

# Table of Contents

## *Volume 1*

<i>Preface</i> .....	v
<i>Contents Checklist</i> .....	CL-1
<i>Table of Cases</i> .....	TC-1
<i>Table of Legislation</i> .....	TL-1
<i>New Developments</i> .....	NDC-1
Table of Contents .....	NDC-1
March 2020 to March 2021 .....	ND21-1
A. Court Decisions .....	ND21-2
(i) Civil Decisions .....	ND21-2
(ii) Criminal Decisions .....	ND21-11
B. Ontario Labour Relations Board Decisions .....	ND21-14
March 2019 to March 2020 .....	ND20-1
A. Court Decisions .....	ND20-2
(i) Civil Decisions .....	ND20-2
(ii) Criminal Decisions .....	ND20-6
B. Ontario Labour Relations Board Decisions .....	ND20-9
March 2018 to March 2019 .....	ND19-1
A. Court Decisions .....	ND19-2
(i) Civil Decisions .....	ND19-2
(ii) Criminal Decisions .....	ND19-2
B. Ontario Labour Relations Board Decisions .....	ND19-4
March 2017 to March 2018 .....	ND18-1
A. Court Decisions .....	ND18-2
(i) Civil Decisions .....	ND18-2
(ii) Criminal Decisions .....	ND18-3
B. Ontario Labour Relations Board Decisions .....	ND18-10
April 2016 to March 2017 .....	ND17-1
A. Court Decisions .....	ND17-2
(i) Civil Decisions .....	ND17-2
(ii) Criminal Decisions .....	ND17-3
B. Ontario Labour Relations Board Decisions .....	ND17-11
<i>Related Articles</i> .....	RA-i
Table of Contents .....	RA-i

## ONTARIO HEALTH AND SAFETY LAW

Blue Mountain Wins at Court of Appeal: Decision Clarifies Reporting Requirements for Non-worker Critical Injuries in Ontario . . . . .	RA-1
“Fly-rock” – When Health and Safety and Environmental Reporting Laws Collide . . . . .	RA-5
Update on Workplace Investigations . . . . .	RA-11
Chronic Mental Stress: Impact on Workplace Harassment Investigations, Litigation and Remedies: Claiming WSIB Benefits . . . . .	RA-25
Third Party Right of Action . . . . .	RA-49
When Does an Arbitrator Have Jurisdiction Over Matters Also Covered by Workers Compensation Regimen, With Respect to Chronic Mental Stress . . . . .	RA-55
Avoiding Common Pitfalls When Conducting Workplace Investigations . . . . .	RA-63
The Race to Identify Conflicts in the Workplace Creating a More Inclusive Work Environment . . . . .	RA-73
Legal Weed and the Non-Union Workplace - Is Drug Testing a Risk Mitigation Option? . . . . .	RA-117
Mental Distress and the Right to Sue for Harassment and Bullying . . . . .	RA-139
Frequently Asked Questions Regarding COVID 19 In The Workplace . . . . .	RA-153
A Primer on Mental Stress Claims at the WSIB . . . . .	RA-175
Chronic Mental Stress Claims: The Interaction between Workers’ Compensation and Human Rights Regimes in the Civil Law Context . . . . .	RA-179
Return to Work After COVID-19 Shutdown: OHS Law Compliance, Best Practices and Due Diligence . . . . .	RA-187
OHS Prosecutions and s.11(b) of the Charter Where We Have Been, and Where We May Be Going . . . . .	RA-201
Concurrent Criminal and OHS Prosecutions: Legal and Practical Considerations . . . . .	RA-211
Can Employers Require Employees Vaccinate Against COVID-19? R-A-225	
K-Law COVID-19 Employer Alert: New Proof of Vaccination Requirements . . . . .	RA-233
COVID-19 Vaccination and the Workplace . . . . .	RA-235

### Chapter 1

	<b>Introduction to Ontario Health and Safety Law . . . . .</b>	<b>1-1</b>
1:1000	General Introduction . . . . .	1-1
1:2000	Origins of Ontario Health and Safety Law . . . . .	1-2
1:3000	Pre-O.H.S.A. Legislation . . . . .	1-7
1:4000	Passage of O.H.S.A. and Amendments . . . . .	1-8
1:5000	Regulations under the O.H.S.A. . . . .	1-10

## TABLE OF CONTENTS

1:6000	Statutes Related to the O.H.S.A. ....	1-12
1:7000	Practical and Policy Issues ....	1-13
1:7100	The Role of Statutes, Regulations and Industry Standards ....	1-13
1:7200	The Internal Responsibility System in Ontario Health and Safety Law ....	1-17
1:7300	The Limits of Law on Accident Prevention. ....	1-19
1:7400	The American Statutory Scheme. ....	1-20
1:7500	Bill C-45 Amendments to the Criminal Code ....	1-21
1:7510	Convictions under the Bill C-45 amendments ....	1-24
Endnotes	.....	1-29

### Chapter 2

	<b>Application of O.H.S.A.</b> ....	2-1
2:1000	Executive Summary ....	2-1
2:2000	Omnibus Legislation ....	2-1
2:3000	Application to Specific Classes ....	2-2
2:3100	Crown Agencies ....	2-2
2:3200	Constitutional Jurisdiction ....	2-3
2:3300	Private Residences ....	2-11
2:3400	Farming Operations ....	2-14
2:3500	Teachers ....	2-17
2:4000	Sector-specific Regulations ....	2-17
2:4100	Industrial Establishments ....	2-17
2:4200	Construction Projects ....	2-18
2:4300	Mines and Mining Plants ....	2-20
2:4400	Health Care and Residential Facilities ....	2-22
2:4500	Commercial Diving. ....	2-23
2:4600	Window Cleaning ....	2-24
2:4700	Firefighters ....	2-25
2:4800	Oil and Gas Offshore ....	2-27
2:4900	X-ray Safety ....	2-28
2:5000	Other Regulations ....	2-29
Endnotes	.....	2-30

### Chapter 3

	<b>Health and Safety Representatives and Committees</b> ....	3-1
3:1000	Executive Summary ....	3-1
3:2000	Health and Safety Representatives ....	3-2
3:2100	Requirement for Health and Safety Representatives ....	3-2
3:2200	Authority of Health and Safety Representatives ....	3-2
3:3000	Health and Safety Committees ....	3-4
3:3100	Requirement for Joint Health and Safety Committees. . .	3-4
3:3200	Composition of Joint Health and Safety Committees . . .	3-6
3:3210	Certified members of committees ....	3-7
3:3300	Authority of Health and Safety Committees ....	3-9

## ONTARIO HEALTH AND SAFETY LAW

3:3400	Meetings and Minutes of Committees . . . . .	3-11
3:3500	Worker Member Walkaround Inspections . . . . .	3-12
3:3600	Posting Names of Committee Members . . . . .	3-12.1
3:3700	Committee Work Paid by Employer . . . . .	3-12.1
3:3800	Committee Inspection of Workplace . . . . .	3-12.1
3:3900	Worker Trades Committee . . . . .	3-12.2
3:4000	Minister's Authority Regarding Committees . . . . .	3-12.3
3:4100	Minister's Authority to Appoint Committees . . . . .	3-12.3
3:4200	Minister's Resolution of Committee Disputes . . . . .	3-12.3
3:5000	Assessing the Impact of Committees . . . . .	3-12.4
3:5100	The Tuohy and Simard Assessment of Committees . . . . .	3-12.4
3:5200	The Legislative Framework of Ontario and Quebec Committees . . . . .	3-12.4
3:5300	Assessment Factors for Committee Performance . . . . .	3-13
3:5400	Government Inspection Rates and Injury Rates . . . . .	3-13
3:5500	Implications for Policy and Legislation . . . . .	3-14
3:5600	Some Conclusions of the Tuohy and Simard Report . . . . .	3-15
3:5700	Comparison Between Ontario and Quebec Findings . . . . .	3-16
3:5800	Summary and Policy Implications of Report . . . . .	3-18
Endnotes . . . . .		3-19

### **Chapter 4**

	<b>Duties Under the O.H.S.A. . . . .</b>	<b>4-1</b>
4:1000	Executive Summary . . . . .	4-1
4:2000	Constructors . . . . .	4-1
4:2100	Definition . . . . .	4-1
4:2200	Project Responsibility . . . . .	4-2
4:2300	Filing Notice of Project . . . . .	4-3
4:2400	Diving Operations . . . . .	4-5
4:2500	Designated Substances Responsibilities . . . . .	4-7
4:2600	Duty to Comply with O.H.S.A. and Regulations . . . . .	4-8
4:3000	Employers . . . . .	4-8
4:3100	Definition . . . . .	4-8
4:3200	Duties to Provide a Safe Work Environment . . . . .	4-13
4:3300	Duties to Direct Workers . . . . .	4-15
4:3310	Duties to instruct, inform and supervise workers . . . . .	4-15
4:3320	Duties to provide workers with written instructions . . . . .	4-16.2
4:3330	Duty to have occupational health and safety policy . . . . .	4-16.3
4:3400	Duty to Appoint Competent Supervision . . . . .	4-16.3
4:3500	Duty to Employ Lawfully Aged Workers . . . . .	4-16.4
4:3600	Duty for Legislative Compliance . . . . .	4-16.5
4:3610	Duty to assist health and safety representative . . . . .	4-16.5
4:3620	Duty to comply with regulations . . . . .	4-16.5
4:3630	Duty to post copy of O.H.S.A. . . . .	4-16.6

## TABLE OF CONTENTS

4:3640	Duty to obtain worker's health records only by order of court or tribunal . . . . .	4-16.6
4:3700	Duty to Establish an Occupational Health Service for Workers . . . . .	4-16.8
4:3800	Duty to Keep Records of Biological, Chemical and Physical Agents . . . . .	4-16.8
4:3900	Duty to Take Every Precaution Reasonable . . . . .	4-16.9
4:4000	Supervisors . . . . .	4-20
4:4100	Definition . . . . .	4-20
4:4200	Duty to Ensure Workers Comply with O.H.S.A. and Regulations . . . . .	4-22.1
4:4300	Duty to Ensure Workers Use All Safety Equipment, Devices and Clothing. . . . .	4-22.1
4:4400	Duty to Advise Workers of Danger . . . . .	4-22.2
4:4500	Duty to Provide Written Instructions . . . . .	4-22.2
4:4600	Duty to Take Every Precaution Reasonable . . . . .	4-22.3
4:5000	Worker . . . . .	4-22.4
4:5100	Definition . . . . .	4-22.4
4:5200	Duty to Comply with O.H.S.A. and Regulations . . .	4-22.5
4:5300	Duty to Use Equipment and Clothing Provided . . . . .	4-23
4:5400	Duty to Report Dangers in Workplace . . . . .	4-23
4:5500	Prohibition Against Making Any Safety Device Ineffective . . . . .	4-24
4:5600	Prohibition Against Using Any Dangerous Equipment or Machine. . . . .	4-24
4:5700	Prohibition Against Horseplay . . . . .	4-24
4:6000	Owner . . . . .	4-25
4:6100	Definition . . . . .	4-25
4:6200	Duty to Ensure Workplace and Facilities Comply with O.H.S.A. and Regulations . . . . .	4-26
4:6300	Duty of Updating Mining Plans . . . . .	4-27
4:6400	Duty to File Construction Plans . . . . .	4-27
4:6500	Duty to Comply with Ministry of Labour Requests . .	4-27
4:6600	Duty Regarding Designated Substances . . . . .	4-28
4:6610	Owners on construction projects. . . . .	4-28
4:7000	Suppliers . . . . .	4-28
4:7100	Definition . . . . .	4-28
4:7200	Duty to Supply Everything in Good Condition . . . . .	4-29
4:7300	Duty to Ensure Everything in Compliance with O.H.S.A. and Regulations . . . . .	4-29
4:7400	Duty to Maintain Everything Supplied in Good Condition . . . . .	4-29
4:8000	Duties on Other Persons . . . . .	4-30
4:8100	Licensee . . . . .	4-30
4:8110	Definition and duty to ensure legislative compliance . . . . .	4-30

## ONTARIO HEALTH AND SAFETY LAW

4:8120	Duty to ensure employer compliance . . . . .	4-30
4:8130	Duty towards employer's employees . . . . .	4-31
4:8200	Architects and Professional Engineers . . . . .	4-31
4:8210	Definition of "architect" . . . . .	4-31
4:8220	Definition of "professional engineer" . . . . .	4-31
4:8230	Duties of architects and professional engineers . . . .	4-31
4:8300	Officers and Directors of Corporations . . . . .	4-34
4:8310	Definition of "officer" . . . . .	4-34
4:8320	Definition of "director" . . . . .	4-36
4:8330	Duty to ensure legislative compliance . . . . .	4-36
4:8340	Duty to comply with inspectors' orders . . . . .	4-36
4:8350	Duty to comply with order of the Minister of Labour . . . . .	4-37
4:9000	Additional Issues . . . . .	4-37
4:9100	Effect of Overlapping Duties . . . . .	4-37
4:9200	Codes and Standards of Practice . . . . .	4-37
Endnotes	. . . . .	4-39

## **Chapter 5**

	<b>Toxic Substances</b> . . . . .	5-1
5:1000	Executive Summary . . . . .	5-1
5:2000	Powers of Director . . . . .	5-1
5:3000	Orders . . . . .	5-2
5:3100	Contents . . . . .	5-2
5:3200	Appeal . . . . .	5-2
5:4000	Designated Substances . . . . .	5-4
5:4100	Introduction . . . . .	5-4
5:4200	Designated Substances Regulation . . . . .	5-5
5:4201	Acrylonitrile . . . . .	5-8
5:4202	Arsenic . . . . .	5-10
5:4203	Asbestos . . . . .	5-12
5:4204	Designated Substance — Asbestos on Construction Projects and in Buildings and Repair Operations . . . . .	5-15
5:4205	Benzene . . . . .	5-18
5:4206	Coke oven emissions . . . . .	5-20
5:4207	Ethylene oxide . . . . .	5-21
5:4208	Isocyanates . . . . .	5-24
5:4209	Lead . . . . .	5-26
5:4210	Mercury . . . . .	5-29
5:4211	Silica . . . . .	5-31
5:4212	Vinyl chloride . . . . .	5-34
5:4300	Designing Programs for Designated Substances . . . .	5-35
5:5000	Generic Hazardous Substances Regulation . . . . .	5-37
5:5100	The Nature of the Regulation . . . . .	5-37
5:5200	Exception to Application of the Regulation . . . . .	5-38

## TABLE OF CONTENTS

5:5300	Exposure Protection Mandate of the Regulation. . . . .	5-38
5:5400	Medical Test Requirements. . . . .	5-40
Endnotes	. . . . .	5-42

### **Chapter 6**

#### **The Workplace Hazardous Materials Information**

	<b>System (WHMIS)</b> . . . . .	6-1
6:1000	Executive Summary . . . . .	6-1
6:2000	Historical Overview of WHMIS . . . . .	6-1
6:2100	Legislative Purpose and Practical Rationale . . . . .	6-1
6:2200	Policy and Legislative Development of WHMIS. . . . .	6-3
6:2300	Introduction to Globally Harmonized System of Classification and Labelling of Chemicals. . . . .	6-6
6:3000	Federal Legislation . . . . .	6-7
6:4000	WHMIS in Ontario . . . . .	6-8
6:4100	General Introduction . . . . .	6-8
6:4200	Bill 79, Bill 180 and R.R.O. 1990, Reg. 860 . . . . .	6-9
6:4300	Designation of Hazardous Products . . . . .	6-10
6:4400	Assessment of Biological and Chemical Agents. . . . .	6-13
6:4500	Worker Education and Training. . . . .	6-13
6:4600	Product Labels Under WHMIS 2015 . . . . .	6-16
6:4700	Safety Data Sheets . . . . .	6-18
6:4800	Protection of Trade Secrets and Confidential Business Information . . . . .	6-20
6:4900	Disclosure of Information in Medical Emergencies . . . . .	6-21
6:5000	Liability for WHMIS Contraventions . . . . .	6-21
6:6000	Effective Implementation of WHMIS 2015 . . . . .	6-23
Endnotes	. . . . .	6-24

### **Chapter 7**

#### **Work Refusal and Work Stoppages** . . . . .

7:1000	Executive Summary . . . . .	7-1
7:2000	Limitations on Right to Refuse. . . . .	7-2
7:2100	Persons Limited in Right to Refuse . . . . .	7-2
7:2110	Step 1: Right to refuse to do unsafe work may apply with respect to certain classes of workers . . . . .	7-2
7:2200	Activities Limiting Right to Refuse. . . . .	7-3
7:2210	Step 2: The work activities in question must fall into one of two limiting activities . . . . .	7-4
7:2220	Case examples . . . . .	7-5
7:3000	Right to Refuse Procedure . . . . .	7-7
7:3100	Basis for Work Refusal and Case Examples . . . . .	7-7
7:3200	Reporting Refusal to Supervisor. . . . .	7-9
7:3300	First Stage Investigation. . . . .	7-10
7:3400	Return to Work or Continuing Refusal . . . . .	7-11
7:3500	Second Stage Investigation . . . . .	7-12

## ONTARIO HEALTH AND SAFETY LAW

7:3600	Replacement Workers Must Be Warned of Prior Refusal. . . . .	7-14
7:3700	Refusing Worker's Role During Investigation. . . . .	7-14
7:3800	Payment of Workers. . . . .	7-15
7:4000	Discipline of Refusing Worker . . . . .	7-16
7:4100	No Reprisals for Proper Work Refusal. . . . .	7-16
7:4200	Discipline for Improper Work Refusal . . . . .	7-18
7:5000	Employer Discipline Adjudication. . . . .	7-18.1
7:5100	Employee Elects Forum . . . . .	7-18.1
7:5200	Onus of Proof . . . . .	7-19
7:5300	Substitution of Penalty . . . . .	7-19
7:6000	Refusal to Work Jurisprudence. . . . .	7-23
7:6100	Exempted Employee Denied Right to Refuse . . . . .	7-23
7:6200	Work Refusal Because of Worker's Comfort . . . . .	7-24
7:6300	Frivolous Work Refusals . . . . .	7-27
7:6310	Case law . . . . .	7-27
7:6400	Discipline After Proper Work Refusals. . . . .	7-28.2
7:6500	Bars to Right to Refuse Complaints. . . . .	7-34
7:6600	No Contravention of the O.H.S.A. . . . .	7-36
7:7000	Certified Member Work Stoppages. . . . .	7-38
7:7100	Bilateral Work Stoppages. . . . .	7-38
7:7110	Basis for bilateral work stoppages . . . . .	7-39
7:7120	Definition of dangerous circumstances . . . . .	7-40
7:7130	Investigation process . . . . .	7-40
7:7140	Role of inspector . . . . .	7-41
7:7150	Cancellation of work stoppage. . . . .	7-41
7:7200	Unilateral Work Stoppage . . . . .	7-42
7:7210	Conditions for unilateral work stoppage. . . . .	7-43
7:7220	Application for declaration. . . . .	7-44
7:7230	Basis for work stoppage. . . . .	7-46
7:7240	Definition of dangerous circumstances . . . . .	7-46
7:7250	Immediate compliance with direction . . . . .	7-46
7:7260	Investigation process . . . . .	7-46
7:7270	Role of inspector . . . . .	7-47
7:7280	Cancellation of work stoppage. . . . .	7-47
7:8000	Chart of Work Refusal Cases . . . . .	7-48
Endnotes	. . . . .	7-69

## **Chapter 8**

	<b>Accident Notices . . . . .</b>	<b>8-1</b>
8:1000	Executive Summary . . . . .	8-1
8:2000	Notice of Death or Critical Injury. . . . .	8-1
8:3000	Accident Responses. . . . .	8-3
8:3100	Preservation of Wreckage . . . . .	8-3
8:3200	Written Opinion of Professional Engineer. . . . .	8-4
8:4000	Notice of Non-critical Injury. . . . .	8-5



## TABLE OF CONTENTS

8:5000	Notice of Occupational Illness . . . . .	8-6
8:6000	Failure to File Notice . . . . .	8-7
8:7000	Duty to Report Environmental Incidents . . . . .	8-7
Endnotes	. . . . .	8-8

### **Chapter 9**

	<b>Ministry of Labour Inspectors and Orders . . . . .</b>	<b>9-1</b>
9:1000	Executive Summary . . . . .	9-1
9:2000	Ministry of Labour Inspectors . . . . .	9-2
9:2100	Definition . . . . .	9-2
9:2200	Ministry of Labour Organizational Structure . . . . .	9-2
9:2300	Training . . . . .	9-3
9:2400	Job Descriptions . . . . .	9-4
9:3000	Authority of Inspectors . . . . .	9-7
9:3100	Entering Workplace Without Search Warrant or Notice . . . . .	9-7
9:3200	Workplace Attendance . . . . .	9-8
9:3210	Workplace inspections . . . . .	9-8
9:3220	Workplace investigations . . . . .	9-9
9:3221	Circumstances under which investigations are conducted . . . . .	9-10
9:3222	Authority of inspectors . . . . .	9-11
9:3223	Inspectors and search warrants . . . . .	9-13
9:3230	Removal of property from workplace . . . . .	9-15
9:3240	Ordering workplace tests . . . . .	9-16
9:3250	Preservation of the workplace . . . . .	9-16
9:3260	Obstruction of inspectors prohibited . . . . .	9-17
9:3300	Compellability of Inspectors . . . . .	9-17
9:4000	Issuance of Ministry of Labour Orders . . . . .	9-21
9:4100	Inspector's Authority to Issue Orders . . . . .	9-21
9:4200	Orders . . . . .	9-23
9:4210	Form . . . . .	9-23
9:4220	Content . . . . .	9-23
9:4230	Stop work orders . . . . .	9-24
9:4240	Legal enforcement . . . . .	9-25
Endnotes	. . . . .	9-26

### **Chapter 10**

	<b>Appealing Ministry of Labour Orders . . . . .</b>	<b>10-1</b>
10:1000	Executive Summary . . . . .	10-1
10:2000	Right to Appeal . . . . .	10-2
10:2100	Who May Appeal . . . . .	10-2
10:2200	Parties to an Appeal . . . . .	10-3
10:2300	When May There Be an Appeal . . . . .	10-4
10:2400	What May Be Appealed . . . . .	10-5
10:2500	Why Is There a Right of Appeal . . . . .	10-8

# ONTARIO HEALTH AND SAFETY LAW

10:2600	Where Is the Appeal Made . . . . .	10-8
10:2700	Collateral Attack and Effect of Not Appealing an Order . . . . .	10-9
10:3000	Procedure for Appealing Orders . . . . .	10-9
10:3100	Limitation Period . . . . .	10-9
10:3200	Form of Appeal Notice . . . . .	10-11
10:3300	Grounds for Appeal . . . . .	10-12
10:3400	Parties to an Appeal . . . . .	10-14
10:3500	Mediation and Settlement of Appeals . . . . .	10-16
10:3600	Setting Appeal Hearing Dates . . . . .	10-18
10:3700	Form of the Appeal Hearing . . . . .	10-19
10:3710	Taking a view . . . . .	10-19
10:3800	Adjournment of Hearing Dates . . . . .	10-20.1
10:4000	Suspension of Orders Pending Appeal . . . . .	10-22
10:4100	No Automatic Suspension with an Appeal . . . . .	10-22
10:4200	Authority to Suspend Order . . . . .	10-23
10:4300	Procedure to Request Suspension . . . . .	10-23
10:4400	No Statutory Criteria for Suspension . . . . .	10-24
10:4500	Judicial Criteria for Suspension . . . . .	10-25
10:4600	Cases Where Suspension Granted . . . . .	10-28
10:4700	Cases Where Suspension Denied . . . . .	10-31
10:5000	Appeal Hearing . . . . .	10-34
10:5100	Notice of Hearing . . . . .	10-34
10:5200	Onus of Proof . . . . .	10-34
10:5300	Standard of Proof . . . . .	10-35
10:5400	Rules of Evidence . . . . .	10-35
10:5500	Application of Statutory Powers Procedure Act . . . . .	10-36
10:5600	Requirement for a Hearing . . . . .	10-37
10:5700	Proceeding before the O.L.R.B. . . . .	10-38
10:5800	Evidence at the Hearing . . . . .	10-40
10:5810	Calling Witnesses . . . . .	10-40
10:5900	Final Submissions . . . . .	10-42
10:6000	Remedial Authority of the O.L.R.B. . . . .	10-43
10:6100	Rescinding Orders . . . . .	10-44
10:6200	Affirming Orders . . . . .	10-44
10:6300	Amending Orders/New Orders . . . . .	10-45
10:6400	Legal Effect of New Orders . . . . .	10-47
10:6500	Request for Costs . . . . .	10-47
10:6600	O.L.R.B. Remaining Seised of Jurisdiction . . . . .	10-48
10:6700	Reconsideration of Decision . . . . .	10-48
10:7000	Appeal Hearing Case Law . . . . .	10-50
10:7100	The Nature of O.L.R.B.'s Decisions . . . . .	10-50
10:7200	Preliminary Issues . . . . .	10-51
10:7210	Division of powers jurisdiction . . . . .	10-51
10:7220	Adjournments of the hearing . . . . .	10-52
10:7230	Adding orders and grounds for appeal . . . . .	10-53

## TABLE OF CONTENTS

10:7240	Mootness of the appeal . . . . .	10-54
10:7250	Standing of the parties . . . . .	10-55
10:7260	Replacement of orders under appeal. . . . .	10-57
10:7270	Wrong regulation applied. . . . .	10-58
10:7280	Proper application of order . . . . .	10-59
10:7290	Lack of jurisdiction to hear appeal. . . . .	10-61
10:7300	Insufficient Evidence to Support Order. . . . .	10-62.1
10:7400	Contravention Required to Justify Order . . . . .	10-64
10:7500	Work Refusal Related Appeals. . . . .	10-64
10:7600	Inspector's Decision Not to Issue an Order . . . . .	10-69
10:7700	Exercise of "E.P.R." Power . . . . .	10-69
10:7800	Due Diligence Not Relevant. . . . .	10-72
10:7900	Specific Subjects on Appeal . . . . .	10-72.1
10:7901	Application of the Building Code. . . . .	10-72.1
10:7902	Definition of legislative terms. . . . .	10-72.2
10:7903	Economic impact of orders. . . . .	10-79
10:7904	Equivalency provisions of regulations. . . . .	10-80
10:7905	Principles of natural justice . . . . .	10-81
10:7906	Susceptible worker standard. . . . .	10-82
10:7907	Staffing issues. . . . .	10-85
10:7908	Need for more complete grounds . . . . .	10-86
10:7909	Asbestos removal . . . . .	10-87
10:7910	CSA standards . . . . .	10-89
10:7911	Smoking in the workplace . . . . .	10-90
10:7912	Application of Fire Code . . . . .	10-90
10:7913	Workplace temperature . . . . .	10-91
10:7914	Role of joint health and safety committee . . . . .	10-93
10:7915	Role of the certified member . . . . .	10-94
10:7916	Pregnant worker. . . . .	10-95
10:7917	Ergonomic issues . . . . .	10-96
10:7918	Uncomfortable and unsafe clothing . . . . .	10-97
10:7919	Lighting levels in the workplace . . . . .	10-97
Endnotes	. . . . .	10-98

## *Volume 2*

### **Chapter 11**

	<b>O.H.S.A. Prosecutions.</b> . . . .	11-1
11:1000	Executive Summary . . . . .	11-1
11:2000	Enforcement of the O.H.S.A. by Prosecution . . . . .	11-1
11:3000	O.H.S.A. Prosecution Process . . . . .	11-2
11:3100	Rules of Procedure. . . . .	11-2
11:3110	Legal character of prosecutions . . . . .	11-3
11:3120	Part I proceedings . . . . .	11-3
11:3130	Part III proceedings . . . . .	11-4
11:3140	Forum and venue for trial . . . . .	11-6

## ONTARIO HEALTH AND SAFETY LAW

11:3150	Arraignment and entering of plea at trial . . . . .	11-8.2
11:3160	Onus of proof . . . . .	11-9
11:3170	Particulars of the charge. . . . .	11-13
11:3180	Disclosure . . . . .	11-15
11:3181	Crown disclosure generally. . . . .	11-15
11:3182	Disclosure of other Crown agency evidence . . . . .	11-26.1
11:3183	Third party disclosure . . . . .	11-26.3
11:3184	Defence disclosure . . . . .	11-26.6
11:3200	Rules of Evidence. . . . .	11-26.6
11:3210	Ontario Evidence Act. . . . .	11-26.6
11:3211	Competency and compellability of the accused . . . . .	11-26.6
11:3212	Right to remain silent . . . . .	11-27
11:3213	The adverse or hostile witness . . . . .	11-28
11:3214	Prior criminal convictions . . . . .	11-28
11:3215	Public documents. . . . .	11-28
11:3216	Business records. . . . .	11-29
11:3217	Medical records . . . . .	11-29
11:3220	Business records and the common law . . . . .	11-30
11:3230	Statements and confessions. . . . .	11-31
11:3231	Persons in authority. . . . .	11-32
11:3232	Voir dire to determine admissibility . . . . .	11-34
11:3233	When statements are admissible. . . . .	11-37
11:3234	The meaning of voluntariness . . . . .	11-40.2
11:3240	Right to counsel and exclusion of evidence. . . . .	11-54.3
11:3241	Introduction. . . . .	11-54.3
11:3242	The meaning of detention . . . . .	11-54.3
11:3243	Rights of the detainee and the duties of the detainer . . . . .	11-55
11:3244	The remedy of excluding evidence . . . . .	11-59
11:3250	Search and seizure of evidence by Ministry of Labour inspectors and other officials. . . . .	11-63
11:3251	Introduction to s. 8 of the Canadian Charter of Rights and Freedoms . . . . .	11-63
11:3252	Search and seizure powers under the O.H.S.A. and the Provincial Offences Act . . . . .	11-64
11:3253	Criteria for warrantless search: Hunter v. Southam Inc. and R. v. Collins . . . . .	11-67
11:3254	Electronic surveillance and its limits. . . . .	11-69
11:3255	Violation of s. 8 rights under the Charter. . . . .	11-70
11:3256	Remedies for violation of Charter rights . . . . .	11-71
11:3257	Common law remedy of excluding unlawfully obtained evidence . . . . .	11-73
11:3300	Directed Verdict of Acquittal . . . . .	11-73
11:3400	Final Verdict and Sentencing . . . . .	11-75
11:3410	Summary of convictions under the O.H.S.A. . . . .	11-81

## TABLE OF CONTENTS

11:3500	Appealing the Trial Decision . . . . .	11-81
11:3600	Prerogative Remedy Applications . . . . .	11-82.4
11:4000	Procedural Defences to O.H.S.A. Charges. . . . .	11-82.10
11:4100	Defective Information. . . . .	11-82.11
11:4200	Trial Not Within Reasonable Time. . . . .	11-82.12
11:4210	A constitutional right . . . . .	11-82.12
11:4220	Application to O.H.S.A. offences . . . . .	11-82.12
11:4230	Application to corporations . . . . .	11-82.13
11:4240	Pre-charge delay . . . . .	11-82.17
11:4250	Post-charge delay . . . . .	11-84.1
11:4255	The Jordan Framework . . . . .	11-92
11:4260	Remedies for unreasonable delay . . . . .	11-94.1
11:4270	Continuing and appellate delay . . . . .	11-94.4
11:4300	Abuse of Process . . . . .	11-94.9
11:4310	The legal test . . . . .	11-94.9
11:4320	Forum in which to raise abuse of process. . . . .	11-94.10
11:4330	Onus and burden of proof . . . . .	11-94.10
11:4340	Abuse of process and the Charter. . . . .	11-95
11:4350	Case examples of abuse of process . . . . .	11-96
11:4351	Government instigation of an offence . . . . .	11-96
11:4352	Undertaking not to prosecute . . . . .	11-97
11:4353	Collection of a civil debt . . . . .	11-100
11:4354	Punishing the accused for exercising their rights . . . . .	11-101
11:4355	Oppressively selective prosecution . . . . .	11-102
11:4356	Prejudice to the right of full answer and defence. . . . .	11-104
11:4357	Crown intimidation of the accused. . . . .	11-106
11:4360	No necessity for Crown misconduct . . . . .	11-108
11:4370	Unreasonable delay and abuse of process. . . . .	11-108.1
11:4380	Remedies for abuse of process . . . . .	11-108.2
11:4400	Res Judicata . . . . .	11-108.5
11:4500	Rule Against Multiple Convictions. . . . .	11-111
11:4600	Time Limitations . . . . .	11-113
11:4700	Crown's Onus of Reasonable Doubt. . . . .	11-115
11:4800	Want of Prosecution. . . . .	11-117
11:5000	Substantive Defences to O.H.S.A. Charges . . . . .	11-118
11:5100	Introduction . . . . .	11-118
11:5200	Primary Defences . . . . .	11-119
11:5210	Proof of the offence . . . . .	11-119
11:5220	Due diligence . . . . .	11-120.1
11:5221	Statutory due diligence. . . . .	11-120.1
11:5222	Common law due diligence . . . . .	11-120.2
11:5223	Due diligence and the presumption of innocence. . . . .	11-125
11:5224	Due diligence cases . . . . .	11-127

## ONTARIO HEALTH AND SAFETY LAW

11:5225	Post-accident improvements creating a problem for general due diligence. . . . .	11-136.1
11:5230	Officially induced error . . . . .	11-136.1
11:5300	Secondary Defences . . . . .	11-136.6
11:5310	Necessity . . . . .	11-136.6
11:5320	Impossibility. . . . .	11-138.1
11:5330	Self-defence . . . . .	11-138.1
11:5340	Duress . . . . .	11-138.2
11:5350	De minimis non curat lex. . . . .	11-138.2
11:5351	Nature of the irregularity. . . . .	11-138.3
11:5352	Legal severity of the offence. . . . .	11-138.3
11:5353	Intention of the legislature. . . . .	11-138.3
11:5354	Availability of other defences. . . . .	11-138.4
11:5360	Project transition . . . . .	11-138.4
11:6000	Practice Points . . . . .	11-139
11:6100	Preparation for Trial . . . . .	11-139
11:6200	Expert Evidence . . . . .	11-140
11:6210	Introduction. . . . .	11-140
11:6220	Weighing conflicting expert evidence . . . . .	11-140.1
11:6230	Non-expert opinions. . . . .	11-140.1
11:6240	The role of expert evidence – The Ikarian Reefer . . . . .	11-140.1
11:6250	Expert witnesses at trial . . . . .	11-140.3
11:6251	Established criteria. . . . .	11-140.3
11:6252	Expert witness jurisprudence . . . . .	11-140.4
11:6300	The Decision to Plead Guilty . . . . .	11-144
11:6400	The Decision to Call Evidence . . . . .	11-145
11:6500	The Decision to Appeal . . . . .	11-145
11:6600	Introduction of Fresh Evidence on Appeal . . . . .	11-147
Endnotes	. . . . .	11-147
Appendix: Summary of Convictions Under the O.H.S.A.	. . . . .	11-186.15

## Chapter 12

	<b>Coroner's Investigations and Inquests . . . . .</b>	<b>12-1</b>
12:1000	Executive Summary . . . . .	12-1
12:2000	The Coroner's System. . . . .	12-2
12:2100	Appointment of Coroners. . . . .	12-2
12:2200	Office and Role of the Chief Coroner. . . . .	12-2
12:3000	The Coroner's Investigation . . . . .	12-3
12:3100	The Initial Investigation . . . . .	12-3
12:3200	Role of the Police. . . . .	12-4
12:3300	Coroner's Power to Seize Evidence. . . . .	12-4
12:3400	Results of the Investigation . . . . .	12-8
12:4000	The Coroner's Inquest . . . . .	12-9
12:4100	Purpose and Function . . . . .	12-9
12:4200	Holding Coroner's Inquests . . . . .	12-10

## TABLE OF CONTENTS

12:4300	Chief Coroner's Rules of Procedure for Inquests . . . .	12-11
12:4400	Preparation for the Inquest. . . . .	12-12
12:4500	Procedure at Coroner's Inquests. . . . .	12-15
12:4510	The role of the coroner . . . . .	12-16
12:4520	The role of the coroner's counsel . . . . .	12-17
12:4530	Evidence . . . . .	12-18
12:4540	Evidence by persons with standing . . . . .	12-20
12:4550	Motions . . . . .	12-20
12:4560	Final argument and coroner's charge to the jury .	12-21
12:4600	Jury's Verdict and Recommendations . . . . .	12-22
12:4700	The Public and the Media . . . . .	12-23
12:5000	Health and Safety Law Implications of Coroner's Inquests . . . . .	12-23
12:6000	Judicial Review of Coroner's Inquest . . . . .	12-26
12:6100	Natural Justice . . . . .	12-27
12:6200	Reasonable Apprehension of Bias. . . . .	12-27
12:6300	Excess of Statutory Jurisdiction . . . . .	12-28
12:7000	Using Coroner's Inquest Evidence at Subsequent Hearings . . . . .	12-29
12:7100	Introduction . . . . .	12-29
12:7200	Section 42 of the Coroners Act. . . . .	12-30
12:7300	Subsequent Use of Inquest Evidence and the Charter. . . . .	12-31
12:7310	Introduction to the Charter analysis. . . . .	12-31
12:7320	Evidence used for incrimination . . . . .	12-33
12:7330	Evidence used for credibility. . . . .	12-34
12:7340	Derivative evidence . . . . .	12-35
Endnotes	. . . . .	12-37

## Chapter 13

	<b>Improving Health and Safety in the Workplace.</b> . . . .	13-1
13:1000	Executive Summary . . . . .	13-1
13:2000	Theoretical Health and Safety Models . . . . .	13-2
13:2100	Total Loss Control. . . . .	13-2
13:2110	Total loss control management. . . . .	13-2
13:2120	Defining accidents and loss . . . . .	13-2
13:2130	Incident to major loss ratio . . . . .	13-2.1
13:2140	Loss causation model. . . . .	13-3
13:2150	Managerial control. . . . .	13-4
13:2200	Legislative Models . . . . .	13-5
13:2210	Collective bargaining model . . . . .	13-5
13:2220	Health and safety tax model. . . . .	13-6
13:2230	Criminal sanctions model. . . . .	13-7
13:2240	Regulatory partnering model . . . . .	13-10
13:2300	General Management Theories and Principles. . . . .	13-11
13:2310	Introduction. . . . .	13-11

## ONTARIO HEALTH AND SAFETY LAW

13:2320	Four general management functions . . . . .	13-12
13:2330	Managerial roles . . . . .	13-13
13:2340	Classic developments in management principles . .	13-14
13:2341	Taylorism and scientific management . . . . .	13-14
13:2342	Science of motion studies . . . . .	13-16
13:2343	Administrative principles approach to management. . . . .	13-16
13:2344	Bureaucratic approach to organizational management. . . . .	13-17
13:2345	Hawthorne studies . . . . .	13-17
13:2350	Human motivation management theories . . . . .	13-19
13:2351	Maslow's hierarchy of human needs . . . . .	13-19
13:2352	Theory X and Theory Y managers . . . . .	13-20
13:2353	Herzberg's two-factor theory . . . . .	13-21
13:2360	Modern approaches to management . . . . .	13-21
13:2370	Management System Standards . . . . .	13-23
13:3000	Practical Health and Safety Programs . . . . .	13-23
13:3100	Written Health and Safety Policies . . . . .	13-23
13:3200	Job Safety Analysis Program . . . . .	13-25
13:3300	Fire Safety and Workplace Violence Program . . . . .	13-27
13:3310	Fire loss prevention program . . . . .	13-27
13:3320	Violence and harassment prevention programs . .	13-28
13:3400	Material Handling: The O.H.S.A. Basics . . . . .	13-30
13:3500	Internal and External Health and Safety Auditing Program . . . . .	13-30.1
13:3600	Accident Reporting and Investigation Program . . . . .	13-31
13:3700	Joint Health and Safety Committee Program . . . . .	13-33
13:3800	Safety Incentive and Training Programs . . . . .	13-33
13:3900	Enhancing the Internal Responsibility System . . . .	13-34.1
13:4000	Worker Discipline . . . . .	13-36
13:4100	Worker Discipline to Improve the Workplace . . . . .	13-36
13:4110	Employee responsibility under the internal responsibility system . . . . .	13-36
13:4120	Ministry of Labour failure to enforce worker duties . . . . .	13-36
13:4130	Prevention of negligent performance of duties . . . . .	13-37
13:4140	Enforcement of reasonable health and safety rules . . . . .	13-37
13:4200	Union Employee Discipline . . . . .	13-38
13:4300	Non-Union Employee Discipline . . . . .	13-47
13:5000	Certified Members . . . . .	13-49
13:5100	Definition of Certified Members . . . . .	13-49
13:5200	Certification Standards . . . . .	13-49
13:5300	Authority of Certified Members . . . . .	13-50
13:5400	Decertification of Certified Members . . . . .	13-51



## TABLE OF CONTENTS

13:5500	Legal Immunity of Certified Members . . . . .	13-52
13:6000	Prevention Council, Chief Prevention Officer and Designated Entities . . . . .	13-52
Endnotes	. . . . .	13-54

### Chapter 14

	<b>Workplace Smoking Restrictions</b> . . . . .	14-1
14:1000	Executive Summary . . . . .	14-1
14:2000	Legislative Development . . . . .	14-1
14:2100	Legislative Overview . . . . .	14-1
14:2200	First Reading of Bill 164 . . . . .	14-2
14:2300	Second Reading of Bill 164 . . . . .	14-3
14:2400	Third Reading of Bill 164 . . . . .	14-5
14:3000	The Workplace Smoking Rules . . . . .	14-6
14:3100	The Prohibition against Smoking in the Workplace . . .	14-6
14:3200	Obligations Imposed on Employers . . . . .	14-8
14:3300	Exemptions to the Prohibition against Smoking . . . . .	14-8
14:4000	Whistle-Blowing Protection . . . . .	14-10
14:4100	Employee Protected from Reprisals . . . . .	14-10
14:4200	Nature of Reprisals Prohibited . . . . .	14-10
14:5000	Workplace Smoking Inspectors . . . . .	14-11
14:5100	Smoking Inspectors . . . . .	14-11
14:5200	Authority of Inspectors . . . . .	14-11
14:5300	Obstruction of Inspectors . . . . .	14-11
14:6000	Penalty Provisions . . . . .	14-12
14:6100	Creation of an Offence . . . . .	14-12
14:6200	Penalties upon Conviction . . . . .	14-12
14:7000	Non-Smoking Municipal By-laws . . . . .	14-13
Endnotes	. . . . .	14-13

### Chapter 15

	<b>Alcohol and Drugs in the Workplace</b> . . . . .	15-1
15:1000	Alcohol and Drugs As Health and Safety Concern . . . . .	15-1
15:2000	The Problem of Alcohol and Drugs in the Workplace . . . .	15-1
15:2100	Alcohol and Drug Abuse Statistics . . . . .	15-3
15:2200	Physical and Psychological Effects of Alcohol and Drug Use and Abuse . . . . .	15-4
15:2300	The Cost of Workplace Alcohol and Drug Use . . . . .	15-5
15:3000	Preventing and Managing the Problem . . . . .	15-6
15:3100	How to Develop a Suitable Alcohol and Drug Policy . .	15-6
15:3200	Contents of an Alcohol and Drug Policy . . . . .	15-7
15:3300	The Legal Issues Confronting Alcohol and Drug Policies . . . . .	15-9
15:3400	Fitness for Duty/Work . . . . .	15-9
15:4000	Human Rights Considerations . . . . .	15-10
15:4100	Entrop v. Imperial Oil Ltd. . . . .	15-11

## ONTARIO HEALTH AND SAFETY LAW

15:4110	Random alcohol testing . . . . .	15-12
15:4120	Alcohol and drug testing: Post-incident and reasonable cause. . . . .	15-12
15:4130	Alcohol and drug testing: Certification testing and post-reinstatement testing . . . . .	15-13
15:4140	Mandatory disclosure, reassignment and reinstatement . . . . .	15-13
15:4150	Pre-employment and random drug testing . . . . .	15-13
15:4200	Human Rights Cases Since Entrop. . . . .	15-14
15:4210	Halter v. Ceda-Reactor Ltd.: Random drug testing . . . . .	15-14
15:4220	Alberta (Human Rights and Citizenship Commission) v. Elizabeth Metis Settlement: Random alcohol and drug testing. . . . .	15-15
15:4230	Milazzo v. Autocar Connaisseur Inc.: Random drug testing . . . . .	15-15
15:4240	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 . . . . .	15-16
15:4250	Weyerhaeuser Co. v. Ontario (Human Rights Commission): Pre-employment drug testing and human rights protection for the casual user . . . . .	15-18
15:4255	C.E.P., Section locale 143 c. Goodyear Canada inc. . . . .	15-19
15:4260	Bish v. Elk Valley Coal Corp.: Control of addiction and lack of disclosure . . . . .	15-20
15:4270	Cross-border transportation: A special case . . . . .	15-21
15:5000	Additional Legal Considerations in the Unionized Workplace . . . . .	15-22
15:5100	Pre-Employment and Pre-Access Testing . . . . .	15-23
15:5200	Reasonable Cause Testing . . . . .	15-24
15:5300	Post-Incident Testing . . . . .	15-25
15:5400	Post-Reinstatement Testing. . . . .	15-26
15:5500	Random Testing. . . . .	15-28
15:6000	Last Chance Agreements and the Duty to Accommodate. . . . .	15-36
15:7000	Conclusion . . . . .	15-36
Endnotes	. . . . .	15-37

## Chapter 16

	<b>Understanding Workplace Violence . . . . .</b>	<b>16-1</b>
16:1000	Defining Workplace Violence . . . . .	16-1
16:1100	Harassment vs. Violence. . . . .	16-2
16:2000	Sources of Workplace Violence. . . . .	16-4

## TABLE OF CONTENTS

16:2100	Co-workers . . . . .	16-5
16:2200	Clients, Patients or Customers . . . . .	16-5
16:2300	Strangers . . . . .	16-5
16:2400	Domestic Violence . . . . .	16-6
16:3000	Causes of Workplace Violence . . . . .	16-7
16:4000	Legal Responses and Solutions . . . . .	16-9
16:4100	Introduction . . . . .	16-9
16:4200	Criminal Law . . . . .	16-10
16:4210	The criminal law process . . . . .	16-11
16:4300	Human Rights Legislation . . . . .	16-12
16:4400	Collective Bargaining . . . . .	16-13
16:4500	Common Law . . . . .	16-14
16:4510	Duty of care. . . . .	16-15
16:4520	Standard of care and breach. . . . .	16-16
16:4530	Causation. . . . .	16-16
16:4540	Remoteness . . . . .	16-16
16:4550	Defences. . . . .	16-17
16:4551	Contributory negligence. . . . .	16-17
16:4552	Voluntary assumption of risk. . . . .	16-18
16:4600	Family Law . . . . .	16-18
16:4610	Custody and access orders . . . . .	16-18
16:4620	Grounds for divorce. . . . .	16-19
16:4700	Occupational Health and Safety Law . . . . .	16-19
16:4800	Workers' Compensation Law . . . . .	16-22.1
16:4900	An Integrated Legal Response . . . . .	16-23
16:5000	Violence Prevention Program . . . . .	16-24
16:5100	Introduction . . . . .	16-24
16:5200	Senior Management Commitment and Employee Involvement . . . . .	16-24
16:5300	Violence Prevention Policy . . . . .	16-24.1
16:5400	Violence Risk Assessment. . . . .	16-24.2
16:5500	Control Measures . . . . .	16-30
16:5510	Engineering controls. . . . .	16-30
16:5511	Workplace design and layout . . . . .	16-31
16:5512	Security systems. . . . .	16-31
16:5520	Administrative controls . . . . .	16-32
16:5530	Workplace practices . . . . .	16-33
16:5600	Worker Training and Education . . . . .	16-34
16:5610	Planning model for training . . . . .	16-35
16:5620	Contents of training and education program . . . .	16-36
16:5630	Training for supervisors and managers. . . . .	16-36
16:5640	Training for security personnel. . . . .	16-37
16:5700	Reviewing, Auditing and Improving the Violence Prevention Program . . . . .	16-38
16:5800	Traps to Avoid. . . . .	16-39
16:5900	Enforcement. . . . .	16-40

ONTARIO HEALTH AND SAFETY LAW

16:6000	Hiring and Termination . . . . .	16-41
16:6100	Hiring. . . . .	16-41
16:6200	Termination . . . . .	16-43
16:7000	Conclusion . . . . .	16-44
Endnotes	. . . . .	16-44
<i>Index</i>	. . . . .	IN-1

*Volume 3*

<i>Selected Legal Literature</i> . . . . .	SLL-1
<i>Words and Phrases.</i> . . . .	WP-1

*Appendices*

<b>Appendix A Occupational Health and Safety Act</b> . . . . .	A-1
<b>Appendix B Regulations</b> . . . . .	B-1
Workplace Hazardous Materials Information System . . . . .	B-1
Control of Exposure to Biological or Chemical Agents . . . . .	B-15
<b>Appendix C Smoke-Free Ontario Act</b> . . . . .	C-1
<b>Appendix D Coroners Act.</b> . . . .	D-1

<i>Table of Digests</i> . . . . .	TD-1
<i>Digests</i> . . . . .	DIG-1