

1980

# c 338 Ontario Highway Transport Board Act

Ontario

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CHAPTER 338

Ontario Highway Transport Board Act

1. In this Act,

Interpre-  
tation

(a) "Board" means the Ontario Highway Transport Board established under this Act;

(b) "Minister" means such Minister as is designated by the Lieutenant Governor in Council;

(c) "public commercial vehicle" means a public commercial vehicle as defined in the *Public Commercial Vehicles Act*; R.S.O. 1980, c. 407

(d) "public vehicle" means a public vehicle as defined in the *Public Vehicles Act*. R.S.O. 1970, c. 316, s. 1. R.S.O. 1980, c. 425

2.—(1) The board known as the Ontario Highway Transport Board is continued and shall consist of three members or as many more as the Lieutenant Governor in Council may from time to time determine. Ontario Highway Transport Board

(2) The members shall be appointed by the Lieutenant Governor in Council and one of them shall be designated as chairman and not more than two of them as vice-chairmen. R.S.O. 1970, c. 316, s. 2. Appointment

3. A vacancy in membership of the Board or the absence or inability of a member to act does not impair the powers of the Board or of the remaining members who may exercise all the jurisdiction and powers of the Board. R.S.O. 1970, c. 316, s. 3. Powers of Board on vacancy

4. Vacancies in the membership of the Board caused by death, resignation or otherwise may be filled by the Lieutenant Governor in Council. R.S.O. 1970, c. 316, s. 4. Vacancies

5. Subject to section 6, two members of the Board constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board. R.S.O. 1970, c. 316, s. 5. Quorum

One member may be authorized to hear application

**6.**—(1) The chairman may authorize one member of the Board to hear and dispose of any application or reference to the Board, or any rehearing or review under section 17, and that member may exercise all the powers of the Board with respect thereto.

Decision of member

(2) Any decision, order, certificate, report or recommendation of a member of the Board made under subsection (1) shall be deemed to be a decision, order, certificate, report or recommendation of the Board for the purposes of this Act. 1979, c. 43, s. 1.

When vice-chairman may act

**7.**—(1) In the absence of the chairman or in case of his inability to act or if there is a vacancy in the office, the vice-chairman may act as, and has all the powers of, the chairman, including the power to complete any unfinished matter.

Idem

(2) Where the vice-chairman has acted in place of the chairman, it shall be presumed conclusively that he so acted in the absence or disability or vacancy in the office of the chairman. R.S.O. 1970, c. 316, s. 7.

Attendance to duties

**8.** Unless otherwise authorized by statute or the standing orders of the Assembly or the Lieutenant Governor in Council, the members of the Board shall devote the whole of their time to the performance of their duties as members of the Board, and shall not accept or hold any office or employment inconsistent with such duties. R.S.O. 1970, c. 316, s. 8.

Staff

**9.** The staff of the Board shall consist of a secretary and such officers and employees as may be considered necessary. R.S.O. 1970, c. 316, s. 9.

Power to require filing of information

**10.** The Board may require any person engaged in the transportation of goods or passengers to produce and file with the Board at any time or periodically such documents and information as it considers necessary. R.S.O. 1970, c. 316, s. 11.

Members of Board not personally liable

**11.**—(1) No member of the Board and no officer, agent or employee of the Board is personally liable for anything done by him in good faith under the authority of this Act or the regulations.

Crown not relieved of liability  
R.S.O. 1980,  
c. 393

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort to which it would otherwise be

subject, and the Crown is liable under that Act for any tort in a like manner as if subsection (1) had not been enacted. 1971, c. 50, s. 62 (3).

(3) No member of the Board or of its staff is required to give testimony in any civil suit with regard to information obtained by him in the discharge of his official duty. R.S.O. 1970, c. 316, s. 12 (2). Protection from being called as witnesses

**12.**—(1) An order, certificate, report or recommendation made after a hearing is effective upon being signed, Signing of orders, etc.

- (a) by the majority of the members who heard the matter; or
- (b) where the matter was heard by a member sitting alone or by two members, by that member or those members, as the case may be.

(2) Every order, certificate, report or recommendation to which subsection (1) does not apply is effective upon being signed by two members of the Board. Idem

(3) Every document other than an order, certificate, report or recommendation issued by the Board shall be signed by a member of the Board. 1979, c. 43, s. 2. Idem

**13.** The *Regulations Act* does not apply to any order, decision, consent, approval or certificate issued by the Board. R.S.O. 1980, c. 446 not to apply  
R.S.O. 1970, c. 316, s. 14.

**14.**—(1) The Board shall sit at such times and places as the chairman may from time to time designate and shall conduct its proceedings in such manner as may seem to it most convenient for the speedy and effectual dispatch of its duties. Sittings

(2) Where sittings of the Board are appointed to be held in a municipality in which a court house is situated, the Board and its members have in all respects the same rights as a judge of the Supreme Court with respect to the use of the court house and any part thereof, and of other buildings and apartments set aside in the municipality for the administration of justice. Use of court house

(3) Where the sittings of the Board are appointed to be held in a municipality in which there is a municipal hall but no court house, the municipality shall, upon request, allow such sittings to be held in such hall and shall make Use of town hall

all arrangements necessary and suitable for the purpose.  
R.S.O. 1970, c. 316, s. 15.

Power to  
determine  
law and  
fact

**15.** The Board has as to all matters within its jurisdiction under this Act authority to hear and determine all questions of law or of fact. R.S.O. 1970, c. 316, s. 16.

Power to  
review

**16.** The Board may at any time and from time to time rehear any application and may review, amend or revoke its decisions, orders, directions, certificates or approvals and may within its jurisdiction review, amend or revoke any decision, certificate or approval made before the 17th day of October, 1955, by the Ontario Municipal Board under *The Public Commercial Vehicles Act* and *The Public Vehicles Act*. R.S.O. 1970, c. 316, s. 17.

R.S.O. 1950,  
cc. 304, 322

Enforce-  
ment of  
orders

**17.** A certified copy of an order of the Board under this or any other Act may be filed in the office of the Registrar of the Supreme Court and thereupon it becomes a judgment or order of the Supreme Court enforceable in the same manner as a judgment or order of that court to the like effect. R.S.O. 1970, c. 316, s. 18.

Application  
of  
R.S.O. 1980,  
c. 484

**18.**—(1) Sections 4 to 24 of the *Statutory Powers Procedure Act* apply with respect to any hearing by the Board and the proceedings relating thereto.

Parties to  
rehearing

(2) Where the Board holds a rehearing under section 16, the parties to the proceedings relating to the rehearing are the persons who were parties to the initial hearing and such other persons as the Board may specify. 1971, c. 50, s. 62 (4), *part*.

Members  
making  
decision not  
to have  
taken part  
in prior  
investigation

**19.**—(1) Members of the Board assigned to render a decision or report after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or any party or his representative except upon notice to and opportunity for all parties to participate, but such members may without such notice,

(a) consult with other members of the Board; and

(b) seek legal advice from a legal adviser independent of the parties but in such case the nature of the advice shall be made known to the parties

in order that they may make submissions as to the law.

(2) The findings of fact by the Board pursuant to a hearing shall be based exclusively on the evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*. Findings of fact  
R.S.O. 1980,  
c. 484

(3) The oral evidence admitted at a hearing by the Board relating to the suspension or cancellation of an operating licence or the issue or cancellation of a vehicle licence under the *Public Vehicles Act* or the *Public Commercial Vehicles Act* shall be taken down in writing or by any other method authorized by the *Evidence Act*. 1971, c. 50, s. 62 (4), *part*. Recording of evidence  
R.S.O. 1980,  
cc. 407, 425,  
145

(4) No member of the Board shall be a party to a decision, order, certificate, report or recommendation made after a hearing unless he was present throughout the hearing and heard the evidence and arguments of the parties and, except with the consent of the parties, no decision, order, certificate, report or recommendation shall be made unless all members so present participate in the making of the decision, order, certificate, report or recommendation. Members at hearing to participate in decision

(5) Where a majority of the members of the Board hearing a matter cannot agree on a decision, order, certificate, report or recommendation, the chairman shall notify all parties to the hearing of the failure of a majority to agree and, upon the consent of the parties, assign another member of the Board to participate in the making of the decision, order, certificate, report or recommendation upon such terms as the parties may agree. Where no majority agreement

(6) Where the consent required under subsection (5) cannot be obtained, the matter shall be reheard under section 16 before a member or members of the Board who did not participate in the initial hearing. 1979, c. 43, s. 3. Idem

**20.—**(1) The costs of and incidental to any proceeding before the Board are in its discretion and may be fixed in any case at a sum certain or may be taxed. Costs

(2) The Board may order by whom and to whom any costs are to be paid and by whom they are to be taxed and allowed. Idem

(3) The Board may prescribe a scale under which such costs shall be taxed. R.S.O. 1970, c. 316, s. 19. Idem

Stated  
case

**21.**—(1) The Board shall, at the request of the Lieutenant Governor in Council, or may, of its own motion or upon the application of any party to proceedings before the Board, state a case in writing for the opinion of the Divisional Court upon any question of law.

Where  
Board  
refuses to  
state case

(2) If, on the application of a party to proceedings before it, the Board refuses to state a case under subsection (1), such party may apply to the Divisional Court for an order directing the Board to state such a case.

Determina-  
tion

(3) The Divisional Court shall hear and determine any case stated to it under this section and remit it to the Board with the opinion of the court thereon. 1971, c. 50, s. 62 (5).

L. G. in C.  
may confirm,  
vary or  
rescind  
orders

**22.** Upon the petition of any party or person interested, filed with the Clerk of the Executive Council within sixty days after the date of any order or decision of the Board, the Lieutenant Governor in Council may,

(a) confirm, vary or rescind the whole or any part of such order or decision; or

(b) require the Board to hold a new public hearing of the whole or any part of the application to the Board upon which such order or decision of the Board was made,

and the decision of the Board after the public hearing ordered under clause (b) is not subject to petition under this section. R.S.O. 1970, c. 316, s. 21.

Appeal on  
questions of  
jurisdiction  
and law

**23.**—(1) An appeal lies from the Board to the Divisional Court from any decision, order or report of the Board upon any question of jurisdiction or upon any question of law, but no such appeal lies unless leave to appeal is obtained from the court within one month of the making of the decision or order sought to be appealed from or within such further time as the court under the special circumstances of the case allows after notice to the opposite party, if any, stating the grounds of appeal. 1971, c. 50, s. 62 (6).

Notice of  
appeal

(2) Upon such leave being obtained, the Registrar shall set the appeal down for hearing at the next sittings of the court and the party appealing shall, within ten days, give to the parties affected by the appeal, or to the solicitors by whom such parties were represented before

the Board, and to the Board, notice in writing that the case has been so set down, and the appeal shall be heard and disposed of by the court as speedily as practicable.

(3) On the hearing of an appeal under this section, the court may draw such inferences as are not inconsistent with the facts expressly found by the Board and necessary for determining the question of jurisdiction or law, as the case may be, and shall specify its opinion to the Board, and the Board shall make an order in accordance with such opinion. Opinion of court

(4) The Board is entitled to be heard by counsel or otherwise upon the argument of any such appeal. R.S.O. 1970, c. 316, s. 22 (2-4). Board may be heard

(5) The court may fix the costs and fees to be taxed, allowed and paid upon appeals under this section. R.S.O. 1970, c. 316, s. 22 (5), *revised*. Costs

(6) The Board, or any member thereof, is not liable for costs in connection with any appeal or application for leave to appeal under this section. R.S.O. 1970, c. 316, s. 22 (6). Board not liable for costs

**24.** Except as provided in sections 16, 22 and 23, every order and decision of the Board is final and binding. R.S.O. 1970, c. 316, s. 23. Orders of Board final and binding

**25.—(1)** The Lieutenant Governor in Council may make regulations governing the practice and procedure in proceedings before the Board. 1971, c. 50, s. 62 (7). Practice and procedure

(2) The Board may charge and collect such fees as it considers proper for all copies of documents, maps or plans, and all certificates as to the same. Fees for copies, certificates, etc.

(3) Upon the application of any person and on payment of the prescribed fee, the secretary shall deliver to such person a certified copy of any order, decision, certificate or other document issued by the Board. R.S.O. 1970, c. 316, s. 24 (2, 3). Certified copies of documents

**26.** There shall be paid upon every application to the Board or every order thereof such fee as the Board may direct, regard being had to the time occupied by the Board and its officers and the expense occasioned to Fees of Board



Ontario in the matter, and such fee shall be paid in the first instance by the applicant and is a debt due by the applicant to Her Majesty and a summary order may be made by the Board for payment thereof, and such summary order may be made an order of the Supreme Court. R.S.O. 1970, c. 316, s. 25.

Payment  
over to  
Ontario

**27.** All fees charged and collected by the Board shall be paid over, accompanied by a detailed statement thereof, to the Treasurer of Ontario at such intervals as he may require. R.S.O. 1970, c. 316, s. 26.

Evidence  
of docu-  
ments

**28.** Every document purporting to be signed by a member or the secretary of the Board is without proof of the signature *prima facie* proof that the document was duly signed, and a copy of such document in the custody of the secretary or on record with the Board purporting to be certified by the secretary is *prima facie* proof of such document without proof of the signature of the secretary. R.S.O. 1970, c. 316, s. 27.

Annual  
report

**29.** The Board shall, after the close of each calendar year, make an annual report upon the affairs of the Board to the Minister who shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1972, c. 1, s. 101.