



Bill 47

**An Act to amend the Employment Standards Act, 2000,
the Labour Relations Act, 1995 and
the Ontario College of Trades and Apprenticeship Act, 2009 and
make complementary amendments to other Acts**

The Hon. T. Smith

Minister of Economic Development, Job Creation and Trade

Government Bill

1st Reading October 23, 2018

2nd Reading November 12, 2018

3rd Reading

Royal Assent

*(Reprinted as amended by the Standing Committee on Finance and Economic Affairs
and as reported to the Legislative Assembly November 20, 2018)*

(The provisions in this Bill will be renumbered after 3rd Reading)

This reprint of the Bill is marked to indicate the changes that were made in Committee.

The changes are indicated by underlines for new text and a ~~strikethrough~~ for deleted text.

EXPLANATORY NOTE

SCHEDULE 1 EMPLOYMENT STANDARDS ACT, 2000

The Schedule amends the *Employment Standards Act, 2000*. Here are some highlights:

New Part VII.1 provides that employees are entitled to a minimum of three hours' pay for shifts that are under three hours, except in certain circumstances.

Section 23.1 is amended to eliminate an increase to the minimum wage as of January 1, 2019. The section is also amended to provide that the minimum wage is subject to an annual inflation adjustment on October 1 of every year starting in 2020.

Certain provisions in Part XII are repealed (sections 42.1 (difference in employment status), 42.2 (difference in assignment employee status) and 42.3 (review)).

Section 50 (personal emergency leave) is repealed. New sections 50, 50.0.1 and 50.0.2 establish separate entitlements to sick leave, family responsibility leave and bereavement leave.

Certain amendments made by the *Fair Workplaces, Better Jobs Act, 2017* are also repealed.

SCHEDULE 2 LABOUR RELATIONS ACT, 1995

Section 6.1 of the *Labour Relations Act, 1995* permits a trade union to obtain a list of the employees of an employer and certain related information. The Schedule repeals that section.

Section 11 of the Act is amended to provide that, where there are certain employer contraventions of the Act, the Ontario Labour Relations Board may order that a representation vote or another representation vote be taken or may certify a trade union.

Section 15.1 of the Act is amended in respect of which addressed the circumstances in which the Board may review the structure of bargaining units and the types of orders that it may make in respect of the structure of bargaining units.is repealed.

Section 15.2 of the Act, which provides for an alternate trade union certification process in the building services industry, the home care and community services industry and the temporary help agency industry, is repealed.

Section 16.1 of the Act, which permits parties to request educational support in the practice of labour relations and collective bargaining, is repealed.

Sections 43 and 43.1 of the Act currently provide for first collective agreement mediation and mediation-arbitration. These provisions are repealed and replaced with a new section providing for first collective agreement arbitration.

Section 69.2 of the Act provides that successor employer rights may apply to other types of service providers. This section is repealed.

The timelines under section 79 of the Act for when a strike or lock-out may occur are adjusted to take into account methods of communication other than mail and to reflect other amendments that address when notices and documents are deemed to have been released.

Section 80 of the Act is amended to provide for reinstatement of an employee if an application is made within six months following the commencement of a lawful strike, subject to certain conditions.

Section 90 of the Act is amended to require the Minister to make available copies of collective agreements.

The maximum amount of a fine upon conviction for an offence is lowered from \$5000 to \$2000 for individuals and from \$100,000 to \$25,000 for corporations.

Provisions respecting the sending of notices and other documents are amended to permit and address methods of communication other than mail or personal delivery and to address when documents such as requests and applications are deemed to be received by the Minister.

Regulation-making powers are amended relating to the other amendments to the Act, and a power is added respecting regulations that provide for transitional matters in connection with the implementation of the amendments.

Various consequential amendments are made to the *Crown Employees Collective Bargaining Act, 1993*, the *Occupational Health and Safety Act*, the *Public Sector Dispute Resolution Act, 1997*, the *Public Sector Labour Relations Transition Act, 1997* and the *School Boards Collective Bargaining Act, 2014*.

SCHEDULE 3
ONTARIO COLLEGE OF TRADES AND APPRENTICESHIP ACT, 2009

The Schedule makes several changes to the *Ontario College of Trades and Apprenticeship Act, 2009*. Some highlights include:

Section 60 of the Act, which provides for review panels to make determinations about journeyperson to apprentice ratios, is repealed. Related provisions are also repealed. A new section provides that the journeyperson to apprentice ratio for all trades that are subject to ratios shall not exceed one apprentice for each journeyperson. This ratio may be changed by regulation.

A new section of the Act imposes a moratorium on the referral of trades to the Classification Roster starting on the day the *Making Ontario Open for Business Act, 2018* receives Royal Assent.

A new Part XIV.1 is added to the Act authorizing the Minister to make a regulation vesting, in the Minister, control and charge over the administration of the affairs of the Board. If such a regulation is made, the Minister is also authorized to, among other things, terminate the appointment of any member of the governing structure of the College and dissolve any divisional board or trade board. Power is also added to authorize regulations modifying, removing or adding to the College's, Board's or Registrar's powers, duties or objects, and providing for preparations to be made to wind-up the College.

The Act, or any part of it, is repealed on a date to be proclaimed by the Lieutenant Governor.

**An Act to amend the Employment Standards Act, 2000, the Labour Relations Act, 1995
and the Ontario College of Trades and Apprenticeship Act, 2009
and make complementary amendments to other Acts**

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

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Making Ontario Open for Business Act, 2018*.

**SCHEDULE 1
EMPLOYMENT STANDARDS ACT, 2000**

1 (1) The definition of “difference in employment status” in subsection 1 (1) of the *Employment Standards Act, 2000* is repealed.

(2) The definition of “personal emergency leave pay” in subsection 1 (1) of the Act is repealed.

(3) The definition of “regular wages” in subsection 1 (1) of the Act is amended by striking out “personal emergency leave pay” and “section 50”.

2 Paragraph 6 of subsection 3 (5) of the Act is repealed.

3 Subsection 5.1 (2) of the Act is repealed.

4 Subsection 15 (7) of the Act is amended by striking out “personal emergency leave” and substituting “sick leave, family responsibility leave, bereavement leave”.

5 The Act is amended by adding the following Part:

**PART VII.1
THREE HOUR RULE**

Three hour rule

21.2 (1) If an employee who regularly works more than three hours a day is required to present himself or herself for work but works less than three hours, despite being available to work longer, the employer shall pay the employee wages for three hours, equal to the greater of the following:

1. The sum of,
 - i. the amount the employee earned for the time worked, and
 - ii. wages equal to the employee’s regular rate for the remainder of the time.
2. Wages equal to the employee’s regular rate for three hours of work.

Exception

(2) Subsection (1) does not apply if the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer’s control that result in the stopping of work.

6 (1) Paragraph 1 of subsection 23.1 (1) of the Act is amended by striking out “January 1, 2019” in the portion before subparagraph i and substituting “October 1, 2020”.

(2) Paragraph 2 of subsection 23.1 (1) of the Act is repealed.

(3) Paragraph 3 of subsection 23.1 (1) of the Act is amended by striking out “2019” and substituting “2020”.

(4) Subsection 23.1 (1.1) of the Act is amended by striking out “or both subparagraphs 2 i and iv of subsection (1)”.

(5) Subsection 23.1 (2) of the Act is amended by striking out “or 2 v” in the portion before clause (a).

(6) Subsection 23.1 (4) of the Act is amended by striking out “2019” and substituting “2020”.

(7) Subsection 23.1 (7) of the Act is amended by striking out “2018” and substituting “2019”.

(8) Subsections 23.1 (10) and (11) of the Act are repealed.

7 (1) Clause 24 (1) (a) of the Act is repealed and the following substituted:

- (a) the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20; or

(2) Subsections 24 (1.1) and (1.2) of the Act are repealed.

8 (1) Clause 42 (2) (d) of the Act is amended by striking out “or employment status” at the end.

(2) Subsection 42 (6) of the Act is repealed.

9 Section 42.1 of the Act is repealed.

10 Section 42.2 of the Act is repealed.

11 Section 42.3 of the Act is repealed.

12 Subsection 49.1 (12) of the Act is repealed.

13 Subsection 49.2 (15) of the Act is repealed.

14 Subsection 49.3 (9) of the Act is repealed.

15 Subsection 49.4 (21) of the Act is repealed.

16 Subsection 49.5 (11) of the Act is repealed.

17 Subsection 49.6 (15) of the Act is repealed.

18 Subsection 49.7 (16) of the Act is repealed.

19 Section 50 of the Act is repealed and the following substituted:

SICK LEAVE

Sick leave

50 (1) An employee who has been employed by an employer for at least two consecutive weeks is entitled to a leave of absence without pay because of a personal illness, injury or medical emergency.

Same, limit

(2) An employee's entitlement to leave under this section is limited to a total of three days in each calendar year.

Advising employer

(3) An employee who wishes to take a leave under this section shall advise his or her employer that he or she will be doing so.

Same

(4) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

Leave deemed to be taken in entire days

(5) For the purposes of an employee's entitlement under subsection (1), if an employee takes any part of a day as leave under this section, the employer may deem the employee to have taken one day of leave on that day.

Evidence

(6) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave.

Sick leave taken under employment contract

(7) If an employee takes a paid or unpaid leave of absence under an employment contract in circumstances for which he or she would also be entitled to take a leave under this section, the employee is deemed to have taken the leave under this section.

Same, application of Act to deemed leave

(8) All applicable requirements and prohibitions under this Act apply to a leave deemed to have been taken under subsection (7).

Same, application of subs. (5) to deemed leave

(9) Subsection (5) applies with necessary modifications to a leave deemed to have been taken under subsection (7).

FAMILY RESPONSIBILITY LEAVE

Family responsibility leave

50.0.1 (1) An employee who has been employed by an employer for at least two consecutive weeks is entitled to a leave of absence without pay because of any of the following:

1. The illness, injury or medical emergency of an individual described in subsection (3).
2. An urgent matter that concerns an individual described in subsection (3).

Same, limit

(2) An employee's entitlement to leave under this section is limited to a total of three days in each calendar year.

Family members

(3) Subsection (1) applies with respect to the following individuals:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child or foster child of the employee or the employee's spouse.
4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse.

5. The spouse of a child of the employee.
6. The employee's brother or sister.
7. A relative of the employee who is dependent on the employee for care or assistance.

Advising employer

(4) An employee who wishes to take a leave under this section shall advise his or her employer that he or she will be doing so.

Same

(5) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

Leave deemed to be taken in entire days

(6) For the purposes of an employee's entitlement under subsection (1), if an employee takes any part of a day as leave under this section, the employer may deem the employee to have taken one day of leave on that day.

Evidence

(7) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave.

Family responsibility leave taken under employment contract

(8) If an employee takes a paid or unpaid leave of absence under an employment contract in circumstances for which he or she would also be entitled to take a leave under this section, the employee is deemed to have taken the leave under this section.

Same, application of Act to deemed leave

(9) All applicable requirements and prohibitions under this Act apply to a leave deemed to have been taken under subsection (8).

Same, application of subs. (6) to deemed leave

(10) Subsection (6) applies with necessary modifications to a leave deemed to have been taken under subsection (8).

BEREAVEMENT LEAVE

Bereavement leave

50.0.2 (1) An employee who has been employed by an employer for at least two consecutive weeks is entitled to a leave of absence without pay because of the death of an individual described in subsection (3).

Same, limit

(2) An employee's entitlement to leave under this section is limited to a total of two days in each calendar year.

Family members

(3) Subsection (1) applies with respect to the following individuals:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child or foster child of the employee or the employee's spouse.
4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse.
5. The spouse of a child of the employee.
6. The employee's brother or sister.
7. A relative of the employee who is dependent on the employee for care or assistance.

Advising employer

(4) An employee who wishes to take a leave under this section shall advise his or her employer that he or she will be doing so.

Same

(5) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

Leave deemed to be taken in entire days

(6) For the purposes of an employee's entitlement under subsection (1), if an employee takes any part of a day as leave under this section, the employer may deem the employee to have taken one day of leave on that day.

Evidence

(7) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave.

Bereavement leave taken under employment contract

(8) If an employee takes a paid or unpaid leave of absence under an employment contract in circumstances for which he or she would also be entitled to take a leave under this section, the employee is deemed to have taken the leave under this section.

Same, application of Act to deemed leave

(9) All applicable requirements and prohibitions under this Act apply to a leave deemed to have been taken under subsection (8).

Same, application of subs. (6) to deemed leave

(10) Subsection (6) applies with necessary modifications to a leave deemed to have been taken under subsection (8).

20 Subsection 50.1 (7) of the Act is repealed.

21 Part XIV of the Act is amended by adding the following section:

Leaves apply separately

53.1 For greater certainty, every entitlement to leave under this Part applies separately from, and in addition to, every other entitlement to leave under this Part.

22 Subclauses 74.12 (1) (a) (v.1), (v.2) and (v.3) of the Act are amended by striking out “is complying with Part XII (Equal Pay for Equal Work)” wherever it appears and substituting in each case “complied with section 42.2, as it read immediately before the day section 10 of Schedule 1 to the *Making Ontario Open for Business Act, 2018* came into force”.

23 Subsection 118 (3) of the Act is repealed.

24 Subsection 121 (4) of the Act is amended by striking out “118 (1) and (3) to (5)” and substituting “118 (1), (4) and (5)”.

25 Subsection 122 (7) of the Act is amended by striking out “118 (1), (3), (4) and (5)” and substituting “118 (1), (4) and (5)”.

26 (1) Paragraph 2.0.1 of subsection 141 (1) of the Act is amended by striking out “or 2 v”.

(2) Section 141 of the Act is amended by adding the following subsection:

Same

(2.0.3.1) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Making Ontario Open for Business Act, 2018*.

(3) Subsection 141 (2.0.4) of the Act is amended by striking out “subsection (2.0.3)” wherever it appears and substituting in each case “subsection (2.0.3) or (2.0.3.1)” wherever it appears.

Fair Workplaces, Better Jobs Act, 2017

27 (1) Subsection 2 (3) of Schedule 1 to the *Fair Workplaces, Better Jobs Act, 2017* is repealed.

(2) Subsection 8 (2) of Schedule 1 to the Act is repealed.

(3) Subsection 8 (6) of Schedule 1 to the Act is repealed.

(4) Section 11 of Schedule 1 to the Act is repealed.

(5) Section 12 of Schedule 1 to the Act is repealed.

Revocation

28 Ontario Regulation 375/18 is revoked.

Commencement

29 (1) Subject to subsection (2), this Schedule comes into force on the later of January 1, 2019 and the day the *Making Ontario Open for Business Act, 2018* receives Royal Assent.

(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 2
LABOUR RELATIONS ACT, 1995

1 Section 6.1 of the *Labour Relations Act, 1995* is repealed and the following substituted:

Transition re employee lists

6.1 (1) Any application made under this section, as it read immediately before the day section 1 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, that, on that day, is before the Board but has not been determined by it, shall be terminated on that day.

Same

(2) If a trade union obtained a list of employees in accordance with a direction of the Board under this section, as it read immediately before the day section 1 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, the trade union shall, on or immediately after that day, destroy the list in such a way that it cannot be reconstructed or retrieved.

2 Subsection 11 (2) of the Act is repealed and the following substituted:

Same

(2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,

- (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
- (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or
- (c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.

Same

(3) An order under subsection (2) may be made despite section 8.1 or subsection 10 (2).

Considerations

(4) On an application made under this section, the Board may consider,

- (a) the results of a previous representation vote; and
- (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

3 Section 11.2 of the Act is amended by adding the following subsection:

Transition

(3) Any application made under section 11, as it read immediately before the day section 3 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, that, on that day, is before the Board but has not been determined by it, shall be determined in accordance with section 11, as amended by that Act.

4 Section 15.1 of the Act is repealed and the following substituted:

Review of structure of bargaining units — units no longer appropriate

15.1 (1) The Board may review the structure of the bargaining units if all of the following conditions are met:

- 1. An employer or a trade union that represents a bargaining unit of employees of an employer makes an application to the Board requesting the review.
- 2. The Board is satisfied that the bargaining units are no longer appropriate for collective bargaining.

Notice of application and participation in review

(2) Notice of an application under subsection (1) shall be provided in accordance with the following rules and the Board shall permit each party who may be affected by the application to participate in the review:

- 1. If the applicant is the employer, it shall deliver a copy of the application to any trade union that represents employees of the employer who may be affected by the application.
- 2. If the applicant is a trade union, it shall deliver a copy of the application to the employer and to any other trade union that represents employees of the employer that may be affected by the application.
- 3. For the purposes of paragraphs 1 and 2, delivery of the copy of the application shall be made by such time as is required under the rules made by the Board and, if there is no rule, not later than the day on which the application is filed with the Board.

Agreement of parties

- (3) If the Board reviews the structure of the bargaining units, the Board,
- (a) must allow the parties to come to an agreement, within a period that the Board considers reasonable, with respect to the determination of bargaining units and any questions arising from its review; and
 - (b) may make any orders it considers appropriate to implement any agreement.

Orders

- (4) If the Board is of the opinion that the agreement reached by the parties would not lead to the creation of units appropriate for collective bargaining or if the parties do not agree on certain issues within the period that the Board considers reasonable, the Board shall determine any question that arises and make any orders it considers appropriate in the circumstances.

Contents of orders

- (5) For the purposes of subsection (4), the Board may,
- (a) consolidate, restructure or otherwise reconfigure a bargaining unit or units and create a new bargaining unit or units;
 - (b) determine which trade union shall be the bargaining agent for the employees in each bargaining unit that results from the review;
 - (c) amend any certification order or description of a bargaining unit contained in any collective agreement;
 - (d) if more than one collective agreement applies to employees in a bargaining unit, make an order that states which collective agreement applies;
 - (e) amend, to the extent that the Board considers necessary, the provisions of collective agreements respecting expiry dates or seniority rights, or amend other such provisions;
 - (f) if the conditions of subsection 79 (2) have been met with respect to some of the employees in a bargaining unit, decide which terms and conditions of employment apply to those employees until the time that a collective agreement becomes applicable to the unit or the conditions of that subsection are met with respect to the unit; and
 - (g) authorize a party to give notice to bargain collectively.

Consideration of other applications

- (6) The Board may consider an application for review under subsection (1) together with an application under subsection 4 (4) or section 69.

Powers of Board before disposing of application

- (7) Before disposing of any application under this section, the Board may hold such representation votes as it considers appropriate.

Bar to reapplying

- (8) If the Board conducts a review under this section, the Board shall not consider another application under this section by the employer that was subject to the review or by any trade union that represents a bargaining unit of employees of that employer until one year after the day the parties come to an agreement under subsection (3) or one year after the day the Board makes an order under subsection (4), as the case may be.

Non-application to construction industry

- (9) This section does not apply with respect to an employer as defined in subsection 126 (1).

Transition

- (10) Any application made under this section, as it read immediately before the day section 4 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, that, on that day, is before the Board but has not been determined by it, shall be determined in accordance with this section, as amended by that Act.

4 Section 15.1 of the Act is repealed.

5 Section 15.2 of the Act is repealed and the following substituted:

Transition

- 15.2** If a trade union elected to have an application for certification dealt with under this section, as it read immediately before the day section 5 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, and, on that day, the application is before the Board but has not been determined by it, the application will be dealt with as follows:

1. If the application was filed before the day the *Making Ontario Open for Business Act, 2018* received first reading, the application shall be determined in accordance with this section, as it read immediately before that day.

2. If the application was filed on or after the day the *Making Ontario Open for Business Act, 2018* received first reading, the application shall be determined in accordance with section 8.

6 Section 16.1 of the Act is repealed.

7 Section 18 of the Act is amended by adding the following subsection:

Material to be filed

- (2.1) Any party who requests the appointment of a conciliation officer under subsection (1) or (2) shall file with that request a copy of the most recent collective agreement, if any, in the form specified by the Minister, together with any other prescribed information.

8 Sections 43 and 43.1 of the Act are repealed and the following substituted:

First agreement arbitration

- 43** (1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration.

Duty of Board

- (2) The Board shall consider and make its decision on an application under subsection (1) within 30 days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether section 17 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of,

- (a) the refusal of the employer to recognize the bargaining authority of the trade union;
- (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- (c) the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or
- (d) any other reason the Board considers relevant.

Choice of arbitrator

- (3) Where a direction is given under subsection (2), the first collective agreement between the parties shall be settled by a board of arbitration unless, within seven days of the giving of the direction, the parties notify the Board that they have agreed that the Board arbitrate the settlement.

Arbitration by Board

- (4) Where the parties give notice to the Board of their agreement that the Board arbitrate the settlement of the first collective agreement, the Board,

- (a) shall appoint a date for and commence a hearing within 21 days of the giving of the notice to the Board; and
- (b) shall determine all matters in dispute and release its decision within 45 days of the commencement of the hearing.

Same

- (5) The parties to an arbitration by the Board shall jointly pay to the Board for payment into the Consolidated Revenue Fund the amount determined under the regulations for the expense of the arbitration.

Private arbitration

- (6) Where the parties do not agree that the Board arbitrate the settlement of the first collective agreement, each party, within 10 days of the giving of the direction under subsection (2), shall inform the other party of the name of its appointee to the board of arbitration referred to in subsection (3) and the appointees so selected, within five days of the appointment of the second of them, shall appoint a third person who shall be the chair.

Same

- (7) If a party fails to make appointment as required by subsection (6) or if the appointees fail to agree upon a chair within the time limit, the appointment shall be made by the Minister upon the request of either party.

Same

- (8) A board of arbitration appointed under this section shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions and section 116 applies to the board of arbitration, its decision and proceedings as if it were the Board.

Same

- (9) The remuneration and expenses of the members of a board of arbitration appointed under this section shall be paid as follows:

1. A party shall pay the remuneration and expenses of the member appointed by or on behalf of the party.
2. Each party shall pay one-half of the remuneration and expenses of the chair.

Same

(10) Subsections 6(8), (9), (10), (12), (13), (14), (17) and (18) of the *Hospital Labour Disputes Arbitration Act* and subsections 48(12) and (18) of this Act apply with necessary modifications to a board of arbitration established under this section.

Same

(11) The date of the first hearing of a board of arbitration appointed under this section shall not be later than 21 days after the appointment of the chair.

Same

(12) A board of arbitration appointed under this section shall determine all matters in dispute and release its decision within 45 days of the commencement of its hearing of the matter.

Mediation

(13) The Minister may appoint a mediator to confer with the parties and endeavour to effect a settlement.

Effect of direction on strike or lock-out

(14) The employees in the bargaining unit shall not strike and the employer shall not lock out the employees where a direction has been given under subsection (2) and, where the direction is made during a strike by, or a lock-out of, employees in the bargaining unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lock-out and the employer shall forthwith reinstate the employees in the bargaining unit in the employment they had at the time the strike or lock-out commenced,

- (a) in accordance with any agreement between the employer and the trade union respecting reinstatement of the employees in the bargaining unit; or
- (b) where there is no agreement respecting reinstatement of the employees in the bargaining unit, on the basis of the length of service of each employee in relation to that of the other employees in the bargaining unit employed at the time the strike or lock-out commenced, except as may be directed by an order of the Board made for the purpose of allowing the employer to resume normal operations.

Non-application

(15) The requirement to reinstate employees set out in subsection (14) applies despite the fact that replacement employees may be performing the work of employees in the bargaining unit, but subsection (14) does not apply so as to require reinstatement of an employee where, because of the permanent discontinuance of all or part of the business of the employer, the employer no longer has persons engaged in performing work of the same or a similar nature to work which the employee performed before the strike or lock-out.

Working conditions not to be altered

(16) Where a direction has been given under subsection (2), the rates of wages and all other terms and conditions of employment and all rights, privileges and duties of the employer, the employees and the trade union in effect at the time notice was given under section 16 shall continue in effect, or, if altered before the giving of the direction, be restored and continued in effect until the first collective agreement is settled.

Non-application

(17) Subsection (16) does not apply so as to effect any alteration in rates of wages or in any other term or condition of employment agreed to by the employer and the trade union.

Matters to be accepted or considered

(18) In arbitrating the settlement of a first collective agreement under this section, matters agreed to by the parties, in writing, shall be accepted without amendment.

Effect of settlement

(19) A first collective agreement settled under this section is effective for a period of two years from the date on which it is settled and it may provide that any of the terms of the agreement, except its term of operation, shall be retroactive to the day that the Board may fix, but not earlier than the day on which notice was given under section 16.

Extension of time

(20) The parties, by agreement in writing, or the Minister may extend any time limit set out in this section, despite the expiration of the time.

Non-application

- (21) This section does not apply to the negotiation of a first collective agreement,
- where one of the parties is an employers' organization accredited under section 136 as a bargaining agent for employers; or
 - where the agreement is a provincial agreement within the meaning of section 151.

Application

- (22) This section applies to an employer and a trade union where the trade union has acquired or acquires bargaining rights for employees of the employer before or after May 26, 1986, and the bargaining rights have been acquired since January 1, 1984 and continue to exist at the time of an application under subsection (1).

Definitions

- (23) In subsections (24) to (29),

“decertification application” means an application for a declaration that a trade union no longer represents the employees in a bargaining unit; (“requête en révocation de l'accréditation”)

“displacement application” means an application for certification by a trade union, other than the trade union that represents the employees in a bargaining unit, as bargaining agent for those employees. (“requête en substitution”)

Application of subs. (25)

- (24) Subsection (25) applies if,

- a decertification application or displacement application has been filed with the Board and before a final decision is made on it an application under subsection (1) is filed with the Board; or
- an application under subsection (1) has been filed with the Board and before a final decision is made on it a decertification application or displacement application is filed with the Board.

Procedure in dealing with multiple applications

- (25) The Board shall proceed to deal with an application under subsection (1) before dealing with or continuing to deal with the decertification application or displacement application.

Same

- (26) If the Board gives a direction under subsection (2), it shall dismiss the decertification application or displacement application.

Same

- (27) If the Board dismisses the application under subsection (1), it shall proceed to deal with the decertification application or displacement application.

Same

- (28) A decertification application filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsection 63 (2).

Same

- (29) A displacement application filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsections 7 (4), (5) and (6).

Procedure

- (30) The *Arbitration Act, 1991* does not apply to an arbitration under this section.

Transition

- 43.1** (1) Unless otherwise provided, a reference in this section to section 43.1 or a provision of it is a reference to the section or provision as it read immediately before the day section 8 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force.

Same

- (2) If, on the day section 8 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force,

- the Board has directed the settlement of a first collective agreement by mediation-arbitration under clause 43.1 (2) (c), section 43.1 shall continue to apply until the parties have entered into a first collective agreement;

- (b) any parties are in first collective agreement mediation under section 43, as it read immediately before the day section 8 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, the mediation shall cease on or immediately after that day; and
- (c) an application for first collective agreement mediation-arbitration has been made under section 43.1 but the Board has not directed the settlement of a first collective agreement by mediation-arbitration under clause 43.1 (2) (c), the application shall proceed under section 43, as amended by section 8 of Schedule 2 to the *Making Ontario Open for Business Act, 2018*.

9 Section 69.2 of the Act is repealed.

10 Subsection 79 (2) of the Act is repealed and the following substituted:

No agreement

(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and,

- (a) nine days have elapsed after the day the Minister is deemed pursuant to subsection 122 (2) to have released to the parties the report of a conciliation board or mediator; or
- (b) 16 days have elapsed after the day the Minister is deemed pursuant to subsection 122 (2) to have released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board.

11 (1) Subsection 80 (1) of the Act is amended by striking out “following” and substituting “within six months from”.

(2) Subsections 80 (3) to (7) of the Act are repealed and the following substituted:

Transition

(3) Subsection (1), as it read immediately before the day section 11 of Schedule 2 to the *Making Ontario Open for Business Act, 2018* came into force, continues to apply to applications made before that date.

12 Section 90 of the Act is repealed and the following substituted:

Collective agreements to be filed

90 (1) Each party to a collective agreement shall, forthwith after it is made, file one copy with the Minister in the form specified by the Minister.

Collective agreements to be made public

(2) The Minister shall publish the copies of collective agreements filed under subsection (1) or otherwise make them available to the public.

Same

(3) For greater certainty, the Minister may satisfy the obligation set out in subsection (2) by publishing the copies on a Government of Ontario website.

13 The Act is amended by adding the following section immediately before the heading “Enforcement”:

Indirect collection of personal information

95.1 If the Minister is authorized to collect personal information indirectly under this Act in a request, application, notification or filing given or made to the Minister, without limiting the Minister’s ability to give notice in other ways, the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* may be given by a public notice posted on a Government of Ontario website.

14 (1) Clause 104 (1) (a) of the Act is amended by striking out “\$5,000” and substituting “\$2,000”.

(2) Clause 104 (1) (b) of the Act is amended by striking out “\$100,000” and substituting “\$25,000”.

15 Subsection 110 (19) of the Act is repealed.

16 (1) Subsections 122 (1) and (2) of the Act are repealed and the following substituted:

Application

(0.1) The provisions of this section apply, subject to any rules made under subsection 110 (17) or (18).

Notice

(1) For the purposes of this Act, and any proceedings taken under it, any notice or communication may be sent,

- (a) by mail;
- (b) by courier;
- (c) by fax;

- (d) by email; or
- (e) by any other method that may be prescribed.

Presumed receipt of mail

(1.1) For the purposes of this Act and of any proceedings taken under it, any notice or communication sent by mail shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

Same

(1.2) For the purposes of this Act and of any proceedings taken under it, any notice or communication sent by the Minister, the Board or the Director of Dispute Resolution Services by a method mentioned in subsection (1) shall be presumed, unless the contrary is proved, to have been received by the addressee.

Time of release

(2) A decision, determination, report, interim order, order, direction, declaration or ruling of the Board, a notice that the Minister does not consider it advisable to appoint a conciliation board, a notice from the Minister of a report of a conciliation board or of a mediator, or a decision of an arbitrator or of an arbitration board, shall be deemed to be released on the day it is sent.

(2) Subsection 122 (3) of the Act is amended by striking out “sent by mail and addressed to” and substituting “sent to”.

(3) Subsection 122 (4) of the Act is amended,

- (a) by striking out “by registered mail”; and
- (b) by striking out “on which the first notice was mailed” and substituting “on which the first notice was sent”.

17 The Act is amended by adding the following section:

Requests, applications etc. to Minister

122.1 (1) Any request, application, notification, report or filing that is given or made to the Minister under this Act shall be deemed to be given or made on the day determined under subsection (2) if it is,

- (a) delivered to the Minister’s office on a day and at a time when it is open;
- (b) mailed to the Minister’s office using a method of mail delivery that allows delivery to be verified;
- (c) sent to the Minister’s office by fax or email;
- (d) electronically filed with the Minister’s office; or
- (e) sent to the Minister’s office by any other method that may be prescribed.

Requests, applications etc. to Minister

122.1 (1) Any request, application, notification, report or filing that is given or made to the Minister under this Act shall be given or made by,

- (a) delivering it to the Minister’s office on a day and at a time when it is open;
- (b) mailing it to the Minister’s office using a method of mail delivery that allows delivery to be verified;
- (c) sending it to the Minister’s office by fax or email;
- (d) electronically filing it with the Minister’s office; or
- (e) sending it to the Minister’s office by any other method that may be prescribed.

Deemed receipt

(2) A request, application, notification, report or filing that is given or made as described in subsection (1) shall be deemed to be received by the Minister,

- (a) in the case of clause (1) (a), on the day shown on a receipt or acknowledgment provided by the Minister or his or her representative;
- (b) in the case of clause (1) (b), on the day shown in the verification;
- (c) in the case of clause (1) (c), on the day on which the fax or email is sent, subject to subsection (3);
- (d) in the case of clause (1) (d), on the day on which the electronic filing was made, subject to subsection (3); and
- (e) in the case of clause (1) (e), on the prescribed day.

Same

(3) If a fax, email or electronic filing is sent on a day on which the Minister's office is closed, or after 5 p.m. eastern standard or daylight saving time on any day, it shall be deemed to have been received on the next day on which the Minister's office is not closed.

Same

(4) If the Minister's power that corresponds to the request, application, notification, report or filing has been delegated, the reference to the Minister in subsections (1) to (3) shall be read as a reference to the Minister's delegate.

18 (1) Clause 125 (1) (i) of the Act is amended by adding “and providing for the publication of such awards by the Minister” after “arbitration boards”.

(2) Clauses 125 (1) (i.1), (i.2), (i.3) and (i.4) of the Act are repealed.

(2) Clauses 125 (1) (i.1), (i.2), (i.3) and (i.4) of the Act are repealed and the following substituted:

(i.1) prescribing information for the purposes of subsection 18 (2.1);

(3) Clause 125 (1) (j) of the Act is amended by striking out “subsection 43.1 (11)” and substituting “subsection 43 (5)”.

(4) Clause 125 (1) (j.1) of the Act is repealed and the following substituted:

(j.1) prescribing other methods of sending a notice or communication for the purposes of clause 122 (1) (e);

(j.2) prescribing other methods of sending a request, application, notification, report or filing for the purposes of clause 122.1 (1) (e) and the date on which such a document is deemed to be received for the purposes of clause 122.1 (2) (e);

(5) Section 125 of the Act is amended by adding the following subsection:

Same

(2.1) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by Schedule 2 to the *Making Ontario Open for Business Act, 2018*.

(6) Subsection 125 (3) of the Act is amended by adding “or (2.1)” after “(2)”.

19 Subsection 160 (2) of the Act is amended by striking out “subsection 11 (2)” and substituting “clause 11 (2) (c)”.

Crown Employees Collective Bargaining Act, 1993

20 (1) Subsection 5 (1) of the *Crown Employees Collective Bargaining Act, 1993* is repealed and the following substituted:

s. 43 (First agreement arbitration)

(1) The operation of section 43 of the *Labour Relations Act, 1995* is subject to the modifications set out in this section.

(2) Subsection 5 (2) of the Act is amended by striking out “mediation-arbitrations under section 43.1” in the portion before paragraph 1 and substituting “arbitrations under section 43”.

(3) Subsection 5 (3) of the Act is amended,

(a) by striking out “mediation-arbitration” wherever it appears and substituting in each case “arbitration”; and

(b) by striking out “subsection 43.1 (15)” and substituting “subsection 43 (11)”.

(4) Subsection 5 (4) of the Act is repealed and the following substituted:

Minister’s order: completion of arbitration

(4) If the decision of the board of arbitration is not released within the time period set out in subsection 43 (12) of the *Labour Relations Act, 1995*, the Minister may,

(a) make such orders as he or she considers necessary to ensure that the decision will be given without undue delay; and

(b) make such orders as he or she considers appropriate respecting the remuneration and expenses of the members of the board of arbitration.

(5) Subsection 5 (5) of the Act is amended by striking out “A mediator-arbitrator” at the beginning and substituting “An arbitrator or board of arbitration”.

(6) Section 26 of the Act is amended by striking out “Sections 43 and 43.1 of the *Labour Relations Act, 1995* do not apply” at the beginning and substituting “Section 43 of the *Labour Relations Act, 1995* does not apply”.

Occupational Health and Safety Act

21 Subsection 50 (4.2) of the *Occupational Health and Safety Act* is amended by striking out “(19)” after “Subsections 110”.

Public Sector Dispute Resolution Act, 1997

22 Clause 2 (1) (e) of the *Public Sector Dispute Resolution Act, 1997* is amended by striking out “as it read immediately before the day section 6 of Schedule 2 to the *Fair Workplaces, Better Jobs Act, 2017* came into force” after “*Labour Relations Act, 1995*”.

Public Sector Labour Relations Transition Act, 1997

23 Subsections 32 (1), (2), and (3) of the *Public Sector Labour Relations Transition Act, 1997* are each amended by striking out “as it read immediately before the day section 6 of Schedule 2 to the *Fair Workplaces, Better Jobs Act, 2017* came into force”.

School Boards Collective Bargaining Act, 2014

24 Subsections 25 (9), 28 (10) and 45.1 (7) of the *School Boards Collective Bargaining Act, 2014* are each amended by striking out “(19)” after “subsections 110”.

Commencement

25 This Schedule comes into force on the day the *Making Ontario Open for Business Act, 2018* receives Royal Assent.

SCHEDULE 3
ONTARIO COLLEGE OF TRADES AND APPRENTICESHIP ACT, 2009

1 (1) The definition of “Minister’s regulation” in section 1 of the *Ontario College of Trades and Apprenticeship Act, 2009* is amended by striking out “under subsection 74 (3)” at the end and substituting “under this Act”.

(2) The definition of “review panel” in section 1 of the Act is repealed.

2 Section 8 of the Act is amended by striking out “has been prescribed under section 60” and substituting “established by section 60 or by a Minister’s regulation”.

3 Paragraph 9 of subsection 11 (1) of the Act is repealed.

4 Section 15 of the Act is amended by adding “or by a Minister’s regulation” at the end.

5 Subsections 21 (1) to (4.1) of the Act are repealed.

6 Section 60 of the Act is repealed and the following substituted:

Ratios

60 (1) If a trade has been prescribed by a Minister’s regulation as being subject to a journeyperson to apprentice ratio, the number of apprentices who may be sponsored or employed by a person in the trade in relation to the number of journeypersons employed or otherwise engaged by the person in the trade shall not exceed one apprentice for each journeyperson.

Statement of membership

(2) A member who holds a statement of membership for a compulsory trade in the journeyperson candidates class that is not suspended is deemed to be an apprentice for the purpose of a journeyperson to apprentice ratio for the trade.

Extended definition

(3) For the purposes of subsection (1),

“journeyperson” includes an individual who practices as a journeyperson in a voluntary trade but who does not hold a certificate of qualification in that trade.

7 The Act is amended by adding the following section:

Moratorium re referrals

63.5.1 (1) Despite sections 63.4 and 63.5 and any regulations made under this Act, starting on the day the *Making Ontario Open for Business Act, 2018* receives Royal Assent, there shall be a moratorium on referrals of trades to the Classification Roster such that no trades may be referred to the Classification Roster.

Same

(2) The moratorium shall be subject to any requirements, limitations, conditions or terms provided in a Minister’s regulation, if any.

Termination of moratorium

(3) The moratorium shall continue until it is terminated by a Minister’s regulation.

Appointments

(4) Starting on the day the *Making Ontario Open for Business Act, 2018* receives Royal Assent, the Appointments Council may not appoint any person to the roster of adjudicators unless a Minister’s regulation has been made that provides that the moratorium does not apply in respect of a trade or trades or that the moratorium does not apply in respect of section 63.4 or 63.5.

8 Subsection 63.6 (2) of the Act is repealed and the following substituted:

Same

(2) The associate chair of the Classification Roster may not be a member of a classification panel and may not appoint a member to a classification panel who, in the associate chair’s opinion, could have a real or perceived interest in the determination of the classification panel.

9 (1) Paragraph 21 of subsection 72 (1) of the Act is repealed.

(2) Paragraphs 23 and 23.1 of subsection 72 (1) of the Act are repealed and the following substituted:

23. providing that journeyperson candidates may be deemed to be apprentices for the purposes of calculating the journeyperson to apprentice ratio, and for the purposes of section 68;

10 Paragraph 30 of subsection 73 (1) of the Act is amended by striking out “review panels or”.

11 (1) Subsection 74 (3) of the Act is amended by adding the following clause:

(a.1) providing for any transitional matter that may arise in connection with a trade no longer being prescribed in a regulation made under clause (a) as a prescribed trade for the purposes of this Act;

(2) Clause 74 (3) (b.2) of the Act is repealed.

(3) Subsection 74 (3) of the Act is amended by adding the following clauses:

(d.1) prescribing that, despite section 60, a different journeyperson to apprentice ratio for a trade or trades applies than the ratio set out in section 60;

(d.2) establishing and governing processes by which the Minister may grant to a person an exemption from the journeyperson to apprentice ratio set out in section 60 or in a Minister's regulation, and specify a different ratio, and specifying criteria, terms and conditions that may apply to the process;

(d.3) governing a moratorium under section 63.5.1, including providing for any requirements, limitations, conditions or terms that shall apply to the moratorium and the date on which the moratorium terminates, and providing for different rules for different trades;

12 (1) Subsection 78 (1) of the Act is amended by striking out “a trade board or a review panel” and substituting “or a trade board”.

(2) Subsection 78 (2) of the Act is repealed and the following substituted:

College, etc.

(2) No action or other proceeding shall be commenced against the College, the chair of or members of either branch of the Appointments Council and Classification Roster, a member of the Board, a divisional board or a trade board, an officer or employee of the College, or a person appointed under subsection 87.0.2 (2), for any act done in good faith in the performance or intended performance of his or her duties or for any neglect or default in the performance in good faith of his or her duties.

13 The Act is amended by adding the following Part:

**PART XIV.1
SPECIAL POWERS OF THE MINISTER**

Power of the Minister

87.0.1 The Minister may,

- (a) terminate the appointment of any member of the governing structure of the College at any time without notice or cause;
- (b) dissolve any divisional board, despite section 19;
- (c) dissolve any trade board;
- (d) dissolve any committee of the Board established under this Act; and
- (e) exercise any power or perform any duty of the Appointments Council.

Control of the Board

87.0.2 (1) The Minister may make a regulation vesting, in the Minister, control and charge over the administration of all the affairs of the Board, other than any matters specified in the regulation for which the Board shall continue to have its powers.

Same

(2) If the Minister makes a regulation under subsection (1), the Minister may appoint a person who shall exercise the powers and perform the duties of the Minister under this section or section 87.0.1 that the Minister assigns to him or her, and such other duties as the Minister may assign.

Same

(3) If the Minister makes a regulation under subsection (1),

- (a) the Minister has control and charge over the exercise and performance of all of the Board's powers, duties and obligations with respect to all matters, other than the matters for which the Board shall continue to have its powers, including, for greater certainty and without limiting the generality of the foregoing, the power to make, amend or revoke a by-law;
- (b) all things done by or for the Minister under the regulation in relation to the affairs of the Board or under this section shall for all purposes be deemed to have been done by and for the Board;
- (c) the Minister may direct the Registrar respecting anything that the Registrar is required or authorized to do under this Act, and if the Registrar does not carry out a direction, the Minister may carry it out;

- (d) the Minister shall have access at all times to all records, documents and information of the Board, College and Registrar, including but not limited to all records relating to their financial transactions, and may inspect and copy them;
- (e) the Minister may deal with all of the College's financial matters, including but not limited to its revenues and expenditures;
- (f) the Minister may sell or otherwise dispose of any of the College's assets;
- (g) all expenses and liabilities of the College shall continue to be the responsibility of the College and all expenses and liabilities of the College shall continue to be paid from the College's revenues; and
- (h) all expenses incurred by the Minister in doing anything under the regulation or this section, including any remuneration or expenses payable in relation to a person appointed under subsection (2), shall be paid by the College to the extent directed by the Minister and be chargeable to such of its accounts as the Minister may direct.

Regulations

87.0.3 The Minister may make regulations,

- (a) making, amending or revoking a Board regulation;
- (b) providing for any power, duty or object of the College, the Board or the Registrar to not apply or to apply with specified modifications or providing for additional powers, duties or objects of the College, the Board or the Registrar;
- (c) providing for any fee set out in the by-laws to not apply or to apply with specified modifications;
- (d) providing for a different composition of the Board than that set out in subsection 13 (1) and that a quorum of the Board is a different number than the number set out in section 14; and
- (e) providing for preparations to be made to wind-up the College, including preparations regarding the College's assets, liabilities and employees.

14 Section 87.1 of the Act is repealed.

15 The *Ontario College of Trades and Apprenticeship Act, 2009* is repealed.

Commencement

16 (1) Subject to subsections (2) and (3), this Schedule comes into force on the day the *Making Ontario Open for Business Act, 2018* receives Royal Assent.

(2) Subject to subsection (3), section 15 comes into force on a day to be named by proclamation of the Lieutenant Governor.

(3) Any proclamation under subsection (2) may apply to the whole or any part, section or subsection of the *Ontario College of Trades and Apprenticeship Act, 2009*, and proclamations may be issued at different times with respect to any part, section or subsection of that Act.