

# Summary of Contents

## Volume 1

- Chapter 1. Introduction to Ontario Health and Safety Law
- Chapter 2. Application of O.H.S.A.
- Chapter 3. Health and Safety Representatives and Committees
- Chapter 4. Duties Under the O.H.S.A.
- Chapter 5. Toxic Substances
- Chapter 6. The Workplace Hazardous Materials Information System (WHMIS)
- Chapter 7. Work Refusal and Work Stoppages
- Chapter 8. Accident Notices
- Chapter 9. Ministry of Labour Inspectors and Orders
- Chapter 10. Appealing Ministry of Labour Orders
- Chapter 11. O.H.S.A. Prosecutions
- Appendix 11A. Summary of Convictions under the O.H.S.A.
- Chapter 12. Coroner's Investigations and Inquests
- Chapter 13. Improving Health and Safety in the Workplace
- Chapter 14. Workplace Smoking Restrictions
- Chapter 15. Alcohol and Drugs in the Workplace
- Chapter 16. Understanding Workplace Violence

## Volume 2

### Appendices

- Appendix A. Occupational Health and Safety Act

- Appendix B. Regulations Under the Occupational Health and Safety Act
- Appendix C. Smoke-Free Ontario Act, 2017
- Appendix D. Coroners Act
- Appendix E. Digests

**Appendix ND. New Developments**

- Appendix ND7. Recent Ontario Health & Safety Law Decisions—January 2023 to March 2024
- Appendix ND6. Recent Ontario Health & Safety Law Decisions—September 2021 to December 2022
- Appendix ND5. Recent Ontario Health & Safety Law Decisions—March 2020 to August 2021
- Appendix ND4. Recent Ontario Health & Safety Law Decisions—March 2019 to March 2020
- Appendix ND3. Recent Ontario Health & Safety Law Decisions—March 2018 to March 2019
- Appendix ND2. Recent Ontario Health & Safety Law Decisions—March 2017 to March 2018
- Appendix ND1. Recent Ontario Health & Safety Law Decisions—March 2016 to March 2017
- Appendix RA. Related Articles
- Appendix SLL. Selected Legal Literature
- Appendix WP. Words and Phrases

**Table of Cases**

**Index**

# Table of Contents

## Volume 1

### **CHAPTER 1. INTRODUCTION TO ONTARIO HEALTH AND SAFETY LAW**

- § 1:1 General Introduction
- § 1:2 Origins of Ontario Health and Safety Law
- § 1:3 Pre-O.H.S.A. Legislation
- § 1:4 Passage of O.H.S.A. and Amendments
- § 1:5 Regulations Under the O.H.S.A.
- § 1:6 Statutes Related to the O.H.S.A.
- § 1:7 Practical and Policy Issues—The Role of Statutes,  
Regulations and Industry Standards
- § 1:8 —The Internal Responsibility System in Ontario  
Health and Safety Law
- § 1:9 —The Law and Accident Prevention
- § 1:10 —The American Statutory Scheme
- § 1:11 —Bill C-45 Amendments to the Criminal Code

### **CHAPTER 2. APPLICATION OF O.H.S.A.**

#### **I. EXECUTIVE SUMMARY**

- § 2:1 Generally

#### **II. OMNIBUS LEGISLATION**

- § 2:2 Generally

#### **III. APPLICATION TO SPECIFIC CLASSES**

- § 2:3 Crown Agencies
- § 2:4 Constitutional Jurisdiction
- § 2:5 Private Residences
- § 2:6 Farming Operations
- § 2:7 Teachers

#### **IV. SECTOR-SPECIFIC REGULATIONS**

- § 2:8 Industrial Establishments

- § 2:9 Construction Projects
- § 2:10 Mines and Mining Plants
- § 2:11 Health Care and Residential Facilities
- § 2:12 Commercial Diving
- § 2:13 Window Cleaning
- § 2:14 Firefighters
- § 2:15 Oil and Gas Offshore
- § 2:16 X-ray Safety

## **V. OTHER REGULATIONS**

- § 2:17 Generally

# **CHAPTER 3. HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES**

## **I. EXECUTIVE SUMMARY**

- § 3:1 Generally

## **II. HEALTH AND SAFETY REPRESENTATIVES**

- § 3:2 Requirement for Health and Safety Representatives
- § 3:3 Authority of Health and Safety Representatives

## **III. HEALTH AND SAFETY COMMITTEES**

- § 3:4 Requirement for Joint Health and Safety Committees
- § 3:5 Composition of Joint Health and Safety Committees
- § 3:6 Certified members of committees
- § 3:7 Authority of Health and Safety Committees
- § 3:8 Meetings and Minutes of Committees
- § 3:9 Worker Member Walkaround Inspections
- § 3:10 Posting Names of Committee Members
- § 3:11 Committee Work Paid by Employer
- § 3:12 Committee Inspection of Workplace
- § 3:13 Worker Trades Committee

## **IV. MINISTER'S AUTHORITY REGARDING COMMITTEES**

- § 3:14 Minister's Authority to Appoint Committees
- § 3:15 Minister's Resolution of Committee Disputes

## **V. ASSESSING THE IMPACT OF COMMITTEES**

- § 3:16 The Tuohy and Simard Assessment of Committees

## TABLE OF CONTENTS

- § 3:17 The Legislative Framework of Ontario and Quebec Committees
- § 3:18 Assessment Factors for Committee Performance
- § 3:19 Government Inspection Rates and Injury Rates
- § 3:20 Implications for Policy and Legislation
- § 3:21 Some Conclusions of the Tuohy and Simard Report
- § 3:22 Comparison Between Ontario and Quebec Findings
- § 3:23 Summary and Policy Implications of Report

## **CHAPTER 4. DUTIES UNDER THE O.H.S.A.**

### **I. EXECUTIVE SUMMARY**

- § 4:1 Generally

### **II. CONSTRUCTORS**

- § 4:2 Definition
- § 4:3 Project Responsibility
- § 4:4 Filing Notice of Project
- § 4:5 Diving Operations
- § 4:6 Designated Substances Responsibilities
- § 4:7 Duty to Comply with *O.H.S.A.* and Regulations

### **III. EMPLOYERS**

- § 4:8 Definition
- § 4:9 Duties to Provide a Safe Work Environment
- § 4:10 Duties to Direct Workers—Duties to instruct, inform and supervise workers
- § 4:11 —Duties to provide workers with written instructions
- § 4:12 —Duty to have occupational health and safety policy
- § 4:13 Duty to Appoint Competent Supervision
- § 4:14 Duty to Employ Lawfully Aged Workers
- § 4:15 Duty for Legislative Compliance—Duty to assist health and safety representative
- § 4:16 —Duty to comply with regulations
- § 4:17 —Duty to post copy of *O.H.S.A.*
- § 4:18 —Duty to obtain worker's health records only by order of court or tribunal
- § 4:19 Duty to Establish an Occupational Health Service for Workers
- § 4:20 Duty to Keep Records of Biological, Chemical and Physical Agents

§ 4:21 Duty to Take Every Precaution Reasonable

#### **IV. SUPERVISORS**

§ 4:22 Definition

§ 4:23 Duty to Ensure Workers Comply with *O.H.S.A.* and Regulations

§ 4:24 Duty to Ensure Workers Use All Safety Equipment, Devices and Clothing

§ 4:25 Duty to Advise Workers of Danger

§ 4:26 Duty to Provide Written Instructions

§ 4:27 Duty to Take Every Precaution Reasonable

#### **V. WORKER**

§ 4:28 Definition

§ 4:29 Duty to Comply with *O.H.S.A.* and Regulations

§ 4:30 Duty to Use Equipment and Clothing Provided

§ 4:31 Duty to Report Dangers in Workplace

§ 4:32 Prohibition Against Making Any Safety Device Ineffective

§ 4:33 Prohibition Against Using Any Dangerous Equipment or Machine

§ 4:34 Prohibition Against Horseplay

#### **VI. OWNER**

§ 4:35 Definition

§ 4:36 Duty to Ensure Workplace and Facilities Comply with *O.H.S.A.* and Regulations

§ 4:37 Duty of Updating Mining Plans

§ 4:38 Duty to File Construction Plans

§ 4:39 Duty to Comply with Ministry of Labour Requests

§ 4:40 Duty Regarding Designated Substances

#### **VII. SUPPLIERS**

§ 4:41 Definition

§ 4:42 Duty to Supply Everything in Good Condition

§ 4:43 Duty to Ensure Everything in Compliance with *O.H.S.A.* and Regulations

§ 4:44 Duty to Maintain Everything Supplied in Good Condition

#### **VIII. DUTIES ON OTHER PERSONS**

##### **A. LICENSEE**

§ 4:45 Definition and duty to ensure legislative compliance

## TABLE OF CONTENTS

§ 4:46 Duty to ensure employer compliance

§ 4:47 Duty towards employer's employees

### **B. ARCHITECTS AND PROFESSIONAL ENGINEERS**

§ 4:48 Definition of "architect"

§ 4:49 Definition of "professional engineer"

§ 4:50 Duties of architects and professional engineers

### **C. OFFICERS AND DIRECTORS OF CORPORATIONS**

§ 4:51 Definition of "officer"

§ 4:52 Definition of "director"

§ 4:53 Duty to ensure legislative compliance

§ 4:54 Duty to comply with inspectors' orders

§ 4:55 Duty to comply with order of the Minister of Labour

## **IX. ADDITIONAL ISSUES**

§ 4:56 Effect of Overlapping Duties

§ 4:57 Codes and Standards of Practice

## **CHAPTER 5. TOXIC SUBSTANCES**

### **I. EXECUTIVE SUMMARY**

§ 5:1 Generally

### **II. POWERS OF DIRECTOR**

§ 5:2 Generally

### **III. ORDERS**

§ 5:3 Contents

§ 5:4 Appeal

### **IV. DESIGNATED SUBSTANCES**

§ 5:5 Introduction

§ 5:6 Designated Substances Regulation

§ 5:7 —Acrylonitrile

§ 5:8 —Arsenic

§ 5:9 —Asbestos

§ 5:10 —Designated Substance – Asbestos on Construction Projects and in Buildings and Repair Operations

- § 5:11 —Benzene
- § 5:12 —Coke oven emissions
- § 5:13 —Ethylene oxide
- § 5:14 —Isocyanates
- § 5:15 —Lead
- § 5:16 —Mercury
- § 5:17 —Silica
- § 5:18 —Vinyl chloride
- § 5:19 Designing Programs for Designated Substances

## **V. GENERIC HAZARDOUS SUBSTANCES REGULATION**

- § 5:20 The Nature of the Regulation
- § 5:21 Exception to Application of the Regulation
- § 5:22 Exposure Protection Mandate of the Regulation
- § 5:23 Medical Test Requirements

## **CHAPTER 6. THE WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM (WHMIS)**

### **I. EXECUTIVE SUMMARY**

- § 6:1 Generally

### **II. HISTORICAL OVERVIEW OF WHMIS**

- § 6:2 Legislative Purpose and Practical Rationale
- § 6:3 Policy and Legislative Development of WHMIS
- § 6:4 Introduction to Globally Harmonized System of  
Classification and Labelling of Chemicals

### **III. FEDERAL LEGISLATION**

- § 6:5 Generally

### **IV. WHMIS IN ONTARIO**

- § 6:6 General Introduction
- § 6:7 Bill 79, Bill 180 and R.R.O. 1990, Reg. 860
- § 6:8 Designation of Hazardous Products
- § 6:9 Assessment of Biological and Chemical Agents
- § 6:10 Worker Education and Training
- § 6:11 Product Labels Under WHMIS 2015
- § 6:12 Safety Data Sheets



TABLE OF CONTENTS

- § 6:13 Protection of Trade Secrets and Confidential Business Information
- § 6:14 Disclosure of Information in Medical Emergencies

**V. LIABILITY FOR WHMIS CONTRAVENTIONS**

- § 6:15 Generally

**VI. EFFECTIVE IMPLEMENTATION OF WHMIS 2015**

- § 6:16 Generally

**CHAPTER 7. WORK REFUSAL AND WORK STOPPAGES**

**I. EXECUTIVE SUMMARY**

- § 7:1 Generally

**II. LIMITATIONS ON RIGHT TO REFUSE**

- § 7:2 Persons Limited in Right to Refuse
- § 7:3 Activities Limiting Right to Refuse

**III. RIGHT TO REFUSE PROCEDURE**

- § 7:4 Basis for Work Refusal and Case Examples
- § 7:5 Reporting Refusal to Supervisor
- § 7:6 First Stage Investigation
- § 7:7 Return to Work or Continuing Refusal
- § 7:8 Second Stage Investigation
- § 7:9 Replacement Workers Must Be Warned of Prior Refusal
- § 7:10 Refusing Worker's Role During Investigation
- § 7:11 Payment of Workers

**IV. DISCIPLINE OF REFUSING WORKER**

- § 7:12 Introduction
- § 7:13 No Reprisals for Proper Work Refusal
- § 7:14 Discipline for Improper Work Refusal

**V. EMPLOYER DISCIPLINE ADJUDICATION**

- § 7:15 Employee Elects Forum
- § 7:16 Onus of Proof
- § 7:17 Substitution of Penalty

## **VI. REFUSAL TO WORK JURISPRUDENCE**

- § 7:18 Exempted Employee Denied Right to Refuse
- § 7:19 Work Refusal Because of Worker's Comfort
- § 7:20 Frivolous Work Refusals
- § 7:21 Discipline After Proper Work Refusals
- § 7:22 Bars to Right to Refuse Complaints
- § 7:23 No Contravention of the O.H.S.A.

## **VII. CERTIFIED MEMBER WORK STOPPAGES**

- § 7:24 Introduction
- § 7:25 Bilateral Work Stoppages
- § 7:26 —Basis for bilateral work stoppages
- § 7:27 —Definition of dangerous circumstances
- § 7:28 —Investigation process
- § 7:29 —Role of inspector
- § 7:30 —Cancellation of work stoppage
- § 7:31 Unilateral Work Stoppage
- § 7:32 —Conditions for unilateral work stoppage
- § 7:33 —Application for declaration
- § 7:34 —Basis for work stoppage
- § 7:35 —Definition of dangerous circumstances
- § 7:36 —Immediate compliance with direction
- § 7:37 —Investigation process
- § 7:38 —Role of inspector
- § 7:39 —Cancellation of work stoppage

## **VIII. CHART OF WORK REFUSAL CASES**

- § 7:40 Generally

## **CHAPTER 8. ACCIDENT NOTICES**

- § 8:1 Executive Summary
- § 8:2 Notice of Death or Critical Injury
- § 8:3 Accident Responses—Preservation of Wreckage
- § 8:4 —Written Opinion of Professional Engineer
- § 8:5 Notice of Non-Critical Injury
- § 8:6 Notice of Occupational Illness
- § 8:7 Failure to File Notice
- § 8:8 Duty to Report Environmental Incidents

## **CHAPTER 9. MINISTRY OF LABOUR INSPECTORS AND ORDERS**

### **I. EXECUTIVE SUMMARY**

- § 9:1 Generally

TABLE OF CONTENTS

**II. MINISTRY OF LABOUR INSPECTORS**

- § 9:2 Definition
- § 9:3 Ministry of Labour Organizational Structure
- § 9:4 Training
- § 9:5 Job Descriptions

**III. AUTHORITY OF INSPECTORS**

- § 9:6 Entering Workplace Without Search Warrant or Notice
- § 9:7 Workplace Attendance—Workplace inspections
- § 9:8 —Workplace investigations
- § 9:9 — —Circumstances under which investigations are conducted
- § 9:10 — —Authority of inspectors
- § 9:11 — —Inspectors and search warrants
- § 9:12 —Removal of property from workplace
- § 9:13 —Ordering workplace tests
- § 9:14 —Preservation of the workplace
- § 9:15 —Obstruction of inspectors prohibited
- § 9:16 Compellability of Inspectors

**IV. ISSUANCE OF MINISTRY OF LABOUR ORDERS**

- § 9:17 Inspector's Authority to Issue Orders
- § 9:18 Orders—Form
- § 9:19 —Content
- § 9:20 —Stop work orders
- § 9:21 —Legal enforcement

**CHAPTER 10. APPEALING MINISTRY OF LABOUR ORDERS**

**I. EXECUTIVE SUMMARY**

- § 10:1 Generally

**II. RIGHT TO APPEAL**

- § 10:2 Introduction
- § 10:3 Who May Appeal
- § 10:4 Parties to an Appeal
- § 10:5 When May There Be an Appeal
- § 10:6 What May Be Appealed

- § 10:7 Why Is There a Right of Appeal
- § 10:8 Where Is the Appeal Made
- § 10:9 Collateral Attack and Effect of Not Appealing an Order

### **III. PROCEDURE FOR APPEALING ORDERS**

- § 10:10 Limitation Period
- § 10:11 Form of Appeal Notice
- § 10:12 Grounds for Appeal
- § 10:13 Parties to an Appeal
- § 10:14 Mediation and Settlement of Appeals
- § 10:15 Setting Appeal Hearing Dates
- § 10:16 Form of the Appeal Hearing
- § 10:17 Adjournment of Hearing Dates

### **IV. SUSPENSION OF ORDERS PENDING APPEAL**

- § 10:18 No Automatic Suspension with an Appeal
- § 10:19 Authority to Suspend Order
- § 10:20 Procedure to Request Suspension
- § 10:21 No Statutory Criteria for Suspension
- § 10:22 Judicial Criteria for Suspension
- § 10:23 Cases Where Suspension Granted
- § 10:24 Cases Where Suspension Denied

### **V. APPEAL HEARING**

- § 10:25 Notice of Hearing
- § 10:26 Onus of Proof
- § 10:27 Standard of Proof
- § 10:28 Rules of Evidence
- § 10:29 Application of Statutory Powers Procedure Act
- § 10:30 Requirement for a Hearing
- § 10:31 Proceeding before the O.L.R.B.
- § 10:32 Evidence at the Hearing
- § 10:33 Final Submissions

### **VI. REMEDIAL AUTHORITY OF THE O.L.R.B.**

- § 10:34 Introduction
- § 10:35 Rescinding Orders
- § 10:36 Affirming Orders
- § 10:37 Amending Orders/New Orders
- § 10:38 Legal Effect of New Orders

TABLE OF CONTENTS

- § 10:39 Request for Costs
- § 10:40 O.L.R.B. Remaining Seized of Jurisdiction
- § 10:41 Reconsideration of Decision

**VII. APPEAL HEARING CASE LAW**

- § 10:42 The Nature of O.L.R.B.'s Decisions
- § 10:43 Preliminary Issues—Division of powers jurisdiction
- § 10:44 —Adjournments of the hearing
- § 10:45 —Adding orders and grounds for appeal
- § 10:46 —Mootness of the appeal
- § 10:47 —Standing of the parties
- § 10:48 —Replacement of orders under appeal
- § 10:49 —Wrong regulation applied
- § 10:50 —Proper application of order
- § 10:51 —Lack of jurisdiction to hear appeal
- § 10:52 Insufficient Evidence to Support Order
- § 10:53 Contravention Required to Justify Order
- § 10:54 Work Refusal Related Appeals
- § 10:55 Inspector's Decision Not to Issue an Order
- § 10:56 Exercise of "E.P.R." Power
- § 10:57 Due Diligence Not Relevant
- § 10:58 Specific Subjects on Appeal—Application of the Building Code
  - § 10:59 —Definition of legislative terms
  - § 10:60 —Economic impact of orders
  - § 10:61 —Equivalency provisions of regulations
  - § 10:62 —Principles of natural justice
  - § 10:63 —Susceptible worker standard
  - § 10:64 —Staffing issues
  - § 10:65 —Need for more complete grounds
  - § 10:66 —Asbestos removal
  - § 10:67 —CSA standards
  - § 10:68 —Smoking in the workplace
  - § 10:69 —Application of Fire Code
  - § 10:70 —Workplace temperature
  - § 10:71 —Role of joint health and safety committee
  - § 10:72 —Role of the certified member
  - § 10:73 —Pregnant worker
  - § 10:74 —Ergonomic issues
  - § 10:75 —Uncomfortable and unsafe clothing
  - § 10:76 —Lighting levels in the workplace
  - § 10:77 —COVID-19

## **CHAPTER 11. O.H.S.A. PROSECUTIONS**

### **I. EXECUTIVE SUMMARY**

§ 11:1 Generally

### **II. ENFORCEMENT OF THE O.H.S.A. BY PROSECUTION**

§ 11:2 Generally

### **III. O.H.S.A. PROSECUTION PROCESS**

#### **A. RULES OF PROCEDURE**

- § 11:3 Introduction
- § 11:4 Legal character of prosecutions
- § 11:5 Part I proceedings
- § 11:6 Part III proceedings
- § 11:7 Forum and venue for trial
- § 11:8 Arraignment and entering of plea at trial
- § 11:9 Onus of proof
- § 11:10 Particulars of the charge
- § 11:11 Disclosure—Crown disclosure generally
- § 11:12 —Disclosure of other Crown agency evidence
- § 11:13 —Third party disclosure
- § 11:14 —Defence disclosure

#### **B. RULES OF EVIDENCE**

##### **1. Ontario Evidence Act**

- § 11:15 Introduction
- § 11:16 Competency and compellability of the accused
- § 11:17 Right to remain silent
- § 11:18 The adverse or hostile witness
- § 11:19 Prior criminal convictions
- § 11:20 Public documents
- § 11:21 Business records
- § 11:22 Medical records

##### **2. Business records and the common law**

§ 11:23 Generally

##### **3. Statements and confessions**

- § 11:24 Introduction
- § 11:25 Persons in authority

## TABLE OF CONTENTS

|         |   |
|---------|---|
| § 11:26 | Voir dire to determine admissibility  |
| § 11:27 | When statements are admissible  |
| § 11:28 | The meaning of voluntariness  |
|         | <b>4. Right to counsel and exclusion of evidence</b>  |
| § 11:29 | Introduction  |
| § 11:30 | The meaning of detention  |
| § 11:31 | Rights of the detainee and the duties of the<br>detainer  |
| § 11:32 | The remedy of excluding evidence  |
|         | <b>5. Search and seizure of evidence by Ministry of<br/>Labour inspectors and other officials</b> |
| § 11:33 | Introduction to s. 8 of the <i>Canadian Charter of<br/>Rights and Freedoms</i>                    |
| § 11:34 | Search and seizure powers under the O.H.S.A. and<br>the Provincial Offences Act                   |
| § 11:35 | Criteria for warrantless search: <i>Hunter v. Southam<br/>Inc.</i> and <i>R. v. Collins</i>       |
| § 11:36 | Electronic surveillance and its limits  |
| § 11:37 | Violation of s. 8 rights under the <i>Charter</i>   |
| § 11:38 | Remedies for violation of <i>Charter</i> rights   |
| § 11:39 | Common law remedy of excluding unlawfully<br>obtained evidence                                    |
|         | <b>C. DIRECTED VERDICT OF ACQUITTAL</b>   |
| § 11:40 | Generally   |
|         | <b>D. FINAL VERDICT AND SENTENCING</b>  |
| § 11:41 | Introduction  |
| § 11:42 | Summary of convictions under the O.H.S.A.   |
|         | <b>E. APPEALING THE TRIAL DECISION</b>  |
| § 11:43 | Generally   |
|         | <b>F. PREROGATIVE REMEDY APPLICATIONS</b>   |
| § 11:44 | Generally   |
|         | <b>IV. PROCEDURAL DEFENCES TO O.H.S.A.<br/>CHARGES</b>  |
|         | <b>A. INTRODUCTION</b>  |
| § 11:45 | Generally   |

**B. DEFECTIVE INFORMATION**

§ 11:46 Generally

**C. TRIAL NOT WITHIN REASONABLE TIME**

- § 11:47 A constitutional right
- § 11:48 Application to O.H.S.A. offences
- § 11:49 Application to corporations
- § 11:50 Pre-charge delay
- § 11:51 Post-charge delay
- § 11:52 The *Jordan* Framework
- § 11:53 The Impact of the Pandemic on the *Jordan* Framework and s. 11(b) *Charter* Applications
- § 11:54 Remedies for unreasonable delay
- § 11:55 Continuing and appellate delay

**D. ABUSE OF PROCESS**

- § 11:56 The legal test
- § 11:57 Forum in which to raise abuse of process
- § 11:58 Onus and burden of proof
- § 11:59 Abuse of process and the *Charter*
- § 11:60 Case examples of abuse of process—Government instigation of an offence
  - § 11:61 —Undertaking not to prosecute
  - § 11:62 —Collection of a civil debt
  - § 11:63 —Punishing the accused for exercising their rights
  - § 11:64 —Oppressively selective prosecution
  - § 11:65 —Prejudice to the right of full answer and defence
  - § 11:66 —Crown intimidation of the accused
- § 11:67 No necessity for Crown misconduct
- § 11:68 Unreasonable delay and abuse of process
- § 11:69 Remedies for abuse of process

**E. RES JUDICATA, RULE AGAINST MULTIPLE CONVICTIONS, AND TIME LIMITATIONS**

- § 11:70 Res Judicata
- § 11:71 Rule Against Multiple Convictions
- § 11:72 Time Limitations

**F. CROWN'S ONUS OF REASONABLE DOUBT, AND WANT OF PROSECUTION**

- § 11:73 Crown's Onus of Reasonable Doubt
- § 11:74 Want of Prosecution



TABLE OF CONTENTS

**V. SUBSTANTIVE DEFENCES TO O.H.S.A. CHARGES**

**A. INTRODUCTION**

§ 11:75 Generally

**B. PRIMARY DEFENCES**

§ 11:76 Proof of the offence

§ 11:77 Due diligence—Statutory due diligence

§ 11:78 —Common law due diligence

§ 11:79 —Due diligence and the presumption of innocence

§ 11:80 —Due diligence cases

§ 11:81 —Post-accident improvements creating a problem  
for general due diligence

§ 11:82 Officially induced error

**C. SECONDARY DEFENCES**

§ 11:83 Introduction

§ 11:84 Necessity

§ 11:85 Impossibility

§ 11:86 Self-defence

§ 11:87 Duress

§ 11:88 De minimis non curat lex

§ 11:89 —Nature of the irregularity

§ 11:90 —Legal severity of the offence

§ 11:91 —Intention of the legislature

§ 11:92 —Availability of other defences

§ 11:93 Project transition

**VI. PRACTICE POINTS**

§ 11:94 Preparation for Trial

§ 11:95 Expert Evidence—Introduction

§ 11:96 —Weighing conflicting expert evidence

§ 11:97 —Non-expert opinions

§ 11:98 —The role of expert evidence – The Ikarian  
Reefer

§ 11:99 —Expert witnesses at trial

§ 11:100 The Decision to Plead Guilty

§ 11:101 The Decision to Call Evidence

§ 11:102 The Decision to Appeal

§ 11:103 Introduction of Fresh Evidence on Appeal

Appendix 11A. Summary of Convictions under the O.H.S.A.

## **CHAPTER 12. CORONER'S INVESTIGATIONS AND INQUESTS**

### **I. EXECUTIVE SUMMARY**

§ 12:1 Generally

### **II. THE CORONER'S SYSTEM**

- § 12:2 Introduction
- § 12:3 Appointment of Coroners
- § 12:4 Office and Role of the Chief Coroner

### **III. THE CORONER'S INVESTIGATION**

- § 12:5 The Initial Investigation
- § 12:6 Role of the Police
- § 12:7 Coroner's Power to Seize Evidence
- § 12:8 Results of the Investigation

### **IV. THE CORONER'S INQUEST**

- § 12:9 Purpose and Function
- § 12:10 Holding Coroner's Inquests
- § 12:11 Chief Coroner's Rules of Procedure for Inquests
- § 12:12 Preparation for the Inquest
- § 12:13 Procedure at Coroner's Inquests
- § 12:14 Jury Verdict and Recommendations
- § 12:15 The Public and the Media

### **V. HEALTH AND SAFETY LAW IMPLICATIONS OF CORONER'S INQUESTS**

§ 12:16 Generally

### **VI. JUDICIAL REVIEW OF CORONER'S INQUEST**

- § 12:17 Introduction
- § 12:18 Natural Justice
- § 12:19 Reasonable Apprehension of Bias
- § 12:20 Excess of Statutory Jurisdiction

### **VII. CORONER'S INQUEST EVIDENCE AT SUBSEQUENT HEARINGS**

- § 12:21 Introduction
- § 12:22 Section 42 of the Coroners Act

TABLE OF CONTENTS

§ 12:23 Subsequent Use of Inquest Evidence and the Charter

**CHAPTER 13. IMPROVING HEALTH AND SAFETY IN THE WORKPLACE**

**I. EXECUTIVE SUMMARY**

§ 13:1 Generally

**II. THEORETICAL HEALTH AND SAFETY MODELS**

**A. TOTAL LOSS CONTROL**

§ 13:2 Total loss control management  
§ 13:3 Defining accidents and loss  
§ 13:4 Incident to major loss ratio  
§ 13:5 Loss causation model  
§ 13:6 Managerial control

**B. LEGISLATIVE MODELS**

§ 13:7 Collective bargaining model  
§ 13:8 Health and safety tax model  
§ 13:9 Criminal sanctions model  
§ 13:10 Regulatory partnering model

**C. GENERAL MANAGEMENT THEORIES AND PRINCIPLES**

§ 13:11 Introduction  
§ 13:12 Four general management functions  
§ 13:13 Managerial roles  
§ 13:14 Classic developments in management principles  
§ 13:15 Human motivation management theories  
§ 13:16 Modern approaches to management  
§ 13:17 Management System Standards

**III. PRACTICAL HEALTH AND SAFETY PROGRAMS**

§ 13:18 Written Health and Safety Policies  
§ 13:19 Job Safety Analysis Program  
§ 13:20 Fire Safety and Workplace Violence Programs  
§ 13:21 Material Handling: The O.H.S.A. Basics  
§ 13:22 Internal and External Health and Safety Auditing Program

- § 13:23 Accident Reporting and Investigation Program
- § 13:24 Joint Health and Safety Committee Program
- § 13:25 Safety Incentive and Training Programs
- § 13:26 Enhancing the Internal Responsibility System

#### **IV. WORKER DISCIPLINE**

- § 13:27 Worker Discipline to Improve the Workplace
- § 13:28 Union Employee Discipline
- § 13:29 Non-Union Employee Discipline

#### **V. CERTIFIED MEMBERS**

- § 13:30 Definition of Certified Members
- § 13:31 Certification Standards
- § 13:32 Authority of Certified Members
- § 13:33 Decertification of Certified Members
- § 13:34 Legal Immunity of Certified Members

#### **VI. PREVENTION COUNCIL, CHIEF PREVENTION OFFICER AND DESIGNATED ENTITIES**

- § 13:35 Generally

### **CHAPTER 14. WORKPLACE SMOKING RESTRICTIONS**

#### **I. EXECUTIVE SUMMARY**

- § 14:1 Generally

#### **II. LEGISLATIVE DEVELOPMENT**

- § 14:2 Legislative Overview
- § 14:3 First Reading of Bill 164
- § 14:4 Second Reading of Bill 164
- § 14:5 Third Reading of Bill 164

#### **III. THE WORKPLACE SMOKING RULES**

- § 14:6 The Prohibition against Smoking in the Workplace
- § 14:7 Obligations Imposed on Employers
- § 14:8 Exceptions to the Prohibition against Smoking

#### **IV. WHISTLE-BLOWING PROTECTION**

- § 14:9 Employee Protected from Reprisals

TABLE OF CONTENTS

§ 14:10 Nature of Reprisals Prohibited

**V. WORKPLACE SMOKING INSPECTORS**

§ 14:11 Smoking Inspectors

§ 14:12 Authority of Inspectors

§ 14:13 Obstruction of Inspectors

**VI. PENALTY PROVISIONS**

§ 14:14 Creation of an Offence

§ 14:15 Penalties upon Conviction

**VII. NON-SMOKING MUNICIPAL BY-LAWS**

§ 14:16 Generally

**CHAPTER 15. ALCOHOL AND DRUGS IN THE WORKPLACE**

**I. ALCOHOL AND DRUGS AS HEALTH AND SAFETY CONCERN**

§ 15:1 Generally

**II. THE PROBLEM OF ALCOHOL AND DRUGS IN THE WORKPLACE**

§ 15:2 Introduction

§ 15:3 Alcohol and Drug Abuse Statistics

§ 15:4 Physical and Psychological Effects of Alcohol and Drug Use and Abuse

§ 15:5 The Cost of Workplace Alcohol and Drug Use

**III. PREVENTING AND MANAGING THE PROBLEM**

§ 15:6 Introduction

§ 15:7 How to Develop a Suitable Alcohol and Drug Policy

§ 15:8 Contents of an Alcohol and Drug Policy

§ 15:9 The Legal Issues Confronting Alcohol and Drug Policies

§ 15:10 Fitness for Duty/Work

## **IV. HUMAN RIGHTS CONSIDERATIONS**

### **A. INTRODUCTION**

§ 15:11 Generally

### **B. ENTROP V. IMPERIAL OIL LTD.**

§ 15:12 Introduction

§ 15:13 Random alcohol testing

§ 15:14 Alcohol and drug testing—Post-incident and reasonable cause

§ 15:15 —Certification testing and post-reinstatement testing

§ 15:16 Mandatory disclosure, reassignment and reinstatement

§ 15:17 Pre-employment and random drug testing

### **C. HUMAN RIGHTS CASES SINCE ENTROP**

§ 15:18 Introduction

§ 15:19 Halter v. Ceda-Reactor Ltd.: Random drug testing

§ 15:20 Alberta (Human Rights and Citizenship Commission) v. Elizabeth Metis Settlement: Random alcohol and drug testing

§ 15:21 Milazzo v. Autocar Connaisseur Inc.: Random drug testing

§ 15:22 Alberta (Human Rights and Citizenship Commission, Director) v. Kellogg Brown & Root (Canada) Co.: Pre-employment drug testing and human rights protection for the casual user

§ 15:23 Weyerhaeuser Co. v. Ontario (Human Rights Commission): Pre-employment drug testing and human rights protection for the casual user

§ 15:24 C.E.P., Section locale 143 c. Goodyear Canada inc.: Random drug testing in the labour context

§ 15:25 Bish v. Elk Valley Coal Corp.: Control of addiction and lack of disclosure

§ 15:26 Cross-border transportation: A special case

## **V. ADDITIONAL LEGAL CONSIDERATIONS IN THE UNIONIZED WORKPLACE**

§ 15:27 Introduction

§ 15:28 Pre-Employment and Pre-Access Testing

§ 15:29 Reasonable Cause Testing

§ 15:30 Post-Incident Testing

§ 15:31 Post-Reinstatement Testing

TABLE OF CONTENTS

§ 15:32 Random Testing

**VI. LAST CHANCE AGREEMENTS AND THE DUTY TO ACCOMMODATE**

§ 15:33 Generally

**VII. CONCLUSION**

§ 15:34 Generally

**CHAPTER 16. UNDERSTANDING WORKPLACE VIOLENCE**

**I. DEFINING WORKPLACE VIOLENCE**

§ 16:1 Introduction

§ 16:2 Harassment vs. Violence

**II. SOURCES OF WORKPLACE VIOLENCE**

§ 16:3 Introduction

§ 16:4 Co-workers

§ 16:5 Clients, Patients or Customers

§ 16:6 Strangers

§ 16:7 Domestic Violence

**III. CAUSES OF WORKPLACE VIOLENCE**

§ 16:8 Generally

**IV. LEGAL RESPONSES AND SOLUTIONS**

§ 16:9 Introduction

§ 16:10 Criminal Law

§ 16:11 —The criminal law process

§ 16:12 Human Rights Legislation

§ 16:13 Collective Bargaining

§ 16:14 Common Law

§ 16:15 —Duty of care

§ 16:16 —Standard of care and breach

§ 16:17 —Causation

§ 16:18 —Remoteness

§ 16:19 —Defences

§ 16:20 —Contributory negligence

§ 16:21 —Voluntary assumption of risk

§ 16:22 Family Law

- § 16:23 —Custody and access orders
- § 16:24 —Grounds for divorce
- § 16:25 Occupational Health and Safety Law
- § 16:26 Workers' Compensation Law
- § 16:27 An Integrated Legal Response

## **V. VIOLENCE PREVENTION PROGRAM**

- § 16:28 Introduction
- § 16:29 Senior Management Commitment and Employee Involvement
- § 16:30 Violence Prevention Policy
- § 16:31 Violence Risk Assessment
- § 16:32 Control Measures
  - § 16:33 —Engineering controls
  - § 16:34 —Administrative controls
  - § 16:35 —Workplace practices
- § 16:36 Worker Training and Education
  - § 16:37 —Planning model for training
  - § 16:38 —Contents of training and education program
  - § 16:39 —Training for supervisors and managers
  - § 16:40 —Training for security personnel
- § 16:41 Reviewing, Auditing and Improving the Violence Prevention Program
- § 16:42 Traps to Avoid
- § 16:43 Enforcement

## **VI. HIRING AND TERMINATION**

- § 16:44 Introduction
- § 16:45 Hiring
- § 16:46 Termination

## **VII. CONCLUSION**

- § 16:47 Generally

# **Volume 2**

## **APPENDICES**

- Appendix A. Occupational Health and Safety Act
- Appendix B. Regulations Under the Occupational Health and Safety Act
- Appendix C. Smoke-Free Ontario Act, 2017



TABLE OF CONTENTS

Appendix D. Coroners Act

Appendix E. Digests

**Appendix ND. New Developments**

Appendix ND7. Recent Ontario Health & Safety Law  
Decisions—January 2023 to March 2024

Appendix ND6. Recent Ontario Health & Safety Law  
Decisions—September 2021 to December  
2022

Appendix ND5. Recent Ontario Health & Safety Law  
Decisions—March 2020 to August 2021

Appendix ND4. Recent Ontario Health & Safety Law  
Decisions—March 2019 to March 2020

Appendix ND3. Recent Ontario Health & Safety Law  
Decisions—March 2018 to March 2019

Appendix ND2. Recent Ontario Health & Safety Law  
Decisions—March 2017 to March 2018

Appendix ND1. Recent Ontario Health & Safety Law  
Decisions—March 2016 to March 2017

Appendix RA. Related Articles

Appendix SLL. Selected Legal Literature

Appendix WP. Words and Phrases

**Table of Cases**

**Index**