

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

ANNOTATED OCCUPATIONAL HEALTH AND SAFETY ACT Deanna Exner, Bruce Arnott, Jeremy Warning and Steven Succi Release No. 1, June 2022
--

Publisher's Special Release Note 2021

The pages in this work were reissued in December 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the December 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred.

THOMSON REUTERS CANADA®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

What's New in this Update:

- Of note amongst the new annotations are the following:
 - *Ontario (Labour) v. Miller Group Inc.*, 2021 ONCA 879, The Ontario Court of Appeal found there was no violation of sections 8 or 11(d) of the *Charter* when Ministry of Labour staff seized a piece of heavy machinery, and then disassembled and inspected it. Before the inspection a lawyer for the employer wrote to the Ministry to state that there should be no inspection without consent of the employer. However, consent of the employer was not required. Furthermore, the employer had no right to have a representative present for the inspection. There are strong policy reasons for not allowing the employer to direct the investigation, “a requirement of knowledge and consent, let alone presence, could thwart or stall timely investigations, potentially endangering the very people the *OHS*A is meant to protect (i.e. workers) and the general public.”
 - *R. v. Ramkey Communications Inc.*, (10 August 2021), Brantford, Baker J. (Ont. C.J.), which addresses a number of issues relevant to sentencing. In the decision the court held that the size of a corporate defendant is to be assessed by looking at the whole enterprise rather than the involved business unit. It also held that the reasons provided for a sentence “must, at a minimum, address the applicable factors including the facts of the offence and the sentencing principles. It is not enough to merely comment on the degree of ‘seriousness’ of the offence”.
 - *Power Workers’ Union v. Elexicon Energy Inc.*, 2022 CanLII 7228 (Ont. Arb.), where an arbitrator held that the employer’s requirement that all employees be vaccinated against COVID-19 is a reasonable precaution, consistent with the “precautionary principle”. Unvaccinated employees are more likely to transmit the disease to others. However, it is not reasonable to apply the policy to employees who work exclusively from home or exclusively outside.
 - *AMAPCEO v. Ontario (Attorney General)*, 2021 CanLII 58440 (Ont. GSB), in which it was held that an employer’s investigation of an allegation of workplace violence must be fair. “Only by providing a fair investigation does the employer take every reasonable precaution for the protection of workers under s. 25 (2)(h) of the *OHS*A.” Because of numerous errors with the processes and conclusions of the employer’s investigator the investigation was not fair. Although witnesses were interviewed, the investigator made conclusions that were not supported by the evidence and damaging conclusions about the grievor without providing an opportunity to respond.
 - *EA v. CUPE*, 2021 CanLII 108498 (Ont. L.R.B.), in which the Ontario Labour Relations Board rejected the Ap-

plicant's request for anonymity. The Board was not satisfied that the privacy interest of the Applicant outweighed the open court principle.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages

