

IN THE PRIVY COUNCIL

No.100 of 1936

ON APPEAL FROM THE  
SUPREME COURT OF CANADA

IN THE MATTER of a REFERENCE re THE WEEKLY  
REST IN INDUSTRIAL UNDERTAKINGS ACT; THE  
MINIMUM WAGES ACT and THE LIMITATION OF  
HOURS OF WORK ACT

B E T W E E N

THE ATTORNEY GENERAL OF CANADA  
Appellant

- and -

THE ATTORNEYS GENERAL OF THE  
PROVINCES OF ONTARIO, QUEBEC,  
NEW BRUNSWICK, BRITISH COLUMBIA,  
MANITOBA, ALBERTA and  
SASKATCHEWAN Respondents

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- (1) THE WEEKLY REST IN INDUSTRIAL UNDERTAKINGS  
ACT 25-26 GEO. V CHAP. 14.
  - (2) THE MINIMUM WAGES ACT 25-26 GEO. V CHAP. 44.
  - (3) THE LIMITATION OF HOURS OF WORK ACT 25-26  
GEO. V. CHAP. 63.
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STRAND, W.C.2.

## 25-26 GEORGE V.

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### CHAP. 14.

An Act to provide for a weekly day of rest in accordance with the Convention concerning the application of the Weekly Rest in Industrial Undertakings adopted by the General Conference of the International Labour Organization of the League of Nations, in accordance with the Labour Part of the Treaty of Versailles of 28th June, 1919.

*[Assented to 4th April, 1935.]*

**W**HEREAS the Dominion of Canada is a signatory, as Preamble.  
Part of the British Empire, to the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919; and whereas the said Treaty of Peace was confirmed by the Treaty of Peace Act 1919; and whereas by Article 23 of the said Treaty the signatories thereto each agreed that they would endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and by Article 427 of the said Treaty it was declared that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme importance; and whereas a Draft Convention respecting the application of the weekly rest in industrial undertakings was agreed upon at a General Conference of the International Labour Organization of the League of Nations, in accordance with the relevant Articles of the said Treaty, which said Convention has been ratified by Canada; and whereas it is advisable to enact the necessary legislation to enable Canada to discharge the obligations assumed under the provisions of the said Treaty and the said Convention, and to provide for the application of the weekly rest in industrial undertakings, in accordance with the general provisions of the said Convention, and to assist in the maintenance on equitable terms of interprovincial and international trade: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

**1.** This Act may be cited as *The Weekly Rest in Industrial Undertakings Act*.

"Industrial undertaking."

Mines, quarries, etc.

Industries, shipbuilding, electricity or motive power.

Works of construction, maintenance, repair, etc.

Transport of passengers or goods, and handling of goods.

Period of rest of 24 hours in each seven days.

For whole staff simultaneously.

To be on Lord's Day wherever possible.

Persons to whom this section does not apply.

Regulations for total or partial exceptions.

**2.** In this Act, unless the context otherwise requires, the term "industrial undertaking" includes:—

(a) Mines, quarries, and other works for the extraction of minerals from the earth;

(b) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding and the generation, transformation, and transmission of electricity or motive power of any kind;

(c) Construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, waterwork, or other work of construction as well as the preparation for or laying the foundation of any such work or structure;

(d) Transport of passengers or goods by road or rail including the handling of goods at docks, quays, wharves or warehouses, but excluding transport by hand.

**3.** (1) The whole of the staff employed in any industrial undertaking, public or private, or in any branch thereof, shall except as otherwise provided for herein be granted by the employer in every period of seven days a period of rest comprising at least twenty-four consecutive hours.

(2) This period of rest shall wherever possible be granted simultaneously to the whole of the staff of each undertaking.

(3) This period of rest shall wherever possible be the Lord's Day as defined in the *Lord's Day Act*, chapter one hundred and twenty-three of the Revised Statutes of Canada, 1927.

(4) The provisions of this section shall not apply in the case of persons holding positions of supervision or management, nor to persons employed in a confidential capacity.

**4.** (1) The Governor in Council may make regulations authorizing total or partial exceptions including suspensions or diminutions from the provisions of the next preceding section, and in making such regulations shall have special regard to all proper humanitarian and economic consideration, and shall consult with responsible associations of employers or workers whenever such exist.

(2) By such regulations it shall be provided that as far as possible there shall be compensatory periods of rest for the suspensions or diminutions made, except in cases where agreements or customs already provide for such periods.

For compensatory periods of rest.

(3) The regulations shall provide for the communication of the said regulations and amendments thereof to the International Labour Office at Geneva.

To be sent to International Labour Office.

5. Where the weekly rest given does not coincide with the Lord's Day as defined in the *Lord's Day Act*, the employer shall make known the days and hours of rest by means of notices posted conspicuously in the establishment or any other convenient place, or in any other manner determined by the Governor in Council by regulation.

When notice of days and hours of rest to be posted.

6. Subsection two of section five of the *Lord's Day Act* is repealed.

R.S., c. 123, sec. 5, ss. 2 repealed.

7. Every employer who violates, or fails or omits to comply with any provision of this Act shall for each offence be liable on summary conviction to a fine not exceeding one hundred dollars and not less than twenty dollars in addition to any other penalty prescribed by law for the same offence.

Penalty for violation.

8. Nothing in this Act contained except section six thereof shall be construed as amending, repealing, or otherwise affecting the operation of any provision of the *Lord's Day Act*.

Lord's Day Act not affected except by section six hereof.

9. This Act shall come into force three months after the date on which it is assented to.

Commencement of Act.

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OTTAWA: Printed by JOSEPH OSCAR PATENAUDE, I.S.O., Law Printer to the King's Most Excellent Majesty.

## 25-26 GEORGE V.

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### CHAP. 44.

An Act to provide for Minimum Wages pursuant to the Convention concerning minimum wages adopted by the International Labour Organization in accordance with the provisions of Part XIII of the Treaty of Versailles and of the corresponding parts of the other treaties of peace.

[Assented to 28th June, 1935.]

**WHEREAS** the Dominion of Canada is a signatory, as Preamble.  
Part of the British Empire, to the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919; and whereas the said Treaty of Peace was confirmed by the Treaty of Peace Act 1919; and whereas by Article 23 of the said Treaty the signatories thereto each agreed that they would endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and by Article 427 of the said Treaty it was declared that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme importance; and whereas a Convention concerning minimum wages was adopted as a Draft Convention by the General Conference of the International Labour Organization of the League of Nations in accordance with the relevant articles of the said Treaty, which said Convention has been ratified by Canada; and whereas it is advisable to enact the necessary legislation to enable Canada to discharge the obligations assumed under the provisions of the said Treaty and the said Convention, and to provide for minimum wages in accordance with the provisions of the said Convention, and to assist in the maintenance on equitable terms of interprovincial and international trade: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Minimum Wages Act*. Short title.

Definitions.  
"Convention."  
"Employer."  
"Minimum rate of wages."  
"Minister."  
"Rateable trades."  
"Specified rateable trades."  
"Regulation."  
"Trade."  
"Trades."  
"Worker."

- 2.** In this Act, unless the context otherwise requires,—
- (a) "Convention" means the Convention concerning the creation of minimum wage fixing machinery adopted as a draft convention by the General Conference of the International Labour Organization of the League of Nations at its Eleventh Session in Geneva on the sixteenth of June, 1928, in accordance with the Provisions of Part XIII of the Treaty of Versailles and of the corresponding Parts of the other Treaties of Peace;
- (b) "employer" means an employer in a rateable trade;
- (c) "minimum rates of wages" means the remuneration, fixed under this Act as payable to workers, whether by way of wages or salary or for piece work, in a rateable trade;
- (d) "Minister" means the Minister of Labour;
- (e) "rateable trades" means those trades or parts of trades (in particular, home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low;
- (f) "specified rateable trades" means such rateable trades as, pursuant to section five of this Act, shall be decided and declared to be those to which the minimum wage rate fixing machinery provided pursuant to this Act shall be applied;
- (g) "regulation" means regulation made by or under the authority of the Governor in Council;
- (h) "trade" and "trades" include manufacture and commerce and employment in either thereof;
- (i) "worker" means an employed person, male or female, who is not under sixteen years of age.

Minimum rates in specified rateable trades.  
Penalty.

**3.** (1) Such minimum rates of wages as shall, pursuant to this Act, be fixed as payable in specified rateable trades shall be paid by employers to workers in such trades.

(2) Every employer who, being engaged in a specified rateable trade, pays or agrees to pay to any worker employed in that trade wages at less than the minimum rates applicable pursuant to this Act thereto is guilty of an offence against this Act, punishable on summary conviction, and liable to a penalty not exceeding five thousand dollars.

Machinery to fix wages in rateable trades.  
Proviso.

**4.** (1) The Governor in Council may on the recommendation of the Minister create, and by regulation provide for the operation by or under the Minister of, machinery whereby minimum rates of wages can be fixed for workers employed in rateable trades: Provided that the employers and workers concerned shall be associated in the operation of such machinery in such manner and to such extent, but

in any case in equal numbers and on equal terms, as the Governor in Council may by regulation determine.

(2) Minimum rates of wages which have been fixed by way of such machinery shall be binding on the employers and workers concerned so as not to be subject to abatement by them by means of individual agreement, nor, except with the general or particular authorization of the Minister, by collective agreement.

Fixed rates  
not subject to  
abatement.

5. (1) The Governor in Council may, on the recommendation of the Minister (made after the Minister has consulted or caused consultation as the Convention requires) decide, and by regulation declare, which trades or parts of trades are those rateable trades to which the minimum wage fixing machinery referred to in section four of this Act shall be applied.

Power to  
declare  
what  
trades are  
rateable  
trades.

(2) Such machinery shall be applied only in rateable trades and it shall not be applied in any particular rateable trade until after the Minister has consulted or caused consultation as the Convention requires and has decided and declared by regulation of his Department the nature and form of, and the methods to be followed in the operation of, that machinery, as it shall be applied to that particular trade.

When  
applicable  
to any  
particular  
rateable  
trade.

(3) A rateable trade specified as by this section provided is referred to in this Act as a specified rateable trade.

Specified  
rateable  
trade.

6. The Governor in Council, subject to the provisions of this Act and in substitution for the provisions of subsection one of section four and for those of section five of this Act, whenever he is satisfied that—

Governor  
in Council  
may fix  
minimum  
wages if  
trade  
injuriously  
affected  
or workers  
oppressed.

(a) the trade and commerce, or the public revenue, of Canada is being injuriously affected by the absence of uniform minimum rates of wages, or

(b) workers throughout Canada are being oppressed by reason of the insufficiency of the wages being paid to them to enable them to maintain a suitable standard of living,

may fix and determine by regulation minimum uniform rates of wages, or fair and suitable rates of wages, as the case may be, to be paid by employers to workers in the trades concerned, and provide or indicate all necessary machinery for enforcing observance and punishing non-observance of such regulation.

7. Notwithstanding anything contained in this Act, the Governor in Council may, by regulation—

Regulations.

(a) provide that the Minister or his nominee may generally or specially permit employers or any employer to pay wages less than the minimum rates of wages

- in the case of workers who, by reason of age, infirmity or inexperience, are incapable of doing the work of a competent worker;
- (b) provide that the Minister may authorize any person, including an officer or employee of any provincial government, to act as an inspector or supervisor in connection with the enforcement of this Act;
- (c) ensure that the employers and workers concerned are informed of the minimum rates of wages in force;
- (d) prescribe the procedure whereby regulations or orders fixing minimum rates of wages are made effective, including the manner of proving and publishing them;
- (e) provide that whenever minimum rates of wages have been fixed pursuant to any one part of the machinery provided by or under this Act the rate of wages so fixed shall apply to employers and workers engaged in that trade in lieu of minimum rates of wages fixed in that trade pursuant to any other part of such machinery;
- (f) provide that any board, commission, committee, commissioner or functionary authorized under this Act to fix minimum rates of wages shall have the powers of a commissioner appointed under the *Inquiries Act*;
- (g) provide so that the Minister may permit delays to enable the orderly and proper application of this Act to industry and commerce and all necessary consultation and arrangement with relation thereto to be had and made;
- (h) do such other things as, being consonant with the convention, are necessary for the enforcement of this Act and for carrying out its provisions according to their true intent and meaning.

Inquiry by  
Minister  
as to  
minimum  
wages  
required.

8. (1) The Minister or his nominee may at any time, on the application of representatives of employers or workers, conduct an inquiry as to the minimum rates of wages required to enable a worker to maintain a suitable standard of living.

Powers  
under  
R.S., c. 99.

(2) The Minister or his nominee shall, for the purposes of such inquiry, have the powers of a commissioner appointed under the *Inquiries Act*.

Recovery  
by worker  
of amount  
underpaid.

9. A worker to whom minimum rates of wages are applicable and who has been paid wages at less than minimum rates shall be entitled to recover as an ordinary debt the amount by which he has been underpaid. Alternatively, on any prosecution had under section three of this Act the Court may, in addition to the imposition of any penalty, order payment to the employee concerned of the amount of wages proved to be unpaid or short paid, as

Alternative  
provision.



the case may be, and with relation to such order all provisions of Part XV of the *Criminal Code* shall apply.

**10.** Every person who fails or omits to comply with any provision of this Act or of any regulation or order made thereunder is guilty of an offence punishable on summary conviction and, if no other penalty is prescribed by this Act, liable to a penalty not exceeding fifty dollars. Penalty.

**11.** Nothing in this Act contained shall be construed as relieving any employer from the obligation to pay any minimum wages fixed by or under any provincial statute, if such minimum wages are higher than the relevant minimum wages fixed under this Act. Provincial rates to prevail if higher than relevant rates under this Act.

**12.** Subsection one of section four of this Act and section five of this Act shall not come into force until proclaimed by the Governor in Council. Secs. 4 (1) and 5 come into force on proclamation.

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## 25-26 GEORGE V.

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### CHAP. 63.

An Act to provide for limiting the Hours of Work in Industrial Undertakings to eight in the day and forty-eight in the week, in accordance with the Convention concerning the application of the principle of the Eight Hour Day or of the Forty-eight Hour Week adopted by the General Conference of the International Labour Organization of the League of Nations, in accordance with the Labour Part of the Treaty of Versailles of 28th June, 1919.

[Assented to 5th July, 1935.]

**W**HEREAS the Dominion of Canada is a signatory, as Preamble.  
Part of the British Empire, to the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919; and whereas the said Treaty of Peace was confirmed by the Treaty of Peace Act 1919; and whereas by Article 23 of the said Treaty the signatories thereto each agreed that they would endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and by Article 427 of the said Treaty it was declared that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme importance; and whereas a Draft Convention respecting hours of work in industrial undertakings was agreed upon at a General Conference of the International Labour Organization of the League of Nations, in accordance with the relevant Articles of the said Treaty, which said Convention has been ratified by Canada; and whereas it is advisable to enact the necessary legislation to enable Canada to discharge the obligations assumed under the provisions of the said Treaty and the said Convention, and to provide for the limitation of hours of work in industrial undertakings, in accordance with the general provisions of the said Convention, and to assist in the maintenance on equitable terms of interprovincial and international trade: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

**1.** This Act may be cited as *The Limitation of Hours of Work Act.*

"Industrial undertaking."

Mines, quarries, etc.

Industries, shipbuilding, electricity or motive power.

Works of construction, maintenance, repair, etc.

Transport of passengers or goods, and handling of goods.

Eight hours in the day, forty-eight in the week.

Distinction between industry, commerce and agriculture.

Persons to whom section three does not apply.

If less than eight hours in one or more days in the week.

Proviso.

**2.** In this Act, unless the context otherwise requires, the term "industrial undertaking" includes:

- (a) Mines, quarries, and other works for the extraction of minerals from the earth;
- (b) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding and the generation, transformation, and transmission of electricity or motive power of any kind;
- (c) Construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, waterwork or other work of construction, as well as the preparation for or laying the foundations of any such work or structure;
- (d) Transport of passengers or goods by road or rail, including the handling of goods at docks, quays, wharves or warehouses, but excluding transport by hand.

**3.** (1) No person shall employ or require or permit any person to work in any public or private industrial undertaking or in any branch thereof other than an undertaking in which only members of the same family are employed for hours in excess of eight in the day and forty-eight in the week except in the cases hereinafter provided for.

(2) The Governor in Council may define the line of division which separates industry from commerce and agriculture for the purpose of determining the employers and the employees to whom this Act shall apply.

**4.** The provisions of section three of this Act shall not apply to persons holding positions of supervision or management, nor to persons employed in a confidential capacity.

**5.** Where by law, custom, or agreement between employers' and workers' organizations, or, where no such organizations exist, between employers' and workers' representatives, the hours of work on one or more days of the week are less than eight, the limit of eight hours may be exceeded on the remaining days of the week by the sanction of the Governor in Council or by agreement between such organizations or representatives: Provided, however, that in no such case shall the daily limit of eight hours be exceeded by more than one hour.

**6.** Where persons are employed in shifts it shall be permissible to employ persons in excess of eight hours in any one day and forty-eight hours in any one week if the average number of hours over a period of three weeks or less does not exceed eight per day and forty-eight per week.

Persons employed in shifts.

**7.** The limit of hours of work prescribed in this Act may be exceeded in case of accident, actual or threatened, or in case of urgent work to be done to machinery or plant, or in case of *vis major*, but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking.

Urgency or *vis major*.

**8.** The limit of hours of work prescribed in this Act may be exceeded in those processes which are required, by reason of the nature of the process, to be carried on continuously by a succession of shifts: Provided, however, that the working hours shall not exceed fifty-six in the week on the average. Such regulation of the hours of work shall in no case affect any rest days which may be secured by the law of Canada to the workers in such processes in compensation for the weekly rest day.

In case of continuity by a succession of shifts.

Proviso.

**9.** The Governor in Council may, in exceptional cases where it is recognized that the daily limit of hours of work cannot be applied and agreements between workers' and employers' organizations to increase the daily limit have been made, give effect to such agreements and permit in such cases the said daily limit of hours to be exceeded: Provided, however, that the average number of hours per week over the number of weeks covered by such agreement shall not exceed forty-eight; and provided, further, that in case such an agreement has been made prior to the thirty-first day of December, 1934, between a railway company and any employees' organization which embodies the basic principle of eight hours as the daily period of employment, the provisions of such agreement relating to the hours of employment shall, notwithstanding anything contained in this Act, continue in force for a period of three months from the date of the coming into force of this Act.

Exceptional cases.

Proviso.

**10.** (1) Whenever the Governor in Council, after consultation as required by the Convention mentioned in the preamble to this Act has been had, is satisfied that the work, or any class of work, in any industrial undertaking or class of industrial undertakings is—

Regulations may except employment in any industry under prescribed conditions.

(a) preparatory or complementary, so that it must necessarily be carried on outside the limits laid down for the general working of an establishment; or

- (b) essentially intermittent, as when it—  
 (i) does not require that the worker be continuously occupied during the hours of employment; or  
 (ii) is such that it must necessarily be performed in variable periods of employment; or  
 (iii) is, in its nature, either seasonal or subject to intervals of discontinuance or to variations in the supply of raw materials; or  
 (c) exceptional, owing to pressure of work for the time being;

the Governor in Council may, by regulation, except all or any employment at such work or class of work in such industrial undertaking or class of industrial undertakings from application thereto of the limits of hours fixed by this Act.

Fair and humane conditions of labour.

(2) Such regulations shall provide so that fair and humane conditions of labour, with relation to hours of work, shall prevail in such excepted employment, and so that any regulation made by reason of pressure of work shall be temporary in character.

Maximum of hours.

(3) Whenever it is practicable the maximum of additional hours permitted under this section shall be fixed by the regulations, and in such case the rate of pay for overtime shall not be less than one and one quarter times the regular rate.

Pay for overtime.

Duties of employers.

**11.** Every employer shall,

Notices of hours of work.

(a) notify by means of the posting of notices in conspicuous places in the works or other suitable place, or by such other method as may be approved by the Governor in Council, the hours at which work begins and ends and where work is carried on by shifts, the hours at which each shift begins and ends. These hours shall be so fixed that the duration of the work shall not exceed the limits prescribed by this Act, and when so notified they shall not be changed except with such notice and in such manner as may be approved by the Governor in Council;

Notices of rest intervals.

(b) notify in the same way such rest intervals accorded during the period of work as are not reckoned as part of the working hours;

Record of additional hours.

(c) keep a record in the form prescribed by or under the authority of the Governor in Council, of all additional hours worked, as permitted under sections seven and ten of this Act.

Regulations to be published.

**12.** Regulations of the Governor in Council made under this Act shall be published in the *Canada Gazette*.

**13.**

**13.** Every employer who violates, or fails or omits to comply with any provision of this Act or of any regulation made thereunder, shall be guilty of an offence against this Act and for each offence be liable on summary conviction to a fine not exceeding one hundred dollars in addition to any other penalty prescribed by law for the same offence.

Offences  
and  
penalties.

**14.** Nothing in this Act contained shall be construed as relieving any employer from any obligation under any provincial statute establishing shorter hours of work than those established under this Act.

Provincial  
statutes  
fixing  
shorter  
hours not  
affected.

**15.** This Act shall come into force three months after the date on which it is assented to.

When Act  
comes into  
force.

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