for the purpose of the enforcement of an order for support, custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts

of the proposed respondent or person against whom the order is made, the court may order any person or public agency to provide the court with such particulars of the address as are contained in the records in its custody and the person or agency shall provide to the court such particulars as it is able to provide.

Section binds Crown

(2) This section binds the Crown in right of Ontario.

Enforcement of orders by family court clerk

27.—(1) The clerk of the Unified Family Court or of a provincial court (family division), upon the request of a person entitled to support under an order for support or maintenance enforceable in Ontario or other persons or agency mentioned in subsection 3 of section 18 and upon the filing of such material as is prescribed by the rules of the court may enforce the order.

Powers of court for enforcement

(2) For the purposes of enforcing an order filed under subsection 1, a provincial court (family division) has the power to issue execution and garnishment in accordance with the rules of the court and section 145 of *The Small Claims Courts Act* and subsection 3 of section 4 of *The Creditors' Relief Act* apply to a garnishment issued by the provincial court (family division).

R.S.O. 1970, cc. 439, 97

Crown subject to attachment for support R.S.O. 1970, c. 365

(3) Notwithstanding section 25 of *The Proceedings Against the Crown Act*, an attachment under subsection 1 of section 30 and any other execution, garnishment or attachment or process in the nature thereof for the payment of an amount owing or accruing under an order for support or maintenance, may be issued against the Crown.

Examination of debtor

28.—(1) Where there is default in payment under an order for support or maintenance, a clerk of the Unified Family Court or a provincial court (family division) may require the debtor, upon notice,

- (a) to file a statement of financial information referred to in section 23;
- (b) submit to an examination as to assets and means; and
- (c) appear before the court to explain the default.

Compelling attendance

(2) If the debtor fails to appear as required after being served with a notice, or if the court is satisfied that the debtor cannot be served or intends to leave Ontario without appearing as required after being served, the court giving the notice may issue a warrant for the arrest of the debtor for the purpose of compelling attendance.

SECTION 27. This section allows support orders made in any court to be filed for enforcement in the new Unified Family Court or the provincial court (family division). It replaces section 25 of *The Provincial Courts Act*. This section recognizes the administrative practice whereby court officials automatically enforce orders in family court.

The provincial court (family division) will have power to enforce support orders by execution and garnishment. Formerly support orders were enforceable in small claims court only up to the monetary jurisdiction of that court.

Garnishee and attachment orders may be obtained against the Crown for support.

SECTION 28. Where a debtor under an order defaults, the debtor can be required to disclose financial particulars and appear before the court to explain the default. The debtor can be arrested if about to abscond. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

SECTION 29. This procedure exists under *The Deserted Wives' and Children's Maintenance Act*. The power to imprison is made flexible enough to allow for alternatives to imprisonment.

SECTION 30. This section is new. It allows a court order for a continuing deduction at source by the employer in order to satisfy a support order. The attachment would have priority over any other seizure of wages. See also sections 76 and 84.

SECTION 32. This section provides a mechanism for enforcing a secured support order by selling the security.

29.—(1) Where the debtor fails to satisfy the court that the default is owing to his or her inability to pay and where the court is satisfied that all other practicable means that are available under this Act for enforcing payment have been considered, the court may,

Penalty
for
default

- (a) order imprisonment for a term of not more than ninety days to be served intermittently or as ordered by the court; or
- (b) make such other order as may be made upon summary conviction for an offence that is punishable by imprisonment.

(2) The order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order, including the performance of a community service order.

Conditions
of sentence

30.—(1) Where the court considers it appropriate in a proceeding under section 28, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order and to pay the amounts deducted into court, and section 7 of *The Wages Act* does not apply.

Attachment
of wages

R.S.O. 1970,
c. 486

(2) Where an application is made under section 21, the court may discharge, vary or suspend any term of an order made under subsection 1.

Variation of
attachment

(3) An order under subsection 1 has priority over any other seizure or attachment of wages arising before or after the service of the order.

Priority
of order

31. Where the court considers it appropriate in a proceeding under section 28, the court may order the debtor to give security for the payment of support or may charge any property of the debtor with payment of an amount for the provision of necessaries or preventing the dependant from becoming a public charge.

Security
for
payment

32. Where a court orders security for the payment of support under this Part or charges property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

Realization
of security

Pledging
credit for
necessaries

33.—(1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessaries of life, except where the spouse has notified the third party that he or she has withdrawn the authority.

Liability
for
necessaries
of minor

(2) Where a person is entitled to recover against a minor in respect of the provision of necessaries for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

Recovery
between
persons
jointly
liable

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Common
law
supplanted

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband.

Order
restraining
harassment

34. Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate.

Custody of
children

35.—(1) Upon application, the court may order that either parent or any person have custody of or access to a child in accordance with the best interests of the child and may at any time alter, vary or discharge the order.

Court

(2) An application to alter, vary or discharge the order shall be made to the court that made the order or to a co-ordinate court in another part of Ontario.

Interim
orders

(3) Where an application is made under subsection 1, the court may make such interim order as the court considers appropriate.

Application
to orders
under
R.S.O. 1970,
c. 128

(4) This section applies to orders for custody or access made under *The Deserted Wives' and Children's Maintenance Act*.

Appeal
from
provincial
court (family
division)

36. An appeal lies from an order of the provincial court (family division) under this Part to the county or district court in the county or district in which the provincial court (family division) is situated.

SECTION 33. While living together, either spouse may pledge the credit of the other for necessities unless this authority is specifically withdrawn by notice to the creditor. Both spouses are then jointly liable to the creditor. Similarly, under subsection 2, a creditor may recover necessities provided to a child under 18 from both the parents and the child. The liability as between the spouses, or between parent and child, is determined in accordance with need and ability to pay as set out in sections 15, 16 and 17.

Subsection 4 abolishes the common law agency of cohabitation and agency of necessity, which applied only in favour of a wife.

SECTION 34. This section provides a civil remedy to prevent a spouse from continually harassing and interfering with the other.

SECTION 35. This section provides for the making of a custody order or interim order in favour of either parent in the best interests of the child. The custody order need not be tied to a support order, as is now the case under section 3 of *The Deserted Wives' and Children's Maintenance Act*.

SECTION 36. Appeals are provided for in Acts governing the Supreme Court and county courts. This section is necessary because *The Provincial Courts Act* does not contain provisions for appeals. The appeal procedure will be set out in the rules.

SECTION 37. This section gives a provincial court (family division) the power to punish contempt of its orders under this Part. The Supreme Court and county courts already have such power.

SECTION 38. This Part extends to mobile homes, trailers, houseboats, etc.

SECTION 39. Where the family has or had two or more homes, this Part applies to all the family residences, subject to section 41. The definition of "matrimonial home" includes a home rented by the family and a unit in a co-operative housing development.

Where the property on which a matrimonial home is used for a purpose that is more than residential, such as for farming or other business purposes, only the surrounding land reasonably necessary for use of the residence is affected by this Part.

SECTION 40. Notwithstanding which spouse owns the home, both spouses are equally entitled to possession. The equal right to possession may be altered by a court order under section 45.

37.—(1) In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed ninety days.

Contempt
of orders of
provincial
court (family
division)

(2) An order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

Conditions
of
imprison-
ment

PART III

MATRIMONIAL HOME

38. In this Part, “property” means real or personal property.

Interpre-
tation

39.—(1) Property in which a person has an interest and that is or has been occupied by the person and his or her spouse as their family residence is their matrimonial home.

Matrimonial
home

(2) Subsection 1 applies notwithstanding that its application results in more than one matrimonial home.

More
than one
matrimonial
home

(3) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection 1.

Ownership
of shares

(4) Where property that includes a matrimonial home is normally used for a purpose other than residential only, the matrimonial home is only such portion of the property as may reasonably be regarded as necessary to the use and enjoyment of the residence.

Residence
on farm-
land, etc.

40.—(1) A spouse is equally entitled to any right of possession of the other spouse in a matrimonial home.

Right to
possession

(2) Subject to an order of the court under this or any other Act, and subject to a separation agreement that provides otherwise, a right of a spouse to possession by virtue of subsection 1 ceases upon the spouse ceasing to be a spouse.

Termination
of right to
possession

Registered
designation
of
matrimonial
home

41.—(1) Both spouses may, by instrument in the form prescribed by the regulations, designate any property that is a matrimonial home and, upon the registration of the instrument and while there is a designation made by the spouses under this subsection that is not cancelled, any other property that would qualify as a matrimonial home under section 39 and that is not similarly designated ceases to be a matrimonial home.

Extent of
designation

(2) The property that is designated as a matrimonial home under subsection 1 may include any property contiguous to the matrimonial home that is described for the purpose in the instrument.

Cancellation
of
designation

(3) The designation of a matrimonial home under subsection 1 is cancelled upon the registration or deposit of,

- (a) an instrument in the form prescribed by the regulations executed by both spouses;
- (b) a decree absolute of divorce or judgment of nullity;
- (c) an order under section 45 cancelling the designation; or
- (d) proof of death of one of the spouses.

Effect of
cancellation

(4) Upon the cancellation of the designation of a property under subsection 3, the property ceases to be a matrimonial home under section 39.

Revival
of
matrimonial
homes

(5) Upon there ceasing to be a designation under subsection 1, section 39 applies in respect of property that is a matrimonial home.

Alienation of
matrimonial
home

42.—(1) No spouse shall dispose of or encumber any interest in a matrimonial home unless,

- (a) the other spouse joins in the instrument or consents to the transaction;
- (b) the other spouse has released all rights under this Part by a separation agreement;
- (c) the transaction is authorized by court order or an order has been made releasing the property as a matrimonial home; or
- (d) the property is not designated as a matrimonial home under section 41 and an instrument desig-

SECTION 41. The spouses may jointly designate one or more properties as matrimonial homes, and thereupon this Part ceases to apply to any property other than those designated. The designation must be registered.

SECTION 42. A spouse may not sell, lease, mortgage or otherwise deal with the matrimonial home unless the non-owning spouse's consent in writing is obtained, a court dispenses with the consent under section 44 or another home has been designated as the matrimonial home. If a spouse deals with the home without consent, the transaction can be set aside unless an innocent third party holds the interest at that time. The affidavit of a spouse is sufficient protection for a bona fide purchaser.

SECTION 43. The non-owning spouse is protected by requiring landlords, mortgagees and other lienholders to accept payment from and give notice to that spouse as if he or she were an owner.

nating another property as a matrimonial home of the spouses is registered under section 41 and not cancelled.

(2) Where a spouse disposes of or encumbers an interest in a matrimonial home in contravention of subsection 1, the transaction may be set aside on an application under section 44 unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice that the property was at the time of the disposition, agreement or encumbrance a matrimonial home.

Setting
aside
transaction

(3) For the purposes of subsection 2, an affidavit of the person making the disposition or encumbrance,

Proof that
property
not a
matrimonial
home

(a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;

(b) verifying that the property has never been occupied by the person and his or her spouse as their matrimonial home;

(c) where the property is not designated under section 41, verifying that an instrument designating another property as a matrimonial home of the person and his or her spouse is registered under section 41 and not cancelled; or

(d) verifying that the other spouse has released all rights under this Part by a separation agreement,

shall, unless the person to whom the disposition or encumbrance is made had actual notice to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home.

(4) This section does not apply to the acquisition of an interest in property by operation of law or of a lien under section 18 of *The Legal Aid Act*.

Liens
arising by
operation
of law
R.S.O. 1970,
c. 239

43.—(1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of section 40 has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

Right of
redemption
and to
notice

Service of
notice

(2) Any notice to which a spouse is entitled by virtue of subsection 1 shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the person to whom notice is to be given at his or her usual or last known address or, where none, the address of the matrimonial home, and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

Effect of
payments
made by
spouse

(3) Where a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection 1, the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

Continuation
of
proceedings
in absence
of spouse

(4) Notwithstanding any other Act, where a person who commences a proceeding to realize upon a lien, encumbrance or execution or to exercise a forfeiture does not have sufficient particulars of a spouse entitled under subsection 1 for the purposes of the proceeding, and a notice given under subsection 2 is not responded to, the proceeding may continue in the absence of the spouse and without regard to the interest of the spouse and any final order in the proceeding terminates the rights of the spouse under this section.

Powers of
court
respecting
alienation

44. The court may, on the application of a spouse or person having an interest in property, by order,

- (a) determine whether or not property is the matrimonial home and, if so, its extent;
- (b) authorize the disposition or encumbrance of the matrimonial home where the court finds that the spouse whose consent is required,
 - (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of other comparable accommodation or payment in place thereof as the court considers appropriate;

- (c) dispense with any notice required to be given under section 43; and




SECTION 45. The court has power to grant exclusive possession of part or all of the home and contents, but is not to exercise the power unless satisfied that other provision for shelter is inadequate in the circumstances.

- (d) direct the setting aside of any transaction disposing of or encumbering an interest in the matrimonial home contrary to subsection 1 of section 42 and the reversion of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.

45.—(1) Notwithstanding the ownership of a matrimonial home and its contents, and notwithstanding section 40, the court on application may by order, Order for possession of matrimonial home

- (a) direct that one spouse be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs and release any other property that is a matrimonial home from the application of this Part;
- (b) direct a spouse to whom exclusive possession of a matrimonial home is given to pay such periodic payments to the other spouse as is prescribed in the order;
- (c) direct that the contents of a matrimonial home, or any part thereof, remain in the home for the use of the person given possession;
- (d) fix the obligation to repair and maintain the matrimonial home or to pay other liabilities arising in respect thereof;
- (e) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home subject to the right to exclusive possession of the other spouse as ordered; and
- (f) where a false affidavit is given under subsection 3 of section 42, direct,

- (i) the person who swore the false affidavit, or
- (ii) any person who knew at the time it was sworn that the affidavit was false and who thereafter conveyed the property,

to substitute other real property for the matrimonial home or direct such person to set aside money or security to stand in place thereof subject to such terms and conditions as the court considers appropriate. 

(2) An order may be made under subsection 1 for temporary relief or pending the bringing or disposition of another application under this Act. Temporary possession

Order where no property interest

(3) An order under subsection 1 for exclusive possession may be made only if, in the opinion of the court, other provision for shelter is not adequate in the circumstances or it is in the best interests of a child to do so.

Limitation on jurisdiction of family court

(4) A provincial court (family division) shall not make an order under clause *b* or *d* of section 44 or clause *e* or *f* of subsection 1.

Variation of possessory order

46.—(1) Upon the application of a person named in an order made under clause *a*, *b*, *c* or *d* of subsection 1 of section 45 or the personal representative of such person and where the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

Variation of conditions of sale

(2) Upon the application of a person who is subject to terms and conditions imposed in an order made under clause *b* of section 44 or his personal representative and where the court is satisfied that the terms and conditions are no longer appropriate, the court may discharge, vary or suspend the terms and conditions.

Interim order for preservation of property

47. In an application under this Part, the court may make such interim order as it considers necessary for the delivering up, safekeeping and preservation of the matrimonial home or its contents.

Registration of order
R.S.O. 1970,
cc. 409, 234

48. An order made under this Part is registrable against land under *The Registry Act* and *The Land Titles Act*.

Application of Part

49.—(1) This Part applies to matrimonial homes that are situated in Ontario.

Idem

(2) This Part applies notwithstanding that,

(a) the spouses entered into the marriage before this Part comes into force; or

(b) the matrimonial home was acquired before this Part comes into force,

but does not apply to property in respect of which the property rights or right to possession of the spouses have been judicially determined before this Part comes into force, or in respect of which a proceeding to determine such rights has been commenced before this Part comes into force.

SECTION 48. An order for possession may be registered against the land so as to provide notice to third parties.

SECTION 49. This Part applies to all matrimonial homes in Ontario, whether or not the spouses have a marriage contract (see section 55) and whether or not the spouses are otherwise subject to Ontario property law (see section 12). This Part covers persons married and matrimonial homes acquired before this Act comes into force, except where a spouse has applied for an order for possession before this Act is in effect.

SECTIONS 50 TO 53. This Part overcomes the common law rule which held that marriage contracts contemplating a future separation or divorce were void.

The sections create a general category called "domestic contracts", which is made up of marriage contracts, cohabitation agreements and separation agreements. Cohabitation agreements are akin to marriage contracts, but the parties are not married. Only a separation agreement may provide for custody of or access to children.

Court approval must be given to the marriage contract of a minor capable of entering into a marriage. Similarly, court approval is required where a committee enters into a domestic contract on behalf of a spouse who becomes mentally incompetent.

PART IV

DOMESTIC CONTRACTS

50. In this Part,

Interpre-
tation

- (a) "cohabitation agreement" means an agreement entered into under section 52;
- (b) "domestic contract" means a marriage contract, separation agreement or cohabitation agreement;
- (c) "marriage contract" means an agreement entered into under section 51;
- (d) "separation agreement" means an agreement entered into under section 53.

51.—(1) Two persons may enter into an agreement, before their marriage or during their marriage while cohabiting, in which they agree on their respective rights and obligations under the marriage or upon separation or the annulment or dissolution of the marriage or upon death, including,

Marriage
contracts

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

(2) Any provision in a marriage contract purporting to limit the rights of a spouse under Part III in respect of a matrimonial home is void.

Rights re
matrimonial
home
excepted

52.—(1) A man and a woman who are cohabiting and not married to one another may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit or death, including,

Cohabitation
agreements

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and

(d) any other matter in the settlement of their affairs.

Effect of
marriage on
agreement

(2) Where the parties to an agreement entered into under subsection 1 subsequently marry, the agreement shall be deemed to be a marriage contract.

Separation
agreements

53. A man and woman who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of and access to their children; and
- (e) any other matter in the settlement of their affairs.

Form of
contract

54.—(1) A domestic contract and any agreement to amend or rescind a domestic contract are void unless made in writing and signed by the persons to be bound and witnessed.

Capacity
of minor

(2) A minor who has capacity to contract marriage has capacity to enter into a marriage contract or separation agreement that is approved by the court, whether the approval is given before or after the contract is entered into.

Agreement
on behalf of
mentally
incompetent

(3) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or, if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a domestic contract or give any waiver or consent under this Act on behalf of the mentally incompetent person.

Contracts
subject
to best
interests
of child

55.—(1) In the determination of any matter respecting the support, education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child.

Dum casta
clauses

(2) A provision in a separation agreement or a provision in a marriage contract to take effect on separation whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another.

SECTION 55. Before separation, a spouse may not contract out of the right to control dealings with the matrimonial home or obtain possession of it. Any provision in a domestic contract respecting a child is to be enforced only if in the child's best interests. Subsection 3 invalidates a *dum casta* clause. See also section 18 (4).

Domestic contracts will also be invalid for any reason that would void another kind of contract, such as fraud, duress or undue influence.

Where a provision is held void, the court will determine under the ordinary law of contract whether the provision can be severed so as to allow enforcement of the remainder of the contract.

SECTION 56. Where a third party makes a gift to either or both spouses, subject to the condition that they do not dispose of it without his consent, and this provision is contained in a marriage contract, the person making the gift can enforce the provision notwithstanding that he was not a party to the original contract.

SECTION 57. A marriage contract may be subject to foreign law. If it is valid under either the foreign law or Ontario law, it will be recognized in Ontario. However, no marriage contract will be enforced to the extent that it contradicts section 55 or 18 (4).

SECTION 58. This section replaces the provisions for affiliation agreements formerly found in Part III of *The Child Welfare Act*. That Part is repealed by section 73.

(3) A provision in a separation agreement made before this section comes into force whereby any right of a spouse is dependent upon remaining chaste shall be given effect as a contingency upon remarriage or cohabitation with another.

56. Where a domestic contract provides that specific gifts made to one or both parties are not disposable or encumberable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision.

57. The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that,

- (a) a contract for which the proper law is that of a jurisdiction other than Ontario, is also valid and enforceable in Ontario if entered into in accordance with the internal law of Ontario;
- (b) subsection 4 of section 18 and section 55 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario; and

(c) a provision respecting the right to custody of or access to children is not valid or enforceable in Ontario.

58.—(1) Where a man and a woman who are not spouses enter into an agreement for,

- (a) the payment of the expenses of prenatal care and birth in respect of a child;
- (b) support of a child; or
- (c) burial expenses of the child or mother,

on the application of a party to the agreement or a children's aid society made to a provincial court (family division) or the Unified Family Court, the court may incorporate the agreement in an order, and Part II applies to the order in the same manner as if it were an order for support made under that Part.

(2) Where an application is made under subsection 1 and a judge of the court is satisfied that the respondent is about to leave Ontario, the judge may issue a warrant in the

form prescribed by the rules of the court for the arrest of the respondent.

Capacity of a minor

(3) A minor who has capacity to contract marriage has capacity to enter into an agreement under subsection 1 that is approved by the court, whether the approval is given before or after the agreement is entered into.

Application to pre-existing agreements

(4) This section applies to agreements referred to in subsection 1 that were made before this Part comes into force.

Application of Act to pre-existing contracts

59.—(1) A separation agreement or marriage contract validly made before this Part comes into force shall be deemed to be a domestic contract for the purposes of this Act.

Contracts entered into before Part comes into force

(2) Where a domestic contract is entered into in accordance with this Part before this Part comes into force and,

(a) the contract or any part would be valid if entered into after this Part comes into force; and

(b) the contract or part is entered into in contemplation of the coming into force of this Part,

the contract or part is not invalid for the reason only that it was entered into before this Part comes into force.

Idem

(3) Where pursuant to an understanding or agreement entered into before this Part comes into force by spouses who are living separate and apart, property is transferred, between them, the transfer is effective as if made pursuant to a domestic contract.

PART V

DEPENDANTS' CLAIM FOR DAMAGES

Right of dependants to sue in tort

60.—(1) Where a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part II, children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1970, c. 164, s. 3 (1), *amended*.

Contributory negligence

(2) In an action under subsection 1, the right to damages is subject to any apportionment of damages due to con-

SECTION 59. Separation agreements and marriage contracts entered into before this Act comes into force are valid, and subsisting affiliation agreements and separation agreements are preserved.

SECTIONS 60 TO 64. This Part replaces *The Fatal Accidents Act* and extends that Act to cover non-fatal injuries, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. It also replaces the actions for loss of consortium and loss of services of a child (see section 69).

With the abolition of the husband's property in the services of his wife and the parent's property in the services of a child, and the creation of a new, qualified obligation of support under this Act, a new basis is created on which family members can recover expenses they incur for the benefit of an injured person. This section will allow them to recover the same kind of pecuniary loss as can now be recovered under *The Fatal Accidents Act*.

Section 60 extends the right to claim to a broader class of related person than under *The Fatal Accidents Act*. Subsection 2 codifies the case law under *The Fatal Accidents Act*.

The following sections are based on the provisions of that Act and require all claimants to join in one action. Insurance payments are not to be considered in assessing damages. The \$800 limit on funeral expenses is removed to allow recovery of reasonable funeral expenses actually incurred.



tributory fault or neglect of the person who was injured or killed. *New.*

(3) Not more than one action lies under subsection 1 for and in respect of the same occurrence, and no such action shall be brought after the expiration of two years from the time the cause of action arose. R.S.O. 1970, c. 164, s. 5; 1975, c. 38, s. 1. One action and limitation of actions

61.—(1) An action under subsection 1 of section 60 in respect of a person who is killed shall be commenced by and in the name of the executor or administrator of the deceased for the benefit of the persons entitled to recover under subsection 1 of section 60. R.S.O. 1970, c. 164, s. 3, *part, amended.* Executor to sue where death

(2) If there is no executor or administrator of the deceased, or if there is an executor or administrator and no such action is, within six months after the death of the deceased, brought by the executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by the executor or administrator. When action may be brought by persons beneficially interested

(3) Every action so brought is for the benefit of the same persons and is subject to the same regulations and procedure, as nearly as may be, as if it were brought by the executor or administrator. R.S.O. 1970, c. 164, s. 7. Regulations and procedure in such case

62.—(1) Where an action is commenced under section 60, the plaintiff shall, in his statement of claim, name and join the claim of any other person who is entitled to maintain an action under section 60 in respect of the same injury or death and thereupon such person becomes a party to the action. Joining claims

(2) A person who commences an action under section 60 shall file with the statement of claim an affidavit stating that to the best of his knowledge, information and belief the persons named in the statement of claim are the only persons who are entitled or claim to be entitled to damages under section 60. R.S.O. 1970, c. 164, s. 6 (1, 2), *amended.* Affidavit

63.—(1) The defendant may pay into court one sum of money as compensation for his fault or neglect to all persons entitled to compensation without specifying the shares into which it is to be divided. R.S.O. 1970, c. 164, s. 4. How money may be paid into court

(2) Where the compensation has not been otherwise apportioned, a judge may, upon application, apportion it among the persons entitled. Apportionment

When pay-
ment may
be
postponed

(3) The judge may in his discretion postpone the distribution of money to which minors are entitled and may direct payment from the undivided fund. R.S.O. 1970, c. 164, s. 8.

Assessment
of damages,
insurance

64.—(1) In assessing the damages in an action brought under this Part, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance.

Funeral
expenses

(2) For the purposes of this Part, damages may be awarded for reasonable expenses actually incurred for the burial of the person in respect of whose death the action is brought. R.S.O. 1970, c. 164, s. 3 (2, 3), *amended*.

PART VI

AMENDMENTS TO THE COMMON LAW AND STATUTE LAW

Unity of legal
personality
abolished

65.—(1) For all purposes of the law of Ontario, a married man has a legal personality that is independent, separate and distinct from that of his wife and a married woman has a legal personality that is independent, separate and distinct from that of her husband.

Capacity of
married
person

(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if such person were an unmarried person. 1975, c. 41, s. 1 (1, 2).

Idem

- (3) Without limiting the generality of subsections 1 and 2,
- (a) each of the parties to a marriage has the like right of action in tort against the other as if they were not married;
 - (b) a married woman is capable of acting as guardian *ad litem* or next friend as if she were an unmarried woman; 1975, c. 41, s. 1 (3), *part*.
 - (c) the same rules shall be applied to determine the domicile of a married woman as for a married man.

Purpose
of subss.
1, 2

(4) The purpose of subsections 1 and 2 is to make the same law apply, and apply equally, to married men and married women and to remove any difference therein resulting from any common law rule or doctrine, and subsections 1 and 2 shall be so construed. 1975, c. 41, s. 1 (4).

Actions
between
parent and
child

66. No person shall be disentitled from bringing an action or other proceeding against another for the reason

SECTION 65. This section formerly appeared as section 1 (1, 2, 4) of *The Family Law Reform Act, 1975*. Subsection 3 (c) is new.

SECTION 66. This section formerly appeared as section 3 of *The Family Law Reform Act, 1975*.

SECTION 67. This section formerly appeared as section 4 of *The Family Law Reform Act, 1975*.

SECTION 68. The domicile of a minor is no longer dependent automatically on the domicile of the father alone. A minor who is or has been married is capable of acquiring a domicile as if an adult.

SECTION 69. This section abolishes several old and little used common law actions, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. The loss of consortium and loss of services actions are replaced by sections 60 to 64. Subsection 5 results from the abolition of the seduction action.

only that they stand in the relationship of parent and child.
1975, c. 41, s. 3.

67. No person shall be disentitled from recovering damages in respect of injuries incurred for the reason only that the injuries were incurred before his birth. 1975, c. 41, s. 4.

Recovery for
prenatal
injuries

68.—(1) Subject to subsection 2, a child who is a minor,

Domicile
of minors

- (a) takes the domicile of his or her parents, where both parents have a common domicile;
- (b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;
- (c) takes the domicile of the father, where the domicile of the child cannot be determined under clause *a* or *b*; or
- (d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause *c*.

(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age.

Idem

69.—(1) No action shall be brought for criminal conversation or for any damages resulting therefrom or from adultery.

Criminal
conversation
abolished

(2) No action shall be brought by a married person for the enticement or harbouring of the spouse of such person or for any damages resulting therefrom.

Enticement
and
harbouring
of spouse
abolished

(3) No action shall be brought by a married person for the loss of the consortium of his or her spouse or for any damages resulting therefrom.

Loss of
consortium
abolished

(4) No action shall be brought by a parent for the enticement, harbouring, seduction or loss of services of his or her child or for any damages resulting therefrom.

Enticement,
harbouring,
seduction,
loss of
services
of child
abolished

(5) *The Seduction Act*, being chapter 428 of the Revised Statutes of Ontario, 1970 and paragraph 30 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 428;
1971, c. 98,
Sched.,
par. 30,
repealed

- R.S.O. 1970,
c. 228, s. 59,
amended (6) Section 59 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by striking out "criminal conversation, seduction" in the first line.
- Dower
abolished **70.**—(1) The common law right of a widow to dower is hereby abolished.
- R.S.O. 1970,
c. 135;
1971, c. 98,
Sched.,
par. 11,
repealed (2) *The Dower Act*, being chapter 135 of the Revised Statutes of Ontario, 1970, and paragraph 11 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.
- R.S.O. 1970,
c. 152, s. 28 (2),
repealed (3) Subsection 2 of section 28 of *The Execution Act*, being chapter 152 of the Revised Statutes of Ontario, 1970, is repealed.
- Vested
right to
dower (4) Subsections 1, 2 and 3 do not apply in respect of a right to dower that has vested before subsections 1 and 2 come into force.
- Refund of
indemnity
held by
accountant
for dower (5) Where money has been paid into court as an indemnity in respect of a right to dower that has not vested before this section comes into force, the husband of the person in respect of whose dower right the money was paid into court is entitled to be paid the money upon application to the accountant of the court, without order.
- Alimony
abolished **71.**—(1) The right of a married woman to alimony under any law existing before this section comes into force is hereby abolished.
- Continuation
of action
commenced (2) Where an action for alimony is commenced before subsection 1 comes into force and no evidence has been heard in the action before this Act comes into force, other than in respect of an interim order, the action shall be deemed to be an application under Part II subject to such directions as the court considers appropriate.
- Polygamous
marriages **72.** This Act applies to persons whose marriage was actually or potentially polygamous if the marriage was celebrated in a jurisdiction whose system of law recognizes the marriage as valid.
- R.S.O. 1970,
c. 64, s. 27 (4),
amended **73.**—(1) Subsection 4 of section 27 of *The Child Welfare Act*, being chapter 64 of the Revised Statutes of Ontario, 1970, is amended by striking out "*The Deserted Wives' and Children's Maintenance Act*" and inserting in lieu thereof "*Part II of The Family Law Reform Act, 1978*".

SECTION 70. Because of the rights conferred on husbands and wives under Parts I and III, dower is abolished. Subsection 4 preserves vested rights of dower where the husband dies before this Act comes into force. Where money has been paid into court in respect of an inchoate dower interest, the husband is entitled to recover the money. Subsections 2 and 3 repeal statutory references to dower.

The widower's right of curtesy is abolished by *The Succession Law Reform Act, 1977*.

SECTION 71. The alimony action is abolished, as it is replaced by Part II. Applications to vary existing alimony orders are to be made under section 21. Alimony actions that have not come to trial are converted into applications for support under Part II.

SECTION 72. The obligations and remedies under this Act are not denied for the reason that the marriage is polygamous.

SECTION 73. Part III of *The Child Welfare Act* is replaced by Part II and section 58.

SECTION 74. *The Children's Maintenance Act* is replaced by Part II.

SECTION 75. The amendment is consequential to section 30 (3).

SECTION 76. *The Deserted Wives' and Children's Maintenance Act* is replaced by Part II.

SECTION 77. *The Employment Standards Act, 1974* is amended to extend the protection against dismissal or suspension in respect of garnishment of wages to cover attachment of wages under section 30 of this Act.

SECTION 78. Sections 1 to 4 of *The Family Law Reform Act, 1975* are incorporated in or replaced by this Act. See sections 7, 8, 65, 66 and 67.

SECTION 79. *The Fatal Accidents Act* is incorporated in sections 60 to 64.

SECTION 80. Provisions of *The Infants Act* relating to support and marriage contracts are repealed, as they are replaced by Part II and Part IV, respectively.

(2) Part III of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, Schedule, paragraph 6, subparagraph ii, 1972, chapter 109, section 6, 1973, chapter 75, section 5 and 1975, chapter 1, sections 25, 26, 27 and 28, is repealed. Part III,
repealed

74. *The Children's Maintenance Act*, being chapter 67 of the Revised Statutes of Ontario, 1970 and subsection 2 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, are repealed. R.S.O. 1970,
c. 67;
1971, c. 98,
s. 18 (2),
repealed

75. Section 4 of *The Creditors Relief Act*, being chapter 97 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: R.S.O. 1970,
c. 97, s. 4 (9),
amended

(9) This section does not apply to an attachment made under section 30 of *The Family Law Reform Act*, 1978. 1978, c. ...
exempted

76. *The Deserted Wives' and Children's Maintenance Act*, being chapter 128 of the Revised Statutes of Ontario, 1970, subsection 1 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, and *The Deserted Wives' and Children's Maintenance Amendment Act*, 1973, being chapter 133, are repealed. R.S.O. 1970,
c. 128,
1971, c. 98,
s. 18 (1);
1973, c. 133,
repealed

77. Section 9 of *The Employment Standards Act, 1974*, being chapter 112, is repealed and the following substituted therefor: 1974, c. 122,
s. 9,
re-enacted

9. No employer shall dismiss or suspend an employee on the ground that garnishment proceedings are or may be taken against the employee or that an attachment order under section 30 of *The Family Law Reform Act*, 1978 has been or may be made against the employee. Garnish-
ment or
attachment
of wages

1978, c. ...

78. Sections 1, 2, 3 and 4 of *The Family Law Reform Act*, 1975, being chapter 41, are repealed. 1975, c. 41,
ss. 1-4,
repealed

79. *The Fatal Accidents Act*, being chapter 164 of the Revised Statutes of Ontario, 1970, *The Fatal Accidents Amendment Act*, 1973, being chapter 16, and *The Fatal Accidents Amendment Act*, 1975, being chapter 38, are repealed. R.S.O. 1970,
c. 164;
1973, c. 16;
1975, c. 38,
repealed

80.—(1) *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by striking out, R.S.O. 1970,
c. 222,
amended

- (a) subsection 4, subsection 4a, as enacted by the Statutes of Ontario, 1971, chapter 98, section 18, and subsection 5 of section 1;
- (b) subsection 2 of section 2;
- (c) sections 10, 13 and 14; and
- (d) section 15, as re-enacted by the Statutes of Ontario, 1971, chapter 98, section 16.

1971, c. 98,
s. 18 (3),
Sched., par. 14,
subpar. 1,
repealed

(2) *The Age of Majority and Accountability Act, 1971*, being chapter 98, is amended by striking out,

- (a) section 10;
- (b) subsection 3 of section 18; and
- (c) subparagraph i of paragraph 14 of the Schedule.

R.S.O. 1970,
c. 228, s. 81,
repealed

81.—(1) Subject to subsection 2, section 81 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is repealed.

Continu-
ance for
existing
judgments

(2) The provision repealed by subsection 1 remains in force in respect of a judgment for alimony in an action commenced before this section comes into force.

R.S.O. 1970,
c. 262, ss. 1, 12,
repealed

82. Sections 1 and 12 of *The Married Women's Property Act*, being chapter 262 of the Revised Statutes of Ontario, 1970, are repealed.

R.S.O. 1970,
c. 265, ss. 1-5,
8;
1971, c. 98,
s. 18 (4),
repealed

83. Sections 1, 2, 3, 4, 5 and 8 of *The Matrimonial Causes Act*, being chapter 265 of the Revised Statutes of Ontario, 1970 and subsection 4 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 336,
repealed

84. *The Parents' Maintenance Act*, being chapter 336 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,
c. 342,
s. 24,
amended

85. Section 24 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970 is amended by adding thereto the following subsection:

Application
of subs. 1

- (2) Subsection 1 does not apply to the execution, seizure or attachment of moneys payable under a pension plan in satisfaction of an order for support under *The Family Law Reform Act, 1978*.

1978, c. ...

SECTION 81. The repeal of section 81 of *The Judicature Act*, which allows the registration of alimony orders against land, results from the abolition of alimony in section 71.

SECTION 82. The remaining sections of *The Married Women's Property Act* are repealed, as they are replaced by sections 6 and 7.

SECTION 83. Provisions of *The Matrimonial Causes Act* relating to support on the annulment of a marriage are repealed, as they are replaced by Part II.

SECTION 84. *The Parents' Maintenance Act* is replaced by Part II.

SECTION 85. *The Pension Benefits Act* is amended to make pensions available to satisfy a support order.

SECTION 86. The repealed provision allows support orders made in the Supreme Court to be filed for enforcement in the provincial court (family division). This is provided for in section 27. The repealed provision remains in force for orders made in actions begun before this Act comes into force.

SECTION 87. This amendment is made to bring the terminology in *The Reciprocal Enforcement of Maintenance Act* into line with that used in this Act.

SECTION 88. The provision of *The Statute of Frauds* relating to marriage contracts is replaced by section 54 (1).

SECTION 89. No action or proceeding under the repealed or abolished provisions may be begun after this Act comes into force.

86.—(1) Subject to subsection 2, section 25 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 369, s. 25, repealed

(2) Every order or judgment filed under section 25 of *The Provincial Courts Act* before subsection 1 comes into force shall be deemed to have been filed under section 27 of this Act with the request therein mentioned. Transition for existing orders R.S.O. 1970, c. 369

87.—(1) *The Reciprocal Enforcement of Maintenance Orders Act*, being chapter 403 of the Revised Statutes of Ontario, 1970, is amended by striking out “summons” in each case where it appears and inserting in lieu thereof “notice of application”. R.S.O. 1970, c. 403, amended

(2) Subsection 3 of section 2 of the said Act is amended by striking out “*The Deserted Wives’ and Children’s Maintenance Act*” and inserting in lieu thereof “Part II of *The Family Law Reform Act, 1978*”. Idem s. 3 (2), amended

88. Section 4 of *The Statute of Frauds*, being chapter 444 of the Revised Statutes of Ontario, 1970, is amended by striking out “any agreement made upon consideration of marriage, or upon” in the fifth and sixth lines. R.S.O. 1970, c. 444, s. 4, amended

89. Sections 69, 73, 74, 76, 79, 80, 82, 83 and 84 apply in all cases when they come into force except in cases where an action or proceeding was commenced under the abolished, repealed or amended provision before that date. Application of ss. 69, 73, 74, 76, 79, 80, 82, 83 and 84

GENERAL

90. The Lieutenant Governor in Council may make regulations respecting any matter required to be or referred to as prescribed by the regulations. Regulations

91. This Act comes into force on the 31st day of March, 1978. Commencement

92. The short title of this Act is *The Family Law Reform Act, 1978*. Short title

ALL ACT TO REFORM THE LAW RESPECTING
PROPERTY RIGHTS AND SUPPORT OBLIGATIONS
BETWEEN MARRIED PERSONS AND IN OTHER
FAMILY RELATIONSHIPS

1st Reading

February 21st, 1978

2nd Reading

February 21st, 1978

3rd Reading

THE HON. R. McMURTRY
Attorney General

*(Reprinted as amended by the
Administration of Justice Committee)*

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to reform the Law respecting
Property Rights and Support Obligations between
Married Persons and in other Family Relationships**

THE HON. R. MCMURTRY
Attorney General

(Reprinted as amended by the Committee of the Whole House)



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EXPLANATORY NOTES

SECTION 1. The definition of "child" allows children born outside marriage and persons treated as a child of the family to claim support from their parents under Part II or to benefit from an order respecting property under section 6 (*d*).

The definition of "court" permits claims under Parts I to IV to be brought in the new Unified Family Court, a provincial court (family division), a county or district court or the Supreme Court.

The definition of "parent" corresponds with the meaning of "child".

The definition of "spouse" ensures that parties to a marriage subsequently found to be void are covered by this Act.

BILL 59

1978

**An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships**

WHEREAS, it is desirable to encourage and strengthen Preamble
the role of the family in society;

AND WHEREAS for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership;

AND WHEREAS in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership; and to provide for other mutual obligations in family relationships, including the equitable sharing by parents of responsibility for their children:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "child" means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a person whom the parent has demonstrated a settled intention to treat as a child of his or her family, but does not include a child placed in a foster home for consideration by a person having lawful custody; R.S.O. 1970, c. 64
- (b) "cohabit" means to live together in a conjugal relationship, whether within or outside marriage;
- (c) "court" means a provincial court (family division), the Unified Family Court, a county or district court or the Supreme Court;

- (d) "domestic contract" means a domestic contract as defined in Part IV;
- (e) "parent" means the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, but does not include a person in whose home a child was placed as a foster child for consideration by a person having lawful custody;
- (f) "spouse" means either of a man and woman who,
- (i) are married to each other,
 - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity, or
 - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

Combining of
application

2.—(1) Where, in an application under any provision of this Act, it appears to the court that for the appropriate determination of the affairs of the spouses it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court considers appropriate.

All
proceedings
in one court

(2) Except as otherwise provided, where an application is made to a court under this Act, no person who is a party to the proceeding shall make an application under this Act to any other court, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

Applications

(3) An application under this Act may be made in the manner prescribed by the rules of the court or in another proceeding.

Capacity
of minors

(4) A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian *ad litem* and give any consent required or authorized by this Act.

Extension
of times

(5) The court may extend any time prescribed by this Act where the court is satisfied that,

SECTION 2. Subsection 1 permits a court to adjourn the hearing of a claim under this Act where it finds that all of the issues necessary for it to make a proper decision have not been determined. For example, an application to divide property could be adjourned to allow the bringing of a support application, and the two applications could be heard together.

Subsection 2 requires all claims under this Act between the same parties to be brought in the same court, and allows the transfer of an application to another court if the first court does not have jurisdiction to deal with all the issues.

Subsection 5 allows a court to permit extensions of times prescribed by the Act.

Subsection 7 allows the court to make orders on the consent of the parties, without the need for a hearing.

Subsection 9 provides that a domestic contract (marriage contract, cohabitation agreement or separation agreement) made under Part IV prevails over the provisions of Parts I to III, subject to the limitation of sections 18 (4) and 55.

Subsection 10 requires registration of orders affecting title to real property.

SECTION 3. The provincial court (family division) does not have jurisdiction under this Part.

The definition of "family assets" includes property held for the benefit of a spouse by a corporation, trust, power of appointment or revocable gift. The definition does not include land around the matrimonial home where that land is used for farming or other business purposes and is not reasonably necessary to the use of the home as a residence. The definition also excludes any property specified in a domestic contract as not being a family asset.

- (a) there are *prima facie* grounds for relief;
- (b) relief is unavailable because of delay that has been incurred in good faith; and
- (c) no substantial prejudice or hardship will result to any person affected by reason of the delay.

(6) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing. Closed hearings

(7) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act, subject to the duty of the court to have regard to the best interests of children affected. Consent orders

(8) Any matter provided for in a domestic contract may be incorporated in an order made under this Act. Incorporation of contract in order

(9) Where a domestic contract makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in this Act. Act subject to contracts

(10) Where an order made under this Act affects real property, the order does not affect the acquisition of an interest in the real property by a person in good faith without notice of the order, unless the order is registered in the proper land registry office. Registration of orders

PART I

FAMILY PROPERTY

3. In this Part,

- (a) "court" means a court as defined in section 1 but does not include a provincial court (family division);
- (b) "family assets" means a matrimonial home as determined under Part III and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for household, educational, recreational, social or aesthetic purposes, and includes,

Interpre-
tation

- (i) money in an account with a chartered bank, savings office, credit union or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,
- (ii) where property owned by a corporation, partnership or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the partnership or trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property,
- (iii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself, if the property would be a family asset if it were owned by the spouse, and
- (iv) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include property that the spouses have agreed by a domestic contract is not to be included in the family assets;

- (c) "property" means real or personal property or any interest therein.

Division of family assets

4.—(1) Subject to subsection 4, where a decree *nisi* of divorce is pronounced or a marriage is declared a nullity or where the spouses are separated and there is no reasonable prospect of the resumption of cohabitation, each spouse is entitled to have the family assets divided in equal shares notwithstanding the ownership of the assets by the spouses as determinable for other purposes and notwithstanding any order under section 7.

Application to court

(2) The court may, upon the application of a person who is the spouse of another, determine any matter respecting the division of family assets between them.

Effect of death of spouse

(3) The rights under subsection 1 are personal as between the spouses but any application commenced under subsection

SECTION 4. This section gives a spouse the right to have the family assets divided where the marriage has broken down. The division can be accomplished by agreement or by court order. The family assets will be divided equally notwithstanding which spouse is the owner of them, even though that ownership has been determined under section 7, unless one of the spouses can satisfy the court that an equal division of family assets would be inequitable in view of the enumerated factors or that due to division of function in the marriage the spouse has not been in a position to acquire property. Once satisfied, the court can divide the family assets unequally or divide other property of the spouse, including business property. The underlying purpose of the section is set out in subsection 5.



2 before the death of a spouse may be continued by or against the estate of the deceased spouse.

(4) The court may make a division of family assets resulting in shares that are not equal where the court is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to, ^{Variation of division}

- (a) any agreement other than a domestic contract;
- (b) the duration of the period of cohabitation under the marriage;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the date when the property was acquired;
- (e) the extent to which property was acquired by one spouse by inheritance or by gift; or
- (f) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares.

(5) The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to an equal division of the family assets, subject to the equitable considerations set out in subsections 4 and 6. ^{Purpose}

(6) The court shall make a division of any property that is not a family asset where, ^{Property other than family assets}

- (a) a spouse has unreasonably impoverished the family assets; or
- (b) the result of a division of the family assets would be inequitable in all the circumstances, having regard to,
 - (i) the considerations set out in clauses a to f of subsection 4, and
 - (ii) the effect of the assumption by one spouse of any of the responsibilities set out in subsection 5 on the ability of the other spouse to acquire, manage, maintain, operate or improve property that is not a family asset.

Statement
of property

5.—(1) Where an application is made under section 4, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of all property of the party in the manner and form prescribed by the rules of the court.

Order for
sealing
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

Idem

6. In an application under section 4, the court may order,

- (a) that the title to any specified property directed to a spouse in the division be transferred to or in trust for or vested in the spouse whether absolutely, for life or for a term of years;
- (b) the partition or sale of any property;
- (c) that payment be made out of the proceeds of sale to one or both spouses, and the amount thereof;
- (d) that any property forming part of the share of either or both spouses be transferred to or in trust for or vested in a child to whom a spouse owes an obligation to provide support;
- (e) that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property; and
- (f) that either spouse pay to the other such sum as is set out in the order for the purpose of adjusting the division,

and may make such other orders or directions as are ancillary thereto.

Determin-
ation of
questions of
title between
married
persons

7. Any person may apply to the court for the determination of any question between that person and his or her spouse or former spouse as to the ownership or right to possession of any particular property, except where an application or an order has been made respecting the property under section 4 or 6, and the court may,

- (a) declare the ownership or right to possession;
- (b) where the property has been disposed of, order payment in compensation for the interest of either party;

SECTION 5. A statement of property is required on an application for division of family assets in the same manner as a statement of financial information under section 23 on an application for support.

SECTION 6 allows an application to court to determine the mechanics of the division of the family assets or other property subject to division. The powers of the court include the power to order partition or sale. Recourse to *The Partition Act* will be unnecessary.

SECTION 7. This section is based on and replaces section 12 of *The Married Women's Property Act*. It allows applications to determine ownership or the right to possession of particular pieces of property, and is not restricted to a marriage breakdown situation. This section is not available where an application under section 4 has been made in respect of the same property. The court may order compensation for a spouse if the other has disposed of the property in question. The court has the power to order partition, so that recourse to *The Partition Act* will not be necessary.

SECTION 8. Is based on section 1 (3) (c) of *The Family Law Reform Act, 1975* and extends that provision so as to allow the court to recognize the spouse's contribution to particular property.

SECTION 9. This section provides a mechanism for enforcing an order charging property.

SECTION 11. This provision formerly appeared as section 1 (3) (d) of *The Family Law Reform Act, 1975*.

- (c) order that the property be partitioned or sold for the purpose of realizing the interests therein; and
- (d) order that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property,

and may make such other orders or directions as are ancillary thereto.

8. Where one spouse or former spouse has contributed Contribution to property work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property, other than family assets, in which the other has or had an interest, upon application, the court may by order,

- (a) direct the payment of an amount in compensation therefor; or
- (b) award a share of the interest of the other spouse or former spouse in the property appropriate to the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. 1975, c. 41, s. 1 (3) (c), *amended*.

9. In or pending an application under section 4, 7 or 8, the court may make such interim order as it considers necessary Interim orders for preservation for restraining the dissipation of the property and for the possession, delivering up, safekeeping and preservation of the property.

10. Where a court orders security for the performance of any obligation under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. Realization of security

11.—(1) The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that, Presumptions

- (a) the fact that property is placed or taken in the name of spouses as joint tenants is *prima facie* proof that each spouse is intended to have on a severance of the joint tenancy a one-half beneficial interest in the property; and

- (b) money on deposit in a chartered bank, savings office, credit union or trust company in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause a. 1975, c. 41, s. 1 (3) (d), *amended*.

Application (2) Subsection 1 applies notwithstanding that the event giving rise to the presumption occurred before this section comes into force.

Application of Part

12. This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before this Part comes into force;
- (b) the property in issue was acquired before this Part comes into force; or
- (c) a proceeding to determine the rights as between spouses in respect of property has been commenced or adjudicated before this Part comes into force.

Conflict of laws

13.—(1) The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of Ontario.

Idem

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the land is situated, but where the law of Ontario is applicable respecting the division of family assets, the value of the property may be taken into consideration for the purposes of section 4.

PART II

SUPPORT OBLIGATIONS

Interpretation

14. In this Part,

- (a) “dependant” means a person to whom another has an obligation to provide support under this Part;
- (b) “spouse” means a spouse as defined in section 1, and in addition includes,
- (i) either of a man and woman not being married to each other who have cohabited,

1. continuously for a period of not less than five years, or

SECTION 12. This Part applies to persons married and to property owned when this Act comes into force.

SECTION 13. This Part will apply to spouses who do not have a marriage contract [see section 2 (9)] and whose last common habitual residence was in Ontario or who never had a common habitual residence. Where the spouses' last common habitual residence was outside Ontario, the ownership of their movable property and their right to divide family assets will be governed by the law of that other jurisdiction.

The ownership of spouses' land is governed by the law of the place where the land is situated. Where this Part applies to the spouses, land outside Ontario cannot be ordered sold or partitioned by the court. However, the court can take the value of that land into account and give a smaller share of movable property or land in Ontario to the spouse who owns the foreign land, in order to adjust the division of family assets.

SECTION 14. The definition of "spouse" is broadened to include a "common law" spouse as defined.

SECTION 15. This section creates an obligation on spouses to be self-supporting and to support the other spouse, depending on ability to provide support and the needs of the other spouse. Matrimonial misconduct will no longer be the basis for making or denying an award of support, but see section 18 (6).

SECTION 16. A parent has an obligation to support a child up to 18 years of age unless the child is over sixteen years and has withdrawn from parental control.

SECTION 17. A corresponding obligation is placed on children of the age of 18 or over to support their parents when in need, in accordance with ability. This section replaces the existing *Parents' Maintenance Act*, which imposes a similar obligation.

SECTION 18. A parent, or a public agency or children's aid society providing welfare or family benefits will be able to claim support for a dependant.

Subsection 5 contains a check-list to assist the court in determining the needs of the dependant and the ability to pay of the person from whom support is claimed. The court is directed to take into consideration any loss of earning capacity or opportunity for advancement occasioned by the responsibilities assumed during cohabitation and may include assistance to a spouse to attain financial independence.

2. in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year, and

- (ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force.

15. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so. Obligation of spouses for support

16.—(1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need, for his or her child who is unmarried and is under the age of eighteen years. Obligation of parent to support child

(2) The obligation under subsection 1 does not extend to a child who, being of the age of sixteen years or over, has withdrawn from parental control. Idem

17. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for and provided support for the child, to the extent that the child is capable of doing so. Obligation of child to support parent

18.—(1) A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof. Order for support

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant or under subsection 3. Applicants

(3) An application for an order for the support of a dependant who is a spouse or a dependent child of the spouse may be made by, Idem

- (a) the Ministry of Community and Social Services in the name of the Minister; or
- (b) a municipal corporation, including a metropolitan, district or regional municipality, but not including an area municipality thereof,

if the Ministry or municipality is providing a benefit under *The Family Benefits Act* or assistance under *The General Welfare Assistance Act* in respect of the support of the dependant. R.S.O. 1970. cc. 157, 192

Setting aside
domestic
contract

(4) The court may set aside a provision for support in a domestic contract or paternity agreement and may determine and order support in an application under subsection 1 notwithstanding that the contract or agreement contains an express provision excluding the application of this section,

- (a) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable;
- (b) where the provision for support is to a spouse who qualifies for an allowance for support out of public money; or
- (c) where there has been default in the payment of support under the contract or agreement.

Determin-
ation of
amount

(5) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity;
- (b) the capacity of the dependant to provide for his or her own support;
- (c) the capacity of the respondent to provide support;
- (d) the age and the physical and mental health of the dependant and of the respondent;
- (e) the length of time the dependant and respondent cohabited;
- (f) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures;
- (h) the legal obligation of the respondent to provide support for any other person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;



SECTION 19. The court has broad powers to make the most suitable order or combination of orders regarding support, including the making of both periodic and lump sum orders and the granting of security to ensure payments. The court can also order the respondent to reimburse a public agency for payments it has made to the dependant. The court can provide for the dependant's support after the respondent's death.

If the order is not expressed to survive the respondent, it terminates on death and only 12 months arrears are enforceable.

A support order may be assigned to a public agency paying benefits to the dependant. This allows the agency to continue the steady income of the dependant and leaves the burden of enforcement and the risk of non-payment on the agency.

- (j) a contribution by the dependant to the realization of the career potential of the respondent;
- (k) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education;
- (l) where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities assumed during cohabitation;
- (m) where the dependant is a spouse, whether the dependant has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents;
- (n) where the dependant is a spouse, whether the dependant has undertaken to assist in the continuation of a program of education for a child who is of the age of eighteen years or over and unable for that reason to withdraw from the charge of his or her parents;
- (o) where the dependant is a spouse, any house-keeping, child care or other domestic service performed by the spouse for the family, in the same way as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings therefrom to the support of the family; and
- (p) any other legal right of the dependant to support other than out of public money.

(6) The obligation to provide support for a spouse exists without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship. ^{Conduct}

19.—(1) In an application under section 18, the court may order, ^{Powers of court}

- (a) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;

- (c) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) any matter authorized to be ordered under clauses *a* to *d* of subsection 1 of section 45 and subject to subsection 3 thereof;
- (e) that all or any of the moneys payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant;
- (f) the payment of support to be made in respect of any period before the date of the order;
- (g) the payment to an agency referred to in subsection 3 of section 18 of any amount in reimbursement for a benefit or assistance referred to therein, including an amount in reimbursement for such benefit or assistance provided before the date of the order;
- (h) the payment of expenses in respect of the pre-natal care and birth of a child;
- (i) that the obligation and liability for support continue after the death of the respondent and be a debt of his or her estate for such period as is fixed in the order;
- (j) that a spouse who has a policy of life insurance as defined in Part V of *The Insurance Act* designate the other spouse or a child as the beneficiary irrevocably; and
- (k) the securing of payment under the order, by a charge on property or otherwise.

R.S.O. 1970.
c. 224

Limitation
on
jurisdiction
of family
court

(2) A provincial court (family division) shall not make an order under clause *b*, *c*, *j* or *k* of subsection 1 except for the provision of necessities or preventing the dependant from becoming a public charge.

Interim
orders

(3) Where an application is made under section 18, the court may make such interim order as the court considers appropriate.

Assignment
of support

(4) An order for support is assignable to an agency referred to in subsection 3 of section 18.

SECTION 20. To avoid having the issue of support before two different courts, an application under this Part is stayed when a divorce is sought and any support order will be made under the *Divorce Act* (Canada). Where support is not before the trial judge as an issue in a divorce, an order under this Part survives the divorce. Under existing law, provincial orders in favour of a child continue but those in favour of a spouse do not.

SECTION 21. An order for support may be varied or ended if there has been a material change of circumstances or new evidence becomes available. The court also has power to wipe out arrears and interest.

If the original order was made by a county or district court, both the original court and another county or district court have jurisdiction to vary the order. The same provision is available for variation by one provincial court (family division) of an order made by another provincial court (family division).

This section applies to the variation of support orders made before this Act takes effect.

SECTION 22. A proposed sale of assets that would defeat a claim or an order for payment of support may be restrained by court order.

(5) Unless an order to provide support otherwise provides, it terminates upon the death of the person having the obligation to provide support, and the liability for amounts under the order coming due and unpaid in the preceding twelve months is a debt of his or her estate.

Termination
of support
order on
death

20.—(1) Where an action for divorce is commenced under the *Divorce Act* (Canada), any application for support or custody under this Part that has not been determined is stayed except by leave of the court.

Effect of
divorce
proceedings
R.S.C. 1970.
c. D-8

(2) Where a marriage is terminated by a decree absolute of divorce or declared a nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms.

Idem

21.—(1) Where an order for support has been made or confirmed and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent or evidence has become available that was not available on the previous hearing, the court may, upon the application of any person named in the order or referred to in subsection 3 of section 18, discharge, vary or suspend any term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all of the arrears or any interest due thereon and make such other order under section 19 as the court considers appropriate in the circumstances referred to in section 18.

Review and
variation
of orders

(2) An application under subsection 1 shall be made to the court that made the order or to a co-ordinate court in another part of Ontario.

Court

(3) No application under subsection 1 shall be made within six months after the making of the order for support or the disposition of any other application under subsection 1 in respect of the same order, except by leave of the court.

Limitation
on appli-
cations for
review

(4) This section applies to orders for maintenance or alimony made before this section comes into force or in a proceeding commenced before this section comes into force.

Existing
orders

22. In or pending an application under section 18 or appearance to a notice under section 28, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support.

Restraining
orders

Statement
of financial
affairs

23.—(1) Where an application is made under section 18 or 21, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of financial information in the manner and form prescribed by the rules of the court.

Order for
sealing
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

Absconding
respondent
or debtor

24. Where an application is made under section 18 or a notice is issued under section 28 and a judge of the court is satisfied that the respondent or debtor is about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent or debtor.

Provisional
orders

25.—(1) Where an application is made under section 18 or 21 in a provincial court (family division) or the Unified Family Court and,

- (a) the respondent in the application fails to appear;
- (b) it appears to the court that the respondent resides in a locality in Ontario that is outside the territorial jurisdiction of the court; and
- (c) in the circumstances of the case, the court is of the opinion that the issues can be adequately determined by proceeding under this section,

the court may proceed in the absence of the respondent and without the statement of the financial affairs of the respondent required by section 23 and in place of a final order may make an order for support that is provisional only and the order has no effect until it is confirmed by the provincial court (family division) or the Unified Family Court in the locality in which the respondent resides.

Transmission
for hearing

(2) Where a provisional order is made under subsection 1, the court making the order shall send to the court having jurisdiction in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court.

Show
cause

(3) The court to which the documents and records are sent under subsection 2 shall cause them to be served upon

SECTION 23. Disclosure of financial information will be required of both the applicant and the person from whom support is claimed in order to ascertain need and ability to pay. The court will have discretion to make the disclosure confidential.

SECTION 25. Where appropriate, a provincial court (family division) or the Unified Family Court can make a provisional order against a respondent who lives outside the judicial district and who fails to appear at the hearing. The order is sent to the court having jurisdiction where the respondent lives and has no effect unless that court confirms it. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

SECTION 26. In order to start a support application or to enforce a support order, the applicant may obtain an order requiring a person such as an employer or public agency, including the Province of Ontario, to provide access to its records for the sole purpose of obtaining the address of a person ordered to pay support.

the respondent together with a notice to file with the court the statement of financial affairs required by section 23 and to appear and show cause why the provisional order should not be confirmed.

(4) At the hearing, the respondent may raise any defence that might have been raised in the original proceedings, but, if on appearing the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with such variation as the court considers proper having regard to all the evidence. Confirmation of order

(5) Where the respondent appears before the court and satisfies the court that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may so remit the case and adjourn the proceedings for that purpose. Adjournment for further evidence

(6) Where the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court that made the order together with a statement of the reasons for so doing, and in that event the court that made the order may dispose of the application in such manner as it considers proper. Where order not confirmed

(7) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the office or signature of the clerk, admissible in evidence in a court to which it is transmitted under this section as *prima facie* proof of the authenticity of the copy. Certificates as evidence

(8) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have had if the order had been made under section 19. Right of appeal

26.—(1) Where it appears to a court that,

Access to records

- (a) for the purpose of bringing an application under this Part; or
- (b) for the purpose of the enforcement of an order for support, custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts

of the proposed respondent or person against whom the order is made, the court may order any person or public agency to provide the court with such particulars of the address as are contained in the records in its custody and the person or agency shall provide to the court such particulars as it is able to provide.

Section
binds Crown

(2) This section binds the Crown in right of Ontario.

Enforcement
of orders by
family court
clerk

27.—(1) The clerk of the Unified Family Court or of a provincial court (family division), upon the request of a person entitled to support under an order for support or maintenance enforceable in Ontario or other persons or agency mentioned in subsection 3 of section 18 and upon the filing of such material as is prescribed by the rules of the court may enforce the order.

Powers of
court for
enforcement

(2) For the purposes of enforcing an order filed under subsection 1, a provincial court (family division) has the power to issue execution and garnishment in accordance with the rules of the court and section 145 of *The Small Claims Courts Act* and subsection 3 of section 4 of *The Creditors' Relief Act* apply to a garnishment issued by the provincial court (family division).

R.S.O. 1970,
cc. 439, 97

Crown
subject to
attachment
for support
R.S.O. 1970,
c. 365

(3) Notwithstanding section 25 of *The Proceedings Against the Crown Act*, an attachment under subsection 1 of section 30 and any other execution, garnishment or attachment or process in the nature thereof for the payment of an amount owing or accruing under an order for support or maintenance, may be issued against the Crown.

Examination
of debtor

28.—(1) Where there is default in payment under an order for support or maintenance, a clerk of the Unified Family Court or a provincial court (family division) may require the debtor, upon notice,

- (a) to file a statement of financial information referred to in section 23;
- (b) submit to an examination as to assets and means; and
- (c) appear before the court to explain the default.

Compelling
attendance

(2) If the debtor fails to appear as required after being served with a notice, or if the court is satisfied that the debtor cannot be served or intends to leave Ontario without appearing as required after being served, the court giving the notice may issue a warrant for the arrest of the debtor for the purpose of compelling attendance.

SECTION 27. This section allows support orders made in any court to be filed for enforcement in the new Unified Family Court or the provincial court (family division). It replaces section 25 of *The Provincial Courts Act*. This section recognizes the administrative practice whereby court officials automatically enforce orders in family court.

The provincial court (family division) will have power to enforce support orders by execution and garnishment. Formerly support orders were enforceable in small claims court only up to the monetary jurisdiction of that court.

Garnishee and attachment orders may be obtained against the Crown for support.

SECTION 28. Where a debtor under an order defaults, the debtor can be required to disclose financial particulars and appear before the court to explain the default. The debtor can be arrested if about to abscond. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

SECTION 29. This procedure exists under *The Deserted Wives' and Children's Maintenance Act*. The power to imprison is made flexible enough to allow for alternatives to imprisonment.

SECTION 30. This section is new. It allows a court order for a continuing deduction at source by the employer in order to satisfy a support order. The attachment would have priority over any other seizure of wages. See also sections 76 and 84.

SECTION 32. This section provides a mechanism for enforcing a secured support order by selling the security.

29.—(1) Where the debtor fails to satisfy the court that the default is owing to his or her inability to pay and where the court is satisfied that all other practicable means that are available under this Act for enforcing payment have been considered, the court may,

Penalty
for
default

- (a) order imprisonment for a term of not more than ninety days to be served intermittently or as ordered by the court; or
- (b) make such other order as may be made upon summary conviction for an offence that is punishable by imprisonment.

(2) The order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order, including the performance of a community service order.

Conditions
of sentence

30.—(1) Where the court considers it appropriate in a proceeding under section 28, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order and to pay the amounts deducted into court, and section 7 of *The Wages Act* does not apply.

Attachment
of wages

R.S.O. 1970,
c. 486

(2) Where an application is made under section 21, the court may discharge, vary or suspend any term of an order made under subsection 1.

Variation of
attachment

(3) An order under subsection 1 has priority over any other seizure or attachment of wages arising before or after the service of the order.

Priority
of order

31. Where the court considers it appropriate in a proceeding under section 28, the court may order the debtor to give security for the payment of support or may charge any property of the debtor with payment of an amount for the provision of necessaries or preventing the dependant from becoming a public charge.

Security
for
payment

32. Where a court orders security for the payment of support under this Part or charges property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

Realization
of security

Pledging
credit for
necessaries

33.—(1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessaries of life, except where the spouse has notified the third party that he or she has withdrawn the authority.

Liability
for
necessaries
of minor

(2) Where a person is entitled to recover against a minor in respect of the provision of necessaries for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

Recovery
between
persons
jointly
liable

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Common
law
supplanted

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband.

Order
restraining
harassment

34. Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate.

Custody of
children

35.—(1) Upon application, the court may order that either parent or any person have custody of or access to a child in accordance with the best interests of the child and may at any time alter, vary or discharge the order.

Court

(2) An application to alter, vary or discharge the order shall be made to the court that made the order or to a co-ordinate court in another part of Ontario.

Interim
orders

(3) Where an application is made under subsection 1, the court may make such interim order as the court considers appropriate.

Application
to orders
under
R.S.O. 1970,
c. 128

(4) This section applies to orders for custody or access made under *The Deserted Wives' and Children's Maintenance Act*.

Appeal
from
provincial
court (family
division)

36. An appeal lies from an order of the provincial court (family division) under this Part to the county or district court in the county or district in which the provincial court (family division) is situated.

SECTION 33. While living together, either spouse may pledge the credit of the other for necessities unless this authority is specifically withdrawn by notice to the creditor. Both spouses are then jointly liable to the creditor. Similarly, under subsection 2, a creditor may recover necessities provided to a child under 18 from both the parents and the child. The liability as between the spouses, or between parent and child, is determined in accordance with need and ability to pay as set out in sections 15, 16 and 17.

Subsection 4 abolishes the common law agency of cohabitation and agency of necessity, which applied only in favour of a wife.

SECTION 34. This section provides a civil remedy to prevent a spouse from continually harassing and interfering with the other.

SECTION 35. This section provides for the making of a custody order or interim order in favour of either parent in the best interests of the child. The custody order need not be tied to a support order, as is now the case under section 3 of *The Deserted Wives' and Children's Maintenance Act*.

SECTION 36. Appeals are provided for in Acts governing the Supreme Court and county courts. This section is necessary because *The Provincial Courts Act* does not contain provisions for appeals. The appeal procedure will be set out in the rules.

SECTION 37. This section gives a provincial court (family division) the power to punish contempt of its orders under this Part. The Supreme Court and county courts already have such power.

SECTION 38. This Part extends to mobile homes, trailers, houseboats, etc.

SECTION 39. Where the family has or had two or more homes, this Part applies to all the family residences, subject to section 41. The definition of "matrimonial home" includes a home rented by the family and a unit in a co-operative housing development.

Where the property on which a matrimonial home is used for a purpose that is more than residential, such as for farming or other business purposes, only the surrounding land reasonably necessary for use of the residence is affected by this Part.

SECTION 40. Notwithstanding which spouse owns the home, both spouses are equally entitled to possession. The equal right to possession may be altered by a court order under section 45.

37.—(1) In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed ninety days.

Contempt of orders of provincial court (family division)

(2) An order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

Conditions of imprisonment

PART III

MATRIMONIAL HOME

38. In this Part, “property” means real or personal property.

Interpretation

39.—(1) Property in which a person has an interest and that is or has been occupied by the person and his or her spouse as their family residence is their matrimonial home.

Matrimonial home

(2) Subsection 1 applies notwithstanding that its application results in more than one matrimonial home.

More than one matrimonial home

(3) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection 1.

Ownership of shares

(4) Where property that includes a matrimonial home is normally used for a purpose other than residential only, the matrimonial home is only such portion of the property as may reasonably be regarded as necessary to the use and enjoyment of the residence.

Residence on farmland, etc.

40.—(1) A spouse is equally entitled to any right of possession of the other spouse in a matrimonial home.

Right to possession

(2) Subject to an order of the court under this or any other Act, and subject to a separation agreement that provides otherwise, a right of a spouse to possession by virtue of subsection 1 ceases upon the spouse ceasing to be a spouse.

Termination of right to possession

Registered
designation
of
matrimonial
home

41.—(1) Both spouses may, by instrument in the form prescribed by the regulations, designate any property that is a matrimonial home and, upon the registration of the instrument and while there is a designation made by the spouses under this subsection that is not cancelled, any other property that would qualify as a matrimonial home under section 39 and that is not similarly designated ceases to be a matrimonial home.

Extent of
designation

(2) The property that is designated as a matrimonial home under subsection 1 may include any property contiguous to the matrimonial home that is described for the purpose in the instrument.

Cancellation
of
designation

(3) The designation of a matrimonial home under subsection 1 is cancelled upon the registration or deposit of,

- (a) an instrument in the form prescribed by the regulations executed by both spouses;
- (b) a decree absolute of divorce or judgment of nullity;
- (c) an order under section 45 cancelling the designation; or
- (d) proof of death of one of the spouses.

Effect of
cancellation

(4) Upon the cancellation of the designation of a property under subsection 3, the property ceases to be a matrimonial home under section 39.

Revival
of
matrimonial
homes

(5) Upon there ceasing to be a designation under subsection 1, section 39 applies in respect of property that is a matrimonial home.

Alienation of
matrimonial
home

42.—(1) No spouse shall dispose of or encumber any interest in a matrimonial home unless,

- (a) the other spouse joins in the instrument or consents to the transaction;
- (b) the other spouse has released all rights under this Part by a separation agreement;
- (c) the transaction is authorized by court order or an order has been made releasing the property as a matrimonial home; or
- (d) the property is not designated as a matrimonial home under section 41 and an instrument desig-

SECTION 41. The spouses may jointly designate one or more properties as matrimonial homes, and thereupon this Part ceases to apply to any property other than those designated. The designation must be registered.

SECTION 42. A spouse may not sell, lease, mortgage or otherwise deal with the matrimonial home unless the non-owning spouse's consent in writing is obtained, a court dispenses with the consent under section 44 or another home has been designated as the matrimonial home. If a spouse deals with the home without consent, the transaction can be set aside unless an innocent third party holds the interest at that time. The affidavit of a spouse is sufficient protection for a bona fide purchaser.

SECTION 43. The non-owning spouse is protected by requiring landlords, mortgagees and other lienholders to accept payment from and give notice to that spouse as if he or she were an owner.

nating another property as a matrimonial home of the spouses is registered under section 41 and not cancelled.

(2) Where a spouse disposes of or encumbers an interest in a matrimonial home in contravention of subsection 1, the transaction may be set aside on an application under section 44 unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice that the property was at the time of the disposition, agreement or encumbrance a matrimonial home.

Setting
aside
transaction

(3) For the purposes of subsection 2, an affidavit of the person making the disposition or encumbrance,

Proof that
property
not a
matrimonial
home

- (a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;
- (b) verifying that the property has never been occupied by the person and his or her spouse as their matrimonial home;
- (c) where the property is not designated under section 41, verifying that an instrument designating another property as a matrimonial home of the person and his or her spouse is registered under section 41 and not cancelled; or
- (d) verifying that the other spouse has released all rights under this Part by a separation agreement,

shall, unless the person to whom the disposition or encumbrance is made had actual notice to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home.

(4) This section does not apply to the acquisition of an interest in property by operation of law or of a lien under section 18 of *The Legal Aid Act*.

Liens
arising by
operation
of law
R.S.O. 1970.
c. 239

43.—(1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of section 40 has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

Right of
redemption
and to
notice

Service of
notice

(2) Any notice to which a spouse is entitled by virtue of subsection 1 shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the person to whom notice is to be given at his or her usual or last known address or, where none, the address of the matrimonial home, and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

Effect of
payments
made by
spouse

(3) Where a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection 1, the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

Continuation
of
proceedings
in absence
of spouse

(4) Notwithstanding any other Act, where a person who commences a proceeding to realize upon a lien, encumbrance or execution or to exercise a forfeiture does not have sufficient particulars of a spouse entitled under subsection 1 for the purposes of the proceeding, and a notice given under subsection 2 is not responded to, the proceeding may continue in the absence of the spouse and without regard to the interest of the spouse and any final order in the proceeding terminates the rights of the spouse under this section.

Powers of
court
respecting
alienation

44. The court may, on the application of a spouse or person having an interest in property, by order,

- (a) determine whether or not property is the matrimonial home and, if so, its extent;
- (b) authorize the disposition or encumbrance of the matrimonial home where the court finds that the spouse whose consent is required,
 - (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of other comparable accommodation or payment in place thereof as the court considers appropriate;

- (c) dispense with any notice required to be given under section 43; and

SECTION 45. The court has power to grant exclusive possession of part or all of the home and contents, but is not to exercise the power unless satisfied that other provision for shelter is inadequate in the circumstances.

- (d) direct the setting aside of any transaction disposing of or encumbering an interest in the matrimonial home contrary to subsection 1 of section 42 and the revesting of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.

45.—(1) Notwithstanding the ownership of a matrimonial home and its contents, and notwithstanding section 40, the court on application may by order, Order for possession of matrimonial home

- (a) direct that one spouse be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs and release any other property that is a matrimonial home from the application of this Part;
- (b) direct a spouse to whom exclusive possession of a matrimonial home is given to pay such periodic payments to the other spouse as is prescribed in the order;
- (c) direct that the contents of a matrimonial home, or any part thereof, remain in the home for the use of the person given possession;
- (d) fix the obligation to repair and maintain the matrimonial home or to pay other liabilities arising in respect thereof;
- (e) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home subject to the right to exclusive possession of the other spouse as ordered; and
- (f) where a false affidavit is given under subsection 3 of section 42, direct,
- (i) the person who swore the false affidavit, or
- (ii) any person who knew at the time it was sworn that the affidavit was false and who thereafter conveyed the property,

to substitute other real property for the matrimonial home or direct such person to set aside money or security to stand in place thereof subject to such terms and conditions as the court considers appropriate.

(2) An order may be made under subsection 1 for temporary relief or pending the bringing or disposition of another application under this Act. Temporary possession

Order where no property interest

(3) An order under subsection 1 for exclusive possession may be made only if, in the opinion of the court, other provision for shelter is not adequate in the circumstances or it is in the best interests of a child to do so.

Limitation on jurisdiction of family court

(4) A provincial court (family division) shall not make an order under clause *b* or *d* of section 44 or clause *e* or *f* of subsection 1.

Variation of possessory order

46.—(1) Upon the application of a person named in an order made under clause *a*, *b*, *c* or *d* of subsection 1 of section 45 or the personal representative of such person and where the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

Variation of conditions of sale

(2) Upon the application of a person who is subject to terms and conditions imposed in an order made under clause *b* of section 44 or his personal representative and where the court is satisfied that the terms and conditions are no longer appropriate, the court may discharge, vary or suspend the terms and conditions.

Interim order for preservation of property

47. In an application under this Part, the court may make such interim order as it considers necessary for the delivering up, safekeeping and preservation of the matrimonial home or its contents.

Registration of order
R.S.O. 1970,
cc. 409, 234

48. An order made under this Part is registrable against land under *The Registry Act* and *The Land Titles Act*.

Application of Part

49.—(1) This Part applies to matrimonial homes that are situated in Ontario.

Idem

(2) This Part applies notwithstanding that,

(a) the spouses entered into the marriage before this Part comes into force;

(b) the matrimonial home was acquired before this Part comes into force; or

(c) a proceeding to determine the rights as between spouses in respect of property has been commenced or adjudicated before this Part comes into force.

SECTION 48. An order for possession may be registered against the land so as to provide notice to third parties.

SECTION 49. This Part applies to all matrimonial homes in Ontario, whether or not the spouses have a marriage contract (see section 55) and whether or not the spouses are otherwise subject to Ontario property law (see section 12). This Part covers persons married and matrimonial homes acquired before this Act comes into force, except where a spouse has applied for an order for possession before this Act is in effect.

SECTIONS 50 TO 53. This Part overcomes the common law rule which held that marriage contracts contemplating a future separation or divorce were void.

The sections create a general category called "domestic contracts", which is made up of marriage contracts, cohabitation agreements and separation agreements. Cohabitation agreements are akin to marriage contracts, but the parties are not married. Only a separation agreement may provide for custody of or access to children.

Court approval must be given to the marriage contract of a minor capable of entering into a marriage. Similarly, court approval is required where a committee enters into a domestic contract on behalf of a spouse who becomes mentally incompetent.

PART IV

DOMESTIC CONTRACTS

50. In this Part,

Interpre-
tation

- (a) "cohabitation agreement" means an agreement entered into under section 52;
- (b) "domestic contract" means a marriage contract, separation agreement or cohabitation agreement;
- (c) "marriage contract" means an agreement entered into under section 51;
- (d) "separation agreement" means an agreement entered into under section 53.

51.—(1) Two persons may enter into an agreement, before their marriage or during their marriage while cohabiting, in which they agree on their respective rights and obligations under the marriage or upon separation or the annulment or dissolution of the marriage or upon death, including,

Marriage
contracts

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

(2) Any provision in a marriage contract purporting to limit the rights of a spouse under Part III in respect of a matrimonial home is void.

Rights re
matrimonial
home
excepted

52.—(1) A man and a woman who are cohabiting and not married to one another may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit or death, including,

Cohabitation
agreements

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and

(d) any other matter in the settlement of their affairs.

Effect of
marriage on
agreement

(2) Where the parties to an agreement entered into under subsection 1 subsequently marry, the agreement shall be deemed to be a marriage contract.

Separation
agreements

53. A man and woman who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

(a) ownership in or division of property;

(b) support obligations;

(c) the right to direct the education and moral training of their children;

(d) the right to custody of and access to their children; and

(e) any other matter in the settlement of their affairs.

Form of
contract

54.—(1) A domestic contract and any agreement to amend or rescind a domestic contract are void unless made in writing and signed by the persons to be bound and witnessed.

Capacity
of minor

(2) A minor who has capacity to contract marriage has capacity to enter into a marriage contract or separation agreement that is approved by the court, whether the approval is given before or after the contract is entered into.

Agreement
on behalf of
mentally
incompetent

(3) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or, if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a domestic contract or give any waiver or consent under this Act on behalf of the mentally incompetent person.

Contracts
subject
to best
interests
of child

55.—(1) In the determination of any matter respecting the support, education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child.

Dum casta
clauses

(2) A provision in a separation agreement or a provision in a marriage contract to take effect on separation whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another.

SECTION 55. Before separation, a spouse may not contract out of the right to control dealings with the matrimonial home or obtain possession of it. Any provision in a domestic contract respecting a child is to be enforced only if in the child's best interests. Subsection 3 invalidates a *dum casta* clause. See also section 18 (4).

Domestic contracts will also be invalid for any reason that would void another kind of contract, such as fraud, duress or undue influence.

Where a provision is held void, the court will determine under the ordinary law of contract whether the provision can be severed so as to allow enforcement of the remainder of the contract.

SECTION 56. Where a third party makes a gift to either or both spouses, subject to the condition that they do not dispose of it without his consent, and this provision is contained in a marriage contract, the person making the gift can enforce the provision notwithstanding that he was not a party to the original contract.

SECTION 57. A marriage contract may be subject to foreign law. If it is valid under either the foreign law or Ontario law, it will be recognized in Ontario. However, no marriage contract will be enforced to the extent that it contradicts section 55 or 18 (4).

SECTION 58. This section replaces the provisions for affiliation agreements formerly found in Part III of *The Child Welfare Act*. That Part is repealed by section 73.

(3) A provision in a separation agreement made before ^{Idem} this section comes into force whereby any right of a spouse is dependent upon remaining chaste shall be given effect as a contingency upon remarriage or cohabitation with another.

56. Where a domestic contract provides that specific gifts ^{Rights of donors of gifts} made to one or both parties are not disposable or encumberable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision.

57. The manner and formalities of making a domestic ^{Contracts made outside Ontario} contract and its essential validity and effect are governed by the proper law of the contract, except that,

- (a) a contract for which the proper law is that of a jurisdiction other than Ontario, is also valid and enforceable in Ontario if entered into in accordance with the internal law of Ontario;
- (b) subsection 4 of section 18 and section 55 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario; and
- (c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of or access to children is not valid or enforceable in Ontario.

58.—(1) Where a man and a woman who are not spouses ^{Paternity agreements} enter into an agreement for,

- (a) the payment of the expenses of prenatal care and birth in respect of a child;
- (b) support of a child; or
- (c) burial expenses of the child or mother,

on the application of a party to the agreement or a children's aid society made to a provincial court (family division) or the Unified Family Court, the court may incorporate the agreement in an order, and Part II applies to the order in the same manner as if it were an order for support made under that Part.

(2) Where an application is made under subsection 1 ^{1 Absconding respondent} and a judge of the court is satisfied that the respondent is about to leave Ontario, the judge may issue a warrant in the

form prescribed by the rules of the court for the arrest of the respondent.

Capacity of a minor

(3) A minor who has capacity to contract marriage has capacity to enter into an agreement under subsection 1 that is approved by the court, whether the approval is given before or after the agreement is entered into.

Application to pre-existing agreements

(4) This section applies to agreements referred to in subsection 1 that were made before this Part comes into force.

Application of Act to pre-existing contracts

59.—(1) A separation agreement or marriage contract validly made before this Part comes into force shall be deemed to be a domestic contract for the purposes of this Act.

Contracts entered into before Part comes into force

(2) Where a domestic contract is entered into in accordance with this Part before this Part comes into force and,

(a) the contract or any part would be valid if entered into after this Part comes into force; and

(b) the contract or part is entered into in contemplation of the coming into force of this Part,

the contract or part is not invalid for the reason only that it was entered into before this Part comes into force.

Idem

(3) Where pursuant to an understanding or agreement entered into before this Part comes into force by spouses who are living separate and apart, property is transferred, between them, the transfer is effective as if made pursuant to a domestic contract.

PART V

DEPENDANTS' CLAIM FOR DAMAGES

Right of dependants to sue in tort

60.—(1) Where a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part II, children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1970, c. 164, s. 3 (1), *amended*.

Damages in case of injury

(2) The damages recoverable in a claim under subsection 1 may include,

SECTION 59. Separation agreements and marriage contracts entered into before this Act comes into force are valid, and subsisting affiliation agreements and separation agreements are preserved.

SECTIONS 60 TO 64. This Part replaces *The Fatal Accidents Act* and extends that Act to cover non-fatal injuries, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. It also replaces the actions for loss of consortium and loss of services of a child (see section 69).

With the abolition of the husband's property in the services of his wife and the parent's property in the services of a child, and the creation of a new, qualified obligation of support under this Act, a new basis is created on which family members can recover expenses they incur for the benefit of an injured person. This section will allow them to recover the same kind of pecuniary loss as can now be recovered under *The Fatal Accidents Act*.

Section 60 extends the right to claim to a broader class of related person than under *The Fatal Accidents Act*. Subsection 2 codifies the case law under *The Fatal Accidents Act*.

The following sections are based on the provisions of that Act and require all claimants to join in one action. Insurance payments are not to be considered in assessing damages. The \$800 limit on funeral expenses is removed to allow recovery of reasonable funeral expenses actually incurred.



- (a) actual out-of-pocket expenses reasonably incurred for the benefit of the injured person;
- (b) a reasonable allowance for travel expenses actually incurred in visiting the injured person during his treatment or recovery;
- (c) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the injured person, a reasonable allowance for loss of income or the value of the services; and
- (d) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the injured person if the injury had not occurred.

(3) In an action under subsection 1, the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. *New.* Contributory negligence

(4) Not more than one action lies under subsection 1 for and in respect of the same occurrence, and no such action shall be brought after the expiration of two years from the time the cause of action arose. R.S.O. 1970, c. 164, s. 5; 1975, c. 38, s. 1. One action and limitation of actions

61.—(1) An action under subsection 1 of section 60 in respect of a person who is killed shall be commenced by and in the name of the executor or administrator of the deceased for the benefit of the persons entitled to recover under subsection 1 of section 60. R.S.O. 1970, c. 164, s. 3, *part, amended.* Executor to sue where death

(2) If there is no executor or administrator of the deceased, or if there is an executor or administrator and no such action is, within six months after the death of the deceased, brought by the executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by the executor or administrator. When action may be brought by persons beneficially interested

(3) Every action so brought is for the benefit of the same persons and is subject to the same regulations and procedure, as nearly as may be, as if it were brought by the executor or administrator. R.S.O. 1970, c. 164, s. 7. Regulations and procedure in such case

62.—(1) Where an action is commenced under section 60, the plaintiff shall, in his statement of claim, name and join the claim of any other person who is entitled to main- Joining claims

tain an action under section 60 in respect of the same injury or death and thereupon such person becomes a party to the action.

Affidavit

(2) A person who commences an action under section 60 shall file with the statement of claim an affidavit stating that to the best of his knowledge, information and belief the persons named in the statement of claim are the only persons who are entitled or claim to be entitled to damages under section 60. R.S.O. 1970, c. 164, s. 6 (1, 2), *amended*.

How money may be paid into court

63.—(1) The defendant may pay into court one sum of money as compensation for his fault or neglect to all persons entitled to compensation without specifying the shares into which it is to be divided. R.S.O. 1970, c. 164, s. 4.

Apportionment

(2) Where the compensation has not been otherwise apportioned, a judge may, upon application, apportion it among the persons entitled.

When payment may be postponed

(3) The judge may in his discretion postpone the distribution of money to which minors are entitled and may direct payment from the undivided fund. R.S.O. 1970, c. 164, s. 8.

Assessment of damages, insurance

64.—(1) In assessing the damages in an action brought under this Part, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance.

Funeral expenses

(2) For the purposes of this Part, damages may be awarded for reasonable expenses actually incurred for the burial of the person in respect of whose death the action is brought. R.S.O. 1970, c. 164, s. 3 (2, 3), *amended*.

PART VI

AMENDMENTS TO THE COMMON LAW AND STATUTE LAW

Unity of legal personality abolished

65.—(1) For all purposes of the law of Ontario, a married man has a legal personality that is independent, separate and distinct from that of his wife and a married woman has a legal personality that is independent, separate and distinct from that of her husband.

Capacity of married person

(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if such person were an unmarried person. 1975, c. 41, s. 1 (1, 2).

Idem

(3) Without limiting the generality of subsections 1 and 2,

SECTION 65. This section formerly appeared as section 1 (1, 2, 4) of *The Family Law Reform Act, 1975*. Subsection 3 (c) is new.

SECTION 66. This section formerly appeared as section 3 of *The Family Law Reform Act, 1975*.

SECTION 67. This section formerly appeared as section 4 of *The Family Law Reform Act, 1975*.

SECTION 68. The domicile of a minor is no longer dependent automatically on the domicile of the father alone. A minor who is or has been married is capable of acquiring a domicile as if an adult.

SECTION 69. This section abolishes several old and little used common law actions, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. The loss of consortium and loss of services actions are replaced by sections 60 to 64. Subsection 5 results from the abolition of the seduction action.

- (a) each of the parties to a marriage has the like right of action in tort against the other as if they were not married;
- (b) a married woman is capable of acting as guardian *ad litem* or next friend as if she were an unmarried woman; 1975, c. 41, s. 1 (3), *part.*
- (c) the same rules shall be applied to determine the domicile of a married woman as for a married man.

(4) The purpose of subsections 1 and 2 is to make the same law apply, and apply equally, to married men and married women and to remove any difference therein resulting from any common law rule or doctrine, and subsections 1 and 2 shall be so construed. 1975, c. 41, s. 1 (4). Purpose of subss. 1, 2

66. No person shall be disentitled from bringing an action or other proceeding against another for the reason only that they stand in the relationship of parent and child. 1975, c. 41, s. 3. Actions between parent and child

67. No person shall be disentitled from recovering damages in respect of injuries incurred for the reason only that the injuries were incurred before his birth. 1975, c. 41, s. 4. Recovery for prenatal injuries

68.—(1) Subject to subsection 2, a child who is a minor, Domicile of minors

- (a) takes the domicile of his or her parents, where both parents have a common domicile;
- (b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;
- (c) takes the domicile of the father, where the domicile of the child cannot be determined under clause *a* or *b*; or
- (d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause *c*.

(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age. Idem

69.—(1) No action shall be brought for criminal conversation or for any damages resulting therefrom or from adultery. Criminal conversation abolished

Enticement
and
harbouring
of spouse
abolished

(2) No action shall be brought by a married person for the enticement or harbouring of the spouse of such person or for any damages resulting therefrom.

Loss of
consortium
abolished

(3) No action shall be brought by a married person for the loss of the consortium of his or her spouse or for any damages resulting therefrom.

Enticement,
harbouring,
seduction,
loss of
services
of child
abolished

(4) No action shall be brought by a parent for the enticement, harbouring, seduction or loss of services of his or her child or for any damages resulting therefrom.

R.S.O. 1970,
c. 428;
1971, c. 98,
Sched.,
par. 30,
repealed

(5) *The Seduction Act*, being chapter 428 of the Revised Statutes of Ontario, 1970 and paragraph 30 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 228, s. 59,
amended

(6) Section 59 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by striking out "criminal conversation, seduction" in the first line.

Dower
abolished

70.—(1) The common law right of a widow to dower is hereby abolished.

R.S.O. 1970,
c. 135;
1971, c. 98,
Sched.,
par. 11,
repealed

(2) *The Dower Act*, being chapter 135 of the Revised Statutes of Ontario, 1970, and paragraph 11 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 152, s. 28 (2),
repealed

(3) Subsection 2 of section 28 of *The Execution Act*, being chapter 152 of the Revised Statutes of Ontario, 1970, is repealed.

Vested
right to
dower

(4) Subsections 1, 2 and 3 do not apply in respect of a right to dower that has vested before subsections 1 and 2 come into force.

Refund of
indemnity
held by
accountant
for dower

(5) Where money has been paid into court as an indemnity in respect of a right to dower that has not vested before this section comes into force, the husband of the person in respect of whose dower right the money was paid into court is entitled to be paid the money upon application to the accountant of the court, without order.

Alimony
abolished

71.—(1) The right of a married woman to alimony under any law existing before this section comes into force is hereby abolished.

SECTION 70. Because of the rights conferred on husbands and wives under Parts I and III, dower is abolished. Subsection 4 preserves vested rights of dower where the husband dies before this Act comes into force. Where money has been paid into court in respect of an inchoate dower interest, the husband is entitled to recover the money. Subsections 2 and 3 repeal statutory references to dower.

The widower's right of curtesy is abolished by *The Succession Law Reform Act, 1977*.

SECTION 71. The alimony action is abolished, as it is replaced by Part II. Applications to vary existing alimony orders are to be made under section 21. Alimony actions that have not come to trial are converted into applications for support under Part II.

SECTION 72. The obligations and remedies under this Act are not denied for the reason that the marriage is polygamous.

SECTION 73. Part III of *The Child Welfare Act* is replaced by Part II and section 58.

SECTION 74. *The Children's Maintenance Act* is replaced by Part II.

SECTION 75. The amendment is consequential to section 30 (3).

SECTION 76. *The Deserted Wives' and Children's Maintenance Act* is replaced by Part II.

SECTION 77. *The Employment Standards Act, 1974* is amended to extend the protection against dismissal or suspension in respect of garnishment of wages to cover attachment of wages under section 30 of this Act.

(2) Where an action for alimony is commenced before subsection 1 comes into force and no evidence has been heard in the action before this Act comes into force, other than in respect of an interim order, the action shall be deemed to be an application under Part II subject to such directions as the court considers appropriate.

Continuation
of action
commenced

72. This Act applies to persons whose marriage was actually or potentially polygamous if the marriage was celebrated in a jurisdiction whose system of law recognizes the marriage as valid.

Polygamous
marriages

73.—(1) Subsection 4 of section 27 of *The Child Welfare Act*, being chapter 64 of the Revised Statutes of Ontario, 1970, is amended by striking out "*The Deserted Wives' and Children's Maintenance Act*" and inserting in lieu thereof "Part II of *The Family Law Reform Act, 1978*".

R.S.O. 1970,
c. 64, s. 27 (4),
amended

(2) Part III of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, Schedule, paragraph 6, subparagraph ii, 1972, chapter 109, section 6, 1973, chapter 75, section 5 and 1975, chapter 1, sections 25, 26, 27 and 28, is repealed.

Part III,
repealed

74. *The Children's Maintenance Act*, being chapter 67 of the Revised Statutes of Ontario, 1970 and subsection 2 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 67;
1971, c. 98,
s. 18 (2),
repealed

75. Section 4 of *The Creditors Relief Act*, being chapter 97 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection:

R.S.O. 1970,
c. 97, s. 4 (9),
amended

(9) This section does not apply to an attachment made under section 30 of *The Family Law Reform Act, 1978*.

1978, c. ...
exempted

76. *The Deserted Wives' and Children's Maintenance Act*, being chapter 128 of the Revised Statutes of Ontario, 1970, subsection 1 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, and *The Deserted Wives' and Children's Maintenance Amendment Act, 1973*, being chapter 133, are repealed.

R.S.O. 1970,
c. 128,
1971, c. 98,
s. 18 (1);
1973, c. 133,
repealed

77. Section 9 of *The Employment Standards Act, 1974*, being chapter 112, is repealed and the following substituted therefor:

1974, c. 122,
s. 9,
re-enacted

9. No employer shall dismiss or suspend an employee on the ground that garnishment proceedings are or

Garnish-
ment or
attachment
of wages

1978, c. ... may be taken against the employee or that an attachment order under section 30 of *The Family Law Reform Act, 1978* has been or may be made against the employee.

1975, c. 41,
ss. 1-4,
repealed

78. Sections 1, 2, 3 and 4 of *The Family Law Reform Act, 1975*, being chapter 41, are repealed.

R.S.O. 1970,
c. 164;
1973, c. 16;
1975, c. 38,
repealed

79. *The Fatal Accidents Act*, being chapter 164 of the Revised Statutes of Ontario, 1970, *The Fatal Accidents Amendment Act, 1973*, being chapter 16, and *The Fatal Accidents Amendment Act, 1975*, being chapter 38, are repealed.

R.S.O. 1970,
c. 222,
amended

80.—(1) *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by striking out,

- (a) subsection 4, subsection 4a, as enacted by the Statutes of Ontario, 1971, chapter 98, section 18, and subsection 5 of section 1;
- (b) subsection 2 of section 2;
- (c) sections 10, 13 and 14; and
- (d) section 15, as re-enacted by the Statutes of Ontario, 1971, chapter 98, section 16.

1971, c. 98,
s. 18 (3),
Sched., par. 14,
subpar. i,
repealed

(2) *The Age of Majority and Accountability Act, 1971*, being chapter 98, is amended by striking out,

- (a) section 16;
- (b) subsection 3 of section 18; and
- (c) subparagraph i of paragraph 14 of the Schedule.

R.S.O. 1970,
c. 228, s. 81,
repealed

81.—(1) Subject to subsection 2, section 81 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is repealed.

Continu-
ance for
existing
judgments

(2) The provision repealed by subsection 1 remains in force in respect of a judgment for alimony in an action commenced before this section comes into force.

s. 118 (3),
amended

(3) Subsection 3 of section 118 of the said Act, as amended by the Statutes of Ontario, 1975, chapter 30, section 7, is further amended by striking out "alimony or for the main-

SECTION 78. Sections 1 to 4 of *The Family Law Reform Act, 1975* are incorporated in or replaced by this Act. See sections 7, 8, 65, 66 and 67.

SECTION 79. *The Fatal Accidents Act* is incorporated in sections 60 to 64.

SECTION 80. Provisions of *The Infants Act* relating to support and marriage contracts are repealed, as they are replaced by Part II and Part IV, respectively.

SECTION 81. The repeal of section 81 of *The Judicature Act*, which allows the registration of alimony orders against land, results from the abolition of alimony in section 71.

SECTION 82. The remaining sections of *The Married Women's Property Act* are repealed, as they are replaced by sections 6 and 7.

SECTION 83. Provisions of *The Matrimonial Causes Act* relating to support on the annulment of a marriage are repealed, as they are replaced by Part II.

SECTION 84. *The Parents' Maintenance Act* is replaced by Part II.

SECTION 85. *The Pension Benefits Act* is amended to make pensions available to satisfy a support order.

SECTION 86. The repealed provision allows support orders made in the Supreme Court to be filed for enforcement in the provincial court (family division). This is provided for in section 27. The repealed provision remains in force for orders made in actions begun before this Act comes into force.

SECTION 87. This amendment is made to bring the terminology in *The Reciprocal Enforcement of Maintenance Act* into line with that used in this Act.

SECTION 88. The provision of *The Statute of Frauds* relating to marriage contracts is replaced by section 54 (1).

tenance or custody of children is joined with" in the amendment of 1975 and inserting in lieu thereof "other relief is joined in".

82. Sections 1 and 12 of *The Married Women's Property Act*, being chapter 262 of the Revised Statutes of Ontario, 1970, are repealed. R.S.O. 1970, c. 262, ss. 1, 12, repealed

83. Sections 1, 2, 3, 4 and 5, subsection 6 of section 6 and section 8 of *The Matrimonial Causes Act*, being chapter 265 of the Revised Statutes of Ontario, 1970 and subsection 4 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed. R.S.O. 1970, c. 265, ss. 1-5, 6 (6), 8; 1971, c. 98, s. 18 (4), repealed

84. *The Parents' Maintenance Act*, being chapter 336 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 336, repealed

85. Section 24 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970 is amended by adding thereto the following subsection: R.S.O. 1970, c. 342, s. 24, amended

(2) Subsection 1 does not apply to the execution, seizure or attachment of moneys payable under a pension plan in satisfaction of an order for support under *The Family Law Reform Act, 1978*. Application of subs. 1
1978, c. ...

86.—(1) Subject to subsection 2, section 25 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 369, s. 25, repealed

(2) Every order or judgment filed under section 25 of *The Provincial Courts Act* before subsection 1 comes into force shall be deemed to have been filed under section 27 of this Act with the request therein mentioned. Transition for existing orders
R.S.O. 1970, c. 369

87.—(1) *The Reciprocal Enforcement of Maintenance Orders Act*, being chapter 403 of the Revised Statutes of Ontario, 1970, is amended by striking out "summons" in each case where it appears and inserting in lieu thereof "notice of application". R.S.O. 1970, c. 403, amended

(2) Subsection 3 of section 2 of the said Act is amended by striking out "*The Deserted Wives' and Children's Maintenance Act*" and inserting in lieu thereof "Part II of *The Family Law Reform Act, 1978*". Idem
s. 3 (2), amended

88. Section 4 of *The Statute of Frauds*, being chapter 444 of the Revised Statutes of Ontario, 1970, is amended by R.S.O. 1970, c. 444, s. 4, amended

striking out "any agreement made upon consideration of marriage, or upon" in the fifth and sixth lines.

Application
of ss. 69, 73, 74,
76, 79, 80, 82,
83 and 84

89. Sections 69, 73, 74, 76, 79, 80, 82, 83 and 84 apply in all cases when they come into force except in cases where an action or proceeding was commenced under the abolished, repealed or amended provision before that date.

GENERAL

Regulations

90. The Lieutenant Governor in Council may make regulations respecting any matter required to be or referred to as prescribed by the regulations.

Commence-
ment

91. This Act comes into force on the 31st day of March, 1978.

Short title

92. The short title of this Act is *The Family Law Reform Act, 1978*.

SECTION 89. No action or proceeding under the repealed or abolished provisions may be begun after this Act comes into force.



An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships

1st Reading

February 21st, 1978

2nd Reading

February 21st, 1978

3rd Reading

THE HON. R. MCMURTRY
Attorney General

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 59

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to reform the Law respecting
Property Rights and Support Obligations between
Married Persons and in other Family Relationships**

THE HON. R. McMURTRY
Attorney General



BILL 59

1978

**An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships**

WHEREAS, it is desirable to encourage and strengthen ^{Preamble} the role of the family in society;

AND WHEREAS for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership;

AND WHEREAS in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership; and to provide for other mutual obligations in family relationships, including the equitable sharing by parents of responsibility for their children:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "child" means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a person whom the parent has demonstrated a settled intention to treat as a child of his or her family, but does not include a child placed in a foster home for consideration by a person having lawful custody; R.S.O. 1970,
c. 64
- (b) "cohabit" means to live together in a conjugal relationship, whether within or outside marriage;
- (c) "court" means a provincial court (family division), the Unified Family Court, a county or district court or the Supreme Court;

- (d) "domestic contract" means a domestic contract as defined in Part IV;
- (e) "parent" means the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, but does not include a person in whose home a child was placed as a foster child for consideration by a person having lawful custody;
- (f) "spouse" means either of a man and woman who,
- (i) are married to each other,
 - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity, or
 - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

Combining of
application

2.—(1) Where, in an application under any provision of this Act, it appears to the court that for the appropriate determination of the affairs of the spouses it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court considers appropriate.

All
proceedings
in one court

(2) Except as otherwise provided, where an application is made to a court under this Act, no person who is a party to the proceeding shall make an application under this Act to any other court, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

Applications

(3) An application under this Act may be made in the manner prescribed by the rules of the court or in another proceeding.

Capacity
of minors

(4) A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian *ad litem* and give any consent required or authorized by this Act.

Extension
of times

(5) The court may extend any time prescribed by this Act where the court is satisfied that,

- (a) there are *prima facie* grounds for relief;
- (b) relief is unavailable because of delay that has been incurred in good faith; and
- (c) no substantial prejudice or hardship will result to any person affected by reason of the delay.

(6) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing. Closed hearings

(7) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act, subject to the duty of the court to have regard to the best interests of children affected. Consent orders

(8) Any matter provided for in a domestic contract may be incorporated in an order made under this Act. Incorporation of contract in order

(9) Where a domestic contract makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in this Act. Act subject to contracts

(10) Where an order made under this Act affects real property, the order does not affect the acquisition of an interest in the real property by a person in good faith without notice of the order, unless the order is registered in the proper land registry office. Registration of orders

PART I

FAMILY PROPERTY

3. In this Part,

- (a) "court" means a court as defined in section 1 but does not include a provincial court (family division);
- (b) "family assets" means a matrimonial home as determined under Part III and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for household, educational, recreational, social or aesthetic purposes, and includes,

Interpretation

- (i) money in an account with a chartered bank, savings office, credit union or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,
- (ii) where property owned by a corporation, partnership or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the partnership or trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property,
- (iii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself, if the property would be a family asset if it were owned by the spouse, and
- (iv) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include property that the spouses have agreed by a domestic contract is not to be included in the family assets;

- (c) "property" means real or personal property or any interest therein.

Division of family assets

4.—(1) Subject to subsection 4, where a decree *nisi* of divorce is pronounced or a marriage is declared a nullity or where the spouses are separated and there is no reasonable prospect of the resumption of cohabitation, each spouse is entitled to have the family assets divided in equal shares notwithstanding the ownership of the assets by the spouses as determinable for other purposes and notwithstanding any order under section 7.

Application to court

(2) The court may, upon the application of a person who is the spouse of another, determine any matter respecting the division of family assets between them.

Effect of death of spouse

(3) The rights under subsection 1 are personal as between the spouses but any application commenced under subsection

2 before the death of a spouse may be continued by or against the estate of the deceased spouse.

(4) The court may make a division of family assets resulting in shares that are not equal where the court is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to, ^{Variation of division}

- (a) any agreement other than a domestic contract;
- (b) the duration of the period of cohabitation under the marriage;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the date when the property was acquired;
- (e) the extent to which property was acquired by one spouse by inheritance or by gift; or
- (f) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares.

(5) The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to an equal division of the family assets, subject to the equitable considerations set out in subsections 4 and 6. ^{Purpose}

(6) The court shall make a division of any property that is not a family asset where, ^{Property other than family assets}

- (a) a spouse has unreasonably impoverished the family assets; or
- (b) the result of a division of the family assets would be inequitable in all the circumstances, having regard to,
 - (i) the considerations set out in clauses *a* to *f* of subsection 4, and
 - (ii) the effect of the assumption by one spouse of any of the responsibilities set out in subsection 5 on the ability of the other spouse to acquire, manage, maintain, operate or improve property that is not a family asset.

Statement
of property

5.—(1) Where an application is made under section 4, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of all property of the party in the manner and form prescribed by the rules of the court.

Order for
sealing
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

Idem

6. In an application under section 4, the court may order,

- (a) that the title to any specified property directed to a spouse in the division be transferred to or in trust for or vested in the spouse whether absolutely, for life or for a term of years;
- (b) the partition or sale of any property;
- (c) that payment be made out of the proceeds of sale to one or both spouses, and the amount thereof;
- (d) that any property forming part of the share of either or both spouses be transferred to or in trust for or vested in a child to whom a spouse owes an obligation to provide support;
- (e) that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property; and
- (f) that either spouse pay to the other such sum as is set out in the order for the purpose of adjusting the division,

and may make such other orders or directions as are ancillary thereto.

Determin-
ation of
questions of
title between
married
persons

7. Any person may apply to the court for the determination of any question between that person and his or her spouse or former spouse as to the ownership or right to possession of any particular property, except where an application or an order has been made respecting the property under section 4 or 6, and the court may,

- (a) declare the ownership or right to possession;
- (b) where the property has been disposed of, order payment in compensation for the interest of either party;

- (c) order that the property be partitioned or sold for the purpose of realizing the interests therein; and
- (d) order that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property,

and may make such other orders or directions as are ancillary thereto.

8. Where one spouse or former spouse has contributed work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property, other than family assets, in which the other has or had an interest, upon application, the court may by order,

Contribution to property

- (a) direct the payment of an amount in compensation therefor; or
- (b) award a share of the interest of the other spouse or former spouse in the property appropriate to the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. 1975, c. 41, s. 1 (3) (c), *amended*.

9. In or pending an application under section 4, 7 or 8, the court may make such interim order as it considers necessary for restraining the dissipation of the property and for the possession, delivering up, safekeeping and preservation of the property.

Interim orders for preservation

10. Where a court orders security for the performance of any obligation under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

Realization of security

11.—(1) The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that,

Presumptions

- (a) the fact that property is placed or taken in the name of spouses as joint tenants is *prima facie* proof that each spouse is intended to have on a severance of the joint tenancy a one-half beneficial interest in the property; and

- (b) money on deposit in a chartered bank, savings office, credit union or trust company in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause *a.* 1975, c. 41, s. 1 (3) (d), *amended.*

Application (2) Subsection 1 applies notwithstanding that the event giving rise to the presumption occurred before this section comes into force.

Application of Part

12. This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before this Part comes into force;
- (b) the property in issue was acquired before this Part comes into force; or
- (c) a proceeding to determine the rights as between spouses in respect of property has been commenced or adjudicated before this Part comes into force.

Conflict of laws

13.—(1) The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of Ontario.

Idem

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the land is situated, but where the law of Ontario is applicable respecting the division of family assets, the value of the property may be taken into consideration for the purposes of section 4.

PART II

SUPPORT OBLIGATIONS

**Interpre-
tation**

14. In this Part,

- (a) “dependant” means a person to whom another has an obligation to provide support under this Part;
- (b) “spouse” means a spouse as defined in section 1, and in addition includes,
- (i) either of a man and woman not being married to each other who have cohabited,

1. continuously for a period of not less than five years, or

2. in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year, and

- (ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force.

15. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so. Obligation of spouses for support

16.—(1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need, for his or her child who is unmarried and is under the age of eighteen years. Obligation of parent to support child

(2) The obligation under subsection 1 does not extend to a child who, being of the age of sixteen years or over, has withdrawn from parental control. Idem

17. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for and provided support for the child, to the extent that the child is capable of doing so. Obligation of child to support parent

18.—(1) A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof. Order for support

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant or under subsection 3. Applicants

(3) An application for an order for the support of a dependant who is a spouse or a dependent child of the spouse may be made by, Idem

- (a) the Ministry of Community and Social Services in the name of the Minister; or
- (b) a municipal corporation, including a metropolitan, district or regional municipality, but not including an area municipality thereof,

if the Ministry or municipality is providing a benefit under *The Family Benefits Act* or assistance under *The General Welfare Assistance Act* in respect of the support of the dependant. R.S.O. 1970, cc. 157, 192

Setting aside
domestic
contract

(4) The court may set aside a provision for support in a domestic contract or paternity agreement and may determine and order support in an application under subsection 1 notwithstanding that the contract or agreement contains an express provision excluding the application of this section,

- (a) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable;
- (b) where the provision for support is to a spouse who qualifies for an allowance for support out of public money; or
- (c) where there has been default in the payment of support under the contract or agreement.

Determin-
ation of
amount

(5) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity;
- (b) the capacity of the dependant to provide for his or her own support;
- (c) the capacity of the respondent to provide support;
- (d) the age and the physical and mental health of the dependant and of the respondent;
- (e) the length of time the dependant and respondent cohabited;
- (f) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures;
- (h) the legal obligation of the respondent to provide support for any other person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;

- (j) a contribution by the dependant to the realization of the career potential of the respondent;
- (k) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education;
- (l) where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities assumed during cohabitation;
- (m) where the dependant is a spouse, whether the dependant has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents;
- (n) where the dependant is a spouse, whether the dependant has undertaken to assist in the continuation of a program of education for a child who is of the age of eighteen years or over and unable for that reason to withdraw from the charge of his or her parents;
- (o) where the dependant is a spouse, any house-keeping, child care or other domestic service performed by the spouse for the family, in the same way as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings therefrom to the support of the family; and
- (p) any other legal right of the dependant to support other than out of public money.

(6) The obligation to provide support for a spouse exists ^{Conduct} without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

19.—(1) In an application under section 18, the court ^{Powers of court} may order,

- (a) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;

- (c) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) any matter authorized to be ordered under clauses *a* to *d* of subsection 1 of section 45 and subject to subsection 3 thereof;
- (e) that all or any of the moneys payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant;
- (f) the payment of support to be made in respect of any period before the date of the order;
- (g) the payment to an agency referred to in subsection 3 of section 18 of any amount in reimbursement for a benefit or assistance referred to therein, including an amount in reimbursement for such benefit or assistance provided before the date of the order;
- (h) the payment of expenses in respect of the pre-natal care and birth of a child;
- (i) that the obligation and liability for support continue after the death of the respondent and be a debt of his or her estate for such period as is fixed in the order;
- (j) that a spouse who has a policy of life insurance as defined in Part V of *The Insurance Act* designate the other spouse or a child as the beneficiary irrevocably; and
- (k) the securing of payment under the order, by a charge on property or otherwise.

R.S.O. 1970.
c. 224

Limitation
on
jurisdiction
of family
court

(2) A provincial court (family division) shall not make an order under clause *b*, *c*, *j* or *k* of subsection 1 except for the provision of necessities or preventing the dependant from becoming a public charge.

Interim
orders

(3) Where an application is made under section 18, the court may make such interim order as the court considers appropriate.

Assignment
of support

(4) An order for support is assignable to an agency referred to in subsection 3 of section 18.

(5) Unless an order to provide support otherwise provides, it terminates upon the death of the person having the obligation to provide support, and the liability for amounts under the order coming due and unpaid in the preceding twelve months is a debt of his or her estate. Termination of support order on death

20.—(1) Where an action for divorce is commenced under the *Divorce Act* (Canada), any application for support or custody under this Part that has not been determined is stayed except by leave of the court. Effect of divorce proceedings R.S.C. 1970, c. D-8

(2) Where a marriage is terminated by a decree absolute of divorce or declared a nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms. Idem

21.—(1) Where an order for support has been made or confirmed and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent or evidence has become available that was not available on the previous hearing, the court may, upon the application of any person named in the order or referred to in subsection 3 of section 18, discharge, vary or suspend any term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all of the arrears or any interest due thereon and make such other order under section 19 as the court considers appropriate in the circumstances referred to in section 18. Review and variation of orders

(2) An application under subsection 1 shall be made to the court that made the order or to a co-ordinate court in another part of Ontario. Court

(3) No application under subsection 1 shall be made within six months after the making of the order for support or the disposition of any other application under subsection 1 in respect of the same order, except by leave of the court. Limitation on applications for review

(4) This section applies to orders for maintenance or alimony made before this section comes into force or in a proceeding commenced before this section comes into force. Existing orders

22. In or pending an application under section 18 or appearance to a notice under section 28, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support. Restraining orders

Statement
of financial
affairs

23.—(1) Where an application is made under section 18 or 21, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of financial information in the manner and form prescribed by the rules of the court.

Order for
sealing
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

Absconding
respondent
or debtor

24. Where an application is made under section 18 or a notice is issued under section 28 and a judge of the court is satisfied that the respondent or debtor is about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent or debtor.

Provisional
orders

25.—(1) Where an application is made under section 18 or 21 in a provincial court (family division) or the Unified Family Court and,

- (a) the respondent in the application fails to appear;
- (b) it appears to the court that the respondent resides in a locality in Ontario that is outside the territorial jurisdiction of the court; and
- (c) in the circumstances of the case, the court is of the opinion that the issues can be adequately determined by proceeding under this section,

the court may proceed in the absence of the respondent and without the statement of the financial affairs of the respondent required by section 23 and in place of a final order may make an order for support that is provisional only and the order has no effect until it is confirmed by the provincial court (family division) or the Unified Family Court in the locality in which the respondent resides.

Transmission
for hearing

(2) Where a provisional order is made under subsection 1, the court making the order shall send to the court having jurisdiction in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court.

Show
cause

(3) The court to which the documents and records are sent under subsection 2 shall cause them to be served upon

the respondent together with a notice to file with the court the statement of financial affairs required by section 23 and to appear and show cause why the provisional order should not be confirmed.

(4) At the hearing, the respondent may raise any defence that might have been raised in the original proceedings, but, if on appearing the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with such variation as the court considers proper having regard to all the evidence. Confirmation of order

(5) Where the respondent appears before the court and satisfies the court that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may so remit the case and adjourn the proceedings for that purpose. Adjournment for further evidence

(6) Where the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court that made the order together with a statement of the reasons for so doing, and in that event the court that made the order may dispose of the application in such manner as it considers proper. Where order not confirmed

(7) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the office or signature of the clerk, admissible in evidence in a court to which it is transmitted under this section as *prima facie* proof of the authenticity of the copy. Certificates as evidence

(8) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have had if the order had been made under section 19. Right of appeal

26.—(1) Where it appears to a court that,

Access to records

- (a) for the purpose of bringing an application under this Part; or
- (b) for the purpose of the enforcement of an order for support, custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts

of the proposed respondent or person against whom the order is made, the court may order any person or public agency to provide the court with such particulars of the address as are contained in the records in its custody and the person or agency shall provide to the court such particulars as it is able to provide.

Section binds Crown

(2) This section binds the Crown in right of Ontario.

Enforcement of orders by family court clerk

27.—(1) The clerk of the Unified Family Court or of a provincial court (family division), upon the request of a person entitled to support under an order for support or maintenance enforceable in Ontario or other persons or agency mentioned in subsection 3 of section 18 and upon the filing of such material as is prescribed by the rules of the court may enforce the order.

Powers of court for enforcement

(2) For the purposes of enforcing an order filed under subsection 1, a provincial court (family division) has the power to issue execution and garnishment in accordance with the rules of the court and section 145 of *The Small Claims Courts Act* and subsection 3 of section 4 of *The Creditors' Relief Act* apply to a garnishment issued by the provincial court (family division).

R.S.O. 1970, cc. 439, 97

Crown subject to attachment for support
R.S.O. 1970, c. 365

(3) Notwithstanding section 25 of *The Proceedings Against the Crown Act*, an attachment under subsection 1 of section 30 and any other execution, garnishment or attachment or process in the nature thereof for the payment of an amount owing or accruing under an order for support or maintenance, may be issued against the Crown.

Examination of debtor

28.—(1) Where there is default in payment under an order for support or maintenance, a clerk of the Unified Family Court or a provincial court (family division) may require the debtor, upon notice,

(a) to file a statement of financial information referred to in section 23;

(b) submit to an examination as to assets and means; and

(c) appear before the court to explain the default.

Compelling attendance

(2) If the debtor fails to appear as required after being served with a notice, or if the court is satisfied that the debtor cannot be served or intends to leave Ontario without appearing as required after being served, the court giving the notice may issue a warrant for the arrest of the debtor for the purpose of compelling attendance.

29.—(1) Where the debtor fails to satisfy the court that the default is owing to his or her inability to pay and where the court is satisfied that all other practicable means that are available under this Act for enforcing payment have been considered, the court may,

- (a) order imprisonment for a term of not more than ninety days to be served intermittently or as ordered by the court; or
- (b) make such other order as may be made upon summary conviction for an offence that is punishable by imprisonment.

(2) The order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order, including the performance of a community service order.

30.—(1) Where the court considers it appropriate in a proceeding under section 28, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order and to pay the amounts deducted into court, and section 7 of *The Wages Act* does not apply.

Attachment
of wages
R.S.O. 1970,
c. 486

(2) Where an application is made under section 21, the court may discharge, vary or suspend any term of an order made under subsection 1.

Variation of
attachment

(3) An order under subsection 1 has priority over any other seizure or attachment of wages arising before or after the service of the order.

Priority
of order

31. Where the court considers it appropriate in a proceeding under section 28, the court may order the debtor to give security for the payment of support or may charge any property of the debtor with payment of an amount for the provision of necessaries or preventing the dependant from becoming a public charge.

Security
for
payment

32. Where a court orders security for the payment of support under this Part or charges property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

Realization
of security

Pledging
credit for
necessaries

33.—(1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessaries of life, except where the spouse has notified the third party that he or she has withdrawn the authority.

Liability
for
necessaries
of minor

(2) Where a person is entitled to recover against a minor in respect of the provision of necessaries for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

Recovery
between
persons
jointly
liable

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Common
law
supplanted

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband.

Order
restraining
harassment

34. Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate.

Custody of
children

35.—(1) Upon application, the court may order that either parent or any person have custody of or access to a child in accordance with the best interests of the child and may at any time alter, vary or discharge the order.

Court

(2) An application to alter, vary or discharge the order shall be made to the court that made the order or to a co-ordinate court in another part of Ontario.

Interim
orders

(3) Where an application is made under subsection 1, the court may make such interim order as the court considers appropriate.

Application
to orders
under
R.S.O. 1970,
c. 128

(4) This section applies to orders for custody or access made under *The Deserted Wives' and Children's Maintenance Act*.

Appeal
from
provincial
court (family
division)

36. An appeal lies from an order of the provincial court (family division) under this Part to the county or district court in the county or district in which the provincial court (family division) is situated.

37.—(1) In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed ninety days.

Contempt
of orders of
provincial
court (family
division)

(2) An order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

Conditions
of
imprison-
ment

PART III

MATRIMONIAL HOME

38. In this Part, “property” means real or personal property.

Interpre-
tation

39.—(1) Property in which a person has an interest and that is or has been occupied by the person and his or her spouse as their family residence is their matrimonial home.

Matrimonial
home

(2) Subsection 1 applies notwithstanding that its application results in more than one matrimonial home.

More
than one
matrimonial
home

(3) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection 1.

Ownership
of shares

(4) Where property that includes a matrimonial home is normally used for a purpose other than residential only, the matrimonial home is only such portion of the property as may reasonably be regarded as necessary to the use and enjoyment of the residence.

Residence
on farm-
land, etc.

40.—(1) A spouse is equally entitled to any right of possession of the other spouse in a matrimonial home.

Right to
possession

(2) Subject to an order of the court under this or any other Act, and subject to a separation agreement that provides otherwise, a right of a spouse to possession by virtue of subsection 1 ceases upon the spouse ceasing to be a spouse.

Termination
of right to
possession

Registered
designation
of
matrimonial
home

41.—(1) Both spouses may, by instrument in the form prescribed by the regulations, designate any property that is a matrimonial home and, upon the registration of the instrument and while there is a designation made by the spouses under this subsection that is not cancelled, any other property that would qualify as a matrimonial home under section 39 and that is not similarly designated ceases to be a matrimonial home.

Extent of
designation

(2) The property that is designated as a matrimonial home under subsection 1 may include any property contiguous to the matrimonial home that is described for the purpose in the instrument.

Cancellation
of
designation

(3) The designation of a matrimonial home under subsection 1 is cancelled upon the registration or deposit of,

- (a) an instrument in the form prescribed by the regulations executed by both spouses;
- (b) a decree absolute of divorce or judgment of nullity;
- (c) an order under section 45 cancelling the designation; or
- (d) proof of death of one of the spouses.

Effect of
cancellation

(4) Upon the cancellation of the designation of a property under subsection 3, the property ceases to be a matrimonial home under section 39.

Revival
of
matrimonial
homes

(5) Upon there ceasing to be a designation under subsection 1, section 39 applies in respect of property that is a matrimonial home.

Alienation of
matrimonial
home

42.—(1) No spouse shall dispose of or encumber any interest in a matrimonial home unless,

- (a) the other spouse joins in the instrument or consents to the transaction;
- (b) the other spouse has released all rights under this Part by a separation agreement;
- (c) the transaction is authorized by court order or an order has been made releasing the property as a matrimonial home; or
- (d) the property is not designated as a matrimonial home under section 41 and an instrument desig-

nating another property as a matrimonial home of the spouses is registered under section 41 and not cancelled.

(2) Where a spouse disposes of or encumbers an interest in a matrimonial home in contravention of subsection 1, the transaction may be set aside on an application under section 44 unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice that the property was at the time of the disposition, agreement or encumbrance a matrimonial home.

Setting
aside
transaction

(3) For the purposes of subsection 2, an affidavit of the person making the disposition or encumbrance,

Proof that
property
not a
matrimonial
home

(a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;

(b) verifying that the property has never been occupied by the person and his or her spouse as their matrimonial home;

(c) where the property is not designated under section 41, verifying that an instrument designating another property as a matrimonial home of the person and his or her spouse is registered under section 41 and not cancelled; or

(d) verifying that the other spouse has released all rights under this Part by a separation agreement,

shall, unless the person to whom the disposition or encumbrance is made had actual notice to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home.

(4) This section does not apply to the acquisition of an interest in property by operation of law or of a lien under section 18 of *The Legal Aid Act*.

Liens
arising by
operation
of law
R.S.O. 1970,
c. 239

43.—(1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of section 40 has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

Right of
redemption
and to
notice

Service of
notice

(2) Any notice to which a spouse is entitled by virtue of subsection 1 shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the person to whom notice is to be given at his or her usual or last known address or, where none, the address of the matrimonial home, and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

Effect of
payments
made by
spouse

(3) Where a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection 1, the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

Continuation
of
proceedings
in absence
of spouse

(4) Notwithstanding any other Act, where a person who commences a proceeding to realize upon a lien, encumbrance or execution or to exercise a forfeiture does not have sufficient particulars of a spouse entitled under subsection 1 for the purposes of the proceeding, and a notice given under subsection 2 is not responded to, the proceeding may continue in the absence of the spouse and without regard to the interest of the spouse and any final order in the proceeding terminates the rights of the spouse under this section.

Powers of
court
respecting
alienation

44. The court may, on the application of a spouse or person having an interest in property, by order,

- (a) determine whether or not property is the matrimonial home and, if so, its extent;
- (b) authorize the disposition or encumbrance of the matrimonial home where the court finds that the spouse whose consent is required,
 - (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of other comparable accommodation or payment in place thereof as the court considers appropriate;

- (c) dispense with any notice required to be given under section 43; and

- (d) direct the setting aside of any transaction disposing of or encumbering an interest in the matrimonial home contrary to subsection 1 of section 42 and the reversioning of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.

45.—(1) Notwithstanding the ownership of a matrimonial home and its contents, and notwithstanding section 40, the court on application may by order, Order for possession of matrimonial home

- (a) direct that one spouse be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs and release any other property that is a matrimonial home from the application of this Part;
- (b) direct a spouse to whom exclusive possession of a matrimonial home is given to pay such periodic payments to the other spouse as is prescribed in the order;
- (c) direct that the contents of a matrimonial home, or any part thereof, remain in the home for the use of the person given possession;
- (d) fix the obligation to repair and maintain the matrimonial home or to pay other liabilities arising in respect thereof;
- (e) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home subject to the right to exclusive possession of the other spouse as ordered; and
- (f) where a false affidavit is given under subsection 3 of section 42, direct,
- (i) the person who swore the false affidavit, or
- (ii) any person who knew at the time it was sworn that the affidavit was false and who thereafter conveyed the property,

to substitute other real property for the matrimonial home or direct such person to set aside money or security to stand in place thereof subject to such terms and conditions as the court considers appropriate.

(2) An order may be made under subsection 1 for temporary relief or pending the bringing or disposition of another application under this Act. Temporary possession

Order where no property interest

(3) An order under subsection 1 for exclusive possession may be made only if, in the opinion of the court, other provision for shelter is not adequate in the circumstances or it is in the best interests of a child to do so.

Limitation on jurisdiction of family court

(4) A provincial court (family division) shall not make an order under clause *b* or *d* of section 44 or clause *e* or *f* of subsection 1.

Variation of possessory order

46.—(1) Upon the application of a person named in an order made under clause *a*, *b*, *c* or *d* of subsection 1 of section 45 or the personal representative of such person and where the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

Variation of conditions of sale

(2) Upon the application of a person who is subject to terms and conditions imposed in an order made under clause *b* of section 44 or his personal representative and where the court is satisfied that the terms and conditions are no longer appropriate, the court may discharge, vary or suspend the terms and conditions.

Interim order for preservation of property

47. In an application under this Part, the court may make such interim order as it considers necessary for the delivering up, safekeeping and preservation of the matrimonial home or its contents.

Registration of order
R.S.O. 1970,
cc. 409, 234

48. An order made under this Part is registrable against land under *The Registry Act* and *The Land Titles Act*.

Application of Part

49.—(1) This Part applies to matrimonial homes that are situated in Ontario.

Idem

(2) This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before this Part comes into force;
- (b) the matrimonial home was acquired before this Part comes into force; or
- (c) a proceeding to determine the rights as between spouses in respect of property has been commenced or adjudicated before this Part comes into force.

PART IV

DOMESTIC CONTRACTS

50. In this Part,

Interpre-
tation

- (a) "cohabitation agreement" means an agreement entered into under section 52;
- (b) "domestic contract" means a marriage contract, separation agreement or cohabitation agreement;
- (c) "marriage contract" means an agreement entered into under section 51;
- (d) "separation agreement" means an agreement entered into under section 53.

51.—(1) Two persons may enter into an agreement, before their marriage or during their marriage while cohabiting, in which they agree on their respective rights and obligations under the marriage or upon separation or the annulment or dissolution of the marriage or upon death, including,

Marriage
contracts

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

(2) Any provision in a marriage contract purporting to limit the rights of a spouse under Part III in respect of a matrimonial home is void.

Rights re
matrimonial
home
excepted

52.—(1) A man and a woman who are cohabiting and not married to one another may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit or death, including,

Cohabitation
agreements

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and

(d) any other matter in the settlement of their affairs.

Effect of
marriage on
agreement

(2) Where the parties to an agreement entered into under subsection 1 subsequently marry, the agreement shall be deemed to be a marriage contract.

Separation
agreements

53. A man and woman who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

(a) ownership in or division of property;

(b) support obligations;

(c) the right to direct the education and moral training of their children;

(d) the right to custody of and access to their children; and

(e) any other matter in the settlement of their affairs.

Form of
contract

54.—(1) A domestic contract and any agreement to amend or rescind a domestic contract are void unless made in writing and signed by the persons to be bound and witnessed.

Capacity
of minor

(2) A minor who has capacity to contract marriage has capacity to enter into a marriage contract or separation agreement that is approved by the court, whether the approval is given before or after the contract is entered into.

Agreement
on behalf of
mentally
incompetent

(3) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or, if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a domestic contract or give any waiver or consent under this Act on behalf of the mentally incompetent person.

Contracts
subject
to best
interests
of child

55.—(1) In the determination of any matter respecting the support, education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child.

Dum casta
clauses

(2) A provision in a separation agreement or a provision in a marriage contract to take effect on separation whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another.

(3) A provision in a separation agreement made before ^{Idem} this section comes into force whereby any right of a spouse is dependent upon remaining chaste shall be given effect as a contingency upon remarriage or cohabitation with another.

56. Where a domestic contract provides that specific gifts ^{Rights of donors of gifts} made to one or both parties are not disposable or encumberable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision.

57. The manner and formalities of making a domestic ^{Contracts made outside Ontario} contract and its essential validity and effect are governed by the proper law of the contract, except that,

- (a) a contract for which the proper law is that of a jurisdiction other than Ontario, is also valid and enforceable in Ontario if entered into in accordance with the internal law of Ontario;
- (b) subsection 4 of section 18 and section 55 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario; and
- (c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of or access to children is not valid or enforceable in Ontario.

58.—(1) Where a man and a woman who are not spouses ^{Paternity agreements} enter into an agreement for,

- (a) the payment of the expenses of prenatal care and birth in respect of a child;
- (b) support of a child; or
- (c) burial expenses of the child or mother,

on the application of a party to the agreement or a children's aid society made to a provincial court (family division) or the Unified Family Court, the court may incorporate the agreement in an order, and Part II applies to the order in the same manner as if it were an order for support made under that Part.

(2) Where an application is made under subsection 1 ^{Absconding respondent} and a judge of the court is satisfied that the respondent is about to leave Ontario, the judge may issue a warrant in the

form prescribed by the rules of the court for the arrest of the respondent.

Capacity of a minor

(3) A minor who has capacity to contract marriage has capacity to enter into an agreement under subsection 1 that is approved by the court, whether the approval is given before or after the agreement is entered into.

Application to pre-existing agreements

(4) This section applies to agreements referred to in subsection 1 that were made before this Part comes into force.

Application of Act to pre-existing contracts

59.—(1) A separation agreement or marriage contract validly made before this Part comes into force shall be deemed to be a domestic contract for the purposes of this Act.

Contracts entered into before Part comes into force

(2) Where a domestic contract is entered into in accordance with this Part before this Part comes into force and,

(a) the contract or any part would be valid if entered into after this Part comes into force; and

(b) the contract or part is entered into in contemplation of the coming into force of this Part,

the contract or part is not invalid for the reason only that it was entered into before this Part comes into force.

Idem

(3) Where pursuant to an understanding or agreement entered into before this Part comes into force by spouses who are living separate and apart, property is transferred, between them, the transfer is effective as if made pursuant to a domestic contract.

PART V

DEPENDANTS' CLAIM FOR DAMAGES

Right of dependants to sue in tort

60.—(1) Where a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part II, children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1970, c. 164, s. 3 (1), *amended*.

Damages in case of injury

(2) The damages recoverable in a claim under subsection 1 may include,

- (a) actual out-of-pocket expenses reasonably incurred for the benefit of the injured person;
- (b) a reasonable allowance for travel expenses actually incurred in visiting the injured person during his treatment or recovery;
- (c) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the injured person, a reasonable allowance for loss of income or the value of the services; and
- (d) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the injured person if the injury had not occurred.

(3) In an action under subsection 1, the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. *New.* Contributory negligence

(4) Not more than one action lies under subsection 1 for and in respect of the same occurrence, and no such action shall be brought after the expiration of two years from the time the cause of action arose. R.S.O. 1970, c. 164, s. 5; 1975, c. 38, s. 1. One action and limitation of actions

61.—(1) An action under subsection 1 of section 60 in respect of a person who is killed shall be commenced by and in the name of the executor or administrator of the deceased for the benefit of the persons entitled to recover under subsection 1 of section 60. R.S.O. 1970, c. 164, s. 3, *part, amended.* Executor to sue where death

(2) If there is no executor or administrator of the deceased, or if there is an executor or administrator and no such action is, within six months after the death of the deceased, brought by the executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by the executor or administrator. When action may be brought by persons beneficially interested

(3) Every action so brought is for the benefit of the same persons and is subject to the same regulations and procedure, as nearly as may be, as if it were brought by the executor or administrator. R.S.O. 1970, c. 164, s. 7. Regulations and procedure in such case

62.—(1) Where an action is commenced under section 60, the plaintiff shall, in his statement of claim, name and join the claim of any other person who is entitled to main- Joining claims

tain an action under section 60 in respect of the same injury or death and thereupon such person becomes a party to the action.

Affidavit (2) A person who commences an action under section 60 shall file with the statement of claim an affidavit stating that to the best of his knowledge, information and belief the persons named in the statement of claim are the only persons who are entitled or claim to be entitled to damages under section 60. R.S.O. 1970, c. 164, s. 6 (1, 2), *amended*.

How money may be paid into court **63.**—(1) The defendant may pay into court one sum of money as compensation for his fault or neglect to all persons entitled to compensation without specifying the shares into which it is to be divided. R.S.O. 1970, c. 164, s. 4.

Apportionment (2) Where the compensation has not been otherwise apportioned, a judge may, upon application, apportion it among the persons entitled.

When payment may be postponed (3) The judge may in his discretion postpone the distribution of money to which minors are entitled and may direct payment from the undivided fund. R.S.O. 1970, c. 164, s. 8.

Assessment of damages, insurance **64.**—(1) In assessing the damages in an action brought under this Part, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance.

Funeral expenses (2) For the purposes of this Part, damages may be awarded for reasonable expenses actually incurred for the burial of the person in respect of whose death the action is brought. R.S.O. 1970, c. 164, s. 3 (2, 3), *amended*.

PART VI

AMENDMENTS TO THE COMMON LAW AND STATUTE LAW

Unity of legal personality abolished **65.**—(1) For all purposes of the law of Ontario, a married man has a legal personality that is independent, separate and distinct from that of his wife and a married woman has a legal personality that is independent, separate and distinct from that of her husband.

Capacity of married person (2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if such person were an unmarried person. 1975, c. 41, s. 1 (1, 2).

Idem (3) Without limiting the generality of subsections 1 and 2,

- (a) each of the parties to a marriage has the like right of action in tort against the other as if they were not married;
- (b) a married woman is capable of acting as guardian *ad litem* or next friend as if she were an unmarried woman; 1975, c. 41, s. 1 (3), *part.*
- (c) the same rules shall be applied to determine the domicile of a married woman as for a married man.

(4) The purpose of subsections 1 and 2 is to make the same law apply, and apply equally, to married men and married women and to remove any difference therein resulting from any common law rule or doctrine, and subsections 1 and 2 shall be so construed. 1975, c. 41, s. 1 (4). Purpose of subss. 1, 2

66. No person shall be disentitled from bringing an action or other proceeding against another for the reason only that they stand in the relationship of parent and child. 1975, c. 41, s. 3. Actions between parent and child

67. No person shall be disentitled from recovering damages in respect of injuries incurred for the reason only that the injuries were incurred before his birth. 1975, c. 41, s. 4. Recovery for prenatal injuries

68.—(1) Subject to subsection 2, a child who is a minor, Domicile of minors

- (a) takes the domicile of his or her parents, where both parents have a common domicile;
- (b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;
- (c) takes the domicile of the father, where the domicile of the child cannot be determined under clause *a* or *b*; or
- (d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause *c*.

(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age. Idem

69.—(1) No action shall be brought for criminal conversation or for any damages resulting therefrom or from adultery. Criminal conversation abolished

Enticement and harbouring of spouse abolished (2) No action shall be brought by a married person for the enticement or harbouring of the spouse of such person or for any damages resulting therefrom.

Loss of consortium abolished (3) No action shall be brought by a married person for the loss of the consortium of his or her spouse or for any damages resulting therefrom.

Enticement, harbouring, seduction, loss of services of child abolished (4) No action shall be brought by a parent for the enticement, harbouring, seduction or loss of services of his or her child or for any damages resulting therefrom.

R.S.O. 1970, c. 428; 1971, c. 98, Sched., par. 30, repealed (5) *The Seduction Act*, being chapter 428 of the Revised Statutes of Ontario, 1970 and paragraph 30 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970, c. 228, s. 59, amended (6) Section 59 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by striking out "criminal conversation, seduction" in the first line.

Dower abolished **70.**—(1) The common law right of a widow to dower is hereby abolished.

R.S.O. 1970, c. 135; 1971, c. 98, Sched., par. 11, repealed (2) *The Dower Act*, being chapter 135 of the Revised Statutes of Ontario, 1970, and paragraph 11 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970, c. 152, s. 28 (2), repealed (3) Subsection 2 of section 28 of *The Execution Act*, being chapter 152 of the Revised Statutes of Ontario, 1970, is repealed.

Vested right to dower (4) Subsections 1, 2 and 3 do not apply in respect of a right to dower that has vested before subsections 1 and 2 come into force.

Refund of indemnity held by accountant for dower (5) Where money has been paid into court as an indemnity in respect of a right to dower that has not vested before this section comes into force, the husband of the person in respect of whose dower right the money was paid into court is entitled to be paid the money upon application to the accountant of the court, without order.

Alimony abolished **71.**—(1) The right of a married woman to alimony under any law existing before this section comes into force is hereby abolished.

(2) Where an action for alimony is commenced before subsection 1 comes into force and no evidence has been heard in the action before this Act comes into force, other than in respect of an interim order, the action shall be deemed to be an application under Part II subject to such directions as the court considers appropriate.

Continuation
of action
commenced

72. This Act applies to persons whose marriage was actually or potentially polygamous if the marriage was celebrated in a jurisdiction whose system of law recognizes the marriage as valid.

Polygamous
marriages

73.—(1) Subsection 4 of section 27 of *The Child Welfare Act*, being chapter 64 of the Revised Statutes of Ontario, 1970, is amended by striking out "*The Deserted Wives' and Children's Maintenance Act*" and inserting in lieu thereof "Part II of *The Family Law Reform Act, 1978*".

R.S.O. 1970,
c. 64, s. 27 (4),
amended

(2) Part III of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, Schedule, paragraph 6, subparagraph ii, 1972, chapter 109, section 6, 1973, chapter 75, section 5 and 1975, chapter 1, sections 25, 26, 27 and 28, is repealed.

Part III,
repealed

74. *The Children's Maintenance Act*, being chapter 67 of the Revised Statutes of Ontario, 1970 and subsection 2 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 67;
1971, c. 98,
s. 18 (2),
repealed

75. Section 4 of *The Creditors Relief Act*, being chapter 97 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection:

R.S.O. 1970,
c. 97, s. 4 (9),
amended

(9) This section does not apply to an attachment made under section 30 of *The Family Law Reform Act, 1978*.

1978, c. ...
exempted

76. *The Deserted Wives' and Children's Maintenance Act*, being chapter 128 of the Revised Statutes of Ontario, 1970, subsection 1 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, and *The Deserted Wives' and Children's Maintenance Amendment Act, 1973*, being chapter 133, are repealed.

R.S.O. 1970,
c. 128,
1971, c. 98,
s. 18 (1);
1973, c. 133,
repealed

77. Section 9 of *The Employment Standards Act, 1974*, being chapter 112, is repealed and the following substituted therefor:

1974, c. 122,
s. 9,
re-enacted

9. No employer shall dismiss or suspend an employee on the ground that garnishment proceedings are or

Garnish-
ment or
attachment
of wages

1978, c. ... may be taken against the employee or that an attachment order under section 30 of *The Family Law Reform Act, 1978* has been or may be made against the employee.

1975, c. 41, ss. 1-4, repealed **78.** Sections 1, 2, 3 and 4 of *The Family Law Reform Act, 1975*, being chapter 41, are repealed.

R.S.O. 1970, c. 164; 1973, c. 16; 1975, c. 38, repealed **79.** *The Fatal Accidents Act*, being chapter 164 of the Revised Statutes of Ontario, 1970, *The Fatal Accidents Amendment Act, 1973*, being chapter 16, and *The Fatal Accidents Amendment Act, 1975*, being chapter 38, are repealed.

R.S.O. 1970, c. 222, amended **80.**—(1) *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by striking out,

(a) subsection 4, subsection 4a, as enacted by the Statutes of Ontario, 1971, chapter 98, section 18, and subsection 5 of section 1;

(b) subsection 2 of section 2;

(c) sections 10, 13 and 14; and

(d) section 15, as re-enacted by the Statutes of Ontario, 1971, chapter 98, section 16.

1971, c. 98, s. 18 (3), Sched., par. 14, subpar. i, repealed (2) *The Age of Majority and Accountability Act, 1971*, being chapter 98, is amended by striking out,

(a) section 16;

(b) subsection 3 of section 18; and

(c) subparagraph i of paragraph 14 of the Schedule.

R.S.O. 1970, c. 228, s. 81, repealed **81.**—(1) Subject to subsection 2, section 81 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is repealed.

Continuance for existing judgments (2) The provision repealed by subsection 1 remains in force in respect of a judgment for alimony in an action commenced before this section comes into force.

s. 118 (3), amended (3) Subsection 3 of section 118 of the said Act, as amended by the Statutes of Ontario, 1975, chapter 30, section 7, is further amended by striking out "alimony or for the main-

tenance or custody of children is joined with" in the amendment of 1975 and inserting in lieu thereof "other relief is joined in".

82. Sections 1 and 12 of *The Married Women's Property Act*, being chapter 262 of the Revised Statutes of Ontario, 1970, are repealed. R.S.O. 1970, c. 262, ss. 1, 12, repealed

83. Sections 1, 2, 3, 4 and 5, subsection 6 of section 6 and section 8 of *The Matrimonial Causes Act*, being chapter 265 of the Revised Statutes of Ontario, 1970 and subsection 4 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed. R.S.O. 1970, c. 265, ss. 1-5, 6 (6), 8; 1971, c. 98, s. 18 (4), repealed

84. *The Parents' Maintenance Act*, being chapter 336 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 336, repealed

85. Section 24 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970 is amended by adding thereto the following subsection: R.S.O. 1970, c. 342, s. 24, amended

(2) Subsection 1 does not apply to the execution, seizure or attachment of moneys payable under a pension plan in satisfaction of an order for support under *The Family Law Reform Act, 1978*. Application of subs. 1 1978, c. ...

86.—(1) Subject to subsection 2, section 25 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 369, s. 25, repealed

(2) Every order or judgment filed under section 25 of *The Provincial Courts Act* before subsection 1 comes into force shall be deemed to have been filed under section 27 of this Act with the request therein mentioned. Transition for existing orders R.S.O. 1970, c. 369

87.—(1) *The Reciprocal Enforcement of Maintenance Orders Act*, being chapter 403 of the Revised Statutes of Ontario, 1970, is amended by striking out "summons" in each case where it appears and inserting in lieu thereof "notice of application". R.S.O. 1970, c. 403, amended

(2) Subsection 3 of section 2 of the said Act is amended by striking out "*The Deserted Wives' and Children's Maintenance Act*" and inserting in lieu thereof "Part II of *The Family Law Reform Act, 1978*". Idem s. 3 (2), amended

88. Section 4 of *The Statute of Frauds*, being chapter 444 of the Revised Statutes of Ontario, 1970, is amended by R.S.O. 1970, c. 444, s. 4, amended

striking out "any agreement made upon consideration of marriage, or upon" in the fifth and sixth lines.

Application
of ss. 69, 73, 74,
76, 79, 80, 82,
83 and 84

89. Sections 69, 73, 74, 76, 79, 80, 82, 83 and 84 apply in all cases when they come into force except in cases where an action or proceeding was commenced under the abolished, repealed or amended provision before that date.

GENERAL

Regulations

90. The Lieutenant Governor in Council may make regulations respecting any matter required to be or referred to as prescribed by the regulations.

Commence-
ment

91. This Act comes into force on the 31st day of March, 1978.

Short title

92. The short title of this Act is *The Family Law Reform Act, 1978*.

An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships

1st Reading

February 21st, 1978

2nd Reading

February 21st, 1978

3rd Reading

March 16th, 1978

THE HON. R. McMURTRY
Attorney General

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Retail Sales Tax Act

THE HON. L. MAECK
Minister of Revenue

EXPLANATORY NOTES

The Bill forms part of the joint federal-provincial Economic Stimulation Program. It provides generally for the reduction of sales tax from 7 per cent to 4 per cent on the purchase of all tangible personal property and taxable services. This reduction of sales tax to 4 per cent is for the period commencing on the 11th day of April, 1978 and ending with the 7th day of October, 1978. In addition, the 10 per cent rate of tax applicable to liquor, beer or wine and prepared meals sold at a price of over \$6 is reduced to 7 per cent for the same period. This reduction does not, however, apply to liquor, beer or wine purchased at government liquor stores, Brewers' Warehousing Company Limited, or stores owned and operated by the manufacturers of beer or Ontario wine.

SECTION 1. Subsection 3a of section 2 of the Act provided for a temporary reduction of sales tax in the year 1975 and its effect is spent.

The re-enacted subsection 3a provides that for the period commencing on the 11th day of April, 1978 and ending with the 7th day of October, 1978, the amount of sales tax imposed upon tangible personal property or taxable services is 4 per cent of the fair value thereof.

The new subsection 3b provides that for the period commencing on the 11th day of April, 1978 and ending with the 7th day of October, 1978, the tax imposed on liquor, beer or wine and prepared meals sold at a price of over \$6 is 7 per cent of the fair value thereof. The rate of tax ordinarily applicable thereto is 10 per cent.

The new subsection 3c provides that the reduction in sales tax from 10 per cent to 7 per cent of the fair value of liquor, beer or wine does not apply to spirits, beer or wine sold through a government store established under *The Liquor Control Act, 1975* or to beer and Ontario wine sold through stores owned and operated by the manufacturers or the Brewers' Warehousing Company Limited.

An Act to amend The Retail Sales Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 3a of section 2 of *The Retail Sales Tax Act*, being chapter 415 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1975, chapter 9, section 2, is repealed and the following substituted therefor:

s. 2 (3a),
re-enacted

(3a) Notwithstanding subsections 1, 3 and 11, during the period commencing on the 11th day of April, 1978 and ending with the 7th day of October, 1978, the tax imposed by subsections 1, 3 and 11 shall be at the rate of 4 per cent of the fair value of the tangible personal property or taxable service respectively made liable to tax under the said subsections during such period.

Temporary
reduction of
tax under
subs. 1, 3, 11

(3b) Notwithstanding subsection 2 but subject to subsection 3c, during the period commencing on the 11th day of April, 1978 and ending with the 7th day of October, 1978, the tax imposed by subsection 2 shall be at the rate of 7 per cent of the fair value of liquor, beer or wine and prepared meals sold at a price of over \$6.00 made liable to tax under the said subsection during such period.

Temporary
reduction of
tax under
subs. 2

(3c) Subsection 3b does not apply to liquor, beer or wine sold through,

Non-applica-
tion of
subs. 3b

- (a) a government store established or authorized by the Liquor Control Board of Ontario under *The Liquor Control Act, 1975*; or
- (b) any establishment authorized under clause *e* of section 3 of *The Liquor Control Act, 1975* to sell beer or Ontario wine.

1975, c. 27

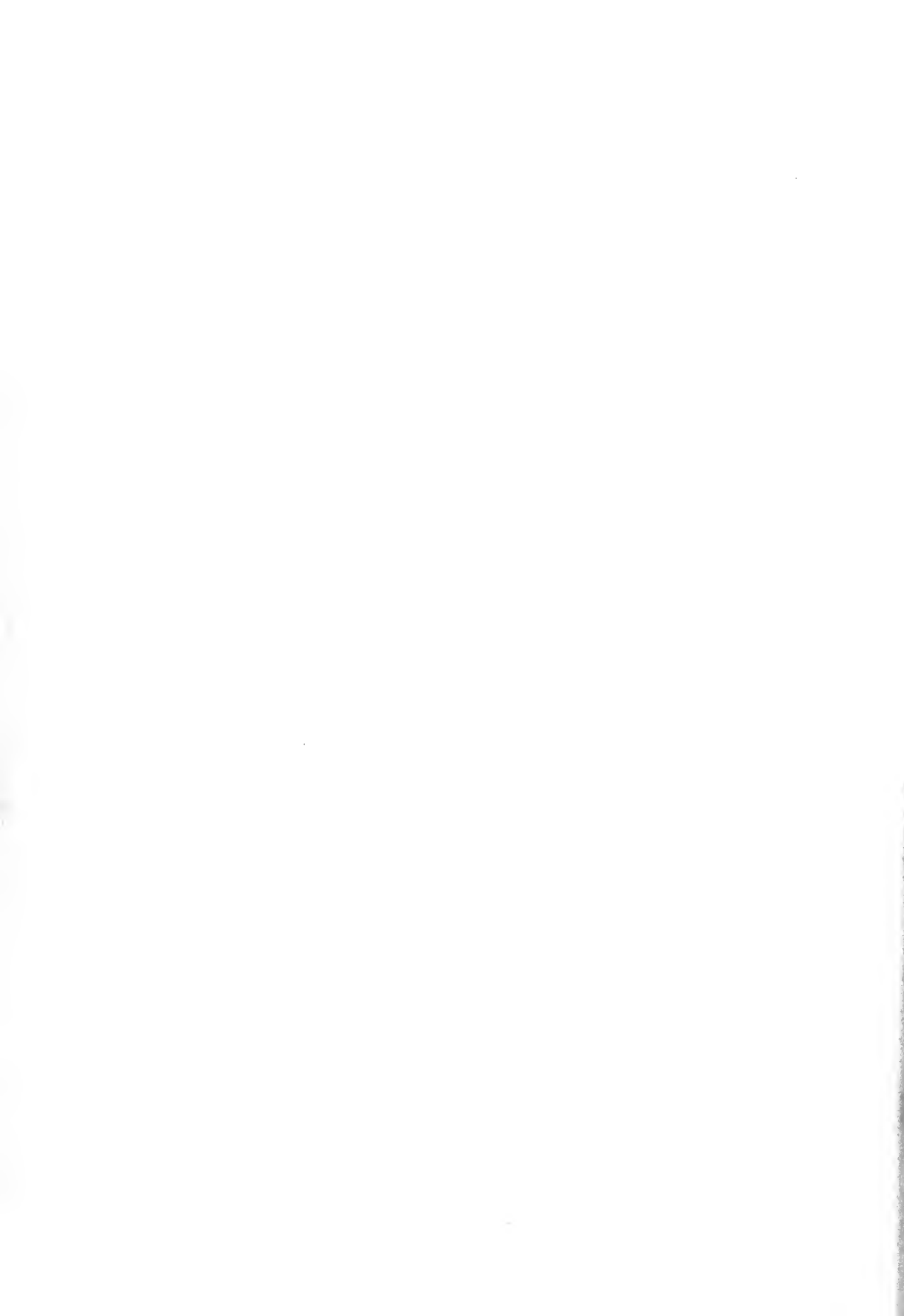
Commence-
ment

2. This Act shall be deemed to have come into force on the 11th day of April, 1978.

Short title

3. The short title of this Act is *The Retail Sales Tax Amendment Act, 1978*.

SECTION 2. The effective date of these changes is April 11th, 1978.



An Act to amend
The Retail Sales Tax Act

1st Reading

April 11th, 1978

2nd Reading

3rd Reading

THE HON. L. MAECK
Minister of Revenue

(Government Bill)

BILL 60

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Retail Sales Tax Act

THE HON. L. MAECK
Minister of Revenue



An Act to amend The Retail Sales Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 3a of section 2 of *The Retail Sales Tax Act*, being chapter 415 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1975, chapter 9, section 2, is repealed and the following substituted therefor:

(3a) Notwithstanding subsections 1, 3 and 11, during the period commencing on the 11th day of April, 1978 and ending with the 7th day of October, 1978, the tax imposed by subsections 1, 3 and 11 shall be at the rate of 4 per cent of the fair value of the tangible personal property or taxable service respectively made liable to tax under the said subsections during such period.

(3b) Notwithstanding subsection 2 but subject to subsection 3c, during the period commencing on the 11th day of April, 1978 and ending with the 7th day of October, 1978, the tax imposed by subsection 2 shall be at the rate of 7 per cent of the fair value of liquor, beer or wine and prepared meals sold at a price of over \$6.00 made liable to tax under the said subsection during such period.

(3c) Subsection 3b does not apply to liquor, beer or wine sold through,

(a) a government store established or authorized by the Liquor Control Board of Ontario under *The Liquor Control Act, 1975*; or

(b) any establishment authorized under clause *e* of section 3 of *The Liquor Control Act, 1975* to sell beer or Ontario wine.

Commence-
ment

2. This Act shall be deemed to have come into force on the 11th day of April, 1978.

Short title

3. The short title of this Act is *The Retail Sales Tax Amendment Act, 1978*.







An Act to amend
The Retail Sales Tax Act

1st Reading

April 11th, 1978

2nd Reading

May 2nd, 1978

3rd Reading

May 2nd, 1978

THE HON. I. MAECK
Minister of Revenue

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Income Tax Act

THE HON. L. MAECK
Minister of Revenue

EXPLANATORY NOTES

The joint federal-provincial Economic Stimulation Program is to be implemented in Ontario by two legislative changes. *The Retail Sales Tax Act* is to be amended to reduce the rate of retail sales tax in Ontario by 3 percentage points. The federal share of the costs of the Program equal to two points of the reduction in Ontario's sales tax will be recovered by Ontario through the mechanism of a temporary tax imposed by Ontario under this Act equal to the amount of a federal tax abatement for the 1978 taxation year. This tax will be collected by the Government of Canada for Ontario pursuant to the Canada-Ontario Tax Collection Agreement. The changes will produce no change in the amount of tax paid by an individual. Only the relative federal-provincial share of tax will be altered.

SECTION 1. A new subsection 2*a* is added to section 3 of the Act to impose for the 1978 taxation year an additional tax equal to the amount of the federal tax abatement. The new subsection 2*b* provides that the additional tax imposed under subsection 2*a* is not to be taken into account in determining instalment payment of taxes or in determining Ontario tax credits.

SECTION 2. Two new clauses are added to subsection 1 of section 27 to authorize the Lieutenant Governor in Council to make regulations providing for the calculation of certain amounts for the purposes of the new section 48*a* enacted by section 3 of this Bill.

SECTION 3. A new section 48*a* is added to provide for the collection of the tax imposed by new subsection 2*a* of section 3.

BILL 61

1978

An Act to amend The Income Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 3 of *The Income Tax Act*, being chapter 217 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsections: s. 3,
amended

(2a) In addition to the tax payable under subsections 1 and 2, an individual, other than a trust, who resided in Ontario on the 31st day of December, 1978 shall pay a tax for the 1978 taxation year equal to the amount deductible by him pursuant to any provision of the Federal Act based on paragraph 13 of the Notice of Ways and Means Motion to Amend the *Income Tax Act* (Canada) tabled in the House of Commons on April 10th, 1978. Federal
abatement

(2b) The tax payable under subsection 2a shall not be taken into consideration in determining the payments required to be made by section 11 or 12 or in determining any payment or deduction authorized by section 6b. Instalment
payments
not affected

2. Subsection 1 of section 27 of the said Act is amended by adding thereto the following clauses: s. 27 (1),
amended

(ba) providing for the calculation of the "federal share of the costs of the 1978 Economic Stimulation Program" for the purposes of section 48a;

(bb) providing for the calculation of the adjusting payment under subsection 4 of section 48a; and

.

3. The said Act is amended by adding thereto the following section: s. 48a,
enacted

Authority
to collect
tax

48a.—(1) Where a collection agreement is entered into pursuant to section 48, the Government of Canada may collect the tax payable under subsection 2a of section 3 on behalf of Ontario.

Authority
to make
adjusting
payment

(2) Where the aggregate of payments made to Ontario pursuant to subsection 1 exceeds the "federal share of the costs of the 1978 Economic Stimulation Program", as prescribed, the Treasurer may make an adjusting payment which shall be paid out of the Consolidated Revenue Fund to the Government of Canada.

Idem

(3) Where a collection agreement is entered into, the whole or any part of the amount of an adjusting payment that may be made pursuant to subsection 2 may be recovered by the Government of Canada in accordance with the terms and conditions contained in the collection agreement providing for the recovery of any amount received by Ontario in excess of the amount to which it is entitled.

Calculation
of adjusting
payment

(4) The amount of the adjusting payment to be made under subsection 2 shall be the amount calculated in the prescribed manner by which the aggregate of payments made to Ontario pursuant to subsection 1 exceeds the "federal share of the costs of the 1978 Economic Stimulation Program".

Commence-
ment

4. This Act shall be deemed to have come into force on the 11th day of April, 1978.

Short title

5. The short title of this Act is *The Income Tax Amendment Act, 1978*.

Subsection 1 authorizes the Government of Canada to collect the federal tax abatement on behalf of Ontario pursuant to the terms of the existing Canada-Ontario Tax Collection Agreement.

Subsection 2 authorizes the Treasurer to make an adjusting payment where the instalment payments made to Ontario by the Government of Canada exceed the federal share of the costs of the Economic Stimulation Program.

Subsection 3 authorizes the recovery, according to the terms of the Tax Collection Agreement, of that part of the adjusting payment which represents the amount by which the instalment payments exceed the amount to which Ontario would be entitled by virtue of the tax imposed by subsection 2*a* of section 3. The difference between the amount to which Ontario is entitled and the actual federal share of the Program costs is authorized to be paid by the Treasurer pursuant to subsection 2.

Subsection 4 provides for the calculation of the adjusting payment.

SECTION 4. The effective date of these changes is April 11th, 1978.





An Act to amend
The Income Tax Act

1st Reading

April 11th, 1978

2nd Reading

3rd Reading

THE HON. L. MAECK
Minister of Revenue

(Government Bill)

BILL 61

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Income Tax Act

THE HON. L. MAECK
Minister of Revenue



BILL 61

1978

An Act to amend The Income Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 3 of *The Income Tax Act*, being chapter 217 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsections:
 - (2a) In addition to the tax payable under subsections 1 and 2, an individual, other than a trust, who resided in Ontario on the 31st day of December, 1978 shall pay a tax for the 1978 taxation year equal to the amount deductible by him pursuant to any provision of the Federal Act based on paragraph 13 of the Notice of Ways and Means Motion to Amend the *Income Tax Act* (Canada) tabled in the House of Commons on April 10th, 1978. s. 3.
amended
Federal
abatement
 - (2b) The tax payable under subsection 2a shall not be taken into consideration in determining the payments required to be made by section 11 or 12 or in determining any payment or deduction authorized by section 6b. Instalment
payments
not affected

2. Subsection 1 of section 27 of the said Act is amended by adding thereto the following clauses: s. 27 (1).
amended
 - (ba) providing for the calculation of the "federal share of the costs of the 1978 Economic Stimulation Program" for the purposes of section 48a;
 - (bb) providing for the calculation of the adjusting payment under subsection 4 of section 48a; and

3. The said Act is amended by adding thereto the following section: s. 48a.
enacted

section:

Authority
to collect
tax

48a.—(1) Where a collection agreement is entered into pursuant to section 48, the Government of Canada may collect the tax payable under subsection 2a of section 3 on behalf of Ontario.

Authority
to make
adjusting
payment

(2) Where the aggregate of payments made to Ontario pursuant to subsection 1 exceeds the "federal share of the costs of the 1978 Economic Stimulation Program", as prescribed, the Treasurer may make an adjusting payment which shall be paid out of the Consolidated Revenue Fund to the Government of Canada.

Idem

(3) Where a collection agreement is entered into, the whole or any part of the amount of an adjusting payment that may be made pursuant to subsection 2 may be recovered by the Government of Canada in accordance with the terms and conditions contained in the collection agreement providing for the recovery of any amount received by Ontario in excess of the amount to which it is entitled.

Calculation
of adjusting
payment

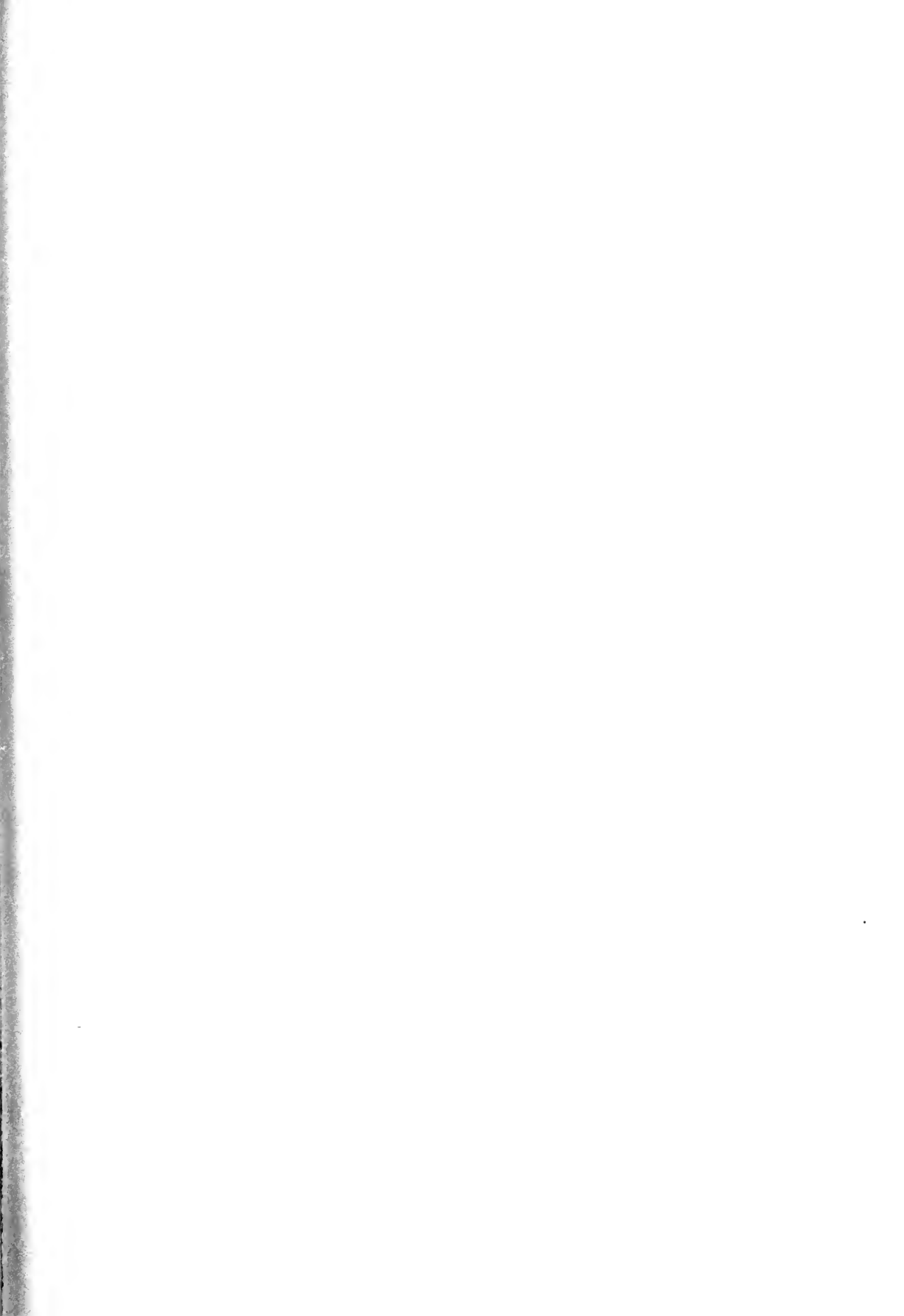
(4) The amount of the adjusting payment to be made under subsection 2 shall be the amount calculated in the prescribed manner by which the aggregate of payments made to Ontario pursuant to subsection 1 exceeds the "federal share of the costs of the 1978 Economic Stimulation Program".

Commence-
ment

4. This Act shall be deemed to have come into force on the 11th day of April, 1978.

Short title

5. The short title of this Act is *The Income Tax Amendment Act, 1978*.





An Act to amend
The Income Tax Act

1st Reading

April 11th, 1978

2nd Reading

May 2nd, 1978

3rd Reading

May 2nd, 1978

THE HON. L. MAECK
Minister of Revenue

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend The Niagara Escarpment
Planning and Development Act, 1973**

MR. MCKESSOCK

EXPLANATORY NOTE

The purpose of the Bill is to reduce the size of the Niagara Escarpment Planning Area to include only those lands included in the Scarp and Scarp Protection Area described in the maps and Schedule A accompanying the Preliminary Proposals issued by the Niagara Escarpment Planning Commission of the 14th day of February, 1978.

The Bill places the authority to issue development permits in the Niagara Escarpment Commission or a municipality, as the Minister may determine. The Bill also provides that an appeal from a decision of the issuing body arising from an application for a development permit may be made to the Ontario Municipal Board.

In addition, the Bill requires that, upon application, a development permit shall be issued for any lot existing as of the 14th day of February, 1978, unless the Government of Ontario gives notice that it intends to acquire the lot at its fair market value, within one year of the date upon which application was made.

**An Act to amend
The Niagara Escarpment Planning and
Development Act, 1973**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Section 1 of *The Niagara Escarpment Planning and Development Act, 1973*, being chapter 52, as amended by the Statutes of Ontario, 1975, chapter 68, section 1 and 1976, chapter 35, section 1, is further amended by adding thereto the following clause:
- (da) “Municipal Board” means the Ontario Municipal Board.
- (2) Clause *f* of the said section 1 is repealed and the following substituted therefor:
- (f) “Niagara Escarpment Planning Area” means the planning area established as such under this Act.
2. Subsection 1 of section 3 of the said Act, as amended by the Statutes of Ontario, 1974, chapter 52, section 1, is repealed and the following substituted therefor:
- (1) There is hereby established as the Niagara Escarpment Planning Area the area of land in Ontario described in the Schedule to this Act.
3. Clause *b* of subsection 2 of section 22a of the said Act, as enacted by the Statutes of Ontario, 1974, chapter 52, section 3, is repealed and the following substituted therefor:
- (b) providing for the issuance of development permits by the Commission, or a county, regional municipality or city outside a regional municipality and designating the body having authority to issue

s. 1,
amended

s. 1 (f),
re-enacted

s. 3 (1),
re-enacted

Establishment of
Niagara
Escarpment
Planning
Area

s. 22a (2) (b),
re-enacted

development permits in each part of the Niagara Escarpment Planning Area.

s. 23,
re-enacted

4. Section 23 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 35, section 4, is repealed and the following substituted therefor:

Develop-
ment
permits

23.—(1) Where an area of development control is established by regulation made under section 22, no person shall undertake any development in the area unless such development is exempt under the regulations or unless a development permit is issued in respect of the development.

Other
permits

(2) No building permit or other permit relating to development shall be issued in respect of any land, building or structure within an area of development control, unless a development permit has been issued under this Act relating to such land, building or structure, and no such building or other permit shall be issued that does not conform to the development permit.

Offence

(3) Every person who contravenes subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than \$10,000.

Order to
demolish,
etc.

(4) Where any person undertakes any development that is in contravention of subsection 1, the body having authority to issue the development permit may order such person to demolish any building or structure erected in connection with the development or to restore the site to the condition it was in prior to the undertaking of the development, or both, within such time as the order specifies.

Cost of
work

(5) Where a person to whom an order is directed under subsection 5 fails to comply with the order within the time specified in it, the body that made the order may cause the necessary work to be done and charge such person with the cost thereof, which cost may be recovered with costs in any court of competent jurisdiction.

s. 24,
re-enacted

5. Section 24 of the said Act, as amended by the Statutes of Ontario, 1974, chapter 52, section 4, is repealed and the following substituted therefor:

Commission,
etc.,
power of
decision

24.—(1) The Commission or the council of a county, regional municipality or city having authority to issue a development permit, on receiving an application for a development permit and, after giving consideration to the merits of the application, may make a decision to issue the development permit or to refuse to issue the permit or

to issue the permit subject to such terms and conditions as it considers desirable.

Notification of decision

(2) The Commission, county, regional municipality or city shall by regular or registered mail cause a copy of the decision made by it on any application for a development permit to be mailed to the Minister, to the applicant for the permit and to all assessed owners of land lying within 400 feet of the land that is the subject of the application and every copy of such decision shall include a notice specifying that any person receiving a copy of the decision, other than the Minister, may, within fourteen days of the mailing of it, appeal in writing to the Municipal Board against the decision.

Appeal to O.M.B.

(3) Where the Municipal Board receives one or more notices of appeal under subsection 2, the Board shall hear the appeal and either dismiss the same or direct that the development permit be issued subject to such terms or conditions, if any, as the Board considers desirable, and the decision of the Board shall be final.

Notice of appeal

(4) Notice of an appeal to the Municipal Board under subsection 2 shall be given to such persons in such manner as the Board may direct.

s. 25, re-enacted

6. Section 25 of the said Act is repealed and the following substituted therefor:

Where development permits shall be issued

25. Notwithstanding anything in sections 23 and 24, where the owner of a lot or parcel of land, the description of which has not been altered since the 14th day of February, 1978, applies for a development permit in respect of the lot or parcel of land, the Commission, county, regional municipality or city, as the case may be, having authority to issue the development permit shall issue the development permit to the owner unless it is given notice that the Minister intends to acquire the lot or land under section 18 within one year from the day of application for an amount equal to the fair market value of the lot or land.

Schedule enacted

7. The said Act is amended by adding thereto the following Schedule:

SCHEDULE

NIAGARA ESCARPMENT PLANNING AREA

1. All lands contained in the area described as the Scarp and Scarp Protection Area on the maps and Schedule A accompanying the Preliminary Proposals issued by the Niagara Escarpment Planning Commission on the 14th day of February, 1978.

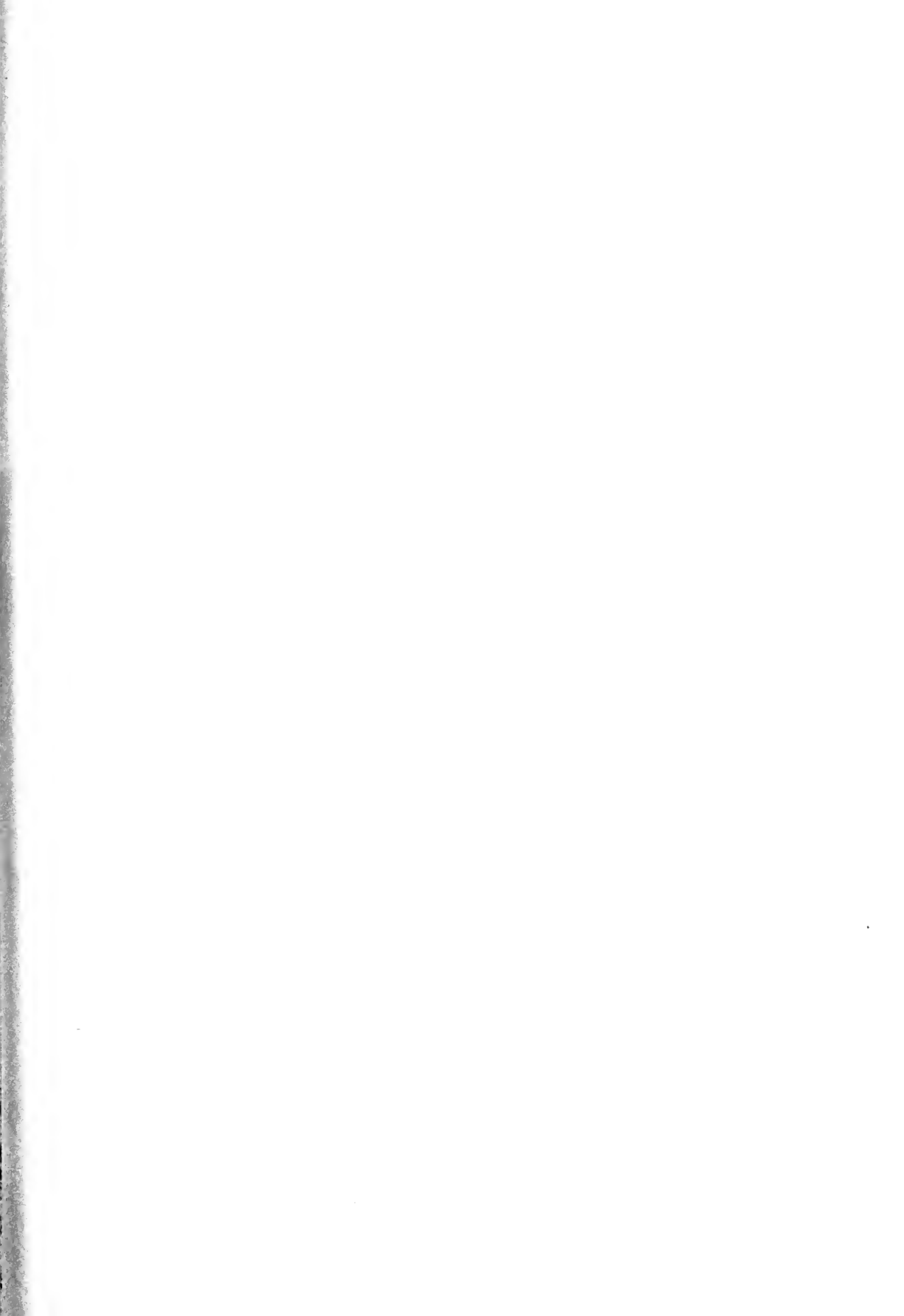
2. All lands owned by the Province of Ontario that abut lands contained in the Scarp and Scarp Protection Area.

Commence-
ment

8. This Act comes into force on the day it receives Royal Assent.

Short title

9. The short title of this Act is *The Niagara Escarpment Planning and Development Amendment Act, 1978*.



An Act to amend
The Niagara Escarpment Planning
and Development Act, 1973

1st Reading

April 13th, 1978

2nd Reading

3rd Reading

MR. MCKESSOCK

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act respecting The Official Languages of Ontario

MR. SAMIS

EXPLANATORY NOTE

The purpose of this Bill is to establish French and English as the official languages of Ontario. The Bill defines the extent to which both official languages are to be used in the Legislative Assembly by the Government of Ontario and in proceedings before judicial and quasi-judicial bodies.

BILL 63

1978

An Act respecting The Official Languages of Ontario

WHEREAS the English and French languages are rec-^{Preamble}
ognized as official languages in Canada; and whereas
the Franco-Ontarian community has been and continues to
be a vital partner in the growth, development and cultural
enrichment of Ontario;

Therefore, Her Majesty, by and with the advice and
consent of the Legislative Assembly of the Province of
Ontario, enacts as follows:

1. In this Act,

Inter-
pre-
ta-
tion

- (a) "proceedings" includes, when applied to a court of record or statutory tribunal, all pleadings and process in or issuing from and written submissions to and oral arguments before the court or tribunal;
- (b) "regulation" includes rules, orders, and by-laws;
- (c) "statutory tribunal" means one or more persons, whether or not incorporated and however described, upon which is conferred by or under a statute a power or right to make a decision deciding or prescribing,
 - (i) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
 - (ii) the eligibility of any person or party to receive or to the continuation of, a benefit or licence, whether he is legally entitled thereto or not.

2. The English and French languages are the official<sup>Declaration
of status</sup>
languages of Ontario for all purposes to which the authority

of the Legislative Assembly extends, and possess and enjoy equality of status and equal rights and privileges as to their use in all institutions of the Assembly and Government of Ontario.

Use of
official
languages
in Legis-
lative
Assembly

3.—(1) Either of the official languages may be used by any person in proceedings of the Legislative Assembly or a committee thereof and the record of debates, journals and Order Paper of the Assembly shall be printed in both official languages.

Idem

(2) Every Bill, resolution, motion or petition introduced in the Assembly may be in either or both of the official languages.

Statutes
to be
printed and
published
in both
official
languages

4.—(1) The Statutes of Ontario shall be printed and published in both official languages.

Regula-
tions and
proclama-
tions

(2) Any regulation and proclamation that is made or issued by or under the authority of any Act of the Legislative Assembly and is required to be published in *The Ontario Gazette* shall be made or issued and published accordingly in both official languages.

Orders and
judgments

(3) All orders and judgments, including any reasons given therefor, issued by any court of record or statutory tribunal established by or pursuant to an Act of the Legislative Assembly of Ontario shall be issued in both official languages where the order or judgment determines a question of law or policy of general public interest or importance or where the proceedings leading to its issue were conducted in whole or in part in both official languages.

Construc-
tion

(4) In construing an Act, regulation or proclamation that is printed and published in the official languages, both versions are equally authentic.

Where
versions
may be
issued at
different
times

(5) Where an authority responsible for the making or issuance of a regulation, proclamation, order or judgment is of the opinion that to make or issue it in both official languages would cause a delay prejudicial to the public interest or result in injustice or hardship to a person affected thereby, the regulation, proclamation, order or judgment may be issued in the first instance in one of the official languages and thereafter, within such time as is reasonable in the circumstances, shall be issued in the other official language and the latter version is deemed to be effective from the time the first is effective.

5.—(1) Every ministry of the Government of Ontario and every board, commission, corporation or other agency thereof has the duty to ensure that members of the public can obtain available services from and can communicate with it in both official languages, Ministries to provide service in both official languages

(a) at its head or central office location; and

(b) at any other office location where there is a significant demand for services in both official languages.

(2) Every ministry, board, commission, corporation or other agency of the Government of Ontario that is required by an Act of the Legislative Assembly to lay an annual report before the Assembly shall include as part of that report a description of the extent to which it provides services to the members of the public in both official languages. Report

6.—(1) Either of the official languages may be used by a person in a proceeding before a court of record or statutory tribunal but, upon application by a party to the proceedings and subject to subsection 2, a court or statutory tribunal may order that proceedings be conducted wholly or partially in one of the official languages where, in the opinion of the court, the balance of convenience favours such an order and no party will be prejudiced thereby. Courts and tribunals

(2) Every court of record or statutory tribunal has in any proceedings brought or taken before it the duty to ensure that any person giving evidence before it may be heard in the official language of his choice. Evidence

7.—(1) In this section, “ministry” means a ministry of the Government of Ontario and every board, commission, corporation or other agency thereof. Interpretation

(2) Where, upon the submission of a Minister, it is established to the satisfaction of the Lieutenant Governor in Council that the immediate application of any provision of this Act to a ministry, court of record or statutory tribunal or any service provided by it, Where application of Bill may be deferred or suspended

(a) would unduly prejudice the interests of the ministry;

(b) would unduly prejudice the interests of persons undertaking or affected by proceedings before a court of record or statutory tribunal; or

(c) would be seriously detrimental to the effective administration of the ministry, court of record or statutory tribunal,

the Lieutenant Governor in Council may by order defer or suspend the application of this Act or a part thereof to the ministry, court of record or statutory tribunal for such period and to such extent as the Lieutenant Governor in Council deems necessary or expedient.

Terms of
order

(3) Any order made under this section may contain such directions and be subject to such terms and conditions as the Lieutenant Governor in Council considers appropriate to ensure the earliest possible application of any deferred or suspended provision provided for in the order.

Order to
be laid
before
Assembly

(4) A copy of an order made under this section shall be laid before the Assembly by the Lieutenant Governor within fifteen days of making the order if the Assembly is in session or, if not, at the commencement of the next ensuing session.

Commence-
ment

8. This Act comes into force on the day it receives Royal Assent.

Short title

9. The short title of this Act is *The Ontario Official Languages Act, 1978*.



An Act respecting The Official
Languages of Ontario

1st Reading

April 13th, 1978

2nd Reading

3rd Reading

MR. SAMIS

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Legislative Assembly Act

MR. BREUGH

EXPLANATORY NOTE

The purpose of the Bill is to place the whole of the Legislative Building and grounds under the control of the Speaker. The amendment follows a recommendation of the Ontario Commission on the Legislature and a select committee of the Assembly established to study the Commission's report.

BILL 64

1978

An Act to amend The Legislative Assembly Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 93 of *The Legislative Assembly Act*, being chapter 240 of the Revised Statutes of Ontario, 1970, as enacted by the Statutes of Ontario, 1974, chapter 116, section 3, is repealed and the following substituted therefor:

93.—(1) All parts of the Legislative Building and the grounds adjacent thereto shall be under the control of the Speaker.

Speaker control over Legislative Building

(2) The Speaker may call upon any ministry or agency of the Crown to provide any service or commodity for or on behalf of the Assembly or in respect of the Legislative Building or grounds adjacent thereto and the ministry or agency shall provide such service or commodity upon such terms and conditions as the ministry or agency and the Speaker may decide.

Provision of services, commodities for Assembly, etc.

(3) The Speaker shall establish guidelines for the security of the Legislative Chamber, the other parts of the Legislative Building, and the grounds adjacent thereto.

Security guidelines

2. Section 94 of the said Act, as enacted by the Statutes of Ontario, 1974, chapter 116, section 3, is repealed.
- s. 94, repealed

3. This Act comes into force on the 1st day of November, 1978.
- Commencement

4. The short title of this Act is *The Legislative Assembly Amendment Act, 1978*.
- Short title

An Act to amend
The Legislative Assembly Act

1st Reading

April 14th, 1978

2nd Reading

3rd Reading

MR. BREUGH

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Labour Relations Act

MR. BREUGH

EXPLANATORY NOTE

The purpose of this Bill is to prevent the hiring of strikebreakers and to control access to a work premises that is affected by a strike or lock-out. The Bill prohibits an employer from hiring or using the services of a person to do the work of an employee who is on strike or locked out unless that person is specifically authorized to do so. Similarly, when a picket line is established at a place of access to a work premises, access is limited to persons specifically authorized by the Bill.

An Act to amend The Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Labour Relations Act*, being chapter 232 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: s. 59a,
enacted

59a.—(1) In this section, Interpre-
tation

- (a) “employer” includes an employers’ organization and a person acting on behalf of an employer or an employers’ organization;
- (b) “legal picket line” means a moving formation of two or more persons who are members of a certified bargaining unit and who by means of signs or posters give notice that the certified bargaining unit is on strike or locked out.

(2) No employer shall employ or use the services of any person to perform the work of an employee who is exercising a legal right to strike or who is locked out unless, Unlawful
employment

- (a) the person ordinarily exercises managerial or supervisory functions and was a full-time employee of the employer on the day the strike or lock-out commenced; or
- (b) the person is authorized to perform the work by agreement between the employer and representatives of the certified bargaining unit that is on strike or locked out.

(3) Where a legal picket line is formed in support of a lawful strike or lock-out at a place of access to a work premises, no person shall enter the premises unless, Unlawful
entry

- (a) the person ordinarily exercises managerial and supervisory functions;
- (b) the person is a member of a certified bargaining unit that is not on strike or locked out and is not engaged in performing the work of an employee who is on strike or locked out;
- (c) the person is a non-union employee who was a full-time employee of the employer on the day the strike or lock-out was commenced and is not engaged in performing the work of an employee who is on strike or locked out;
- (d) the person requires access to the work premises for the purpose of providing emergency services;
- (e) the person is authorized to enter the work premises by agreement between the employer and representatives of the bargaining unit that is on strike or locked out.

Duty of
police
officer

(4) Where a picket line is formed in support of a lawful strike or lock-out at a place of access to a work premises, it is the duty of every police officer stationed at that place to ensure that no person other than a person authorized under subsection 3 enters the work premises.

Trespass

(5) A person who enters the work premises contrary to subsection 3 or who, upon gaining entry, performs work contrary to subsection 2, commits a trespass and is liable to proceedings under *The Petty Trespass Act*.

R.S.O. 1970,
c. 347

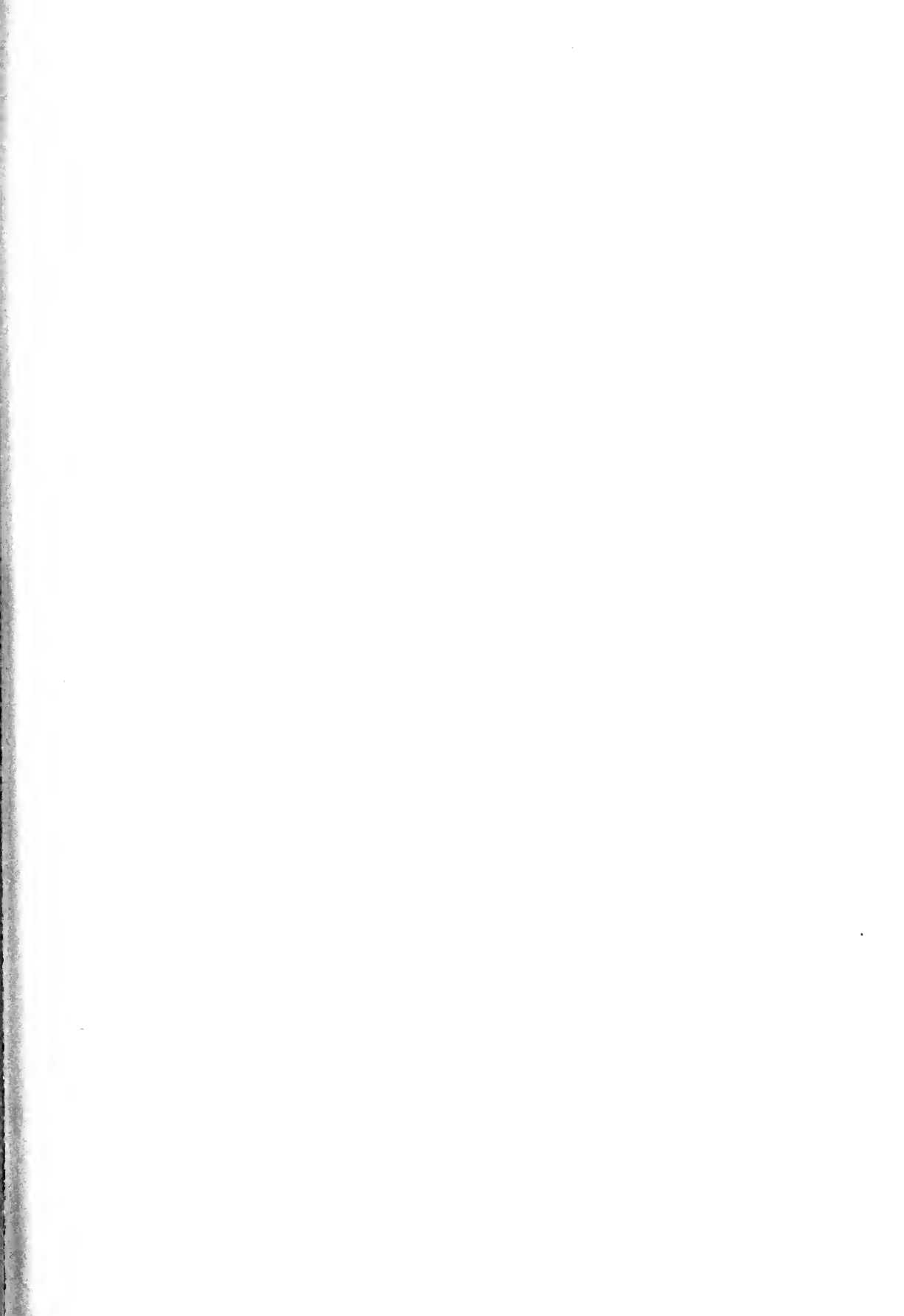
Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Labour Relations Amendment Act, 1978*.





An Act to amend
The Labour Relations Act

1st Reading

April 14th, 1978

2nd Reading

3rd Reading

MR. BREAUUGH

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to provide for Municipal Hydro-Electric Service in
The Regional Municipality of York**

THE HON. R. BAETZ
Minister of Energy

EXPLANATORY NOTE

The Bill establishes new municipal hydro-electric commissions for the municipalities of Aurora, Georgina, King, Markham, Newmarket, Richmond Hill, Vaughan and Whitchurch-Stouffville and provides for the future establishment of a municipal hydro-electric commission for the Township of East Gwillimbury.

A transitional period is provided before the new commissions become fully operational.

The members of each commission will be the mayor of the area municipality and additional members qualified as municipal electors in the municipality.

The council of each area municipality will determine at a future date whether the members of its commission should be elected or appointed.

Customers within Aurora, Markham, Newmarket, Richmond Hill and Vaughan presently served by Ontario Hydro's rural retail power distribution system will be supplied with power by the new commissions.

Customers within Georgina, King and Whitchurch-Stouffville presently served by Ontario Hydro will continue to be served by Ontario Hydro until the area municipal council directs the commission to expand its service area to the municipal boundaries. All customers in East Gwillimbury will continue to be served by Ontario Hydro until the area council establishes a hydro-electric commission under section 3 of the Bill.

Also, the council of Georgina, King or Whitchurch-Stouffville may dissolve a commission established by or under this Bill and on the dissolution Ontario Hydro will commence to distribute and supply power in all areas of the municipality.

Provision is made for the transfer of employees and the protection of their salaries and benefits.

BILL 66

1978

**An Act to provide for Municipal
Hydro-Electric Service in
The Regional Municipality of York**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "accumulated net retail equity" means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) "area municipality" has the same meaning as in *The Regional Municipality of York Act*; R.S.O. 1970,
c. 408
- (c) "hydro-electric commission" means a hydro-electric commission or public utilities commission entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area within the meaning of *The Regional Municipality of York Act* immediately before the coming into force of this Act and established or deemed to be established under Part III of *The Public Utilities Act*; R.S.O. 1970,
c. 390
- (d) "Minister" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (e) "power" means electrical power and includes electrical energy;
- (f) "regulations" means the regulations made under this Act;

- (g) "retail", when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions
established

2.—(1) On the day this Act comes into force, a hydro-electric commission for each of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Vaughan, the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King is hereby established, and each commission shall be deemed to be a commission established under Part III of *The Public Utilities Act* and a municipal commission within the meaning of *The Power Corporation Act*.

R.S.O. 1970,
cc. 390, 354

Composition,
Aurora
Hydro-
Electric
Commission

(2) The commission for the Town of Aurora established by subsection 1 shall be known as the Aurora Hydro-Electric Commission and shall consist of the mayor of the Town of Aurora and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Aurora.

1977, c. 62

Composition,
Markham
Hydro-
Electric
Commission

(3) The commission established for the Town of Markham by subsection 1 shall be known as the Markham Hydro-Electric Commission and shall consist of the mayor of the Town of Markham and four additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Markham.

Composition,
Newmarket
Hydro-
Electric
Commission

(4) The commission established for the Town of Newmarket by subsection 1 shall be known as the Newmarket Hydro-Electric Commission and shall consist of the mayor of Newmarket and four additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Newmarket.

Composition,
Richmond
Hill Hydro-
Electric
Commission

(5) The commission established for the Town of Richmond Hill by subsection 1 shall be known as the Richmond Hill Hydro-Electric Commission and shall consist of the mayor of the Town of Richmond Hill and four additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Richmond Hill.

Composition,
Vaughan
Hydro-
Electric
Commission

(6) The commission established for the Town of Vaughan by subsection 1 shall be known as the Vaughan Hydro-Electric Commission and shall consist of the mayor of the Town of Vaughan and four additional members who are

qualified electors under *The Municipal Elections Act, 1977* 1977, c. 62 in the Town of Vaughan.

(7) The commission established for the Town of Whitchurch-Stouffville by subsection 1 shall be known as the Whitchurch-Stouffville Hydro-Electric Commission and shall consist of the mayor of the Town of Whitchurch-Stouffville and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Whitchurch-Stouffville.

Composition,
Whitchurch-
Stouffville
Hydro-
Electric
Commission

(8) The commission established for the Township of Georgina under subsection 1 shall be known as the Georgina Hydro-Electric Commission and shall consist of the mayor of the Township of Georgina and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Township of Georgina.

Composition,
Georgina
Hydro-
Electric
Commission

(9) The commission established for the Township of King by subsection 1 shall be known as the King Hydro-Electric Commission and shall consist of the mayor of the Township of King and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Township of King.

Composition,
King
Hydro-
Electric
Commission

(10) For the term expiring with the 30th day of November, 1980, the two additional members of each of the Aurora Hydro-Electric Commission, the Georgina Hydro-Electric Commission, the King Hydro-Electric Commission, and the Whitchurch-Stouffville Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the area municipality served by each of the commissions, and at least one of the additional members shall be appointed from among the members of the hydro-electric commissions that supplied power within the area municipality immediately before the coming into force of this Act.

Additional
members of
first com-
missions of
Aurora,
Georgina,
King,
Whitchurch-
Stouffville

(11) For the term expiring with the 30th day of November, 1980, the four additional members of the Markham Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Markham and,

Additional
members of
first com-
mission,
Markham

- (a) two of them shall be appointed from among the members of the Public Utilities Commission of the Town of Markham immediately before the coming into force of this Act; and
- (b) two of them shall be persons who reside outside the area supplied with power by the Public Utilities

Commission of the Town of Markham immediately before the coming into force of this Act.

Additional
members of
first com-
mission,
Newmarket

(12) For the term expiring with the 30th day of November, 1980, the four additional members of the Newmarket Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Newmarket and,

- (a) one of them shall be appointed from among the members of the Hydro-Electric Commission of the Town of Newmarket immediately before the coming into force of this Act; and
- (b) two of them shall be persons who reside outside the area supplied with power by the Hydro-Electric Commission of the Town of Newmarket immediately before the coming into force of this Act.

Additional
members of
first com-
mission,
Richmond
Hill

(13) For the term expiring with the 30th day of November, 1980, the four additional members of the Richmond Hill Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Richmond Hill and,

- (a) two of them shall be appointed from among the members of the Hydro-Electric Commission of the Town of Richmond Hill immediately before the coming into force of this Act;
- (b) one of them shall be appointed from among the members of the Hydro-Electric Commission of the Town of Vaughan immediately before the coming into force of this Act; and
- (c) one of them shall be a person who resides in the area supplied with power by Ontario Hydro immediately before the coming into force of this Act.

Additional
members of
first com-
mission,
Vaughan

(14) For the term expiring with the 30th day of November, 1980, the four additional members of the Vaughan Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Vaughan and,

- (a) two of them shall be appointed from among the members of the Hydro-Electric Commission of the Township of Vaughan immediately before the coming into force of this Act; and
- (b) one of them shall be appointed from among the members of the Hydro-Electric Commission of the

Village of Woodbridge immediately before the coming into force of this Act.

(15) For terms commencing after the 30th day of November, 1980, the additional members of each commission established by subsection 1 shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1980 the council of the area municipality provides by by-law that the additional members shall be appointed by the council.

Additional members of subsequent commissions

(16) Members of the council of the area municipality served by a commission established by subsection 1 appointed or elected as members of the commission shall not form a majority of the commission.

Members of council not to form majority of commission

(17) A member of a commission established by subsection 1 shall hold office for the same term as the members of council or until his successor is elected or appointed.

Term of office

(18) The council of an area municipality served by a commission established by subsection 1 may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Delegates

(19) The salary of the members of the commissions established by subsection 1 for the term expiring with the 30th day of November, 1980, shall be fixed on or before the 1st day of November, 1978 in an amount that does not exceed the highest salary paid to members of the hydro-electric commissions operating in the Regional Area within the meaning of *The Regional Municipality of York Act* on the 1st day of January, 1978.

Salary of first commissions

R.S.O. 1970. c. 408

(20) A resignation from the council of a member of a council who is a member of a commission established by subsection 1 shall be deemed to be a resignation from both the commission and the council.

Resignation

(21) After the 1st day of January, 1980, the council of the area municipality may, by by-law, determine whether a commission established by subsection 1 shall consist of three or five members.

When area municipality to determine size of commission

3.—(1) Notwithstanding subsection 3 of section 4, the council of an area municipality that is not served by a commission established under section 2, with the consent of Ontario Hydro, may establish by by-law a hydro-electric commission for the area municipality.

Establishment of commission by by-law

- Nature of commission
R.S.O. 1970, cc. 390, 354
- (2) The commission established under subsection 1 shall be deemed to be a commission established under Part III of *The Public Utilities Act* and a municipal commission within the meaning of *The Power Corporation Act*.
- Composition
1977, c. 62
- (3) The commission established under subsection 1 shall be known as the "Hydro-Electric Commission" and shall consist of the mayor of the area municipality and two additional members who shall be qualified electors under *The Municipal Elections Act, 1977* in the area municipality.
- Term of office
- (4) The term of office of the members of the commission established under subsection 1 shall be the same as the term of office of the council of the area municipality.
- First additional members
- (5) The first additional members of the commission shall be appointed by the council of the area municipality.
- Subsequent additional members
- (6) For terms after the first term, the additional members of the commission shall be elected by a general vote of the electors of the area municipality unless, before the completion of the first term of office of the members of the commission, the council of the area municipality provides by by-law that the additional members shall be appointed by the council.
- Application of other sections of Act
- (7) Upon the establishment of the commission under subsection 1,
- (a) subsections 16, 17, 18, 20 and 21 of section 2 shall apply, with necessary modifications, to the commission;
 - (b) subsections 1, 2, 4, 5, 6, 9, 10 and 11 of section 4 shall apply, with necessary modifications, to the commission, and, for the purpose,
 - (i) the date mentioned in subsections 1, 2 and 6,
 - (ii) the date mentioned in subsection 9, and
 - (iii) the date mentioned in subsection 11,
 of the said section 4 shall be deemed to be such dates as shall be specified in the by-law mentioned in subsection 1 of this section;
 - (c) sections 5, 6, 7 and 9 shall apply, with necessary modifications, to the commission; and

- (d) the commission, for the purposes of clauses *a*, *b* and *c*, shall be deemed to be a commission established under section 2.

4.—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by *The Public Utilities Act* on a municipal corporation with respect to power, shall, on and after the 1st day of January, 1979, be exercised on behalf of each of the municipalities of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Vaughan, the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King by the commission established by section 2 in respect of the municipality and not by the council of any municipality or any other hydro-electric commission.

Powers
of com-
missions
R.S.O. 1970.
c. 390

(2) Subject to subsections 3 and 5 and to any subsisting contracts for the supply of power to customers within the meaning of subsection 1 of section 37a of *The Ontario Energy Board Act*, on and after the 1st day of January, 1979, each commission established by section 2 has the sole right to distribute and supply power within the area municipality in respect of which it is established, and may contract with Ontario Hydro for the transmission and supply to the commission of power to be distributed and sold within the municipality without electoral assent or other approval or authorization and such a contract shall be deemed to be an agreement within the meaning of clause *s* of subsection 2 of section 293 of *The Municipal Act*.

Idem

R.S.O. 1970.
c. 312

R.S.O. 1970.
c. 284

(3) Notwithstanding subsection 2, but subject to subsections 12 and 14, Ontario Hydro shall continue to distribute and supply power in those areas of the Town of Whitchurch-Stouffville, the Township of East Gwillimbury, the Township of Georgina and the Township of King that it served immediately before the coming into force of this Act, and subsections 5, 10 and 11 do not apply.

Where
Ontario
Hydro to
continue to
distribute
and supply
power

(4) Except where inconsistent with the provisions of this Act, the provisions of *The Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to each of the commissions established by section 2.

Applica-
tion of
R.S.O. 1970.
c. 354

(5) With the consent of a commission established by section 2, Ontario Hydro may distribute and supply power directly to customers within the municipality in respect of which the commission is established.

Direct
customers

Transfer of
assets and
liabilities

(6) On the 1st day of January, 1979, all assets under the control and management of and all liabilities of hydro-electric commissions distributing and selling power in the area municipalities, to the extent that they pertain to the distribution and supply of power in each area municipality, are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the municipality.

Compensa-
tion by
Richmond
Hill Hydro-
Electric
Com-
mission

(7) Notwithstanding subsection 6, the Richmond Hill Hydro-Electric Commission established by section 2 shall pay compensation to the Vaughan Hydro-Electric Commission established by section 2 for the assets pertaining to the retail distribution and supply of power in that portion of the Town of Richmond Hill supplied with power by the Hydro-Electric Commission of the Town of Vaughan immediately before the coming into force of this Act, and the amount of the compensation shall be equal to the original cost of the assets less the sum of,

- (a) the accumulated depreciation associated with the assets;
- (b) the equity in the Hydro-Electric Commission of the Town of Vaughan of the customers supplied with power through the assets; and
- (c) any liabilities associated with the assets that are assumed by the Richmond Hill Hydro-Electric Commission.

Idem,
calculation
of equity

(8) The equity referred to in clause *b* of subsection 7 shall be calculated so that the equity in the Hydro-Electric Commission of the Town of Vaughan of a customer in the Town of Vaughan is not altered by the transfer of the assets referred to in subsection 7.

Transi-
tional

(9) Such management and control of works for the distribution and supply of power within the municipalities of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Vaughan, the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King as are exercised by hydro-electric commissions and Ontario Hydro immediately before this Act comes into force remain entrusted to them to and including the 31st day of December, 1978, but any of the assets, powers and responsibilities of such commissions and Ontario Hydro pertaining to the distribution and supply of power in any of the municipalities may by agreement be transferred before that date to a commission established by section 2 in respect of the municipality.

(10) Subject to subsections 3 and 5 and the regulations, and except as otherwise agreed between Ontario Hydro and the commission, each commission established by section 2 shall acquire, on behalf of the area municipality served by the commission, the assets and liabilities of Ontario Hydro pertaining to the retail distribution and supply of power within the municipality, including equipment leased by Ontario Hydro to retail customers within the municipality for the use of such power, and the commission shall pay to Ontario Hydro an amount equal to the original cost of the assets less the sum of,

Purchase of
retail
distribu-
tion
facilities

- (a) the accumulated net retail equity of the customers supplied with power through the assets; and
- (b) the accumulated depreciation associated with the assets.

(11) If the amount payable under section 7 or 10 has not been determined before the 1st day of July, 1979, the amount shall be determined in accordance with subsections 7 and 8 or subsection 10, as the case requires, and in accordance with the regulations, by a board of arbitration, and the decision of the board of arbitration shall not be subject to appeal and,

Where
amount
to be deter-
mined by
arbitration

- (a) on or before the 1st day of August, 1979, each party to the arbitration shall appoint a person as a member of the board of arbitration and shall give notice to the other party of the name and address of the person;
- (b) the two members of the board of arbitration, within ten days after the giving of the notice of appointment, shall appoint a third person to be chairman of the board of arbitration and the chairman shall give notice of his appointment to the parties;
- (c) if a party fails to appoint a member to a board of arbitration pursuant to clause *a* or if the members do not appoint a chairman pursuant to clause *b*, or in the event of the absence or inability to act or of a vacancy in the office of a member or the chairman of a board of arbitration, either party may apply on notice to the other party to the Divisional Court and the Court may appoint the member or chairman;
- (d) except as otherwise provided in this subsection, *The Arbitrations Act* applies to this subsection; and

R.S.O. 1970,
c. 25

(e) in this subsection, "parties" means,

(i) in the case of subsection 7, the Richmond Hill Hydro-Electric Commission and the Vaughan Hydro-Electric Commission, and

(ii) in the case of subsection 10, Ontario Hydro and, in each case, the commission established by section 2.

Supply of power in all areas of municipalities of Whitchurch-Stouffville, Georgina, King

(12) The council of the Town of Whitchurch-Stouffville, the Township of Georgina or the Township of King, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,

(a) may direct the commission established by section 2 in respect of the municipality to commence on a day specified by the by-law the distribution and supply of power in all areas of the municipality and on the specified day subsections 10 and 11 and section 7 shall apply with necessary modifications; or

(b) may dissolve the commission established by section 2 in respect of the municipality on a day specified by the by-law and on the specified day,

(i) all assets under the control and management of and all liabilities of the commission, and all debentures issued in respect of the distribution and supply of power in the municipality are, without compensation, assets and liabilities of Ontario Hydro, and

(ii) Ontario Hydro shall commence to distribute and supply power in all areas of the municipality.

Review of distribution and supply of power

(13) Until such time as the power conferred by subsection 12 has been exercised,

(a) the councils of the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King shall review the distribution and supply of power within their respective municipalities at least once in every three years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection 12; and

- (b) where the council of the Town of Whitchurch-Stouffville, the Township of Georgina or the Township of King determines as provided in clause a that it is financially feasible for the commission established under section 2 in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by subsection 12.

5.—(1) All real property transferred pursuant to section 4 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission, shall be held by the commission in trust for the area municipality served by the commission.

Vesting
of real
property

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipality served by the commission, the real property may be disposed of as follows:

Disposition
of real
property

1. In the event that the area municipality served by the commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater, and when the area municipality in good faith no longer wishes to use the real property for a municipal purpose the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the commission does not wish to use the real property in accordance with paragraph 1, the commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor pursuant to this subsection shall be received by the commission and shall be applied in accordance with *The Public Utilities Act*.

Borrowing
R.S.O. 1970,
c. 408

6. Except as otherwise provided in this Act, sections 126 to 147 of *The Regional Municipality of York Act*, apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

Interpre-
tation

7.—(1) In this section, “transfer date”, when used in respect of an employee of a hydro-electric commission or Ontario Hydro, means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

Transfer of
employees

(2) On or before the 31st day of December, 1978, each hydro-electric commission shall designate those of its full-time employees who were employed in the distribution and supply of power in an area municipality on the 1st day of January, 1978, and who continued such employment until the 31st day of December, 1978 or until their transfer dates, as the case may be, and each commission established by section 2 shall offer employment to the employees designated in respect of the area municipality served by the commission.

Idem,
Ontario
Hydro

(3) On or before the 31st day of December, 1978, Ontario Hydro shall designate those of its full-time employees who were employed in the distribution and supply of power in the municipalities of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill and the Town of Vaughan on the 1st day of January, 1978 and who continued such employment until the 31st day of December, 1978 or until their transfer dates, as the case may be, and each commission established by section 2 shall offer employment to the employees designated in respect of the area municipality served by the commission.

Wages or
salaries

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date.

Partici-
pation in
O.M.E.R.S.

(5) Each commission established by section 2 shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and *The Ontario Municipal Employees Retirement System Act* applies to such person as a member of the System.

R.S.O. 1970,
c. 324

Supple-
mentary
agreements

(6) When a person who accepts employment under this section with a commission established by section 2 is entitled

to the benefit of a supplementary agreement between a hydro-electric commission and the Ontario Municipal Employees Retirement Board immediately before his transfer date, the commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the hydro-electric commission.

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Transfer of
pension
credits from
Ontario
Hydro plan

(8) Notwithstanding subsection 5, a person who accepts employment under this section with a commission established by section 2 and who,

Pension
guarantee

- (a) was employed by Ontario Hydro immediately before his transfer date; and
- (b) continues in the employment of the commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit he would have been entitled to under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1978, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 5 shall be apportioned and paid as provided by the regulations.

(9) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer.

Group life
insurance

Idem (10) On or before the 31st day of December, 1980, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the employee was entitled immediately before his transfer date.

Sick leave (11) A person who accepts employment under this section shall continue to enjoy as a term of his employment, the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the employee shall receive allowance or credit for any accrued sick leave rights or benefits.

Life insurance provided to pensioners (12) The commissions established by section 2 shall continue the provision of life insurance to pensioners formerly employed in the distribution and supply of power in the area municipalities by public utilities commissions and municipal hydro-electric commissions.

Termination for cause (13) Nothing in this section prevents an employer from terminating the employment of an employee for cause.

Special circumstances (14) Where, under this section, an employee, in the opinion of the Minister, experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.

Dissolution of existing commissions
R.S.O. 1970, c. 408

8. For the purposes of section 169 of *The Regional Municipality of York Act*, the 1st day of January, 1979 is the date determined by the Minister in respect of the Regional Area within the meaning of *The Regional Municipality of York Act*, and on that date the hydro-electric commissions that distribute and supply only power are dissolved and the by-laws establishing them passed pursuant to sections 38 and 40 of *The Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.

R.S.O. 1970, c. 390

Regulations

9. The Lieutenant Governor in Council may make regulations,

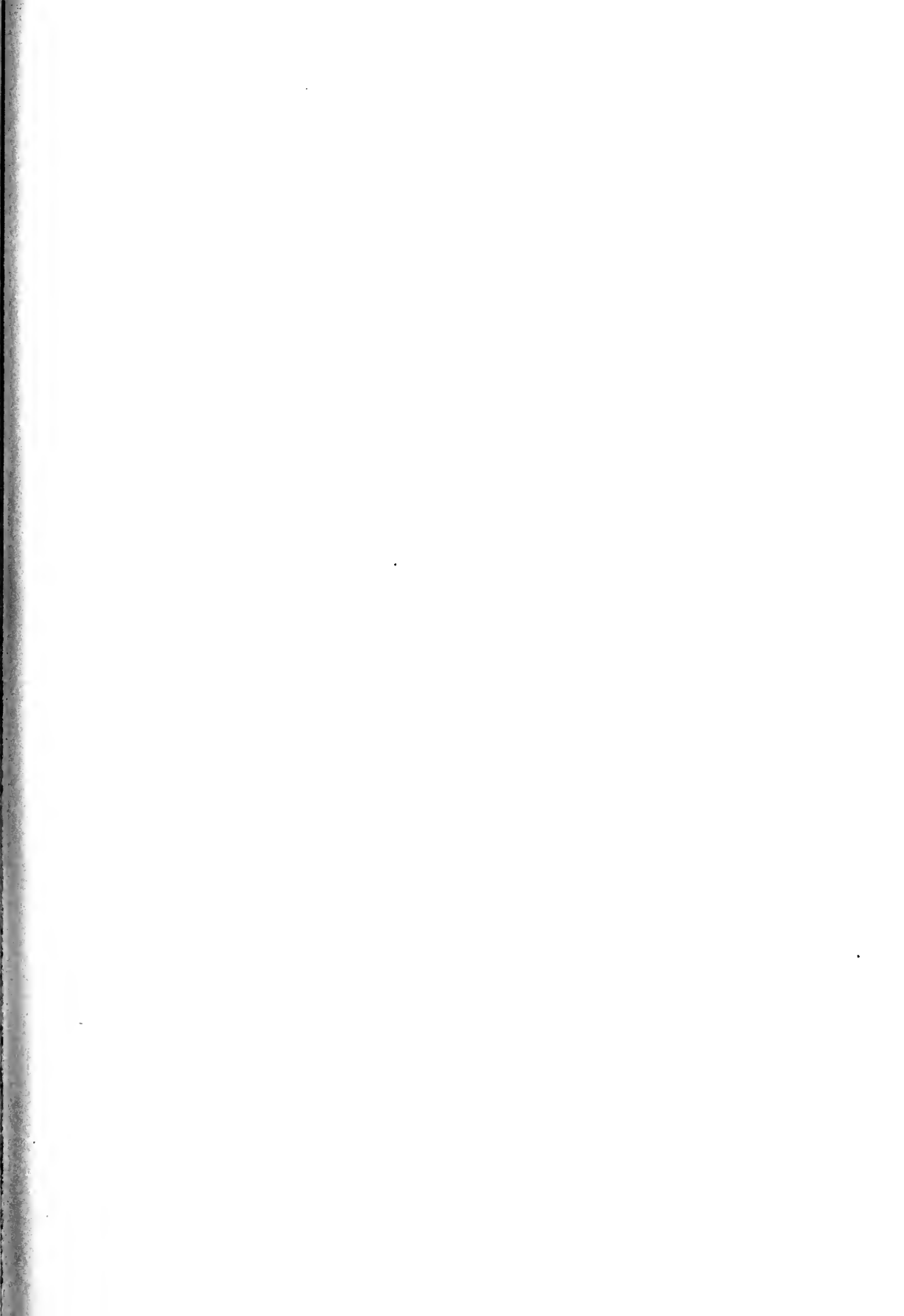
(a) for the purpose of subsection 10 of section 4 in respect of,

- (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
 - (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,
 - (iii) the method of determining the amount of any component of the accumulated net retail equity,
 - (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
 - (v) the method of calculating accumulated depreciation or any component of accumulated depreciation,
 - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
 - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 8 of section 7, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

10. This Act comes into force on the day it receives Royal ^{Commence-} Assent._{ment}

11. The short title of this Act is *The York Municipal* ^{Short title} *Hydro-Electric Service Act, 1978.*





An Act to provide for Municipal
Hydro-Electric Service in
The Regional Municipality of York

1st Reading

April 18th, 1978

2nd Reading

3rd Reading

THE HON. R. BAETZ
Minister of Energy

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to provide for Municipal Hydro-Electric Service in
The Regional Municipality of York**

THE HON. R. BAETZ
Minister of Energy

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTE

The Bill establishes new municipal hydro-electric commissions for the municipalities of Aurora, Georgina, King, Markham, Newmarket, Richmond Hill, Vaughan and Whitchurch-Stouffville and provides for the future establishment of a municipal hydro-electric commission for the Township of East Gwillimbury.

A transitional period is provided before the new commissions become fully operational.

The members of each commission will be the mayor of the area municipality and additional members qualified as municipal electors in the municipality.

The council of each area municipality will determine at a future date whether the members of its commission should be elected or appointed.

Customers within Aurora, Markham, Newmarket, Richmond Hill and Vaughan presently served by Ontario Hydro's rural retail power distribution system will be supplied with power by the new commissions.

Customers within Georgina, King and Whitchurch-Stouffville presently served by Ontario Hydro will continue to be served by Ontario Hydro until the area municipal council directs the commission to expand its service area to the municipal boundaries. All customers in East Gwillimbury will continue to be served by Ontario Hydro until the area council establishes a hydro-electric commission under section 3 of the Bill.

Also, the council of Georgina, King or Whitchurch-Stouffville may dissolve a commission established by or under this Bill and on the dissolution Ontario Hydro will commence to distribute and supply power in all areas of the municipality.

Provision is made for the transfer of employees and the protection of their salaries and benefits.

BILL 66

1978

**An Act to provide for Municipal
Hydro-Electric Service in
The Regional Municipality of York**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "accumulated net retail equity" means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) "area municipality" has the same meaning as in *The Regional Municipality of York Act*; R.S.O. 1970,
c. 408
- (c) "hydro-electric commission" means a hydro-electric commission or public utilities commission entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area within the meaning of *The Regional Municipality of York Act* immediately before the coming into force of this Act and established or deemed to be established under Part III of *The Public Utilities Act*; R.S.O. 1970,
c. 390
- (d) "Minister" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (e) "power" means electrical power and includes electrical energy;
- (f) "regulations" means the regulations made under this Act;

(g) "retail", when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions
established

2.—(1) On the day this Act comes into force, a hydroelectric commission for each of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Vaughan, the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King is hereby established, and each commission shall be deemed to be a commission established under Part III of *The Public Utilities Act* and a municipal commission within the meaning of *The Power Corporation Act*.

R.S.O. 1970,
cc. 390, 354

Composi-
tion, Aurora
Hydro-
Electric
Commission

(2) The commission for the Town of Aurora established by subsection 1 shall be known as the Aurora Hydro-Electric Commission and shall consist of the mayor of the Town of Aurora and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Aurora.

1977, c. 62

Composi-
tion,
Markham
Hydro-
Electric
Commission

(3) The commission established for the Town of Markham by subsection 1 shall be known as the Markham Hydro-Electric Commission and shall consist of the mayor of the Town of Markham and four additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Markham.

Composi-
tion,
Newmarket
Hydro-
Electric
Commission

(4) The commission established for the Town of Newmarket by subsection 1 shall be known as the Newmarket Hydro-Electric Commission and shall consist of the mayor of Newmarket and four additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Newmarket.

Composi-
tion,
Richmond
Hill Hydro-
Electric
Commission

(5) The commission established for the Town of Richmond Hill by subsection 1 shall be known as the Richmond Hill Hydro-Electric Commission and shall consist of the mayor of the Town of Richmond Hill and four additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Richmond Hill.

Composi-
tion,
Vaughan
Hydro-
Electric
Commission

(6) The commission established for the Town of Vaughan by subsection 1 shall be known as the Vaughan Hydro-Electric Commission and shall consist of the mayor of the Town of Vaughan and four additional members who are

qualified electors under *The Municipal Elections Act, 1977* 1977, c. 62 in the Town of Vaughan.

(7) The commission established for the Town of Whitchurch-Stouffville by subsection 1 shall be known as the Whitchurch-Stouffville Hydro-Electric Commission and shall consist of the mayor of the Town of Whitchurch-Stouffville and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Whitchurch-Stouffville.

Composition,
Whitchurch-Stouffville
Hydro-Electric
Commission

(8) The commission established for the Township of Georgina under subsection 1 shall be known as the Georgina Hydro-Electric Commission and shall consist of the mayor of the Township of Georgina and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Township of Georgina.

Composition,
Georgina
Hydro-Electric
Commission

(9) The commission established for the Township of King by subsection 1 shall be known as the King Hydro-Electric Commission and shall consist of the mayor of the Township of King and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Township of King.

Composition, King
Hydro-Electric
Commission

(10) For the term expiring with the 30th day of November, 1980, the two additional members of each of the Aurora Hydro-Electric Commission, the Georgina Hydro-Electric Commission, the King Hydro-Electric Commission, and the Whitchurch-Stouffville Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the area municipality served by each of the commissions, and at least one of the additional members shall be appointed from among the members of the hydro-electric commissions that supplied power within the area municipality immediately before the coming into force of this Act.

Additional
members of
first com-
missions of
Aurora,
Georgina,
King,
Whitchurch-
Stouffville

(11) For the term expiring with the 30th day of November, 1980, the four additional members of the Markham Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Markham and,

Additional
members of
first com-
mission,
Markham

- (a) two of them shall be appointed from among the members of the Public Utilities Commission of the Town of Markham immediately before the coming into force of this Act; and
- (b) two of them shall be persons who reside outside the area supplied with power by the Public Utilities

Commission of the Town of Markham immediately before the coming into force of this Act.

Additional
members of
first com-
mission,
Newmarket

(12) For the term expiring with the 30th day of November, 1980, the four additional members of the Newmarket Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Newmarket and,

- (a) one of them shall be appointed from among the members of the Hydro-Electric Commission of the Town of Newmarket immediately before the coming into force of this Act; and
- (b) two of them shall be persons who reside outside the area supplied with power by the Hydro-Electric Commission of the Town of Newmarket immediately before the coming into force of this Act.

Additional
members of
first com-
mission,
Richmond
Hill

(13) For the term expiring with the 30th day of November, 1980, the four additional members of the Richmond Hill Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Richmond Hill and,

- (a) two of them shall be appointed from among the members of the Hydro-Electric Commission of the Town of Richmond Hill immediately before the coming into force of this Act;
- (b) one of them shall be appointed from among the members of the Hydro-Electric Commission of the Township of Vaughan immediately before the coming into force of this Act; and
- (c) one of them shall be a person who resides in the area supplied with power by Ontario Hydro immediately before the coming into force of this Act.

Additional
members of
first com-
mission,
Vaughan

(14) For the term expiring with the 30th day of November, 1980, the four additional members of the Vaughan Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Vaughan and,

- (a) two of them shall be appointed from among the members of the Hydro-Electric Commission of the Township of Vaughan immediately before the coming into force of this Act; and
- (b) one of them shall be appointed from among the members of the Hydro-Electric Commission of the

Village of Woodbridge immediately before the coming into force of this Act.

(15) For terms commencing after the 30th day of November, 1980, the additional members of each commission established by subsection 1 shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1980 the council of the area municipality provides by by-law that the additional members shall be appointed by the council.

Additional members of subsequent commissions

(16) Members of the council of the area municipality served by a commission established by subsection 1 appointed as members of the commission shall not form a majority of the commission.

Members of council not to form majority of commission

(17) A member of a commission established by subsection 1 shall hold office for the same term as the members of council or until his successor is elected or appointed.

Term of office

(18) The council of an area municipality served by a commission established by subsection 1 may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Delegates

(19) The salary of the members of the commissions established by subsection 1 for the term expiring with the 30th day of November, 1980, shall be fixed on or before the 1st day of November, 1978 in an amount that does not exceed the highest salary paid to members of the hydro-electric commissions operating in the Regional Area within the meaning of *The Regional Municipality of York Act* on the 1st day of January, 1978.

Salary of first commissions

R.S.O. 1970. c. 408

(20) A resignation from the council of a member of a council who is a member of a commission established by subsection 1 shall be deemed to be a resignation from both the commission and the council.

Resignation

(21) After the 1st day of January, 1980, the council of the area municipality may, by by-law, determine whether a commission established by subsection 1 shall consist of three or five members.

When area municipality to determine size of commission

3.—(1) Notwithstanding subsection 3 of section 4, the council of an area municipality that is not served by a commission established under section 2, with the consent of Ontario Hydro, may establish by by-law a hydro-electric commission for the area municipality.

Establishment of commission by by-law

Nature of
commission

R.S.O. 1970,
cc. 390, 354

(2) The commission established under subsection 1 shall be deemed to be a commission established under Part III of *The Public Utilities Act* and a municipal commission within the meaning of *The Power Corporation Act*.

Composi-
tion

1977, c. 62

(3) The commission established under subsection 1 shall be known as the "Hydro-Electric Commission of" and shall consist of the mayor of the area municipality and two additional members who shall be qualified electors under *The Municipal Elections Act, 1977* in the area municipality.

Term of
office

(4) The term of office of the members of the commission established under subsection 1 shall be the same as the term of office of the council of the area municipality.

First
additional
members

(5) The first additional members of the commission shall be appointed by the council of the area municipality.

Subsequent
additional
members

(6) For terms after the first term, the additional members of the commission shall be elected by a general vote of the electors of the area municipality unless, before the completion of the first term of office of the members of the commission, the council of the area municipality provides by by-law that the additional members shall be appointed by the council.

Applica-
tion of other
sections
of Act

(7) Upon the establishment of the commission under subsection 1,

(a) subsections 16, 17, 18, 20 and 21 of section 2 shall apply, with necessary modifications, to the commission;

(b) subsections 1, 2, 4, 5, 6, 9, 10 and 11 of section 4 shall apply, with necessary modifications, to the commission, and, for the purpose,

(i) the date mentioned in subsections 1, 2 and 6,

(ii) the date mentioned in subsection 9, and

(iii) the date mentioned in subsection 11,

of the said section 4 shall be deemed to be such dates as shall be specified in the by-law mentioned in subsection 1 of this section;

(c) sections 5, 6, 7 and 9 shall apply, with necessary modifications, to the commission; and

- (d) the commission, for the purposes of clauses *a*, *b* and *c*, shall be deemed to be a commission established under section 2.

4.—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by *The Public Utilities Act* on a municipal corporation with respect to power, shall, on and after the 1st day of January, 1979, be exercised on behalf of each of the municipalities of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Vaughan, the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King by the commission established by section 2 in respect of the municipality and not by the council of any municipality or any other hydro-electric commission.

Powers
of com-
missions
R.S.O. 1970,
c. 390

(2) Subject to subsections 3 and 5 and to any subsisting contracts for the supply of power to customers within the meaning of subsection 1 of section 37a of *The Ontario Energy Board Act*, on and after the 1st day of January, 1979, each commission established by section 2 has the sole right to distribute and supply power within the area municipality in respect of which it is established, and may contract with Ontario Hydro for the transmission and supply to the commission of power to be distributed and sold within the municipality without electoral assent or other approval or authorization and such a contract shall be deemed to be an agreement within the meaning of clause *s* of subsection 2 of section 293 of *The Municipal Act*.

Idem

R.S.O. 1970,
c. 312

R.S.O. 1970,
c. 284

(3) Notwithstanding subsection 2, but subject to subsections 12 and 13, Ontario Hydro shall continue to distribute and supply power in those areas of the Town of Whitchurch-Stouffville, the Town of East Gwillimbury, the Township of Georgina and the Township of King that it served immediately before the coming into force of this Act, and subsections 5, 10 and 11 do not apply.

Where
Ontario
Hydro to
continue to
distribute
and supply
power

(4) Except where inconsistent with the provisions of this Act, the provisions of *The Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to each of the commissions established by section 2.

Applica-
tion of
R.S.O. 1970,
c. 354

(5) With the consent of a commission established by section 2, Ontario Hydro may distribute and supply power directly to customers within the municipality in respect of which the commission is established.

Direct
customers

Transfer of
assets and
liabilities

(6) On the 1st day of January, 1979, all assets under the control and management of and all liabilities of hydro-electric commissions distributing and selling power in the area municipalities, to the extent that they pertain to the distribution and supply of power in each area municipality, are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the municipality.

Compensa-
tion by
Richmond
Hill Hydro-
Electric
Com-
mission

(7) Notwithstanding subsection 6, the Richmond Hill Hydro-Electric Commission established by section 2 shall pay compensation to the Vaughan Hydro-Electric Commission established by section 2 for the assets pertaining to the retail distribution and supply of power in that portion of the Town of Richmond Hill supplied with power by the Hydro-Electric Commission of the Township of Vaughan immediately before the coming into force of this Act, and the amount of the compensation shall be equal to the original cost of the assets less the sum of,

- (a) the accumulated depreciation associated with the assets;
- (b) the equity in the Hydro-Electric Commission of the Township of Vaughan of the customers supplied with power through the assets; and
- (c) any liabilities associated with the assets that are assumed by the Richmond Hill Hydro-Electric Commission.

Idem,
calculation
of equity

(8) The equity referred to in clause *b* of subsection 7 shall be calculated so that the equity in the Hydro-Electric Commission of the Township of Vaughan of a customer in the Town of Vaughan is not altered by the transfer of the assets referred to in subsection 7.

Transi-
tional

(9) Such management and control of works for the distribution and supply of power within the municipalities of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Vaughan, the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King as are exercised by hydro-electric commissions and Ontario Hydro immediately before this Act comes into force remain entrusted to them to and including the 31st day of December, 1978, but any of the assets, powers and responsibilities of such commissions and Ontario Hydro pertaining to the distribution and supply of power in any of the municipalities may by agreement be transferred before that date to a commission established by section 2 in respect of the municipality.

(10) Subject to subsections 3 and 5 and the regulations, and except as otherwise agreed between Ontario Hydro and the commission, each commission established by section 2 shall acquire, on behalf of the area municipality served by the commission, the assets and liabilities of Ontario Hydro pertaining to the retail distribution and supply of power within the municipality, including equipment leased by Ontario Hydro to retail customers within the municipality for the use of such power, and the commission shall pay to Ontario Hydro an amount equal to the original cost of the assets less the sum of,

Purchase of
retail
distribu-
tion
facilities

- (a) the accumulated net retail equity of the customers supplied with power through the assets; and
- (b) the accumulated depreciation associated with the assets.

(11) If the amount payable under subsection 7 or 10 has not been determined before the 1st day of July, 1979, the amount shall be determined in accordance with subsections 7 and 8 or subsection 10, as the case requires, and in accordance with the regulations, by a board of arbitration, and,

Where
amount
to be deter-
mined by
arbitration

- (a) on or before the 1st day of August, 1979, each party to the arbitration shall appoint a person as a member of the board of arbitration and shall give notice to the other party of the name and address of the person;
- (b) the two members of the board of arbitration, within ten days after the giving of the notice of appointment, shall appoint a third person to be chairman of the board of arbitration and the chairman shall give notice of his appointment to the parties;
- (c) if a party fails to appoint a member to a board of arbitration pursuant to clause *a* or if the members do not appoint a chairman pursuant to clause *b*, or in the event of the absence or inability to act or of a vacancy in the office of a member or the chairman of a board of arbitration, either party may apply on notice to the other party to the Divisional Court and the Court may appoint the member or chairman;
- (d) except as otherwise provided in this subsection, *The Arbitrations Act* applies to this subsection; and
- (e) in this subsection, "parties" means,

R.S.O. 1970.
c. 25

- (i) in the case of subsection 7, the Richmond Hill Hydro-Electric Commission and the Vaughan Hydro-Electric Commission, and
- (ii) in the case of subsection 10, Ontario Hydro and, in each case, the commission established by section 2.

Supply of power in all areas of municipalities of Whitchurch-Stouffville, Georgina, King

(12) The council of the Town of Whitchurch-Stouffville, the Township of Georgina or the Township of King, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,

- (a) may direct the commission established by section 2 in respect of the municipality to commence on a day specified by the by-law the distribution and supply of power in all areas of the municipality and on the specified day subsections 10 and 11 and section 7 shall apply with necessary modifications; or
- (b) may dissolve the commission established by section 2 in respect of the municipality on a day specified by the by-law and on the specified day,
 - (i) all assets under the control and management of and all liabilities of the commission, and all debentures issued in respect of the distribution and supply of power in the municipality are, without compensation, assets and liabilities of Ontario Hydro, and
 - (ii) Ontario Hydro shall commence to distribute and supply power in all areas of the municipality.

Review of distribution and supply of power

(13) Until such time as the power conferred by subsection 12 has been exercised,

- (a) the councils of the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King shall review the distribution and supply of power within their respective municipalities at least once in every three years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection 12; and
- (b) where the council of the Town of Whitchurch-Stouffville, the Township of Georgina or the Township of King determines as provided in clause *a*

that it is financially feasible for the commission established under section 2 in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by subsection 12.

(14) For the purpose of the calculations mentioned in subsections 7, 8 and 10, "original cost" and "equity" do not include capital contributions by customers or developers.

Interpretation:
original cost, equity

5.—(1) All real property transferred pursuant to section 4 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission, shall be held by the commission in trust for the area municipality served by the commission.

Vesting of real property

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipality served by the commission, the real property may be disposed of as follows:

Disposition of real property

1. In the event that the area municipality served by the commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater, and when the area municipality in good faith no longer wishes to use the real property for a municipal purpose the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the commission does not wish to use the real property in accordance with paragraph 1, the commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor pursuant to this subsection shall be received by the commission and shall be applied in accordance with *The Public Utilities Act*.

Borrowing
R.S.O. 1970,
c. 408

6. Except as otherwise provided in this Act, sections 126 to 147 of *The Regional Municipality of York Act*, apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

Interpre-
tation

7.—(1) In this section, “transfer date”, when used in respect of an employee of a hydro-electric commission or Ontario Hydro, means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

Transfer of
employees

(2) On or before the 31st day of December, 1978, each hydro-electric commission shall designate those of its full-time employees who were employed in the distribution and supply of power in an area municipality on the 1st day of January, 1978, and who continued such employment until the 31st day of December, 1978 or until their transfer dates, as the case may be, and each commission established by section 2 shall offer employment to the employees designated in respect of the area municipality served by the commission.

Idem,
Ontario
Hydro

(3) On or before the 31st day of December, 1978, Ontario Hydro shall designate those of its full-time employees who were employed in the distribution and supply of power in the municipalities of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill and the Town of Vaughan on the 1st day of January, 1978 and who continued such employment until the 31st day of December, 1978 or until their transfer dates, as the case may be, and each commission established by section 2 shall offer employment to the employees designated in respect of the area municipality served by the commission.

Wages or
salaries

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date.

Partici-
pation in
O.M.E.R.S.

(5) Each commission established by section 2 shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and *The Ontario Municipal Employees Retirement System Act* applies to such person as a member of the System.

R.S.O. 1970,
c. 324

Supple-
mentary
agreements

(6) When a person who accepts employment under this section with a commission established by section 2 is entitled

to the benefit of a supplementary agreement between a hydro-electric commission and the Ontario Municipal Employees Retirement Board immediately before his transfer date, the commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the hydro-electric commission.

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Transfer of
pension
credits from
Ontario
Hydro plan

(8) Notwithstanding subsection 5, a person who accepts employment under this section with a commission established by section 2 and who,

Pension
guarantee

- (a) was employed by Ontario Hydro immediately before his transfer date; and
- (b) continues in the employment of the commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit he would have been entitled to under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1978, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 5 shall be apportioned and paid as provided by the regulations.

(9) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer.

Group life
insurance

Idem (10) On or before the 31st day of December, 1980, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the employee was entitled immediately before his transfer date.

Sick leave (11) A person who accepts employment under this section shall continue to enjoy as a term of his employment, the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the employee shall receive allowance or credit for any accrued sick leave rights or benefits.

Life insurance provided to pensioners (12) The commissions established by section 2 shall continue the provision of life insurance to pensioners formerly employed in the distribution and supply of power in the area municipalities by public utilities commissions and municipal hydro-electric commissions.

Termination for cause (13) Nothing in this section prevents an employer from terminating the employment of an employee for cause.

Special circumstances (14) Where, under this section, an employee, in the opinion of the Minister, experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.

Dissolution of existing commissions
R.S.O. 1970,
c. 408

8. For the purposes of section 169 of *The Regional Municipality of York Act*, the 1st day of January, 1979 is the date determined by the Minister in respect of the Regional Area within the meaning of *The Regional Municipality of York Act*, and on that date the hydro-electric commissions that distribute and supply only power are dissolved and the by-laws establishing them passed pursuant to sections 38 and 40 of *The Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.

R.S.O. 1970,
c. 390

Regulations

9. The Lieutenant Governor in Council may make regulations,

(a) for the purpose of subsection 10 of section 4 in respect of,

- (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
 - (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,
 - (iii) the method of determining the amount of any component of the accumulated net retail equity,
 - (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
 - (v) the method of calculating accumulated depreciation or any component of accumulated depreciation,
 - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
 - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 8 of section 7, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

10. This Act comes into force on the day it receives Royal ^{Commence-} Assent._{ment}

11. The short title of this Act is *The York Municipal* ^{Short title} *Hydro-Electric Service Act, 1978.*



An Act to provide for Municipal
Hydro-Electric Service in
The Regional Municipality of York

1st Reading

April 18th, 1978

2nd Reading

May 23rd, 1978

3rd Reading

THE HON. R. BAETZ
Minister of Energy

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 66

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to provide for Municipal Hydro-Electric Service in
The Regional Municipality of York**

THE HON. R. BAETZ
Minister of Energy



BILL 66

1978

**An Act to provide for Municipal
Hydro-Electric Service in
The Regional Municipality of York**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "accumulated net retail equity" means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) "area municipality" has the same meaning as in *The Regional Municipality of York Act*; R.S.O. 1970,
c. 408
- (c) "hydro-electric commission" means a hydro-electric commission or public utilities commission entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area within the meaning of *The Regional Municipality of York Act* immediately before the coming into force of this Act and established or deemed to be established under Part III of *The Public Utilities Act*; R.S.O. 1970,
c. 390
- (d) "Minister" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (e) "power" means electrical power and includes electrical energy;
- (f) "regulations" means the regulations made under this Act;

(g) "retail", when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions
established

2.—(1) On the day this Act comes into force, a hydro-electric commission for each of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Vaughan, the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King is hereby established, and each commission shall be deemed to be a commission established under Part III of *The Public Utilities Act* and a municipal commission within the meaning of *The Power Corporation Act*.

R.S.O. 1970,
cc. 390, 354

Composition,
Aurora
Hydro-
Electric
Commission

(2) The commission for the Town of Aurora established by subsection 1 shall be known as the Aurora Hydro-Electric Commission and shall consist of the mayor of the Town of Aurora and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Aurora.

1977, c. 62

Composition,
Markham
Hydro-
Electric
Commission

(3) The commission established for the Town of Markham by subsection 1 shall be known as the Markham Hydro-Electric Commission and shall consist of the mayor of the Town of Markham and four additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Markham.

Composition,
Newmarket
Hydro-
Electric
Commission

(4) The commission established for the Town of Newmarket by subsection 1 shall be known as the Newmarket Hydro-Electric Commission and shall consist of the mayor of Newmarket and four additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Newmarket.

Composition,
Richmond
Hill Hydro-
Electric
Commission

(5) The commission established for the Town of Richmond Hill by subsection 1 shall be known as the Richmond Hill Hydro-Electric Commission and shall consist of the mayor of the Town of Richmond Hill and four additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Richmond Hill.

Composition,
Vaughan
Hydro-
Electric
Commission

(6) The commission established for the Town of Vaughan by subsection 1 shall be known as the Vaughan Hydro-Electric Commission and shall consist of the mayor of the Town of Vaughan and four additional members who are

qualified electors under *The Municipal Elections Act, 1977* 1977, c. 62 in the Town of Vaughan.

(7) The commission established for the Town of Whitchurch-Stouffville by subsection 1 shall be known as the Whitchurch-Stouffville Hydro-Electric Commission and shall consist of the mayor of the Town of Whitchurch-Stouffville and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Town of Whitchurch-Stouffville.

Composition, Whitchurch-Stouffville Hydro-Electric Commission

(8) The commission established for the Township of Georgina under subsection 1 shall be known as the Georgina Hydro-Electric Commission and shall consist of the mayor of the Township of Georgina and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Township of Georgina.

Composition, Georgina Hydro-Electric Commission

(9) The commission established for the Township of King by subsection 1 shall be known as the King Hydro-Electric Commission and shall consist of the mayor of the Township of King and two additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Township of King.

Composition, King Hydro-Electric Commission

(10) For the term expiring with the 30th day of November, 1980, the two additional members of each of the Aurora Hydro-Electric Commission, the Georgina Hydro-Electric Commission, the King Hydro-Electric Commission, and the Whitchurch-Stouffville Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the area municipality served by each of the commissions, and at least one of the additional members shall be appointed from among the members of the hydro-electric commissions that supplied power within the area municipality immediately before the coming into force of this Act.

Additional members of first commissions of Aurora, Georgina, King, Whitchurch-Stouffville

(11) For the term expiring with the 30th day of November, 1980, the four additional members of the Markham Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Markham and,

Additional members of first commission, Markham

- (a) two of them shall be appointed from among the members of the Public Utilities Commission of the Town of Markham immediately before the coming into force of this Act; and
- (b) two of them shall be persons who reside outside the area supplied with power by the Public Utilities

Commission of the Town of Markham immediately before the coming into force of this Act.

Additional
members of
first com-
mission,
Newmarket

(12) For the term expiring with the 30th day of November, 1980, the four additional members of the Newmarket Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Newmarket and,

- (a) one of them shall be appointed from among the members of the Hydro-Electric Commission of the Town of Newmarket immediately before the coming into force of this Act; and
- (b) two of them shall be persons who reside outside the area supplied with power by the Hydro-Electric Commission of the Town of Newmarket immediately before the coming into force of this Act.

Additional
members of
first com-
mission,
Richmond
Hill

(13) For the term expiring with the 30th day of November, 1980, the four additional members of the Richmond Hill Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Richmond Hill and,

- (a) two of them shall be appointed from among the members of the Hydro-Electric Commission of the Town of Richmond Hill immediately before the coming into force of this Act;
- (b) one of them shall be appointed from among the members of the Hydro-Electric Commission of the Township of Vaughan immediately before the coming into force of this Act; and
- (c) one of them shall be a person who resides in the area supplied with power by Ontario Hydro immediately before the coming into force of this Act.

Additional
members of
first com-
mission,
Vaughan

(14) For the term expiring with the 30th day of November, 1980, the four additional members of the Vaughan Hydro-Electric Commission established by subsection 1 shall be appointed by the council of the Town of Vaughan and,

- (a) two of them shall be appointed from among the members of the Hydro-Electric Commission of the Township of Vaughan immediately before the coming into force of this Act; and
- (b) one of them shall be appointed from among the members of the Hydro-Electric Commission of the

Village of Woodbridge immediately before the coming into force of this Act.

(15) For terms commencing after the 30th day of November, 1980, the additional members of each commission established by subsection 1 shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1980 the council of the area municipality provides by by-law that the additional members shall be appointed by the council.

Additional members of subsequent commissions

(16) Members of the council of the area municipality served by a commission established by subsection 1 appointed as members of the commission shall not form a majority of the commission.

Members of council not to form majority of commission

(17) A member of a commission established by subsection 1 shall hold office for the same term as the members of council or until his successor is elected or appointed.

Term of office

(18) The council of an area municipality served by a commission established by subsection 1 may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Delegates

(19) The salary of the members of the commissions established by subsection 1 for the term expiring with the 30th day of November, 1980, shall be fixed on or before the 1st day of November, 1978 in an amount that does not exceed the highest salary paid to members of the hydro-electric commissions operating in the Regional Area within the meaning of *The Regional Municipality of York Act* on the 1st day of January, 1978.

Salary of first commissions

R.S.O. 1970, c. 408

(20) A resignation from the council of a member of a council who is a member of a commission established by subsection 1 shall be deemed to be a resignation from both the commission and the council.

Resignation

(21) After the 1st day of January, 1980, the council of the area municipality may, by by-law, determine whether a commission established by subsection 1 shall consist of three or five members.

When area municipality to determine size of commission

3.—(1) Notwithstanding subsection 3 of section 4, the council of an area municipality that is not served by a commission established under section 2, with the consent of Ontario Hydro, may establish by by-law a hydro-electric commission for the area municipality.

Establishment of commission by by-law

- Nature of commission
R.S.O. 1970, cc. 390, 354
- (2) The commission established under subsection 1 shall be deemed to be a commission established under Part III of *The Public Utilities Act* and a municipal commission within the meaning of *The Power Corporation Act*.
- Composition
1977, c. 62
- (3) The commission established under subsection 1 shall be known as the "Hydro-Electric Commission of" and shall consist of the mayor of the area municipality and two additional members who shall be qualified electors under *The Municipal Elections Act, 1977* in the area municipality.
- Term of office
- (4) The term of office of the members of the commission established under subsection 1 shall be the same as the term of office of the council of the area municipality.
- First additional members
- (5) The first additional members of the commission shall be appointed by the council of the area municipality.
- Subsequent additional members
- (6) For terms after the first term, the additional members of the commission shall be elected by a general vote of the electors of the area municipality unless, before the completion of the first term of office of the members of the commission, the council of the area municipality provides by by-law that the additional members shall be appointed by the council.
- Application of other sections of Act
- (7) Upon the establishment of the commission under subsection 1,
- (a) subsections 16, 17, 18, 20 and 21 of section 2 shall apply, with necessary modifications, to the commission;
 - (b) subsections 1, 2, 4, 5, 6, 9, 10 and 11 of section 4 shall apply, with necessary modifications, to the commission, and, for the purpose,
 - (i) the date mentioned in subsections 1, 2 and 6,
 - (ii) the date mentioned in subsection 9, and
 - (iii) the date mentioned in subsection 11,
 of the said section 4 shall be deemed to be such dates as shall be specified in the by-law mentioned in subsection 1 of this section;
 - (c) sections 5, 6, 7 and 9 shall apply, with necessary modifications, to the commission; and

- (d) the commission, for the purposes of clauses *a*, *b* and *c*, shall be deemed to be a commission established under section 2.

4.—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by *The Public Utilities Act* on a municipal corporation with respect to power, shall, on and after the 1st day of January, 1979, be exercised on behalf of each of the municipalities of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Vaughan, the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King by the commission established by section 2 in respect of the municipality and not by the council of any municipality or any other hydro-electric commission.

Powers
of com-
missions
R.S.O. 1970,
c. 390

(2) Subject to subsections 3 and 5 and to any subsisting contracts for the supply of power to customers within the meaning of subsection 1 of section 37*a* of *The Ontario Energy Board Act*, on and after the 1st day of January, 1979, each commission established by section 2 has the sole right to distribute and supply power within the area municipality in respect of which it is established, and may contract with Ontario Hydro for the transmission and supply to the commission of power to be distributed and sold within the municipality without electoral assent or other approval or authorization and such a contract shall be deemed to be an agreement within the meaning of clause *s* of subsection 2 of section 293 of *The Municipal Act*.

Idem

R.S.O. 1970,
c. 312

R.S.O. 1970,
c. 284

(3) Notwithstanding subsection 2, but subject to subsections 12 and 13, Ontario Hydro shall continue to distribute and supply power in those areas of the Town of Whitchurch-Stouffville, the Town of East Gwillimbury, the Township of Georgina and the Township of King that it served immediately before the coming into force of this Act, and subsections 5, 10 and 11 do not apply.

Where
Ontario
Hydro to
continue to
distribute
and supply
power

(4) Except where inconsistent with the provisions of this Act, the provisions of *The Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to each of the commissions established by section 2.

Applica-
tion of
R.S.O. 1970,
c. 354

(5) With the consent of a commission established by section 2, Ontario Hydro may distribute and supply power directly to customers within the municipality in respect of which the commission is established.

Direct
customers

Transfer of
assets and
liabilities

(6) On the 1st day of January, 1979, all assets under the control and management of and all liabilities of hydro-electric commissions distributing and selling power in the area municipalities, to the extent that they pertain to the distribution and supply of power in each area municipality, are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the municipality.

Compensa-
tion by
Richmond
Hill Hydro-
Electric
Com-
mission

(7) Notwithstanding subsection 6, the Richmond Hill Hydro-Electric Commission established by section 2 shall pay compensation to the Vaughan Hydro-Electric Commission established by section 2 for the assets pertaining to the retail distribution and supply of power in that portion of the Town of Richmond Hill supplied with power by the Hydro-Electric Commission of the Township of Vaughan immediately before the coming into force of this Act, and the amount of the compensation shall be equal to the original cost of the assets less the sum of,

- (a) the accumulated depreciation associated with the assets;
- (b) the equity in the Hydro-Electric Commission of the Township of Vaughan of the customers supplied with power through the assets; and
- (c) any liabilities associated with the assets that are assumed by the Richmond Hill Hydro-Electric Commission.

Idem,
calculation
of equity

(8) The equity referred to in clause *b* of subsection 7 shall be calculated so that the equity in the Hydro-Electric Commission of the Township of Vaughan of a customer in the Town of Vaughan is not altered by the transfer of the assets referred to in subsection 7.

Transi-
tional

(9) Such management and control of works for the distribution and supply of power within the municipalities of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Vaughan, the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King as are exercised by hydro-electric commissions and Ontario Hydro immediately before this Act comes into force remain entrusted to them to and including the 31st day of December, 1978, but any of the assets, powers and responsibilities of such commissions and Ontario Hydro pertaining to the distribution and supply of power in any of the municipalities may by agreement be transferred before that date to a commission established by section 2 in respect of the municipality.

(10) Subject to subsections 3 and 5 and the regulations, and except as otherwise agreed between Ontario Hydro and the commission, each commission established by section 2 shall acquire, on behalf of the area municipality served by the commission, the assets and liabilities of Ontario Hydro pertaining to the retail distribution and supply of power within the municipality, including equipment leased by Ontario Hydro to retail customers within the municipality for the use of such power, and the commission shall pay to Ontario Hydro an amount equal to the original cost of the assets less the sum of,

Purchase of
retail
distribu-
tion
facilities

- (a) the accumulated net retail equity of the customers supplied with power through the assets; and
- (b) the accumulated depreciation associated with the assets.

(11) If the amount payable under subsection 7 or 10 has not been determined before the 1st day of July, 1979, the amount shall be determined in accordance with subsections 7 and 8 or subsection 10, as the case requires, and in accordance with the regulations, by a board of arbitration, and,

Where
amount
to be deter-
mined by
arbitration

- (a) on or before the 1st day of August, 1979, each party to the arbitration shall appoint a person as a member of the board of arbitration and shall give notice to the other party of the name and address of the person;
- (b) the two members of the board of arbitration, within ten days after the giving of the notice of appointment, shall appoint a third person to be chairman of the board of arbitration and the chairman shall give notice of his appointment to the parties;
- (c) if a party fails to appoint a member to a board of arbitration pursuant to clause *a* or if the members do not appoint a chairman pursuant to clause *b*, or in the event of the absence or inability to act or of a vacancy in the office of a member or the chairman of a board of arbitration, either party may apply on notice to the other party to the Divisional Court and the Court may appoint the member or chairman;
- (d) except as otherwise provided in this subsection, *The Arbitrations Act* applies to this subsection; and
- (e) in this subsection, "parties" means,

R.S.O. 1970.
c. 25

- (i) in the case of subsection 7, the Richmond Hill Hydro-Electric Commission and the Vaughan Hydro-Electric Commission, and
- (ii) in the case of subsection 10, Ontario Hydro and, in each case, the commission established by section 2.

Supply of power in all areas of municipalities of Whitchurch-Stouffville, Georgina, King

(12) The council of the Town of Whitchurch-Stouffville, the Township of Georgina or the Township of King, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,

- (a) may direct the commission established by section 2 in respect of the municipality to commence on a day specified by the by-law the distribution and supply of power in all areas of the municipality and on the specified day subsections 10 and 11 and section 7 shall apply with necessary modifications; or
- (b) may dissolve the commission established by section 2 in respect of the municipality on a day specified by the by-law and on the specified day,
 - (i) all assets under the control and management of and all liabilities of the commission, and all debentures issued in respect of the distribution and supply of power in the municipality are, without compensation, assets and liabilities of Ontario Hydro, and
 - (ii) Ontario Hydro shall commence to distribute and supply power in all areas of the municipality.

Review of distribution and supply of power

(13) Until such time as the power conferred by subsection 12 has been exercised,

- (a) the councils of the Town of Whitchurch-Stouffville, the Township of Georgina and the Township of King shall review the distribution and supply of power within their respective municipalities at least once in every three years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection 12; and
- (b) where the council of the Town of Whitchurch-Stouffville, the Township of Georgina or the Township of King determines as provided in clause a

that it is financially feasible for the commission established under section 2 in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by subsection 12.

(14) For the purpose of the calculations mentioned in subsections 7, 8 and 10, "original cost" and "equity" do not include capital contributions by customers or developers.

Interpretation:
original cost, equity

5.—(1) All real property transferred pursuant to section 4 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission, shall be held by the commission in trust for the area municipality served by the commission.

Vesting of real property

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipality served by the commission, the real property may be disposed of as follows:

Disposition of real property

1. In the event that the area municipality served by the commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater, and when the area municipality in good faith no longer wishes to use the real property for a municipal purpose the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the commission does not wish to use the real property in accordance with paragraph 1, the commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor pursuant to this subsection shall be received by the commission and shall be applied in accordance with *The Public Utilities Act*.

Borrowing
R.S.O. 1970,
c. 408

6. Except as otherwise provided in this Act, sections 126 to 147 of *The Regional Municipality of York Act*, apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

Interpre-
tation

7.—(1) In this section, “transfer date”, when used in respect of an employee of a hydro-electric commission or Ontario Hydro, means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

Transfer of
employees

(2) On or before the 31st day of December, 1978, each hydro-electric commission shall designate those of its full-time employees who were employed in the distribution and supply of power in an area municipality on the 1st day of January, 1978, and who continued such employment until the 31st day of December, 1978 or until their transfer dates, as the case may be, and each commission established by section 2 shall offer employment to the employees designated in respect of the area municipality served by the commission.

Idem,
Ontario
Hydro

(3) On or before the 31st day of December, 1978, Ontario Hydro shall designate those of its full-time employees who were employed in the distribution and supply of power in the municipalities of the Town of Aurora, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill and the Town of Vaughan on the 1st day of January, 1978 and who continued such employment until the 31st day of December, 1978 or until their transfer dates, as the case may be, and each commission established by section 2 shall offer employment to the employees designated in respect of the area municipality served by the commission.

Wages or
salaries

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date.

Partici-
pation in
O.M.E.R.S.

(5) Each commission established by section 2 shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and *The Ontario Municipal Employees Retirement System Act* applies to such person as a member of the System.

R.S.O. 1970,
c. 324

Supple-
mentary
agreements

(6) When a person who accepts employment under this section with a commission established by section 2 is entitled

to the benefit of a supplementary agreement between a hydro-electric commission and the Ontario Municipal Employees Retirement Board immediately before his transfer date, the commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the hydro-electric commission.

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Transfer of
pension
credits from
Ontario
Hydro plan

(8) Notwithstanding subsection 5, a person who accepts employment under this section with a commission established by section 2 and who,

Pension
guarantee

- (a) was employed by Ontario Hydro immediately before his transfer date; and
- (b) continues in the employment of the commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit he would have been entitled to under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1978, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 5 shall be apportioned and paid as provided by the regulations.

(9) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer.

Group life
insurance

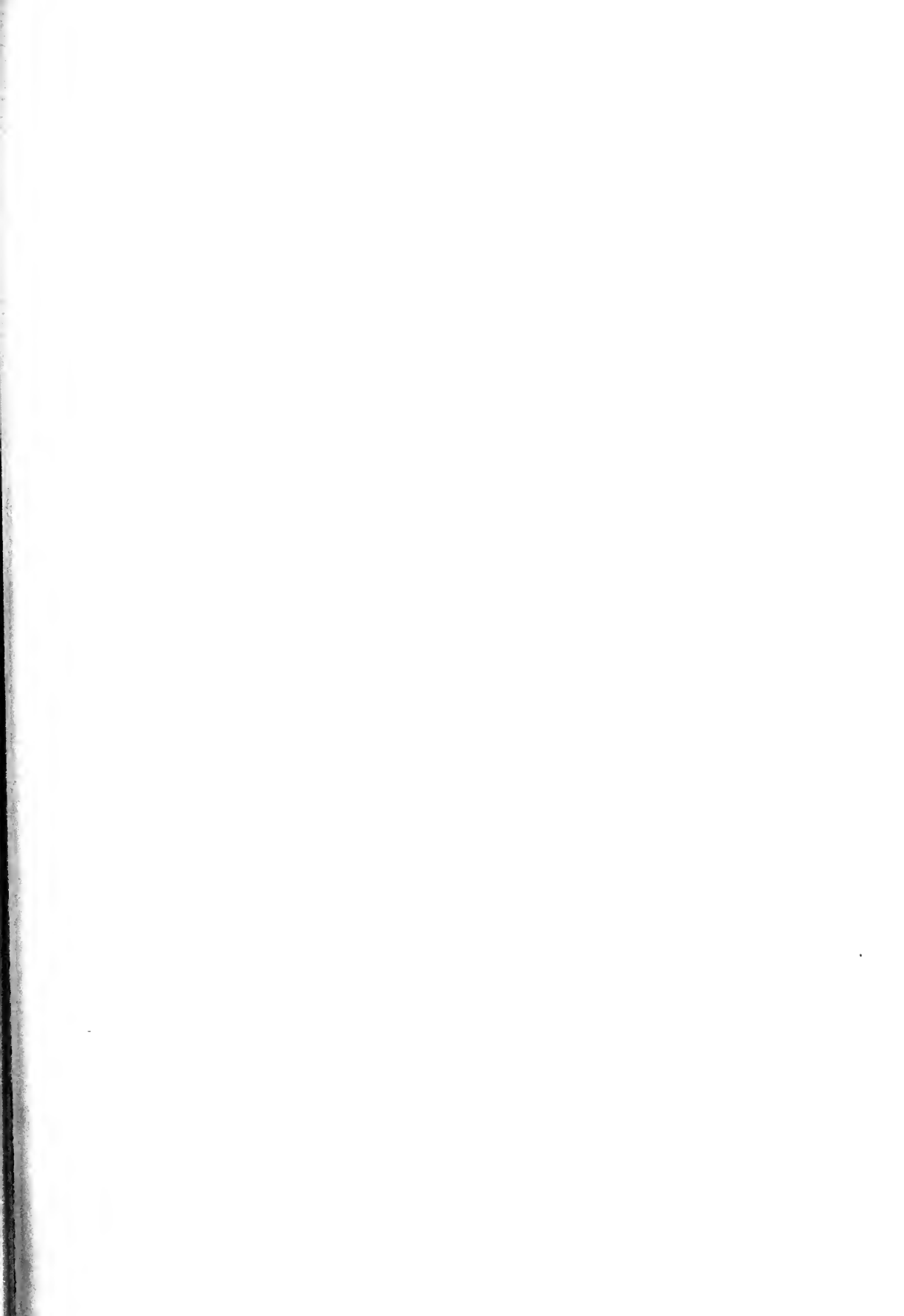
- Idem** (10) On or before the 31st day of December, 1980, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the employee was entitled immediately before his transfer date.
- Sick leave** (11) A person who accepts employment under this section shall continue to enjoy as a term of his employment, the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the employee shall receive allowance or credit for any accrued sick leave rights or benefits.
- Life insurance provided to pensioners** (12) The commissions established by section 2 shall continue the provision of life insurance to pensioners formerly employed in the distribution and supply of power in the area municipalities by public utilities commissions and municipal hydro-electric commissions.
- Termination for cause** (13) Nothing in this section prevents an employer from terminating the employment of an employee for cause.
- Special circumstances** (14) Where, under this section, an employee, in the opinion of the Minister, experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.
- Dissolution of existing commissions**
R.S.O. 1970, c. 408
8. For the purposes of section 169 of *The Regional Municipality of York Act*, the 1st day of January, 1979 is the date determined by the Minister in respect of the Regional Area within the meaning of *The Regional Municipality of York Act*, and on that date the hydro-electric commissions that distribute and supply only power are dissolved and the by-laws establishing them passed pursuant to sections 38 and 40 of *The Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.
- R.S.O. 1970, c. 390**
- Regulations** **9.** The Lieutenant Governor in Council may make regulations,
(a) for the purpose of subsection 10 of section 4 in respect of,

- (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
 - (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,
 - (iii) the method of determining the amount of any component of the accumulated net retail equity,
 - (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
 - (v) the method of calculating accumulated depreciation or any component of accumulated depreciation,
 - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
 - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 8 of section 7, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

10. This Act comes into force on the day it receives Royal ^{Commence-} Assent.
ment

11. The short title of this Act is *The York Municipal* ^{Short title}
Hydro-Electric Service Act, 1978.





An Act to provide for Municipal
Hydro-Electric Service in
The Regional Municipality of York

1st Reading

April 18th, 1978

2nd Reading

May 23rd, 1978

3rd Reading

June 13th, 1978

THE HON. R. BAETZ
Minister of Energy

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to regulate the Manufacture, Sale and
Servicing of Portable Fire Extinguishers**

MR. STONG

EXPLANATORY NOTE

The purpose of the Bill is to protect the public from the fire hazard created by inadequately manufactured and serviced fire extinguishers. The Bill requires that any business or person engaged in the business of manufacturing, selling or servicing fire extinguishers must first obtain a licence. The Lieutenant Governor in Council has authority to make regulations establishing safety standards governing the manufacturing and servicing of fire extinguishers. The Director of Fire Extinguisher Safety may require persons who apply for a licence to service fire extinguishers to complete examinations to ensure their competency prior to being issued a licence. The Director has authority to refuse an application or to revoke a licence, but the Bill establishes a right to a hearing before the Fire Marshal of Ontario and a further appeal to a court in order to provide recourse to applicants and licensees who wish to reverse the Director's decision.

BILL 67

1978

**An Act to regulate the Manufacture,
Sale and Servicing of Portable
Fire Extinguishers**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Director" means the Director of Fire Extinguisher Safety;
- (b) "fire extinguisher" means a portable device designed and intended to be used for the purpose of extinguishing fires;
- (c) "Marshal" means the Fire Marshal of Ontario.

2.—(1) There shall be a Director of Fire Extinguisher Safety who shall be appointed by the Lieutenant Governor in Council.

Director

(2) The Director may exercise the powers and shall discharge the duties conferred and imposed upon him by this Act and the regulations.

Powers and
duties

3. No person shall,

Licences

- (a) engage in the business of manufacturing, selling or servicing fire extinguishers; or
- (b) undertake to service a fire extinguisher,

unless such person is the holder of a licence therefor.

4.—(1) Every applicant for a licence to engage in the business of manufacturing, selling or servicing fire extinguishers or for a licence to service fire extinguishers shall apply to the Director in the prescribed form.

Applica-
tion for
licence

Employer to ensure employees licensed

(2) No person engaged in the business of servicing fire extinguishers shall employ a person to service fire extinguishers who is not the holder of a licence.

Address for service

5. Every applicant for a licence shall state in the application an address for service in Ontario, and all notices under this Act or the regulations are sufficiently given or served for all purposes if sent by registered mail or delivered to the latest address for service so stated.

Notice of changes in business, etc.

6. Every person licensed to engage in the business of manufacturing, selling or servicing fire extinguishers shall within fourteen days notify the Director of,

- (a) any change in the address for service or in the address of any place at which the person carries on business;
- (b) any change in the officers or members in the case of an association of individuals, partnership or corporation; and
- (c) any termination of employment of a person licensed to service fire extinguishers.

Inquiry re applicant

7.—(1) The Director or any person authorized by him may make such inquiry as he considers sufficient regarding the competence of an applicant or licensee and may require an applicant to try such examinations to determine competence as the Director considers necessary.

Further information

(2) The Director may require further information or material to be submitted by an applicant or a licensee and may require verification by affidavit or otherwise of any information or material then or previously submitted.

Issuance of licence

8. The Director shall issue a licence or renewal of a licence where in the opinion of the Director the proposed licensing is not against the public interest, and the licence may be subject to terms and conditions.

Transfers

9. A licence is not transferable.

Expiry of licence

10. Every licence and renewal of licence expires on the day three years after the day of issuance.

Cancellation of licence on termination of employment

11.—(1) The licence of a person licensed to service fire extinguishers is cancelled upon the termination of the employment in respect of which it was issued.

(2) When a person licensed to service fire extinguishers ^{idem} ceases to be employed as such, he shall give the licence to his employer who shall forward it to the Director.

(3) Every person who is licensed to engage in the business ^{Surrender of licence} of manufacturing, selling or servicing fire extinguishers shall immediately upon the termination of such business forward to the Director his licence together with the licences, if any, of his employees.

12.—(1) Where the Director proposes to refuse to grant or renew a licence or proposes to suspend or revoke a licence, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or licensee. ^{Notice of proposal to refuse or revoke}

(2) A notice under subsection 1 shall inform the applicant or licensee that he is entitled to a hearing by the Marshal if he mails or delivers, within fifteen days after the notice under subsection 1 is served on him, notice in writing requiring a hearing to the Director and the Marshal, and he may so require such a hearing. ^{Notice requiring hearing}

(3) Where an applicant or licensee does not require a hearing by the Marshal in accordance with subsection 2, the Director may carry out the proposal stated in the notice under subsection 1. ^{Powers of Director where no hearing}

(4) Where an applicant or licensee requires a hearing by the Marshal in accordance with subsection 2, the Marshal shall appoint a time for and hold the hearing and, on the application of the Director at the hearing, may order the Director to carry out his proposal or refrain from carrying out his proposal and to take such action as the Marshal considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Marshal may substitute his opinion for that of the Director. ^{Powers of Marshal where hearing}

(5) The Marshal may attach such terms and conditions ^{Conditions of order} to his order or to the licence as he considers proper to give effect to the purposes of the Act.

(6) The Director, the applicant or licensee who has ^{Parties} required the hearing and such other persons as the Marshal may specify are parties to proceedings before the Marshal under this section.

13.—(1) An applicant or licensee who is a party to proceedings under section 12 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced, or any report the content of which will be given in evidence at the hearing. ^{Examination of documentary evidence}

- Recording of evidence (2) The oral evidence taken before the Marshal shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.
- Findings of fact (3) The findings of fact of the Marshal pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.
- 1971, c. 47
- Release of documentary evidence (4) Documents and things put in evidence at a hearing before the Marshal shall, upon the request of the person who produced them, be released to him by the Marshal within a reasonable time after the matter in issue has been finally determined.
- Reasons (5) The Marshal shall give his decision and reasons therefor in writing to the parties to the proceedings.
- Order effective, stay (6) Notwithstanding that a licensee appeals from an order of the Marshal, the order takes effect immediately, but the Marshal may grant a stay until disposition of the appeal.
- Appeal from decision of Marshal **14.**—(1) Any party to proceedings before the Marshal may appeal from his decision or order to the Supreme Court in accordance with the rules of court.
- Record to be filed in court (2) Where any party appeals from a decision of the Marshal, the Marshal shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of the evidence if it is not part of the Marshal's record, shall constitute the record in the appeal.
- Minister entitled to be heard (3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.
- Powers of court on appeal (4) An appeal under this section may be made on questions of law or fact or both and the court may exercise all the powers of the Marshal, and for such purpose the court may substitute its opinion for that of the Director or of the Marshal, or the court may refer the matter back to the Marshal for rehearing, in whole or in part, in accordance with such directions as the court considers proper.
- Voluntary cancellation **15.** Notwithstanding section 12, the Director may cancel a licence upon the request in writing of the licensee in the prescribed form surrendering his licence.

16. Where, within the time prescribed therefor, or, if no time is prescribed, before expiry of his licence, a licensee has applied for renewal of the licence, the licence shall be deemed to continue, Continuation of licence pending renewal

(a) until the renewal is granted; or

(b) where he is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the Marshal has made his order.

17. A further application for a licence may be made upon new or other evidence or where it is clear that material circumstances have changed. Further application

18.—(1) Where the Director receives a complaint in respect of the carrying on of the business of manufacturing, selling or servicing fire extinguishers and so requests in writing, the person carrying on the business shall furnish the Marshal with such information respecting the matter complained of as the Marshal may require. Complaints

(2) The request under subsection 1 shall indicate the nature of the inquiry involved. Idem

19. The Director or any person designated by him in writing may at any reasonable time enter upon any premises in respect of which a licence is issued to make an inspection for the purpose of ensuring that the provisions of this Act and the regulations and the terms and conditions of the licence are being complied with, and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection. Inspections

20. The Minister may, by order, appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of his investigation to the Minister and, for the purposes of the investigation, the person making it has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such investigation as if it were an inquiry under that Act. Investigations by order of Minister 1971, c. 49

21.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or investigation, shall preserve secrecy in respect of all matters that come to his knowledge in the course of Matters confidential

his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

Testimony
in civil suit

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

Restraining
orders

22.—(1) Where it appears to the Marshal that any person does not comply with a provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of a penalty in respect of such non-compliance and in addition to any other rights he may have, the Marshal may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Court of Appeal from an order made under subsection 1.

Offences

23.—(1) Every person who knowingly,

- (a) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with any order, direction or other requirement made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000.

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. Corporations

(3) No proceedings under this section shall be instituted except with the consent of the Minister. Consent of the Minister

24. A statement as to, Certificate as evidence

- (a) the licensing or non-licensing of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Marshal;
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Marshal;
- (d) any other matter pertaining to such licensing, non-licensing, filing or non-filing or to any such person, document or material,

purporting to be certified by the Marshal is, without proof of the office or signature of the Marshal, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

25. The Lieutenant Governor in Council may make Regulations regulations,

- (a) prescribing methods, standards and procedures in respect of the manufacture and servicing of fire extinguishers;
- (b) providing for the issuance of licences and for renewals thereof;
- (c) exempting any class of person or fire extinguisher or type of service from this Act or the regulations or any provision thereof;
- (d) requiring licensees, or any class thereof, to be bonded on such terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;
- (e) requiring licensees, or any class thereof, to make returns and furnish information to the Director;
- (f) governing contracts for the sale, purchase or servicing of fire extinguishers;

(g) prescribing forms and providing for their use.

Commence-
ment

26. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

27. The short title of this Act is *The Portable Fire Extinguishers Safety Act, 1978*.

An Act to regulate the
Manufacture, Sale and Servicing of
Portable Fire Extinguishers

1st Reading

April 20th, 1978

2nd Reading

3rd Reading

MR. STONG

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Corporations Tax Act, 1972

THE HON. L. MAECK
Minister of Revenue

EXPLANATORY NOTES

SECTIONS 1, 3, 4, 5. These sections are complementary to section 2 of the Bill.

SECTION 2. Section 33 of the Act, showing underlined the percentage to be changed by the amendment, is set out below:

33. The tax payable by a corporation under this Part upon its taxable income or taxable income earned in Canada, as the case may be, in this section referred to as the "amount taxable", is 12 per cent of the amount taxable.

The effect of the amendment to section 33 is to increase the rate of tax payable by a corporation from 12 per cent of the "amount taxable" to 13 per cent.

At present, a special deduction is available for small business which effectively reduces the regular tax rate by three percentage points, from 12 per cent to 9 per cent. In consequence of the increase in the regular tax rate from 12 per cent to 13 per cent the effective rate for small business will increase from 9 per cent to 10 per cent.

BILL 68

1978

**An Act to amend
The Corporations Tax Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 6 of section 14 of *The Corporations Tax Act, 1972*, ^{s. 14 (6),} being chapter 143, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "5/12ths" in the tenth line and inserting in lieu thereof "5/13ths". _{amended}
2. Section 33 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "12 per cent" in the fourth line and inserting in lieu thereof "13 per cent". ^{s. 33,} _{amended}
3. Section 34 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "12 per cent" in the third line and inserting in lieu thereof "13 per cent". ^{s. 34,} _{amended}
4. Clause *e* of subsection 1 of section 35 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "12 per cent" in the first line and inserting in lieu thereof "13 per cent". ^{s. 35 (1) (e),} _{amended}
- 5.—(1) Subsection 2 of section 41 of the said Act, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "6%" in the fourth line and inserting in lieu thereof "6½%". ^{s. 41 (2),} _{amended}
- (2) Subsection 4 of the said section 41 is amended by striking out "16 2/3 times" in the fifth line and inserting in lieu thereof "15 5/13 times". ^{s. 41 (4),} _{amended}
- (3) Subsection 5 of the said section 41 is amended by striking out "12 per cent" in the fifth line and inserting in lieu thereof "13 per cent". ^{s. 41 (5),} _{amended}

Commence-
ment

6. This Act shall be deemed to have come into force on the 8th day of March, 1978 and to apply to corporations in respect of all taxation years ending after the 7th day of March, 1978, except that with respect to the taxation year ending after the 7th day of March, 1978, and that includes that day, the following rules apply:

- (a) determine the amount of tax payable under Part II of the said Act as that Part stood on the 7th day of March, 1978 on the assumption that that Part as it so stood was applicable to that taxation year;
- (b) determine the proportion of the amount determined under clause *a* that the number of days of that taxation year prior to the 8th day of March, 1978 bears to the total number of days of that taxation year;
- (c) determine the amount of tax payable under Part II of the said Act, as amended by this Act, on the assumption that that Part as so amended was applicable for that taxation year;
- (d) determine the proportion of the amount determined under clause *c* that the number of days of that taxation year that follow the 7th day of March, 1978 bears to the total number of days of that taxation year;
- (e) determine the aggregate of the amounts determined under clauses *b* and *d* in respect of the corporation,

and the aggregate determined under clause *e* is the amount payable by the corporation under Part II of the said Act, as amended by this Act, for its taxation year that ends after the 7th day of March, 1978, and that includes that day.

Short title

7. The short title of this Act is *The Corporations Tax Amendment Act, 1978*.

SECTION 6. The increase in the rate of tax from 12 to 13 per cent is made to take effect on the 8th day of March, 1978, and the section contains the usual pro-rating provisions in respect of any corporation whose taxation year ends after, but includes within it, the 7th day of March, 1978.





An Act to amend
The Corporations Tax Act, 1972

1st Reading

April 25th, 1978

2nd Reading

3rd Reading

THE HON. L. MAECK
Minister of Revenue

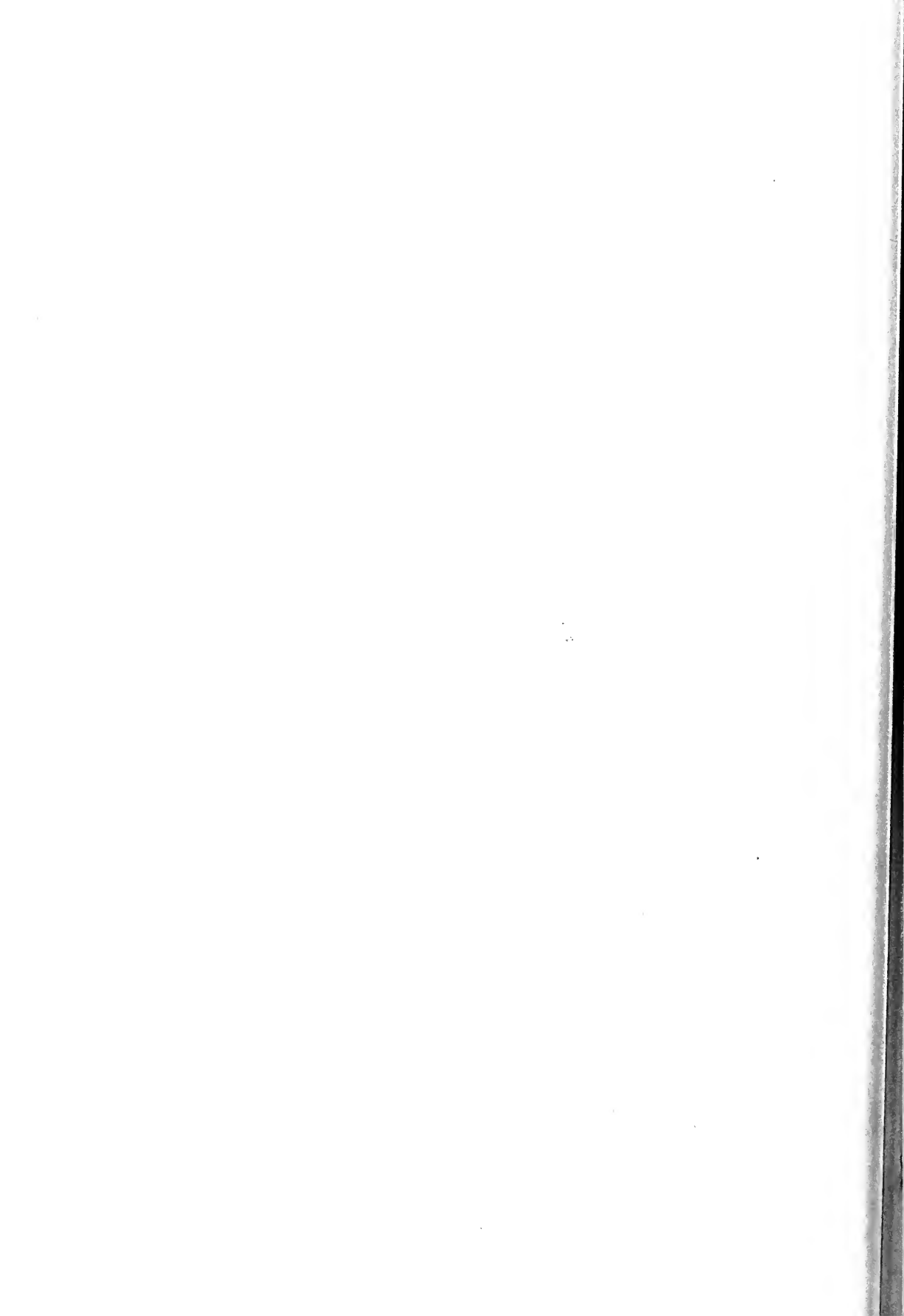
(Government Bill)

BILL 68

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Corporations Tax Act, 1972

THE HON. L. MAECK
Minister of Revenue



BILL 68

1978

**An Act to amend
The Corporations Tax Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 6 of section 14 of *The Corporations Tax Act, 1972*, ^{s. 14 (6),} ^{amended} being chapter 143, as re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "5/12ths" in the tenth line and inserting in lieu thereof "5/13ths".
2. Section 33 of the said Act, as re-enacted by the Statutes of ^{s. 33,} ^{amended} Ontario, 1977, chapter 58, section 8, is amended by striking out "12 per cent" in the fourth line and inserting in lieu thereof "13 per cent".
3. Section 34 of the said Act, as re-enacted by the Statutes of ^{s. 34,} ^{amended} Ontario, 1977, chapter 58, section 8, is amended by striking out "12 per cent" in the third line and inserting in lieu thereof "13 per cent".
4. Clause *e* of subsection 1 of section 35 of the said Act, as ^{s. 35 (1) (e),} ^{amended} re-enacted by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "12 per cent" in the first line and inserting in lieu thereof "13 per cent".
- 5.—(1) Subsection 2 of section 41 of the said Act, as re-enacted ^{s. 41 (2),} ^{amended} by the Statutes of Ontario, 1977, chapter 58, section 8, is amended by striking out "6%" in the fourth line and inserting in lieu thereof "6½%".
 - (2) Subsection 4 of the said section 41 is amended by striking ^{s. 41 (4),} ^{amended} out "16 2/3 times" in the fifth line and inserting in lieu thereof "15 5/13 times".
 - (3) Subsection 5 of the said section 41 is amended by striking ^{s. 41 (5),} ^{amended} out "12 per cent" in the fifth line and inserting in lieu thereof "13 per cent".

Commence-
ment

6. This Act shall be deemed to have come into force on the 8th day of March, 1978 and to apply to corporations in respect of all taxation years ending after the 7th day of March, 1978, except that with respect to the taxation year ending after the 7th day of March, 1978, and that includes that day, the following rules apply:

- (a) determine the amount of tax payable under Part II of the said Act as that Part stood on the 7th day of March, 1978 on the assumption that that Part as it so stood was applicable to that taxation year;
- (b) determine the proportion of the amount determined under clause *a* that the number of days of that taxation year prior to the 8th day of March, 1978 bears to the total number of days of that taxation year;
- (c) determine the amount of tax payable under Part II of the said Act, as amended by this Act, on the assumption that that Part as so amended was applicable for that taxation year;
- (d) determine the proportion of the amount determined under clause *c* that the number of days of that taxation year that follow the 7th day of March, 1978 bears to the total number of days of that taxation year;
- (e) determine the aggregate of the amounts determined under clauses *b* and *d* in respect of the corporation,

and the aggregate determined under clause *e* is the amount payable by the corporation under Part II of the said Act, as amended by this Act, for its taxation year that ends after the 7th day of March, 1978, and that includes that day.

Short title

7. The short title of this Act is *The Corporations Tax Amendment Act, 1978*.







An Act to amend
The Corporations Tax Act, 1972

1st Reading

April 25th, 1978

2nd Reading

May 2nd, 1978

3rd Reading

May 2nd, 1978

THE HON. L. MAECK
Minister of Revenue

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Racing Commission Act**

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

EXPLANATORY NOTE

The Bill gives the Commission specific authority to adopt by reference any rules of racing associations or bodies and to delegate to racing associations and bodies the power to enforce any rules adopted by way of hearings and imposition of penalties. As complementary to the power to hold hearings, a power to summon witnesses is given.

Section 15 (1) of the Act presently provides for a similar delegation of powers by the Commission to officials specified in that subsection.

The Act presently provides for an appeal to the Commission from a decision of a person to whom a delegation was made under section 15 (1) of the Act. Section 15 (2) of the Act is being expanded to provide a similar right of appeal to the Commission from a decision of an association to which a delegation is made under the new section 15 (1a). A further new provision makes clear that a grievor must exhaust available appeals before applying to the Commission. Also, there is a new provision to the effect that where the Commission, after hearing an appeal, considers that the appeal to it was frivolously made, it may impose a penalty of up to \$300.

Under the Act, the quorum for the Commission is a majority of members with full membership, being seven. A new provision provides that for purposes of appeal hearings the quorum is three.

A further new provision empowers the Commission to review, on its own motion, any decision made by an association to which the power to make that decision has been delegated by the Commission.

**An Act to amend
The Racing Commission Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Section 15 of *The Racing Commission Act*, being chapter 398 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1973, chapter 116, section 3, is amended by adding thereto the following subsections:

s. 15.
amended

(1a) The Commission may adopt by reference, in whole or in part, with such changes as the Commission considers necessary, rules and procedures of racing associations or bodies and may delegate to racing associations or bodies the power to,

Adoption by
reference and
delegation
of powers

- (a) enforce the carrying out and observance of the rules and procedures as adopted or amended;
- (b) hold hearings in respect of the contravention of any of the said rules or procedures; and
- (c) impose and collect fines, costs and other penalties for the contravention of any of the said rules or procedures,

and where a power has been so delegated to a racing association or body, it shall have the right to exercise discretion or judgment in relation to the powers delegated.

(1b) Every person, association or body to whom a power to hold hearings has been delegated under subsection 1 or 1a, may summon any person by subpoena and require any person so summoned to give evidence on oath and to produce such documents and things as may be required for purposes of a hearing.

Power to
summon

Quorum for
hearings

(4) For the purposes of a hearing under subsection 2, three members of the Commission, one of whom shall be the chairman or vice-chairman, constitute a quorum.

Commission
may review
decision

(5) The Commission may, on its own motion, review any decision made by a racing association or body pursuant to a power delegated under subsection 1a and may, after affording the parties an opportunity to be heard, confirm the decision reviewed or substitute its own decision in lieu thereof.

s. 15 (2),
re-enacted

(2) Subsection 2 of the said section 15 is repealed and the following substituted therefor:

Aggrieved
person
entitled to
a hearing

(2) Subject to subsection 2b, any person who considers himself aggrieved by a decision of a person delegated by the Commission under a rule made under subsection 1 or by a decision resulting from a hearing held pursuant to a delegation under subsection 1a, is entitled to a hearing by the Commission and, in the case of a hearing, the Commission may exercise its powers and duties under section 11 as if such powers and duties had not been delegated.

Penalty

(2a) Where the Commission, after holding a hearing, is of the opinion that the request for the hearing was frivolously made, the Commission may order the person requesting the hearing to pay to the Commission a penalty of no more than \$300 in addition to any other penalty that may be imposed.

Appeals
prior to
hearing by
Commission

(2b) Where the rules of the Commission, promulgated or adopted, provide for an appeal to an association or body, any person who considers himself aggrieved shall appeal in accordance with the rules before applying to the Commission for a hearing under subsection 2.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Racing Commission Amendment Act, 1978*.







An Act to amend
The Racing Commission Act

1st Reading

April 25th, 1978

2nd Reading

3rd Reading

THE HON. L. GROSSMAN
Minister of Consumer and Commercial
Relations

(Government Bill)

BILL 69

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Racing Commission Act**

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations



BILL 69

1978

**An Act to amend
The Racing Commission Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Section 15 of *The Racing Commission Act*, being chapter 398 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1973, chapter 116, section 3, is amended by adding thereto the following subsections:

s. 15,
amended

(1a) The Commission may adopt by reference, in whole or in part, with such changes as the Commission considers necessary, rules and procedures of racing associations or bodies and may delegate to racing associations or bodies the power to,

Adoption by
reference and
delegation
of powers

- (a) enforce the carrying out and observance of the rules and procedures as adopted or amended;
- (b) hold hearings in respect of the contravention of any of the said rules or procedures; and
- (c) impose and collect fines, costs and other penalties for the contravention of any of the said rules or procedures,

and where a power has been so delegated to a racing association or body, it shall have the right to exercise discretion or judgment in relation to the powers delegated.

(1b) Every person, association or body to whom a power to hold hearings has been delegated under subsection 1 or 1a, may summon any person by subpoena and require any person so summoned to give evidence on oath and to produce such documents and things as may be required for purposes of a hearing.

Power to
summon

Quorum for
hearings

(4) For the purposes of a hearing under subsection 2, three members of the Commission, one of whom shall be the chairman or vice-chairman, constitute a quorum.

Commission
may review
decision

(5) The Commission may, on its own motion, review any decision made by a racing association or body pursuant to a power delegated under subsection 1a and may, after affording the parties an opportunity to be heard, confirm the decision reviewed or substitute its own decision in lieu thereof.

s. 15 (2),
re-enacted

(2) Subsection 2 of the said section 15 is repealed and the following substituted therefor:

Aggrieved
person
entitled to
a hearing

(2) Subject to subsection 2b, any person who considers himself aggrieved by a decision of a person delegated by the Commission under a rule made under subsection 1 or by a decision resulting from a hearing held pursuant to a delegation under subsection 1a, is entitled to a hearing by the Commission and, in the case of a hearing, the Commission may exercise its powers and duties under section 11 as if such powers and duties had not been delegated.

Penalty

(2a) Where the Commission, after holding a hearing, is of the opinion that the request for the hearing was frivolously made, the Commission may order the person requesting the hearing to pay to the Commission a penalty of no more than \$300 in addition to any other penalty that may be imposed.

Appeals
prior to
hearing by
Commission

(2b) Where the rules of the Commission, promulgated or adopted, provide for an appeal to an association or body, any person who considers himself aggrieved shall appeal in accordance with the rules before applying to the Commission for a hearing under subsection 2.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Racing Commission Amendment Act, 1978*.







An Act to amend
The Racing Commission Act

1st Reading

April 25th, 1978

2nd Reading

May 11th, 1978

3rd Reading

May 11th, 1978

THE HON. L. GROSSMAN
Minister of Consumer and Commercial
Relations

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting the
Occupational Health and Occupational Safety of Workers**

THE HON. B. STEPHENSON
Minister of Labour



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EXPLANATORY NOTE

The purpose of the Bill is to revise and consolidate into one Act, the Acts dealing with the health and safety of workers at work.

These Acts are:

The Mining Act, R.S.O. 1970, c. 274, Part IX

The Silicosis Act, R.S.O. 1970, c. 438

The Industrial Safety Act, 1971, c. 43

The Construction Safety Act, 1973, c. 47

The Employees' Health and Safety Act, 1976, c. 79

The Bill provides that the application of the Act may be extended to work places not presently dealt with by regulation.

The Bill provides for the establishment of an Advisory Council on Occupational Health and Occupational Safety to make recommendations to and advise the Minister on matters relating to occupational health and safety.

The Bill further provides for the regulation of the use of and exposure to substances which may endanger health in a work place, the monitoring of the levels of such substances in a work place and requiring medical examinations of workers.

BILL 70

1978

**An Act respecting the
Occupational Health and Occupational
Safety of Workers**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

1. "committee" means a joint health and safety committee established under this Act; 1976, c. 79, s. 1 (a), *amended*.
2. "competent person" means a person who is selected by his employer as being qualified because of his,
 - i. knowledge, training and experience to organize the work and its performance,
 - ii. familiarity with the provisions of this Act and the regulations that apply to the work, and
 - iii. knowledge of any potential or actual danger to health or safety in the work place; *New*.
3. "construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any machinery or plant, and any work or undertaking in connection with a project; 1973, c. 47, s. 1 (d), *amended*.
4. "constructor" means a person or owner who undertakes a project; 1973, c. 47, s. 1 (e), *amended*.
5. "Deputy Minister" means the Deputy Minister of Labour; 1973, c. 47, s. 1 (f).

6. "designated substance" means a biological, chemical or physical agent or combination thereof prescribed as a designated substance to which the exposure of a worker is prohibited, regulated, restricted, limited or controlled;
7. "Director" means an inspector who is appointed under this Act as a Director of the Occupational Health and Safety Division of the Ministry; 1971, c. 43, s. 1 (*da*); 1972, c. 122, s. 1, *amended*.
8. "employer" means a person who employs one or more workers and includes, in relation to a part of a project, a contractor or subcontractor who performs work on the part of the project and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work on the part of the project; 1971, c. 43, s. 1 (*e*); 1973, c. 47, s. 1 (*h*), *amended*.
9. "factory" means,
 - i. a building or place other than a mine, mining plant or place where homework is carried on, where,
 - A. any manufacturing process or assembling in connection with the manufacturing of any goods or products is carried on,
 - B. in preparing, inspecting, manufacturing, finishing, repairing, warehousing, cleaning or adapting for hire or sale any substance, article or thing, energy is,
 1. used to work any machinery or device, or
 2. modified in any manner,
 - C. any work is performed by way of trade or for the purposes of gain in or incidental to the making of any goods, substance, article or thing or part thereof,
 - D. any work is performed by way of trade or for the purposes of gain in or in-

cidental to the altering, demolishing, repairing, maintaining, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance, article or thing, or

E. aircraft, locomotives or vehicles used for private or public transport are maintained,

ii. a laundry including a laundry operated in conjunction with,

A. a public or private hospital,

B. a hotel, or

C. a public or private institution for religious, charitable or educational purposes, and

iii. a logging operation; 1971, c. 43, s. 1 (*h*), *amended*.

10. "health and safety representative" means a health and safety representative selected under this Act; 1976, c. 79, s. 1 (*d*), *amended*.
11. "homework" means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof by a person for wages in premises occupied primarily as living accommodation; 1971, c. 43, s. 1 (*i*).
12. "industrial establishment" means an office building, factory, shop or office, and any land, buildings and structures appertaining thereto; 1971, c. 43, s. 1 (*j*); 1974, c. 104, s. 1 (*i*), *amended*.
13. "inspector" means an inspector appointed for the purposes of this Act and includes a Director; 1971, c. 43, s. 1 (*k*); 1973, c. 47, s. 1 (*i*), *amended*.
14. "logging" means the operation of felling or trimming trees for commercial or industrial purposes and includes the measuring, storing, transporting or floating of logs and any such activities for the clearing of land; 1971, c. 43, s. 1 (*kb*); 1974, c. 104, s. 1 (2), *amended*.

15. "mine" means any work or undertaking for the purpose of opening up, proving, removing or extracting any metallic or non-metallic mineral or mineral-bearing substance, rock, earth, clay, sand or gravel; R.S.O. 1970, c. 274, s. 169 (1) (d), *amended*.
16. "mining plant" means any roasting or smelting furnace, concentrator, mill or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substance mentioned in paragraph 15; R.S.O. 1970, c. 274, s. 169 (1) (g), *amended*.
17. "Minister" means the Minister of Labour; 1971, c. 43, s. 1 (l); 1973, c. 47, s. 1 (j).
18. "Ministry" means the Ministry of Labour; *New*.
19. "owner" includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a work place, and a person who acts for or on behalf of an owner as his agent or delegate; R.S.O. 1970, c. 274, s. 1, par. 18; 1971, c. 43, s. 1 (n); 1973, c. 47, s. 1 (l), *amended*.
20. "prescribed" means prescribed by a regulation made under this Act; *New*.
21. "project" means the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, highway, railway, street, runway, parking lot, cofferdam, conduit, sewer, watermain, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof, public or private, including mine development or any work or undertaking, or any lands or appurtenances used in connection with construction; 1973, c. 47, s. 1 (n), *amended*.
22. "regulations" means the regulations made under this Act; 1971, c. 43, s. 1 (r); 1973, c. 47, s. 1 (o), *amended*.
23. "shop" means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale; 1971, c. 43, s. 1 (s), *amended*.
24. "supervisor" means a foreman, superintendent or manager who has charge of a work place or authority over a worker; *New*.

25. "trade union" means a trade union as defined in *The Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a work place; 1976, c. 79, s. 1 (g), *amended*. R.S.O. 1970, c. 232
26. "work place" includes any site, location, space, water, vehicle, aircraft, equipment, land, building, shop, structure whether movable or not, mine, mining plant, industrial establishment, project site, premises and area, public or private, or any part thereof, at, upon, in or near which a worker performs work; *New*.
27. "worker" includes a person who is in or on a work place for any purpose in connection therewith. 1973, c. 47, s. 1 (t), *amended*.

PART I

APPLICATION

2.—(1) This Act binds the Crown and applies to an employee in the service of the Crown or an agency, board, commission or corporation that exercises any function assigned or delegated to it by the Crown. 1971, c. 43, s. 3; 1973, c. 47, s. 2 (1), *amended*. Application to Crown

(2) Notwithstanding anything in any general or special Act, the provisions of this Act and the regulations prevail. 1976, c. 79, s. 11. Application of other Acts

3.—(1) This Act applies to, Application to work places

(a) a project;

(b) a mine;

(c) a mining plant;

(d) an industrial establishment; and

(e) a work place designated generally or specifically by regulation.

(2) This Act does not apply to, Where Act does not apply

(a) a project being done in person by the owner or occupants of a private residence in relation to such residence; and

- (b) a work place that is exempted generally or specifically by regulation. 1971, c. 43, s. 2; 1973, c. 47, ss. 2 (1), 3, *amended*.

PART II

ADMINISTRATION

Delegation
of powers

4. Where under this Act or the regulations any power or duty is granted to or vested in the Minister or the Deputy Minister, the Minister or Deputy Minister may in writing delegate that power or duty from time to time to any officer or officers of the Ministry subject to such limitations, restrictions, conditions and requirements as the Minister or Deputy Minister may set out in the delegation. *New*.

Appoint-
ment of
inspectors
and
Directors

5.—(1) Such persons as may be necessary to administer and enforce this Act and the regulations may be appointed as inspectors by the Deputy Minister and the Deputy Minister may designate one or more of the inspectors as a Director or Directors. 1971, c. 43, s. 6 (1, 2); 1973, c. 47, s. 4 (1, 2), *amended*.

Director
may act as
inspector

(2) A Director may exercise any of the powers or perform any of the duties of an inspector under this Act or the regulations. *New*.

Certificate
of appoint-
ment

6.—(1) The Deputy Minister shall issue a certificate of appointment, bearing his signature or a facsimile thereof, to every inspector.

Production
of
certificate

(2) Every inspector, in the exercise of any of his powers or duties under this Act, shall produce his certificate of appointment upon request. 1971, c. 43, s. 7; 1973, c. 47, s. 5, *amended*.

Order
establi-
shing joint
health and
safety
committee

7.—(1) The Minister may, by order in writing, require an employer, a constructor or a group of employers to establish a joint health and safety committee or committees for a work place, or any part or parts thereof, and, in the order, may provide for the qualifications and the term of office of its members and its practice and procedures, and, from time to time, may give such directions as the Minister considers advisable concerning the carrying out of its functions.

What
Minister
shall
consider

(2) In exercising the power conferred by subsection 1, the Minister shall consider,

- (a) the nature of the work being done;
- (b) the number of workers engaged in the work;

- (c) the request of a constructor, an employer, a group of the workers or the trade union or trade unions representing the workers in a work place;
- (d) the frequency of illness or injury in the work place or in the industry of which the constructor or employer is a part;
- (e) the existence of health and safety programs and procedures in the work place and the effectiveness thereof; and
- (f) such other matters as the Minister considers advisable.

(3) A committee shall consist of such number of persons as the Minister may prescribe, of whom half shall be workers who do not exercise managerial functions, to be selected by the workers they are to represent or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions. Composi-
tion of
committee

- (4) It is the function of a committee and it has power to, Powers of
committee
- (a) identify situations that may be a source of danger or hazard to workers;
 - (b) make recommendations to the constructor, employer or group of employers, as the case may be, and the workers for the improvement of the health and safety of workers;
 - (c) recommend to the constructor, employer or group of employers, as the case may be, and the workers, the establishment, maintenance and monitoring of programs, measures and procedures respecting the health or safety of workers; and
 - (d) obtain information from the constructor or employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) health and safety experience and work practices and standards in similar or other industries of which the employer has knowledge.
- 1976, c. 79, s. 4 (1-4), *amended*.

Minutes of
proceed-
ings

(5) A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector. *New.*

Posting of
names and
work
locations

(6) The employer, constructor or group of employers required by the order of the Minister to establish a committee pursuant to subsection 1 shall post and keep posted at the work place the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the workers.

Meetings

(7) A committee shall meet at least once every three months at the work place and may be required to meet by order of the Minister.

Entitle-
ment to
time from
work

(8) A member of a committee is entitled to such time from his work as is necessary to attend meetings of the committee and the time so spent shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 4 (5-7), *amended.*

Effect of
order on
collective
agreement

(9) Where a committee is established under this Act, those provisions of a collective agreement providing for the creation of any committee of like nature are suspended and any committee formed under the collective agreement shall be superseded by the committee established under this Act.

Existing
health and
safety
committees
under
collective
agreements
continued

(10) Any committee of like nature to a committee that may be established under this Act, created under the provisions of a collective agreement and not superseded by a committee established under this Act, has, in addition to its functions and powers under the provisions of the collective agreement, the functions and powers conferred upon a committee by subsection 4.

Existing
rights and
liabilities,
etc.

(11) Subsection 9 does not affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred prior to the establishment of a committee under this Act. *New.*

Order
appointing
health and
safety
representa-
tives

8.—(1) The Minister may, by order in writing, require an employer, a constructor or a group of employers to cause the selection of one or more health and safety representatives for a work place or a part or parts thereof from among the workers employed at the work place or in the part or parts thereof who do not exercise managerial functions, and may provide in the order for the qualifications of such representative or representatives.

(2) The Minister may from time to time give such directions as the Minister considers advisable concerning the carrying out of the functions of a health and safety representative. 1976, c. 79, s. 5 (1), *amended*. Idem

(3) In exercising the power conferred by subsection 1, the Minister shall consider the matters set out in subsection 2 of section 7, and in addition thereto, the Minister shall consider whether a committee has or has not been ordered to be established. *New*. What
Minister
shall
consider

(4) The selection of a health and safety representative shall be made by those workers who do not exercise managerial functions and who will be represented by the health and safety representative in the work place, or the part or parts thereof, as the case may be, or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions. Selection
of
representa-
tives

(5) A health and safety representative may inspect the work place or the part or parts thereof for which he has been selected, as the case may be, not more often than once a month or at such intervals as a Director may direct, and it is the duty of the employer and the workers to afford the health and safety representative such information and assistance as may be required for the purpose of carrying out the inspection. Powers of
representa-
tive

(6) A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his findings thereon to the employer, workers, a trade union or trade unions representing workers and a joint health and safety committee, if any. Idem

(7) Where a person is killed or critically injured at a work place from any cause, the health and safety representative may, subject to subsection 2 of section 23, inspect the place where the accident occurred and any machine, device or thing, and shall report his findings in writing to a Director and a committee, if any. Notice of
accident.
inspection
by repre-
sentative

(8) A health and safety representative is entitled to take such time from his work as is necessary to carry out his duties under subsections 5 and 7 and the time so spent shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 5 (2-6), *amended*. Entitle-
ment to
time from
work

(9) Where one or more health and safety representatives are selected under this Act, those provisions of a collective Effect on
collective
agreement

agreement providing for the appointment of a health and safety representative or representatives of like nature are suspended, and a health and safety representative or representatives appointed under the collective agreement shall be superseded by the health and safety representative or representatives selected under this Act.

Existing rights and liabilities, etc.

(10) Subsection 9 does not affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred prior to the selection of a health and safety representative or representatives under this Act.

Additional power of existing health and safety representative

(11) A health and safety representative or representatives of like nature appointed or selected under the provisions of a collective agreement and not superseded by a health and safety representative selected under this Act has, in addition to his functions and powers under the provisions of the collective agreement, the functions and powers conferred upon a health and safety representative by subsections 5, 6 and 7. *New.*

Summary to be furnished

9.—(1) The Workmen's Compensation Board, upon the request of an employer, a worker or a trade union, shall send to the employer, worker or trade union an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost workday cases, the number of lost workdays, the number of non-fatal cases that required medical aid without lost workdays, the number of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.

Posting of copy of summary

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of the workers. 1976, c. 79, s. 8, *amended.*

Advisory Council on Occupational Health and Occupational Safety

10.—(1) There shall be a council to be known as the Advisory Council on Occupational Health and Occupational Safety composed of not fewer than twelve and not more than twenty members appointed by the Lieutenant Governor in Council on the recommendation of the Minister.

Term of office of members

(2) The members of the Advisory Council shall be appointed for such term as the Lieutenant Governor in Council determines and shall be representative of management, labour and technical or professional persons and the public who are concerned with and have knowledge of occupational health and occupational safety.

(3) The Lieutenant Governor in Council shall designate a chairman and a vice-chairman of the Advisory Council from among the members appointed. Chairman and vice-chairman

(4) The Lieutenant Governor in Council may fill any vacancy that occurs in the membership of the Advisory Council. Vacancies

(5) The remuneration and expenses of the members of the Advisory Council shall be determined by the Lieutenant Governor in Council and shall be paid out of the moneys appropriated therefor by the Legislature. Remuneration and expenses

(6) The Advisory Council, with the approval of the Minister, may make rules and pass resolutions governing its procedure, including the calling of meetings, the establishment of a quorum, and the conduct of meetings. Powers of Advisory Council

(7) The function of the Advisory Council is and it has power, Idem

(a) to make recommendations to the Minister relating to programs of the Ministry in occupational health and occupational safety; and

(b) to advise the Minister on matters relating to occupational health and occupational safety which may be brought to its attention or be referred to it. *New.*

11.—(1) The Minister may appoint committees, which are not committees as defined in paragraph 1 of section 1, or persons to assist or advise the Minister on any matter arising under this Act or to inquire into and report to the Minister on any matter that the Minister considers advisable. Advisory committees

(2) Any person appointed under subsection 1 who is not an officer in the public service of the Province of Ontario may be paid such remuneration and expenses as may be from time to time fixed by the Lieutenant Governor in Council. *New.* Remuneration and expenses

12.—(1) The Lieutenant Governor in Council may, upon the recommendation of the Minister, fix an amount that shall be assessed and levied by the Workmen's Compensation Board upon the employers in Schedule 1 under *The Workmen's Compensation Act* engaged in projects, excluding mine development, or the construction of a mining plant, to defray the expenses of the administration of this Act and the regulations. Assessment to defray expenses
R.S.O. 1970, c. 505

Method of
collection
R.S.O. 1970,
c. 505

(2) The Workmen's Compensation Board shall add to the assessment and levy made under *The Workmen's Compensation Act* upon each employer in Schedule 1 under that Act engaged in projects, excluding mine development, or the construction of a mining plant, a sum which shall be calculated as a percentage of the said assessment and levy and which percentage shall be determined as the proportion that the amount fixed under subsection 1 bears to the total sum that the Workmen's Compensation Board fixes and determines to be assessed for payment by all employers in the said Schedule 1 engaged in projects, excluding mine development, or the construction of a mining plant, and *The Workmen's Compensation Act* applies to such sum and to the collection and payment thereof in the same manner as to an assessment and levy made under that Act.

Idem

(3) The Workmen's Compensation Board shall collect the assessment and levy imposed under this section and shall pay the amounts so collected to the Treasurer of Ontario. 1973, c. 47, s. 29, *amended*.

PART III

DUTIES OF A CONSTRUCTOR, EMPLOYER, SUPERVISOR, WORKER, OWNER AND SUPPLIER

Duties of
constructor

13.—(1) A constructor shall ensure that,

- (a) the measures and procedures required by this Act and the regulations are carried out on a project undertaken by the constructor; and
- (b) every employer and every worker performing work on a project undertaken by the constructor complies with this Act and the regulations. 1973, c. 47, s. 14 (3), *amended*.

Notice of
project

(2) Where so prescribed, a constructor shall, before commencing any work on a project, give to a Director notice in writing of the project containing such information as may be prescribed. *New*.

Duties of
employer

14.—(1) An employer shall ensure that,

- (a) the equipment, materials and protective devices as prescribed are provided;
- (b) the equipment, materials and protective devices provided by him are,

- (i) maintained in good condition, and
 - (ii) used as prescribed;
- (c) the measures and procedures prescribed are carried out in the work place; and
- (d) a floor, roof, wall, pillar, support or other part of a work place is capable of supporting all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under *The Building Code Act*, 1974, c. 74, 1974.

(2) Without limiting the strict duty imposed by sub-section 1, an employer shall, Additional duties of employer

- (a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;
- (b) appoint one or more competent persons to be a supervisor or supervisors;
- (c) acquaint a worker or a person in authority over a worker with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment or a biological, chemical or physical agent;
- (d) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;
- (e) only employ in or about a work place a person over such age as may be prescribed;
- (f) not knowingly permit a person who is under such age as may be prescribed to be in or about a work place; and
- (g) take every precaution reasonable in the circumstances for the protection of a worker.

(3) For the purposes of clause *b* of subsection 2, an employer ^{Idem} may appoint himself as a supervisor where the employer is qualified because he has the qualifications set out in subparagraphs *i*, *ii* and *iii* of paragraph 2 of section 1. 1971, c. 43, ss. 24 (1-3), *part*, 28 (1, 2); 1973, c. 47, s. 17 (1, 2), *amended*.

Idem

15. In addition to the duties imposed by section 14, an employer shall,

- (a) establish an occupational health service for workers at a work place as prescribed;
- (b) where an occupational health service is established as prescribed, maintain the same according to the standards prescribed;
- (c) keep and maintain accurate records of the handling, storage, use and disposal of biological, chemical or physical agents as prescribed;
- (d) accurately keep and maintain such records of the exposure of a worker to biological, chemical or physical agents as may be prescribed;
- (e) notify a Director of the use or introduction into a work place of such biological, chemical or physical agents as may be prescribed;
- (f) monitor at such time or times or at such interval or intervals the levels of biological, chemical or physical agents in a work place and keep accurate records thereof as prescribed;
- (g) comply with a standard limiting the exposure of a worker to biological, chemical or physical agents as prescribed;
- (h) where so prescribed, only permit a worker to work or be in a work place who has undergone such medical examinations, tests or x-rays as prescribed and who is found to be physically fit to do the work in the work place; and
- (i) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker. *New.*

Duties of supervisor

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

- (a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and
- (b) uses or wears the equipment, protective devices or clothing that his employer requires to be used or worn.

(2) Without limiting the strict duty imposed by sub-section 1, a supervisor shall, Additional duties of supervisor

- (a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;
- (b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and
- (c) take every precaution reasonable in the circumstances for the protection of a worker. R.S.O. 1970, c. 274, s. 177 (6); 1971, c. 43, s. 26; 1973, c. 47, s. 17 (1, 3), *amended*.

17.—(1) A worker shall, Duties of workers

- (a) work in compliance with the provisions of this Act and the regulations;
- (b) use or wear the equipment, protective devices or clothing that his employer requires to be used or worn;
- (c) report to his employer or supervisor the absence of or defect in any equipment or protective device of which he is aware and which may endanger himself or another worker;
- (d) report to his employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he knows; and
- (e) where so prescribed, have, at the expense of the employer, such medical examinations, tests or x-rays, at such time or times and at such place or places as prescribed.

(2) No worker shall, Idem

- (a) remove or make ineffective any protective device required by the regulations or by his employer, without providing an adequate temporary protective device;
- (b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself or any other worker; or

- (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct. 1971, c. 43, ss. 27, 29, 31 (3); 1973, c. 47, ss. 18, 19, 20, *amended*.

Duties of owners

18.—(1) The owner of a work place that is not a project shall,

(a) ensure that,

- (i) such facilities as may be prescribed are provided,
- (ii) any facilities prescribed to be provided are maintained as prescribed,
- (iii) the work place complies with the regulations, and
- (iv) no work place is constructed, developed, reconstructed, altered or added to except in compliance with this Act and the regulations; and

(b) where so prescribed, furnish to a Director any drawings, plans or specifications of any work place as prescribed. 1971, c. 43, s. 22.

Mine plans

(2) The owner of a mine shall cause drawings, plans or specifications to be maintained and kept up to a date not more than six months last past on such scale and showing such matters or things as may be prescribed. R.S.O. 1970, c. 274, s. 617, *amended*.

Plans of work places

(3) Where so prescribed, an owner or employer shall,

- (a) not begin any construction, development, reconstruction, alteration, addition or installation to or in a work place until the drawings, layout and specifications thereof and any alterations thereto have been filed with the Ministry for review by an engineer for compliance with this Act and the regulations, and the same have been reviewed for such compliance; and
- (b) keep a copy of the drawings as reviewed in a convenient location at or near the work place and such drawings shall be produced by the owner or employer upon the request of an inspector for his examination and inspection. 1971, c. 43, s. 17 (1, 5), *amended*.

(4) An engineer may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information. 1971, c. 43, s. 17 (3) (b), *amended*. Additional information

(5) Fees as prescribed for the filing and review of drawings, layout or specifications shall become due and payable by the owner or employer upon filing. 1971, c. 43, s. 17 (6), *amended*. Fees

(6) In subsections 3 and 4 and in section 34 "engineer" means a person employed by the Ministry who is registered as a professional engineer or licenced as a professional engineer under *The Professional Engineers Act*. *New*. Interpretation
R.S.O. 1970, c. 366

19. Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a work place shall ensure, Duties of suppliers

- (a) that the machine, device, tool or equipment is in good condition;
- (b) that the machine, device, tool or equipment complies with this Act and the regulations; and
- (c) if it is his responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition. 1971, c. 43, s. 30; 1973, c. 47, s. 24 (2), *amended*.

PART IV

TOXIC SUBSTANCES

20.—(1) Where a biological, chemical or physical agent or combination of such agents used or intended to be used in the work place, their presence in the work place or the manner of use is in the opinion of a Director likely to endanger the health of a worker, the Director may by notice in writing to the employer order that the use, intended use, presence or manner of use be, Orders of Director

- (a) prohibited;
- (b) limited or restricted in such manner as the Director specifies; or

- (c) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies.

Contents of
order

(2) Where a Director makes an order to an employer under subsection 1, the order shall,

- (a) identify the biological, chemical or physical agent, or combination of such agents, and the manner of use that is the subject-matter of the order; and
- (b) state the opinion of the Director as to the likelihood of the danger to the health of a worker, and his reasons in respect thereof, including the matters or causes which give rise to his opinion.

Posting of
order

(3) The employer shall cause a copy of an order made under subsection 1 to be posted in a conspicuous place in the work place where it is most likely to come to the attention of the workers who may be affected by the use, presence or intended use of the biological, chemical or physical agent or combination of agents.

Appeal to
Minister

(4) Where the employer, a worker or a trade union considers that he or it is aggrieved by an order made under subsection 1, the employer, worker or trade union may by notice in writing given within fourteen days of the making of the order appeal to the Minister.

Delegation

(5) The Minister may, having regard to the circumstances, direct that an appeal under subsection 4 be determined on his behalf by a person appointed by him for that purpose.

Procedure

(6) The Minister or, where a person has been appointed under subsection 5, the person so appointed, may give such directions and issue such orders as he considers proper or necessary concerning the procedures to be adopted or followed and shall have all the powers of a chairman of a board of arbitration under subsection 7 of section 37 of *The Labour Relations Act*.

R.S.O. 1970.
c. 232

Substitu-
tion of
findings

(7) On an appeal, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may substitute his findings for those of the Director and may rescind or affirm the order appealed from or make a new order in substitution therefor and such order shall stand

in the place of and have the like effect under this Act and the regulations as the order of the Director, and such order shall be final and not subject to appeal under this section.

(8) In making a decision or order under subsection 1 or subsection 7, a Director, the Minister, or, where a person has been appointed under subsection 5, the person so appointed, shall consider as relevant factors, Matters to be considered

- (a) the relation of the agent, combination of agents or by-product to a biological or chemical agent that is known to be a danger to health;
- (b) the quantities of the agent, combination of agents or by-product used or intended to be used or present;
- (c) the extent of exposure;
- (d) the availability of other processes, agents or equipment for use or intended use;
- (e) data regarding the effect of the process or agent on health; and
- (f) any criteria or guide with respect to the exposure of a worker to a biological, chemical or physical agent or combination of such agents that are adopted by a regulation related to exposure to a toxic or potentially toxic substance.

(9) On an appeal under subsection 4, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may suspend the operation of the order appealed from pending the disposition of the appeal. Suspension of order by Minister, etc., pending disposition of appeal

(10) A person appointed under subsection 5 shall be paid remuneration and expenses at the same rate as is payable to a chairman of a conciliation board under *The Labour Relations Act*. Remuneration of appointee R.S.O. 1970, c. 232

(11) This section does not apply to designated substances. Application

(12) A Director is not required to hold or afford to an employer or any other person an opportunity for a hearing before making an order under subsection 1. *New.* No hearing required prior to issuing order

PART V

REFUSAL TO WORK WHERE HEALTH
OR SAFETY IN DANGER

Duty to
report
unsafe
conditions

21.—(1) Where a worker has cause to believe that,

(a) any equipment, machine, device or thing he is to use or operate is,

(i) in contravention of this Act or the regulations, and

(ii) is likely to endanger himself or another worker; or

(b) the work place or the part thereof in which he is to work is,

(i) in contravention of this Act or the regulations, and

(ii) likely to endanger himself,

the worker shall, before using or operating or continuing to use or operate the equipment, machine, device or thing, or working in the work place, report the same to his supervisor who shall investigate the matter and the worker shall remain in a safe place near his work station during the investigation. 1971, c. 43, s. 31 (1, 2); 1976, c. 79, s. 5 (1), *amended*.

Dispute of
super-
visor's
report

(2) Where upon the investigation the worker disputes the direction or finding of the supervisor, the supervisor shall cause the same to be further investigated in the presence of the worker and if there is such, in the presence of one of,

(a) a health and safety representative, if any;

(b) a committee member who represents workers, if any; or

(c) a worker, who because of his knowledge, experience and training, is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

and who is reasonably available and in the presence of the employer or a person other than the supervisor representing the employer.

(3) Where upon an investigation the employer or the person representing the employer disputes the report of the worker or takes steps to deal with the circumstances that caused the worker to make the report, the worker may refuse to work where the worker has reasonable grounds to believe that the equipment, machine, device or thing the worker is to use or operate or the work place in which the worker is to work comes within clause *a* or *b* of subsection 1. Refusal to work

(4) Where a worker refuses to work pursuant to subsection 3, the employer shall immediately cause an inspector to be notified thereof. Notice of refusal to work

(5) The worker who refuses to work pursuant to subsection 3 or, if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 2, may cause an inspector to be notified of the refusal to work. Idem

(6) An inspector shall investigate the refusal to work in the presence of the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 2. Investigation by inspector

(7) The inspector shall, following the investigation referred to in subsection 6, decide whether the machine, device, thing or the work place or part thereof is in contravention of this Act or the regulations and is likely to endanger the worker or another worker. 1976, c. 79, s. 3 (2-4), *amended*. Decision of inspector

(8) The inspector shall give his decision, in writing, to the employer, the worker, and, if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 2. Idem

(9) Pending the investigation and decision of the inspector, the worker shall remain at a safe place near his work station during his normal working hours unless the employer, subject to the provisions of a collective agreement, if any, Worker to remain at a safe place pending decision

(a) assigns the worker reasonable alternative work during such hours; or

(b) where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

(10) The time spent by a person mentioned in clause *a*, *b* or *c* of subsection 2 in accompanying an inspector during his investigation, shall be deemed to be work time for which the person shall be paid by his employer at his regular or premium rate as may be proper. Entitlement to time from work

Refusal to
work
without
reasonable
grounds

(11) A worker who without reasonable grounds exercises a right conferred by this section may be subject to such discipline as his employer may impose under the terms or conditions of employment that apply to the worker. *New.*

PART VI

REPRISALS BY EMPLOYER PROHIBITED

No
discipline,
dismissal,
etc., by
employer

22.—(1) No employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder or has sought the enforcement of this Act or the regulations. 1971, c. 43, s. 24 (5); 1973, c. 47, s. 17 (4); 1976, c. 79, s. 9 (1), *amended.*

Arbitra-
tion

(2) Where a worker complains that an employer has contravened subsection 1, the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply, with all necessary modifications, to the complaint.

Inquiry
by Ontario
Labour
Relations
Board
R.S.O. 1970,
c. 232

(3) The Ontario Labour Relations Board may inquire into any complaint filed under subsection 2, and section 79 of *The Labour Relations Act*, except subsection 4a, applies with all necessary modifications, as if such section, except subsection 4a, is enacted in and forms part of this Act.

Idem

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, sections 91, 92, 95, 97 and 98 of *The Labour Relations Act* apply, with all necessary modifications.

Onus of
proof

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the burden of proof that an employer did not act contrary to subsection 1 lies upon the employer. 1976, c. 79, s. 9 (2-5), *amended.*

(6) The Ontario Labour Relations Board shall exercise jurisdiction under this section on a complaint by a Crown employee that the Crown has contravened subsection 1. *New.*

Jurisdiction when complaint by Crown employee

PART VII

NOTICES

23.—(1) Where a person is killed or critically injured from any cause at a work place, the constructor, if any, and the employer shall notify an inspector and a health and safety representative, if any, immediately of the occurrence by telephone, telegram or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations may prescribe.

Notice of death or injury

(2) Where a person is killed or is critically injured at a work place no person shall, except for the purpose of,

Preservation of wreckage

- (a) saving life or relieving human suffering;
- (b) maintaining an essential public utility service or a public transportation system; or
- (c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. R.S.O. 1970, c. 274, s. 612; 1971, c. 43, s. 33; 1973, c. 47, s. 25, *amended*.

24.—(1) Where an accident, explosion or fire causes injury to a person at a work place whereby he is disabled from performing his usual work or requires medical attention, and such occurrence does not cause death or critical injury to any person, the employer shall give notice in writing, within four days of the occurrence, to a Director containing such information and particulars as may be prescribed. R.S.O. 1970, c. 274, s. 613; 1971, c. 43, s. 34; 1973, c. 47, s. 30, *amended*.

Notice of accident, explosion or fire causing injury

(2) Where an employer is advised by a worker or by a person on behalf of the worker that the worker has an occupational disease, the employer shall give notice in writing, within four days of being so advised, to a Director

Notice of occupational disease

containing such information and particulars as may be prescribed. 1971, c. 43, s. 34; *part, amended.*

Idem

(3) Subsection 2 applies, with all necessary modifications, where an employer is advised by a former worker of the employer or a person on behalf of such worker, that such worker has or had an occupational disease. *New.*

Accidents,
explosions,
etc., at a
project site
or mine

25. Where a notice or report is not required under section 23 or 24 and an accident, premature or unexpected explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article or thing, cave-in, subsidence, rockburst, or other incident as prescribed occurs at a project site, mine or mining plant, notice in writing of the occurrence shall be given to a Director by the constructor of the project or the owner of the mine or mining plant, within two days of the occurrence containing such information and particulars as may be prescribed. R.S.O. 1970, c. 274, s. 614, *amended.*

PART VIII

ENFORCEMENT

Powers of
inspector

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

- (a) subject to subsection 2, enter in or upon any work place at any time without warrant or notice;
- (b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;
- (c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same;
- (d) upon giving a receipt therefor, remove any drawings, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;
- (e) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a work place and for

- such purposes, take and carry away such samples as may be necessary;
- (f) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him and use any equipment or materials required for such purpose;
 - (g) make inquiries of any person who is or was in a work place either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test;
 - (h) require that a work place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, investigation or test;
 - (i) require that any equipment, machine, device, article, thing or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;
 - (j) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,
 - (i) the load limits of a floor, roof or temporary work or part of a building, structure or temporary work,
 - (ii) that a floor, roof or temporary work is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or
 - (iii) that a floor, roof or temporary work, or part of a building, structure or temporary work is capable of supporting or withstanding all loads to which it may be subject without exceeding the allowable unit stresses for the materials used as provided under *The Building Code Act, 1974*; 1974. c. 74
 - (k) require in writing an owner of a mine or part thereof to provide, at his expense, a report in writing

bearing the seal and signature of a professional engineer stating that the support, stability or rock mechanics of the mine or part thereof is such that a worker is not likely to be endangered; and R.S.O. 1970, c. 274, s. 618 (1) (a, b); 1971, c. 43 s. 8 (1); 1973, c. 47, s. 6 (1), *amended*.

- (d) require in writing an employer to produce any record or information, or to provide, at the expense of the employer, a report or assessment made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the inspector of any process or biological, chemical or physical agents or combination of such agents used or intended to be used in a work place, and the manner of use including,
- (i) the ingredients thereof and their common or generic name or names,
 - (ii) the composition and the properties thereof,
 - (iii) the toxicological effect thereof,
 - (iv) the effect of exposure thereto whether by contact, inhalation or ingestion,
 - (v) the protective measures used or to be used in respect thereof,
 - (vi) the emergency measures used or to be used to deal with exposure in respect thereof, and
 - (vii) the effect of the use, transport and disposal thereof. *New*.

Entry to
dwellings

(2) An inspector shall only enter a work place or that part of a work place actually being used as a dwelling with the consent of the occupier or under the authority of a search warrant issued under section 16 of *The Summary Convictions Act*. 1971, c. 43, s. 8 (4); 1973, c. 47, s. 6 (4).

R.S.O. 1970,
c. 450

Repre-
sentative to
accompany
inspector

(3) Where an inspector makes an inspection of a work place under the powers conferred upon him under subsection 1, the constructor, employer or group of employers shall allow a health and safety representative, if any, or a worker selected by a trade union or trade unions, if any, because of his knowledge, experience and training, to represent it or them and, where there is no trade union, a worker selected by the workers because of his knowledge, training

and experience to represent them, the opportunity to accompany the inspector during his physical inspection of a work place, or any part or parts thereof.

(4) Where there is no health and safety representative or worker selected under subsection 3, the inspector shall endeavour to consult during his physical inspection with a reasonable number of the workers concerning matters of health and safety at their work. Consultation with workers

(5) The time spent by a health and safety representative or a worker selected in accordance with subsection 3 in accompanying an inspector during his physical inspection, shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 6 (1-3), *amended*. Entitlement to time from work

27.—(1) Where an inspector finds that a provision of this Act or the regulations is being contravened, he may order, orally or in writing, the owner, constructor, employer, or person whom he believes to be in charge of a work place or the person whom he believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies. R.S.O. 1970, c. 274, s. 618 (1), (c); 1971, c. 43, s. 10 (1); 1973, c. 47, s. 11 (1), *amended*. Orders by inspectors where non-compliance

(2) Where an inspector makes an oral order under subsection 1, he shall confirm the order in writing before leaving the work place. 1971, c. 43, s. 10 (2), *amended*. Idem

(3) An order made under subsection 1 shall indicate generally the nature of the contravention and where appropriate the location of the contravention. 1973, c. 47, s. 11 (2), *amended*. Contents of order

(4) Where an inspector makes an order under subsection 1 and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker he may, Orders by inspector where worker endangered

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

(b) order that work at the work place as indicated in the order shall stop until the order is complied with, or until the order to stop work is withdrawn or cancelled by an inspector;

(c) order that the work place where the contravention exists be cleared of workers and isolated by barricades, fencing or any other means suitable to prevent access thereto by a worker until the danger or hazard to the health or safety of a worker is removed. 1971, c. 43, s. 10 (3), *amended*; 1973, c. 47, s. 11 (3, 4), *amended*.

Posting of
notice

(5) Where an inspector makes an order under this section, he may affix to the work place, or to any equipment, machine, device article or thing, a copy thereof or a notice in the prescribed form and no person, except an inspector, shall remove such copy or notice unless authorized to do so by an inspector. 1971, c. 43, s. 10 (4); 1973, c. 47, s. 11 (6), *amended*.

Idem

(6) Where an inspector makes an order in writing or issues a report of his inspection to an owner, constructor, employer or person in charge of the work place, the owner, constructor, employer or person in charge of the work place shall forthwith cause a copy or copies thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of the workers and shall furnish a copy of such order or report to the health and safety representative and the committee, if any, and the inspector shall cause a copy thereof to be furnished to a person who has complained of a contravention of this Act or the regulations. 1976, c. 79, s. 7, *amended*.

No hearing
required
prior to
making
order

(7) An inspector is not required to hold or afford to an owner, constructor, employer or any other person an opportunity for a hearing before making an order. *New*.

Entry into
barricaded
area

28. Where an order is made under clause *c* of subsection 4 of section 27, no owner, constructor, employer or supervisor shall require or permit a worker to enter the work place except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the worker is protected from the danger or hazard. 1973, c. 47, s. 11 (4), *part*.

Injunction
proceed-
ings

29. In addition to any other remedy or penalty therefor, where an order made under subsection 4 of section 27 is contravened, such contravention may be restrained upon an *ex parte* application to the Supreme Court made at the instance of a Director. 1973, c. 47, s. 13 (2), *amended*.

Appeals
from order
of an
inspector

30.—(1) Any employer, constructor, owner, worker or trade union which considers himself or itself aggrieved by

any order made by an inspector under this Act or the regulations may, within fourteen days of the making thereof, appeal to a Director who shall hear and dispose of the appeal as promptly as is practicable.

(2) An appeal to a Director may be made in writing ^{Method} or orally or by telephone, but the Director may require the grounds for appeal to be specified in writing before the appeal is heard.

(3) The appellant, the inspector from whom the appeal ^{Parties} is taken and such other persons as a Director may specify are parties to an appeal under this section.

(4) On an appeal under this section, a Director may substitute his findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Director shall stand in the place of and have the like effect under this Act and the regulations as the order of the inspector. ^{Powers of a Director}

(5) In this section, an order of an inspector under this Act or the regulations includes any order or decision made or given or the imposition of any terms or conditions therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector. ^{Order, extended meaning}

(6) A decision of the Director under this section is final. ^{Decision of Director final} 1971, c. 43, s. 11; 1973, c. 47, s. 12, *amended*.

(7) On an appeal under subsection 1, a Director may suspend the operation of the order appealed from pending the disposition of the appeal. ^{Suspension of order by Director pending disposition of appeal}

(8) This section does not apply to the order of a Director made under section 20. *New.* ^{Application}

31.—(1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations. ^{Obstruction of inspector}

(2) Every person shall furnish all necessary means in his power to facilitate any entry, inspection, examination, testing or inquiry by an inspector in the exercise of his powers or performance of his duties under this Act or the regulations. ^{Assistance to inspector}

False
informa-
tion, etc.

(3) No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his duties under this Act or the regulations. 1971, c. 43, s. 9; 1973, c. 47, s. 7, *amended*.

Monitoring
devices

(4) No person shall interfere with any monitoring equipment or device in a work place.

Obstruc-
tion of
committee,
etc.

(5) No person shall knowingly,

(a) hinder or interfere with a committee, a committee member or a health and safety representative in the exercise of a power or performance of a duty under this Act;

(b) furnish a committee, a committee member or a health and safety representative with false information in the exercise of a power or performance of a duty under this Act; or

(c) hinder or interfere with a worker selected by a trade union or trade unions or a worker selected by the workers to represent them in the exercise of a power or performance of a duty under this Act. *New*.

Informa-
tion
confidential

32.—(1) Except for the purposes of this Act and the regulations or as required by law,

(a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations; 1971, c. 43, s. 13 (1); 1973, c. 47, s. 8 (1), *amended*.

(b) a committee member shall not publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act or the regulations; *New*.

(c) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and 1971, c. 43, s. 13 (5); 1973, c. 47, s. 8 (5), *amended*.

- (d) no person shall disclose any information obtained in any medical examination, test or x-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case.
New.

(2) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector is not a compellable witness in a civil suit or any proceeding respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (3); 1973, c. 47, s. 8 (3), *amended*.

Com-
pellability,
civil suit

(3) A Director may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (4); 1973, c. 47, s. 8 (4), *amended*.

Power of
Director
to disclose

33. A Director may, upon receipt of a request in writing from the owner of a work place who has entered into an agreement to sell the same and upon payment of the fee or fees prescribed, furnish to the owner or a person designated by him copies of reports or orders of an inspector made under this Act in respect of the work place as to its compliance with subsection 1 of section 18. 1971, c. 43, s. 14, *amended*.

Copies of
reports

34.—(1) No action or other proceeding for damages, prohibition, or mandamus lies or shall be instituted against a Director, an inspector, an engineer, a health and safety representative, a committee member, a worker selected by a trade union or trade unions or a worker selected by the workers to represent them for an act or an omission done or omitted to be done by him in good faith in the execution or intended execution of any power or duty under this Act or the regulations.

Liability
of certain
persons

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a Director, an inspector or an engineer to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted. 1971, c. 43, s. 16; 1973, c. 47, s. 9, *amended*.

Liability
of Crown
R.S.O. 1970,
c. 365

PART IX

OFFENCES AND PENALTIES

Penalties

35.—(1) Every person who contravenes or fails to comply with,

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

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

Onus of proof

(2) On a prosecution for a failure to comply with clause *g* of subsection 2 of section 14 or clause *c* of subsection 2 of section 16, it shall be for the accused to prove that every precaution reasonable in the circumstances for the protection of a worker was taken. R.S.O. 1970, c. 274, s. 625; 1971, c. 43, s. 36; 1973, c. 47, s. 26, *amended*.

Certified copies of documents, etc., as evidence

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

- (a) a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister or an inspector;
- (b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom given or made under this Act or the regulations and purporting to be certified by an inspector;
- (c) a document purporting to certify the result of a test or an analysis of a sample of air and setting forth the concentration or amount of a biological, chemical or physical agent in a work place or part thereof and purporting to be certified by an inspector, or

is evidence of the order, decision, writing or document, and the facts appearing in the order, decision, writing or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof. 1971, c. 43, s. 41; 1973, c. 47, s. 27, *amended*.

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

- (a) personally in the case of an individual or in case of a partnership upon a partner, and in the case of a corporation, upon the president, vice-president, secretary, treasurer or a director, or upon the manager or person in charge of the work place; or
- (b) by registered letter addressed to a person or corporation mentioned in clause *a* at his or its last known place of business,

and the same shall be deemed to be good and sufficient service thereof. *New.*

37. An information in respect of an offence under this Act may, at the election of the informant, be heard, tried and determined by a justice of the peace or a provincial court judge of the Provincial Court (Criminal Division) having jurisdiction in the county or district in which the accused is resident or carries on business although the subject-matter of the information did not arise in that county or district. 1973, c. 47, s. 28. ^{Place of trial}

38. No prosecution under this Act shall be instituted more than one year after the last act or default upon which the prosecution is based occurred. 1971, c. 43, s. 37. ^{Limitation on prosecutions}

PART X

REGULATIONS

39.—(1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety of persons in or about a work place. 1971, c. 43, s. 45 (1); 1973, c. 47, s. 31 (1), *amended*. ^{Regulations}

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

1. defining any word or expression used in this Act or the regulations that is not defined in this Act for the purposes of the Act and the regulations;

2. designating or defining any industry, work place, employer or class of work places or employers for the purposes of this Act, a part of this Act, or the regulations or any provision thereof;
3. designating, either generally or specifically, work places, to which this Act and the regulations apply or do not apply;
4. prescribing forms and providing for their use;
5. providing for and prescribing fees and the payment or refund of fees;
6. requiring and prescribing notices that shall be posted in one or more languages;
7. prescribing the records that shall be made and kept by owners and employers;
8. requiring an owner, employer or constructor to transmit to a Director such notices, returns and reports and such information and particulars therein as are prescribed;
9. prescribing the kind of accident, explosion, fire, flood or inrush of water, failure of equipment, machine, device or thing, cave-in, subsidence, rock-burst or other incident of which notice is to be given under section 25;
10. requiring the submission of drawings, specifications, reports, details of procedures and other information as are prescribed and prescribing by whom such information shall be prepared or certified;
11. prescribing the qualifications of any person required to prepare or certify such information as may be required under a regulation made pursuant to paragraph 10;
12. regulating or prohibiting the installation or use of any machine, device or thing or any class thereof;
13. requiring that any equipment, machine, device, article or thing used bear the seal of approval of an organization designated by the regulations to test and approve the equipment, machine, device, article or thing and designating organizations for such purposes;

14. requiring and regulating equipment, materials and protective devices or clothing for workers;
15. requiring that a worker shall be a competent person;
16. prescribing measures and procedures to be carried out in a work place;
17. regulating or prohibiting the handling of, exposure to, use and disposal of any material, biological, chemical or physical agent or combination thereof or thing in a work place;
18. respecting medical examinations, tests or x-rays of workers and the reports to be made of such examinations;
19. respecting the reporting by physicians and others of workers affected by any biological, chemical or physical agents or combination thereof;
20. regulating or prohibiting atmospheric conditions, to which any worker may be exposed in a work place;
21. prescribing methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any biological, chemical or physical agent, or combination thereof in a work place;
22. prescribing any biological, chemical or physical agent or combination thereof as a designated substance;
23. prohibiting, regulating, restricting, limiting or controlling the handling of, exposure to, or the use and disposal of a designated substance;
24. requiring the maintenance and keeping of a record or records of biological, chemical or physical agents, the use thereof, the disposal thereof, and the exposure of workers thereto;
25. requiring and regulating the establishment of an occupational health service by an employer or person in charge of a work place and the maintenance thereof in accordance with standards as prescribed;

26. respecting the provision of suitable facilities for medical treatment in cases of accident or sickness and for the supervision of the general health of employees during working hours;
27. respecting the prevention or control of fire in a work place and protection therefrom;
28. respecting the provision and maintenance of any sanitary convenience or welfare provision in a work place;
29. respecting the provision of suitable facilities in a work place for handicapped persons;
30. adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code and requiring compliance with any code that is so adopted;
31. requiring and providing for the registration of employers of workers;
32. prescribing the minimum age for a worker or person in any work place or class of work places;
33. requiring an employer or supervisor to provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker;
34. requiring a constructor to appoint a superintendent for a project as prescribed;
35. adopting by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof; and
36. enabling the Director by notice in writing to designate that any part of a project shall be an individual project for the purposes of this Act and the regulations and prescribing to whom notice shall be given. 1971, c. 43, s. 45 (2); 1973, c. 47, s. 31 (2), *amended*.

Repeals**40.** The following are repealed:

1. *The Construction Safety Act, 1973*, being chapter 47.

2. *The Industrial Safety Act, 1971*, being chapter 43.
3. *The Industrial Safety Amendment Act, 1972*, being chapter 122.
4. *The Industrial Safety Amendment Act, 1974*, being chapter 104.
5. Part IX of *The Mining Act*, except,
 - i. Subsection 1 of section 176,
 - ii. Clauses *d*, *e* and *f* of subsection 2 of section 176, and
 - iii. Sections 611 and 616,
 being chapter 274 of the Revised Statutes of Ontario, 1970.
6. *The Silicosis Act*, being chapter 438 of the Revised Statutes of Ontario, 1970.
7. Section 78 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.
8. *The Employees' Health and Safety Act, 1976*, being chapter 79.
9. Section 10 of *The Ministry of Labour Act*, being chapter 117 of the Revised Statutes of Ontario, 1970.

41. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

42. The short title of this Act is *The Occupational Health and Safety Act, 1978*. Short title

An Act respecting the
Occupational Health and Occupational
Safety of Workers

1st Reading

February 21st, 1978

2nd Reading

February 21st, 1978

3rd Reading

THE HON. B. STEPHENSON
Minister of Labour

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting the
Occupational Health and Occupational Safety of Workers**

THE HON. B. STEPHENSON
Minister of Labour

(Reprinted as amended by the Resources Development Committee)



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EXPLANATORY NOTE

The purpose of the Bill is to revise and consolidate into one Act, the Acts dealing with the health and safety of workers at work.

These Acts are:

The Mining Act, R.S.O. 1970, c. 274, Part IX

The Silicosis Act, R.S.O. 1970, c. 438

The Industrial Safety Act, 1971, c. 43

The Construction Safety Act, 1973, c. 47

The Employees' Health and Safety Act, 1976, c. 79

The Bill provides that the application of the Act extends to all work places.

The Bill provides for the establishment of an Advisory Council on Occupational Health and Occupational Safety to make recommendations to and advise the Minister on matters relating to occupational health and safety.

The Bill further provides for the regulation of the use of and exposure to substances which may endanger health in a work place, the monitoring of the levels of such substances in a work place and requiring medical examinations of workers.

BILL 70

1978

**An Act respecting the
Occupational Health and Occupational
Safety of Workers**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

1. "committee" means a joint health and safety committee established under this Act; 1976, c. 79, s. 1 (a), *amended*.
2. "competent person" means a person who is qualified because of his,
 - i. knowledge, training and experience to organize the work and its performance,
 - ii. familiarity with the provisions of this Act and the regulations that apply to the work, and
 - iii. knowledge of any potential or actual danger to health or safety in the work place; *New*.
3. "construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any machinery or plant, and any work or undertaking in connection with a project; 1973, c. 47, s. 1 (d), *amended*.
4. "constructor" means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer; 1973, c. 47, s. 1 (e), *amended*.

5. "Deputy Minister" means the Deputy Minister of Labour; 1973, c. 47, s. 1 (*f*).
6. "designated substance" means a biological, chemical or physical agent or combination thereof prescribed as a designated substance to which the exposure of a worker is prohibited, regulated, restricted, limited or controlled; *New*.
7. "Director" means an inspector who is appointed under this Act as a Director of the Occupational Health and Safety Division of the Ministry; 1971, c. 43, s. 1 (*da*); 1972, c. 122, s. 1, *amended*.
8. "employer" means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services; 1971, c. 43, s. 1 (*e*); 1973, c. 47, s. 1 (*h*), *amended*.
9. "engineer of the Ministry" means a person who is employed by the Ministry and who is registered as a professional engineer or licensed as a professional engineer under *The Professional Engineers Act*; 1971, c. 43, s. 1 (*g*), *amended*.
10. "factory" means,
 - i. a building or place other than a mine, mining plant or place where homework is carried on, where,
 - A. any manufacturing process or assembling in connection with the manufacturing of any goods or products is carried on,
 - B. in preparing, inspecting, manufacturing, finishing, repairing, warehousing, cleaning or adapting for hire or sale any substance, article or thing, energy is,
 1. used to work any machinery or device, or
 2. modified in any manner,

- C. any work is performed by way of trade or for the purposes of gain in or incidental to the making of any goods, substance, article or thing or part thereof,
 - D. any work is performed by way of trade or for the purposes of gain in or incidental to the altering, demolishing, repairing, maintaining, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance, article or thing, or
 - E. aircraft, locomotives or vehicles used for private or public transport are maintained,
- ii. a laundry including a laundry operated in conjunction with,
 - A. a public or private hospital,
 - B. a hotel, or
 - C. a public or private institution for religious, charitable or educational purposes, and
 - iii. a logging operation; 1971, c. 43, s. 1 (*h*), *amended*.
11. "health and safety representative" means a health and safety representative selected under this Act; 1976, c. 79, s. 1 (*d*), *amended*.
 12. "homework" means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof by a person for wages in premises occupied primarily as living accommodation; 1971, c. 43, s. 1 (*i*).
 13. "industrial establishment" means an office building, factory, shop or office, and any land, buildings and structures appertaining thereto; 1971, c. 43, s. 1 (*j*); 1974, c. 104, s. 1 (*i*), *amended*.
 14. "inspector" means an inspector appointed for the purposes of this Act and includes a Director; 1971, c. 43, s. 1 (*k*); 1973, c. 47, s. 1 (*i*), *amended*.

15. "logging" means the operation of felling or trimming trees for commercial or industrial purposes and includes the measuring, storing, transporting or floating of logs and any such activities for the clearing of land; 1971, c. 43, s. 1 (*kb*); 1974, c. 104, s. 1 (2), *amended*.
16. "mine" means any work or undertaking for the purpose of opening up, proving, removing or extracting any metallic or non-metallic mineral or mineral-bearing substance, rock, earth, clay, sand or gravel; R.S.O. 1970, c. 274, s. 169 (1) (*d*), *amended*.
17. "mining plant" means any roasting or smelting furnace, concentrator, mill or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substance mentioned in paragraph 15; R.S.O. 1970, c. 274, s. 169 (1) (*g*), *amended*.
18. "Minister" means the Minister of Labour; 1971, c. 43, s. 1 (*l*); 1973, c. 47, s. 1 (*j*).
19. "Ministry" means the Ministry of Labour;
20. "occupational illness" means a condition that results from exposure in a work place to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an industrial disease as defined by *The Workmen's Compensation Act*; *New*.
21. "owner" includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a work place, and a person who acts for or on behalf of an owner as his agent or delegate; R.S.O. 1970, c. 274, s. 1, par. 18; 1971, c. 43, s. 1 (*n*); 1973, c. 47, s. 1 (*l*), *amended*.
22. "prescribed" means prescribed by a regulation made under this Act; *New*.
23. "project" means a construction project, whether public or private, including,
 - i. the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking

lot, cofferdam, conduit, sewer, watermain, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof,

- ii. mining development,
 - iii. the moving of a building or structure, and
 - iv. any work or undertaking, or any lands or appurtenances used in connection with construction; 1973, c. 47, s. 1 (n), *amended*.
24. "regulations" means the regulations made under this Act; 1971, c. 43, s. 1 (r); 1973, c. 47, s. 1 (o), *amended*.
25. "shop" means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale; 1971, c. 43, s. 1 (s), *amended*.
26. "supervisor" means a person who has charge of a work place or authority over a worker; *New*.
27. "trade union" means a trade union as defined in *The Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a work place and includes an organization representing workers or persons to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such workers or persons; 1976, c. 79, s. 1 (g), *amended*. R.S.O. 1970.
c. 232
28. "work place" includes any site, location, space, water, vehicle, aircraft, equipment, land, building, shop, structure whether movable or not, mine, mining plant, industrial establishment, project site, premises and area, public or private, or any part thereof, at, upon, in or near which a worker performs work; *New*.
29. "worker" includes a person who is in or on a work place for any purpose in connection therewith. 1973, c. 47, s. 1 (l), *amended*.

PART I

APPLICATION

2.—(1) This Act binds the Crown and applies to an employee in the service of the Crown or an agency, board, Application
to Crown

commission or corporation that exercises any function assigned or delegated to it by the Crown. 1971, c. 43, s. 3; 1973, c. 47, s. 2 (1), *amended*.

Application
of other
Acts

(2) Notwithstanding anything in any general or special Act, the provisions of this Act and the regulations prevail. 1976, c. 79, s. 11.

Application
to work
places

3.—(1) This Act applies to all work places.

Where Act
does not
apply

(2) This Act does not apply to,

(a) a project being done in person by the owner or occupants of a private residence in relation to such residence; and

(b) a work place that is exempted generally or specifically by regulation provided that all such exemptions shall expire not later than the 31st day of December, 1978. 1971, c. 43, s. 2; 1973, c. 47, ss. 2 (1), 3, *amended*.

No
exemption
for projects,
mines, etc.

(3) Clause *b* of subsection 2 does not apply to a project, mine, mining plant or industrial establishment. *New*.

PART II

ADMINISTRATION

Delegation
of powers

4. Where under this Act or the regulations any power or duty is granted to or vested in the Minister or the Deputy Minister, the Minister or Deputy Minister may in writing delegate that power or duty from time to time to any officer or officers of the Ministry subject to such limitations, restrictions, conditions and requirements as the Minister or Deputy Minister may set out in the delegation. *New*.

Appoint-
ment of
inspectors
and
Directors

5.—(1) Such persons as may be necessary to administer and enforce this Act and the regulations may be appointed as inspectors by the Deputy Minister and the Deputy Minister may designate one or more of the inspectors as a Director or Directors. 1971, c. 43, s. 6 (1, 2); 1973, c. 47, s. 4 (1, 2), *amended*.

Director
may act as
inspector

(2) A Director may exercise any of the powers or perform any of the duties of an inspector under this Act or the regulations. *New*.

Certificate
of appoint-
ment

6.—(1) The Deputy Minister shall issue a certificate of appointment, bearing his signature or a facsimile thereof, to every inspector.

(2) Every inspector, in the exercise of any of his powers or duties under this Act, shall produce his certificate of appointment upon request. 1971, c. 43, s. 7; 1973, c. 47, s. 5, *amended*. Production of certificate

7.—(1) An employer, constructor or group of employers shall cause a joint health and safety committee or committees to be established at every work place where twenty or more workers are employed unless a committee of like nature to such a committee is in existence in the work place under the provisions of a collective agreement or other agreement or arrangement between the employer, constructor or group of employers, as the case may be, and the workers. Establishment of joint health and safety committees

(2) At every work place at which nineteen or fewer workers are employed, the Minister may, by order in writing, require an employer, constructor or group of employers to establish a joint health and safety committee. *New*. Idem

(3) In exercising the power conferred by subsection 2, the Minister shall consider, What Minister shall consider

- (a) the nature of the work being done;
- (b) the request of a constructor, an employer, a group of the workers or the trade union or trade unions representing the workers in a work place;
- (c) the frequency of illness or injury in the work place or in the industry of which the constructor or employer is a part;
- (d) the existence of health and safety programs and procedures in the work place and the effectiveness thereof; and
- (e) such other matters as the Minister considers advisable. 1976, c. 79, s. 4 (3), *amended*.

(4) A committee shall consist of at least two persons of whom at least half shall be workers who do not exercise managerial functions to be selected by the workers they are to represent or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions. Composition of committee

(5) It is the function of a committee and it has power to, Powers of committee

- (a) identify situations that may be a source of danger or hazard to workers;

- (b) make recommendations to the constructor, employer or group of employers, as the case may be, and the workers for the improvement of the health and safety of workers;
- (c) recommend to the constructor, employer or group of employers, as the case may be, and the workers, the establishment, maintenance and monitoring of programs, measures and procedures respecting the health or safety of workers; and
- (d) obtain information from the constructor or employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge. 1976, c. 79, s. 4 (4), *amended*.

Minutes of proceedings

(6) A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector.

Powers of designated member

(7) The members of a committee who represent workers shall designate one of the members representing workers to inspect the work place, not more often than once a month or at such intervals as a Director may direct, and it is the duty of the employer and the workers to afford that member such information and assistance as may be required for the purpose of carrying out the inspection.

Idem

(8) The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is killed or critically injured at a work place from any cause and one of those members may, subject to subsection 2 of section 25, inspect the place where the accident occurred and any machine, device or thing, and shall report his findings to a Director and to the committee. *New.*

Posting of names and work locations

(9) The employer, constructor or group of employers required to establish a committee under this section shall post and keep posted at the work place the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the workers.

(10) A committee shall meet at least once every three months at the work place and may be required to meet by order of the Minister. 1976, c. 79, s. 4 (6, 7), *amended*. Meetings

(11) A member of a committee is entitled to such time from his work as is necessary to attend meetings of the committee and to carry out his duties under subsections 7 and 8 and the time so spent shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 4 (8), *amended*. Entitlement to time from work

(12) Any committee of a like nature to a committee established under this section in existence in a work place under the provisions of a collective agreement or other agreement or arrangement between an employer, a constructor or a group of employers, as the case may be, and the workers, has, in addition to its functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a committee by this section. *New*. Additional powers of certain committees

8.—(1) Where no committee has been established, the Minister may, by order in writing, require an employer, a constructor or a group of employers to cause the selection of one or more health and safety representatives for a work place or a part or parts thereof from among the workers employed at the work place or in the part or parts thereof who do not exercise managerial functions, and may provide in the order for the qualifications of such representative or representatives. Order appointing health and safety representatives

(2) The Minister may from time to time give such directions as the Minister considers advisable concerning the carrying out of the functions of a health and safety representative. 1976, c. 79, s. 5 (1), *amended*. Idem

(3) In exercising the power conferred by subsection 1, the Minister shall consider the matters set out in subsection 3 of section 7. What Minister shall consider

(4) The selection of a health and safety representative shall be made by those workers who do not exercise managerial functions and who will be represented by the health and safety representative in the work place, or the part or parts thereof, as the case may be, or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions. Selection of representatives

(5) A health and safety representative may inspect the work place or the part or parts thereof for which he has been Powers of representative

selected, as the case may be, not more often than once a month or at such intervals as a Director may direct, and it is the duty of the employer and the workers to afford the health and safety representative such information and assistance as may be required for the purpose of carrying out the inspection.

Idem

(6) A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his findings thereon to the employer, workers, a trade union or trade unions representing workers.

Notice of accident, inspection by representative

(7) Where a person is killed or critically injured at a work place from any cause, the health and safety representative may, subject to subsection 2 of section 25, inspect the place where the accident occurred and any machine, device or thing, and shall report his findings in writing to a Director.

Entitlement to time from work

(8) A health and safety representative is entitled to take such time from his work as is necessary to carry out his duties under subsections 5 and 7 and the time so spent shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 5 (2-6), *amended*.

Additional powers of certain health and safety representatives

(9) A health and safety representative or representatives of like nature appointed or selected under the provisions of a collective agreement or other agreement or arrangement between the employer, constructor or group of employers, as the case may be, and the workers, has, in addition to his functions and powers under the provisions of the collective agreement or other agreement or arrangement the functions and powers conferred upon a health and safety representative by subsections 5, 6 and 7. *New*.

Summary to be furnished

9.—(1) The Workmen's Compensation Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost workday cases, the number of lost workdays, the number of non-fatal cases that required medical aid without lost workdays, the incidence of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.

Posting of copy of summary

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous

place or places at the work place where it is most likely to come to the attention of the workers. 1976, c. 79, s. 8, *amended*.

(3) A Director shall, in accordance with the objects and purposes of this Act, ensure that persons and organizations concerned with the purposes of this Act are provided with information and advice pertaining to its administration and to the protection of the occupational health and occupational safety of workers generally. *New*.

Director to provide information

10.—(1) There shall be a council to be known as the Advisory Council on Occupational Health and Occupational Safety composed of not fewer than twelve and not more than twenty members appointed by the Lieutenant Governor in Council on the recommendation of the Minister.

Advisory Council on Occupational Health and Occupational Safety

(2) The members of the Advisory Council shall be appointed for such term as the Lieutenant Governor in Council determines and shall be representative of management, labour and technical or professional persons and the public who are concerned with and have knowledge of occupational health and occupational safety.

Term of office of members

(3) The Lieutenant Governor in Council shall designate a chairman and a vice-chairman of the Advisory Council from among the members appointed.

Chairman and vice-chairman

(4) The Lieutenant Governor in Council may fill any vacancy that occurs in the membership of the Advisory Council.

Vacancies

(5) The remuneration and expenses of the members of the Advisory Council shall be determined by the Lieutenant Governor in Council and shall be paid out of the moneys appropriated therefor by the Legislature.

Remuneration and expenses

(6) The Advisory Council, with the approval of the Minister, may make rules and pass resolutions governing its procedure, including the calling of meetings, the establishment of a quorum, and the conduct of meetings.

Powers of Advisory Council

(7) The function of the Advisory Council is and it has power,

Idem

- (a) to make recommendations to the Minister relating to programs of the Ministry in occupational health and occupational safety; and

(b) to advise the Minister on matters relating to occupational health and occupational safety which may be brought to its attention or be referred to it.

Annual report

(8) The Advisory Council shall file with the Minister not later than the 1st day of June in each year an annual report upon the affairs of the Advisory Council.

Idem

(9) The Minister shall submit the report to the Lieutenant Governor in Council who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. *New.*

Advisory committees

11.—(1) The Minister may appoint committees, which are not committees as defined in paragraph 1 of section 1, or persons to assist or advise the Minister on any matter arising under this Act or to inquire into and report to the Minister on any matter that the Minister considers advisable.

Remuneration and expenses

(2) Any person appointed under subsection 1 who is not an officer in the public service of the Province of Ontario may be paid such remuneration and expenses as may be from time to time fixed by the Lieutenant Governor in Council. *New.*

Assessment to defray expenses

12.—(1) The Lieutenant Governor in Council may, upon the recommendation of the Minister, fix an amount that shall be assessed and levied by the Workmen's Compensation Board upon the employers in Schedule 1 under *The Workmen's Compensation Act* engaged in projects, excluding mine development to defray the expenses of the administration of this Act and the regulations, in relation to projects.

R.S.O. 1970, c. 505

Method of collection
R.S.O. 1970, c. 505

(2) The Workmen's Compensation Board shall add to the assessment and levy made under *The Workmen's Compensation Act* upon each employer in Schedule 1 under that Act engaged in projects, excluding mine development, a sum which shall be calculated as a percentage of the said assessment and levy and which percentage shall be determined as the proportion that the amount fixed under subsection 1 bears to the total sum that the Workmen's Compensation Board fixes and determines to be assessed for payment by all employers in the said Schedule 1 engaged in projects, excluding mine development, and *The Workmen's Compensation Act* applies to such sum and to the collection and payment thereof in the same manner as to an assessment and levy made under that Act.

Idem

(3) The Workmen's Compensation Board shall collect the assessment and levy imposed under this section and shall pay

the amounts so collected to the Treasurer of Ontario. 1973, c. 47, s. 29, *amended*.

PART III

DUTIES OF A CONSTRUCTOR, EMPLOYER, SUPERVISOR, WORKER, OWNER AND SUPPLIER

13.—(1) A constructor shall ensure that the measures and procedures required by this Act and the regulations are carried out on a project undertaken by the constructor. Duties of constructor

(2) A constructor shall take every precaution reasonable in the circumstances to ensure that every employer and every worker performing work on a project undertaken by the constructor complies with this Act and the regulations. 1973, c. 47, s. 14 (3), *amended*. Idem

(3) Where so prescribed, a constructor shall, before commencing any work on a project, give to a Director notice in writing of the project containing such information as may be prescribed. *New*. Notice of project

14.—(1) An employer shall ensure that, Duties of employer

- (a) the equipment, materials and protective devices as prescribed are provided;
- (b) the equipment, materials and protective devices provided by him are maintained in good condition;
- (c) the measures and procedures prescribed are carried out in the work place; and
- (d) a floor, roof, wall, pillar, support or other part of a work place is capable of supporting all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under *The Building Code Act*, 1974, c. 74, 1974.

(2) An employer shall take every precaution reasonable in the circumstances to ensure that the equipment, materials and protective devices provided by him are used as prescribed. Idem

(3) Without limiting the strict duty imposed by sub-section 1, an employer shall, Idem

- (a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;

- (b) when appointing a supervisor, appoint a competent person;
- (c) acquaint a worker or a person in authority over a worker with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment or a biological, chemical or physical agent;
- (d) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;
- (e) only employ in or about a work place a person over such age as may be prescribed;
- (f) not knowingly permit a person who is under such age as may be prescribed to be in or about a work place; and
- (g) take every precaution reasonable in the circumstances for the protection of a worker.

Idem

(4) For the purposes of clause *b* of subsection 3, an employer may appoint himself as a supervisor where the employer is a competent person. 1971, c. 43, ss. 24 (1-3), *part*, 28 (1, 2); 1973, c. 47, s. 17 (1, 2), *amended*.

Idem

15. In addition to the duties imposed by section 14, an employer or group of employers shall,

- (a) establish an occupational health service for workers as prescribed;
- (b) where an occupational health service is established as prescribed, maintain the same according to the standards prescribed;
- (c) keep and maintain accurate records of the handling, storage, use and disposal of biological, chemical or physical agents as prescribed;
- (d) accurately keep and maintain and make available to the worker affected such records of the exposure of a worker to biological, chemical or physical agents as may be prescribed;
- (e) notify a Director of the use or introduction into a work place of such biological, chemical or physical agents as may be prescribed;

- (f) monitor at such time or times or at such interval or intervals the levels of biological, chemical or physical agents in a work place and keep and post accurate records thereof as prescribed;
- (g) comply with a standard limiting the exposure of a worker to biological, chemical or physical agents as prescribed;
- (h) where so prescribed, only permit a worker to work or be in a work place who has undergone such medical examinations, tests or x-rays as prescribed and who is found to be physically fit to do the work in the work place; and
- (i) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker. *New.*

16.—(1) A supervisor shall take every precaution reasonable in the circumstances to ensure that a worker, Duties of supervisor

- (a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and
- (b) uses or wears the equipment, protective devices or clothing that his employer requires to be used or worn.

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

- (a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;
- (b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and
- (c) take every precaution reasonable in the circumstances for the protection of a worker. R.S.O. 1970, c. 274, s. 177 (6); 1971, c. 43, s. 26; 1973, c. 47, s. 17 (1, 3), *amended.*

17.—(1) A worker shall, Duties of workers

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

- (b) use or wear the equipment, protective devices or clothing that his employer requires to be used or worn;
- (c) report to his employer or supervisor the absence of or defect in any equipment or protective device of which he is aware and which may endanger himself or another worker;
- (d) report to his employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he knows; and
- (e) where so prescribed, have, at the expense of the employer, such medical examinations, tests or x-rays, at such time or times and at such place or places as prescribed.

Idem

- (2) No worker shall,
 - (a) remove or make ineffective any protective device required by the regulations or by his employer, without providing an adequate temporary protective device and when the need for removing or making ineffective the protective device has ceased, the protective device shall be replaced immediately;
 - (b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself or any other worker; or
 - (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct. 1971, c. 43, ss. 27, 29, 31 (3); 1973, c. 47, ss. 18, 19, 20, *amended*.

Duties of owners

18.—(1) The owner of a work place that is not a project shall,

- (a) ensure that,
 - (i) such facilities as may be prescribed are provided,
 - (ii) any facilities prescribed to be provided are maintained as prescribed,
 - (iii) the work place complies with the regulations, and

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

(b) where so prescribed, furnish to a Director any drawings, plans or specifications of any work place as prescribed. 1971, c. 43, s. 22.

(2) The owner of a mine shall cause drawings, plans or specifications to be maintained and kept up to a date not more than six months last past on such scale and showing such matters or things as may be prescribed. R.S.O. 1970, c. 274, s. 617, *amended*. Mine plans

(3) Where so prescribed, an owner or employer shall, Plans of work places

(a) not begin any construction, development, reconstruction, alteration, addition or installation to or in a work place until the drawings, layout and specifications thereof and any alterations thereto have been filed with the Ministry for review by an engineer of the Ministry for compliance with this Act and the regulations, and the same have been reviewed for such compliance; and

(b) keep a copy of the drawings as reviewed in a convenient location at or near the work place and such drawings shall be produced by the owner or employer upon the request of an inspector for his examination and inspection. 1971, c. 43, s. 17 (1, 5), *amended*.

(4) An engineer of the Ministry may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information. 1971, c. 43, s. 17 Additional information

(3) (b), *amended*.

(5) Fees as prescribed for the filing and review of drawings, layout or specifications shall become due and payable by the owner or employer upon filing. 1971, c. 43, s. 17 (6), *amended*. Fees

19. Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a work place shall ensure, Duties of suppliers

(a) that the machine, device, tool or equipment is in good condition;

- (b) that the machine, device, tool or equipment complies with this Act and the regulations; and
- (c) if it is his responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition. 1971, c. 43, s. 30; 1973, c. 47, s. 24 (2), *amended*.

PART IV

TOXIC SUBSTANCES

Orders of
Director

20.—(1) Where a biological, chemical or physical agent or combination of such agents is used or intended to be used in the work place and its presence in the work place or the manner of its use is in the opinion of a Director likely to endanger the health of a worker, the Director shall by notice in writing to the employer order that the use, intended use, presence or manner of use be,

- (a) prohibited;
- (b) limited or restricted in such manner as the Director specifies; or
- (c) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies.

Contents of
order

(2) Where a Director makes an order to an employer under subsection 1, the order shall,

- (a) identify the biological, chemical or physical agent, or combination of such agents, and the manner of use that is the subject-matter of the order; and
- (b) state the opinion of the Director as to the likelihood of the danger to the health of a worker, and his reasons in respect thereof, including the matters or causes which give rise to his opinion.

Posting of
order

(3) The employer shall provide a copy of an order made under subsection 1 to the committee, health and safety representative and trade union, if any, and shall cause a copy of the order to be posted in a conspicuous place in the work place where it is most likely to come to the attention of the workers who may be affected by the use, presence or intended

use of the biological, chemical or physical agent or combination of agents.

(4) Where the employer, a worker or a trade union considers that he or it is aggrieved by an order made under subsection 1, the employer, worker or trade union may by notice in writing given within fourteen days of the making of the order appeal to the Minister. Appeal to
Minister

(5) The Minister may, having regard to the circumstances, direct that an appeal under subsection 4 be determined on his behalf by a person appointed by him for that purpose. Delegation

(6) The Minister or, where a person has been appointed under subsection 5, the person so appointed, may give such directions and issue such orders as he considers proper or necessary concerning the procedures to be adopted or followed and shall have all the powers of a chairman of a board of arbitration under subsection 7 of section 37 of *The Labour Relations Act*. Procedure

R.S.O. 1970.
c. 232

(7) On an appeal, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may substitute his findings for those of the Director and may rescind or affirm the order appealed from or make a new order in substitution therefor and such order shall stand in the place of and have the like effect under this Act and the regulations as the order of the Director, and such order shall be final and not subject to appeal under this section. Substitu-
tion of
findings

(8) In making a decision or order under subsection 1 or subsection 7, a Director, the Minister, or, where a person has been appointed under subsection 5, the person so appointed, shall consider as relevant factors, Matters
to be
considered

- (a) the relation of the agent, combination of agents or by-product to a biological or chemical agent that is known to be a danger to health;
- (b) the quantities of the agent, combination of agents or by-product used or intended to be used or present;
- (c) the extent of exposure;
- (d) the availability of other processes, agents or equipment for use or intended use;

(e) data regarding the effect of the process or agent on health; and

(f) any criteria or guide with respect to the exposure of a worker to a biological, chemical or physical agent or combination of such agents that are adopted by a regulation related.

Suspension of order by Minister, etc., pending disposition of appeal

(9) On an appeal under subsection 4, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may suspend the operation of the order appealed from pending the disposition of the appeal.

Remuneration of appointee
R.S.O. 1970, c. 232

(10) A person appointed under subsection 5 shall be paid remuneration and expenses at the same rate as is payable to a chairman of a conciliation board under *The Labour Relations Act*.


Application

(11) This section does not apply to designated substances.

No hearing required prior to issuing order

(12) A Director is not required to hold or afford to an employer or any other person an opportunity for a hearing before making an order under subsection 1. *New.*

New biological or chemical agents

 **21.—(1)** Except for purposes of research and development, no person shall,

(a) manufacture;

(b) distribute; or

(c) supply,

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

Report on assessment

(2) Where, in the opinion of the Director, which opinion shall be made promptly, the introduction of the new biological or chemical agent or combination of such agents referred to in subsection 1 may endanger the health or safety of the workers in a work place, the Director shall require the manufacturer,

distributor or supplier, as the case may be, to provide, at the expense of the manufacturer, distributor or supplier, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the Director, of the agent or combination of agents intended to be manufactured, distributed or supplied and the manner of use including, the matters referred to in subclauses i to vii of clause l of subsection 1 of section 28.

(3) For the purpose of this section, "new biological or chemical agent or combination of such agents" means any such agent or combination of such agents other than those used in one or more work places and included in an inventory compiled or adopted by the Ministry. *New.* Interpretation

22. Prior to a substance being designated under paragraph 23 of subsection 2 of section 41, the Minister, Designation of substances

- (a) shall publish in *The Ontario Gazette* a notice stating that the substance may be designated and calling for briefs or submissions in relation to the designation; and
- (b) shall publish in *The Ontario Gazette* a notice setting forth the proposed regulation relating to the designation of the substance at least sixty days before the regulation is filed with the Registrar of Regulations. *New.*

PART V

REFUSAL TO WORK WHERE HEALTH OR SAFETY IN DANGER

23.—(1) Where a worker has reason to believe that,

- (a) any equipment, machine, device or thing he is to use or operate is likely to endanger himself or another person; or
- (b) the work place or the part thereof in which he is to work is likely to endanger himself,

Duty to report unsafe conditions

the worker may refuse to use, operate or continue to use or operate the equipment, machine, device or thing or work in the work place and shall forthwith report the same to his supervisor who shall forthwith investigate the matter in the presence of the worker and the worker shall remain in a

safe place near his work station during the investigation. 1971, c. 43, s. 31 (1, 2); 1976, c. 79, s. 5 (1), *amended*.

Dispute of
super-
visor's
report

(2) Where upon the investigation the worker disputes the direction or finding of the supervisor, the supervisor shall cause the same to be further investigated in the presence of the worker and if there is such, in the presence of one of,

- (a) a health and safety representative, if any;
- (b) a committee member who represents workers, if any; or
- (c) a worker, who because of his knowledge, experience and training, is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

and who is reasonably available and in the presence of the employer or a person other than the supervisor representing the employer.

Refusal
to work

(3) Where upon an investigation the employer or the person representing the employer disputes the report of the worker or takes steps to deal with the circumstances that caused the worker to make the report, the worker may continue to refuse to work where the worker continues to have reason to believe that the equipment, machine, device or thing the worker is to use or operate or the work place in which the worker is to work comes within clause a or b of subsection 1.

Notice of
refusal to
work

(4) Where a worker refuses to work pursuant to subsection 3, the employer shall immediately cause an inspector to be notified thereof.

Idem

(5) The worker who refuses to work pursuant to subsection 3 or, if there is such, the person mentioned in clause a, b or c of subsection 2, may cause an inspector to be notified of the refusal to work.

Investiga-
tion by
inspector

(6) An inspector shall investigate the refusal to work in the presence of the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause a, b or c of subsection 2.

Decision of
inspector

(7) The inspector shall, following the investigation referred to in subsection 6, decide whether the machine, device, thing or the work place or part thereof is likely to endanger the worker or another person. 1976, c. 79, s. 3 (2-4), *amended*.

(8) The inspector shall give his decision, in writing, as ^{Idem} soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 2.

(9) Pending the investigation and decision of the inspector, the worker shall remain at a safe place near his work station during his normal working hours unless the employer, ^{Worker to remain at a safe place pending decision} subject to the provisions of a collective agreement, if any,

- (a) assigns the worker reasonable alternative work during such hours; or
- (b) subject to section 24, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

(10) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the work place or the part thereof which is being investigated unless the worker to be so assigned has been advised of the refusal by another worker and the reason therefor. ^{Duty to advise other workers}

(11) The time spent by a person mentioned in clause *a*, *b* or *c* of subsection 2 in carrying out his duties under subsections 2 and 6, shall be deemed to be work time for which the person shall be paid by his employer at his regular or premium rate as may be proper. ^{Entitlement to time from work} *New.*

PART VI

REPRISALS BY EMPLOYER PROHIBITED

24.—(1) No employer or person acting on behalf of an employer shall, ^{No discipline, dismissal, etc., by employer}

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder or has sought the enforcement of this Act or the regulations. 1971, c. 43, s. 24 (5); 1973, c. 47, s. 17 (4); 1976, c. 79, s. 9 (1), *amended.*

Arbitra-
tion

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection 1, the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply, with all necessary modifications, to the complaint.

Inquiry
by Ontario
Labour
Relations
Board
R.S.O. 1970.
c. 232

(3) The Ontario Labour Relations Board may inquire into any complaint filed under subsection 2, and section 79 of *The Labour Relations Act*, except subsection 4a, applies with all necessary modifications, as if such section, except subsection 4a, is enacted in and forms part of this Act.

Idem

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, sections 91, 92, 95, 97 and 98 of *The Labour Relations Act* apply, with all necessary modifications.

Onus of
proof

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection 1 lies upon the employer or the person acting on behalf of the employer. 1976, c. 79, s. 9 (2-5), *amended*.

Jurisdic-
tion when
complaint
by Crown
employee

(6) The Ontario Labour Relations Board shall exercise jurisdiction under this section on a complaint by a Crown employee that the Crown has contravened subsection 1.

Board may
substitute
penalty

(7) Where on an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances. *New.*

PART VII

NOTICES

Notice of
death or
injury

25.—(1) Where a person is killed or critically injured from any cause at a work place, the constructor, if any, and the employer shall notify an inspector, and the committee,

health and safety representative and trade union, if any, immediately of the occurrence by telephone, telegram or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations may prescribe.

(2) Where a person is killed or is critically injured at a work place no person shall, except for the purpose of, Preservation of wreckage

- (a) saving life or relieving human suffering;
- (b) maintaining an essential public utility service or a public transportation system; or
- (c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. R.S.O. 1970, c. 274, s. 612; 1971, c. 43, s. 33; 1973, c. 47, s. 25, *amended*.

26.—(1) Where an accident, explosion or fire causes injury to a person at a work place whereby he is disabled from performing his usual work or requires medical attention, and such occurrence does not cause death or critical injury to any person, the employer shall give notice in writing, within four days of the occurrence, to a Director, and to the committee, health and safety representative and trade union, if any, containing such information and particulars as may be prescribed. R.S.O. 1970, c. 274, s. 613; 1971, c. 43, s. 34; 1973, c. 47, s. 30, *amended*. Notice of accident, explosion or fire causing injury

(2) Where an employer is advised by a worker or by a person on behalf of the worker that the worker has an occupational illness, the employer shall give notice in writing, within four days of being so advised, to a Director and to the committee, health and safety representative and trade union, if any, containing such information and particulars as may be prescribed. 1971, c. 43, s. 34, *part, amended*. Notice of occupational illness

(3) Subsection 2 applies, with all necessary modifications, where an employer is advised by a former worker of the employer or a person on behalf of such worker, that such worker has or had an occupational illness. *New*. Idem

27. Where a notice or report is not required under section 25 or 26 and an accident, premature or unexpected Accidents, explosions, etc., at a project site or mine

explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article or thing, cave-in, subsidence, rockburst, or other incident as prescribed occurs at a project site, mine or mining plant, notice in writing of the occurrence shall be given to a Director and to the committee, health and safety representative and trade union, if any, by the constructor of the project or the owner of the mine or mining plant within two days of the occurrence containing such information and particulars as may be prescribed. R.S.O. 1970, c. 274, s. 614, *amended*.

PART VIII

ENFORCEMENT

Powers of
inspector

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

- (a) subject to subsection 2, enter in or upon any work place at any time without warrant or notice;
- (b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;
- (c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same;
- (d) upon giving a receipt therefor, remove any drawings, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;
- (e) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a work place and for such purposes, take and carry away such samples as may be necessary;
- (f) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him and use any equipment or materials required for such purpose;

- (g) make inquiries of any person who is or was in a work place either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test;
- (h) require that a work place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, investigation or test;
- (i) require that any equipment, machine, device, article, thing or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;
- (j) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,
 - (i) the load limits of a floor, roof or temporary work or part of a building, structure or temporary work,
 - (ii) that a floor, roof or temporary work is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or
 - (iii) that a floor, roof or temporary work, or part of a building, structure or temporary work is capable of supporting or withstanding all loads to which it may be subject without exceeding the allowable unit stresses for the materials used as provided under *The Building Code Act, 1974*; ^{1974, c. 74}
- (k) require in writing an owner of a mine or part thereof to provide, at his expense, a report in writing bearing the seal and signature of a professional engineer stating that the ground stability of, the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered; and R.S.O. 1970, c. 274, s. 618 (1) (a, b); 1971, c. 43, s. 8 (1); 1973, c. 47, s. 6 (1), *amended*.
- (l) require in writing an employer to produce any record or information, or to provide, at the ex-

pense of the employer, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the inspector, of any process or biological, chemical or physical agents or combination of such agents used or intended to be used in a work place, and the manner of use including,

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

Entry to
dwellings

R.S.O. 1970,
c. 450

Repre-
sentative to
accompany
inspector

Consulta-
tion with
workers

(2) An inspector shall only enter a dwelling or that part of a dwelling actually being used as a work place with the consent of the occupier or under the authority of a search warrant issued under section 16 of *The Summary Convictions Act*. 1971, c. 43, s. 8 (4); 1973, c. 47, s. 6 (4).

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

(4) Where there is no committee member representing workers, health and safety representative or worker selected under subsection 3, the inspector shall endeavour to consult during his physical inspection with a reasonable number of the

workers concerning matters of health and safety at their work.

(5) The time spent by a committee member representing workers, health and safety representative or worker selected in accordance with subsection 3 in accompanying an inspector during his physical inspection, shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 6 (1-3), *amended*. Entitle-
ment to
time from
work

29.—(1) Where an inspector finds that a provision of this Act or the regulations is being contravened, he may order, orally or in writing, the owner, constructor, employer, or person whom he believes to be in charge of a work place or the person whom he believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies. R.S.O. 1970, c. 274, s. 618 (1), (c); 1971, c. 43, s. 10 (1); 1973, c. 47, s. 11 (1), *amended*. Orders by
inspectors
where non-
compliance

(2) Where an inspector makes an oral order under subsection 1, he shall confirm the order in writing before leaving the work place. 1971, c. 43, s. 10 (2), *amended*. Idem

(3) An order made under subsection 1 shall indicate generally the nature of the contravention and where appropriate the location of the contravention. 1973, c. 47, s. 11 (2), *amended*. Contents of
order

(4) Where an inspector makes an order under subsection 1 and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker he may, Orders by
inspector
where
worker en-
dangered

- (a) order that any place, equipment, machine, device, article or thing or any process or material shall not be used until the order is complied with;
- (b) order that work at the work place as indicated in the order shall stop until the order is complied with, or until the order to stop work is withdrawn or cancelled by an inspector;
- (c) order that the work place where the contravention exists be cleared of workers and isolated by barricades, fencing or any other means suitable to prevent access thereto by a worker until the danger or hazard to the health or safety of a worker is

removed. 1971, c. 43, s. 10 (3), *amended*; 1973, c. 47, s. 11 (3, 4), *amended*.

Posting of
notice

(5) Where an inspector makes an order under this section, he may affix to the work place, or to any equipment, machine, device, article or thing, a copy thereof or a notice in the prescribed form and no person, except an inspector, shall remove such copy or notice unless authorized to do so by an inspector. 1971, c. 43, s. 10 (4); 1973, c. 47, s. 11 (6), *amended*.

Idem

(6) Where an inspector makes an order in writing or issues a report of his inspection to an owner, constructor, employer or person in charge of the work place, the owner, constructor, employer or person in charge of the work place shall forthwith cause a copy or copies thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of the workers and shall furnish a copy of such order or report to the health and safety representative and the committee, if any, and the inspector shall cause a copy thereof to be furnished to a person who has complained of a contravention of this Act or the regulations. 1976, c. 79, s. 7, *amended*.

No hearing
required
prior to
making
order

(7) An inspector is not required to hold or afford to an owner, constructor, employer or any other person an opportunity for a hearing before making an order. *New*.

Entry into
barricaded
area

30. Where an order is made under clause *c* of subsection 4 of section 29, no owner, constructor, employer or supervisor shall require or permit a worker to enter the work place except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the worker is protected from the danger or hazard. 1973, c. 47, s. 11 (4), *part*.

Injunction
proceed-
ings

31. In addition to any other remedy or penalty therefor, where an order made under subsection 4 of section 29 is contravened, such contravention may be restrained upon an *ex parte* application to a judge or local judge of the Supreme Court made at the instance of a Director. 1973, c. 47, s. 13 (2), *amended*.

Appeals
from order
of an
inspector

32.—(1) Any employer, constructor, owner, worker or trade union which considers himself or itself aggrieved by any order made by an inspector under this Act or the regulations may, within fourteen days of the making thereof, appeal to a Director who shall hear and dispose of the appeal as promptly as is practicable.

(2) An appeal to a Director may be made in writing ^{Method} or orally or by telephone, but the Director may require the grounds for appeal to be specified in writing before the appeal is heard.

(3) The appellant, the inspector from whom the appeal ^{Parties} is taken and such other persons as a Director may specify are parties to an appeal under this section.

(4) On an appeal under this section, a Director may sub- ^{Powers of a Director} stitute his findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Director shall stand in the place of and have the like effect under this Act and the regulations as the order of the inspector.

(5) In this section, an order of an inspector under this ^{Order, extended meaning} Act or the regulations includes any order or decision made or given or the imposition of any terms or conditions therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector.

(6) A decision of the Director under this section is final. ^{Decision of Director final} 1971, c. 43, s. 11; 1973, c. 47, s. 12, *amended*.

(7) On an appeal under subsection 1, a Director may ^{Suspension of order by Director pending disposition of appeal} suspend the operation of the order appealed from pending the disposition of the appeal.

(8) This section does not apply to the order of a Director ^{Application} made under section 20. *New*.

33.—(1) No person shall hinder, obstruct, molest or ^{Obstruction of inspector} interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations.

(2) Every person shall furnish all necessary means in ^{Assistance to inspector} his power to facilitate any entry, inspection, examination, testing or inquiry by an inspector in the exercise of his powers or performance of his duties under this Act or the regulations.

False
informa-
tion, etc.

(3) No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his duties under this Act or the regulations. 1971, c. 43, s. 9; 1973, c. 47, s. 7, *amended*.

Monitoring
devices

(4) No person shall interfere with any monitoring equipment or device in a work place.

Obstruc-
tion of
committee,
etc.

(5) No person shall knowingly,

(a) hinder or interfere with a committee, a committee member or a health and safety representative in the exercise of a power or performance of a duty under this Act;

(b) furnish a committee, a committee member or a health and safety representative with false information in the exercise of a power or performance of a duty under this Act; or

(c) hinder or interfere with a worker selected by a trade union or trade unions or a worker selected by the workers to represent them in the exercise of a power or performance of a duty under this Act. *New*.

Informa-
tion
confidential

34.—(1) Except for the purposes of this Act and the regulations or as required by law,

(a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations; 1971, c. 43, s. 13 (1); 1973, c. 47, s. 8 (1), *amended*.

(b) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act of the regulations; *New*.

(c) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and 1971, c. 43, s. 13 (5); 1973, c. 47, s. 8 (5), *amended*.

- (d) no person shall disclose any information obtained in any medical examination, test or x-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case.
New.

(2) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector is not a compellable witness in a civil suit or any proceeding, except an inquest under *The Coroners Act, 1972*, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (3); 1973, c. 47, s. 8 (3), *amended*. Com-
pellability,
civil suit

1972. c. 98

(3) A Director may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (4); 1973, c. 47, s. 8 (4), *amended*. Power of
Director
to disclose

35. A Director may, upon receipt of a request in writing from the owner of a work place who has entered into an agreement to sell the same and upon payment of the fee or fees prescribed, furnish to the owner or a person designated by him copies of reports or orders of an inspector made under this Act in respect of the work place as to its compliance with subsection 1 of section 18. 1971, c. 43, s. 14, *amended*. Copies of
reports

36.—(1) No action or other proceeding for damages, prohibition, or mandamus lies or shall be instituted against a Director, an inspector, an engineer of the Ministry, a health and safety representative, a committee member, a worker selected by a trade union or trade unions or a worker selected by the workers to represent them for an act or an omission done or omitted to be done by him in good faith in the execution or intended execution of any power or duty under this Act or the regulations. Liability
of certain
persons

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a Director, an inspector or an engineer of the Ministry to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted. 1971, c. 43, s. 16; 1973, c. 47, s. 9, *amended*. Liability
of Crown
R.S.O. 1970,
c. 365

PART IX

OFFENCES AND PENALTIES

Penalties **37.**—(1) Every person who contravenes or fails to comply with,

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

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

Onus of proof

(2) On a prosecution for a failure to comply with subsection 2 of section 13, subsection 2 of section 14, clause *g* of subsection 3 of section 14, subsection 1 of section 16 or clause *c* of subsection 2 of section 16, it shall be for the accused to prove that every precaution reasonable in the circumstances for the protection of a worker was taken. R.S.O. 1970, c. 274, s. 625; 1971, c. 43, s. 36; 1973, c. 47, s. 26, *amended*.

Certified copies of documents, etc., as evidence

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

- (a) a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister or an inspector;
- (b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom given or made under this Act or the regulations and purporting to be certified by an inspector; or
- (c) a document purporting to certify the result of a test or an analysis of a sample of air and setting forth the concentration or amount of a biological, chemical or physical agent in a work place or part thereof and purporting to be certified by an inspector,

is evidence of the order, decision, writing or document, and the facts appearing in the order, decision, writing or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof. 1971, c. 43, s. 41; 1973, c. 47, s. 27, *amended*.

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

- (a) personally in the case of an individual or in case of a partnership upon a partner, and in the case of a corporation, upon the president, vice-president, secretary, treasurer or a director, or upon the manager or person in charge of the work place; or
- (b) by registered letter addressed to a person or corporation mentioned in clause *a* at his or its last known place of business,

and the same shall be deemed to be good and sufficient service thereof. *New.*

39. An information in respect of an offence under this Act may, at the election of the informant, be heard, tried and determined by a justice of the peace or a provincial court judge of the Provincial Court (Criminal Division) having jurisdiction in the county or district in which the accused is resident or carries on business although the subject-matter of the information did not arise in that county or district. 1973, c. 47, s. 28. Place of trial

40. No prosecution under this Act shall be instituted more than one year after the last act or default upon which the prosecution is based occurred. 1971, c. 43, s. 37. Limitation on prosecutions

PART X

REGULATIONS

41.—(1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety of persons in or about a work place. 1971, c. 43, s. 45 (1); 1973, c. 47, s. 31 (1), *amended*. Regulations

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

1. defining any word or expression used in this Act or the regulations that is not defined in this Act for the purposes of the Act and the regulations;

2. designating or defining any industry, work place, employer or class of work places or employers for the purposes of this Act, a part of this Act, or the regulations or any provision thereof;
3. exempting any work place, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof from the application of a regulation or any provision thereof;
4. limiting or restricting the application of a regulation or any provision thereof to any work place, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof;
5. prescribing forms and providing for their use;
6. providing for and prescribing fees and the payment or refund of fees;
7. requiring and prescribing notices that shall be posted in one or more languages;
8. prescribing the records that shall be made and kept by owners and employers;
9. requiring an owner, employer or constructor to transmit to a Director such notices, returns and reports and such information and particulars therein as are prescribed;
10. prescribing the kind of accident, explosion, fire, flood or inrush of water, failure of equipment, machine, device or thing, cave-in, subsidence, rock-burst or other incident of which notice is to be given under section 27;
11. requiring the submission of drawings, specifications, reports, details of procedures and other information as are prescribed and prescribing by whom such information shall be prepared or certified;
12. prescribing the qualifications of any person required to prepare or certify such information as may be required under a regulation made pursuant to paragraph 11;
13. regulating or prohibiting the installation or use of any machine, device or thing or any class thereof;

14. requiring that any equipment, machine, device, article or thing used bear the seal of approval of an organization designated by the regulations to test and approve the equipment, machine, device, article or thing and designating organizations for such purposes;
15. requiring and regulating equipment, materials and protective devices or clothing for workers;
16. requiring that a worker shall be a competent person;
17. prescribing measures and procedures to be carried out in a work place;
18. regulating or prohibiting the handling of, exposure to, use and disposal of any material, biological, chemical or physical agent or combination thereof or thing in a work place;
19. respecting medical examinations, tests or x-rays of workers and the reports to be made of such examinations;
20. respecting the reporting by physicians and others of workers affected by any biological, chemical or physical agents or combination thereof;
21. regulating or prohibiting atmospheric conditions, to which any worker may be exposed in a work place;
22. prescribing methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any biological, chemical or physical agent, or combination thereof in a work place;
23. prescribing any biological, chemical or physical agent or combination thereof as a designated substance;
24. prohibiting, regulating, restricting, limiting or controlling the handling of, exposure to, or the use and disposal of a designated substance;
25. requiring the maintenance and keeping of a record or records of biological, chemical or physical agents,

the use thereof, the disposal thereof, and the exposure of workers thereto;

26. requiring and regulating the establishment of an occupational health service by an employer or person in charge of a work place or by a group of employers or persons in charge of a work place and the maintenance thereof in accordance with standards as prescribed;
27. respecting the provision of suitable facilities for medical treatment in cases of accident or sickness and for the supervision of the general health of employees during working hours;
28. respecting the prevention or control of fire in a work place and protection therefrom;
29. respecting the provision and maintenance of any sanitary convenience or welfare provision in a work place;
30. respecting the provision of suitable facilities in a work place for handicapped persons;
31. adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code and requiring compliance with any code that is so adopted;
32. requiring and providing for the registration of employers of workers;
33. prescribing the minimum age for a worker or person in any work place or class of work places;
34. requiring an employer or supervisor to provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker;
35. requiring a constructor to appoint a superintendent for a project as prescribed;
36. adopting by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof;

37. enabling the Director by notice in writing to designate that any part of a project shall be an individual project for the purposes of this Act and the regulations and prescribing to whom notice shall be given.
38. permitting the Minister to approve laboratories for the purpose of carrying out and performing sampling, analyses, tests, and examinations; and
39. requiring that sampling, analyses, examinations, and tests be carried out and performed by a laboratory approved by the Minister. 1971, c. 43, s. 45 (2); 1973, c. 47, s. 31 (2), *amended*.

42. The following are repealed:

Repeals

1. *The Construction Safety Act, 1973*, being chapter 47.
2. *The Industrial Safety Act, 1971*, being chapter 43.
3. *The Industrial Safety Amendment Act, 1972*, being chapter 122.
4. *The Industrial Safety Amendment Act, 1974*, being chapter 104.
5. Part IX of *The Mining Act*, except,
 - i. Subsection 1 of section 176,
 - ii. Clauses *d*, *e* and *f* of subsection 2 of section 176, and
 - iii. Sections 611 and 616,
 being chapter 274 of the Revised Statutes of Ontario, 1970.
6. *The Silicosis Act*, being chapter 438 of the Revised Statutes of Ontario, 1970.
7. Section 78 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.
8. *The Employees' Health and Safety Act, 1976*, being chapter 79.
9. Section 10 of *The Ministry of Labour Act*, being chapter 117 of the Revised Statutes of Ontario, 1970.

Commence-
ment

43. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

44. The short title of this Act is *The Occupational Health and Safety Act, 1978*.



An Act respecting the
Occupational Health and Occupational
Safety of Workers

1st Reading

February 21st, 1978

2nd Reading

February 21st, 1978

3rd Reading

THE HON. B. STEPHENSON
Minister of Labour

*(Reprinted as amended by the
Resources Development Committee)*

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting the
Occupational Health and Occupational Safety of Workers**

THE HON. R. G. ELGIE
Minister of Labour

(Reprinted as amended by the Committee of the Whole House)



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EXPLANATORY NOTE

The purpose of the Bill is to revise and consolidate into one Act, the Acts dealing with the health and safety of workers at work.

These Acts are:

The Mining Act, R.S.O. 1970, c. 274, Part IX

The Silicosis Act, R.S.O. 1970, c. 438

The Industrial Safety Act, 1971, c. 43

The Construction Safety Act, 1973, c. 47

The Employees' Health and Safety Act, 1976, c. 79

Subject to section 3, the Bill applies to all work places.

The Bill provides for the establishment of an Advisory Council on Occupational Health and Occupational Safety to make recommendations to and advise the Minister on matters relating to occupational health and safety.

The Bill further provides for the regulation of the use of and exposure to substances which may endanger health in a work place, the monitoring of the levels of such substances in a work place and requiring medical examinations of workers.

BILL 70

1978

An Act respecting the Occupational Health and Occupational Safety of Workers

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

1. "committee" means a joint health and safety committee established under this Act; 1976, c. 79, s. 1 (a), *amended*.

2. "competent person" means a person who,

i. is qualified because of his knowledge, training and experience to organize the work and its performance,

ii. is familiar with the provisions of this Act and the regulations that apply to the work, and

iii. has knowledge of any potential or actual danger to health or safety in the work place;
New.

3. "construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any machinery or plant, and any work or undertaking in connection with a project; 1973, c. 47, s. 1 (d), *amended*.

4. "constructor" means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer; 1973, c. 47, s. 1 (e), *amended*.

5. "Deputy Minister" means the Deputy Minister of Labour; 1973, c. 47, s. 1 (f).
6. "designated substance" means a biological, chemical or physical agent or combination thereof prescribed as a designated substance to which the exposure of a worker is prohibited, regulated, restricted, limited or controlled; *New*.
7. "Director" means an inspector who is appointed under this Act as a Director of the Occupational Health and Safety Division of the Ministry; 1971, c. 43, s. 1 (da); 1972, c. 122, s. 1, *amended*.
8. "employer" means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or sub-contractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services; 1971, c. 43, s. 1 (e); 1973, c. 47, s. 1 (h), *amended*.
9. "engineer of the Ministry" means a person who is employed by the Ministry and who is registered as a professional engineer or licensed as a professional engineer under *The Professional Engineers Act*; 1971, c. 43, s. 1 (g), *amended*.
10. "factory" means,
 - i. a building or place other than a mine, mining plant or place where homework is carried on, where,
 - A. any manufacturing process or assembling in connection with the manufacturing of any goods or products is carried on,
 - B. in preparing, inspecting, manufacturing, finishing, repairing, warehousing, cleaning or adapting for hire or sale any substance, article or thing, energy is,
 1. used to work any machinery or device, or
 2. modified in any manner,

- C. any work is performed by way of trade or for the purposes of gain in or incidental to the making of any goods, substance, article or thing or part thereof,
 - D. any work is performed by way of trade or for the purposes of gain in or incidental to the altering, demolishing, repairing, maintaining, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance, article or thing, or
 - E. aircraft, locomotives or vehicles used for private or public transport are maintained,
- ii. a laundry including a laundry operated in conjunction with,
 - A. a public or private hospital,
 - B. a hotel, or
 - C. a public or private institution for religious, charitable or educational purposes, and
 - iii. a logging operation; 1971, c. 43, s. 1 (*h*), *amended*.
11. "health and safety representative" means a health and safety representative selected under this Act; 1976, c. 79, s. 1 (*d*), *amended*.
 12. "homework" means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof by a person for wages in premises occupied primarily as living accommodation; 1971, c. 43, s. 1 (*i*).
 13. "industrial establishment" means an office building, factory, arena, shop or office, and any land, buildings and structures appertaining thereto; 1971, c. 43, s. 1 (*j*); 1974, c. 104, s. 1 (*i*), *amended*.
 14. "inspector" means an inspector appointed for the purposes of this Act and includes a Director; 1971, c. 43, s. 1 (*k*); 1973, c. 47, s. 1 (*i*), *amended*.

15. "logging" means the operation of felling or trimming trees for commercial or industrial purposes and includes the measuring, storing, transporting or floating of logs and any such activities for the clearing of land; 1971, c. 43, s. 1 (*kb*); 1974, c. 104, s. 1 (2), *amended*.
16. "mine" means any work or undertaking for the purpose of opening up, proving, removing or extracting any metallic or non-metallic mineral or mineral-bearing substance, rock, earth, clay, sand or gravel; R.S.O. 1970, c. 274, s. 169 (1) (*d*), *amended*.
17. "mining plant" means any roasting or smelting furnace, concentrator, mill or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substance mentioned in paragraph 16; R.S.O. 1970, c. 274, s. 169 (1) (*g*), *amended*.
18. "Minister" means the Minister of Labour; 1971, c. 43, s. 1 (*l*); 1973, c. 47, s. 1 (*j*).
19. "Ministry" means the Ministry of Labour;
20. "occupational illness" means a condition that results from exposure in a work place to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an industrial disease as defined by *The Workmen's Compensation Act*; *New*.
21. "owner" includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a work place, and a person who acts for or on behalf of an owner as his agent or delegate; R.S.O. 1970, c. 274, s. 1, par. 18; 1971, c. 43, s. 1 (*n*); 1973, c. 47, s. 1 (*l*), *amended*.
22. "prescribed" means prescribed by a regulation made under this Act; *New*.
23. "project" means a construction project, whether public or private, including,
 - i. the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking

lot, cofferdam, conduit, sewer, watermain, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof,

ii. mining development,

iii. the moving of a building or structure, and

iv. any work or undertaking, or any lands or appurtenances used in connection with construction; 1973, c. 47, s. 1 (n), *amended*.

24. "regulations" means the regulations made under this Act; 1971, c. 43, s. 1 (r); 1973, c. 47, s. 1 (o), *amended*.

25. "shop" means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale; 1971, c. 43, s. 1 (s), *amended*.

26. "supervisor" means a person who has charge of a work place or authority over a worker; *New*.

27. "trade union" means a trade union as defined in *The Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a work place and includes an organization representing workers or persons to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such workers or persons; 1976, c. 79, s. 1 (g), *amended*. R.S.O. 1970,
c. 232

28. "work place" means any land, premises, location or thing at, upon, in or near which a worker works; *New*.

29. "worker" means a person who performs work or supplies services for monetary compensation but does not include,

i. an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program, or

ii. a patient who participates in a work or rehabilitation program in a psychiatric institution, mental health or retardation centre or

home, or rehabilitation facility. 1973, c. 47, s. 1 (t), *amended*.

PART I

APPLICATION

Application
to Crown

2.—(1) This Act binds the Crown and applies to an employee in the service of the Crown or an agency, board, commission or corporation that exercises any function assigned or delegated to it by the Crown. 1971, c. 43, s. 3; 1973, c. 47, s. 2 (1), *amended*.

Application
of other
Acts

(2) Notwithstanding anything in any general or special Act, the provisions of this Act and the regulations prevail. 1976, c. 79, s. 11.

Application
to private
residences

3.—(1) This Act does not apply to work performed by the owner or occupant or a servant of the owner or occupant to, in or about a private residence or the lands and appurtenances used in connection therewith.

Farming
operations

(2) Except as shall be prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to farming operations.

Teachers,
etc.

(3) Except as shall be prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to,

1974, c. 109

(a) a person who is employed as a teacher as defined in *The Education Act, 1974*; or

(b) a person who is employed as a member or teaching assistant of the academic staff of a university or a related institution. *New*.

PART II

ADMINISTRATION

Delegation
of powers

4. Where under this Act or the regulations any power or duty is granted to or vested in the Minister or the Deputy Minister, the Minister or Deputy Minister may in writing

delegate that power or duty from time to time to any officer or officers of the Ministry subject to such limitations, restrictions, conditions and requirements as the Minister or Deputy Minister may set out in the delegation. *New.*

5.—(1) Such persons as may be necessary to administer and enforce this Act and the regulations may be appointed as inspectors by the Deputy Minister and the Deputy Minister may designate one or more of the inspectors as a Director or Directors. 1971, c. 43, s. 6 (1, 2); 1973, c. 47, s. 4 (1, 2), *amended.*

(2) A Director may exercise any of the powers or perform any of the duties of an inspector under this Act or the regulations. *New.*

6.—(1) The Deputy Minister shall issue a certificate of appointment, bearing his signature or a facsimile thereof, to every inspector.

(2) Every inspector, in the exercise of any of his powers or duties under this Act, shall produce his certificate of appointment upon request. 1971, c. 43, s. 7; 1973, c. 47, s. 5, *amended.*

7.—(1) Where the number of workers at a project regularly exceeds twenty, the constructor shall cause the workers to select at least one health and safety representative from among the workers on the project who do not exercise managerial functions. *New.*

(2) Where no committee has been established under section 8, or where the number of workers at a project does not regularly exceed twenty, the Minister may, by order in writing, require a constructor or an employer to cause the selection of one or more health and safety representatives for a work place or a part or parts thereof from among the workers employed at the work place or in the part or parts thereof who do not exercise managerial functions, and may provide in the order for the qualifications of such representative or representatives.

(3) The Minister may from time to time give such directions as the Minister considers advisable concerning the carrying out of the functions of a health and safety representative. 1976, c. 79, s. 5 (1), *amended.*

(4) In exercising the power conferred by subsection 2, the Minister shall consider the matters set out in subsection 4 of section 8. *New.*

Selection
of
representa-
tives

(5) The selection of a health and safety representative shall be made by those workers who do not exercise managerial functions and who will be represented by the health and safety representative in the work place, or the part or parts thereof, as the case may be, or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions.

Powers of
representa-
tive

(6) A health and safety representative may inspect the physical condition of the work place or the part or parts thereof for which he has been selected, as the case may be, not more often than once a month or at such intervals as a Director may direct, and it is the duty of the employer and the workers to afford the health and safety representative such information and assistance as may be required for the purpose of carrying out the inspection.

Idem

(7) A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his findings thereon to the employer, the workers and the trade union or trade unions representing the workers.

Notice of
accident,
inspection
by repre-
sentative

(8) Where a person is killed or critically injured at a work place from any cause, the health and safety representative may, subject to subsection 2 of section 25, inspect the place where the accident occurred and any machine, device or thing, and shall report his findings in writing to a Director.

Entitle-
ment to
time from
work

(9) A health and safety representative is entitled to take such time from his work as is necessary to carry out his duties under subsections 6 and 8 and the time so spent shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 5 (2-6), *amended*.

Additional
powers of
certain
health and
safety
representa-
tives

(10) A health and safety representative or representatives of like nature appointed or selected under the provisions of a collective agreement or other agreement or arrangement between the constructor or the employer and the workers, has, in addition to his functions and powers under the provisions of the collective agreement or other agreement or arrangement the functions and powers conferred upon a health and safety representative by subsections 6, 7 and 8. *New*.

Application

8.—(1) Subject to subsection 3, this section does not apply,

(a) to a constructor or an employer who undertakes to perform work or supply services on a project; or

- (b) to an employer in respect of those workers who work,
- (i) in that part or those parts of a building used for office purposes,
 - (ii) in a shop where goods or services are sold or offered for sale to the public, except any part used as a factory,
 - (iii) in a building used for multiple residential accommodation,
 - (iv) in a library, museum or art gallery,
 - (v) in a restaurant, hotel, motel or premises for which a licence or permit has been issued under *The Liquor Licence Act, 1975* except ^{1975, c. 40} that part used as a kitchen or laundry,
 - (vi) in a theatre or place of public entertainment, or
 - (vii) in premises occupied and used by a fraternal or social organization or a private club.

(2) Subject to subsection 3, where,

- (a) twenty or more workers are regularly employed at a work place;
- (b) a regulation made in respect of a designated substance applies to a work place; or
- (c) an order to an employer is in effect under section 20,

Establishment
of joint
health and
safety
committees

the employer shall cause a joint health and safety committee to be established and maintained at the work place unless the Minister is satisfied that a committee of like nature or an arrangement, program or system in which the workers participate is, on the date this Act comes into force, established and maintained pursuant to a collective agreement or other agreement or arrangement and that such committee, arrangement, program or system provides benefits for the health and safety of the workers equal to, or greater than, the benefits to be derived under a committee established under this section.

(3) Notwithstanding subsections 1 and 2, the Minister ^{Minister's order} may, by order in writing, require a constructor or an em-

ployer to establish and maintain one or more joint health and safety committees for a work place or a part thereof, and may, in such order, provide for the composition, practice and procedure of any committee so established. *New.*

What
Minister
shall
consider

(4) In exercising the power conferred by subsection 3, the Minister shall consider,

- (a) the nature of the work being done;
- (b) the request of a constructor, an employer, a group of the workers or the trade union or trade unions representing the workers in a work place;
- (c) the frequency of illness or injury in the work place or in the industry of which the constructor or employer is a part;
- (d) the existence of health and safety programs and procedures in the work place and the effectiveness thereof; and
- (e) such other matters as the Minister considers advisable. 1976, c. 79, s. 4 (3), *amended.*

Composi-
tion of
committee

(5) A committee shall consist of at least two persons of whom at least half shall be workers who do not exercise managerial functions to be selected by the workers they are to represent or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions.

Powers of
committee

- (6) It is the function of a committee and it has power to,
- (a) identify situations that may be a source of danger or hazard to workers;
 - (b) make recommendations to the constructor or employer and the workers for the improvement of the health and safety of workers;
 - (c) recommend to the constructor or employer and the workers the establishment, maintenance and monitoring of programs, measures and procedures respecting the health or safety of workers; and
 - (d) obtain information from the constructor or employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) health and safety experience and work practices and standards in similar or other indus-

tries of which the constructor or employer has knowledge. 1976, c. 79, s. 4 (4), *amended*.

(7) A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector. Minutes of proceedings

(8) The members of a committee who represent workers shall designate one of the members representing workers to inspect the physical condition of the work place, not more often than once a month or at such intervals as a Director may direct, and it is the duty of the employer and the workers to afford that member such information and assistance as may be required for the purpose of carrying out the inspection. Powers of designated member

(9) The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is killed or critically injured at a work place from any cause and one of those members may, subject to subsection 2 of section 25, inspect the place where the accident occurred and any machine, device or thing, and shall report his findings to a Director and to the committee. Idem
New.

(10) A constructor or an employer required to establish a committee under this section shall post and keep posted at the work place the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the workers. Posting of names and work locations

(11) A committee shall meet at least once every three months at the work place and may be required to meet by order of the Minister. 1976, c. 79, s. 4 (6, 7), *amended*. Meetings

(12) A member of a committee is entitled to such time from his work as is necessary to attend meetings of the committee and to carry out his duties under subsections 8 and 9 and the time so spent shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 4 (8), *amended*. Entitlement to time from work

(13) Any committee of a like nature to a committee established under this section in existence in a work place under the provisions of a collective agreement or other agreement or arrangement between a constructor or an employer and the workers, has, in addition to its functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a committee by this section. Additional powers of certain committees

Dispute
resolution

(14) Where a dispute arises as to the application of subsection 2, or the compliance or purported compliance therewith by an employer, the dispute shall be decided by the Minister after consulting the employer and the workers or the trade union or trade unions representing the workers. *New.*

Summary
to be
furnished
R.S.O. 1970,
c. 505

9.—(1) For work places to which *The Workmen's Compensation Act* applies, the Workmen's Compensation Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost workday cases, the number of lost workdays, the number of non-fatal cases that required medical aid without lost workdays, the incidents of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.

Posting of
copy of
summary

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of the workers. 1976, c. 79, s. 8, *amended.*

Director
to provide
information

(3) A Director shall, in accordance with the objects and purposes of this Act, ensure that persons and organizations concerned with the purposes of this Act are provided with information and advice pertaining to its administration and to the protection of the occupational health and occupational safety of workers generally. *New.*

Advisory
Council on
Occupational
Health and
Occupational
Safety

10.—(1) There shall be a council to be known as the Advisory Council on Occupational Health and Occupational Safety composed of not fewer than twelve and not more than twenty members appointed by the Lieutenant Governor in Council on the recommendation of the Minister.

Term of
office of
members

(2) The members of the Advisory Council shall be appointed for such term as the Lieutenant Governor in Council determines and shall be representative of management, labour and technical or professional persons and the public who are concerned with and have knowledge of occupational health and occupational safety.

Chairman
and vice-
chairman

(3) The Lieutenant Governor in Council shall designate a chairman and a vice-chairman of the Advisory Council from among the members appointed.

(4) The Lieutenant Governor in Council may fill any vacancy that occurs in the membership of the Advisory Council. Vacancies

(5) The remuneration and expenses of the members of the Advisory Council shall be determined by the Lieutenant Governor in Council and shall be paid out of the moneys appropriated therefor by the Legislature. Remuneration and expenses

(6) The Advisory Council, with the approval of the Minister, may make rules and pass resolutions governing its procedure, including the calling of meetings, the establishment of a quorum, and the conduct of meetings. Powers of Advisory Council

(7) The function of the Advisory Council is and it has power, Idem

(a) to make recommendations to the Minister relating to programs of the Ministry in occupational health and occupational safety; and

(b) to advise the Minister on matters relating to occupational health and occupational safety which may be brought to its attention or be referred to it.

(8) The Advisory Council shall file with the Minister not later than the 1st day of June in each year an annual report upon the affairs of the Advisory Council. Annual report

(9) The Minister shall submit the report to the Lieutenant Governor in Council who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. *New.* Idem

11.—(1) The Minister may appoint committees, which are not committees as defined in paragraph 1 of section 1, or persons to assist or advise the Minister on any matter arising under this Act or to inquire into and report to the Minister on any matter that the Minister considers advisable. Advisory committees

(2) Any person appointed under subsection 1 who is not an officer in the public service of the Province of Ontario may be paid such remuneration and expenses as may be from time to time fixed by the Lieutenant Governor in Council. *New.* Remuneration and expenses

12.—(1) The Lieutenant Governor in Council may fix an amount that shall be assessed and levied by the Workmen's Compensation Board upon employers in Schedules 1 Assessment to defray expenses

R.S.O. 1970,
c. 505

and 2 under *The Workmen's Compensation Act* to defray the expenses of the administration of this Act and the regulations and such amount shall not exceed \$4,000,000 for the fiscal year in which this Act comes into force and shall be subject to increase in each subsequent fiscal year by a sum not exceeding 10 per cent of the amount fixed for the preceding fiscal year.

Method of
collection

(2) The Workmen's Compensation Board shall add to the assessments and levies made under *The Workmen's Compensation Act* upon employers in Schedules 1 and 2 a sum calculated as a percentage of the assessments and levies and which percentage shall be determined as the proportion that the amount fixed under subsection 1 bears to the total sum that the Workmen's Compensation Board fixes and determines to be assessed for payment by employers in Schedules 1 and 2, and *The Workmen's Compensation Act* applies to such sum and to the collection and payment thereof in the same manner as to an assessment and levy made under that Act.

Idem

(3) The Workmen's Compensation Board shall collect the assessment and levy imposed under this section and shall pay the amounts so collected to the Treasurer of Ontario. 1973, c. 47, s. 29, *amended*.

PART III

DUTIES OF A CONSTRUCTOR, EMPLOYER, SUPERVISOR, WORKER, OWNER AND SUPPLIER

Duties of
constructor

13.—(1) A constructor shall ensure, on a project undertaken by the constructor that,

- (a) the measures and procedures prescribed by this Act and the regulations are carried out on the project;
- (b) every employer and every worker performing work on the project complies with this Act and the regulations; and
- (c) the health and safety of workers on the project is protected. 1973, c. 47, s. 14 (3), *amended*.

Notice of
project

(2) Where so prescribed, a constructor shall, before commencing any work on a project, give to a Director notice in writing of the project containing such information as may be prescribed. *New*.

Duties of
employers

14.—(1) An employer shall ensure that,

- (a) the equipment, materials and protective devices as prescribed are provided;
- (b) the equipment, materials and protective devices provided by him are maintained in good condition;
- (c) the measures and procedures prescribed are carried out in the work place;
- (d) the equipment, materials and protective devices provided by him are used as prescribed; and
- (e) a floor, roof, wall, pillar, support or other part of a work place is capable of supporting all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under *The Building Code Act*, 1974, c. 74, 1974.

(2) Without limiting the strict duty imposed by sub-^{Idem} section 1, an employer shall,

- (a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;
- (b) when appointing a supervisor, appoint a competent person;
- (c) acquaint a worker or a person in authority over a worker with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment or a biological, chemical or physical agent;
- (d) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;
- (e) only employ in or about a work place a person over such age as may be prescribed;
- (f) not knowingly permit a person who is under such age as may be prescribed to be in or about a work place;
- (g) take every precaution reasonable in the circumstances for the protection of a worker; and
- (h) post, in the work place, a copy of this Act and any explanatory material prepared by the Ministry, both in English and the majority language of the

work place, outlining the rights, responsibilities and duties of workers.

Idem (3) For the purposes of clause *b* of subsection 2, an employer may appoint himself as a supervisor where the employer is a competent person. 1971, c. 43, ss. 24 (1-3), *part*, 28 (1, 2); 1973, c. 47, s. 17 (1, 2), *amended*.

Idem 15.—(1) In addition to the duties imposed by section 14, an employer shall,

- (a) establish an occupational health service for workers as prescribed;
- (b) where an occupational health service is established as prescribed, maintain the same according to the standards prescribed;
- (c) keep and maintain accurate records of the handling, storage, use and disposal of biological, chemical or physical agents as prescribed;
- (d) accurately keep and maintain and make available to the worker affected such records of the exposure of a worker to biological, chemical or physical agents as may be prescribed;
- (e) notify a Director of the use or introduction into a work place of such biological, chemical or physical agents as may be prescribed;
- (f) monitor at such time or times or at such interval or intervals the levels of biological, chemical or physical agents in a work place and keep and post accurate records thereof as prescribed;
- (g) comply with a standard limiting the exposure of a worker to biological, chemical or physical agents as prescribed;
- (h) where so prescribed, only permit a worker to work or be in a work place who has undergone such medical examinations, tests or x-rays as prescribed and who is found to be physically fit to do the work in the work place; and
- (i) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker. *New*.

Idem (2) For the purposes of clause *a* of subsection 1, a group of employers, with the approval of a Director, may act as an employer.

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

Duties of
supervisor

- (a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and
- (b) uses or wears the equipment, protective devices or clothing that his employer requires to be used or worn.

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

Additional
duties of
supervisor

- (a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;
- (b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and
- (c) take every precaution reasonable in the circumstances for the protection of a worker. R.S.O. 1970, c. 274, s. 177 (6); 1971, c. 43, s. 26; 1973, c. 47, s. 17 (1, 3), *amended*.

17.—(1) A worker shall,

Duties of
workers

- (a) work in compliance with the provisions of this Act and the regulations;
- (b) use or wear the equipment, protective devices or clothing that his employer requires to be used or worn;
- (c) report to his employer or supervisor the absence of or defect in any equipment or protective device of which he is aware and which may endanger himself or another worker;
- (d) report to his employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he knows; and
- (e) where so prescribed, have, at the expense of the employer, such medical examinations, tests or x-rays, at such time or times and at such place or places as prescribed.

(2) No worker shall,

Idem

- (a) remove or make ineffective any protective device required by the regulations or by his employer, without providing an adequate temporary protective device and when the need for removing or making

ineffective the protective device has ceased, the protective device shall be replaced immediately;

- (b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself or any other worker; or
- (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct. 1971, c. 43, ss. 27, 29, 31 (3); 1973, c. 47, ss. 18, 19, 20, *amended*.

Duties of
owners

18.—(1) The owner of a work place that is not a project shall,

- (a) ensure that,
 - (i) such facilities as may be prescribed are provided,
 - (ii) any facilities prescribed to be provided are maintained as prescribed,
 - (iii) the work place complies with the regulations, and
 - (iv) no work place is constructed, developed, reconstructed, altered or added to except in compliance with this Act and the regulations; and
- (b) where so prescribed, furnish to a Director any drawings, plans or specifications of any work place as prescribed. 1971, c. 43, s. 22.

Mine
plans

(2) The owner of a mine shall cause drawings, plans or specifications to be maintained and kept up to a date not more than six months last past on such scale and showing such matters or things as may be prescribed. R.S.O. 1970, c. 274, s. 617, *amended*.

Plans of
work
places

(3) Where so prescribed, an owner or employer shall,

- (a) not begin any construction, development, reconstruction, alteration, addition or installation to or in a work place until the drawings, layout and specifications thereof and any alterations thereto have been filed with the Ministry for review by an engineer of the Ministry for compliance with this Act and the regulations; and
- (b) keep a copy of the drawings as reviewed in a convenient location at or near the work place and

such drawings shall be produced by the owner or employer upon the request of an inspector for his examination and inspection. 1971, c. 43, s. 17 (1, 5), *amended*.

(4) An engineer of the Ministry may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information. 1971, c. 43, s. 17 (3) (b), *amended*. Additional information

(5) Fees as prescribed for the filing and review of drawings, layout or specifications shall become due and payable by the owner or employer upon filing. 1971, c. 43, s. 17 (6), *amended*. Fees

19. Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a work place shall ensure, Duties of suppliers

- (a) that the machine, device, tool or equipment is in good condition;
- (b) that the machine, device, tool or equipment complies with this Act and the regulations; and
- (c) if it is his responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition. 1971, c. 43, s. 30; 1973, c. 47, s. 24 (2), *amended*.

PART IV

TOXIC SUBSTANCES

20.—(1) Where a biological, chemical or physical agent or combination of such agents is used or intended to be used in the work place and its presence in the work place or the manner of its use is in the opinion of a Director likely to endanger the health of a worker, the Director shall by notice in writing to the employer order that the use, intended use, presence or manner of use be, Orders of Director

- (a) prohibited;
- (b) limited or restricted in such manner as the Director specifies; or
- (c) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies.

Contents of
order

(2) Where a Director makes an order to an employer under subsection 1, the order shall,

(a) identify the biological, chemical or physical agent, or combination of such agents, and the manner of use that is the subject-matter of the order; and

(b) state the opinion of the Director as to the likelihood of the danger to the health of a worker, and his reasons in respect thereof, including the matters or causes which give rise to his opinion.

Posting of
order

(3) The employer shall provide a copy of an order made under subsection 1 to the committee, health and safety representative and trade union, if any, and shall cause a copy of the order to be posted in a conspicuous place in the work place where it is most likely to come to the attention of the workers who may be affected by the use, presence or intended use of the biological, chemical or physical agent or combination of agents.

Appeal to
Minister

(4) Where the employer, a worker or a trade union considers that he or it is aggrieved by an order made under subsection 1, the employer, worker or trade union may by notice in writing given within fourteen days of the making of the order appeal to the Minister.

Delegation

(5) The Minister may, having regard to the circumstances, direct that an appeal under subsection 4 be determined on his behalf by a person appointed by him for that purpose.

Procedure

(6) The Minister or, where a person has been appointed under subsection 5, the person so appointed, may give such directions and issue such orders as he considers proper or necessary concerning the procedures to be adopted or followed and shall have all the powers of a chairman of a board of arbitration under subsection 7 of section 37 of *The Labour Relations Act*.

R.S.O. 1970,
c. 232

Substitu-
tion of
findings

(7) On an appeal, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may substitute his findings for those of the Director and may rescind or affirm the order appealed from or make a new order in substitution therefor and such order shall stand in the place of and have the like effect under this Act and the regulations as the order of the Director, and such order shall be final and not subject to appeal under this section.

(8) In making a decision or order under subsection 1 or subsection 7, a Director, the Minister, or, where a person has been appointed under subsection 5, the person so appointed, shall consider as relevant factors, Matters to be considered

- (a) the relation of the agent, combination of agents or by-product to a biological or chemical agent that is known to be a danger to health;
- (b) the quantities of the agent, combination of agents or by-product used or intended to be used or present;
- (c) the extent of exposure;
- (d) the availability of other processes, agents or equipment for use or intended use;
- (e) data regarding the effect of the process or agent on health; and
- (f) any criteria or guide with respect to the exposure of a worker to a biological, chemical or physical agent or combination of such agents that are adopted by a regulation.

(9) On an appeal under subsection 4, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may suspend the operation of the order appealed from pending the disposition of the appeal. Suspension of order by Minister, etc., pending disposition of appeal

(10) A person appointed under subsection 5 shall be paid such remuneration and expenses as the Minister, with the approval of the Lieutenant Governor in Council, may determine. Remuneration of appointee

(11) This section does not apply to designated substances. Application

(12) A Director is not required to hold or afford to an employer or any other person an opportunity for a hearing before making an order under subsection 1. *New.* No hearing required prior to issuing order

21.—(1) Except for purposes of research and development, no person shall, New biological or chemical agents

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

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

Report on
assessment

(2) Where in the opinion of the Director, which opinion shall be made promptly, the introduction of the new biological or chemical agent or combination of such agents referred to in subsection 1 may endanger the health or safety of the workers in a work place, the Director shall require the manufacturer, distributor or supplier, as the case may be, to provide, at the expense of the manufacturer, distributor or supplier, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the Director, of the agent or combination of agents intended to be manufactured, distributed or supplied and the manner of use including, the matters referred to in subclauses i to vii of clause 1 of subsection 1 of section 28.

Interpre-
tation

(3) For the purpose of this section, "new biological or chemical agent or combination of such agents" means any such agent or combination of such agents other than those used in one or more work places and included in an inventory compiled or adopted by the Ministry. *New.*

Designation
of
substances

22. Prior to a substance being designated under paragraph 14 of subsection 2 of section 41, the Minister,

- (a) shall publish in *The Ontario Gazette* a notice stating that the substance may be designated and calling for briefs or submissions in relation to the designation; and
- (b) shall publish in *The Ontario Gazette* a notice setting forth the proposed regulation relating to the designation of the substance at least sixty days before the regulation is filed with the Registrar of Regulations. *New.*

PART V

REFUSAL TO WORK WHERE HEALTH OR SAFETY IN DANGER

Application

23.—(1) This section does not apply to,

- (a) a person employed in, or who is a member of a police force, to which *The Police Act* applies;

- (b) a full-time fire fighter as defined in *The Fire Departments Act*; or R.S.O. 1970, c. 169
- (c) a person employed in the operation of a correctional institution or facility, training school or centre, detention and observation home, or other similar institution, facility, school or home.

(2) Where circumstances are such that the life, health or ^{idem} safety of another person or the public may be in imminent jeopardy, this section does not apply to a person employed in the operation of any of the following institutions, facilities or services whether granted aid out of moneys appropriated by the Legislature or not and whether operated for private gain or not:

1. A hospital, sanatorium, nursing home, home for the aged, psychiatric institution, mental health or mental retardation centre or a rehabilitation facility.
2. A residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental handicap.
3. An ambulance service or a first aid clinic or station.
4. A laboratory operated by the Crown or a laboratory licensed under *The Public Health Act*. R.S.O. 1970, c. 377
5. Any laundry, food service, power plant or technical service or facility belonging to, or used in conjunction with, any institution, facility or service referred to in paragraphs 1 to 4. *New.*

(3) A worker may refuse to work or do particular work ^{Refusal to work} where he has reason to believe that,

- (a) any equipment, machine, device or thing he is to use or operate is likely to endanger himself or another worker;
- (b) the physical condition of the work place or the part thereof in which he works or is to work is likely to endanger himself; or
- (c) any equipment, machine, device or thing he is to use or operate or the physical condition of the work place or the part thereof in which he works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself or another worker.

(4) Upon refusing to work or do particular work, the ^{Report of refusal to work} worker shall promptly report the circumstances of his refusal

to his employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) a committee member who represents workers, if any;
- (b) a health and safety representative, if any; or
- (c) a worker who because of his knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

who shall be made available and who shall attend without delay.

Worker to remain near work station

(5) Until the investigation is completed, the worker shall remain in a safe place near his work station. 1971, c. 43, s. 31 (1, 2); 1976, c. 79, s. 5 (1), *amended*.

Refusal to work following investigation

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

- (a) the equipment, machine, device or thing that was the cause of his refusal to work or do particular work continues to be likely to endanger himself or another worker;
- (b) the physical condition of the work place or the part thereof in which he works continues to be likely to endanger himself; or
- (c) any equipment, machine, device or thing he is to use or operate or the physical condition of the work place or the part thereof in which he works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself or another worker,

the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.

Investigation by inspector

(7) An inspector shall investigate the refusal to work in the presence of the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 4.

Decision of inspector

(8) The inspector shall, following the investigation referred to in subsection 7, decide whether the machine, device,

thing or the work place or part thereof is likely to endanger the worker or another person. 1976, c. 79, s. 3 (2-4), *amended*.

(9) The inspector shall give his decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 4. Idem

(10) Pending the investigation and decision of the inspector, the worker shall remain at a safe place near his work station during his normal working hours unless the employer, subject to the provisions of a collective agreement, if any, Worker to remain at a safe place pending decision

- (a) assigns the worker reasonable alternative work during such hours; or
- (b) subject to section 24, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

(11) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the work place or the part thereof which is being investigated unless the worker to be so assigned has been advised of the refusal by another worker and the reason therefor. Duty to advise other workers

(12) The time spent by a person mentioned in clause *a*, *b* or *c* of subsection 4 in carrying out his duties under subsections 4 and 7, shall be deemed to be work time for which the person shall be paid by his employer at his regular or premium rate as may be proper. Entitlement to time from work

PART VI

REPRISALS BY EMPLOYER PROHIBITED

24.—(1) No employer or person acting on behalf of an employer shall, No discipline, dismissal, etc., by employer

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder or has sought the enforcement of this Act or the regulations. 1971, c. 43, s. 24 (5); 1973, c. 47, s. 17 (4); 1976, c. 79, s. 9 (1), *amended*.

Arbitra-
tion

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection 1, the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply, with all necessary modifications, to the complaint.

Inquiry
by Ontario
Labour
Relations
Board
R.S.O. 1970,
c. 232

(3) The Ontario Labour Relations Board may inquire into any complaint filed under subsection 2, and section 79 of *The Labour Relations Act*, except subsection 4a, applies with all necessary modifications, as if such section, except subsection 4a, is enacted in and forms part of this Act.

Idem

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, sections 91, 92, 95, 97 and 98 of *The Labour Relations Act* apply, with all necessary modifications.

Onus of
proof

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection 1 lies upon the employer or the person acting on behalf of the employer. 1976, c. 79, s. 9 (2-5), *amended*.

Jurisdic-
tion when
complaint
by Crown
employee

(6) The Ontario Labour Relations Board shall exercise jurisdiction under this section on a complaint by a Crown employee that the Crown has contravened subsection 1.

Board may
substitute
penalty

(7) Where on an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

Exception
R.S.O. 1970,
c. 351

(8) Notwithstanding subsection 2, a person who is subject to a rule or code of discipline under *The Police Act* shall have his complaint in relation to an alleged contravention of subsection 1 dealt with under that Act. *New.*

PART VII

NOTICES

Notice of
death or
injury

25.—(1) Where a person is killed or critically injured from any cause at a work place, the constructor, if any,

and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone, telegram or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations may prescribe.

(2) Where a person is killed or is critically injured at a work place no person shall, except for the purpose of, Preservation of wreckage

- (a) saving life or relieving human suffering;
- (b) maintaining an essential public utility service or a public transportation system; or
- (c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. R.S.O. 1970, c. 274, s. 612; 1971, c. 43, s. 33; 1973, c. 47, s. 25, *amended*.

26.—(1) Where an accident, explosion or fire causes injury to a person at a work place whereby he is disabled from performing his usual work or requires medical attention, and such occurrence does not cause death or critical injury to any person, the employer shall give notice in writing, within four days of the occurrence, to a Director, and to the committee, health and safety representative and trade union, if any, containing such information and particulars as may be prescribed. R.S.O. 1970, c. 274, s. 613; 1971, c. 43, s. 34; 1973, c. 47, s. 30, *amended*. Notice of accident, explosion or fire causing injury

(2) Where an employer is advised by a worker or by a person on behalf of the worker that the worker has an occupational illness, the employer shall give notice in writing, within four days of being so advised, to a Director and to the committee, health and safety representative and trade union, if any, containing such information and particulars as may be prescribed. 1971, c. 43, s. 34, *part, amended*. Notice of occupational illness

(3) Subsection 2 applies, with all necessary modifications, where an employer is advised by a former worker of the employer or a person on behalf of such worker, that such worker has or had an occupational illness. *New*. Idem

27. Where a notice or report is not required under section 25 or 26 and an accident, premature or unexpected Accidents, explosions, etc., at a project site or mine

explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article or thing, cave-in, subsidence, rockburst, or other incident as prescribed occurs at a project site, mine or mining plant, notice in writing of the occurrence shall be given to a Director and to the committee, health and safety representative and trade union, if any, by the constructor of the project or the owner of the mine or mining plant within two days of the occurrence containing such information and particulars as may be prescribed. R.S.O. 1970, c. 274, s. 614, *amended*.

PART VIII

ENFORCEMENT

Powers of
inspector

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

- (a) subject to subsection 2, enter in or upon any work place at any time without warrant or notice;
- (b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;
- (c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same;
- (d) upon giving a receipt therefor, remove any drawings, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;
- (e) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a work place and for such purposes, take and carry away such samples as may be necessary;
- (f) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him and use any equipment or materials required for such purpose;

- (g) make inquiries of any person who is or was in a work place either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test;
- (h) require that a work place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, investigation or test;
- (i) require that any equipment, machine, device, article, thing or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;
- (j) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,
 - (i) the load limits of a floor, roof or temporary work or part of a building, structure or temporary work,
 - (ii) that a floor, roof or temporary work is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or
 - (iii) that a floor, roof or temporary work, or part of a building, structure or temporary work is capable of supporting or withstanding all loads to which it may be subject without exceeding the allowable unit stresses for the materials used as provided under *The Building Code Act, 1974*; ^{1974, c. 74}
- (k) require in writing an owner of a mine or part thereof to provide, at his expense, a report in writing bearing the seal and signature of a professional engineer stating that the ground stability of, the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered; and R.S.O. 1970, c. 274, s. 618 (1) (a, b); 1971, c. 43, s. 8 (1); 1973, c. 47, s. 6 (1), *amended*.
- (l) require in writing an employer to produce any record or information, or to provide, at the ex-

pense of the employer, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the inspector, of any process or biological, chemical or physical agents or combination of such agents used or intended to be used in a work place, and the manner of use including,

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

Entry to
dwellings

(2) An inspector shall only enter a dwelling or that part of a dwelling actually being used as a work place with the consent of the occupier or under the authority of a search warrant issued under section 16 of *The Summary Convictions Act.* 1971, c. 43, s. 8 (4); 1973, c. 47, s. 6 (4).

R.S.O. 1970,
c. 450

Repre-
sentative to
accompany
inspector

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

Consulta-
tion with
workers

(4) Where there is no committee member representing workers, health and safety representative or worker selected under subsection 3, the inspector shall endeavour to consult during his physical inspection with a reasonable number of the

workers concerning matters of health and safety at their work.

(5) The time spent by a committee member representing workers, health and safety representative or worker selected in accordance with subsection 3 in accompanying an inspector during his physical inspection, shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 6 (1-3), *amended*.

Entitle-
ment to
time from
work

29.—(1) Where an inspector finds that a provision of this Act or the regulations is being contravened, he may order, orally or in writing, the owner, constructor, employer, or person whom he believes to be in charge of a work place or the person whom he believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies. R.S.O. 1970, c. 274, s. 618 (1), (c); 1971, c. 43, s. 10 (1); 1973, c. 47, s. 11 (1), *amended*.

Orders by
inspectors
where non-
compliance

(2) Where an inspector makes an oral order under subsection 1, he shall confirm the order in writing before leaving the work place. 1971, c. 43, s. 10 (2), *amended*.

Idem

(3) An order made under subsection 1 shall indicate generally the nature of the contravention and where appropriate the location of the contravention. 1973, c. 47, s. 11 (2), *amended*.

Contents of
order

(4) Where an inspector makes an order under subsection 1 and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker he may,

Orders by
inspector
where
worker en-
dangered

- (a) order that any place, equipment, machine, device, article or thing or any process or material shall not be used until the order is complied with;
- (b) order that work at the work place as indicated in the order shall stop until the order is complied with, or until the order to stop work is withdrawn or cancelled by an inspector;
- (c) order that the work place where the contravention exists be cleared of workers and isolated by barricades, fencing or any other means suitable to prevent access thereto by a worker until the danger or hazard to the health or safety of a worker is

removed. 1971, c. 43, s. 10 (3), *amended*; 1973, c. 47, s. 11 (3, 4), *amended*.

Posting of
notice

(5) Where an inspector makes an order under this section, he may affix to the work place, or to any equipment, machine, device, article or thing, a copy thereof or a notice in the prescribed form and no person, except an inspector, shall remove such copy or notice unless authorized to do so by an inspector. 1971, c. 43, s. 10 (4); 1973, c. 47, s. 11 (6), *amended*.

Idem

(6) Where an inspector makes an order in writing or issues a report of his inspection to an owner, constructor, employer or person in charge of the work place, the owner, constructor, employer or person in charge of the work place shall forthwith cause a copy or copies thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of the workers and shall furnish a copy of such order or report to the health and safety representative and the committee, if any, and the inspector shall cause a copy thereof to be furnished to a person who has complained of a contravention of this Act or the regulations. 1976, c. 79, s. 7, *amended*.

No hearing
required
prior to
making
order

(7) An inspector is not required to hold or afford to an owner, constructor, employer or any other person an opportunity for a hearing before making an order. *New*.

Entry into
barricaded
area

30. Where an order is made under clause *c* of subsection 4 of section 29, no owner, constructor, employer or supervisor shall require or permit a worker to enter the work place except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the worker is protected from the danger or hazard. 1973, c. 47, s. 11 (4), *part*.

Injunction
proceed-
ings

31. In addition to any other remedy or penalty therefor, where an order made under subsection 4 of section 29 is contravened, such contravention may be restrained upon an *ex parte* application to a judge or local judge of the Supreme Court made at the instance of a Director. 1973, c. 47, s. 13 (2), *amended*.

Appeals
from order
of an
inspector

32.—(1) Any employer, constructor, owner, worker or trade union which considers himself or itself aggrieved by any order made by an inspector under this Act or the regulations may, within fourteen days of the making thereof, appeal to a Director who shall hear and dispose of the appeal as promptly as is practicable.

(2) An appeal to a Director may be made in writing ^{Method} or orally or by telephone, but the Director may require the grounds for appeal to be specified in writing before the appeal is heard.

(3) The appellant, the inspector from whom the appeal ^{Parties} is taken and such other persons as a Director may specify are parties to an appeal under this section.

(4) On an appeal under this section, a Director may substitute his findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Director shall stand in the place of and have the like effect under this Act and the regulations as the order of the inspector. ^{Powers of a Director}

(5) In this section, an order of an inspector under this Act or the regulations includes any order or decision made or given or the imposition of any terms or conditions therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector. ^{Order, extended meaning}

(6) A decision of the Director under this section is final. ^{Decision of Director final} 1971, c. 43, s. 11; 1973, c. 47, s. 12, *amended*.

(7) On an appeal under subsection 1, a Director may suspend the operation of the order appealed from pending the disposition of the appeal. ^{Suspension of order by Director pending disposition of appeal}

(8) This section does not apply to the order of a Director made under section 20. *New.* ^{Application}

33.—(1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations. ^{Obstruction of inspector}

(2) Every person shall furnish all necessary means in his power to facilitate any entry, inspection, examination, testing or inquiry by an inspector in the exercise of his powers or performance of his duties under this Act or the regulations. ^{Assistance to inspector}

False
informa-
tion, etc.

(3) No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his duties under this Act or the regulations. 1971, c. 43, s. 9; 1973, c. 47, s. 7, *amended*.

Monitoring
devices

(4) No person shall interfere with any monitoring equipment or device in a work place.

Obstruc-
tion of
committee,
etc.

(5) No person shall knowingly,

- (a) hinder or interfere with a committee, a committee member or a health and safety representative in the exercise of a power or performance of a duty under this Act;
- (b) furnish a committee, a committee member or a health and safety representative with false information in the exercise of a power or performance of a duty under this Act; or
- (c) hinder or interfere with a worker selected by a trade union or trade unions or a worker selected by the workers to represent them in the exercise of a power or performance of a duty under this Act. *New*.

Informa-
tion
confidential

34.—(1) Except for the purposes of this Act and the regulations or as required by law,

- (a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations; 1971, c. 43, s. 13 (1); 1973, c. 47, s. 8 (1), *amended*.
- (b) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act or the regulations; *New*.
- (c) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and 1971, c. 43, s. 13 (5); 1973, c. 47, s. 8 (5), *amended*.

- (d) no person shall disclose any information obtained in any medical examination, test or x-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case.
New.

(2) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector is not a compellable witness in a civil suit or any proceeding, except an inquest under *The Coroners Act, 1972*, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (3); 1973, c. 47, s. 8 (3), *amended*. Com-
pellability,
civil suit
1972, c. 98

(3) A Director may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (4); 1973, c. 47, s. 8 (4), *amended*. Power of
Director
to disclose

35. A Director may, upon receipt of a request in writing from the owner of a work place who has entered into an agreement to sell the same and upon payment of the fee or fees prescribed, furnish to the owner or a person designated by him copies of reports or orders of an inspector made under this Act in respect of the work place as to its compliance with subsection 1 of section 18. 1971, c. 43, s. 14, *amended*. Copies of
reports

36.—(1) No action or other proceeding for damages, prohibition, or mandamus lies or shall be instituted against a Director, an inspector, an engineer of the Ministry, a health and safety representative, a committee member, a worker selected by a trade union or trade unions or a worker selected by the workers to represent them for an act or an omission done or omitted to be done by him in good faith in the execution or intended execution of any power or duty under this Act or the regulations. Liability
of Crown
persons

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a Director, an inspector or an engineer of the Ministry to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted. 1971, c. 43, s. 16; 1973, c. 47, s. 9, *amended*. Liability
of Crown
R.S.O. 1970,
c. 365

PART IX

OFFENCES AND PENALTIES

Penalties

37.—(1) Every person who contravenes or fails to comply with,

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

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

Defence

(2) On a prosecution for a failure to comply with,

- (a) subsection 1 of section 13;
- (b) clause *b*, *c* or *d* of subsection 1 of section 14; or
- (c) subsection 1 of section 16,

it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken. R.S.O. 1970, c. 274, s. 625; 1971, c. 43, s. 36; 1973, c. 47, s. 26, *amended*.

Accused
liable for
acts or
neglect of
managers,
agents, etc.

(3) In a prosecution of an offence under any provision of this Act, any act or neglect on the part of any manager, agent, representative, officer, director or supervisor of the accused, whether a corporation or not, shall be the act or neglect of the accused. *New*.

Certified
copies of
documents,
etc., as
evidence

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

- (a) a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister or an inspector;
- (b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom given or made under this Act or the regulations and purporting to be certified by an inspector; or
- (c) a document purporting to certify the result of a test or an analysis of a sample of air and setting

forth the concentration or amount of a biological, chemical or physical agent in a work place or part thereof and purporting to be certified by an inspector,

is evidence of the order, decision, writing or document, and the facts appearing in the order, decision, writing or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof. 1971, c. 43, s. 41; 1973, c. 47, s. 27, *amended*.

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

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

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

and the same shall be deemed to be good and sufficient service thereof. *New*.

39. An information in respect of an offence under this Act may, at the election of the informant, be heard, tried and determined by the Provincial Court having jurisdiction in the county or district in which the accused is resident or carries on business although the subject-matter of the information did not arise in that county or district. 1973, c. 47, s. 28, *amended*. Place of trial

40. No prosecution under this Act shall be instituted more than one year after the last act or default upon which the prosecution is based occurred. 1971, c. 43, s. 37. Limitation on prosecutions

PART X

REGULATIONS

41.—(1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety Regulations

of persons in or about a work place. 1971, c. 43, s. 45 (1); 1973, c. 47, s. 31 (1), *amended*.

Idem

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

1. defining any word or expression used in this Act or the regulations that is not defined in this Act;
2. designating or defining any industry, work place, employer or class of work places or employers for the purposes of this Act, a part of this Act, or the regulations or any provision thereof;
3. exempting any work place, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof from the application of a regulation or any provision thereof;
4. limiting or restricting the application of a regulation or any provision thereof to any work place, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof;
5. respecting any matter or thing that is required or permitted to be regulated or prescribed under this Act;
6. respecting any matter or thing, where a provision of this Act requires that the matter or thing be done, used or carried out or provided as prescribed;
7. respecting any matter or thing, where it is a condition precedent that a regulation be made prescribing the matter or thing before this Act or a provision of this Act has any effect;
8. providing for and prescribing fees and the payment or refund of fees;
9. regulating or prohibiting the installation or use of any machine, device or thing or any class thereof;
10. requiring that any equipment, machine, device, article or thing used bear the seal of approval of an organization designated by the regulations to test and approve the equipment, machine, device, article or thing and designating organizations for such purposes;
11. respecting the reporting by physicians and others of workers affected by any biological, chemical or physical agents or combination thereof;

12. regulating or prohibiting atmospheric conditions to which any worker may be exposed in a work place;
13. prescribing methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any biological, chemical or physical agent or combination thereof in a work place;
14. prescribing any biological, chemical or physical agent or combination thereof as a designated substance;
15. prohibiting, regulating, restricting, limiting or controlling the handling of, exposure to, or the use and disposal of any designated substance;
16. adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and requiring compliance with any code or standard that is so adopted;
17. adopting by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof;
18. enabling the Director by notice in writing to designate that any part of a project shall be an individual project for the purposes of this Act and the regulations and prescribing to whom notice shall be given;
19. permitting the Minister to approve laboratories for the purpose of carrying out and performing sampling, analyses, tests, and examinations, and requiring that sampling, analyses, examinations, and tests be carried out and performed by a laboratory approved by the Minister;
20. requiring and providing for the registration of employers of workers;
21. providing for the establishment, equipment, operation and maintenance of mine rescue stations, as the Minister may direct, and providing for the payment of the cost thereof and the recovery of such cost from the mining industry;

22. prescribing forms and notices and providing for their use; and
23. prescribing building standards for industrial establishments. 1971, c. 43, s. 45 (2); 1973, c. 47, s. 31 (2), amended.

Repeals

42. The following are repealed:

1. *The Construction Safety Act, 1973*, being chapter 47.
2. *The Industrial Safety Act, 1971*, being chapter 43.
3. *The Industrial Safety Amendment Act, 1972*, being chapter 122.
4. *The Industrial Safety Amendment Act, 1974*, being chapter 104.
5. Part IX of *The Mining Act*, being chapter 274 of the Revised Statutes of Ontario, 1970, except sections 176, 611 and 616.
6. *The Silicosis Act*, being chapter 438 of the Revised Statutes of Ontario, 1970.
7. Section 78 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.
8. *The Employees' Health and Safety Act, 1976*, being chapter 79.
9. Section 10 of *The Ministry of Labour Act*, being chapter 117 of the Revised Statutes of Ontario, 1970.

Commencement

43. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

44. The short title of this Act is *The Occupational Health and Safety Act, 1978*.



An Act respecting the
Occupational Health and Occupational
Safety of Workers

1st Reading

February 21st, 1978

2nd Reading

February 21st, 1978

3rd Reading

THE HON. R. G. ELGIE
Minister of Labour

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 70

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting the
Occupational Health and Occupational Safety of Workers**

THE HON. R. G. ELGIE
Minister of Labour



BILL 70

1978

**An Act respecting the
Occupational Health and Occupational
Safety of Workers**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

1. "committee" means a joint health and safety committee established under this Act; 1976, c. 79, s. 1 (a), *amended*.
2. "competent person" means a person who,
 - i. is qualified because of his knowledge, training and experience to organize the work and its performance,
 - ii. is familiar with the provisions of this Act and the regulations that apply to the work, and
 - iii. has knowledge of any potential or actual danger to health or safety in the work place; *New*.
3. "construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any machinery or plant, and any work or undertaking in connection with a project; 1973, c. 47, s. 1 (d), *amended*.
4. "constructor" means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer; 1973, c. 47, s. 1 (e), *amended*.

5. "Deputy Minister" means the Deputy Minister of Labour; 1973, c. 47, s. 1 (*f*).
6. "designated substance" means a biological, chemical or physical agent or combination thereof prescribed as a designated substance to which the exposure of a worker is prohibited, regulated, restricted, limited or controlled; *New*.
7. "Director" means an inspector who is appointed under this Act as a Director of the Occupational Health and Safety Division of the Ministry; 1971, c. 43, s. 1 (*da*); 1972, c. 122, s. 1, *amended*.
8. "employer" means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services; 1971, c. 43, s. 1 (*e*); 1973, c. 47, s. 1 (*h*), *amended*.
9. "engineer of the Ministry" means a person who is employed by the Ministry and who is registered as a professional engineer or licensed as a professional engineer under *The Professional Engineers Act*; 1971, c. 43, s. 1 (*g*), *amended*.
10. "factory" means,
 - i. a building or place other than a mine, mining plant or place where homework is carried on, where,
 - A. any manufacturing process or assembling in connection with the manufacturing of any goods or products is carried on,
 - B. in preparing, inspecting, manufacturing, finishing, repairing, warehousing, cleaning or adapting for hire or sale any substance, article or thing, energy is,
 1. used to work any machinery or device, or
 2. modified in any manner,

- C. any work is performed by way of trade or for the purposes of gain in or incidental to the making of any goods, substance, article or thing or part thereof,
 - D. any work is performed by way of trade or for the purposes of gain in or incidental to the altering, demolishing, repairing, maintaining, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance, article or thing, or
 - E. aircraft, locomotives or vehicles used for private or public transport are maintained,
- ii. a laundry including a laundry operated in conjunction with,
 - A. a public or private hospital,
 - B. a hotel, or
 - C. a public or private institution for religious, charitable or educational purposes, and
 - iii. a logging operation; 1971, c. 43, s. 1 (*h*), *amended*.
11. "health and safety representative" means a health and safety representative selected under this Act; 1976, c. 79, s. 1 (*d*), *amended*.
 12. "homework" means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof by a person for wages in premises occupied primarily as living accommodation; 1971, c. 43, s. 1 (*i*).
 13. "industrial establishment" means an office building, factory, arena, shop or office, and any land, buildings and structures appertaining thereto; 1971, c. 43, s. 1 (*j*); 1974, c. 104, s. 1 (*i*), *amended*.
 14. "inspector" means an inspector appointed for the purposes of this Act and includes a Director; 1971, c. 43, s. 1 (*k*); 1973, c. 47, s. 1 (*i*), *amended*.

15. "logging" means the operation of felling or trimming trees for commercial or industrial purposes and includes the measuring, storing, transporting or floating of logs and any such activities for the clearing of land; 1971, c. 43, s. 1 (*kb*); 1974, c. 104, s. 1 (2), *amended*.
16. "mine" means any work or undertaking for the purpose of opening up, proving, removing or extracting any metallic or non-metallic mineral or mineral-bearing substance, rock, earth, clay, sand or gravel; R.S.O. 1970, c. 274, s. 169 (1) (*d*), *amended*.
17. "mining plant" means any roasting or smelting furnace, concentrator, mill or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substance mentioned in paragraph 16; R.S.O. 1970, c. 274, s. 169 (1) (*g*), *amended*.
18. "Minister" means the Minister of Labour; 1971, c. 43, s. 1 (*l*); 1973, c. 47, s. 1 (*j*).
19. "Ministry" means the Ministry of Labour;
20. "occupational illness" means a condition that results from exposure in a work place to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an industrial disease as defined by *The Workmen's Compensation Act; New*.
21. "owner" includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a work place, and a person who acts for or on behalf of an owner as his agent or delegate; R.S.O. 1970, c. 274, s. 1, par. 18; 1971, c. 43, s. 1 (*n*); 1973, c. 47, s. 1 (*l*), *amended*.
22. "prescribed" means prescribed by a regulation made under this Act; *New*.
23. "project" means a construction project, whether public or private, including,
 - i. the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking

lot, cofferdam, conduit, sewer, watermain, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof,

- ii. mining development,
 - iii. the moving of a building or structure, and
 - iv. any work or undertaking, or any lands or appurtenances used in connection with construction; 1973, c. 47, s. 1 (n), *amended*.
24. "regulations" means the regulations made under this Act; 1971, c. 43, s. 1 (r); 1973, c. 47, s. 1 (o), *amended*.
25. "shop" means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale; 1971, c. 43, s. 1 (s), *amended*.
26. "supervisor" means a person who has charge of a work place or authority over a worker; *New*.
27. "trade union" means a trade union as defined in *The Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a work place and includes an organization representing workers or persons to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such workers or persons; 1976, c. 79, s. 1 (g), *amended*. R.S.O. 1970,
c. 232
28. "work place" means any land, premises, location or thing at, upon, in or near which a worker works; *New*.
29. "worker" means a person who performs work or supplies services for monetary compensation but does not include,
- i. an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program, or
 - ii. a patient who participates in a work or rehabilitation program in a psychiatric institution, mental health or retardation centre or

home, or rehabilitation facility. 1973, c. 47, s. 1 (t), *amended*.

PART I

APPLICATION

Application
to Crown

2.—(1) This Act binds the Crown and applies to an employee in the service of the Crown or an agency, board, commission or corporation that exercises any function assigned or delegated to it by the Crown. 1971, c. 43, s. 3; 1973, c. 47, s. 2 (1), *amended*.

Application
of other
Acts

(2) Notwithstanding anything in any general or special Act, the provisions of this Act and the regulations prevail. 1976, c. 79, s. 11.

Application
to private
residences

3.—(1) This Act does not apply to work performed by the owner or occupant or a servant of the owner or occupant to, in or about a private residence or the lands and appurtenances used in connection therewith.

Farming
operations

(2) Except as shall be prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to farming operations.

Teachers,
etc.

(3) Except as shall be prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to,

1974, c. 109

(a) a person who is employed as a teacher as defined in *The Education Act, 1974*; or

(b) a person who is employed as a member or teaching assistant of the academic staff of a university or a related institution. *New*.

PART II

ADMINISTRATION

Delegation
of powers

4. Where under this Act or the regulations any power or duty is granted to or vested in the Minister or the Deputy Minister, the Minister or Deputy Minister may in writing

delegate that power or duty from time to time to any officer or officers of the Ministry subject to such limitations, restrictions, conditions and requirements as the Minister or Deputy Minister may set out in the delegation. *New.*

5.—(1) Such persons as may be necessary to administer and enforce this Act and the regulations may be appointed as inspectors by the Deputy Minister and the Deputy Minister may designate one or more of the inspectors as a Director or Directors. 1971, c. 43, s. 6 (1, 2); 1973, c. 47, s. 4 (1, 2), *amended.*

(2) A Director may exercise any of the powers or perform any of the duties of an inspector under this Act or the regulations. *New.*

6.—(1) The Deputy Minister shall issue a certificate of appointment, bearing his signature or a facsimile thereof, to every inspector.

(2) Every inspector, in the exercise of any of his powers or duties under this Act, shall produce his certificate of appointment upon request. 1971, c. 43, s. 7; 1973, c. 47, s. 5, *amended.*

7.—(1) Where the number of workers at a project regularly exceeds twenty, the constructor shall cause the workers to select at least one health and safety representative from among the workers on the project who do not exercise managerial functions. *New.*

(2) Where no committee has been established under section 8, or where the number of workers at a project does not regularly exceed twenty, the Minister may, by order in writing, require a constructor or an employer to cause the selection of one or more health and safety representatives for a work place or a part or parts thereof from among the workers employed at the work place or in the part or parts thereof who do not exercise managerial functions, and may provide in the order for the qualifications of such representative or representatives.

(3) The Minister may from time to time give such directions as the Minister considers advisable concerning the carrying out of the functions of a health and safety representative. 1976, c. 79, s. 5 (1), *amended.*

(4) In exercising the power conferred by subsection 2, the Minister shall consider the matters set out in subsection 4 of section 8. *New.*

Selection
of
representa-
tives

(5) The selection of a health and safety representative shall be made by those workers who do not exercise managerial functions and who will be represented by the health and safety representative in the work place, or the part or parts thereof, as the case may be, or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions.

Powers of
representa-
tive

(6) A health and safety representative may inspect the physical condition of the work place or the part or parts thereof for which he has been selected, as the case may be, not more often than once a month or at such intervals as a Director may direct, and it is the duty of the employer and the workers to afford the health and safety representative such information and assistance as may be required for the purpose of carrying out the inspection.

Idem

(7) A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his findings thereon to the employer, the workers and the trade union or trade unions representing the workers.

Notice of
accident,
inspection
by repre-
sentative

(8) Where a person is killed or critically injured at a work place from any cause, the health and safety representative may, subject to subsection 2 of section 25, inspect the place where the accident occurred and any machine, device or thing, and shall report his findings in writing to a Director.

Entitle-
ment to
time from
work

(9) A health and safety representative is entitled to take such time from his work as is necessary to carry out his duties under subsections 6 and 8 and the time so spent shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 5 (2-6), *amended*.

Additional
powers of
certain
health and
safety
representa-
tives

(10) A health and safety representative or representatives of like nature appointed or selected under the provisions of a collective agreement or other agreement or arrangement between the constructor or the employer and the workers, has, in addition to his functions and powers under the provisions of the collective agreement or other agreement or arrangement the functions and powers conferred upon a health and safety representative by subsections 6, 7 and 8. *New*.

Application

8.—(1) Subject to subsection 3, this section does not apply,

(a) to a constructor or an employer who undertakes to perform work or supply services on a project; or

- (b) to an employer in respect of those workers who work,
- (i) in that part or those parts of a building used for office purposes,
 - (ii) in a shop where goods or services are sold or offered for sale to the public, except any part used as a factory,
 - (iii) in a building used for multiple residential accommodation,
 - (iv) in a library, museum or art gallery,
 - (v) in a restaurant, hotel, motel or premises for which a licence or permit has been issued under *The Liquor Licence Act, 1975* except ^{1975, c. 40} that part used as a kitchen or laundry,
 - (vi) in a theatre or place of public entertainment, or
 - (vii) in premises occupied and used by a fraternal or social organization or a private club.

(2) Subject to subsection 3, where,

- (a) twenty or more workers are regularly employed at a work place;
- (b) a regulation made in respect of a designated substance applies to a work place; or
- (c) an order to an employer is in effect under section 20,

Establishment
of joint
health and
safety
committees

the employer shall cause a joint health and safety committee to be established and maintained at the work place unless the Minister is satisfied that a committee of like nature or an arrangement, program or system in which the workers participate is, on the date this Act comes into force, established and maintained pursuant to a collective agreement or other agreement or arrangement and that such committee, arrangement, program or system provides benefits for the health and safety of the workers equal to, or greater than, the benefits to be derived under a committee established under this section.

(3) Notwithstanding subsections 1 and 2, the Minister ^{Minister's} may, by order in writing, require a constructor or an em-_{order}

ployer to establish and maintain one or more joint health and safety committees for a work place or a part thereof, and may, in such order, provide for the composition, practice and procedure of any committee so established. *New.*

What
Minister
shall
consider

(4) In exercising the power conferred by subsection 3, the Minister shall consider,

- (a) the nature of the work being done;
- (b) the request of a constructor, an employer, a group of the workers or the trade union or trade unions representing the workers in a work place;
- (c) the frequency of illness or injury in the work place or in the industry of which the constructor or employer is a part;
- (d) the existence of health and safety programs and procedures in the work place and the effectiveness thereof; and
- (e) such other matters as the Minister considers advisable. 1976, c. 79, s. 4 (3), *amended.*

Composi-
tion of
committee

(5) A committee shall consist of at least two persons of whom at least half shall be workers who do not exercise managerial functions to be selected by the workers they are to represent or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions.

Powers of
committee

- (6) It is the function of a committee and it has power to,
- (a) identify situations that may be a source of danger or hazard to workers;
 - (b) make recommendations to the constructor or employer and the workers for the improvement of the health and safety of workers;
 - (c) recommend to the constructor or employer and the workers the establishment, maintenance and monitoring of programs, measures and procedures respecting the health or safety of workers; and
 - (d) obtain information from the constructor or employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) health and safety experience and work practices and standards in similar or other indus-

tries of which the constructor or employer has knowledge. 1976, c. 79, s. 4 (4), *amended*.

(7) A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector. Minutes of proceedings

(8) The members of a committee who represent workers shall designate one of the members representing workers to inspect the physical condition of the work place, not more often than once a month or at such intervals as a Director may direct, and it is the duty of the employer and the workers to afford that member such information and assistance as may be required for the purpose of carrying out the inspection. Powers of designated member

(9) The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is killed or critically injured at a work place from any cause and one of those members may, subject to subsection 2 of section 25, inspect the place where the accident occurred and any machine, device or thing, and shall report his findings to a Director and to the committee. Idem
New.

(10) A constructor or an employer required to establish a committee under this section shall post and keep posted at the work place the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the workers. Posting of names and work locations

(11) A committee shall meet at least once every three months at the work place and may be required to meet by order of the Minister. 1976, c. 79, s. 4 (6, 7), *amended*. Meetings

(12) A member of a committee is entitled to such time from his work as is necessary to attend meetings of the committee and to carry out his duties under subsections 8 and 9 and the time so spent shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 4 (8), *amended*. Entitlement to time from work

(13) Any committee of a like nature to a committee established under this section in existence in a work place under the provisions of a collective agreement or other agreement or arrangement between a constructor or an employer and the workers, has, in addition to its functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a committee by this section. Additional powers of certain committees

Dispute
resolution

(14) Where a dispute arises as to the application of subsection 2, or the compliance or purported compliance therewith by an employer, the dispute shall be decided by the Minister after consulting the employer and the workers or the trade union or trade unions representing the workers. *New.*

Summary
to be
furnished
R.S.O. 1970,
c. 505

9.—(1) For work places to which *The Workmen's Compensation Act* applies, the Workmen's Compensation Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost workday cases, the number of lost workdays, the number of non-fatal cases that required medical aid without lost workdays, the incidents of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.

Posting of
copy of
summary

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of the workers. 1976, c. 79, s. 8, *amended.*

Director
to provide
information

(3) A Director shall, in accordance with the objects and purposes of this Act, ensure that persons and organizations concerned with the purposes of this Act are provided with information and advice pertaining to its administration and to the protection of the occupational health and occupational safety of workers generally. *New.*

Advisory
Council on
Occupational
Health and
Occupational
Safety

10.—(1) There shall be a council to be known as the Advisory Council on Occupational Health and Occupational Safety composed of not fewer than twelve and not more than twenty members appointed by the Lieutenant Governor in Council on the recommendation of the Minister.

Term of
office of
members

(2) The members of the Advisory Council shall be appointed for such term as the Lieutenant Governor in Council determines and shall be representative of management, labour and technical or professional persons and the public who are concerned with and have knowledge of occupational health and occupational safety.

Chairman
and vice-
chairman

(3) The Lieutenant Governor in Council shall designate a chairman and a vice-chairman of the Advisory Council from among the members appointed.

(4) The Lieutenant Governor in Council may fill any vacancy that occurs in the membership of the Advisory Council. ^{Vacancies}

(5) The remuneration and expenses of the members of the Advisory Council shall be determined by the Lieutenant Governor in Council and shall be paid out of the moneys appropriated therefor by the Legislature. ^{Remuneration and expenses}

(6) The Advisory Council, with the approval of the Minister, may make rules and pass resolutions governing its procedure, including the calling of meetings, the establishment of a quorum, and the conduct of meetings. ^{Powers of Advisory Council}

(7) The function of the Advisory Council is and it has power, ^{Idem}

(a) to make recommendations to the Minister relating to programs of the Ministry in occupational health and occupational safety; and

(b) to advise the Minister on matters relating to occupational health and occupational safety which may be brought to its attention or be referred to it.

(8) The Advisory Council shall file with the Minister not later than the 1st day of June in each year an annual report upon the affairs of the Advisory Council. ^{Annual report}

(9) The Minister shall submit the report to the Lieutenant Governor in Council who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. *New.* ^{Idem}

11.—(1) The Minister may appoint committees, which are not committees as defined in paragraph 1 of section 1, or persons to assist or advise the Minister on any matter arising under this Act or to inquire into and report to the Minister on any matter that the Minister considers advisable. ^{Advisory committees}

(2) Any person appointed under subsection 1 who is not an officer in the public service of the Province of Ontario may be paid such remuneration and expenses as may be from time to time fixed by the Lieutenant Governor in Council. *New.* ^{Remuneration and expenses}

12.—(1) The Lieutenant Governor in Council may fix an amount that shall be assessed and levied by the Workmen's Compensation Board upon employers in Schedules 1 ^{Assessment to defray expenses}

R.S.O. 1970,
c. 505

and 2 under *The Workmen's Compensation Act* to defray the expenses of the administration of this Act and the regulations and such amount shall not exceed \$4,000,000 for the fiscal year in which this Act comes into force and shall be subject to increase in each subsequent fiscal year by a sum not exceeding 10 per cent of the amount fixed for the preceding fiscal year.

Method of
collection

(2) The Workmen's Compensation Board shall add to the assessments and levies made under *The Workmen's Compensation Act* upon employers in Schedules 1 and 2 a sum calculated as a percentage of the assessments and levies and which percentage shall be determined as the proportion that the amount fixed under subsection 1 bears to the total sum that the Workmen's Compensation Board fixes and determines to be assessed for payment by employers in Schedules 1 and 2, and *The Workmen's Compensation Act* applies to such sum and to the collection and payment thereof in the same manner as to an assessment and levy made under that Act.

Idem

(3) The Workmen's Compensation Board shall collect the assessment and levy imposed under this section and shall pay the amounts so collected to the Treasurer of Ontario. 1973, c. 47, s. 29, *amended*.

PART III

DUTIES OF A CONSTRUCTOR, EMPLOYER, SUPERVISOR, WORKER, OWNER AND SUPPLIER

Duties of
constructor

13.—(1) A constructor shall ensure, on a project undertaken by the constructor that,

- (a) the measures and procedures prescribed by this Act and the regulations are carried out on the project;
- (b) every employer and every worker performing work on the project complies with this Act and the regulations; and
- (c) the health and safety of workers on the project is protected. 1973, c. 47, s. 14 (3), *amended*.

Notice of
project

(2) Where so prescribed, a constructor shall, before commencing any work on a project, give to a Director notice in writing of the project containing such information as may be prescribed. *New*.

Duties of
employers

14.—(1) An employer shall ensure that,

- (a) the equipment, materials and protective devices as prescribed are provided;
- (b) the equipment, materials and protective devices provided by him are maintained in good condition;
- (c) the measures and procedures prescribed are carried out in the work place;
- (d) the equipment, materials and protective devices provided by him are used as prescribed; and
- (e) a floor, roof, wall, pillar, support or other part of a work place is capable of supporting all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under *The Building Code Act*, 1974, c. 74, 1974.

(2) Without limiting the strict duty imposed by sub-^{Idem} section 1, an employer shall,

- (a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;
- (b) when appointing a supervisor, appoint a competent person;
- (c) acquaint a worker or a person in authority over a worker with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment or a biological, chemical or physical agent;
- (d) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;
- (e) only employ in or about a work place a person over such age as may be prescribed;
- (f) not knowingly permit a person who is under such age as may be prescribed to be in or about a work place;
- (g) take every precaution reasonable in the circumstances for the protection of a worker; and
- (h) post, in the work place, a copy of this Act and any explanatory material prepared by the Ministry, both in English and the majority language of the

work place, outlining the rights, responsibilities and duties of workers.

Idem (3) For the purposes of clause *b* of subsection 2, an employer may appoint himself as a supervisor where the employer is a competent person. 1971, c. 43, ss. 24 (1-3), *part*, 28 (1, 2); 1973, c. 47, s. 17 (1, 2), *amended*.

Idem **15.**—(1) In addition to the duties imposed by section 14, an employer shall,

- (a) establish an occupational health service for workers as prescribed;
- (b) where an occupational health service is established as prescribed, maintain the same according to the standards prescribed;
- (c) keep and maintain accurate records of the handling, storage, use and disposal of biological, chemical or physical agents as prescribed;
- (d) accurately keep and maintain and make available to the worker affected such records of the exposure of a worker to biological, chemical or physical agents as may be prescribed;
- (e) notify a Director of the use or introduction into a work place of such biological, chemical or physical agents as may be prescribed;
- (f) monitor at such time or times or at such interval or intervals the levels of biological, chemical or physical agents in a work place and keep and post accurate records thereof as prescribed;
- (g) comply with a standard limiting the exposure of a worker to biological, chemical or physical agents as prescribed;
- (h) where so prescribed, only permit a worker to work or be in a work place who has undergone such medical examinations, tests or x-rays as prescribed and who is found to be physically fit to do the work in the work place; and
- (i) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker. *New*.

Idem (2) For the purposes of clause *a* of subsection 1, a group of employers, with the approval of a Director, may act as an employer.

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

Duties of
supervisor

- (a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and
- (b) uses or wears the equipment, protective devices or clothing that his employer requires to be used or worn.

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

Additional
duties of
supervisor

- (a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;
- (b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and
- (c) take every precaution reasonable in the circumstances for the protection of a worker. R.S.O. 1970, c. 274, s. 177 (6); 1971, c. 43, s. 26; 1973, c. 47, s. 17 (1, 3), *amended*.

17.—(1) A worker shall,

Duties of
workers

- (a) work in compliance with the provisions of this Act and the regulations;
- (b) use or wear the equipment, protective devices or clothing that his employer requires to be used or worn;
- (c) report to his employer or supervisor the absence of or defect in any equipment or protective device of which he is aware and which may endanger himself or another worker;
- (d) report to his employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he knows; and
- (e) where so prescribed, have, at the expense of the employer, such medical examinations, tests or x-rays, at such time or times and at such place or places as prescribed.

(2) No worker shall,

Idem

- (a) remove or make ineffective any protective device required by the regulations or by his employer, without providing an adequate temporary protective device and when the need for removing or making

ineffective the protective device has ceased, the protective device shall be replaced immediately;

- (b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself or any other worker; or
- (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct. 1971, c. 43, ss. 27, 29, 31 (3); 1973, c. 47, ss. 18, 19, 20, *amended*.

Duties of owners

18.—(1) The owner of a work place that is not a project shall,

- (a) ensure that,
 - (i) such facilities as may be prescribed are provided,
 - (ii) any facilities prescribed to be provided are maintained as prescribed,
 - (iii) the work place complies with the regulations, and
 - (iv) no work place is constructed, developed, reconstructed, altered or added to except in compliance with this Act and the regulations; and
- (b) where so prescribed, furnish to a Director any drawings, plans or specifications of any work place as prescribed. 1971, c. 43, s. 22.

Mine plans

(2) The owner of a mine shall cause drawings, plans or specifications to be maintained and kept up to a date not more than six months last past on such scale and showing such matters or things as may be prescribed. R.S.O. 1970, c. 274, s. 617, *amended*.

Plans of work places

- (3) Where so prescribed, an owner or employer shall,
 - (a) not begin any construction, development, reconstruction, alteration, addition or installation to or in a work place until the drawings, layout and specifications thereof and any alterations thereto have been filed with the Ministry for review by an engineer of the Ministry for compliance with this Act and the regulations; and
 - (b) keep a copy of the drawings as reviewed in a convenient location at or near the work place and

such drawings shall be produced by the owner or employer upon the request of an inspector for his examination and inspection. 1971, c. 43, s. 17 (1, 5), *amended*.

(4) An engineer of the Ministry may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information. 1971, c. 43, s. 17 (3) (b), *amended*. Additional information

(5) Fees as prescribed for the filing and review of drawings, layout or specifications shall become due and payable by the owner or employer upon filing. 1971, c. 43, s. 17 (6), *amended*. Fees

19. Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a work place shall ensure, Duties of suppliers

- (a) that the machine, device, tool or equipment is in good condition;
- (b) that the machine, device, tool or equipment complies with this Act and the regulations; and
- (c) if it is his responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition. 1971, c. 43, s. 30; 1973, c. 47, s. 24 (2), *amended*.

PART IV

TOXIC SUBSTANCES

20.—(1) Where a biological, chemical or physical agent or combination of such agents is used or intended to be used in the work place and its presence in the work place or the manner of its use is in the opinion of a Director likely to endanger the health of a worker, the Director shall by notice in writing to the employer order that the use, intended use, presence or manner of use be, Orders of Director

- (a) prohibited;
- (b) limited or restricted in such manner as the Director specifies; or
- (c) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies.

Contents of
order

(2) Where a Director makes an order to an employer under subsection 1, the order shall,

- (a) identify the biological, chemical or physical agent, or combination of such agents, and the manner of use that is the subject-matter of the order; and
- (b) state the opinion of the Director as to the likelihood of the danger to the health of a worker, and his reasons in respect thereof, including the matters or causes which give rise to his opinion.

Posting of
order

(3) The employer shall provide a copy of an order made under subsection 1 to the committee, health and safety representative and trade union, if any, and shall cause a copy of the order to be posted in a conspicuous place in the work place where it is most likely to come to the attention of the workers who may be affected by the use, presence or intended use of the biological, chemical or physical agent or combination of agents.

Appeal to
Minister

(4) Where the employer, a worker or a trade union considers that he or it is aggrieved by an order made under subsection 1, the employer, worker or trade union may by notice in writing given within fourteen days of the making of the order appeal to the Minister.

Delegation

(5) The Minister may, having regard to the circumstances, direct that an appeal under subsection 4 be determined on his behalf by a person appointed by him for that purpose.

Procedure

(6) The Minister or, where a person has been appointed under subsection 5, the person so appointed, may give such directions and issue such orders as he considers proper or necessary concerning the procedures to be adopted or followed and shall have all the powers of a chairman of a board of arbitration under subsection 7 of section 37 of *The Labour Relations Act*.

R.S.O. 1970,
c. 232

Substitu-
tion of
findings

(7) On an appeal, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may substitute his findings for those of the Director and may rescind or affirm the order appealed from or make a new order in substitution therefor and such order shall stand in the place of and have the like effect under this Act and the regulations as the order of the Director, and such order shall be final and not subject to appeal under this section.

(8) In making a decision or order under subsection 1 or subsection 7, a Director, the Minister, or, where a person has been appointed under subsection 5, the person so appointed, shall consider as relevant factors, Matters to be considered

- (a) the relation of the agent, combination of agents or by-product to a biological or chemical agent that is known to be a danger to health;
- (b) the quantities of the agent, combination of agents or by-product used or intended to be used or present;
- (c) the extent of exposure;
- (d) the availability of other processes, agents or equipment for use or intended use;
- (e) data regarding the effect of the process or agent on health; and
- (f) any criteria or guide with respect to the exposure of a worker to a biological, chemical or physical agent or combination of such agents that are adopted by a regulation.

(9) On an appeal under subsection 4, the Minister or, where a person has been appointed under subsection 5, the person so appointed, may suspend the operation of the order appealed from pending the disposition of the appeal. Suspension of order by Minister, etc., pending disposition of appeal

(10) A person appointed under subsection 5 shall be paid such remuneration and expenses as the Minister, with the approval of the Lieutenant Governor in Council, may determine. Remuneration of appointee

(11) This section does not apply to designated substances. Application

(12) A Director is not required to hold or afford to an employer or any other person an opportunity for a hearing before making an order under subsection 1. *New.* No hearing required prior to issuing order

21.—(1) Except for purposes of research and development, no person shall, New biological or chemical agents

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

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

Report on
assessment

(2) Where in the opinion of the Director, which opinion shall be made promptly, the introduction of the new biological or chemical agent or combination of such agents referred to in subsection 1 may endanger the health or safety of the workers in a work place, the Director shall require the manufacturer, distributor or supplier, as the case may be, to provide, at the expense of the manufacturer, distributor or supplier, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the Director, of the agent or combination of agents intended to be manufactured, distributed or supplied and the manner of use including, the matters referred to in subclauses i to vii of clause 1 of subsection 1 of section 28.

Interpre-
tation

(3) For the purpose of this section, "new biological or chemical agent or combination of such agents" means any such agent or combination of such agents other than those used in one or more work places and included in an inventory compiled or adopted by the Ministry. *New.*

Designation
of
substances

22. Prior to a substance being designated under paragraph 14 of subsection 2 of section 41, the Minister,

- (a) shall publish in *The Ontario Gazette* a notice stating that the substance may be designated and calling for briefs or submissions in relation to the designation; and
- (b) shall publish in *The Ontario Gazette* a notice setting forth the proposed regulation relating to the designation of the substance at least sixty days before the regulation is filed with the Registrar of Regulations. *New.*

PART V

REFUSAL TO WORK WHERE HEALTH OR SAFETY IN DANGER

Application

23.—(1) This section does not apply to,

- (a) a person employed in, or who is a member of a police force, to which *The Police Act* applies;

R.S.O. 1970,
c. 351

- (b) a full-time fire fighter as defined in *The Fire Departments Act*; or R.S.O. 1970,
c. 169
- (c) a person employed in the operation of a correctional institution or facility, training school or centre, detention and observation home, or other similar institution, facility, school or home.

(2) Where circumstances are such that the life, health or safety of another person or the public may be in imminent jeopardy, this section does not apply to a person employed in the operation of any of the following institutions, facilities or services whether granted aid out of moneys appropriated by the Legislature or not and whether operated for private gain or not: Idem

1. A hospital, sanatorium, nursing home, home for the aged, psychiatric institution, mental health or mental retardation centre or a rehabilitation facility.
2. A residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental handicap.
3. An ambulance service or a first aid clinic or station.
4. A laboratory operated by the Crown or a laboratory licensed under *The Public Health Act*. R.S.O. 1970,
c. 377
5. Any laundry, food service, power plant or technical service or facility belonging to, or used in conjunction with, any institution, facility or service referred to in paragraphs 1 to 4. *New.*

(3) A worker may refuse to work or do particular work where he has reason to believe that, Refusal
to work

- (a) any equipment, machine, device or thing he is to use or operate is likely to endanger himself or another worker;
- (b) the physical condition of the work place or the part thereof in which he works or is to work is likely to endanger himself; or
- (c) any equipment, machine, device or thing he is to use or operate or the physical condition of the work place or the part thereof in which he works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself or another worker.

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of his refusal Report of
refusal to
work

to his employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) a committee member who represents workers, if any;
- (b) a health and safety representative, if any; or
- (c) a worker who because of his knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

who shall be made available and who shall attend without delay.

Worker to remain near work station

(5) Until the investigation is completed, the worker shall remain in a safe place near his work station. 1971, c. 43, s. 31 (1, 2); 1976, c. 79, s. 5 (1), *amended*.

Refusal to work following investigation

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

- (a) the equipment, machine, device or thing that was the cause of his refusal to work or do particular work continues to be likely to endanger himself or another worker;
- (b) the physical condition of the work place or the part thereof in which he works continues to be likely to endanger himself; or
- (c) any equipment, machine, device or thing he is to use or operate or the physical condition of the work place or the part thereof in which he works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself or another worker,

the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.

Investigation by inspector

(7) An inspector shall investigate the refusal to work in the presence of the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 4.

Decision of inspector

(8) The inspector shall, following the investigation referred to in subsection 7, decide whether the machine, device,

thing or the work place or part thereof is likely to endanger the worker or another person. 1976, c. 79, s. 3 (2-4), *amended*.

(9) The inspector shall give his decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause *a*, *b* or *c* of subsection 4. Idem

(10) Pending the investigation and decision of the inspector, the worker shall remain at a safe place near his work station during his normal working hours unless the employer, subject to the provisions of a collective agreement, if any, Worker to remain at a safe place pending decision

- (a) assigns the worker reasonable alternative work during such hours; or
- (b) subject to section 24, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

(11) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the work place or the part thereof which is being investigated unless the worker to be so assigned has been advised of the refusal by another worker and the reason therefor. Duty to advise other workers

(12) The time spent by a person mentioned in clause *a*, *b* or *c* of subsection 4 in carrying out his duties under subsections 4 and 7, shall be deemed to be work time for which the person shall be paid by his employer at his regular or premium rate as may be proper. Entitlement to time from work

PART VI

REPRISALS BY EMPLOYER PROHIBITED

24.—(1) No employer or person acting on behalf of an employer shall, No discipline, dismissal, etc., by employer

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder or has sought the enforcement of this Act or the regulations. 1971, c. 43, s. 24 (5); 1973, c. 47, s. 17 (4); 1976, c. 79, s. 9 (1), *amended*.

Arbitra-
tion

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection 1, the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply, with all necessary modifications, to the complaint.

Inquiry
by Ontario
Labour
Relations
Board
R.S.O. 1970,
c. 232

(3) The Ontario Labour Relations Board may inquire into any complaint filed under subsection 2, and section 79 of *The Labour Relations Act*, except subsection 4a, applies with all necessary modifications, as if such section, except subsection 4a, is enacted in and forms part of this Act.

Idem

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, sections 91, 92, 95, 97 and 98 of *The Labour Relations Act* apply, with all necessary modifications.

Onus of
proof

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection 1 lies upon the employer or the person acting on behalf of the employer. 1976, c. 79, s. 9 (2-5), *amended*.

Jurisdic-
tion when
complaint
by Crown
employee

(6) The Ontario Labour Relations Board shall exercise jurisdiction under this section on a complaint by a Crown employee that the Crown has contravened subsection 1.

Board may
substitute
penalty

(7) Where on an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

Exception
R.S.O. 1970,
c. 351

(8) Notwithstanding subsection 2, a person who is subject to a rule or code of discipline under *The Police Act* shall have his complaint in relation to an alleged contravention of subsection 1 dealt with under that Act. *New*.

PART VII

NOTICES

Notice of
death or
injury

25.—(1) Where a person is killed or critically injured from any cause at a work place, the constructor, if any,

and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone, telegram or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations may prescribe.

(2) Where a person is killed or is critically injured at a work place no person shall, except for the purpose of, Preservation of wreckage

- (a) saving life or relieving human suffering;
- (b) maintaining an essential public utility service or a public transportation system; or
- (c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. R.S.O. 1970, c. 274, s. 612; 1971, c. 43, s. 33; 1973, c. 47, s. 25, *amended*.

26.—(1) Where an accident, explosion or fire causes injury to a person at a work place whereby he is disabled from performing his usual work or requires medical attention, and such occurrence does not cause death or critical injury to any person, the employer shall give notice in writing, within four days of the occurrence, to a Director, and to the committee, health and safety representative and trade union, if any, containing such information and particulars as may be prescribed. R.S.O. 1970, c. 274, s. 613; 1971, c. 43, s. 34; 1973, c. 47, s. 30, *amended*. Notice of accident, explosion or fire causing injury

(2) Where an employer is advised by a worker or by a person on behalf of the worker that the worker has an occupational illness, the employer shall give notice in writing, within four days of being so advised, to a Director and to the committee, health and safety representative and trade union, if any, containing such information and particulars as may be prescribed. 1971, c. 43, s. 34, *part, amended*. Notice of occupational illness

(3) Subsection 2 applies, with all necessary modifications, where an employer is advised by a former worker of the employer or a person on behalf of such worker, that such worker has or had an occupational illness. *New*. Idem

27. Where a notice or report is not required under section 25 or 26 and an accident, premature or unexpected Accidents, explosions, etc., at a project site or mine

explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article or thing, cave-in, subsidence, rockburst, or other incident as prescribed occurs at a project site, mine or mining plant, notice in writing of the occurrence shall be given to a Director and to the committee, health and safety representative and trade union, if any, by the constructor of the project or the owner of the mine or mining plant within two days of the occurrence containing such information and particulars as may be prescribed. R.S.O. 1970, c. 274, s. 614, *amended*.

PART VIII

ENFORCEMENT

Powers of
inspector

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

- (a) subject to subsection 2, enter in or upon any work place at any time without warrant or notice;
- (b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;
- (c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same;
- (d) upon giving a receipt therefor, remove any drawings, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;
- (e) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a work place and for such purposes, take and carry away such samples as may be necessary;
- (f) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him and use any equipment or materials required for such purpose;

- (g) make inquiries of any person who is or was in a work place either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test;
- (h) require that a work place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, investigation or test;
- (i) require that any equipment, machine, device, article, thing or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;
- (j) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,
 - (i) the load limits of a floor, roof or temporary work or part of a building, structure or temporary work,
 - (ii) that a floor, roof or temporary work is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or
 - (iii) that a floor, roof or temporary work, or part of a building, structure or temporary work is capable of supporting or withstanding all loads to which it may be subject without exceeding the allowable unit stresses for the materials used as provided under *The Building Code Act, 1974*; ^{1974, c. 74}
- (k) require in writing an owner of a mine or part thereof to provide, at his expense, a report in writing bearing the seal and signature of a professional engineer stating that the ground stability of, the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered; and R.S.O. 1970, c. 274, s. 618 (1) (a, b); 1971, c. 43, s. 8 (1); 1973, c. 47, s. 6 (1), *amended*.
- (l) require in writing an employer to produce any record or information, or to provide, at the ex-

pense of the employer, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the inspector, of any process or biological, chemical or physical agents or combination of such agents used or intended to be used in a work place, and the manner of use including,

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

Entry to
dwellings

(2) An inspector shall only enter a dwelling or that part of a dwelling actually being used as a work place with the consent of the occupier or under the authority of a search warrant issued under section 16 of *The Summary Convictions Act*. 1971, c. 43, s. 8 (4); 1973, c. 47, s. 6 (4).

R.S.O. 1970,
c. 450

Repre-
sentative to
accompany
inspector

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

Consulta-
tion with
workers

(4) Where there is no committee member representing workers, health and safety representative or worker selected under subsection 3, the inspector shall endeavour to consult during his physical inspection with a reasonable number of the

workers concerning matters of health and safety at their work.

(5) The time spent by a committee member representing workers, health and safety representative or worker selected in accordance with subsection 3 in accompanying an inspector during his physical inspection, shall be deemed to be work time for which he shall be paid by his employer at his regular or premium rate as may be proper. 1976, c. 79, s. 6 (1-3), *amended*.

Entitle-
ment to
time from
work

29.—(1) Where an inspector finds that a provision of this Act or the regulations is being contravened, he may order, orally or in writing, the owner, constructor, employer, or person whom he believes to be in charge of a work place or the person whom he believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies. R.S.O. 1970, c. 274, s. 618 (1), (c); 1971, c. 43, s. 10 (1); 1973, c. 47, s. 11 (1), *amended*.

Orders by
inspectors
where non-
compliance

(2) Where an inspector makes an oral order under subsection 1, he shall confirm the order in writing before leaving the work place. 1971, c. 43, s. 10 (2), *amended*.

Idem

(3) An order made under subsection 1 shall indicate generally the nature of the contravention and where appropriate the location of the contravention. 1973, c. 47, s. 11 (2), *amended*.

Contents of
order

(4) Where an inspector makes an order under subsection 1 and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker he may,

Orders by
inspector
where
worker en-
dangered

- (a) order that any place, equipment, machine, device, article or thing or any process or material shall not be used until the order is complied with;
- (b) order that work at the work place as indicated in the order shall stop until the order is complied with, or until the order to stop work is withdrawn or cancelled by an inspector;
- (c) order that the work place where the contravention exists be cleared of workers and isolated by barricades, fencing or any other means suitable to prevent access thereto by a worker until the danger or hazard to the health or safety of a worker is

removed. 1971, c. 43, s. 10 (3), *amended*; 1973, c. 47, s. 11 (3, 4), *amended*.

Posting of
notice

(5) Where an inspector makes an order under this section, he may affix to the work place, or to any equipment, machine, device, article or thing, a copy thereof or a notice in the prescribed form and no person, except an inspector, shall remove such copy or notice unless authorized to do so by an inspector. 1971, c. 43, s. 10 (4); 1973, c. 47, s. 11 (6), *amended*.

Idem

(6) Where an inspector makes an order in writing or issues a report of his inspection to an owner, constructor, employer or person in charge of the work place, the owner, constructor, employer or person in charge of the work place shall forthwith cause a copy or copies thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of the workers and shall furnish a copy of such order or report to the health and safety representative and the committee, if any, and the inspector shall cause a copy thereof to be furnished to a person who has complained of a contravention of this Act or the regulations. 1976, c. 79, s. 7, *amended*.

No hearing
required
prior to
making
order

(7) An inspector is not required to hold or afford to an owner, constructor, employer or any other person an opportunity for a hearing before making an order. *New*.

Entry into
barricaded
area

30. Where an order is made under clause *c* of subsection 4 of section 29, no owner, constructor, employer or supervisor shall require or permit a worker to enter the work place except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the worker is protected from the danger or hazard. 1973, c. 47, s. 11 (4), *part*.

Injunction
proceed-
ings

31. In addition to any other remedy or penalty therefor, where an order made under subsection 4 of section 29 is contravened, such contravention may be restrained upon an *ex parte* application to a judge or local judge of the Supreme Court made at the instance of a Director. 1973, c. 47, s. 13 (2), *amended*.

Appeals
from order
of an
inspector

32.—(1) Any employer, constructor, owner, worker or trade union which considers himself or itself aggrieved by any order made by an inspector under this Act or the regulations may, within fourteen days of the making thereof, appeal to a Director who shall hear and dispose of the appeal as promptly as is practicable.

(2) An appeal to a Director may be made in writing or orally or by telephone, but the Director may require the grounds for appeal to be specified in writing before the appeal is heard. Method

(3) The appellant, the inspector from whom the appeal is taken and such other persons as a Director may specify are parties to an appeal under this section. Parties

(4) On an appeal under this section, a Director may substitute his findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Director shall stand in the place of and have the like effect under this Act and the regulations as the order of the inspector. Powers of a Director

(5) In this section, an order of an inspector under this Act or the regulations includes any order or decision made or given or the imposition of any terms or conditions therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector. Order, extended meaning

(6) A decision of the Director under this section is final. Decision of Director final
1971, c. 43, s. 11; 1973, c. 47, s. 12, *amended*.

(7) On an appeal under subsection 1, a Director may suspend the operation of the order appealed from pending the disposition of the appeal. Suspension of order by Director pending disposition of appeal

(8) This section does not apply to the order of a Director made under section 20. *New*. Application

33.—(1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations. Obstruction of inspector

(2) Every person shall furnish all necessary means in his power to facilitate any entry, inspection, examination, testing or inquiry by an inspector in the exercise of his powers or performance of his duties under this Act or the regulations. Assistance to inspector

False
informa-
tion, etc.

(3) No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his duties under this Act or the regulations. 1971, c. 43, s. 9; 1973, c. 47, s. 7, *amended*.

Monitoring
devices

(4) No person shall interfere with any monitoring equipment or device in a work place.

Obstruc-
tion of
committee,
etc.

(5) No person shall knowingly,

- (a) hinder or interfere with a committee, a committee member or a health and safety representative in the exercise of a power or performance of a duty under this Act;
- (b) furnish a committee, a committee member or a health and safety representative with false information in the exercise of a power or performance of a duty under this Act; or
- (c) hinder or interfere with a worker selected by a trade union or trade unions or a worker selected by the workers to represent them in the exercise of a power or performance of a duty under this Act. *New*.

Informa-
tion
confidential

34.—(1) Except for the purposes of this Act and the regulations or as required by law,

- (a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations; 1971, c. 43, s. 13 (1); 1973, c. 47, s. 8 (1), *amended*.
- (b) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act or the regulations; *New*.
- (c) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and 1971, c. 43, s. 13 (5); 1973, c. 47, s. 8 (5), *amended*.

- (d) no person shall disclose any information obtained in any medical examination, test or x-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case.
New.

(2) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector is not a compellable witness in a civil suit or any proceeding, except an inquest under *The Coroners Act, 1972*, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (3); 1973, c. 47, s. 8 (3), *amended*. Com-
pellability,
civil suit
1972, c. 98

(3) A Director may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations. 1971, c. 43, s. 13 (4); 1973, c. 47, s. 8 (4), *amended*. Power of
Director
to disclose

35. A Director may, upon receipt of a request in writing from the owner of a work place who has entered into an agreement to sell the same and upon payment of the fee or fees prescribed, furnish to the owner or a person designated by him copies of reports or orders of an inspector made under this Act in respect of the work place as to its compliance with subsection 1 of section 18. 1971, c. 43, s. 14, *amended*. Copies of
reports

36.—(1) No action or other proceeding for damages, prohibition, or mandamus lies or shall be instituted against a Director, an inspector, an engineer of the Ministry, a health and safety representative, a committee member, a worker selected by a trade union or trade unions or a worker selected by the workers to represent them for an act or an omission done or omitted to be done by him in good faith in the execution or intended execution of any power or duty under this Act or the regulations. Liability
of certain
persons

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a Director, an inspector or an engineer of the Ministry to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted. 1971, c. 43, s. 16; 1973, c. 47, s. 9, *amended*. Liability
of Crown
R.S.O. 1970,
c. 365

PART IX

OFFENCES AND PENALTIES

Penalties **37.**—(1) Every person who contravenes or fails to comply with,

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

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

Defence (2) On a prosecution for a failure to comply with,

- (a) subsection 1 of section 13;
- (b) clause *b*, *c* or *d* of subsection 1 of section 14; or
- (c) subsection 1 of section 16,

it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken. R.S.O. 1970, c. 274, s. 625; 1971, c. 43, s. 36; 1973, c. 47, s. 26, *amended*.

Accused liable for acts or neglect of managers, agents, etc.

(3) In a prosecution of an offence under any provision of this Act, any act or neglect on the part of any manager, agent, representative, officer, director or supervisor of the accused, whether a corporation or not, shall be the act or neglect of the accused. *New*.

Certified copies of documents, etc., as evidence

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

- (a) a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister or an inspector;
- (b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom given or made under this Act or the regulations and purporting to be certified by an inspector; or
- (c) a document purporting to certify the result of a test or an analysis of a sample of air and setting

forth the concentration or amount of a biological, chemical or physical agent in a work place or part thereof and purporting to be certified by an inspector,

is evidence of the order, decision, writing or document, and the facts appearing in the order, decision, writing or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof. 1971, c. 43, s. 41; 1973, c. 47, s. 27, *amended*.

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

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

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

and the same shall be deemed to be good and sufficient service thereof. *New*.

39. An information in respect of an offence under this Act may, at the election of the informant, be heard, tried and determined by the Provincial Court having jurisdiction in the county or district in which the accused is resident or carries on business although the subject-matter of the information did not arise in that county or district. 1973, c. 47, s. 28, *amended*. Place of trial

40. No prosecution under this Act shall be instituted more than one year after the last act or default upon which the prosecution is based occurred. 1971, c. 43, s. 37. Limitation on prosecutions

PART X

REGULATIONS

41.—(1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety Regulations

of persons in or about a work place. 1971, c. 43, s. 45 (1); 1973, c. 47, s. 31 (1), *amended*.

Idem

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

1. defining any word or expression used in this Act or the regulations that is not defined in this Act;
2. designating or defining any industry, work place, employer or class of work places or employers for the purposes of this Act, a part of this Act, or the regulations or any provision thereof;
3. exempting any work place, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof from the application of a regulation or any provision thereof;
4. limiting or restricting the application of a regulation or any provision thereof to any work place, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof;
5. respecting any matter or thing that is required or permitted to be regulated or prescribed under this Act;
6. respecting any matter or thing, where a provision of this Act requires that the matter or thing be done, used or carried out or provided as prescribed;
7. respecting any matter or thing, where it is a condition precedent that a regulation be made prescribing the matter or thing before this Act or a provision of this Act has any effect;
8. providing for and prescribing fees and the payment or refund of fees;
9. regulating or prohibiting the installation or use of any machine, device or thing or any class thereof;
10. requiring that any equipment, machine, device, article or thing used bear the seal of approval of an organization designated by the regulations to test and approve the equipment, machine, device, article or thing and designating organizations for such purposes;
11. respecting the reporting by physicians and others of workers affected by any biological, chemical or physical agents or combination thereof;

12. regulating or prohibiting atmospheric conditions to which any worker may be exposed in a work place;
13. prescribing methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any biological, chemical or physical agent or combination thereof in a work place;
14. prescribing any biological, chemical or physical agent or combination thereof as a designated substance;
15. prohibiting, regulating, restricting, limiting or controlling the handling of, exposure to, or the use and disposal of any designated substance;
16. adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and requiring compliance with any code or standard that is so adopted;
17. adopting by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof;
18. enabling the Director by notice in writing to designate that any part of a project shall be an individual project for the purposes of this Act and the regulations and prescribing to whom notice shall be given;
19. permitting the Minister to approve laboratories for the purpose of carrying out and performing sampling, analyses, tests, and examinations, and requiring that sampling, analyses, examinations, and tests be carried out and performed by a laboratory approved by the Minister;
20. requiring and providing for the registration of employers of workers;
21. providing for the establishment, equipment, operation and maintenance of mine rescue stations, as the Minister may direct, and providing for the payment of the cost thereof and the recovery of such cost from the mining industry;

22. prescribing forms and notices and providing for their use; and
23. prescribing building standards for industrial establishments. 1971, c. 43, s. 45 (2); 1973, c. 47, s. 31 (2), *amended*.

Repeals

42. The following are repealed:

1. *The Construction Safety Act, 1973*, being chapter 47.
2. *The Industrial Safety Act, 1971*, being chapter 43.
3. *The Industrial Safety Amendment Act, 1972*, being chapter 122.
4. *The Industrial Safety Amendment Act, 1974*, being chapter 104.
5. Part IX of *The Mining Act*, being chapter 274 of the Revised Statutes of Ontario, 1970, except sections 176, 611 and 616.
6. *The Silicosis Act*, being chapter 438 of the Revised Statutes of Ontario, 1970.
7. Section 78 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.
8. *The Employees' Health and Safety Act, 1976*, being chapter 79.
9. Section 10 of *The Ministry of Labour Act*, being chapter 117 of the Revised Statutes of Ontario, 1970.

Commence-
ment

43. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

44. The short title of this Act is *The Occupational Health and Safety Act, 1978*.



An Act respecting the
Occupational Health and Occupational
Safety of Workers

1st Reading

February 21st, 1978

2nd Reading

February 21st, 1978

3rd Reading

December 15 th, 1978

THE HON. R. G. ELGIE
Minister of Labour

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Judicature Act

THE HON. R. MCMURTRY
Attorney General

EXPLANATORY NOTE

The amendment provides for bilingual trials in courts in designated counties and districts of Ontario. It would enable the courts to receive evidence and conduct proceedings in the French language in appropriate cases.

An Act to amend The Judicature Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Section 127 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by adding at the commencement thereof “Subject to subsections 2 to 8”.
- (2) The said section 127 is further amended by adding thereto the following subsections:
- (2) The Lieutenant Governor in Council may designate,
- (a) counties and districts; and
- (b) courts in a designated county or district,
- for the purposes of this section.
- (3) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.
- (4) Except by leave of the court, an application under subsection 3 shall be made,
- (a) where the proceeding is in the Supreme Court or a county or district court before the giving of a jury notice or, if none, before the proceeding is set down for trial;
- (b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.

s. 127.
amended

s. 127.
amended

Designation of
counties
and
districts

Bilingual
trier of fact

Time of
application

Hearings
in French
language

(5) Where an application is made under subsection 3, the court may further direct that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectually.

Evidence
recorded in
French

(6) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for the purposes of appeal.

Pleadings
in French

(7) Any document filed by a party in a proceeding in a small claims court in a designated county or district may be in the French language.

Bilingual
forms

(8) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and the French languages for use in or relating to proceedings in designated courts and requiring their use.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Judicature Amendment Act, 1978*.







An Act to amend
The Judicature Act

1st Reading

April 25th, 1978

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Judicature Act

THE HON. R. MCMURTRY
Attorney General

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTE

The amendment provides for bilingual trials in courts in designated counties and districts of Ontario. It would enable the courts to receive evidence and conduct proceedings in the French language in appropriate cases.

BILL 71

1978

An Act to amend The Judicature Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 127 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by adding at the commencement thereof “Subject to subsections 2 to 9”.

s. 127.
amended

(2) The said section 127 is further amended by adding thereto the following subsections:

s. 127.
amended

(2) The Regional Municipality of Ottawa-Carleton, The United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming and such additional counties and districts as are designated by the Lieutenant Governor in Council under subsection 3 are designated counties and districts for the purposes of this section.

Designated
counties
and
districts

(3) The Lieutenant Governor in Council may designate,

Designation
of courts
and
additional
counties and
districts

(a) counties and districts in addition to those named in subsection 2; and

(b) courts in a designated county or district,

for the purposes of this section.

(4) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.

Bilingual
trier of fact

Time of application

(5) Except by leave of the court, an application under subsection 4 shall be made,

- (a) where the proceeding is in the Supreme Court or a county or district court before the giving of a jury notice or, if none, before the proceeding is set down for trial;
- (b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.

Hearing in French language



(6) Where an application is made under subsection 4 and in addition to a direction made thereunder, the court may direct,

- (a) that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectually; and
- (b) that subsection 7 apply to oral evidence given in examinations for discovery or in any other pre-hearing stage of the proceeding.

Evidence recorded in French

(7) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for all purposes.

Pleadings in French

(8) Any document filed by a party in a proceeding in a small claims court in a designated county or district may be in the French language.

Bilingual forms

(9) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and the French languages for use in or relating to proceedings in designated courts and requiring their use.

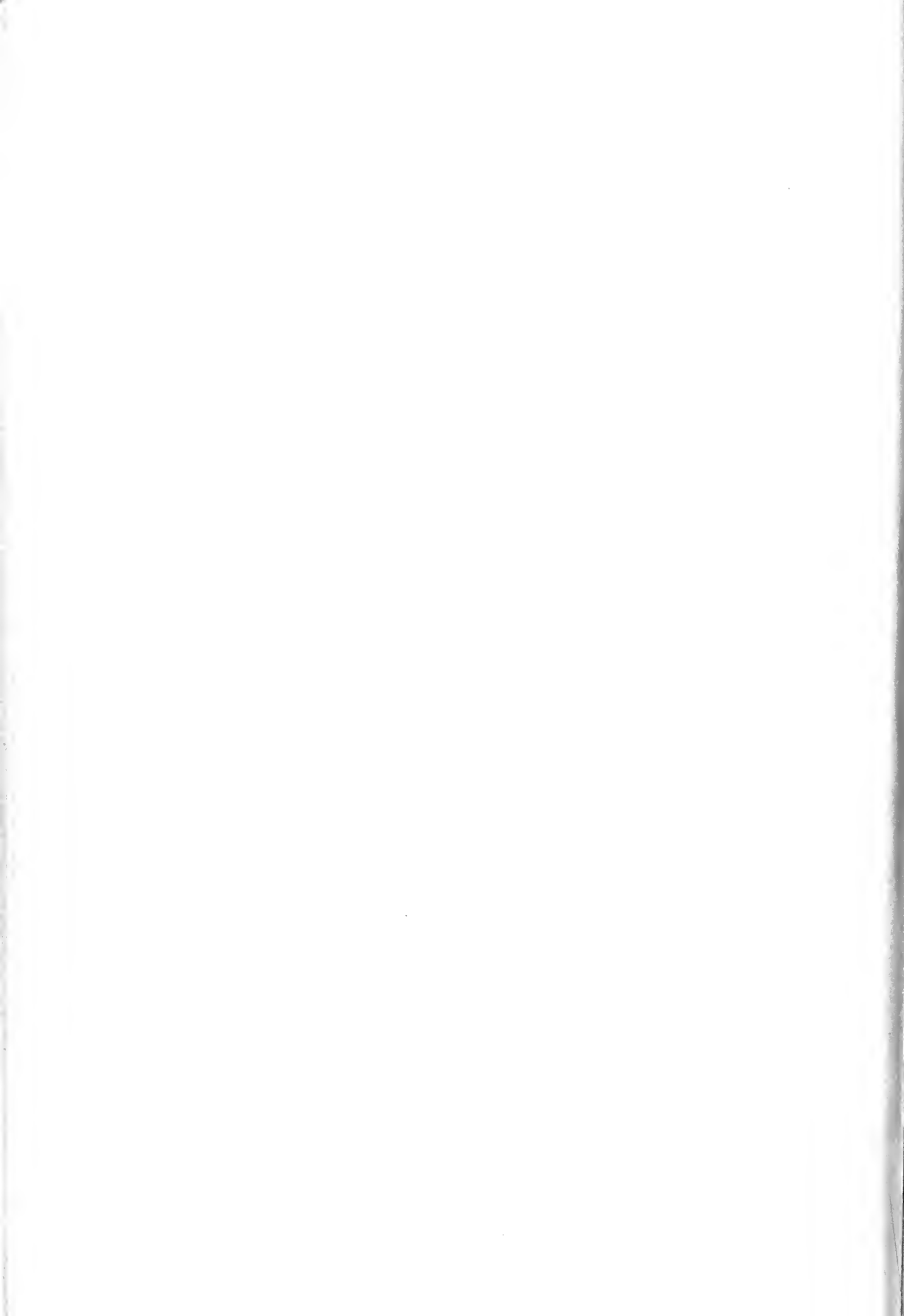
Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Judicature Amendment Act, 1978*.







An Act to amend
The Judicature Act

1st Reading

April 25th, 1978

2nd Reading

May 11th, 1978

3rd Reading

THE HON. R. MCMURTRY
Attorney General

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 71

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Judicature Act

THE HON. R. McMURTRY
Attorney General



BILL 71

1978

An Act to amend The Judicature Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 127 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by adding at the commencement thereof “Subject to subsections 2 to 9”.

s. 127,
amended

(2) The said section 127 is further amended by adding thereto the following subsections:

s. 127,
amended

(2) The Regional Municipality of Ottawa-Carleton, The United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming and such additional counties and districts as are designated by the Lieutenant Governor in Council under subsection 3 are designated counties and districts for the purposes of this section.

Designated
counties
and
districts

(3) The Lieutenant Governor in Council may designate,

(a) counties and districts in addition to those named in subsection 2; and

Designation
of courts
and
additional
counties and
districts

(b) courts in a designated county or district,

for the purposes of this section.

(4) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.

Bilingual
trier of fact

Time of
application

(5) Except by leave of the court, an application under subsection 4 shall be made,

(a) where the proceeding is in the Supreme Court or a county or district court before the giving of a jury notice or, if none, before the proceeding is set down for trial;

(b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.

Hearing
in French
language

(6) Where an application is made under subsection 4 and in addition to a direction made thereunder, the court may direct,

(a) that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectually; and

(b) that subsection 7 apply to oral evidence given in examinations for discovery or in any other pre-hearing stage of the proceeding.

Evidence
recorded in
French

(7) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for all purposes.

Pleadings
in French

(8) Any document filed by a party in a proceeding in a small claims court in a designated county or district may be in the French language.

Bilingual
forms

(9) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and the French languages for use in or relating to proceedings in designated courts and requiring their use.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Judicature Amendment Act, 1978*.







An Act to amend
The Judicature Act

1st Reading

April 25th, 1978

2nd Reading

May 11th, 1978

3rd Reading

May 26th, 1978

THE HON. R. MCMURTRY
Attorney General

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Juries Act, 1974

THE HON. R. MCMURTRY
Attorney General

EXPLANATORY NOTE

This Bill is complementary to a Bill to amend *The Judicature Act* enabling bilingual trials.

The amendment requires the sheriff to identify the persons on the jury roll who are bilingual in French and English.

BILL 72

1978

An Act to amend The Juries Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 8 of *The Juries Act, 1974*, being chapter 63, is amended s. 8.
amended by adding thereto the following subsection:

(1a) Where the county or Supreme Court is designated in English and
bilingual
jury rolls
R.S.O. 1970.
c. 228 a county or district under section 127 of *The Judicature Act*, the jury roll prepared under subsection 1 shall be divided into two parts and,

- (a) in one part the sheriff shall include those persons who appear, by the returns to jury service notices, to speak, read and understand the English language; and
- (b) in the other part the sheriff shall include those persons who appear, by the returns to jury service notices, to speak, read and understand both the English and the French languages.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment
3. The short title of this Act is *The Juries Amendment Act, 1978*. Short title

An Act to amend
The Juries Act, 1974

1st Reading

April 25th, 1978

2nd Reading

3rd Reading

THE HON. R. MCMURRY
Attorney General

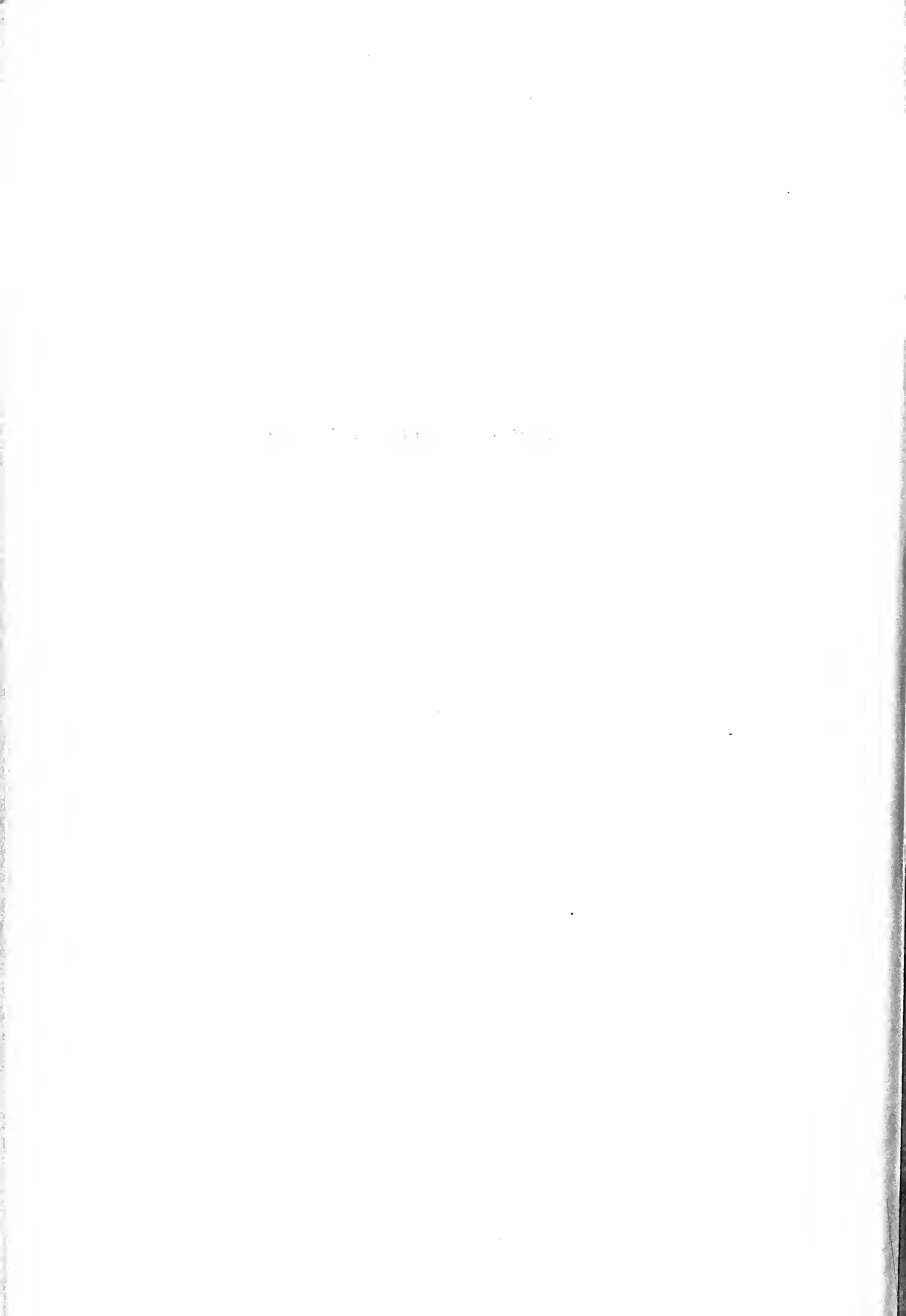
(Government Bill)

BILL 72

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Juries Act, 1974

THE HON. R. MCMURTRY
Attorney General



BILL 72

1978

An Act to amend The Juries Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 8 of *The Juries Act, 1974*, being chapter 63, is amended ^{s. 8.} amended by adding thereto the following subsection:

(1a) Where the county or Supreme Court is designated in a county or district under section 127 of *The Judicature Act*, the jury roll prepared under subsection 1 shall be divided into two parts and, ^{English and bilingual jury rolls R.S.O. 1970, c. 226}

- (a) in one part the sheriff shall include those persons who appear, by the returns to jury service notices, to speak, read and understand the English language; and
- (b) in the other part the sheriff shall include those persons who appear, by the returns to jury service notices, to speak, read and understand both the English and the French languages.

2. This Act comes into force on the day it receives Royal Assent. ^{Commencement}
3. The short title of this Act is *The Juries Amendment Act, 1978*. ^{Short title}

AN ACT TO AMEND
THE JURIES ACT, 1974

1st Reading

April 25th, 1978

2nd Reading

May 11th, 1978

3rd Reading

May 11th, 1978

THE HON. R. McMURTRY
Attorney General

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Nursing Homes Act, 1972

MR. COOKE

EXPLANATORY NOTE

The purpose of this Bill is to require all nursing homes licensed under *The Nursing Homes Act, 1972* to be incorporated as charitable non-profit corporations. When the Bill is enacted, the Director shall refuse to issue a licence to an applicant unless the applicant is incorporated as a charitable corporation under *The Corporations Act*. On and after January 1, 1978, the Director will refuse to renew a licence if the applicant for the licence is not a charitable corporation incorporated under that Act.

An Act to amend The Nursing Homes Act, 1972

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 4 of *The Nursing Homes Act, 1972*, being chapter 11, as amended by the Statutes of Ontario, 1973, chapter 38, section 1, is further amended by adding thereto the following subsection:

(1d) Every applicant for a licence to establish, operate or maintain a nursing home shall be a corporation without share capital having objects of a charitable nature incorporated in accordance with Part III of *The Corporations Act* and the Director shall refuse to issue a licence unless the applicant is so incorporated.

s. 4,
amended

Applicant
to be cor-
poration
without
share
capital
R.S.O. 1970,
c. 89

2. Section 5 of the said Act is amended by adding thereto the following subsection:

(2) The Director shall refuse to renew a nursing home licence where the person applying for renewal of the licence is not a corporation without share capital having objects of a charitable nature incorporated in accordance with Part III of *The Corporations Act*.

s. 5,
amended

Renewal by
corporation
without
share
capital

3. The Director may issue a nursing home licence to an applicant who is not a corporation without share capital having objects of a charitable nature incorporated in accordance with Part III of *The Corporations Act* where the application was made prior to the day on which section 1 of this Act comes into force.

Transition

- 4.—(1) This Act, except section 2, comes into force on the day it receives Royal Assent.

Commence-
ment

(2) Section 2 comes into force on the 1st day of January, 1980.

Idem

5. The short title of this Act is *The Nursing Homes Amendment Act, 1978*.

Short title

An Act to amend
The Nursing Homes Act, 1972

1st Reading

April 25th, 1978

2nd Reading

3rd Reading

MR. COOKE

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to establish a Code of Procedure for
Provincial Offences**

THE HON. R. MCMURTRY
Attorney General

EXPLANATORY NOTE

The Bill provides a complete code of procedure for the prosecution of provincial offences in place of the provisions of the *Criminal Code* (Canada) adopted by the present Summary Convictions Act.

The principal changes include,

1. provision of procedures for the prosecution of provincial offences in a provincial code of procedure without reference to the *Criminal Code* (Canada)
2. provision of procedures for minor offences more appropriate to their nature and more expedient for the defendant than those for more serious criminal offences
3. provision for more alternatives in the payment and collection of fines
4. restriction on resorting to imprisonment both in sentencing and for default in payment of fines.

BILL 74

1978

An Act to establish a Code of Procedure for Provincial Offences

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1.—(1) In this Act,

Interpre-
tation

- (a) “certificate” means a certificate of offence issued under Part I or a certificate of parking infraction issued under Part II;
- (b) “court” means a provincial offences court;
- (c) “judge” means a provincial judge;
- (d) “justice” means a provincial judge or a justice of the peace;
- (e) “offence” means an offence under an Act of the Legislature or under a regulation or by-law made under the authority of an Act of the Legislature;
- (f) “prescribed” means prescribed by the rules of the court;
- (g) “prosecutor” means the Attorney General or, where the Attorney General does not intervene, means the person who institutes proceedings to which this Act applies and includes counsel or agent acting on behalf of either of them;
- (h) “provincial offences officer” means a police officer or a person designated under subsection 2;
- (i) “set fine” means the amount of fine set by the court for an offence for the purpose of proceedings commenced under Part I or II.

Designation
of provincial
offences
officers

(2) A minister of the Crown may designate in writing any person or class of persons as a provincial offences officer for the purposes of all or any class of offences.

Purpose of
Act

R.S.C. 1970,
c. C-34

2. The purpose of this Act is to replace the summary conviction procedure for the prosecution of provincial offences, heretofore adopted by reference to the *Criminal Code* (Canada), with a new procedure that reflects the distinction between provincial offences and offences of a more criminal nature.

PART I

COMMENCEMENT OF PROCEEDINGS BY CERTIFICATE OF OFFENCE

Certificate
of offence

3.—(1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of an offence may be commenced by filing a certificate of offence alleging the offence in the office of the court named therein.

Issuance
and service

(2) A provincial offences officer who believes that one or more persons have committed an offence may issue, by completing and signing, a certificate of offence certifying that an offence has been committed and,

(a) an offence notice indicating the set fine for the offence;
or

(b) a summons,

in the form prescribed under section 14 and shall serve the offence notice or summons on the person charged.

Certificate
of service

(3) The provincial offences officer shall certify on the certificate of offence that he personally served the offence notice or summons on the person charged and the date of service.

Certificate
as
evidence

(4) A certificate of service of an offence notice or summons purporting to be signed by the provincial offences officer issuing it shall be received in evidence and is proof of personal service in the absence of evidence to the contrary.

Payment
of penalty

(5) The provincial offences officer who serves an offence notice or summons under this section shall not receive payment of any money in respect of a fine.

4. A certificate of offence shall be filed forthwith in the office of the court named therein. Filing of certificate of offence

5.—(1) Where an offence notice is served on a defendant, he may plead not guilty by signing the not guilty plea on the offence notice and indicate his desire in the form prescribed on the notice to appear or be represented at a trial and deliver the offence notice to the office of the court specified in the notice. Dispute with trial

(2) Where an offence notice is received under subsection 1, the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial. Notice of trial

6.—(1) Where an offence notice is served on a defendant and he wishes to dispute the charge but does not wish to attend or be represented at a trial, he may sign the not guilty plea on the offence notice and deliver the offence notice to the office of the court specified in the notice together with any written explanation or submission he wishes to make. Dispute without appearance

(2) Where an offence notice is delivered under subsection 1, a justice may, in the absence of the defendant, and after considering the explanation and submissions of the defendant, direct a trial or, where no reasonable ground of defence is disclosed in the explanation or submission, convict the defendant and impose the set fine or such lesser fine as is permitted by law. Disposition

(3) Where the justice directs a trial under subsection 2, the court shall hold the trial and may, in the absence of the defendant and after considering the explanation and submissions of the defendant, acquit the defendant or convict the defendant and impose such fine as is lawful and considered just. Trial

7. Where an offence notice is served on a defendant and he does not wish to dispute the charge but wishes to make submissions as to penalty, including the extension of time for payment, he may attend at the office of the court specified in the notice during regular office hours and may appear before a justice for the purpose of pleading guilty to the offence and making submissions as to penalty, and the justice may enter a conviction and impose the set fine or such lesser fine as is permitted by law. Plea of guilty with representations

8.—(1) Where an offence notice is served on a defendant and he does not wish to dispute the charge, he may sign the plea of guilty on the offence notice and deliver the offence Payment out of court

notice and amount of the set fine to the office of the court specified in the notice.

Conviction

(2) Acceptance by the court office of payment under subsection 1 constitutes a plea of guilty whether or not the plea is signed and endorsement of payment on the certificate of offence constitutes the conviction and imposition of a fine in the amount of the set fine for the offence.

Failure to respond to offence notice

9. Where the defendant does not, within fifteen days after he is served with an offence notice, deliver the offence notice to the office of the court specified in the notice or does not attend under section 7, he shall be deemed to not wish to dispute the charge and a justice may enter a conviction in his absence and without a hearing and impose the set fine for the offence.

Signature on plea

10. A signature affixed to the form of plea of guilty or not guilty on an offence notice, purporting to be that of the defendant, is *prima facie* proof that it is the signature of that person.

Failure to respond to summons

11. Where, in a proceeding commenced by a certificate of offence, the defendant is served with a summons under section 3 and fails to appear in response to the summons, the court may acquit or convict the defendant in his absence under section 53 and impose a penalty under this Part.

Reopening on failure of notice

12. Where the defendant has not had an opportunity to dispute the charge or to appear or be represented at a hearing for the reason that through no fault of his own the delivery of a necessary notice or document failed to occur in fact, and where not more than fifteen days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a justice and the justice, upon being satisfied upon affidavit evidence of such facts, shall strike out the conviction, if any, and direct a hearing.

Penalty

13. Where a proceeding is taken by means of a certificate of offence under this Part in respect of an offence that is punishable by a fine of more than \$300 or other penalty, the penalty therefor shall be a fine of not more than \$300.

Regulations

14.—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the form of certificates of offence, offence notices and summonses and such other forms as are considered necessary under this Part;

(b) authorizing the use in a form prescribed under clause *a* of any word or expression to designate an offence;

(c) respecting any matter that is considered necessary to provide for the use of the forms under this Part.

(2) The use on a form prescribed under clause *a* of subsection 1 of any word or expression authorized by the regulations to designate an offence is sufficient for all purposes to describe the offence designated by such word or expression. Sufficiency of abbreviated wording

(3) Where the regulations do not authorize the use of a word or expression to describe an offence in a form prescribed under clause *a* of subsection 1, any word or expression may be used that gives the defendant reasonable notice of the offence. Idem

PART II

COMMENCEMENT OF PROCEEDINGS FOR PARKING INFRACTIONS

15. In this Part, “parking infraction” means any unlawful parking, standing or stopping of a vehicle that constitutes an offence. Interpretation

16. Subject to the approval of the Lieutenant Governor in Council, the council of a municipality, including a regional, district or metropolitan municipality, may by by-law declare that this Part applies in respect of parking infractions that are offences under the by-laws of the municipality and, upon the approval of the by-law, this Part applies in respect of parking infractions under the by-laws occurring after the effective date of the by-law. Municipal by-laws

17.—(1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of a parking infraction may be commenced by filing a certificate of the parking infraction in the office of the court named therein, within thirty days after the occurrence of the offence. Certificate of parking infraction and notice

(2) A provincial offences officer who believes from his personal knowledge that one or more persons have committed a parking infraction may issue, by completing and signing, Issuance and notice

(a) a certificate of parking infraction certifying that a parking infraction has been committed; and

(b) a notice of parking infraction indicating the set fine for the infraction,

in the form prescribed under section 22.

Service of
notice

(3) The parking infraction notice may be served on the owner of the vehicle identified therein by affixing it to the vehicle in a conspicuous place or by delivering it personally to the driver of the vehicle.

Dispute
with
trial

18.—(1) Where a parking infraction notice is served, the owner of the vehicle may plead not guilty by signing the not guilty plea on the notice and indicate his desire in the form prescribed on the notice to appear or be represented at a trial and deliver it to the office of the court specified in the notice.

Notice of
trial

(2) Where a parking infraction notice is received under subsection 1, the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial.

Payment
out of
court

19. Where the owner of the vehicle in respect of which a parking infraction notice is served does not wish to dispute the charge, he may deliver the notice and amount of the set fine to the address shown on the notice.

Failure
to respond
to parking
infraction
notice

20.—(1) Where no notice is delivered under section 18 within fifteen days after the service of the parking infraction notice, the owner of the vehicle shall be deemed to not wish to dispute the charge and a justice may, upon being satisfied that the person being convicted is the owner and that payment has not been made under section 19 enter a conviction in his absence and without a hearing and impose the set fine for the infraction.

Notice of
fine

(2) The clerk of the court shall give notice to the person against whom a conviction is entered under subsection 1 of the date and place of the infraction, the date of the conviction and the amount of the fine, and the fine or any part of the fine not paid within fifteen days after the giving of the notice shall be deemed to be in default.

Reopening
on failure
of notice

21. Where the defendant has not had an opportunity to dispute the charge or appear or be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact, and where not more than fifteen days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a justice and the justice, upon being satisfied upon affidavit evidence of such facts, shall direct a hearing and strike out the conviction, if any.

Regula-
tions

22.—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the form of certificates of parking infractions and parking infraction notices and such other forms as are considered necessary under this Part;
- (b) authorizing the use in a form prescribed under clause *a* of any word or expression to designate a parking infraction;
- (c) respecting any matter that is considered necessary to provide for the use of the forms under this Part.

(2) The use on a form prescribed under clause *a* of subsection 1 of any word or expression authorized by the regulations to designate a parking infraction is sufficient for all purposes to describe the infraction designated by such word or expression. Sufficiency of abbreviations

(3) Where the regulations do not authorize the use of a word or expression to describe a parking infraction in a form prescribed under clause *a* of subsection 1, any word or expression may be used that gives the defendant reasonable notice of the infraction. Idem

PART III

COMMENCEMENT OF PROCEEDING BY INFORMATION

23. In addition to the procedure set out in Parts I and II for commencing a proceeding by the filing of a certificate, a proceeding in respect of an offence may be commenced by laying an information. Commencement of proceeding by information

24.—(1) Any person who, on reasonable and probable grounds, believes that one or more persons have committed an offence, may lay an information in the prescribed form and under oath before a justice alleging the offence and the justice shall receive the information. Information

(2) An information may be laid anywhere in Ontario. Idem

25.—(1) A justice who receives an information laid under section 24 shall consider the information and, where he considers it desirable to do so, hear and consider *ex parte* the allegations of the informant and the evidence of witnesses and where he considers that a case for so doing is made out, Issuance of summons or warrant

- (a) issue a summons in the prescribed form; or

(b) where the arrest is authorized by statute and where the allegations of the informant or the evidence satisfy the justice on reasonable and probable grounds that it is necessary in the public interest to do so, issue a warrant for the arrest of the defendant.

Summons or warrants in blank

(2) A justice shall not sign a summons or warrant in blank.

Counts

26.—(1) Each charge in an information shall be set out in a separate count.

Allegation of offence

(2) Each count in an information shall in general apply to a single transaction and shall contain and is sufficient if it contains in substance a statement that the defendant committed an offence therein specified.

Idem

(3) The statement referred to in subsection 2 may be,

(a) in popular language without technical averments or allegations of matters that are not essential to be proved;

(b) in the words of the enactment that describes the offence; or

(c) in words that are sufficient to give to the defendant notice of the offence with which he is charged.

More than one count

(4) Any number of counts for any number of offences may be joined in the same information.

Particulars of count

(5) A count shall contain sufficient detail of the circumstances of the alleged offence to give to the defendant reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to.

Sufficiency

(6) No count in an information is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of this section and, without restricting the generality of the foregoing, no count in an information is insufficient by reason only that,

(a) it does not name the person affected by the offence or intended or attempted to be affected;

(b) it does not name the person who owns or has a special property or interest in property mentioned in the count;

- (c) it charges an intent in relation to another person without naming or describing the other person;
- (d) it does not set out any writing that is the subject of the charge;
- (e) it does not set out the words used where words that are alleged to have been used are the subject of the charge;
- (f) it does not specify the means by which the alleged offence was committed;
- (g) it does not name or describe with precision any person, place or thing; or
- (h) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained.

(7) Where in a count an offence is identified but the count fails to set out one or more of the essential elements of the offence, a reference to the provision creating or defining the offence shall be deemed to incorporate all the essential elements of the offence. Reference to statutory provision

(8) A count is not objectionable for the reason only that, Idem

- (a) it charges in the alternative several different matters, acts or omissions that are stated in the alternative in an enactment that describes as an offence the matters, acts or omissions charged in the count; or
- (b) it is double or multifarious.

(9) No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information. Need to negative exception, etc.

27.—(1) A summons issued under section 25 shall, Summons

- (a) be directed to the defendant;
- (b) set out briefly the offence in respect of which the defendant is charged; and
- (c) require the defendant to attend court at a time and place stated therein and to attend thereafter as required by the court in order to be dealt with according to law.

Service

(2) A summons shall be served by a provincial offences officer by delivering it personally to the person to whom it is directed or if that person cannot conveniently be found, by leaving it for him at his last known or usual place of abode with an inmate thereof who appears to be at least sixteen years of age.

Service
outside
Ontario

(3) Notwithstanding subsection 2, where the person to whom a summons is directed does not reside in Ontario, the summons shall be deemed to have been duly served seven days after it has been sent by registered mail to his last-known or usual place of abode.

Service
on
corporation

(4) Service of a summons on a corporation may be effected by delivering the summons personally,

- (a) in the case of a municipal corporation, to the mayor, warden, reeve or other chief officer of the corporation or to the clerk of the corporation; or
- (b) in the case of any other corporation, to the manager, secretary or other executive officer of the corporation or person apparently in charge of a branch office thereof,

or by mailing the summons by registered mail to the corporation, in which case the summons shall be deemed to have been duly served seven days after the day of mailing.

Proof of
service

(5) Service of a summons may be proved by statement under oath, written or oral, of the person who made the service.

Contents
of
warrant

28.—(1) A warrant issued under section 25 shall,

- (a) name or describe the defendant;
- (b) set out briefly the offence in respect of which the defendant is charged; and
- (c) order that the defendant be forthwith arrested and brought before a justice to be dealt with according to law.

Idem

(2) A warrant issued under section 25 remains in force until it is executed and need not be made returnable at any particular time.

PART IV

TRIAL AND SENTENCING

Trial

29. This Part applies to proceedings commenced under this Act. Application of Part

30.—(1) Subject to subsection 2, a proceeding in respect of an offence shall be taken in the provincial offences court in whose territorial jurisdiction the offence occurred. Proper court

(2) A proceeding in respect of an offence may be taken in the provincial offences court having territorial jurisdiction that adjoins that in which the offence occurred if, Idem

(a) the court holds sittings in a place reasonably proximate to the place where the offence occurred; and

(b) the court and place of sitting referred to in clause a are named in the information or certificate.

(3) Where a proceeding is taken in a court other than one referred to in subsection 1 or 2, the court may order that the proceeding be transferred to the proper court. Transfer to proper court

(4) Where, upon the application of a defendant or prosecutor made to the court named in the information or certificate, it appears to the court that, Change of venue

(a) it would be appropriate in the interests of justice to do so; or

(b) both the defendant and prosecutor consent thereto,

the court may order that the proceeding be transferred to another court in Ontario.

(5) The court may, in an order made upon an application by the prosecutor under subsection 3 or 4, prescribe conditions that it thinks proper with respect to the payment of additional expenses caused to the defendant as a result of the change of venue. Conditions

(6) An order under subsection 3 or 4 may be made notwithstanding that any motion preliminary to trial has been disposed of or that the plea has been taken and it may be made at any time before evidence has been heard. Time of order for change of venue

(7) The court to which proceedings are transferred under this section may receive and determine any motion pre- Preliminary motions

liminary to trial notwithstanding that the same matter was determined by the court from which the proceeding was transferred.

Delivery of
papers

(8) Where an order is made under subsection 3 or 4, the clerk of the court in which the trial was to be held before the order was made shall deliver any material in his possession in connection with the proceedings forthwith to the clerk of the court before which the trial is ordered to be held, and all proceedings in the case shall be held or, if previously commenced, shall be continued in that court.

Justice
presiding
at trial

31.—(1) The justice presiding when evidence is first taken at the trial shall preside over the whole of the trial.

When
presiding
justice
unable to
act before
adjudica-
tion

(2) Where evidence has been taken at a trial and, before making his adjudication, the presiding justice dies or in his opinion or the opinion of the chief judge of the provincial offences courts is for any reason unable to continue, another justice shall conduct the hearing again as a new trial.

When
presiding
justice
unable to
act after
adjudica-
tion

(3) Where evidence has been taken at a trial and, after making his adjudication but before making his order or imposing sentence, the presiding justice dies or in his opinion or the opinion of the chief judge of the provincial offences courts is for any reason unable to continue, another justice may make the order or impose the sentence that is authorized by law.

Consent to
change
presiding
justice

(4) A justice presiding at a trial may, at any stage of the trial and upon the consent of the prosecutor and defendant, order that the trial be conducted by another justice and, upon the order being given, subsection 2 applies as if the justice were unable to act.

Retention
of juris-
diction

32. The court in which proceedings are taken or to which proceedings are transferred retains jurisdiction over the information or certificate notwithstanding the failure of the court to exercise its jurisdiction at any particular time or that the provisions of this Act respecting adjournments are not complied with.

Stay of
proceeding

33.—(1) In addition to his right to withdraw a charge, the Attorney General or his agent may stay any proceeding at any time before judgment by direction to the clerk of the court in which the proceedings are conducted and thereupon any recognizance relating to the proceeding is vacated.

Recommence-
ment

(2) A proceeding stayed under subsection 1 may be recommenced by direction of the Attorney General or his

agent to the clerk of the court in which the proceeding was stayed but a proceeding that is stayed shall not be recommenced,

- (a) later than one year after the stay; or
- (b) after the expiration of any limitation period applicable, which shall run as if the proceeding had not been commenced until the recommencement,

whichever is the earlier.

34.—(1) An objection to an information or certificate for a defect apparent on its face shall be taken by motion to quash the information or certificate before the defendant has pleaded, and thereafter only by leave of the court. Motion to quash information or certificate

(2) A defendant may at any stage of the proceeding apply to the court to amend or to divide a count that, Dividing counts

- (a) charges in the alternative different matters, acts or omissions that are stated in the alternative in the enactment that creates or describes the offence; or
- (b) is double or multifarious,

on the ground that, as framed, it prejudices him in his defence.

(3) Upon an application under subsection 2, where the court is satisfied that the ends of justice so require, it may order that a count be amended or divided into two or more counts, and thereupon a formal commencement may be inserted before each of the counts into which it is divided. Idem

35.—(1) The court may, at any stage of the proceeding, amend the information or certificate as may be necessary if it appears that the information or certificate, Amendment of information or certificate

- (a) fails to state or states defectively anything that is requisite to charge the offence;
- (b) does not negative an exception that should be negatived; or
- (c) is in any way defective in substance or in form.

(2) The court may, during the trial, amend the information or certificate as may be necessary if the matters to be alleged in the proposed amendment are disclosed by the evidence taken at the trial. Idem

- Variations between charge and evidence (3) A variance between the information or certificate and the evidence taken on the trial is not material with respect to,
- (a) the time when the offence is alleged to have been committed, if it is proved that the information was laid or certificate issued within the prescribed period of limitation; or
 - (b) the place where the subject-matter of the proceedings is alleged to have arisen, except in an issue as to the jurisdiction of the court.
- Considerations on amendment (4) The court shall, in considering whether or not an amendment should be made, consider,
- (a) the evidence taken on the trial, if any;
 - (b) the circumstances of the case;
 - (c) whether the defendant has been misled or prejudiced in his defence by a variance, error or omission; and
 - (d) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.
- Costs on amendment (5) Where the information or certificate is amended, the court may make an order under section 57 for the payment of costs resulting from the necessity of amendment.
- Amendment question of law (6) The question whether an order to amend an information or certificate should be granted or refused is a question of law.
- Endorsement of order to amend (7) An order to amend an information or certificate shall be endorsed on the information or certificate as part of the record and the trial shall proceed as if the information or certificate had been originally laid as amended.
- Particulars **36.** The court may, before or during trial, if it is satisfied that it is necessary for a fair trial, order that a particular, further describing any matter relevant to the proceedings, be furnished to the defendant.
- Joinder of counts or defendants **37.—(1)** The court may, before trial, where it is satisfied that the ends of justice so require, direct that separate counts, informations or certificates be tried together or that persons who are charged separately be tried together.

(2) The court may, before or during the trial, where it is satisfied that the ends of justice so require, direct that separate counts, informations or certificates be tried separately or that persons who are charged jointly or being tried together be tried separately. ^{Separate trials}

38.—(1) Where a justice is satisfied that a person is able to give material evidence in a proceeding under this Act, the justice may issue a subpoena requiring the person to attend to give evidence and bring with him any writings or things referred to in the subpoena. ^{Issuance of subpoena}

(2) A subpoena shall be served and the service shall be proved in the same manner as a summons under section 27. ^{Service}

(3) A person who is served with a subpoena shall attend at the time and place stated in the subpoena to give evidence and, if required by the subpoena, shall bring with him any writing or other thing that he has in his possession or under his control relating to the subject-matter of the proceedings. ^{Attendance}

(4) A person who is served with a subpoena shall remain in attendance during the hearing and the hearing as resumed after adjournment from time to time unless he is excused from attendance by the presiding justice. ^{Remaining in attendance}

39.—(1) Where a judge is satisfied upon evidence under oath, that a person is able to give material evidence that is necessary in a proceeding under this Act and, ^{Arrest of witness}

(a) will not attend if a subpoena is served; or

(b) attempts to serve a subpoena have been made and have failed because he is evading service,

the judge may issue a warrant in the prescribed form for the arrest of the person.

(2) Where a person who has been served with a subpoena to attend to give evidence in a proceeding does not attend or remain in attendance, the court may, if it is established, ^{Idem}

(a) that the subpoena has been served; and

(b) that the person is able to give material evidence that is necessary,

issue or cause to be issued a warrant in the prescribed form for the arrest of the person.

Bringing
before
justice

(3) The police officer who arrests a person under a warrant issued under subsection 1 or 2 shall immediately take the person before a justice.

Release on
recogniz-
ance

(4) Unless the justice is satisfied that it is necessary to detain a person in custody to ensure his attendance to give evidence, the justice shall order the person released upon condition that he enter into a recognizance in such amount and with such sureties, if any, as are reasonably necessary to ensure his attendance.

Bringing
before
judge

(5) Where the person is not released pursuant to an order under subsection 4, the justice who made the order shall cause the person to be brought before a judge within two days of the decision of the justice.

Detention

(6) Where the judge is satisfied that it is necessary to detain the person in custody to ensure his attendance to give evidence, the judge may order that the person be detained in custody to testify at the trial or to have his evidence taken by a commissioner under an order made under subsection 11.

Release on
recogniz-
ance

(7) Where the judge does not make an order under subsection 6, he shall order that the person be released upon condition that he enter into a recognizance in such amount and with such sureties, if any, as are reasonably necessary to ensure his attendance.

Maximum
imprison-
ment

(8) A person who is ordered to be detained in custody under subsection 6 or is not released in fact under subsection 7 shall not be detained in custody for a period longer than ten days.

Release
when no
longer
required

(9) A judge, or the justice presiding at a trial, may at any time order the release of a person in custody under this section where he is satisfied that the detention is no longer justified.

Arrest on
breach of
recogniz-
ance

(10) Where a person who is bound by a recognizance to attend to give evidence in any proceeding does not attend or remain in attendance, the court before which the person is bound to attend may issue a warrant in the prescribed form for the arrest of that person and,

(a) where he is brought directly before the court, subsections 6 and 7 apply; and

(b) where he is not brought directly before the court, subsections 3 to 7 apply.

(11) A judge or the justice presiding at the trial may order that the evidence of a person held in custody under this section be taken by a commissioner under section 42, which applies thereto in the same manner as to a witness who is unable to attend by reason of illness. Commissioner evidence of witness in custody

40.—(1) Where a person whose attendance is required in a court to stand trial or to give evidence is confined in a prison, and a judge is satisfied that his attendance is necessary to satisfy the ends of justice, the judge may order in writing that the person be brought before the court before which his attendance is required, from day to day, as may be necessary. Order for person in a prison to attend

(2) An order under subsection 1 is sufficient authority for the keeper of the prison to deliver up the prisoner and for a police officer or other person named in the order to convey the prisoner. Idem

(3) An order made under subsection 1 shall direct the manner in which the person shall be kept in custody and returned to the prison from which he is brought. Idem

41. Every person who, being required by law to attend or remain in attendance at a hearing, fails without lawful excuse to attend or remain in attendance accordingly is guilty of an offence and on conviction is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than thirty days, or to both. Penalty for failure to attend

42.—(1) Upon the application of the defendant or prosecutor, a judge or, during trial, the court may by order appoint a commissioner to take the evidence of a witness who is out of Ontario or is not likely to be able to attend the trial by reason of illness or physical disability or for some other good and sufficient cause. Order for evidence by commissioner

(2) Evidence taken by a commissioner appointed under subsection 1 may be read in evidence in the proceeding if, Admission of commissioner evidence

- (a) it is proved by oral evidence or by affidavit that the witness is unable to attend for a reason set out in subsection 1;
- (b) the transcript of the evidence is signed by the commissioner by or before whom it purports to have been taken; and
- (c) it is proved to the satisfaction of the court that reasonable notice of the time and place for taking the evidence was given to the other party, and the

party had full opportunity to cross-examine the witness.

Attendance
of accused

(3) An order under subsection 1 may make provision to enable the defendant to be present or represented by counsel or agent when the evidence is taken, but failure of the defendant to be present or to be represented by counsel or agent in accordance with the order does not prevent the reading of the evidence in the proceedings if the evidence has otherwise been taken in accordance with the order and with this section.

Application
of rules
in civil
cases

(4) Except as otherwise provided by this section or by the rules, the practice and procedure in connection with the appointment of commissioners under this section, the taking of evidence by commissioners, the certifying and return thereof, and the use of the evidence in the proceedings shall, as far as possible, be the same as those that govern like matters in civil proceedings in the Supreme Court.

Trial of
issue as to
capacity to
conduct
defence

43.—(1) Where at any time before a defendant is sentenced a court has reason to believe, based on,

(a) the evidence of a legally qualified medical practitioner or, with the consent of the parties, a written report of a legally qualified medical practitioner; or

(b) the conduct of the defendant in the courtroom,

that the defendant suffers from mental disorder, the court shall direct the trial of the issue as to whether the defendant is, because of mental disorder, unable to conduct his defence.

Idem.
finding of
incapacity

(2) The trial of the issue shall be presided over by a judge and where he finds that the accused is, because of mental disorder, unable to conduct his defence, he shall order that further proceeding on the charge be suspended.

Application
for
rehearing
as to
capacity

(3) At any time within one year after an order is made under subsection 2, either party may, upon seven days notice to the other, apply to a judge to rehear the trial of the issue and where upon the rehearing the judge finds that the defendant is able to conduct his defence, he may order that the suspended proceeding be continued.

Order for
examination

(4) For the purposes of the trial of an issue under subsection 1 or a hearing or rehearing under subsection 2 or 3, the court or judge may order the defendant to attend at such

place or before such person and at or within such time as are specified in the order and submit to an examination for the purpose of determining whether the defendant is, because of mental disorder, unable to conduct his defence.

(5) Where the defendant fails or refuses to comply with an order under subsection 4 without reasonable excuse or where the person conducting the examination satisfies the judge that it is necessary to do so, a judge may by warrant direct that the defendant be taken into such custody as is necessary for the purpose of the examination and, where it is necessary to detain the defendant in a place, the place shall be, where practicable, a psychiatric facility. Idem

(6) Where an order is made under subsection 2 and one year has elapsed and no further order is made under subsection 3, no further proceeding shall be taken in respect of the charge or any other charge arising out of the same circumstance. Limitation on suspension of proceeding

44.—(1) After being informed of the substance of the information or certificate, the defendant shall be asked whether he pleads guilty or not guilty of the offence charged therein. Taking of plea

(2) Where the defendant pleads guilty, the court may accept the plea and convict him. Conviction on plea of guilty

(3) Where the defendant refuses to plead or does not answer directly, the court shall enter a plea of not guilty. Refusal to plead

(4) Where the defendant pleads not guilty of the offence charged but guilty of an offence that has not been charged, the court may, with the consent of the prosecutor, accept such plea of guilty and accordingly amend the information or substitute the offence to which the defendant pleads guilty. Plea of guilty to another offence

45.—(1) Where the defendant pleads not guilty, the court shall hold the trial. Trial on plea of not guilty

(2) The defendant is entitled to make his full answer and defence. Right to defend

(3) The prosecutor or defendant, as the case may be, may examine and cross-examine witnesses. Right to examine witnesses

(4) The court may accept and act upon any facts agreed upon by the defendant and prosecutor without proof or evidence. Agreed facts

Defendant
not
compellable
R.S.O. 1970,
c. 151

(5) Notwithstanding section 8 of *The Evidence Act*, the defendant is not a compellable witness for the prosecution.

Evidence
taken on
another
charge

46.—(1) The court may receive and consider evidence taken before the same justice on a different charge against the same defendant, with the consent of the parties.

Certificate
as evidence

(2) Where a certificate as to the content of an official record is, by any Act, made admissible in evidence as *prima facie* proof, the court may, for the purpose of deciding whether the defendant is the person referred to in the certificate, receive and base its decision upon information it considers credible or trustworthy in the circumstances of each case.

Burden of
proving
exception,
etc.

(3) The burden of proving that an authorization, exception, exemption or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the authorization, exception, exemption or qualification does not operate in favour of the defendant, whether or not it is set out in the information.

Exhibits

47.—(1) The court may order that an exhibit be kept in such custody and place as, in the opinion of the court, is appropriate for its preservation.

Release of
exhibits

(2) Where any thing is filed as an exhibit in a proceeding, the clerk may release the exhibit upon the consent of the parties at any time after the trial or, in the absence of consent, may return the exhibit to the party filing it after the disposition of any appeal in the proceeding or, where an appeal is not taken, after the expiration of the time for appeal.

Adjourn-
ments

48.—(1) The court may, from time to time, adjourn a trial or hearing but, where the defendant is in custody, an adjournment shall not be for a period longer than eight days without the consent of the defendant.

Early
resumption

(2) A trial or hearing that is adjourned for a period may be resumed before the expiration of the period with the consent of the defendant and the prosecutor.

Appearance
by defendant

49.—(1) A defendant may appear and act personally or by counsel or agent.

Appearance
by
corporation

(2) A defendant that is a corporation shall appear and act by counsel or agent.

(3) The court may bar any person from appearing as an agent who is not a barrister and solicitor entitled to practise in Ontario if the court finds that the person is not competent properly to represent or advise the person for whom he appears as agent or does not understand and comply with the duties and responsibilities of an agent. Exclusion of agents

50. Notwithstanding that a defendant appears by counsel or agent, the court may order the defendant to attend personally, and, where it appears to be necessary to do so, may issue a summons in the prescribed form. Compelling attendance of defendant

51.—(1) The court may cause the defendant to be removed and to be kept out of court, Excluding defendant from hearing

(a) when he misconducts himself by interrupting the proceedings so that to continue in his presence would not be feasible; or

(b) where, during the trial of an issue as to whether the defendant is, because of mental disorder, unable to conduct his defence, the court is satisfied that failure to do so might have an adverse effect on the mental health of the defendant.

(2) The court may exclude the public or any member of the public from a hearing where, in the opinion of the court, it is necessary to do so, Excluding public from hearing

(a) for the maintenance of order in the courtroom;

(b) to protect the reputation of a minor; or

(c) to remove an influence that might affect the testimony of a witness.

(3) Where the court considers it necessary to do so to protect the reputation of a minor, the court may make an order prohibiting the publication or broadcast of the identity of the minor or of the evidence or any part of the evidence taken at the hearing. Prohibition of publication of evidence

52.—(1) Where the defendant appears for a hearing and the prosecutor, having had due notice, does not appear, the court may dismiss the charge or may adjourn the hearing to some other time upon such terms as it considers proper. Failure of prosecutor to appear

(2) Where the prosecutor does not appear at the time and place appointed for the resumption of an adjourned hearing under subsection 1, the court may dismiss the charge. Idem

Costs

(3) Where a hearing is adjourned under subsection 1 or a charge is dismissed under subsection 2, the court may make an order under section 57 for the payment of costs.

Dismissal
bar to
further
proceeding

(4) Where a charge is dismissed under subsection 1 or 2, no further information shall be laid or certificate issued in the same matter, except with the consent of the Attorney General or his agent.

Ex parte
conviction

53.—(1) Where a defendant does not appear at the time and place appointed for a hearing and it is proved that a summons was served, a notice of trial was given under Part I or II, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the defendant does not appear upon the resumption of a hearing that has been adjourned, the court,

(a) may proceed *ex parte* to hear and determine the proceedings in the absence of the defendant;

(b) may, if it thinks fit, adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the defendant; or

(c) may, where the defendant does not appear in response to the summons or warrant on the date to which the hearing is adjourned, proceed under clause *a* or *b*.

Where
convicted
ex parte

(2) Where, the court proceeds under clause *a* of subsection 1, no proceeding arising out of the failure of the defendant to appear at the time and place appointed for the hearing or for the resumption of the hearing shall be instituted or if instituted shall be proceeded with, except with the consent of the Attorney General or his agent.

Sentencing

Pre-sentence
report

54.—(1) Where a defendant is convicted of an offence in a proceeding commenced by information, the court may direct a probation officer to prepare and file with the court a report in writing relating to the defendant for the purpose of assisting the court in imposing sentence.

Service

(2) Where a report is filed with the court under subsection 1, the clerk of the court shall cause a copy of the report to be provided to the defendant or his counsel or agent and to the prosecutor.

55.—(1) Where a defendant is convicted of an offence, the court shall give the prosecutor and the counsel or agent for the defendant an opportunity to make submissions as to sentence and, where the defendant has no counsel or agent, the court shall ask him if he has anything to say before sentence is passed upon him.

Submissions
as to
sentence

(2) The omission to comply with subsection 1 does not affect the validity of the proceeding.

Omission
to comply

(3) Where a defendant is convicted of an offence, the court may make such inquiries, on oath or otherwise, of and concerning the defendant as it considers desirable, including his economic circumstances, but the defendant shall not be compelled to answer.

Inquiries
by court

(4) A certificate setting out with reasonable particularity the finding of guilt or acquittal or conviction and sentence in Canada of a person signed by,

Proof of
previous
conviction

(a) the person who made the adjudication; or

(b) the clerk of the court in which the adjudication was made,

is, upon the court being satisfied that the defendant is the person referred to in the certificate, admissible in evidence and is *prima facie* proof of the facts stated therein without proof of the signature or the official character of the person appearing to have signed the certificate.

56.—(1) No penalty prescribed for an offence is a minimum penalty unless it is specifically declared to be a minimum.

Provision
for
minimum
penalty

(2) Notwithstanding that the provision that creates the penalty for an offence prescribes a minimum fine, where in the opinion of the court exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice, the court may suspend the sentence.

Relief
against
minimum
fine

(3) Where a minimum penalty is prescribed for an offence and the minimum penalty includes imprisonment, the court may, notwithstanding the prescribed penalty, impose a fine of not more than \$2,000 in lieu of imprisonment.

Idem, re
imprison-
ment

57.—(1) Subject to subsection 2, the court may order the defendant or the prosecutor to pay to the other costs in an amount of not more than the fees and expenses reasonably incurred by or on behalf of witnesses, but, where the proceed-

Costs
payable by
defendant
and private
prosecutor:

ing is commenced by means of a certificate, such amount shall not exceed \$100.

Crown (2) An order for costs shall not be made against a prosecutor acting on behalf of the Crown.

Costs collectable as a fine (3) Costs ordered to be paid under this section shall be deemed to be a fine for the purpose of enforcing payment.

General penalty **58.**—(1) Except where otherwise expressly provided by law, every person who is convicted of an offence is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Amendment of subs. 1 (2) Subsection 1 is amended by striking out “or to imprisonment for a term of not more than six months, or to both” in the third and fourth lines.

Effective date of amendment (3) Subsection 2 does not come into force until the 1st day of July, 1980.

Minute of conviction **59.** Where a court convicts a defendant or dismisses a charge, a minute of the dismissal or conviction and sentence shall be made by the court, and, upon request by the defendant or the prosecutor or by the Attorney General or his agent, the court shall cause a copy thereof certified by the clerk of the court to be delivered to the person making the request.

Time when imprisonment starts **60.**—(1) The term of imprisonment imposed by sentence shall, unless otherwise directed in the sentence, commence on the day on which the convicted person is taken into custody thereunder, but no time during which the convicted person is imprisoned or out on bail before sentence shall be reckoned as part of the term of imprisonment to which he is sentenced.

Idem (2) Where the court imposes imprisonment, the court may order custody to commence on a day not later than thirty days after the day of sentencing.

Sentences consecutive **61.** Where a person is subject to more than one term of imprisonment at the same time, the terms shall be served consecutively except in so far as the court has ordered a term to be served concurrently with any other term of imprisonment.

Authority of warrant **62.**—(1) A warrant of committal is sufficient authority,

- (a) for the conveyance of the prisoner in the custody of a police officer or other person named in the warrant for the purpose of committal under the warrant; and
- (b) for the reception and detention of the prisoner by keepers of prisons in accordance with the terms of the warrant.

(2) A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced. Prisoner subject to rules of institution

63.—(1) A fine becomes due and payable fifteen days after its imposition. When fine due

(2) Where the court imposes a fine, the court shall ask the defendant if he wishes an extension of the time for payment of the fine. Extension of time for payment of a fine

(3) Where the defendant requests an extension of the time for payment of the fine, the court may make such inquiries, on oath or otherwise, of and concerning the defendant as the court considers desirable, but the defendant shall not be compelled to answer. Inquiries

(4) Unless the court finds that the request for extension of time is not made in good faith or that the extension would likely be used to evade payment, the court shall extend the time for payment by ordering periodic payments or otherwise. Granting of extension

(5) Where a fine is imposed in the absence of the defendant, the clerk of the court shall give the defendant notice of the fine and its due date and of his right to apply for an extension of the time for payment under subsection 6. Notice where convicted in absentia

(6) The defendant may, at any time by application in the prescribed form filed in the office of the court, request an extension or further extension of time for payment of a fine and the application shall be determined by a justice and the justice has the same powers in respect of the application as the court has under subsections 3 and 4. Further application for extension

64.—(1) When the payment of a fine is in default, the clerk of the court may complete a certificate in the prescribed Civil enforcement of fines

form as to the imposition of the fine and the amount remaining unpaid and file the certificate in a court of competent jurisdiction and upon filing, the certificate shall be deemed to be an order or judgment of that court for the purposes of enforcement.

Limitation (2) A certificate shall not be filed under subsection 1 after two years after the default in respect of which it is issued.

Certificate of discharge (3) Where a certificate has been filed under subsection 1 and the fine is fully paid, the clerk shall file a certificate of payment upon which the certificate of default is discharged.

Default **65.**—(1) The payment of a fine is in default when any part of the fine is due and unpaid for fifteen days or more.

Order on default (2) Where a justice is satisfied that payment of a fine is in default, the justice,

(a) shall order that any permit, licence, registration or privilege in respect of which a suspension is authorized by or under any Act for non-payment of the fine be suspended, not renewed or not issued; and

(b) may direct the clerk of the court to proceed with civil enforcement under section 64.

Imprisonment for non-payment of fine (3) A justice may issue a warrant in the prescribed form for the committal of the defendant where,

(a) an order or direction under subsection 2 has not resulted in payment within a time that is reasonable in the circumstances;

(b) all other reasonable methods of collecting the fine have been tried and failed or, in the opinion of the justice, would not likely result in payment within a reasonable time in the circumstances; and

(c) the defendant has been given fifteen days notice of the intent to issue a warrant and has had an opportunity to be heard.

Provision on conviction for imprisonment in default (4) In exceptional circumstances where, in the opinion of the court imposing the fine, to proceed under subsection 3 would defeat the ends of justice, the court may,

- (a) order that no warrant of committal be issued under subsection 3; or
- (b) order imprisonment in default of payment of the fine and that no extension of time for payment be granted.

(5) Imprisonment under a warrant issued under subsection 3 or 4 shall be for three days, plus one day for each \$25 or part thereof that is in default, subject to a maximum period of, ^{Term of imprisonment}

- (a) ninety days; or
- (b) half of the maximum imprisonment, if any, provided for the offence,

whichever is the greater.

(6) Any payment made after a warrant is issued under subsection 3 or 4 shall reduce the term by the number of days that is in the same proportion to the number of days in the term as the amount paid bears to the total fine and no amount offered in part payment of a fine shall be accepted unless it is sufficient to secure reduction of sentence of one day, or a multiple thereof. ^{Effect of payments}

66. Where an Act provides that a fine may be suspended subject to the performance of a condition, ^{Suspension of fine on conditions}

- (a) the period of suspension shall be fixed by the court and shall be for not more than one year;
- (b) the court shall provide in its order of suspension the method of proving the performance of the condition;
- (c) the suspension is in addition to and not in lieu of any other power of the court in respect of the fine; and
- (d) the fine is not in default until fifteen days have elapsed after notice that the period of suspension has expired is given to the defendant.

67.—(1) Where a defendant is convicted of an offence in a proceeding commenced by information, the court may, ^{Probation order}

having regard to the age, character and background of the defendant, the nature of the offence and the circumstances surrounding its commission,

- (a) suspend the passing of sentence and direct that the defendant comply with the conditions prescribed in a probation order;
- (b) in addition to fining the defendant or sentencing him to imprisonment, whether in default of payment of a fine or otherwise, direct that the defendant comply with the conditions prescribed in a probation order; or
- (c) where it imposes a sentence of imprisonment on the defendant, whether in default of payment of a fine or otherwise, that does not exceed ninety days, order that the sentence be served intermittently at such times as are specified in the order and direct that the defendant, at all times when he is not in confinement pursuant to such order, comply with the conditions prescribed in a probation order.

Statutory
conditions
of order

(2) A probation order shall be deemed to contain the conditions that,

- (a) the defendant not commit the same or any related or similar offence, or any offence under a statute of Canada or Ontario or any other province of Canada that is punishable by imprisonment;
- (b) the defendant report to the court as and when required; and
- (c) the defendant notify the court of any change in his address.

Conditions
imposed
by court

(3) In addition to the conditions set out in subsection 2, the court may prescribe the following conditions in a probation order,

- (a) that the defendant satisfy any compensation or restitution that is required or authorized by an Act;
- (b) with the consent of the defendant and where the conviction is of an offence that is punishable by imprisonment that the defendant perform a community service as set out in the order;

- (c) where the conviction is of an offence punishable by imprisonment, such other conditions relating to the circumstances of the offence and of the defendant that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to the rehabilitation of the defendant; or
- (d) where considered necessary for the purpose of implementing the conditions of the probation order, that the defendant report to a responsible person designated by the court and, in addition, where the circumstances warrant it, that the defendant be under the supervision of the person to whom he is required to report.

(4) A probation order shall be in the prescribed form and the court that makes the order shall specify therein the period for which it is to remain in force, which shall not be for more than three years from the date when the order takes effect.

(5) Where the court makes a probation order, it shall cause a copy of the order and a copy of section 70 to be given to the defendant.

(6) The Lieutenant Governor in Council may make regulations respecting community service orders, including their terms and conditions.

68.—(1) A probation order comes into force,

(a) on the date on which the order is made; or

(b) where the defendant is sentenced to imprisonment other than a sentence to be served intermittently, upon the expiration of that sentence.

(2) Subject to section 70, where a defendant who is bound by a probation order is convicted of an offence or is imprisoned in default of payment of a fine, the order continues in force except in so far as the sentence or imprisonment renders it impossible for the defendant to comply for the time being with the order.

Variation of
probation
order

69. The court may, at any time upon the application of the defendant or prosecutor with notice to the other, after a hearing or, with the consent of the parties, without a hearing,

- (a) make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances;
- (b) relieve the defendant, either absolutely or upon such terms or for such period as the court considers desirable, of compliance with any condition described in any of the clauses in subsection 3 of section 67 that is prescribed in the order; or
- (c) terminate the order or decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and, if it changes or adds to the conditions prescribed in the order, inform the defendant of its action and give him a copy of the order so endorsed.

Breach of
probation
order

70. Where a defendant who is bound by a probation order is convicted of an offence constituting a breach of condition of the order and,

- (a) the time within which he may appeal or apply for leave to appeal against that conviction has expired and he has not taken an appeal or applied for leave to appeal;
- (b) he has taken an appeal or applied for leave to appeal against the conviction and the appeal or application for leave has been dismissed or abandoned; or
- (c) he has given written notice to the court that convicted him that he elects not to appeal,

or where the defendant otherwise wilfully fails or refuses to comply with the order, he is guilty of an offence and upon conviction the court may,

- (d) impose a fine of not more than \$1,000 or imprisonment for a term of not more than thirty days, or

both, and in lieu of or in addition to the penalty, continue the probation order with such changes or additions and for such extended term, not exceeding an additional year, as the court considers reasonable; or

- (e) where the justice presiding is the justice who made the original order, in lieu of imposing the penalty under clause *d*, revoke the probation order and impose the sentence that was suspended upon the making of the probation order.

PART V

GENERAL PROVISIONS

71.—(1) Proceedings shall not be commenced after the ^{Limitation} expiration of any limitation period prescribed for the offence or, where no limitation period is prescribed, after six months after the date on which the offence was, or is alleged to have been, committed.

(2) A limitation period may be extended by a justice ^{Extension} with the consent of the defendant.

72.—(1) Every person is a party to an offence who, ^{Parties to offence}

(a) actually commits it,

(b) does or omits to do anything for the purpose of aiding any person to commit it; or

(c) abets any person in committing it.

(2) Where two or more persons form an intention in ^{Common purpose} common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to the offence.

73.—(1) Where a person counsels or procures another ^{Counselling} person to be a party to an offence and that other person is afterwards a party to the offence, the person who counselled or procured is a party to the offence, notwithstanding that the offence was committed in a way different from that which was counselled or procured.

- Idem** (2) Every person who counsels or procures another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling or procuring that the person who counselled or procured knew or ought to have known was likely to be committed in consequence of the counselling or procuring.
- Computation of age** **74.**—(1) In determining the age of a person for the purposes of a proceeding under this Act or for the purposes of an offence, the person shall be deemed to be of the age that corresponds to the number of anniversaries of his birthday that are fully completed.
- Idem** (2) In the absence of other evidence, or by way of corroboration of other evidence, a justice may infer the age of a person from his appearance.
- Common law defences** **75.** Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of offences, except in so far as they are altered by or inconsistent with this or any other Act.
- Ignorance of the law** **76.** Ignorance of the law by a person who commits an offence is not an excuse for committing the offence.
- Counsel or agent** **77.** A defendant may act by his counsel or agent.
- Recording of evidence** **78.**—(1) Proceedings in which evidence is taken shall be recorded.
- Evidence under oath** (2) Evidence under this Act shall be taken under oath, except as otherwise provided by law.
- Form of certificate of ownership** **79.** The Lieutenant Governor in Council may make regulations prescribing the form of certificate as to ownership of a motor vehicle given by the Registrar under subsection 2 of section 150 of *The Highway Traffic Act* for the purpose of proceedings under this Act.
- R.S.O. 1970, c. 202**
- Interpreters** **80.**—(1) A justice may authorize a person to act as interpreter in a proceeding before him where the person swears the prescribed oath and, in the opinion of the justice, is competent.
- Idem** (2) A judge may authorize a person to act as interpreter in proceedings under this Act where he swears the prescribed oath and, in the opinion of the judge is competent and likely to be readily available.

81. Any time prescribed by this Act or the regulations made thereunder or by the rules of the court for doing any thing other than commencing proceedings may be extended by the court in which the proceeding is conducted, whether or not the prescribed time has expired. Extension of time

82. Every person who makes an assertion of fact in a statement or entry in a document or form for use under this Act knowing that the assertion is false is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. Penalty for false statements

83.—(1) Except as otherwise provided by this Act or the rules of the court, any notice or document required or authorized to be given or delivered under this Act or the rules of the court is sufficiently given or delivered if delivered personally or by mail. Delivery

(2) Where a notice or document that is required or authorized to be given or delivered to a person under this Act is mailed to the person at his last known address appearing on the records of the court in the proceeding, there is a rebuttable presumption that the notice or document is given or delivered to the person. Idem

84. No civil remedy for an act or omission is suspended or affected for the reason that the act or omission is an offence. Civil remedies preserved

85. Any action authorized or required by this Act is not invalid for the reason only that the action was taken on a non-judicial day. Process on holidays

86.—(1) The validity of any proceeding is not affected by, Irregularities in form

(a) any irregularity or defect in the substance or form of the summons, warrant, offence notice, parking infraction notice, undertaking to appear or recognizance; or

(b) any variance between the charge set out in the summons, warrant, parking infraction notice, offence notice undertaking to appear or recognizance and the charge set out in the information or certificate.

(2) Where it appears to the court that the defendant has been misled by any irregularity, defect or variance mentioned in subsection 1, the court may adjourn the hearing and may make such order as the court considers appropriate, including an order under section 57 for the payment of costs. Adjournment to meet irregularities

PART VI

APPEALS AND REVIEW

Interpre-
tation**87.** In this Part,

- (a) "county court" means a county or district court having jurisdiction in an appeal under section 88;
- (b) "county judge" means a judge of a county or district court having jurisdiction in an appeal under section 88;
- (c) "rules" means the rules made under section 117;
- (d) "sentence" includes any order or disposition consequent upon a conviction and an order as to costs.

APPEALS UNDER PART III

Appeal to
county or
district
court

88.—(1) Where a proceeding is commenced by information under Part III, the defendant or the prosecutor or the Attorney General by way of intervention may appeal to the county or district court of the county or district in which the adjudication was made and the appeal may be from a conviction or dismissal or from a finding as to ability, because of mental disorder, to conduct a defence or as to sentence.

Notice of
appeal

(2) The appellant shall give notice of appeal in such manner and within such period as is provided by the rules.

Custody
pending
appeal

89. A defendant who appeals shall, if he is in custody, remain in custody, but a judge of the county court may order his release upon any of the conditions set out in subsection 2 of section 128.

Recognizance
of appellant

90.—(1) An appellant other than the Attorney General shall, forthwith after filing the notice of appeal in accordance with the rules, appear before a justice and the justice may, after giving the appellant and respondent a reasonable opportunity to be heard, order that the appellant enter into a recognizance to appear on the appeal, personally or by counsel, and the recognizance may be in such amount with or without sureties as the justice directs.

Review

(2) Where a justice makes an order under subsection 1, either the appellant or respondent may, before or at any time during the hearing of the appeal, apply to the county court for a review of the order and the county court shall,

- (a) dismiss the application; or
- (b) allow the application, vacate the order made by the justice and make the order that in the opinion of the county court ought to have been made.

91.—(1) Where an appellant is in custody pending the hearing of the appeal and the hearing of the appeal has not commenced within thirty days from the day on which notice of the appeal was given, the person having custody of the appellant shall apply to a county judge to fix a date for the hearing of the appeal. Fixing of date where appellant in custody

(2) Upon receiving an application under subsection 1, Idem the county judge shall, after giving the prosecutor a reasonable opportunity to be heard, fix a date for the hearing of the appeal and give such directions as he thinks appropriate for expediting the hearing of the appeal.

92. A person does not waive his right of appeal by reason only that he pays the fine or complies with any order imposed upon conviction. Payment of fine not waiver

93. Where a notice of appeal has been filed, the clerk of the county court shall notify the clerk of the provincial offences court appealed from of the appeal and, upon receipt of the notification, the clerk of the provincial offences court shall transmit the order appealed from and transmit or transfer custody of all other material in his possession or control relevant to the proceedings to the clerk of the county court to be kept with the records of the county court. Transmittal of material

94.—(1) The county court may, where it considers it to be in the interests of justice, Powers of county court

- (a) order the production of any writing, exhibit or other thing relevant to the appeal;
- (b) order any witness who would have been a compellable witness at the trial, whether or not he was called at the trial,
 - (i) to attend and be examined before the court, or
 - (ii) to be examined in the manner provided by the rules before a judge of the court, or before any officer of the court or justice of the peace or other person appointed by the court for the purpose;

- (c) admit, as evidence, an examination that is taken under subclause ii of clause *b*;
- (d) receive the evidence, if tendered, of any witness;
- (e) order that any question arising on the appeal that,
 - (i) involves prolonged examination of writings or accounts, or scientific investigation, and
 - (ii) cannot in the opinion of the court conveniently be inquired into before the court,
 be referred for inquiry and report, in the manner provided by the rules, to a special commissioner appointed by the court; and
- (f) act upon the report of a commissioner who is appointed under clause *e* in so far as the court thinks fit to do so.

Right of appellant

(2) In proceedings under this section, the parties or their counsel are entitled to examine or cross-examine witnesses and, in an inquiry under clause *e* of subsection 1, are entitled to be present during the inquiry and to adduce evidence and to be heard.

Rights of appellant to appear

95.—(1) Subject to subsection 2, an appellant who is in custody is entitled, if he desires, to be present at the hearing of the appeal.

Exceptions

(2) An appellant who is in custody and who is represented by counsel is not entitled to be present, on any proceedings that are preliminary or incidental to an appeal, unless the rules provide that he is entitled to be present or the county court or a judge thereof gives him leave to be present.

Sentencing in absence

(3) The power of a county court to impose sentence may be exercised notwithstanding that the appellant is not present.

Written argument

96. An appellant may present his case on appeal and his argument in writing instead of orally, and the county court shall consider any case or argument so presented.

Powers on appeal against conviction

97.—(1) On the hearing of an appeal against a conviction or against a finding that the appellant is unable, because of mental disorder, to conduct his defence, the county court by order,

(a) may allow the appeal where it is of the opinion that,

- (i) the finding should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,
- (ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or
- (iii) on any ground, there was a miscarriage of justice;

(b) may dismiss the appeal where,

- (i) the court is of the opinion that the appellant, although he was not properly convicted on a count or part of an information, was properly convicted on another count or part of the information,
- (ii) the appeal is not decided in favour of the appellant on any ground mentioned in clause *a*, or
- (iii) notwithstanding that the court is of the opinion that on any ground mentioned in subclause ii of clause *a* the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred; or

(c) may set aside the conviction and find the appellant unable, because of mental disorder, to conduct his defence and order a new trial subject to section 43.

(2) Where a county court allows an appeal under clause *a* ^{Idem} of subsection 1, it shall quash the conviction and,

- (a) direct a finding of acquittal to be entered; or
- (b) order a new trial.

(3) Where a county court dismisses an appeal under sub- ^{Idem} clause i of clause *b* of subsection 1, it may substitute the finding that in its opinion should have been found and affirm the sentence passed by the trial court or impose a sentence that is warranted in law.

Enforcement (4) A conviction made by the county court may be enforced,
 (a) in the same manner as if it had been made by the trial court; or
 (b) by process of the county court.

Transmission of documents (5) Where a conviction that has been made or affirmed by a county court is to be enforced by the trial court, the clerk of the county court shall send to the clerk of the trial court the conviction and all writings relating thereto.

Powers on appeal against acquittal **98.** Where an appeal is from an acquittal, the county court may by order,
 (a) dismiss the appeal; or
 (b) allow the appeal, set aside the finding and,
 (i) order a new trial, or
 (ii) enter a finding of guilt with respect to the offence of which, in its opinion, the appellant should have been found guilty, and pass a sentence that is warranted in law.

Powers on appeal as to capacity to conduct defence **99.** Where a county court allows an appeal from a finding that the defendant is unable, because of mental disorder, to conduct his defence, it shall order a new trial.

Appeal against sentence **100.**—(1) Where an appeal is taken against sentence, the county court shall consider the fitness of the sentence appealed from and may, upon such evidence, if any, as it thinks fit to require or receive, by order,

- (a) dismiss the appeal; or
 (b) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted,

and, in making any order under clause *b*, the court may take into account any time spent in custody by the defendant as a result of the offence.

Variance of sentence (2) A judgment of a county court that varies a sentence has the same force and effect as if it were a sentence passed by the trial court.

One sentence on more than one count **101.** Where one sentence is passed upon a finding of guilt on two or more counts, the sentence is good if any of the counts would have justified the sentence.

102.—(1) Judgment shall not be given in favour of an appellant based on any alleged defect in the substance or form of an information, certificate or process or any variance between the information, certificate or process and the evidence adduced at trial unless it is shown that objection was taken at the trial and that, in the case of a variance, an adjournment of the trial was refused notwithstanding that the variance had misled the appellant. Appeal based on defect in information or process

(2) Where an appeal is based on a defect in a conviction or an order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect. Idem

103. Where a county court exercises any of the powers conferred by sections 94 to 102, it may make any order, in addition, that justice requires. Additional orders

104.—(1) Where a county court orders a new trial, it shall be held before a provincial offences court presided over by a justice other than the justice who tried the defendant in the first instance. New trial

(2) Where a county court orders a new trial, it may make such order for the release or detention of the appellant pending such trial as may be made by a justice under subsection 2 of section 128 and the order may be enforced in the same manner as if it had been made by a justice under that subsection. Order for release

105.—(1) Where, because of the condition of the record of the trial in the trial court or for any other reason, the county court, upon application of the appellant or respondent, is of the opinion that the interests of justice would be better served by hearing and determining the appeal by holding a new trial in the county court, the county court may order that the appeal shall be heard by way of a new trial in the county court in accordance with the rules, and for this purpose this Act applies, with necessary modifications, in the same manner as to a proceeding in a provincial offences court. Trial *denovo*

(2) The county court may, for the purpose of hearing and determining an appeal under subsection 1, permit the evidence of any witness taken before the trial court to be read if that evidence has been authenticated and if, Evidence

(a) the appellant and respondent consent;

(b) the county court is satisfied that the attendance of the witness cannot reasonably be obtained; or

- (c) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the county court.

Dismissal or
abandonment

106. The county court may, upon proof that notice of an appeal has been given and that,

- (a) the appellant has failed to comply with any order made under section 89 or 90 or with the conditions of any recognizance entered into under either of those sections; or
- (b) the appeal has not been proceeded with or has been abandoned,

order that the appeal be dismissed.

Costs

107.—(1) Where an appeal is heard and determined or is abandoned or is dismissed for want of prosecution, the county court may make any order with respect to costs that it considers just and reasonable.

Payment

(2) Where the county court orders the appellant or respondent to pay costs, the order shall direct that the costs be paid to the clerk of the court, to be paid by him to the person entitled to them, and shall fix the period within which the costs shall be paid.

Enforce-
ment

(3) Costs ordered to be paid under this section by a person other than a prosecutor acting on behalf of the Crown shall be deemed to be a fine for the purpose of enforcing its payment.

Appeal to
Court of
Appeal

108. A defendant or the prosecutor or the Attorney General by way of intervention may appeal from the judgment of the county or district court to the Court of Appeal, with leave of a justice of appeal, upon any question of law alone or as to sentence in accordance with the rules made under section 117.

Custody
pending
appeal

109. A defendant who appeals shall, if he is in custody, remain in custody, but a judge of the county court may order his release upon any of the conditions set out in subsection 2 of section 128.

110. Where an application for leave to appeal is made, the Registrar of the Court of Appeal shall notify the clerk of the county court appealed from of the application and, upon receipt of the notification, the clerk of the county court shall transmit to the Registrar all the material forming the record including any other relevant material requested by a justice of appeal. Transfer
of
record

111. Sections 92, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103 and 104, clause *b* of section 106 and section 107 apply, with necessary modifications, to appeals to the Court of Appeal under section 108. Application
of ss. 92,
94-104,
106 (b), 107

APPEALS UNDER PARTS I AND II

112.—(1) A defendant or the prosecutor or the Attorney General by way of intervention is entitled to appeal an acquittal, conviction or sentence in a proceeding commenced by certificate under Part I or II and the appeal shall be to the provincial court (criminal division) of the county or district in which the adjudication was made. Appeal

(2) A notice of appeal shall be in the prescribed form and shall state the reasons why the appeal is taken and shall be filed with the clerk of the provincial court (criminal division) within fifteen days after the making of the decision appealed from, in accordance with the rules. Application
for appeal

(3) The clerk shall, as soon as is practicable, give a notice to the defendant and prosecutor of the time and place of the hearing of the appeal. Notice of
hearing

(4) An appeal by a defendant shall not be heard if the defendant has not paid any fine imposed by the decision appealed from and due, except by leave of a judge. Payment
of fine
before
appeal

113.—(1) Upon an appeal, the court shall give the parties an opportunity to be heard for the purpose of determining the issues and may, where the circumstances warrant it, make such inquiries as are necessary to ensure that the issues are fully and effectively defined. Conduct
of appeal

(2) An appeal may be conducted by means of a review or by means of a new trial in the provincial court (criminal division) as directed by the court. Review or
new trial

(3) In determining a review or whether to direct a new trial, the court may, Evidence

- (a) hear or rehear the recorded evidence or any part thereof and may require any party to provide a transcript of the evidence, or any part thereof, or to produce any further exhibit;
- (b) receive the evidence of any witness whether or not the witness gave evidence at the trial;
- (c) require the justice presiding at the trial to report in writing on any matter specified in the request; or
- (d) receive and act upon statements of agreed facts or admissions.

Consequences
as factor
on review

(4) In conducting a review, the court shall have regard to all the consequences of conviction in addition to the penalty imposed by the sentence.

Dismissal
on abandon-
ment

114. Where an appeal has not been proceeded with or abandoned, the court may order that the appeal be dismissed.

Powers of
court on
appeal

115. Upon an appeal, the court may affirm, reverse or modify the decision appealed from.

Appeal to
Court of
Appeal

116. An appeal lies from the judgment of the provincial court (criminal division) to the Court of Appeal, with leave of a justice of appeal, upon any question of law alone in accordance with the rules made under section 117.

RULES FOR APPEALS

Rules of
court for
appeals

117. The Lieutenant Governor in Council may make rules of court not inconsistent with this or any other Act for the conduct of and governing practices and procedures on appeals in the county and district courts and the Court of Appeal under this Act, and respecting any matter arising from or incidental to such appeals.

REVIEW

Application
for relief
in nature of
mandamus,
prohibition,
certiorari

118.—(1) Upon an application by way of originating notice, the High Court may by order grant any relief in respect of matters arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the nature of mandamus, prohibition or *certiorari*.

Notice of
application

(2) Notice of an application under this section shall be served on,

- (a) the person whose act or omission gives rise to the application;

- (b) any person who is a party to a proceeding that gives rise to the application; and
- (c) the Attorney General.

(3) An appeal lies to the Court of Appeal from an order ^{Appeal} made under this section.

119.—(1) A notice under section 118 in respect of an application for relief in the nature of *certiorari* shall be given at least seven days and not more than ten days before the date fixed for the hearing of the application and the notice shall be served within thirty days after the occurrence of the act sought to be quashed. ^{Notice re certiorari}

(2) Where a notice referred to in subsection 1 is served on the person making the decision, order or warrant or holding the proceeding giving rise to the application, such person shall forthwith file in the High Court for use on the application, all material concerning the subject-matter of the application. ^{Filing material}

(3) No application shall be made to quash a conviction, order or ruling from which an appeal is provided by this Act, whether subject to leave or otherwise. ^{Where appeal available}

(4) On an application for relief in the nature of *certiorari*, the High Court shall not grant relief unless the court finds that a substantial wrong or miscarriage of justice has occurred, and the court may amend or validate any decision already made, with effect from such time and on such terms as the court considers proper. ^{Substantial wrong}

(5) Where an application is made to quash a decision, order, warrant or proceeding made or held by a justice on the ground that he exceeded his jurisdiction, the High Court may, in quashing the decision, order, warrant or proceeding, order that no civil proceeding shall be taken against the justice or against any officer who acted under the decision, order or warrant or in the proceeding or under any warrant issued to enforce it. ^{Order for immunity from civil liability}

120.—(1) Upon an application by way of originating notice, the High Court may by order grant any relief in respect of a matter arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the nature of *habeas corpus*. ^{Application for habeas corpus}

(2) Notice of an application under subsection 1 for relief in the nature of *habeas corpus* shall be served upon the person having custody of the person in respect of whom the application is made and upon the Attorney General and upon the hearing of the application the presence before the High Court ^{Procedure on application for relief in nature of habeas corpus}

of the person in respect of whom the application was made may be dispensed with by consent, in which event the High Court may proceed to dispose of the matter forthwith as the justice of the case requires.

Application
of
R.S.O. 1970,
c. 197

(3) Subject to subsections 1 and 2, *The Habeas Corpus Act* applies to applications under this section, but an application for relief in the nature of *certiorari* may be brought in aid of an application under this section.

1971, c. 48 and
R.S.O. 1970,
c. 228, ss. 69, 70
do not apply

(4) *The Judicial Review Procedure Act, 1971* and sections 69 and 70 of *The Judicature Act* do not apply to matters in respect of which an application may be made under section 118 for relief in the nature of *certiorari*.

PART VII

ARREST, BAIL AND SEARCH WARRANTS

Arrest

Officer
in charge

121. In this Part, "officer in charge" means the member of the police force who is in charge of the lock-up or other place to which a person is taken after his arrest.

Execution
of warrant

122.—(1) A warrant for the arrest of a person shall be executed by a police officer by arresting the person against whom the warrant is directed wherever he is found in Ontario.

Idem

(2) A police officer may arrest without warrant a person for whose arrest he has reasonable and probable grounds to believe that a warrant is in force in Ontario.

Citizen's
arrest

123. Any person, other than a police officer, may arrest without warrant a person who he has reasonable and probable grounds to believe has committed an offence and is escaping from and freshly pursued by a police officer who has lawful authority to arrest that person, and shall forthwith deliver the person arrested to a police officer.

Use of
force

124. Every police officer and person acting in aid of a police officer is, if he acts on reasonable and probable grounds, justified in using as much force as is necessary to do what the police officer is required or authorized by law to do.

Immunity
from civil
liability

125. Where a person is wrongfully arrested, whether with or without a warrant, no action for damages shall be brought,

(a) against the police officer making the arrest if he believed in good faith and on reasonable and probable grounds that the person arrested was the person named in the warrant or was subject to arrest without warrant under the authority of an Act;

- (b) against any person called upon to assist the police officer if such person believed that the police officer had the right to effect the arrest; or
- (c) against any person required to detain the prisoner in custody if such person believes the arrest was lawfully made.

126.—(1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so. Production of process

(2) It is the duty of every one who arrests a person, whether with or without warrant, to give notice to that person, where it is feasible to do so, of the reason for the arrest. Notice of reason for arrest

Bail

127.—(1) Where a police officer acting under a warrant or other power of arrest, arrests a person, the police officer shall, as soon as is practicable, release the person from custody after serving him with a summons under section 3 or obtaining his undertaking to appear in the prescribed form unless he has reasonable and probable grounds to believe that, Release after arrest by officer

- (a) it is necessary in the public interest for the person to be detained, having regard to all the circumstances including the need to,
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence; or
- (b) the person arrested is ordinarily resident outside Ontario.

(2) Where a defendant is not released from custody under subsection 1, the police officer shall deliver him to the officer in charge who shall, where in his opinion the conditions set out in clauses *a* and *b* of subsection 1 do not or no longer exist, release the defendant, Release by officer in charge

- (a) upon serving him with a summons under section 3;
- (b) upon his giving an undertaking to appear in the prescribed form; or

- (c) upon his entering into a recognizance in the prescribed form without sureties conditioned for his appearance in court.

Cash bail
by non-
resident

(3) Where the defendant is held for the reason only that he is not ordinarily resident in Ontario, the officer in charge may, in addition to anything required under subsection 2, require the defendant to deposit cash in an amount not to exceed,

- (a) where the offence is commenced by certificate under Part I or II, the amount of the set fine for the offence or, if none, \$300; or
- (b) where the offence is commenced by information under Part III, \$500.

Person in
custody to
be brought
before
justice

128.—(1) Where a defendant is not released from custody under section 127, the officer in charge shall, as soon as is practicable but in any event within twenty-four hours, bring him before a justice and the justice shall, unless a plea of guilty is taken, order that the defendant be released upon giving his undertaking to appear unless the prosecutor having been given an opportunity to do so shows cause why the detention of the defendant is justified to ensure his appearance in court or why an order under subsection 2 is justified for the same purpose.

Order for
conditional
release

(2) Subject to subsection 1, the justice may order the release of the defendant,

- (a) upon his entering into a recognizance to appear with such conditions as are appropriate to ensure his appearance in court;
- (b) where the offence is one punishable by imprisonment for twelve months or more, conditional upon his entering into a recognizance before a justice with sureties in such amount and with such conditions, if any, as are appropriate to ensure his appearance in court but without deposit of money or other valuable security; or
- (c) if the defendant is not ordinarily resident in Ontario, upon his entering into a recognizance before a justice, with or without sureties, in such amount and with such conditions, if any, as are appropriate to ensure his appearance in court, and depositing with the justice such sum of money or other valuable security as the order directs in an amount not exceeding,

(i) where the offence is one commenced by certificate under Part I or II, the amount of the set fine for the offence or if none, \$300, or

(ii) where the offence is one commenced by information under Part III, \$1,000.

(3) The justice shall not make an order under clause *b* or *c* ^{Idem} of subsection 2 unless the prosecutor shows cause why an order under the immediately preceding clause should not be made.

(4) Where the prosecutor shows cause why the detention ^{Order for detention} of the defendant in custody is justified to ensure his appearance in court, the justice shall order the defendant to be detained in custody until he is dealt with according to law.

(5) The justice shall include in the record a statement of ^{Reasons} his reasons for his decision under subsection 1, 2 or 4.

(6) In a proceeding under subsection 1, the justice may receive and base his decision upon information he considers ^{Evidence at hearing} credible or trustworthy in the circumstances of each case except that the defendant shall not be examined or cross-examined in respect of the offence with which he is charged.

(7) A proceeding under subsection 1 shall not be adjourned ^{Adjournments} for more than three days without the consent of the defendant.

129.—(1) Where a defendant is not released from custody ^{Expediting trial of person in custody} under section 127 or 128, he shall be brought before the court for trial forthwith and, in any event, within eight days.

(2) The justice presiding upon any appearance of the defendant in court may, upon the application of the defendant or prosecutor, review any order made under section 128 and make such further or other order under section 128 as to him seems appropriate in the circumstances. ^{Further orders}

130. A defendant or the prosecutor may appeal from an ^{Appeal} order or refusal to make an order under section 128 or 129 and the appeal shall be to the county or district court of the county or district in which the adjudication was made and shall be conducted in accordance with the rules made under section 117.

131.—(1) A person who is released upon deposit of a ^{Appointment of agent for appearance} sum of money under subsection 3 of section 127 or clause *c* of subsection 2 of section 128 may appoint the clerk of the

court to act as his agent, in the event that he does not appear to answer to the charge, for the purpose of entering a plea of guilty on his behalf and authorizing the clerk to apply the moneys so deposited toward payment of the fine and costs imposed by the court upon the conviction, and the clerk shall act as agent under this subsection without fee.

Returns
to court

(2) An officer in charge or justice who takes a recognizance, money or security under section 127 or 128 shall make a return thereof to the court where the defendant is required to appear.

Returns
to
sureties

(3) The clerk of the court shall, upon the conclusion of proceedings, make a financial return to every person who deposited money or security under a recognizance.

Recognizance
binds for
all
appearances

132.—(1) Where a person is bound by recognizance to appear before a court, the recognizance binds the person and his sureties in respect of all appearances required in the proceeding at times and places to which the sittings of the court is adjourned.

Recognizance
binds
independ-
ently of
other
charges

(2) A recognizance is binding in respect of appearances for the offence to which it relates and is not vacated upon the arrest, discharge or conviction of the defendant upon another charge.

Liability
joint and
several

(3) The principal and each surety to a recognizance are bound, jointly and severally, for the amount of the recognizance due upon forfeiture.

Application
by surety
to be
relieved

133.—(1) A surety to a recognizance may, by application in writing to the court, apply to be relieved of his obligation under the recognizance and the court shall thereupon issue a warrant for the arrest of the defendant.

Certificate
of
arrest

(2) When a police officer arrests the defendant under a warrant issued under subsection 1, he shall certify the arrest by certificate in the prescribed form and deliver the certificate to the court.

Vacating of
recognizance

(3) The receipt of the certificate by the court under subsection 2 vacates the recognizance and discharges the sureties.

Delivery of
defendant
by surety

134. A surety to a recognizance may discharge his obligation under the recognizance by delivering the defendant into the custody of the court at which he is required to appear at any time while it is sitting at or before the trial of the defendant.

135.—(1) Where a person who is bound by recognizance does not comply with a condition of the recognizance, a justice having knowledge of the facts shall endorse on the recognizance a certificate in the prescribed form setting out,

Certificate
of
default

- (a) the nature of the default;
- (b) the reason for the default, if it is known;
- (c) whether the ends of justice have been defeated or delayed by reason of the default; and
- (d) the names and addresses of the principal and sureties.

(2) A certificate that has been endorsed on a recognizance under subsection 1 is evidence of the default to which it relates.

Certificate
as evidence

(3) The clerk of the court shall transmit the endorsed recognizance to the clerk of the county or district court of the same county or district and, upon its receipt, the endorsed recognizance constitutes an application for the forfeiture of the recognizance.

Application
for
forfeiture

(4) A judge of the county or district court shall fix a time and place for the hearing of the application by the county or district court and the clerk of the county or district court shall, not less than ten days before the time fixed for the hearing, deliver notice to the prosecutor and to each principal and surety named in the recognizance, of the time and place fixed for the hearing and requiring each principal and surety to show cause why the recognizance should not be forfeited.

Notice of
hearing

(5) The county or district court may, after giving the parties an opportunity to be heard, in its discretion grant or refuse the application and make any order in respect of the forfeiture of the recognizance that the court considers proper.

Order as to
forfeiture

(6) Where an order for forfeiture is made under subsection 5,

Collection
on
forfeiture

- (a) any money or security forfeited shall be paid over by the person who has custody of it to the person who is entitled by law to receive it; and
- (b) the principal and surety become judgment debtors of the Crown jointly and severally in the amount forfeited under the recognizance and the amount may be collected in the same manner as money owing under a judgment of the county or district court.

*Search Warrants*Search
warrant

136.—(1) Where a justice is satisfied by information upon oath that there is reasonable ground to believe that there is in any building, receptacle or place,

- (a) anything upon or in respect of which an offence has been or is suspected to have been committed; or
- (b) anything that there is reasonable ground to believe will afford evidence as to the commission of an offence,

he may at any time issue a warrant in the prescribed form under his hand authorizing a police officer or person named therein to search such building, receptacle or place for any such thing, and to seize and carry it before the justice issuing the warrant or another justice in the county or district in which the provincial offences court having jurisdiction in respect of the offence is situated to be dealt with by him according to law.

Expiration

(2) Every search warrant shall name a date upon which it expires, which date shall be not later than fifteen days after its issue.

When to be
executed

(3) Every search warrant shall be executed between sunrise and sunset, unless the justice by the warrant authorizes its execution at night.

Detention
of things
seized

137.—(1) Where any thing is seized and brought before a justice, he shall by order,

- (a) detain it or direct it to be detained in the care of a person named in the order; or
- (b) direct it to be returned,

and the justice may make any other provision in the order as, in the opinion of the justice, is appropriate for its preservation.

Time
limit for
detention

(2) Nothing shall be detained under an order made under subsection 1 for a period of more than three months after the time of seizure unless, before the expiration of that period,

- (a) upon application, a justice is satisfied that having regard to the nature of the investigation, its further detention for a specified period is warranted and he so orders; or

(b) proceedings are instituted in which the thing detained may be required.

(3) Upon the application of the defendant or person having an interest in a thing detained under subsection 1, a justice may make an order for the examination, testing, inspection or reproduction of any thing detained upon such conditions as are reasonably necessary and directed in the order. Application for examination and copying

(4) Upon the application of a person having an interest in a thing detained under subsection 1, and upon notice to the defendant, the person from whom the thing was seized, the person to whom the search warrant was issued and any other person who has an apparent interest in the thing detained, a justice may make an order for the release of any thing detained to the person from whom the thing was seized where it appears that the thing detained is no longer necessary for the purpose of an investigation or proceeding. Application for release

(5) Where an order or refusal to make an order under subsection 3 or 4 is made by a justice of the peace, an appeal lies therefrom in the same manner as an appeal from a conviction in a proceeding commenced by means of a certificate. Appeal where order by justice of the peace

138.—(1) Where under a search warrant a person is about to examine or seize a document that is in the possession of a lawyer and a solicitor-client privilege is claimed on behalf of a named client in respect of the document, the person shall, without examining or making copies of the document, Examination or seizure of documents where privilege claimed

(a) seize the document and place it, together with any other document seized in respect of which the same claim is made on behalf of the same client, in a package and seal and identify the package; and

(b) place the package in the custody of the clerk of the court in the jurisdiction of which the seizure was made or, with the consent of the person and the client, in the custody of another person.

(2) Where a document has been seized and placed in custody under subsection 1, the client by or on whose behalf the claim of solicitor-client privilege is made may apply to a judge for an order sustaining the privilege and for the return of the document. Application to determine privilege

(3) An application under subsection 2 shall be made not later than thirty days after the date on which the document was placed in custody. Limitation

Attorney
General
a party

(4) The person who seized the document and the Attorney General are parties to an application under subsection 2 and entitled to notice thereof.

Private
hearing and
scrutiny by
judge

(5) An application under subsection 2 shall be heard in private, and, for the purposes of the hearing, the judge may examine the document and, if he does so, shall cause it to be resealed.

Order

(6) The judge may, by order,

- (a) declare that the solicitor-client privilege exists or does not exist in respect of the document;
- (b) direct that the document be delivered up to the appropriate person.

Release of
document
where no
application
under
subs. 2

(7) Where it appears to a judge upon the application of the Attorney General or person who seized the document that no application has been made under subsection 2 within the time limit prescribed by subsection 3, the judge shall order that the document be delivered to the applicant.

PART VIII

ORDERS ON APPLICATION UNDER STATUTES

Orders
under
statutes

139. Where, by any other Act, proceedings are authorized to be taken before a court or a justice for an order, including an order for the payment of money, this Act applies, with necessary modifications, to the proceeding which shall be commenced in the same manner as in the case of an information charging an offence, and for the purpose,

- (a) in place of an information, the applicant shall complete a statement in the prescribed form under oath attesting, on reasonable and probable grounds, to the existence of facts that would justify the order sought; and
- (b) in place of a plea, the defendant shall be asked whether or not he wishes to dispute the making of the order.

PART IX

COMMENCEMENT AND TRANSITION

Application

140.—(1) This Act, except Parts I and II, applies to offences in respect of which proceedings are commenced after this Act comes into force.

(2) Part I and Part II apply to offences occurring after that ^{Idem} Part comes into force.

141.—(1) Subject to subsection 2, the following are ^{Repeals} repealed:

1. *The Summary Convictions Act*, being chapter 450 of the Revised Statutes of Ontario, 1970.
2. *The Summary Convictions Amendment Act, 1971*, being chapter 10.
3. Section 5 of *The Probation Act*, being chapter 364 of the Revised Statutes of Ontario, 1970.

(2) The enactments repealed by subsection 1 continue in ^{Transition} force in respect of offences to which this Act does not apply.

142.—(1) A reference in any Act, regulation or by-law to ^{Reference to} *The Summary Convictions Act* shall be deemed to be a ^{R.S.O. 1970.} reference to this Act. ^{c. 450}

(2) A reference in any Act, regulation or by-law to ^{References to} proceeding by summary conviction shall be deemed to refer ^{to summary conviction} to the procedures under this Act.

143. This Act comes into force on a day to be named by ^{Commence-} proclamation of the Lieutenant Governor. ^{ment}

144. The short title of this Act is *The Provincial Offences* ^{Short title} *Act, 1978.*

An Act to establish a Code of
Procedure for Provincial Offences

1st Reading

April 27th, 1978

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Provincial Courts Act

THE HON. R. MCMURTRY
Attorney General

EXPLANATORY NOTES

SECTION 1. The new provision empowers the courts and judges to proceed in accordance with the due administration of justice where express procedures are not otherwise provided.

SECTION 2. The chief judge of the provincial courts (criminal division) is chief judge of the provincial offences courts.

SECTION 3. The rules committee for provincial courts (criminal division) is established in respect of procedures under the *Criminal Code* (Canada). The same rules committee will make rules for provincial offences courts under section 16*f*, as enacted by section 4 of this Bill.

BILL 75

1978

An Act to amend The Provincial Courts Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 9 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection:

(1a) Where jurisdiction is conferred on a judge, justice of the peace or provincial court, in the absence of express provision for procedures therefor in any Act, regulation or rule, the judge, justice of the peace or provincial court shall exercise the jurisdiction in any manner consistent with the due administration of justice.

s. 9,
amendedWhere
procedures
not
provided

2. Section 10 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 46, section 1, is further amended by adding thereto the following subsection:

(1a) The chief judge of the provincial courts (criminal division) is chief judge of the provincial offences courts.

s. 10,
amendedChief judge
of provincial
offences
courts

3. The said Act is amended by adding thereto the following section:

16a.—(1) The rules committee of the provincial courts (criminal division) is established and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members as chairman.

s. 16a,
enactedRules
committee

(2) A majority of the members of the rules committee constitutes a quorum.

Quorum

(3) The rules committee of the provincial courts (criminal division) is a provincial court (criminal division) for the purpose of making rules of court under the *Criminal Code* (Canada).

Rules

R.S.C. 1970,
c. C-34

Part II-A
(ss. 16b-16f),
enacted

4. The said Act is further amended by adding thereto the following Part:

PART II-A

Provincial
offences
court

16b.—(1) There shall be in every county and district a court of record to be styled,

(a) in counties, the “Provincial Offences Court of the County (or Judicial District or United Counties) of (*naming the county, etc.*)”;

(b) in districts, the “Provincial Offences Court of the District of (*naming the district*)”,

presided over by a judge or justice of the peace.

Jurisdiction

(2) Each provincial offences court has jurisdiction to hear, determine and dispose of,

1978, c.

(a) all matters in which jurisdiction is conferred by *The Provincial Offences Act, 1978*; and

(b) any other matter assigned to it by or under any statute.

Sittings

16c.—(1) The provincial offences courts may hold sittings at any place in the county or district designated by the chief judge of the provincial offences courts.

Idem

(2) Where a proceeding in which a provincial offences court has jurisdiction is conducted during the course of a sitting of the provincial court (criminal division) or provincial court (family division) in the same county or district, the proceeding shall be deemed to be conducted in the provincial offences court.

Penalty
for
contempt

16d.—(1) Except as otherwise provided by statute, every person who commits contempt in the face of a provincial offences court is upon conviction liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

Statement
to
offender

(2) Before proceedings are taken for contempt under subsection 1, the court shall inform the offender of the conduct complained of and the nature of the contempt and inform him of his right to show cause why he should not be punished.

SECTION 4. The provincial offences courts are established in a manner parallel to provincial courts (criminal division). Provision is made for contempt procedures and rules. The new Part is complementary to the Bill to enact *The Provincial Offences Act, 1978*.



(3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he should not be punished.

Show
cause

(4) Except where, in the opinion of the court, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day.

Adjournment
for
adjudication
of contempt

(5) Where a contempt proceeding is adjourned to another day under subsection 1, the contempt proceeding shall be heard and determined by the court presided over by a judge.

Adjudication
by a judge

(6) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection 4, the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.

Arrest for
immediate
adjudication
of contempt

(7) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in Ontario, the court may order that he be barred from acting as agent in the proceeding in addition to any other punishment to which he is liable.

Barring of
agent in
contempt

(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in proceedings commenced by certificate under Part I of *The Provincial Offences Act, 1978*.

Appeals

1978, c.

(9) *The Provincial Offences Act, 1978* applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section.

Enforcement

16e. Any person who knowingly disturbs or interferes with the proceedings of a provincial offences court, without reasonable justification, while outside the courtroom is guilty of an offence and upon conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

Penalty for
disturbance
outside
courtroom

16f. Subject to the approval of the Lieutenant Governor in Council, the rules committee of the provincial courts (criminal division) may make rules regulating any matters relating to the practice and procedure of the provincial offences courts including, without limiting the generality of the foregoing,

Rules for
provincial
offences
courts

(a) prescribing forms respecting proceedings in the court;

(b) prescribing any matter required to be or referred to as prescribed by the rules of the court;

(c) prescribing and regulating the proceedings under any Act that confers jurisdiction upon a provincial offences court or a judge or justice of the peace sitting therein.

s. 27,
amended

5. Section 27 of the said Act is amended by adding thereto the following subsection:

Idem

(1a) The clerk of a provincial court (criminal division) is the clerk of the provincial offences court of the same county or district.

References
to
provincial
courts
(criminal
division)

6. Where, in any Act, regulation or by-law, a reference is made to a provincial court (criminal division) in connection with a provincial offence, the reference shall be deemed to be to a provincial offences court.

Commence-
ment

7. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

8. The short title of this Act is *The Provincial Courts Amendment Act, 1978*.

SECTION 5. The amendment provides for clerks for the provincial offences courts.

SECTION 6. The provision recognizes the transfer of jurisdiction from provincial courts (criminal division) to provincial offences courts.





An Act to amend
The Provincial Courts Act

1st Reading

April 27th, 1978

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Change of Name Act

THE HON. R. McMURTRY
Attorney General

EXPLANATORY NOTES

SECTION 1. Section 3 (2) at present reads as follows :

(2) Where the applicant is an infant, he shall be deemed to be of full age for all purposes of this Act.

The provision was necessary when the age of majority was 21 and applicants could make application for change of name at 18. The provision has no function with the reduction of the age of majority to 18.

SECTION 2. This provision removes uncertainty as to the validity of orders already made.

BILL 76

1978

An Act to amend *The Change of Name Act*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 3 of *The Change of Name Act*, being ^{s. 3 (2).} chapter 60 of the Revised Statutes of Ontario, 1970, is repealed. ^{repealed}
2. An order effecting a change of name made before this Act ^{Orders} comes into force is not invalid for the reason only that the ^{previously} applicant was a minor. ^{made}
3. This Act comes into force on the day it receives Royal Assent. ^{Commence-}
^{ment}
4. The short title of this Act is *The Change of Name Amendment* ^{Short title}
Act, 1978.

BILL 76

An Act to amend
The Change of Name Act

1st Reading

April 27th, 1978

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(Government Bill)

BILL 76

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Change of Name Act

THE HON. R. MCMURTRY
Attorney General



BILL 76

1978

An Act to amend The Change of Name Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 3 of *The Change of Name Act*, being ^{s. 3 (2),} chapter 60 of the Revised Statutes of Ontario, 1970, is repealed. _{repealed}
2. An order effecting a change of name made before this Act ^{Orders} comes into force is not invalid for the reason only that the _{previously} applicant was a minor. _{made}
3. This Act comes into force on the day it receives Royal Assent. <sub>Commence-
ment</sub>
4. The short title of this Act is *The Change of Name Amendment Act, 1978*. _{Short title}

DB 176
An Act to amend
The Change of Name Act

1st Reading

April 27th, 1978

2nd Reading

May 11th, 1978

3rd Reading

May 11th, 1978

THE HON. R. MCMURTRY
Attorney General

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Corporations Act

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

EXPLANATORY NOTES

SECTION 1. The section repealed permits a business that is not incorporated to notify the Minister of its business name for notation in the records. These business names are now required to be filed with the Registrar of Partnerships and the repealed section is superfluous.

SECTION 2. The subsection as amended reads as follows:

(13) A mutual insurance corporation incorporated for the purposes of undertaking contracts of fire insurance solely on the premium note plan or under a contract to which the Fire Mutuals Guarantee Fund is applicable in accordance with section 143 of The Insurance Act has and is limited to the power to,

- (a) undertake contracts of fire insurance upon agricultural property or property that is not mercantile or manufacturing or hazardous, on the premium note plan in accordance with The Insurance Act;
- (b) in respect of property that it insures against fire, undertake contracts of property damage insurance, theft insurance or any class or classes of insurance set out in section 27 of The Insurance Act;
- (c) undertake contracts of employers' liability insurance or public liability insurance as defined in The Insurance Act in the case of persons whose property it insures against fire, but such insurance shall be limited to liability arising from the use and occupancy of the property insured against fire;
- (d) undertake contracts of hail insurance as defined for the purposes of The Insurance Act in the case of persons whose property it insures against fire; and
- (e) undertake contracts of weather insurance as defined for the purposes of The Insurance Act in the case of persons whose property it insures against fire.

The words underlined are being added.

The amendment ensures that a corporation entering into an agreement to establish and maintain the Fire Mutuals Guarantee Fund that was provided for in 1975 is subject to the limitation of subsection 13 of section 169 of the Act.

SECTION 3. The amendment brings up to date the reference to the *Criminal Code* (Canada). The reference makes the use of an incorporated social club as a common gaming house as set out in the *Criminal Code* grounds for cancellation of the letters patent.

SECTION 4. Section 382 of the Act reads as follows:

- 382.—(1) *The Minister shall, after the close of each fiscal year, prepare an annual report showing the licences issued under this Part during such year, the authorized capital of each corporation licensed and the fee paid for each licence.*
- (2) *The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.*

The Part of the Act in which the section is found deals with extra-provincial corporations. Certain classes of extra-provincial corporations are prohibited from carrying on business in Ontario without a licence.

BILL 77

1978

An Act to amend The Corporations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 17 of *The Corporations Act*, being chapter 89 of the Revised Statutes of Ontario, 1970, is repealed. s. 17,
repealed
2. Subsection 13 of section 169 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 25, section 2 and amended by 1973, chapter 104, section 2, is further amended by inserting after "plan" in the third line "or under a contract to which the Fire Mutuals Guarantee Fund is applicable in accordance with section 143 of *The Insurance Act*". s. 169 (13),
amended
3. Clause *a* of section 346 of the said Act is repealed and the following substituted therefor: s. 346 (a),
re-enacted
 - (a) occupies and uses a house, room or place as a club that, except for clause *a* of subsection 2 of section 179 of the *Criminal Code* (Canada) would be a common gaming house as defined in subsection 1 thereof; or R.S.C. 1970,
c. C-34

.
4. Section 382 of the said Act is repealed. s. 382,
repealed
5. This Act comes into force on the day it receives Royal Assent. Commence-
ment
6. The short title of this Act is *The Corporations Amendment Act, 1978*. Short title

BILL 77

An Act to amend
The Corporations Act

1st Reading

April 28th, 1978

2nd Reading

3rd Reading

THE HON. I. GROSSMAN
Minister of Consumer and
Commercial Relations

(Government Bill)

BILL 77

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Corporations Act

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations



BILL 77

1978

An Act to amend The Corporations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 17 of *The Corporations Act*, being chapter 89 of the Revised Statutes of Ontario, 1970, is repealed. s. 17,
repealed

2. Subsection 13 of section 169 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 25, section 2 and amended by 1973, chapter 104, section 2, is further amended by inserting after "plan" in the third line "or under a contract to which the Fire Mutuals Guarantee Fund is applicable in accordance with section 143 of *The Insurance Act*". s. 169 (13).
amended

3. Clause *a* of section 346 of the said Act is repealed and the following substituted therefor: s. 346 (a),
re-enacted
 - (a) occupies and uses a house, room or place as a club that, except for clause *a* of subsection 2 of section 179 of the *Criminal Code* (Canada) would be a common gaming house as defined in subsection 1 thereof; or

.

4. Section 382 of the said Act is repealed. s. 382.
repealed

5. This Act comes into force on the day it receives Royal Assent. Commence-
ment

6. The short title of this Act is *The Corporations Amendment Act, 1978*. Short title

BILL 77

An Act to amend
The Corporations Act

1st Reading

April 28th, 1978

2nd Reading

May 11th, 1978

3rd Reading

May 11th, 1978

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Public Commercial Vehicles Act**

THE HON. J. W. SNOW
Minister of Transportation and Communications

EXPLANATORY NOTES

SECTION 1. Section 1 (*k*) of the Act defines public commercial vehicle, basically, as a commercial vehicle licensed under the Act. The amendment goes on to include a vehicle for which a temporary exemption to licensing has been provided.

SECTION 2.—Subsection 1. Section 2 (1) of the Act prohibits the operation of a commercial vehicle for compensation without proper licences.

Section 2 (2) of the Act provides exceptions to the prohibition found in section 2 (1) of the Act. The list of goods that may be carried without licence is expanded.

BILL 78

1978

**An Act to amend
The Public Commercial Vehicles Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *k* of section 1 of *The Public Commercial Vehicles Act*, <sup>s.1 (k),
amended</sup> being chapter 375 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1973, chapter 166, section 1, is amended by adding at the end thereof "or for which temporary exemptions have been provided under the regulations".

- 2.—(1) Subsection 2 of section 2 of the said Act, as re-enacted <sup>s.2 (2),
re-enacted</sup> by the Statutes of Ontario, 1973, chapter 166, section 2, is repealed and the following substituted therefor:
 - (2) Subsection 1 does not apply to the transportation of, ^{Exceptions}
 - (a) goods within an urban zone;
 - (b) fresh fruit or fresh vegetables;
 - (c) logs, timber, rough or dressed lumber, wooden ties and poles, plywood, particle board, waferboard, fibreboard, veneer, bark, woodchips, shavings, sawdust or wood flour;
 - (d) farm or forest produce, other than live stock or milk, that are the produce of the farm or forest from which they are being transported;
 - (e) ready mixed concrete;
 - (f) waste, including ashes, garbage, refuse, domestic waste, municipal refuse and industrial waste other than liquid industrial waste; or
 - (g) hay, straw, live stock feed, grain, seed, turf, sod, farm produce containers, manure, pesticides, agri-

cultural limestone, fencing materials, or bagged or dry bulk fertilizer.

s. 2.
amended

- (2) The said section 2, as amended by the Statutes of Ontario, 1971, chapter 50, section 71 and 1973, chapter 166, section 2, is further amended by adding thereto the following subsections:

Penalty

(3) Every person to whom subsection 1 applies who operates a commercial vehicle on a highway for the transportation for compensation of goods of another person without an operating licence or in contravention of the terms and conditions of his operating licence is guilty of an offence and on summary conviction is liable,

(a) for a first offence, to a fine of not less than \$250 and not more than \$5,000; and

(b) for each subsequent offence, to a fine of not less than \$500 and not more than \$5,000.

Subsequent
offences

(3a) Where a person who has previously been convicted of an offence mentioned in subsection 3 is convicted of the same or any other offence mentioned in subsection 3 within five years after the date of the previous conviction, the offence for which he is last convicted shall be deemed to be a subsequent offence for the purpose of clause *b* of subsection 3.

s. 2a,
enacted

- 3.** The said Act is amended by adding thereto the following section:

Hiring of
unlicensed
commercial
vehicle

2a. Where, under the provisions of this Act, a licence is required for the transportation of goods, no person shall hire, directly or indirectly, or participate in an arrangement to hire a person to transport such goods by means of a commercial vehicle knowing that the person hired, by, for or on behalf of whom the commercial vehicle is operated, is not the holder of the required licence.

s. 5,
amended

- 4.** Section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71 and amended by 1975 (2nd Session), chapter 7, section 1, is further amended by adding thereto the following subsection:

Condition
deleted

(4) Every operating licence issued by the Minister under this section and every certificate issued by the Board under section 6 which contains a condition having the effect of restricting or prohibiting the transportation of goods to or from any point north of North Bay, including any point

Subsection 2. The new section 2 (3) of the Act provides a penalty different from the general penalty found in the Act where the contravention of section 2 (1) of the Act is in operating without an operating licence or in contravention of an operating licence. The fine is increased for subsequent offences by the new section 2 (3a) of the Act.

SECTION 3. The provision makes it an offence for a person shipping goods to hire a transporter whom the shipper knows does not have the necessary licence.

SECTION 4. Self-explanatory.

SECTION 5.—Subsection 1. The amendment is complementary to section 5 (2) of the Bill.

Subsection 2. The new subsections being added to section 6 of the Act provide for the issuance of a probationary operating licence to persons who have been operating without a licence between September 30, 1974 and October 1, 1976 and are also so operating at the time the application is made.

This privilege would be available to those who apply within 120 days after these provisions come into force.

The probationary licence would be valid for one year after which time the Board would review the matter and either revoke the certificate or issue a new certificate approving a regular operating licence.

north of North Bay on King's Highway No. 11 and all highways connecting with King's Highway No. 11 north of its intersection with King's Highway No. 17 near North Bay, is hereby amended by the deletion of the condition.

- 5.—(1) Subsection 2 of section 6 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71 and amended by 1975 (2nd Session), chapter 7, section 2, is further amended by striking out "subsection 3" in the amendment of 1975 (2nd Session) and inserting in lieu thereof "subsections 3 and 11". ^{s. 6 (2), amended}
- (2) The said section 6, as amended by the Statutes of Ontario, 1975 (2nd Session), chapter 7, section 2 and 1976, chapter 22, section 1, is further amended by adding thereto the following subsections: ^{s. 6, amended}
- (9) An application for a probationary operating licence or licences may be made to the Board by a person who has not been the holder of an operating licence at any time between the 30th day of September, 1974 and the 1st day of October, 1976. ^{Applicants who operated between September 30, 1974 and October 1, 1976}
- (10) In support of an application made under subsection 9, the person making the application shall submit to the Board evidence showing, ^{Evidence in support of application}
- (a) that, from the 1st day of October, 1974 to the 30th day of September, 1976, the applicant operated on a continuing basis one or more commercial vehicles transporting goods for compensation where the operation was not restricted to urban zones;
 - (b) the number of commercial vehicles operated by the applicant;
 - (c) a description of goods carried and names of the consignors of the goods;
 - (d) the points of origin and destination of the goods described under clause c;
 - (e) that persons named in clause c support the application;
 - (f) that the applicant is financially capable of continuing to provide such transportation services in accordance with this Act and the regulations and of meeting his financial responsibilities to the persons mentioned in clause e; and

(g) that the applicant was on the date of the application carrying on the business of transporting for compensation goods of another person where the operation was not restricted to urban zones.

Issuance of certificate

(11) The Board, upon hearing an application made under subsection 9 and being satisfied with regard only to the evidence submitted under subsection 10, shall issue a certificate or certificates consistent with such evidence approving the issue of a probationary licence or licences, which certificate or certificates shall state the maximum number of commercial vehicles that may be operated.

Issuance of licence

(12) Notwithstanding subsection 1 and subject to subsection 15, where the Board has issued a certificate or certificates under subsection 11, the Minister shall issue a probationary licence or licences in accordance with the certificate or certificates containing such terms and conditions as set out in the certificate or certificates.

Time limit for application under subs. 9

(13) An application under subsection 9 shall be made not later than 120 days after that subsection comes into force.

Applicant to file tariff

(14) An applicant under subsection 9 shall file with his application a tariff of tolls showing all the rates and charges for the transportation of goods in respect of which the transportation is proposed to be provided or offered by the applicant.

Requirements prior to issue of licence

(15) Before a licence is issued by the Minister pursuant to a certificate issued by the Board under subsection 11, the applicant shall file with the Ministry for each motor vehicle that he proposes to operate under the licence a safety standards certificate issued under *The Highway Traffic Act* not more than thirty days before the date of filing.

R.S.O. 1970, c. 202

Validity of probationary operating licence

(16) A probationary operating licence issued under subsection 12 expires,

(a) upon the Board revoking its certificate under subsection 17; or

(b) where the Board issues a new certificate under subsection 17,

(i) upon the Minister issuing an operating licence under subsection 1 pursuant to the certificate, or

SECTION 6. Section 7 (1) of the Act provides that an operating licence shall not be transferred without the approval of the Minister. The new section 7 (1a) of the Act provides that an operating licence issued pursuant to an application under the new section 6 (9) of the Act cannot be transferred.

SECTION 7. Section 10 of the Act empowers the Minister to suspend or cancel an operating licence for any of the causes set out in that section. The amendment adds a further cause for suspending or cancelling an operating licence.

SECTION 8. The reference to Schedules A and B is being deleted. This is complementary to section 13 of the Bill.

Added to the matters which are to be part of a bill of lading is a statement by the carrier or freight forwarder as to the state of the goods when he received them.

Where a driver or carrier is required to produce a copy of a bill of lading, a memorandum of the bill will no longer suffice, but a "carrier's waybill" may be produced instead.

Where a shipment is carried by more than one vehicle, the carrier must ensure that a bill of lading or a waybill is in each vehicle.

- (ii) upon the expiration of three months after the issuance of the new certificate,

whichever first occurs.

(17) The Board shall, not less than one year after the date of issue of a probationary operating licence issued under subsection 12 and as soon after the expiration of the one year as is convenient to the Board, review under section 17 of *The Ontario Highway Transport Board Act* the certificate with respect to the licence and shall revoke the certificate or issue a new certificate approving the issue of an operating licence.

Review by Board

R.S.O. 1970, c. 316

6. Section 7 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by adding thereto the following subsection:

s. 7, amended

(1a) Notwithstanding subsection 1, no probationary operating licence issued pursuant to an application under subsection 9 of section 6 is transferable.

Exception to subs. 1

7. Section 10 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by adding thereto the following clause:

s. 10, amended

(ba) where the past conduct of the applicant or licensee or, where the applicant or licensee is a corporation, of its officers or directors affords reasonable grounds for belief that the transportation service will not be operated in accordance with the law and with honesty and integrity.

8. Subsections 2 to 6 of section 12n of the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, are repealed and the following substituted therefor:

s. 12n (2-6), re-enacted

(2) A bill of lading shall contain such information as may be prescribed by regulation together with an acknowledgment of receipt by the carrier or the freight forwarder of the goods therein described indicating whether the goods were received in apparent good order and condition and an undertaking to carry the goods for delivery to the consignee or the person entitled to receive the goods and shall be signed in full by, or on behalf of, the issuing carrier or issuing freight forwarder and by the consignor as accepting the terms and conditions contained, or deemed to be contained, therein.

Contents

Signed copy
to be
retained

(3) A signed copy of the bill of lading shall be retained by the consignor and by the carrier.

Copy of bill
of lading to
be carried
by driver

(4) Every driver operating a public commercial vehicle shall carry on each trip a copy of the bill of lading and shall produce it when required for inspection by a member of the Ontario Provincial Police Force or an officer of the Ministry.

Idem

(5) Where a carrier is transporting goods on behalf of a freight forwarder, the driver transporting the goods by public commercial vehicle shall carry on each trip a copy of the bill of lading issued by the freight forwarder and shall produce it when required for inspection by a member of the Ontario Provincial Police Force or an officer of the Ministry.

Carrier's
waybill
carried in
lieu of bill
of lading

(6) Notwithstanding subsections 4 and 5, a carrier's waybill, containing such information as may be prescribed by regulation, may be carried by any driver operating a public commercial vehicle or transporting goods on behalf of a freight forwarder and may be produced in lieu of a bill of lading when such is required for inspection by a member of the Ontario Provincial Police Force or an officer of the Ministry.

Carrier's
responsi-
bility

(7) Where any shipment of goods is carried on more than one vehicle, the carrier shall ensure that every part of the shipment is accompanied by a copy of the bill of lading or by a waybill mentioned in subsection 6.

s. 15c (1),
amended

9.—(1) Subsection 1 of section 15c of the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, is amended by inserting after "vehicles" in the fourth line "or of the holder of a freight forwarder's licence relating to his business as a freight forwarder".

s. 15c (2, 3),
re-enacted

(2) Subsections 2 and 3 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, are repealed and the following substituted therefor:

Appointment
of
investigators

(2) The Minister may appoint one or more officers of the Ministry as investigators for the purpose of carrying out investigations to ascertain compliance with this Act and the regulations thereunder.

Examination
of records,
etc.

(3) Where an investigator appointed under subsection 2 believes on reasonable and probable grounds that any person has contravened any of the provisions of this Act or the regulations, he may inquire into and examine the affairs of that person and may,

SECTION 9.—Subsection 1. Section 15c (1) of the Act presently gives an officer of the Ministry authority to examine business records and documents of a holder of an operating licence in respect of a public commercial vehicle business. The amendment extends this authority to include the holder of a freight forwarder's licence.

Subsection 2. Section 15c (2) and (3) of the Act presently authorize the Minister to appoint persons to investigate possible contravention of the Act. Section 15c (3) sets out the power to examine documents, etc., and to enter business premises.

The basic change in the provisions as recast is that the power to examine documents and enter business premises will apply when an investigator believes on reasonable and probable grounds that there is a contravention of the Act. Presently they apply when the Minister so believes.

Subsections 3, 4, 5, 6. The changes are ones in wording made necessary by section 9 (2) of the Bill. There are no substantive changes.



- (a) upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents and things relevant to the purported contravention; and
- (b) inquire into negotiations and transactions made by or on behalf of or in relation to such person relating to the transportation of goods or the use of commercial vehicles or that are otherwise relevant to the subject-matter of the investigation,

and for the purpose of the inquiry, the investigator has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act. 1971, c. 49

- (3) Subsection 4 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, is amended by striking out "a person appointed to make an investigation under this section" in the first and second lines and inserting in lieu thereof "an investigator appointed under subsection 2". s. 15c (4), amended

- (4) Subsection 5 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, is repealed and the following substituted therefor: s. 15c (5), re-enacted

(5) Where a provincial judge is satisfied upon an *ex parte* application by an investigator appointed under subsection 2 that there are reasonable grounds for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 3, issue an order authorizing the investigator, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the investigator to make the search at night. Issuance of order

- (5) Subsection 6 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, is amended by striking out "Any person making an investigation under this section" in the first and second lines and inserting in lieu thereof "An investigator appointed under subsection 2". s. 15c (6), amended

s. 15c (7),
amended

(6) Subsection 7 of the said section 15c, as enacted by the Statutes of Ontario, 1973, chapter 166, section 11, is amended by striking out "person" in the second line and inserting in lieu thereof "investigator".

s. 16,
re-enacted

10. Section 16 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 166, section 12, is repealed and the following substituted therefor:

Penalty

16. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on summary conviction, where a penalty for the contravention is not otherwise provided for herein, is liable to a fine of not less than \$150 and not more than \$1,500.

s. 18,
amended

11. Section 18 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 50, section 71, 1973, chapter 166, section 13 and 1975 (2nd Session), chapter 7, section 3, is further amended by adding thereto the following clauses:

(j) prescribing the form and contents of a waybill;

.

(t) governing the issue and renewal of operating licences and classes of operating licences;

(u) prescribing the qualifications of applicants for and holders of operating licences or any class or classes of operating licences;

(v) exempting holders of any class or classes of operating licences from any of the provisions of section 12j or 12n.

ss. 19, 20,
enacted

12. The said Act is amended by adding thereto the following sections:

Policy
statements

19.—(1) The Lieutenant Governor in Council may by order from time to time issue policy statements setting out matters to be considered by the Board when determining questions of public necessity and convenience and the Board shall take such matters into consideration together with such other matters as the Board considers appropriate where the application or reference is made after the policy statement is gazetted.

Publication

(2) An order made under subsection 1 shall be published in *The Ontario Gazette*.

SECTION 10. The minimum and maximum general penalties are increased from \$50 and \$1,000, respectively, to \$150 and \$1,500.

SECTION 11. Section 18 of the Act refers to the authority to make regulations. The clauses added expand the matters that may be dealt with by regulation.

SECTION 12. Self-explanatory.

SECTION 13. Schedules A and B set out conditions deemed to be part of contracts for transportation of goods for compensation.

20.—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as are referred to it by the Minister and the Board shall report thereon to the Minister. Investigation directed by Minister

(2) For the purposes of subsection 1, the Board may hold such hearings as it considers necessary. Hearings by Board

13. Schedules A and B to the said Act, as enacted by the Statutes of Ontario, 1971, chapter 50, section 71, are repealed. Schedules A and B, repealed

14.—(1) This Act, except sections 5, 6 and 8, comes into force on the day it receives Royal Assent. Commencement

(2) Sections 5, 6 and 8 come into force on a day to be named by proclamation of the Lieutenant Governor. Idem

15. The short title of this Act is *The Public Commercial Vehicles Amendment Act, 1978*. Short title

BILL 78

An Act to amend
The Public Commercial
Vehicles Act

1st Reading

May 2nd, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(Government Bill)



