



Français

## **Agricultural Employees Protection Act, 2002**

### S.O. 2002, CHAPTER 16

**Consolidation Period:** From April 3, 2019 to the e-Laws currency date.

Last amendment: 2019, c. 4, Sched. 1, s. 1-3.

Legislative History: [ + ]

## **PURPOSE**

### **Purpose of this Act**

**1** (1) The purpose of this Act is to protect the rights of agricultural employees while having regard to the unique characteristics of agriculture, including, but not limited to, its seasonal nature, its sensitivity to time and climate, the perishability of agricultural products and the need to protect animal and plant life. 2002, c. 16, s. 1 (1).

### **Same**

(2) The following are the rights of agricultural employees referred to in subsection (1):

1. The right to form or join an employees' association.
2. The right to participate in the lawful activities of an employees' association.
3. The right to assemble.
4. The right to make representations to their employers, through an employees' association, respecting the terms and conditions of their employment.
5. The right to protection against interference, coercion and discrimination in the exercise of their rights. 2002, c. 16, s. 1 (2).

## **INTERPRETATION**

### **Interpretation**

**2** (1) In this Act,

"agriculture" includes,

- (a) farming in all its branches, including dairying, beekeeping, aquaculture, the raising of livestock including non-traditional livestock, furbearing animals and poultry, the production, cultivation, growing and harvesting of agricultural commodities, including eggs, maple products, mushrooms and tobacco, and any practices performed as an integral part of an agricultural operation, and
- (b) ornamental horticulture; ("agriculture")

"employee" means an employee employed in agriculture; ("employé")

"employees' association" means an association of employees formed for the purpose of acting in concert; ("association d'employés")

"employer" means,

- (a) the employer of an employee, and
- (b) any other person who, acting on behalf of the employer, has control or direction of, or is directly or indirectly responsible for, the employment of the employee; ("employeur")

“ornamental horticulture” means the production of ornamental plants or their parts for the purpose of their sale or distribution;  
 (“horticulture ornementale”)

“ornamental plant” includes annual and perennial plants, nursery sod, woody plants and Christmas trees; (“plante ornementale”)

“Tribunal” means the Agriculture, Food and Rural Affairs Appeal Tribunal continued under section 14 of the *Ministry of Agriculture, Food and Rural Affairs Act*. (“Tribunal”) 2002, c. 16, s. 2 (1); 2019, c. 4, Sched. 1, s. 1.

#### **Status of associations, organizations**

(2) An employees’ association, an employers’ organization or any other entity that may be a party to a proceeding under this Act shall be deemed to be a person for the purpose of any provision of the *Statutory Powers Procedure Act* or of any rule made under that Act that applies to parties. 2002, c. 16, s. 2 (2).

#### **Section Amendments with date in force (d/m/y) [ + ]**

##### **Non-application, ornamental horticulture**

**2.1** For greater certainty, this Act does not apply to a person who is engaged in ornamental horticulture or the production of ornamental plants if,

- (a) the person is employed by a municipality to do so; or
- (b) the person is employed in silviculture. 2019, c. 4, Sched. 1, s. 2.

#### **Section Amendments with date in force (d/m/y) [ + ]**

##### **Persuasion during working hours**

**3** Nothing in this Act authorizes any person or entity to attempt at the place at which an employee works to persuade the employee during the employee’s working hours to become or refrain from becoming or continuing to be a member of an employees’ association. 2002, c. 16, s. 3.

##### **Private property**

**4** Subject to section 7, nothing in this Act confers any new right to enter on, occupy or use private property. 2002, c. 16, s. 4.

## **RIGHTS OF AGRICULTURAL EMPLOYEES**

##### **Representations**

**5 (1)** The employer shall give an employees’ association a reasonable opportunity to make representations respecting the terms and conditions of employment of one or more of its members who are employed by that employer. 2002, c. 16, s. 5 (1).

##### **Same**

(2) For greater certainty, an employees’ association may make its representations through a person who is not a member of the association. 2002, c. 16, s. 5 (2).

##### **Reasonable opportunity**

(3) For the purposes of subsection (1), the following considerations are relevant to the determination of whether a reasonable opportunity has been given:

1. The timing of the representations relative to planting and harvesting times.
2. The timing of the representations relative to concerns that may arise in running an agricultural operation, including, but not limited to, weather, animal health and safety and plant health.
3. Frequency and repetitiveness of the representations. 2002, c. 16, s. 5 (3).

##### **Same**

(4) Subsection (3) shall not be interpreted as setting out a complete list of relevant considerations. 2002, c. 16, s. 5 (4).

##### **Same**

(5) The employees' association may make the representations orally or in writing. 2002, c. 16, s. 5 (5).

**Same**

(6) The employer shall listen to the representations if made orally, or read them if made in writing. 2002, c. 16, s. 5 (6).

**Same**

(7) If the representations are made in writing, the employer shall give the association a written acknowledgment that the employer has read them. 2002, c. 16, s. 5 (7).

**Duty of employees' association**

**6** An employees' association shall not act in bad faith or in a manner that is arbitrary or discriminatory in the representation of its members. 2002, c. 16, s. 6.

**Right of access**

**7 (1)** This section applies where employees of an employer reside on the property of the employer, or on property to which the employer has the right to control access. 2002, c. 16, s. 7 (1).

**Same**

(2) On a written application by any person or entity, the Tribunal may make an order allowing access to the property described in subsection (1) for the purpose of attempting to persuade the employees to join an employees' association. 2002, c. 16, s. 7 (2).

**Hearing**

(3) The Tribunal shall hold a hearing to determine what order, if any, to make. 2002, c. 16, s. 7 (3).

**Parties**

(4) The parties to the hearing shall be,

- (a) the applicant;
- (b) the employer who owns the property or has the right to control access to it; and
- (c) any other person or entity that the Tribunal specifies as a party. 2002, c. 16, s. 7 (4).

**Same**

(5) The order may be subject to such terms and conditions as the Tribunal considers appropriate. 2002, c. 16, s. 7 (5).

**Limitation**

(6) The Tribunal shall not make an order allowing access to property under subsection (2) unless the person or entity applying for the order satisfies the Tribunal that the order is necessary to effectively communicate with employees for the purposes of forming an employees' association or recruiting members. 2002, c. 16, s. 7 (6).

**Same**

(7) The Tribunal, in making an order allowing access, shall ensure that the access does not unduly interfere with,

- (a) normal agricultural practices, including agricultural practices intended to control the quality of agricultural products;
- (b) agricultural practices that are innovative or experimental;
- (c) human health and safety;
- (d) animal health and safety;
- (e) plant health;
- (f) planting, growing and harvesting;
- (g) bio-security needs; or

(h) privacy or property rights. 2002, c. 16, s. 7 (7).

## PROTECTIONS

### **Employers, etc., not to interfere with employees' associations**

**8** No employer, employers' organization or person acting on behalf of an employer or an employers' organization shall interfere with the formation, selection or administration of an employees' association, the representation of employees by an employees' association or the lawful activities of an employees' association, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence. 2002, c. 16, s. 8.

### **Employers, etc., not to interfere with employees' rights**

**9** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of an employees' association or was or is exercising any other right under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of an employees' association or exercising any other right under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of an employees' association or to cease to exercise any other right under this Act. 2002, c. 16, s. 9.

### **Intimidation and coercion**

**10** No person, employees' association, employers' organization or other entity shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of an employees' association or of an employers' organization or to refrain from exercising any right under this Act or from performing any obligations under this Act. 2002, c. 16, s. 10.

## COMPLAINTS RE CONTRAVENTIONS

### **Complaint to Tribunal**

**11** (1) An employee, an employees' association, an employer, an employers' organization or any other person or entity directly involved in an activity related to the exercise of a right under this Act may file a written complaint with the Tribunal alleging that there has been a contravention of this Act. 2002, c. 16, s. 11 (1).

### **Hearing**

(2) The Tribunal shall hold a hearing to inquire into the complaint. 2002, c. 16, s. 11 (2).

### **Parties**

(3) The parties to the hearing shall be,

- (a) any employee, employees' association, employer, employers' organization, or other person or entity who filed the complaint;
- (b) any employee, employees' association, employer, employers' organization, or other person or entity who is alleged in the complaint to have contravened this Act; and
- (c) any other person or entity that the Tribunal specifies as a party. 2002, c. 16, s. 11 (3).

### **Limited rights of participation**

(4) The Tribunal may order that a person or entity who is not a party to the hearing has limited rights of participation in the hearing, as specified by the Tribunal. 2002, c. 16, s. 11 (4).

### **Orders and remedies**

(5) Where the Tribunal is satisfied that an employee, an employees' association, an employer, an employers' organization or any other person or entity has acted contrary to this Act, it shall determine what, if anything, the employee, employees' association, employer, employers' organization, or other person or entity shall do or refrain from doing with respect to the contravention. 2002, c. 16, s. 11 (5).

#### Same

(6) Without limiting the generality of subsection (5), a determination under that subsection may include any one or more of,

- (a) an order directing the employee, employees' association, employer, employers' organization, or other person or entity to cease doing the act or acts complained of;
- (b) an order directing the employee, employees' association, employer, employers' organization, or other person or entity to rectify the act or acts complained of; or
- (c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Tribunal against the employee, employees' association, employer, employers' organization, or other person or entity, jointly or severally. 2002, c. 16, s. 11 (6).

#### Interest

(7) Any party may request the Tribunal for an order on account of interest and the Tribunal may make such an order if the Tribunal considers it just to do so in all the circumstances. 2002, c. 16, s. 11 (7).

#### Same

(8) For the purposes of subsection (7), sections 127 to 130 of the *Courts of Justice Act* apply with appropriate modifications. 2002, c. 16, s. 11 (8).

### GENERAL

#### Application of ss. 14-14.2, *Ministry of Agriculture, Food and Rural Affairs Act*

12 Sections 14 to 14.2 of the *Ministry of Agriculture, Food and Rural Affairs Act* apply to a proceeding under section 7 or 11 of this Act. 2002, c. 16, s. 12.

#### Dismissal of proceeding

13 (1) A panel of the Tribunal appointed under subsection 14 (3.1) of the *Ministry of Agriculture, Food and Rural Affairs Act* may dismiss, without a hearing, an application under section 7 or a complaint under section 11 if it appears to the panel that,

- (a) the matter is one that could or should be more appropriately dealt with under an Act other than this Act;
- (b) the application or the complaint is trivial, frivolous, vexatious or made in bad faith;
- (c) the application or the complaint is not within the jurisdiction of the Tribunal;
- (d) some aspect of the statutory requirements for bringing the proceeding has not been met; or
- (e) in the case of a complaint under section 11, the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person or entity affected by the delay. 2002, c. 16, s. 13 (1).

#### Same

(2) This section applies instead of section 4.6 of the *Statutory Powers Procedure Act*, except that subsections 4.6 (2) to (6) apply with necessary modifications and, for the purpose,

- (a) the reference to clause 4.6 (1) (b) in clause 4.6 (2) (a) of the *Statutory Powers Procedure Act* shall be read as a reference to clauses (1) (a), (c) and (e) of this section;
- (b) the reference to rules under section 25.1 in subsection 4.6 (6) of the *Statutory Powers Procedure Act* shall be read as a reference to rules under subsection 14.1 (6) of the *Ministry of Agriculture, Food and Rural Affairs Act*; and

(c) the reference to subsection 4.6 (1) in clause 4.6 (6) (a) of the *Statutory Powers Procedure Act* shall be read as a reference to subsection (1) of this section. 2002, c. 16, s. 13 (2).

#### **Interim orders and decisions**

**14** Despite section 16.1 of the *Statutory Powers Procedure Act*, the Tribunal shall not make an interim order or decision requiring an employer to hire a person or employee or to reinstate an employee in employment. 2002, c. 16, s. 14.

#### **Burden of proof**

**15** On an inquiry by the Tribunal into a complaint under section 11 that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization. 2002, c. 16, s. 15.

#### **Decision final and binding**

**16** A decision of the Tribunal is final and binding on the parties and any other person or entity that the Tribunal may specify. 2002, c. 16, s. 16.

#### **Limitation**

**17** The Tribunal has no jurisdiction under this Act to make a decision altering the terms and conditions of employment of employees, except as permitted under sections 7 and 11. 2002, c. 16, s. 17.

#### **Non-application of the *Labour Relations Act, 1995***

**18** (1) The *Labour Relations Act, 1995* does not apply to employees or employers in agriculture. 2002, c. 16, s. 18.

#### **Exception**

(2) Despite subsection (1) of this section and clause 3 (b.1) of the *Labour Relations Act, 1995*, if, on or before the day subsection 1 (1) of Schedule 1 to the *Restoring Ontario's Competitiveness Act, 2019* comes into force, a trade union was certified or voluntarily recognized under the *Labour Relations Act, 1995* as the bargaining agent for a bargaining unit that includes employees of an employer who are engaged in ornamental horticulture,

(a) the *Labour Relations Act, 1995* continues to apply to,

(i) the employees in the bargaining unit, whether or not they were in the bargaining unit at the time of certification or voluntary recognition,

(ii) the trade union that represents the employees described in sub-clause (i), and

(iii) the employer of the employees described in sub-clause (i); and

(b) this Act does not apply to the employees, trade union or employer referred to in clause (a). 2019, c. 4, Sched. 1, s. 3.

#### **Section Amendments with date in force (d/m/y) [ + ]**

**19, 20** Omitted (amends or repeals other Acts). 2002, c. 16, ss. 19, 20.

**21** Omitted (provides for coming into force of provisions of this Act). 2002, c. 16, s. 21.

**22** Omitted (enacts short title of this Act). 2002, c. 16, s. 22.

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