

O.C. 57/2009

A.R. 29/2009

February 18, 2009

The Lieutenant Governor in Council makes the Market Enhancement Recovery Fund Distribution Regulation set out in the attached Appendix.

For Information only

Recommended by: Minister of Employment and Immigration

Authority: Labour Relations Code  
(section 148.2)

**APPENDIX**  
**Labour Relations Code**  
**MARKET ENHANCEMENT RECOVERY**  
**FUND DISTRIBUTION REGULATION**

*Table of Contents*

- 1 Definitions
- 2 Requirements to report market enhancement recovery funds
- 3 Information to be disclosed in report
- 4 Distribution of market enhancement recovery funds
- 5 Compelling disclosure
- 6 Expiry
- 7 Coming into force

**Definitions**

**1** In this Regulation,

- (a) “construction contractor” means construction contractor as defined in section 148.1 of the Act;
- (b) “market enhancement recovery fund” means market enhancement recovery fund as defined in section 148.1 of the Act;
- (c) “trade union trust” means trade union trust as defined in section 148.1 of the Act;
- (d) “trustee” means a trustee of a trade union trust.

**Requirements to report market enhancement recovery funds**

**2(1)** Every trade union, and every trustee, that

- (a) is a signatory to
  - (i) a collective agreement that contemplates or references contributions to a market enhancement recovery fund, or
  - (ii) a trust agreement that establishes or maintains a market enhancement recovery fund,

or

- (b) maintains a market enhancement recovery fund,

shall file a disclosure report with the Board.

**(2)** A disclosure report must be filed within 30 days from the following:

- (a) the coming into force of section 148.2 of the Act, if the market enhancement recovery fund was established before that date;

(b) the date the market enhancement recovery fund is established, if it is established on or after the date of the coming into force of section 148.2 of the Act.

(3) Where it comes to the attention of the Board that a trade union or trustee has not filed a disclosure report in accordance with subsection (2), the Board shall, by notice in writing, require the trade union or trustee, as the case may be, to file a disclosure report with the Board within 30 days after receiving the notice.

#### **Information to be disclosed in report**

**3** The following must be included in a disclosure report filed under section 2:

- (a) the name of the trade union and a contact person for the trade union;
- (b) the name and position of the person who completed the disclosure report;
- (c) the name of the market enhancement recovery fund;
- (d) copies of any collective agreement, trust agreement, contract or other agreement that contain provisions respecting contributions to, or the winding-up of, the market enhancement recovery fund;
- (e) the names of the trustees of the market enhancement recovery fund or any other persons who have control of the fund;
- (f) whether any contributions to the market enhancement recovery fund were made in compliance with section 148.1 of the Act;
- (g) the value of the market enhancement recovery fund as of the date on which the disclosure report was completed;
- (h) any other details or documents required by the Board;
- (i) a statutory declaration in the form required by the Board made by the person who completed the disclosure report stating that the disclosure report is true, accurate and complete to the best of the person's knowledge.

#### **Distribution of market enhancement recovery funds**

**4(1)** Where the Board determines that a market enhancement recovery fund contains amounts that must be distributed pursuant to section 148.2 of the Act and those funds can be distributed in accordance with section 148.2(3)(a) of the Act, the trade union or trustee, as the case may be, shall distribute the funds in accordance with section 148.2(3)(a) within 6 months of the Board's determination.

**(2)** Where the Board determines that a market enhancement recovery fund contains amounts that must be distributed pursuant to section 148.2 of the Act and those funds cannot be distributed in accordance with section 148.2(3)(a) of the Act, the funds shall be transferred by the trade union or trustee, as the case may be, within 6 months of the Board's determination to another fund of the same trade union or trade union trust, notwithstanding the provisions of any collective agreement or trade union trust, in such a manner that the funds

cannot be used to subsidize the bids, tenders, fees or prices of a construction contractor or the wages paid to the employees of a construction contractor.

- (3) The Board may, on application to the Board, extend the time under subsection (1) or (2).
- (4) The trade union, trustee or person acting on behalf of the trade union or trustee shall, as soon as possible after a distribution pursuant to subsection (1) or a transfer pursuant to subsection (2) has been made, provide to the Board evidence satisfactory to the Board that the applicable subsection has been complied with.
- (5) Where the Board is satisfied that the applicable subsection has been complied with, the Board may make an order declaring that no further distribution under section 148.2 of the Act is required.
- (6) Despite subsection (5), if, during a distribution pursuant to subsection (1) or a transfer pursuant to subsection (2), the Board is presented with evidence that the funds no longer meet the definition of a market enhancement recovery fund, the Board may make an order declaring that there are no remaining funds to be distributed in accordance with section 148.2 of the Act.

#### **Compelling disclosure**

**5(1)** The Board may make orders compelling persons with information

- (a) that is relevant to the establishment or winding-up of a market enhancement recovery fund, or
- (b) about contributions made to a market enhancement recovery fund,

to disclose that information for the purposes of this Regulation and section 148.2 of the Act.

**(2)** In addition to the powers of the Board and officers under the Act, the Board or an officer may for the purposes of this Regulation and section 148.2 of the Act

- (a) make any inquiries, investigations and inspections the Board considers necessary,
- (b) inspect and examine all books, records, documents, papers, payrolls, contracts or other records of a construction contractor, an employee of a construction contractor, a trade union, a trustee or any other person relating to
  - (i) a market enhancement recovery fund,
  - (ii) contributions to a market enhancement recovery fund, or
  - (iii) deductions made from the wages of an employee that are remitted to a trade union or trade union trust or any person acting on behalf of a trade union or trade union trust,
- (c) by notice in writing demand the production, either forthwith or at a date, place and time specified in the notice, of any books, records, documents, papers, payrolls, contracts or other records relating to
  - (i) a market enhancement recovery fund,
  - (ii) contributions to a market enhancement recovery fund, or

- (iii) deductions made from the wages of an employee that are remitted to a trade union or trade union trust or any person acting on behalf of a trade union or trade union trust,
- (d) take extracts from or make copies of books, records, documents, papers, payrolls, contracts of employment and any other records relating to
  - (i) a market enhancement recovery fund,
  - (ii) contributions to a market enhancement recovery fund, or
  - (iii) deductions made from the wages of an employee that are remitted to a trade union or trade union trust or any person acting on behalf of a trade union or trade union trust,
- (e) require a construction contractor, an employee of a construction contractor, a trade union, a trustee or any other person acting on behalf of any of them to make, furnish or produce full and correct statements either orally or in writing respecting information that must be disclosed in accordance with this Regulation, and may require the statements to be made on oath or to be verified by statutory declaration, and
- (f) post or require any construction contractor, trade union, trustee, employee or other person to post any notices or other communications of the Board at the locations that the Board or officer, as the case may be, considers advisable.

(3) For the purposes of this Regulation and section 148.2 of the Act, an officer may, in the execution of the officer's duties, enter, inspect and examine at all reasonable times any premises or other place, other than a private dwelling, in which the officer has reason to believe that books, records, documents, papers, payrolls, contracts or other records referred to in this section are located.

#### **Expiry**

6 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on January 31, 2014.

#### **Coming into force**

7 This Regulation comes into force on the coming into force of section 148.2 of the Act.