1970

c 147 Employment Standards Act

Ontario
CHAPTER 147

The Employment Standards Act

INTERPRETATION

1. In this Act,

(a) "Department" means the Department of Labour;

(b) "Director" means the Director of Employment Standards appointed for the purposes of this Act;

(c) "employee" includes a person who,
   (i) performs any work for or supplies any services to an employer,
   (ii) does homework for an employer, or
   (iii) receives any instruction, or training in the activity, business, work, trade, occupation or profession of the employer;

(d) "employer" includes any person who as the owner, proprietor, manager, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control or direction of, or is directly or indirectly responsible for, the employment of a person therein;

(e) "holiday" means New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day and Christmas Day and where New Year's Day, Dominion Day or Christmas Day falls on a Sunday, the day next following is in lieu thereof a holiday;

(f) "homework" means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof by a person for wages in premises occupied primarily as living accommodation, and "homeworker" has a corresponding meaning;

(g) "Minister" means the Minister of Labour or such member of the Executive Council as is for the time being charged with the administration of this Act;

(h) "regulations" means the regulations made under this Act;

(i) "wages" includes any form of remuneration for work or services performed, but does not include tips and other gratuities. 1968, c. 35, s. 1; 1970, c. 45, s. 1.
2.-(1) The Minister is responsible for the administration of this Act.

(2) A Director of Employment Standards shall be appointed for the purposes of this Act. 1968, c. 35, s. 2.

3. This Act applies notwithstanding any agreement or waiver to the contrary. 1968, c. 35, s. 3.

4. Any agreement, arrangement or understanding by an employee with an employer, or any term or condition of employment implied by law, that results in the whole or any part of the wages of an employee being retained by, returned to or accepted by the employer, either directly or indirectly, is null and void. 1970, c. 45, s. 2, part.

5. No employer shall dismiss or suspend an employee upon the ground that garnishment proceedings are or may be taken against that employee. 1970, c. 45, s. 2, part.

6. Where associated or related activities, businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, the Director may by order determine that all or any one or more of such corporations, individuals, firms, syndicates or associations are a single employer for the purposes of this Act and those corporations, individuals, firms, syndicates or associations determined to be a single employer shall be jointly and severally liable to pay unpaid wages, overtime and holiday pay and vacation pay. 1970, c. 45, s. 2, part.

7. If an activity, business, trade or undertaking is disposed of, transferred or sold in any manner or amalgamated, whether by agreement, will, instrument, transfer, including transfer of shares, or by operation of law, the period of employment of an employee of the activity, business, trade or undertaking at the time of such disposition, transfer, sale or amalgamation, shall be deemed to have been employment with the disposee, transferee, purchaser or amalgamation and the continuity of employment shall not be broken. 1970, c. 45, s. 2, part.

8.- (1) Notwithstanding the provisions of any other Act, a person to whom unpaid wages is due and owing by an employer shall have first priority over the claims or rights, including the claims or rights of the Crown, of all preferred, ordinary or general creditors of the employer to the extent of $2,000.
(2) Every employer shall be deemed to hold vacation pay accruing due to an employee in trust for the employee and for payment of the vacation pay over in the manner and at the time provided under this Act and the regulations, and the amount shall be a charge upon the assets of the employer or his estate in his hands or the hands of a trustee and shall have priority over all other claims. 1970, c. 45, s. 2, part.

9.—(1) The standards for rates of wages and vacations with pay required under this Act are minimum standards only and nothing in this Act affects any rights or benefits of an employee under any law, custom, agreement or arrangement that is more favourable to him than his rights or benefits under this Act.

(2) Where there is conflict between the rate of wages, vacations with pay or payment in lieu thereof, or hours of work determined under this Act or the regulations and those determined under any other Act or any regulation or order made thereunder, or any schedule under The Industrial Standards Act, c. 221. the greater rate of wages and vacations with pay and the lesser hours of work shall prevail. 1968, c. 35, s. 4.

10. The Director or any person designated so to do, may inquire into any matter or thing relating to the administration or enforcement of this Act and the regulations, and, without limiting the generality of the foregoing, the Director, or the person designated so to do, may,

(a) summon and enforce the attendance of witnesses, and examine them under oath and require them to produce such documents and things as he considers requisite to the full investigation and consideration of matters or things within his jurisdiction;

(b) accept such evidence, oral or written, as in his discretion he considers proper;

(c) determine that all, any one or more or any combination of a corporation, individual, firm, syndicate or association are a single employer for the purposes of this Act;

(d) determine whether a person is an employee or an employer for the purposes of this Act;

(e) determine the regular rate paid to an employee;

(f) determine whether any act, agreement, arrangement or scheme is intended to have or has the effect, directly or indirectly, of defeating the true intent and purpose of this Act;

(g) determine whether an employer has failed to pay wages, or any pay or vacation pay to which an employee is entitled under this Act or under the terms and conditions of his employment;
Acting Director

Notice of termination

11. Where the Director is unable to act or there is a vacancy in the office, the powers and duties of the Director shall be exercised and performed by such employee of the Department as the Minister designates. 1968, c. 35, s. 6.

PART II

TERMINATION OF EMPLOYMENT

12. This Part applies to the Crown, every agency thereof and any board, commission, authority or corporation that exercises any functions assigned or delegated to it by the Crown. 1970, c. 45, s. 4, part.

13.—(1) No employer shall terminate the employment of a person who has been employed for three months or more unless he gives,

(a) one weeks notice in writing to the person if his period of employment is less than two years;

(b) two weeks notice in writing to the person if his period of employment is two years or more but less than five years;

(c) four weeks notice in writing to the person if his period of employment is five years or more but less than ten years; and

(d) eight weeks notice in writing to the person if his period of employment is ten years or more,

and such notice has expired.

(2) Notwithstanding subsection 1, the notice required by an employer to terminate the employment of fifty or more persons in any period of four weeks or less shall be given in the manner and for the period prescribed in the regulations, and until the expiry of such notice the terminations shall not take effect.

(3) Subsections 1 and 2 do not apply to,

(a) a person employed for a definite term or task;

(b) a person who is temporarily laid off, as defined in the regulations;

(c) a person who has been guilty of wilful misconduct or disobedience or wilful neglect of duty that has not been condoned by the employer;
(d) a contract of employment that is or has become impossi-

ble of performance or is frustrated by a fortuitous or

unforeseeable event or circumstance; or

(e) a person employed in an activity, business, work, trade,

occupation or profession, or any part thereof, that is

exempted by the regulations.

(4) Where an employer is required to give the notice referred to

in subsection 2, he shall co-operate with the Minister during the

period of the notice in any action or program intended to facilitate

the re-establishment in employment of the persons whose em-

ployment is to be terminated.

(5) Where the notice referred to in subsection 1 or 2 has been

given,

(a) no employer shall alter the rates of wages or any other

term or condition of employment of any person to whom

notice has been given; and

(b) upon the expiry of the notice, the employer shall pay to

the person the wages and any unpaid vacation pay to

which he is entitled.

(6) Notwithstanding subsections 1 and 2, the employment of a

person may be terminated forthwith where the employer gives to

the person notice in writing to that effect and,

(a) pays to the person an amount equal to the wages to

which the person would have been entitled for work that

would have been performed by him at the regular rate

for a normal non-overtime workweek for the period of

notice prescribed under subsection 1 or the regulations,

as the case may be; and

(b) pays to the person any unpaid vacation pay to which the

person is entitled under Part VII.

(7) Any amount payable under clause a of subsection 6 shall be

deeded to be unpaid wages for the purpose of this Act.

(8) Where an employer,

(a) fails to give the notice in writing prescribed in subsection 1 or in the regulations, as the case may be;

(b) fails to pay wages or any vacation pay to which an employee is entitled under clause b of subsection 5; or

(c) fails to pay the moneys to which an employee is entitled

under subsection 6,

the Director may determine the amount or amounts that the

employee is entitled to receive and section 34 applies.

(9) Subject to subsection 10, an employee to whom notice has

been given under subsection 2 shall not terminate his employment

until after the expiry of,
(a) one weeks notice in writing to the employer if the period of employment is less than two years; and
(b) two weeks notice in writing to the employer if the period of employment is two years or more.

An employee may terminate his employment forthwith upon notice where his employer has been guilty of a breach of the terms and conditions of employment.

Nothing in this section affects any rights or benefits of an employee under any law, custom, agreement or arrangement that is more favourable to him than his rights or benefits under this section.

The Lieutenant Governor in Council may make regulations respecting any matter or thing necessary or advisable to carry out the intent and purpose of this Part, and, without restricting the generality of the foregoing, may make regulations,

(a) prescribing the length of notice of termination of employment to be given by an employer or class of employers to a class or classes of employees;
(b) prescribing the length of notice of termination of employment to be given by an employee or class of employees to an employer or class of employers;
(c) prescribing the manner of giving notice of termination of employment and the form and contents of such notice;
(d) defining "temporarily laid off", "termination of employment", and "employment for a definite term or task";
(e) prescribing what constitutes a period of employment; and
(f) exempting any activity, business, work, trade, occupation or profession, or any part thereof from the application of this Part. 1970, c. 45, s. 4, Part.

PART III

HOURS OF WORK

Subject to subsection 2, the working hours of an employee shall not exceed eight in the day and forty-eight in the week.

Subsection 1 does not apply to an employee whose only work is supervisory or managerial in character, or of a character exempted by the regulations. 1968, c. 35, s. 7.
15.—(1) Subject to subsection 2, an employer may, with the approval of the Director, and upon such terms and conditions as the Director prescribes, adopt a working day in excess of eight hours, but the working hours of his employees shall not exceed forty-eight hours in a week.

(2) The maximum working hours of an employee in a day prescribed by section 14 is subject to any schedule in force under The Industrial Standards Act. 1968, c. 35, s. 8.

16.—(1) The Director may issue a permit authorizing hours of work in an establishment in excess of those prescribed by section 14 or under section 15, but the excess working hours shall not exceed,

(a) in the case of an engineer, fireman, full-time maintenance man, receiver, shipper, delivery truck driver or his helper, watchman or other person, who in the opinion of the Director, is engaged in a similar occupation, twelve hours in each week for each employee; and

(b) in the case of all other employees, 100 hours in each year for each employee.

(2) Notwithstanding subsection 1, the Director may issue a permit for work in excess of the maximum hours prescribed by subsection 1 where he is satisfied that the nature of the work or perishable nature of raw material being processed requires the excess hours.

(3) Notwithstanding subsections 1 and 2, the overtime work of a female employee under the age of eighteen years shall not exceed six hours in a week.

(4) The limit of hours of work prescribed by subsection 1 of section 14 may be exceeded in case of an accident, or in case of work urgently required to be done to machinery or plant, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment. 1968, c. 35, s. 9.

17. A permit issued under section 16 shall contain such terms and conditions as the Director may prescribe. 1968, c. 35, s. 10.

18.—(1) No employer may require or permit work, and no employee may work or agree to work, any hours that exceed the maximum hours determined under this Act.

(2) The issuance of a permit under section 16 does not require an employee to work any hours in excess of those prescribed by section 14 without the consent or agreement of the employee or his agent. 1968, c. 35, s. 11.
19.—(1) No female employee under the age of eighteen years shall work in an establishment between the hours of 12 o'clock midnight and 6 o'clock in the forenoon of any day.

(2) Where the work period of a female employee ends between 12 o'clock midnight and 6 o'clock in the forenoon, the employer shall provide her with private transportation to her residence at his expense.

(3) Where the work period of a female employee begins between 12 o'clock midnight and 6 o'clock in the forenoon, the employer shall provide her with private transportation from her residence to the place of employment at his expense. 1968, c. 35, s. 12.

20. Every employer shall provide eating periods of at least one-half hour, or such shorter period as is approved by the Director, at such intervals as will result in no employee working longer than five consecutive hours without an eating period, but where immediately before the 1st day of January, 1969 an employer provided eating periods that were shorter than one-half hour, he may continue such eating periods unless ordered to do otherwise by the Director. 1968, c. 35, s. 13, amended.

PART IV

OVERTIME PAY

21.—(1) Where an employee works for an employer in excess of forty-eight hours in any week, he shall be paid for each hour worked in excess of forty-eight hours an amount not less than one and one-half times his regular rate.

(2) Where an employee works on a holiday, he shall be paid for each hour worked an amount not less than one and one-half times his regular rate. 1968, c. 35, s. 14.

(3) In complying with subsections 1 and 2, no employer shall reduce the regular rate of wages payable to an employee. 1970, c. 45, s. 5.

PART V

MINIMUM WAGES

22. Every employer who permits any employee to perform any work with respect to which a minimum wage is established shall be deemed to have agreed to pay to the employee at least the minimum wage established and the minimum wage shall be paid to the employee only by cash or by cheque payable at par at the place where the employee performed the work. 1968, c. 35, s. 16.
23. For the purpose of enabling a handicapped person to be gainfully employed, the Director may, upon the application of the handicapped person or his employer and with the consent of the handicapped person, his parent or guardian, authorize the employment of such handicapped person at a wage lower than the minimum wage prescribed under a regulation. 1968, c. 35, s. 17.

24. This Part does not apply to apprentices to whom The Apprenticeship and Tradesmen’s Qualification Act applies. 1968, c. 35, s. 18.

PART VI

EQUAL PAY FOR EQUAL WORK

25.—(1) No employer or person acting on behalf of an employer shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee, or vice versa, employed by him for the same work performed in the same establishment, the performance of which requires equal skill, effort, and responsibility, and which is performed under similar working conditions, except where such payment is made pursuant to,

(a) a seniority system;
(b) a merit system;
(c) a system that measures earnings by quantity or quality of production; or
(d) a differential based on any factor other than sex.

(2) No employer shall reduce the rate of pay of an employee in order to comply with subsection 1.

(3) No organization of employers or employees, as the case may be, or its agents shall cause or attempt to cause an employer to pay to his employees rates of pay that are in contravention of subsection 1.

(4) Where in the opinion of the Director an employer has not complied with subsection 1, the Director may determine the amount of moneys owing to an employee, and such amount shall be deemed to be unpaid wages.

(5) This section applies to the Crown and every agency thereof. 1968, c. 35, s. 19.

26.—(1) Where the Director is unable to effect a determination under subsection 4 of section 25, the Minister, on the recommendation of the Director, may appoint a board of inquiry, composed of one or more persons, to investigate the matter.
(2) The Director shall communicate the names of the members of the board to the parties concerned.

(3) The board shall have the powers of a conciliation board under section 30 of The Labour Relations Act.

(4) The board shall give the parties full opportunity to present evidence and to make submissions and shall recommend to the Director the course of action that ought to be taken.

(5) If the board is composed of more than one person, the recommendations of the majority are the recommendations of the board.

(6) After the board has made its recommendations, the Director may direct it to clarify or amplify any of them and they shall be deemed not to have been received by the Director until they have been so clarified or amplified.

(7) The rate of remuneration of the chairman and members of a board of inquiry appointed under this section shall be the rate paid from time to time to the chairman and members of a conciliation board under The Labour Relations Act. 1968, c. 35, s. 20.

PART VII

VACATIONS WITH PAY

27.—(1) Every employer shall give to each employee,

(a) a vacation with pay of at least one week upon the completion of the first twelve months of employment; and

(b) a vacation with pay of at least two weeks upon the completion of each twelve months of employment thereafter.

(2) Where an employee has completed twelve months of non-continuous employment during any period of thirty-six consecutive months subsequent to the year 1966, the employer shall give to the employee a vacation of at least one week with pay upon the completion of the first twelve months of non-continuous employment and a vacation of two weeks with pay upon the completion of each twelve months of employment thereafter. 1970, c. 45, s. 7, part.

28.—(1) The employer shall determine the period when an employee may take the vacation provided by section 27, which in the case of a two-week vacation may be a two-week period or two periods of one week each, but in any case the employee shall be given his vacation not later than ten months after the end of the year for which the vacation was given.
(2) Notwithstanding subsection 1, the Director may require the employer to pay to an employee at any time the vacation pay to which the employee is entitled under section 27. 1970, c. 45, s. 7, part.

29. Subject to subsection 1 of section 9, in the case of a vacation one-week vacation the amount of pay for the vacation shall not be less than an amount equal to 2 per cent of the total pay of the employee in the year for which the vacation is given and, in the case of a two-week vacation the amount of pay for the vacation shall not be less than an amount equal to 4 per cent of the total pay of the employee in the year for which the vacation is given. 1970, c. 45, s. 7, part.

30. Where an employee has not been given a vacation with pay pursuant to section 27 or the employment of an employee is terminated for any cause or by operation of law, the employee shall be paid,

(a) an amount equal to 2 per cent of the total pay of the employee in the first twelve months of employment or any part thereof; and

(b) an amount equal to 4 per cent of the total pay of the employee in each succeeding twelve months of employment, or any part thereof. 1970, c. 45, s. 7, part.

31. Any agreement between the employer and his employees respecting the method of providing funds for paying vacation pay, or payment in lieu of vacation, or of any arrangements for the taking of vacation, is subject to the approval of the Director. 1968, c. 35, s. 25.

PART VIII

HOMEWORKERS

32.—(1) An application for a permit to employ homeworkers shall be made by the employer to the Director.

(2) No person shall employ a homemaker without a permit issued by the Director.

(3) The Director may issue a permit on such terms and conditions as he considers advisable.

(4) The Director may revoke or suspend a permit for a breach of a term or condition thereof, or where the holder is liable for a nuisance within the meaning of The Public Health Act, or a breach of any Act.

(5) Every employer shall keep a register and enter therein the name and address of every homeworker to whom he gives homework, and the wages paid therefor. 1968, c. 35, s. 26.
33. Every employer shall furnish to every employee at the time wages are paid to the employee, a statement in writing which can be retained by the employee, setting forth,

(a) the period of time or the work for which the wages are being paid;

(b) the rate of wages to which the employee is entitled unless such information is furnished to the employee in some other manner;

(c) the amount of the wages to which the employee is entitled;

(d) the amount of each deduction from the wages of the employee and the purpose for which each deduction is made;

(e) any living allowance or other payment to which the employee is entitled; and

(f) the net amount of money being paid to the employee. 1968, c. 35, s. 27.

34.—(1) Where an employer has failed to pay any amount of wages, overtime pay, pay for work performed on a holiday or vacation pay that is due to an employee or employees under this Act or under any law, custom, agreement or arrangement that is more favourable to him or them than his or their rights or benefits under this Act, the Director or any person designated so to do may determine the amount or amounts due to the employee or employees.

(2) Where a determination has been made under subsection 1, the Director or any person designated so to do shall by notice in writing require the employer to pay to the Director in trust any amount, not exceeding $2,000 for any employee, that an employer has failed to pay to his employee or employees, and in addition to that amount the Director or any person designated so to do shall require the employer to pay to the Director in trust a penalty of 10 per cent of that amount.

(3) Where the employer has paid the amount and the penalty required under subsection 2, the employer may, within fifteen days of the date of the notice, apply in writing in the prescribed form to the Minister for a review of the determination.

(4) The Minister or a person designated by him to review the determination shall give the employer notice of the time and place of hearing at which the employer or his agent may attend, present his evidence, and make his submissions, and the Minister or the
person designated by him so to do may exercise any powers under section 10 and shall give his final decision which may vary, rescind or confirm the amount payable by the employer.

(5) An employer dissatisfied with a decision made under subsection 4 may appeal from the decision to the Court of Appeal within fifteen days from the date of the decision upon the ground that the decision is,

(a) erroneous in point of law; or

(b) in excess of jurisdiction.

(6) Upon the request of an employer desiring to appeal, the Minister or person designated by him to review the determination shall state a case setting forth the facts as found and the grounds upon which the decision is questioned.

(7) An appeal under subsection 5 shall be by motion, notice of which shall be served upon the Minister and the record shall consist of the case as stated.

(8) The Court of Appeal shall hear and determine the appeal in accordance with the practice in appeals from a decision of a judge of the Supreme Court and may make such order as the court considers proper or may refer the matter or any part thereof back to the Minister or the person designated by him to review the determination with such directions as the court considers proper. 1968, c. 45, s. 8 (1-8).

(9) Where no appeal has been made to the Minister, the Director shall pay to the employee or employees the moneys collected from the employer on his or their behalf.

(10) Where an appeal has been made to the Minister or an appeal has been taken under subsection 5, the Director shall pay to the employee or the employees the amounts owing as determined upon the final disposition of the appeal and shall pay to the employer any moneys to which the employer is entitled upon that final disposition. 1970, c. 45, s. 8 (9, 10).

35.—(1) When the Director has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to an employer who is liable to make any payment under this Act, he may, by registered letter or by a letter served personally, require the first named person to pay the moneys otherwise payable to the employer in whole or in part to the Director in trust on account of the liability under this Act.

(2) The receipt of the Director for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment. 1970, c. 45, s. 9.
Regulations 36.—(1) The Lieutenant Governor in Council may make regulations for carrying out the purposes of this Act and, without restricting the generality of the foregoing, may make regulations,

(a) establishing minimum rates of wages for employees;

(b) designating or defining any establishment or part thereof to which the regulation is applicable;

(c) designating or defining the zone or zones within Ontario in which any regulation or provision thereof is applicable;

(d) defining what comprises a regular rate of pay;

(e) prescribing conditions of employment;

(f) exempting any class of employers or employees from the application of this Act or the regulations or any provision thereof;

(g) prescribing what constitutes the performance of work in respect of which minimum wages shall be paid;

(h) specifying the deductions that may be made from the wages paid to employees;

(i) providing for a system of vacation-with-pay credit stamps for use in the construction industry as defined in the regulations, and providing for the sale and redemption of such stamps;

(j) prescribing the maximum number of hours that may elapse between the commencement and the termination of the daily work period or periods of an employee;

(k) prescribing the records that shall be kept and the returns that shall be made by employers;

(l) governing the production and inspection of records required to be kept by employers;

(m) requiring employers in any establishment or branch thereof to notify employees, by the publication of such notices, in such manner as may be prescribed, of the provisions of this Act or any regulation or permit made thereunder;

(n) prescribing rates of pay and hours of work for the whole or part of any industry, business or trade in a designated part of Ontario;

(o) providing for the substitution of another day in lieu of a day defined as a holiday in this Act;

(p) providing for the averaging of daily or weekly hours of work over a longer period of time;
(q) providing for the setting up of a consultative or advisory committee to advise the Minister on any matters arising in relation to the administration of this Act;

(r) prescribing forms and providing for their use;

(s) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1968, c. 35, s. 29 (1); 1970, c. 45, s. 10.

(2) A regulation made under subsection 1 or any provision thereof may be confined in its application to any class of employer, employee or establishment defined in the regulation. 1968, c. 35, s. 29 (2).

PART XI
ADMINISTRATION

37. Every employer shall post and keep posted any notice required by the Director in a conspicuous place where his employees are engaged in their duties. 1968, c. 35, s. 30.

38.—(1) Every employer shall,

(a) make and keep in Ontario for a period of twenty-four months after work is performed by an employee complete and accurate records in respect of the employee showing,
   (i) his name and address,
   (ii) his age, if under eighteen years of age,
   (iii) the number of hours worked by him in each day and week,
   (iv) the number of hours worked by him in any day or week in excess of the hours prescribed by this Act or the regulations,
   (v) wage rate and actual earnings; and

(b) make and keep for a period of five years after work is performed by an employee complete and accurate records in respect of the employee showing,
   (i) his name and address,
   (ii) the date of commencement of his present term of employment and the anniversary date thereof, and
   (iii) his earnings during each pay period and his vacations with pay or payment to him in lieu thereof. 1968, c. 35, s. 31 (1); 1970, c. 45, s. 11.

(2) Subclause iii of clause a of subsection 1 does not apply in respect of the salaried employees of an employer who perform work of a clerical or administrative nature where the employer establishes a regular working day in accordance with section 14.
and makes and keeps a record showing the number of hours worked by such employees in excess of eight hours a day and forty-eight hours a week. 1968, c. 35, s. 31 (2).

39. An employer shall,

(a) produce the records required under this Act for inspection by the Director or any person authorized by the Minister, and shall for this purpose provide access to his premises for the Director or such person at all reasonable times and at any time his employees are engaged in their work; and

(b) furnish such information from the records at such time and place as the Director may require. 1968, c. 35, s. 32.

40.—(1) The Director may,

(a) require any employer to make or furnish such full and correct statements, either orally or in writing as the Director requires, respecting the wages, hours of work, vacations with pay and conditions of work of any of his employees, and require the statements to be made by the employer on oath or to be verified by his statutory declaration;

(b) require any employee to make such full and correct statements, either orally or in writing as the Director requires, respecting his wages, hours of work, vacations with pay and other matters relating to his employment, and require such statements to be made on oath or verified by his statutory declaration.

(2) The Director or any person authorized by the Minister may,

(a) inspect and examine all books, payrolls and other records of an employer that in any way relate to the wages, hours or work, vacations with pay or conditions of work of his employees;

(b) take extracts from or make copies of any entry in the books, payrolls and other records mentioned in clause a;

(c) at any reasonable time, enter any establishment or business or other premises for the purpose of making an inspection, provided, however, that he shall not enter any room or place actually used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 16 of The Summary Convictions Act; and
(d) question any employee apart from his employer. 1968, c. 35, s. 33.

41.—(1) Where the Director is authorized under this Act or the regulations to require a person to furnish information, the Director may require the information to be furnished by a notice to that effect served personally or sent by registered mail addressed to the last known place of abode of the person for whom the notice is intended, and such person shall furnish the information within such reasonable time as is specified in the notice.

(2) A certificate of the Director certifying that the notice was sent by registered mail to the person to whom it was addressed, accompanied by and identifying the post office certificate of the registration and a true copy of the notice is admissible as prima facie proof of the mailing and receipt of the notice.

(3) Where the Director is authorized to require a person to furnish information under this Act, a certificate of the Director certifying that the information has not been furnished is admissible as prima facie proof that in such case the person did not furnish the information.

(4) A certificate of the Director certifying that a document annexed thereto is a document or true copy of a document made by or on behalf of the Director is admissible as prima facie proof of the nature and contents of the document and shall be received in evidence in the place and stead of the original and has the same force and effect as the original document would have had if produced and proved.

(5) A certificate under this section signed or purporting to be signed by the Director is admissible as prima facie proof of the facts stated therein and of the authority of the person giving or making the certificate without any proof of appointment or signature. 1968, c. 35, s. 34.

PART XII

ENFORCEMENT

42.—(1) Every employer who dismisses or threatens to dismiss or otherwise discriminates against an employee because the employee has sought the enforcement of this Act or the regulations or has given information to a person authorized to require it under this Act is guilty of an offence and on summary conviction is liable to a fine of not more than $1,000.

(2) Where an employer is convicted of the offence of dismissing an employee under one of the circumstances mentioned in subsection 1, the provincial judge making the conviction shall, in addition to the penalty, order the employer,
(a) to reinstate the employee in his employ at such date as in
the opinion of the provincial judge is just and proper in
the circumstances and in the position that the employee
would have held but for such dismissal; and

(b) to pay to the employee compensation for loss of employ-
ment in an amount not exceeding the amount that, in
the opinion of the provincial judge, is equivalent to the
wages that would have accrued to the employee but for
such dismissal.

(3) An employer who fails to comply with an order made under
subsection 2 is guilty of an offence and on summary conviction is
liable to a fine not exceeding $50 for each day during which the
failure continues. 1968, c. 35, s. 35, amended.

43.—(1) Every person who,

(a) furnishes false or misleading information in any applica-
tion under this Act or in any statement or return
required to be furnished under this Act or the regula-
tions;

(b) fails to comply with any order, direction or requirement
under this Act or the regulations; or

(c) contravenes any provision of this Act or the regulations
for which no penalty is otherwise provided,
is guilty of an offence and on summary conviction is liable to a fine
of not more than $1,000.

(2) Where an employer is convicted of an offence respecting
the wages, hours of work, vacation, vacation pay or conditions of
work of one or more employees, the offence against each employee
shall be deemed to be a separate offence for the purposes of
subsection 1.

(3) Where an employer is convicted of an offence including the
failure to pay wages or vacation pay in accordance with this Act,
the provincial judge making the conviction shall, in addition to
any other penalty, assess the amount of wages or vacation pay so
unpaid in respect of the employee and shall order the employer to
pay the amount so assessed to the Director who shall collect and
distribute to the employees the amount ordered to be paid.

(4) A final order for payment under subsection 3 may be filed
by the Director in a small claims court and thereupon the order
shall be deemed to be an order of the small claims court for the
purposes of enforcement. 1968, c. 35, s. 36.

(5) No prosecution under this Act shall be instituted more
than two years after the last act or default upon which the
prosecution is based occurred. 1970, c. 45, s. 12.