

## **PRELIMINARY ANALYSIS OF SCHEDULE 13, BILL 197: PROPOSED AMENDMENTS TO THE OCCUPATIONAL HEALTH AND SAFETY ACT**

Prepared by  
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### **Commentary and Recommendation**

On preliminary review of Schedule 13-Occupational Health and Safety Act, Bill 197, COVID-19 Economic Recovery Act, 2020, CELA concludes that the proposed provisions will delegate new and additional discretion to the Government with the addition of a new subsection (3) under section 70 on matters that are currently provided to the Lieutenant Governor in Council under section 70(2) of the OHS Act as stated in para 25 and 26, respectively. Currently, paragraphs 25 and 26 state:

*25. adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and requiring compliance with any code or standard that is so adopted;*

*26. adopting by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof;*

The proposal needs clarification on the extent to which it plans to exercise its powers. The proposal needs to take into consideration section 2(2) of OHS Act which states “Despite anything in any general or special Act, the provisions of this Act and the regulations prevail.” A new section 70(3) under OHS Act appears to weaken the intent of this.

The proposed new “power” is problematic in upholding and advancing goals under the Occupational Health and Safety Act in protecting workers for the following reasons:

- 1) Inadequate detail on the decision-making process to exercise this power;
- 2) Lack of information on the timeframe to complete the process;
- 3) An absence of information on engagement opportunities for stakeholders and general public prior to final decision; and
- 4) The lack of opportunity to analyze the effectiveness and adequacy of standards or codes, criteria or guides to be adopted.

Additional review on these matters should be undertaken before adoption of Schedule 13 of Bill 197. The primary focus of the Occupational Health and Safety Act is for the protection of workers, with a foundation to apply the precautionary principle as it considers the hierarchy of controls available. The engagement of those affected by proposed changes needs to include the perspective of workers in decisions taken. The proposed amendments do not provide certainty in the role of stakeholders to engage in the process nor provide adequate timeframes when decisions are to be made.

The reliance and development of standards, codes, criteria and guides to advance workplace safety have generated substantial concerns from various stakeholders in the past. These concerns include:

- 1) The lack of adequate and effective participation and membership in the development of standards and codes by affected stakeholders, particularly workers' representation and labour groups.
- 2) Standards and codes are considered non regulatory tools and are developed and lead by industry interest, normally outside government leadership and authorization. Referencing health and safety standards and codes developed and lead by private interest in regulations continues to exacerbate the limited opportunities provided to the public and its role to provide meaningful input into standards and codes meant to ensure protection and safety in the workplace.

***CELA recommends that the proposed amendments to OHSA be rejected without substantial amendments to include provisions for consultation and adequate time to consult with stakeholders including labour stakeholders and the public.***

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