

Contents

Preface/iii

Acknowledgements/v

Contents/vii

List of Exhibits/xxix

Table of Cases/xxxiii

Index/I-1

Chapter 1 — The Administration of Health and Safety in Ontario

Introduction/1.1

Existing Legislative Structure/1.2

The *Occupational Health and Safety Act*/1.3

The WHMIS Amendments/1.3.1

The 1990 Amendments (Formerly Bill 208)/1.3.2

The 2011 Amendments (Bill 160)/1.3.3

Regulations under the OHSA/1.4

Regulations for Industrial Establishments/1.4.1

Pre-Start Health and Safety Reviews Under Industrial
Regulations/1.4.2

Regulations for Construction Projects/1.4.3

Regulations for Mines and Mining Plants/1.4.4

Regulations for Health Care and Residential Facilities/1.4.5

WHMIS Regulations/1.4.6

Critical Injury Regulation/1.4.7

Regulations Respecting Biological or Chemical Agents/1.4.8

Designated Substance Regulations/1.4.9

Other Regulations/1.4.10

Diving Operations (O. Reg. 629/94)/1.4.10a

Protective Equipment for Firefighters (O. Reg. 714/94)/
1.4.10b

Offshore Oil and Gas (Reg. 855)/1.4.10c

- Roll-Over Protective Structures (Reg. 856)/1.4.10d
- Window Cleaning (Reg. 859)/1.4.10e
- Training Requirements for Certain Skill Sets and Trades
(O. Reg. 572/99)/1.4.10f
- Confined Spaces (O.Reg. 632/05 and other Regulations)/
1.4.10g
- Needle Safety/1.4.10h
- Occupational Health and Safety Awareness and Training
(O. Reg. 297/13)/1.4.10i
- Codes of Practice/1.5
- Smoking in the Workplace/1.6
 - The Smoke Free Ontario Act*/1.6.1
 - Ban on Smoking in “Enclosed Workplaces”/1.6.2
 - Ban on Smoking in “Enclosed Public Places” /1.6.3
 - Exceptions/1.6.4
 - Smoking Shelters/1.6.5
 - Employer Obligations/1.6.6
 - Enforcement of the *Smoke Free Ontario Act*/1.6.7
 - Offences and Penalties/1.6.8
 - Protection for Complainants and Home Healthcare Workers/1.6.9
 - Posting Requirements/1.6.10
- Workplace Violence and Harassment Provisions (Bill 168)/1.7
 - Workplace Violence and Harassment Definitions/1.7.1
 - Employer’s Workplace Violence and Harassment Obligations/1.7.2
 - Domestic Violence in the Workplace /1.7.3
 - Workplace Violence and Work Refusals/1.7.4
- The *Workplace Safety and Insurance Act, 1997*/1.8
 - Authority over Health and Safety Education/1.8.1
 - Authority over Health Clinics and Safe Workplace Associations/
1.8.2
 - Accreditation of Employers/1.8.3
 - The *Criminal Code*: Bill C-45 Criminalizes OH&S/1.9

Chapter 2 — The Government Administrative Structure

- Introduction/2.1
- Role of the Occupational Health and Safety Branch/2.2.1
- Role of the Ministry of Labour/2.2.2

Administrative Structure of Occupational Health and Safety—Safety Branch/2.3	
Industrial Health and Safety Program/2.3.1	
Construction Health and Safety Program/2.3.2	
Mining Health and Safety Program/2.3.3	
Professional and Specialized Services Unit/2.3.4	
Health and Safety Policy Units/2.3.5	
Administrative Structure of Occupational Health and Safety—The Prevention Council and Chief Prevention Officer/2.4	
Codes of Practice/2.5	

Chapter 3 — Duties and Potential Liabilities of Workplace Parties

Introduction/3.1	
The Employer/3.2	
Definition/3.2.1	
Excluded Employers/3.2.1a	
Duties/3.2.2	
Duty to Provide a Safe Workplace/3.2.2a	
Duty to Comply with Regulations/3.2.2b	
Duty to Provide Information and to Educate Workers/3.2.2c	
Duty to Appoint a Competent Supervisor/3.2.2d	
Duty to Acquaint the Worker or Person with Authority/3.2.2dd	
Obligations Respecting Policy and Programs/3.2.2e	
Obligations to Provide Reports to Workers/3.2.2f	
Obligations to Provide Training/3.2.2g	
Obligations Respecting Medical Surveillance/3.2.2h	
Duty to Assist Safety Committee or Representative/3.2.2i	
Duty Not to Employ Minors/3.2.2j	
Duty to Take Every Reasonable Precaution/3.2.2k	
Duty to Post a Copy of Act/3.2.2l	
Duty to Establish an Occupational Health Service/3.2.2m	
Duty Respecting the Use of Agents/3.2.2n	
Duty to Provide Medical Examination/3.2.2o	
Duty to Provide Workers with Written Instructions/3.2.2p	
Duties Regarding Hazardous Materials/3.2.2q	
Duty Not to Seek Access to Health Records/3.2.2r	

- Duties Involving Non-Workers/3.2.2s
- Duties Regarding Workplace Violence and Harassment/
3.2.2t
- Potential Offences/3.2.3
- Extended Coverage Workplaces and “Every Precaution
Reasonable” /3.2.4
- The Worker/3.3
 - Definition/3.3.1
 - Workers Excluded from the Act/3.3.1a
 - Workers Excluded from Work-Refusal Provisions/3.3.1b
 - Duties/3.3.2
 - Duty to Comply with Act and Regulations/3.3.2a
 - Duty to Use Equipment, Protective Devices and Clothing
Provided/3.3.2b
 - Duty to Report Defects, Contraventions and Hazards/3.3.2c
 - Duty to Undergo Medical Examination/3.3.2d
 - Duty Not to Make Protective Device Ineffective/3.3.2e
 - Duty Not to Operate Machine or Device in Dangerous
Manner/3.3.2f
 - Duty Not to Play in the Workplace/3.3.2g
 - Potential Offences/3.3.3
- Constructors/3.4
 - Definition/3.4.1
 - Duties/3.4.2
 - Duty to Register with Director/3.4.2a
 - Duty to Give Notice/3.4.2b
 - Duty to Appoint a Supervisor/3.4.2c
 - Notice of Project/3.4.2d
 - Potential Offences/3.4.3
- Supervisors/3.5
 - Definition/3.5.1
 - Duties/3.5.2
 - Duty to Ensure Workers Comply with the OHSA and
Regulations/3.5.2a
 - Duty to Ensure Workers Use Equipment, Devices and
Clothing/3.5.2b
 - Duty to Advise Workers of Danger/3.5.2c
 - Duty to Provide Written Instructions/3.5.2d
 - Duty to Take Every Precaution Reasonable/3.5.2e

- Potential Offences/3.5.3
- Owners/3.6
 - Definition/3.6.1
 - Duties/3.6.2
 - Disclosure of Hazards/3.6.2a
 - Duties of Owner of a Workplace That is not a Project/3.6.2b
 - Duties of Mine Owners/3.6.2c
 - Duty to File Plans of Workplaces/3.6.2d
 - Duty to Provide Additional Information/3.6.2e
 - Potential Offences/3.6.3

[The next page is xi]

Directors and Officers/3.7
Definition/3.7.1
Duties/3.7.2
Potential Offences/3.7.3
Suppliers/3.8
Definition/3.8.1
Duties (Suppliers as Lessors)/3.8.2
Duty to Ensure Equipment in Good Condition/ 3.2.8a
Duty to Comply with OHSA and Regulations/3.8.2b
Contractual Duty to Maintain Equipment in Good Condition/3.8.2c
Potential Offences (Suppliers as Lessors)/3.8.3
Suppliers of Hazardous Materials—Duties and Potential Liabilities/3.8.4
Licensees/3.9
Duties/3.9.1
Self-Employed Persons/3.10
Architects and Engineers/3.11
<i>Criminal Code</i> Duties and Responsibilities/3.12
Duty Must Be Breached in Wanton or Reckless Manner/ 3.12.1

Chapter 4 – Inspections, Investigations and Orders by the Ministry of Labour

Introduction/4.1
The Ministry of Labour Inspector/4.2
Legal Rights and Powers of Inspectors/4.2.1
Compliance Orders/4.2.2
Stop-Work Orders (s. 57(6))/4.2.2a
Forthwith Orders (s. 57(1))/4.2.2b
Orders Specifying Time for Compliance (s. 57(1))/ 4.2.2c
Orders to Control Exposure to Toxic Substances (s. 54(1)(o))/4.2.2d
Section 33 Orders/4.2.2e
Procedure for the Issuing of Orders/4.2.3
Order Follow-Up and Posting Notices of Compliance/ 4.2.4

- Non-Compliance with Orders/4.2.5
- Orders and Prosecutions Policy/4.3
- Inspecting Within the Internal Responsibility System/4.4
- Right of Ontario Inspectors to Enforce Federal Legislation/
4.5
 - Inspectors' Powers Under the *Hazardous Products Act*/
4.5.1
 - Power of Inspectors with Respect to Other Ontario Acts/
4.6
- Extraordinary Powers of Inspectors/4.7
 - Stop-Work Orders/4.7.1
 - No Right to a Hearing/4.7.1a
 - Work That May Be Performed with a Stop-Work
Order in Effect/4.7.1b
 - Suspending the Stop-Work Order/4.7.1c
 - Lifting the Stop-Work Order/4.7.1d
 - Contravention of Stop-Work Orders—Prosecution
and Injunction Proceedings/4.7.1e
 - Inspector Powers to Apply for Unilateral Stop-Work
Directive Power/4.7.2
 - Orders Prohibiting Use of Hazardous Material/4.7.3
 - Labelling, MSDS or Worker Training Obligations
Not Met/4.7.3a
 - New Hazardous Agents Introduced—Section 33 Orders/
4.7.4
 - Right to Appeal a Section 33 Order/4.7.4a
 - Right of Inspectors to Order Disclosure of
Customer Lists/4.7.4b
- Procedural Issues in Inspections and Investigations/4.8
 - Regulatory Inspection Authority/4.8.1
 - The Inspection Process/4.8.2
 - The Self-Assessment/4.8.2a
 - The Evaluation of Assessment/4.8.2b
 - The Assessment Review/4.8.2c
 - The Inspection Report/4.8.2d
 - Right of Worker Representative or Committee Member
to Accompany Inspector/4.8.3
 - Right of Work Refusee to be Present During the
Investigation/4.8.3a

Investigatory Powers of Inspectors/4.8.4	
Right to Remove Samples, Machinery, Documents/ 4.8.4a	
Requiring Report at the Employer's Expense/4.8.4b	
Investigations After Accidents or Work Refusals/4.8.5	
The Line Between Inspections and Investigations/4.8.6	
The Line Between Inspections and Investigations/ 4.8.6a	
Key Cases on Inspections Versus Investigations/ 4.8.6b	
Seizure of Evidence/4.8.7a	
Key Cases—Exclusion of Evidence/4.8.7b	
Strategies for the Inspector Without a Warrant/ 4.8.7c	
Strategies for an Inspector With a Warrant/4.8.7d	
Prior Notification of Inspections/4.9	
How to Deal with the Inspection Process/4.10	
Reducing Conflict with the Inspector/4.10.1	
Discussing Proposed Orders with Inspectors/4.10.2	
Management Strategy for Dealing with Routine Inspections and Investigations/4.10.3	
Right to Remain Silent in Ministry of Labour Investigations/4.10.4	
Chapter 5 – Appealing an Order Under the Act	
Introduction/5.1	
The Statutory Framework for Appeals/5.2	
When an Order Can Be Appealed/5.2.1	
A Party “Aggrieved” by an Order/5.2.2	
Orders That Can Be Appealed/5.2.3	
Grounds for an Appeal/5.2.4	
Appealing Compliance Time Limits/5.2.5	
Obligation to Comply with an Appealed Order/5.2.6	
Making an Appeal/5.3	
The Ontario Labour Relations Board/5.3.1	
How to Appeal/5.3.2	
Providing Grounds for Appeal/5.3.3	
Parties to an Appeal/5.3.4	
Pre-Hearing Issues/5.4	

- Resolution of Appeals by Labour Relations Officers/
5.4.1
- Pre-Hearing Consultation Meetings/5.4.2
- Suspension of Orders or Decisions Pending an Appeal
Hearing/5.4.3
 - Requesting a Suspension from the Adjudicator/
5.4.3a
 - When a Suspension is Granted or the Deadline
Extended/5.4.3b
- Adjournment of Appeal Pending Actual or
Contemplated Prosecution/5.4.4
- The Hearing of an Appeal/5.5
 - Scheduling the Hearing/5.5.1
 - Representation by Counsel/5.5.2
 - The Hearing/5.5.3
 - Witnesses/5.5.3a
 - Cross-Examination/5.5.3b
 - Evidence at the Hearing/5.5.3c
 - Admissibility of Evidence Gathered After
Inspector's Order/5.5.3d
 - Applicability of Due Diligence Defence/5.5.3e
 - Application of Jurisprudence from Prosecution
Cases/5.5.3f
 - Onus of Proof/5.5.4
 - The Appeal Decision/5.5.5
 - Decisions Available to the OLRB/5.5.5a
 - The Decision-Making Role of the OLRB/5.5.5b
 - Announcement of the Decision/5.5.5c
 - Finality of OLRB's Decision/5.5.6
- The Appeal Process for Other Orders/5.6
 - Appealing a Section 33 Order: Toxic Substances/5.6.1
 - Appealing a Smoking in the Workplace Order/5.6.2
- Setting Up Structures to Protect Appeal Rights and Respond
to Appeals/5.7
 - Regular Review of Ministry Orders by Management/5.7.1
 - Discussion with the Inspector/5.7.2
 - To Appeal or Not to Appeal/5.7.3
 - Gathering Evidence/5.7.4
 - Using Appeal Rights When Prosecution is Anticipated/
5.7.5

Chapter 6 – Enforcement of Health and Safety by Prosecution

Introduction/6.1

Prosecution Policies in Occupational Health and Safety/6.2

Internal Responsibility versus Prosecution/6.2.1

When Prosecution will be Considered/6.2.2

Fatal or Critical Injuries/6.2.2a

High Risk Situations/6.2.2b

Non-Compliance with Orders/6.2.2c

Obstruction of a Ministry Inspector/6.2.2d

Designated Substance Regulations/6.2.2e

[The next page is xv]

WHMIS/6.2.2f	
Grounds of Compassion/6.2.2g	
Impact of the <i>Regulatory Modernization Act, 2007</i> /6.2.3	
Offences/6.3	
General Scheme of the Act/6.3.1	
General Duties and Obligations/6.3.2	
Duties of Employers/6.3.2a	
Duties of Workers/6.3.2b	
Duties of Constructors/6.3.2c	
Duties of Supervisors/6.3.2d	
Duties of Owners/6.3.2e	
Duties of Directors and Officers/6.3.2f	
Duties of Suppliers as Lessors/6.3.2g	
Duties of Licensees/6.3.2h	
Offences by Architects and Engineers/6.3.2i	
Self-Employed Persons/6.3.2j	
Other Duties and Obligations/6.3.3	
Establishing Joint Health and Safety Committees/6.3.3a	
Introducing Biological or Chemical Agents/6.3.3b	
Investigating Work Refusals/6.3.3c	
Reporting Accidents/6.3.3d	
Failing to Comply with an Inspector’s Order/6.3.3e	
WHMIS and the <i>Hazardous Products Act</i> /6.3.3f	
Offences Created by Regulation/6.3.3g	
“Extended Coverage” Offences—The Regulations as a Guide/6.3.3h	
Smoking in the Workplace Legislation/6.3.4	
The Prosecution Process/6.4	
How Companies and Individuals are Charged/6.4.1	
Certificate of Offence/6.4.1a	
Information/6.4.1b	
Service/6.4.1c	
The Summons/6.4.1d	
Charges/6.4.2	
Who May Be Charged/6.4.2a	
Time Limitation/6.4.2b	
Place of Trial/6.4.3	
First Appearance in Court/6.4.4	
Subpoenas/6.4.5	

- Disclosure of Evidence/6.4.6
 - [No 6.4.7]
- The Right to Trial Within a Reasonable Time/6.4.7a
- The Trial/6.4.7b
- Pleading Guilty/6.4.8
- Verdict and Sentencing/6.4.9
 - Time to Pay Fines/6.4.9a
- Appeals/6.5
- Defences/6.6
 - The Defence of Due Diligence/6.6.1
 - Officially Induced Error/6.6.2
 - Worker Error/6.6.3
 - Unforeseeable Worker Acts/6.6.4
 - Other Defences/6.6.5
- Indemnification of Employees for Prosecution Costs/6.7
- Penalties/6.8
 - Penalties for Corporations and Individuals/6.8.1
 - Penalties for Suppliers Under the *Hazardous Products Act*/6.8.2
 - Principles Applied in Imposing Penalties/6.8.3
 - Sentencing Factors for Individuals/6.8.3a
 - Casual Link Between Contravention and Accident/6.8.3b
 - Recent Trends in Penalties/6.8.4
 - [No 6.8.4a or 6.8.4b]
 - Prosecutions on an Information Post-1990/6.8.4c
 - Surcharge on Penalties under the OHSA/6.8.5
 - Victim Impact Statements/6.8.6
- Enforcement of Health and Safety by *Criminal Code* Prosecution/6.9
- Minimizing the Risk of Prosecution/6.10

Chapter 6A — Bill C-45: the Criminalization of OH&S

- Introduction/6A.1
- Background/6A.2
 - History of “Criminal” OH&S Prosecutions/6A.2.1
 - Past *Criminal Code* Prosecutions Against Corporations for Workplace Accidents/6A.2.2
 - Past *Criminal Code* Prosecutions Against Individuals for Workplace Accidents/6A.2.3

Criminal Sanctions for OH&S Around the World/6A.2.4	
Positive Duty Added to <i>Criminal Code</i> /6A.3	
Duty Must Be Breached In Wanton Or Reckless Manner/6A.4	
Offences Other Than Negligence/6A.5	
The Right to Trial Within a Reasonable Time/6A.5.1	
Prosecution of Individuals under <i>Criminal Code</i> Provisions/6A.6	
Penalties Against Individuals under the <i>Criminal Code</i> /6A.6.1	
Prosecutions of Corporations and Other Organizations under the <i>Criminal Code</i> /6A.7	
How a Corporation is Convicted of Criminal Negligence under the <i>Criminal Code</i> /6A.7.1	
Penalties against Corporations Convicted under the <i>Criminal Code</i> /6A.7.2	
What a Court Must Consider When Sentencing an Organization/6A.7.3	
Probation Orders/6A.7.4	
First Bill C-45 Conviction/6A.7.5	
Other Bill C-45 Prosecutions/6A.7.6	
Whistleblower Provisions/6A.8	
<i>Criminal Code</i> Whistleblower Provisions/6A.8.1	
Penalties under the <i>Criminal Code</i> Whistleblower Provisions/6A.8.2	
<i>Criminal Code</i> Reprisal Provisions vs. OHS Act Section 50 Reprisal Complaints/6A.8.3	

Chapter 7 — The Legal Concept of Due Diligence

Introduction/7.1	
Due Diligence as a Defence/7.2	
Development of the Defence by the Courts—Strict Liability Versus Absolute Liability/7.2.1	
Reasonable Care Distinguished from Reasonable Belief In Mistaken Set of Facts/7.2.1a	
Due Diligence as a Statutory Defence Under the OHS Act/7.2.2	
The Charter: Implications for the Due Diligence Defence/7.2.3	
Due Diligence and the <i>Criminal Code</i> /7.2.4	
Content of the Defence/7.3	
Know Workplace Hazards/7.3.1	

- A Proper System/7.3.2
- A Functioning System/7.3.3
- Ongoing Communications/7.3.4
- A Standard of Perfection?/7.3.5
- Negligence of Employed Professionals/7.3.8

Chapter 7A — Employee Discipline

- Introduction/7A.1
- Discipline of Workers/7A.2
 - Drug and Alcohol Use at the Workplace/7A.2.1
 - Drug and Alcohol Use Outside the Workplace/7A.2.2
- Discipline of Supervisors /7A.3

Chapter 8 — Establishing Proper Health and Safety Programs and Procedures

- Introduction/8.1
- The Basic Approach/8.2
- Codes of Practice/8.3.5
- Knowledge of the OHSA and Regulations/8.3
 - OHSA Duty to Create Safety Policy and Program/8.3.1
 - OHSA Duty to Create Workplace Violence and Workplace Harassment Policies and Programs/8.3.1a
 - Core Duties under OHSA/8.3.2
 - Specific Provisions of Regulations/8.3.3
 - General Obligations under OHSA/8.3.4
- Knowledge of Workplace Hazards/8.4
- Using the Knowledge to Create Proper Health and Safety Programs and Procedures/8.5
 - Physical Premises and Work Locations/8.5.1
 - Policies, Practices and Procedures/8.5.2
- Implementation of Health and Safety Programs and Procedures/8.6
 - Training/8.6.1
 - Monitoring/8.6.2
 - Enforcement and Discipline/8.6.3
 - Ongoing Communication/8.6.4
 - Documentation/8.6.5

<i>Criminal Code</i> Considerations/8.7
Duty to the Public/8.7.1
Expansion of Duty to Persons Who Direct Work/8.7.2
Conclusion/8.8

Chapter 8A — Due Diligence: Contracting for Services and Projects

Introduction to Contracting for Services: An Area of Hidden Liability/8A.1
The Extended Definition of Employer under the OHSA/8A.2
The <i>Wyssen</i> Decision/8A.3
Contractor Liability at Client Work Site/8A.3.1
Due Diligence in Contracting for Services/8A.4
Due Diligence Standards for the Extended “Employer”/8A.4.1
Due Diligence Steps Before Hiring Contractor/8A.4.2
Due Diligence Steps After Hire of Contractor/8A.4.3
Penalty Cases—Contracting as “Employer”/8A.4.4
Performing and Contracting for Construction Work: An Introduction/8A.5
Construction Work Under the OHSA/8A.6
The “Constructor” Under the OHSA/8A.7
Duties and Responsibilities of the “Constructor”/8A.7.1
Planning and Organizing Construction Work to Take Account of OHSA Issues/8A.8
Avoiding Status of “Constructor” by Retaining a “Constructor”/8A.8.1
Maintaining “Constructor” Status of General Contractor After Hire/8A.8.2
Acting as a “Constructor”: Due Diligence Steps/8A.8.3
Penalty Cases—Contracting as “Constructor”/8A.8.4

Chapter 9 — Workplace Accidents: Reporting, Investigating and Dealing with Ministry of Labour Officials

Introduction/9.1
Requirements to Report Workplace Accidents/9.2
Reporting Fatal or Critical Accidents/9.3

- OHSA Requirements/9.3.1
 - Critical Injury Defined/9.3.1a
 - Preservation of Evidence/9.3.1b
- Industrial Establishments Requirements/9.3.2
- Construction Projects Requirements/9.3.3
- Mines and Mining Plants Requirements/9.3.4
- Health Care and Residential Facilities Requirements/9.3.5
- Reporting Non-Critical Injuries/9.4
 - OHSA Requirements/9.4.1
 - When Disability Results/9.4.2
 - Records to be Kept When Medical Attention is Required/9.4.3
 - Other Situations to be Reported/9.4.4
- Reporting Occupational Illness/9.5
- Employer Response to Workplace Accidents/9.6
 - Internal Procedures for Accident Response/9.6.1
 - Preparing Non-Incriminating Accident Reports/9.6.2
 - Internal Accident Investigation, Reports and Analysis/9.6.3
 - Preserving Notes and Evidence/9.6.4
 - Taking Corrective Action/9.6.5
 - Response to Ministry Orders/9.6.5a
 - Response to Internal Recommendations/9.6.5b
 - Corrective Action in the Form of Discipline/9.6.5c
 - Communicating with Employees and the Health and Safety Committee/9.6.6
 - Assisting the Accident Victim/9.6.7
 - Participating at Coroners' Inquests/9.6.8
 - The Function of a Coroner's Inquest/9.6.8a
 - Employer's Participation at Inquest/9.6.8b

Chapter 10 — Protecting Officers and Directors from Liability

- Introduction/10.1
- Officers' and Directors' Liability/10.2
 - OHSA Obligations/10.2.1
 - Convictions of Officers and Directors under the OHSA/10.2.2
- Charges under the *Criminal Code*/10.3
 - Criminal Code* Charges after Passage of Bill C-45/10.3.1
 - Criminal Code* Prosecutions against Individuals/10.3.2

Who are Officers and Directors?/10.4
 Offences of Strict Liability and the Defence of Due Diligence/
 10.5
 Indemnification of Officers and Directors/10.6
 Strategies for Protecting Officers and Directors/10.7

**Chapter 11 – Joint Health and Safety Committees and Health
 and Safety Representatives**

Introduction/11.1
 The Joint Health and Safety Committee/11.2
 Where a Committee is Required/11.2.1
 Where a Committee is Not Required/11.2.2
 Worker Trades Committees on Construction Projects/
 11.2.3
 Membership on the Committee/11.2.4
 Meetings of the Committee/11.2.5
 Pay for Committee Members—Preparation Time and
 Other Matters/11.2.6
 Minister of Labour Orders to Create or Fix Practice of
 Committee/11.2.7
 Establishing Single Committee for Multiple Workplaces/
 11.2.8
 Disputes Regarding the Health and Safety Committee/
 11.2.9
 Functions and Powers of a Joint Health and Safety
 Committee/11.3
 Inspections and Investigations/11.3.1
 Regular Inspection/11.3.1a
 Inspection After Critical Injury/11.3.1b
 Accompanying the Inspector/11.3.1c
 Joint Committee Recommendations/11.3.2
 Duties of the Employer Toward Committee/11.4
 General Duties/11.4.1
 Duties Respecting Accidents/11.4.2
 Provision of Information on Potentially Hazardous
 Materials and Equipment/11.4.3
 Response to Committee Recommendations/11.4.4
 Obligations to Consult with Committee/11.4.5

- Providing Reports Concerning Health and Safety to the Committee/11.4.6
- Certified Members of Committee/11.5
- Workplace Health and Safety Representatives/11.6
 - Selection of Representative/11.6.1
 - Rights, Functions and Powers of Representatives/11.6.2
 - Duties of Employers to Representatives/11.6.3
 - : Training Requirements for Representatives/11.6.4
- Winning Strategies for Effective Use of Committees and Representatives/11.7
 - Establishing Joint Health and Safety Committee Guidelines/11.7.1
 - Working with the Committee or Representatives/11.7.2
 - Working Together to Ensure WHMIS Compliance/11.7.3
 - Working Together to Reduce Work Refusals/11.7.4
- Chapter 12 – Certified Members and the Stop-Work Power**
 - Introduction/12.1
 - Certified Members/12.2
 - When Certified Members are Required/12.2.1
 - Exemptions/12.2.2
 - Certified Member Defined by Law/12.2.3
 - Effective Date for Certified Members/12.2.4
 - Payment for Certification Program/12.2.5
 - Selection of Certified Members/12.2.6
 - Designation of Certified Member and Delegation Provisions/12.2.7
 - Administration of Certified Members/12.3
 - Brief History—The Workplace Health and Safety Agency/12.3.1
 - Role of the WSIB/12.3.2
 - Certification Program/12.3.2a
 - New Regime under Bill 160/12/3/3
 - Certified Member Powers/12.4
 - Role and Powers of Certified Members/12.4.1
 - The Stop-Work Power/12.4.2
 - The “Dangerous Circumstances” Test/12.4.2a
 - Bilateral Work Stoppage/12.4.2b

- Unilateral Work Stoppage/12.4.2c
- Exemptions from Stop-Work Powers/12.4.2d
- Abuse of Power by Certified Members/12.4.3
- Reprisal Complaints/12.4.4
- Practical Strategies for Managing Certification and the Stop-Work Powers/12.5
 - Starting with the Basics/12.5.1
 - Selection of Certified Members: The Employer Can Play a Role/12.5.2
 - Management Strategies for the Stop-Work Powers/12.5.3
 - Written Procedures for Stop-Work Directives/12.5.3a
 - Commitment to Health and Safety/12.5.3b
 - Communications with Certified Members and Other Workers/12.5.3c
 - Working with the Joint Health and Safety Committee in Stop-Work Situations/12.5.3d
 - Record Keeping/12.5.3e
 - Protecting Management Certified Members from Complaints/12.5.4

Chapter 13 — Refusal to Work on Health and Safety Grounds

- Introduction/13.1
- Work Refusal—An Overview/13.2
 - Who Has the Right to Refuse Work?/13.2.1
 - Conditional Refusal Rights of Public Sector Workers/13.2.2
 - The Two-Stage Process/13.2.3
 - Work Refusals and Workplace Violence/13.2.4
- The First Stage of the Work Refusal Process/13.3
 - The Statutory Provisions/13.3.1
 - Additional Steps for Public Sector Workers/13.3.1a
 - The Subjective Test/13.3.2
 - How Employees Must Indicate a Refusal/13.3.3
 - Documentation/13.3.3a
 - Employee to Indicate Safety Concern/13.3.3b
 - Non-Payment of Wages and Discipline at First Stage/13.3.4
 - The Employer’s Investigation/13.3.5
 - No Alternative Work Assignment at First Stage/13.3.6
- The Second Stage of the Work Refusal Process/13.4

- The Statutory Provisions/13.4.1
- The Objective Test/13.4.2
- Documentation/13.4.3
- Notifying the Ministry of Labour/13.4.4
- What the Employer May and May Not Do During a Second-
Stage Refusal/13.4.5
 - Reprisal Provisions (Section 50)/13.4.5a
 - Assigning Alternative Work or Giving “Other Directions”/
13.4.5b
 - Reassigning Refused Work/13.4.5c
 - Payment of Wages/13.4.5d
- The Ministry Investigation/13.4.6
 - The Importance of the On-site Investigation/13.4.6a
 - The Inspector’s Report/13.4.6b
- Continued Refusal After Inspector’s Decision/13.4.7
- When Can Work Be Refused?/13.5
 - The “Thin-Skulled” or “Sensitive” Worker/13.5.1
 - The Traditional “Average Worker” Test/13.5.1a
 - “New” Test Focuses on Individual Endangerment/13.5.1b
 - Co-worker’s Unsafe Work Habits/13.5.2
 - Picket Lines/13.5.3
 - Mass Work Refusals/13.5.4

[The next page is xxiii]

- Communicable Disease/13.5.5
- Structuring the Workplace for Cost-Effective Management of Work Refusals/13.6
 - Written Procedures for Work Refusals/13.6.1
 - Records/13.6.2
 - Instructions to Supervisors About Wage Payment and Discipline/13.6.3
 - Communication with Workers and Commitment to Health and Safety/13.6.4
 - Working with Joint Health and Safety Committee/13.6.5

Chapter 14 — Reprisal Complaints

- Introduction/14.1
- A Reprisal Complaint: Who, When and Where/14.2
 - The Forums for Complaint/14.2.1
 - Only the Worker May Complain/14.2.2
- What is a Reprisal?/14.3
 - Intent to Penalize—Causal Connection/14.3.1
 - No Grounds to Continue a Work Refusal/14.3.2
 - Refusal to Work Unrelated to Safety/14.3.3
 - Failure to Follow Steps for a Work Refusal/14.3.4
 - Jurisdiction to Hear a Reprisal Related to Discrimination or Harassment/14.3.5
 - Does Failure to Pay Constitute a Reprisal?/14.3.6
 - Cases Found in Favour of the Employer/14.3.7
 - The *Canadian General Electric* Case/14.3.7a
 - International Harvester*/14.3.7b
 - The *Dowty Equipment* Case/14.3.7c
 - Cases Found Against the Employer/14.3.8
 - The *North American Plastics* Case/14.3.8a
 - The *Cody's Stores* Case/14.3.8b
 - The *Firestone Canada* Case/14.3.8c
 - The *Wilco Canada* Case/14.3.8d
- The Two Forums for Hearing Reprisal Complaints/14.4
 - Application of the Ontario *Labour Relations Act*, s. 96/14.4.1
 - Who Bears the Burden of Proof?/14.4.2
 - Onus Before OLRB/14.4.2a

- Onus Before Board of Arbitration/14.4.2b
- When is the Election of Forums Made?/14.4.3
 - The *Reed* Case/14.4.3a
 - The *Metro Toronto* Case/14.4.3b
 - The *A & P* Case/14.4.3c
 - The *Inco Metals* Case/14.4.3d
 - The *Scarborough General* Case/14.4.3e
- Role of the Offices of the Worker and Employer Advisor/
14.4.4
- Remedies/14.5
 - Reinstatement/14.5.1
 - Damages for Lost Wages/14.5.2
 - The *Auto Jobbers Warehouse* Case/14.5.2a
 - The *Domtar* Case/14.5.2b
 - The *Art Shoppe* Case/14.5.2c
 - The *Butler Metal* Case/14.5.2d
 - Substitute Penalties/14.5.3
 - The *North American Plastics* Case/14.5.3a
 - The *Commonwealth Construction* Case/14.5.3b
 - Mental Distress Damages/14.5.4
- Application of Reprisal Provisions to Certified Members/14.6
- Smoking in the Workplace Reprisals/14.7
- Avoiding Reprisal Complaints After a Work Refusal/14.8
- Criminal Code* Whistleblower Provisions/14.9

Chapter 15 — Hazardous Substances in the Workplace

- Introduction/15.1
- Designated Substances/15.2
 - Definition/15.2.1
 - The Designation Process/15.2.2
 - Notice of Intent to Designate/15.2.3
 - The Consultation Process/15.2.4
 - The Review Process Before 1988/15.2.4a
 - Joint Steering Committee on Hazardous Substances and Existing Process/15.2.4b
- Substances Currently Designated/15.3
 - Acrylonitrile (Regulation 835)/15.3.1

Arsenic (Regulation 836)/15.3.2
Asbestos (Regulation 837)/15.3.3
Benzene (Regulation 839)/15.3.4
Coke Oven Emissions (Regulation 840)/15.3.5
Ethylene Oxide (Regulation 841)/15.3.6
Isocyanates (Regulation 842)/15.3.7
Lead (Regulation 843)/15.3.8
Mercury (Regulation 844)/15.3.9
Silica (Regulation 845)/15.3.10
Vinyl Chloride (Regulation 846)/15.3.11
Obligations when Substances are Designated/15.4
General Obligations Under Designated Substance Regulations/ 15.4.1
Exposure Limits/15.4.2
Assessment/15.4.3
The Control Program/15.4.4
Monitoring/15.4.5
Civil Liability/15.4.6
The Role of the Joint Health and Safety Committee/15.5
Intended Potential Future Designations/15.6
The Joint Steering Committee/15.7
Objectives and Terms of Reference/15.7.1
Activities/15.7.2
Regulation Respecting Biological and Chemical Agents (Regulation 833)/15.8
Obligations/15.8.1
Potential Liabilities/15.8.2

Chapter 16 — Workplace Hazardous Materials Information System (WHMIS)

Introduction/16.1
An Overview of the WHMIS System/16.2
The Legislation That Makes up the WHMIS System/16.2.1
The Scope of WHMIS Disclosure Obligations: Employers and Suppliers/16.2.2
Employer Defined/16.2.2a
Supplier Defined/16.2.2b
The Materials Covered by WHMIS/16.2.3

- “Controlled Products”—The *Hazardous Products Act*/
16.2.3a
- Exempted Products/16.2.3b
- The “Manufactured Article” Exemption/16.2.3c
- “Controlled Products” in Ontario/16.2.3d
- “Hazardous Materials” and “Hazardous Physical
Agents”—The Ontario OHSA/16.2.3e
- Supplier Duties Under WHMIS/16.3
 - Labelling Hazardous Materials/16.3.1
 - Content of Labels/16.3.1a
 - Design of Labels/16.3.1b
 - Exceptions to the Requirement for a Supplier Label/16.3.1c
 - Material Safety Data Sheets (MSDSs)/16.3.2
 - Content/16.3.2a
 - Language of the MSDS/16.3.2b
 - Obligation to Transmit or Obtain an MSDS/16.3.2c
 - Renewal of the MSDS/16.3.2d
 - Exemptions from Duty to Provide an MSDS/16.3.2e
 - Ingredient Disclosure List (IDL)/16.3.3
 - Duty of Disclosure to the Minister of Labour/16.3.4
- Ontario Employer Duties Under WHMIS/16.4
 - Employer Duties Generally/16.4.1
 - Assessing Potentially Hazardous Materials/16.4.2
 - Workplace Inventory Requirements/16.4.3
 - Labelling Hazardous Materials/16.4.4
 - Supplier Labels/16.4.4a
 - Workplace Labels/16.4.4b
 - Providing Material Safety Data Sheets (MSDSs)/16.4.5
 - Supplier MSDS/16.4.5a
 - Employer MSDS/16.4.5b
 - Making an MSDS Available/16.4.5c
 - Training and Educating Workers/16.4.6
 - The Obligation to Train Generally/16.4.6a
 - Content of Training and Education/16.4.6b
 - A Product That Emits or Produces Hazardous Physical Agents/
16.4.7
 - WHMIS and “Every Precaution Reasonable”/16.4.8
- Worker Duties Under WHMIS/16.5
 - Duty Not to Remove Information/16.5.1

Duty to Participate in Education and Training/16.5.2	
General Duties/16.5.3	
Penalties for Non-Compliance with WHMIS Obligations/16.6	
The Federal <i>Hazardous Products Act</i> /16.6.1	
The Ontario <i>Occupational Health and Safety Act</i> /16.6.2	
Trade Secrets and Confidential Information/16.7	
The Hazardous Materials Information Review Commission/ 16.7.1	
Information That can be Claimed as Confidential/16.7.2	
Making a Claim for Exemption/16.7.3	
The Claim/16.7.3a	
The Review Process/16.7.3b	
Procedure if Claim for Exemption is Accepted/16.7.3c	
Procedure if Claim for Exemption is Rejected/16.7.3d	
Procedures Pending Disposition of a Claim or Appeal/ 16.7.3e	
Disclosure of Confidential Information in Medical Emergency/ 16.7.4	
Setting up Programs to Ensure WHMIS Compliance/16.8	
Suppliers/16.8.1	
Ensuring Accurate Classification/16.8.1a	
Conducting Regular Audits/16.8.1b	
Updating MSDSs/16.8.1c	
Written Program for WHMIS Compliance/16.8.1d	
Employers/16.8.2	
Monitoring Compliance as Materials Received/16.8.2a	
Appointing a WHMIS Co-ordinator/16.8.2b	
Written Program for WHMIS Compliance/16.8.2c	
Training and Education Programs/16.8.2d	

Appendix A

Index to Act/A-i	
<i>Occupational Health and Safety Act</i> /A-1	

Appendix B

Occupational Health & Safety Addresses/B-1	
--	--