



This Act is Current to December 31, 2013

*[Note: the dollar amounts shown in sections 3, 17, 18, 22, 29, 33 (5), 35, 73, 75, 77, 196 and 217 may not reflect the current consumer price index adjustments referred to in section 25.2, and the maximum wage rate shown in section 33 (10) may not be current. Current information may be found on the Workers' Compensation Board website at [www.worksafebc.com/regulation\\_and\\_policy/policy\\_decision/consumer\\_price\\_index\\_adjustments/default.asp](http://www.worksafebc.com/regulation_and_policy/policy_decision/consumer_price_index_adjustments/default.asp) or may be obtained by calling your WorkSafeBC regional office.]*

## **WORKERS COMPENSATION ACT**

### **[RSBC 1996] CHAPTER 492**

#### **Definitions**

**1** In this Act:

**"accident"** includes a wilful and intentional act, not being the act of the worker, and also includes a fortuitous event occasioned by a physical or natural cause;

**"accident fund"** means the fund provided for the payment of compensation, outlays and expenses referred to in section 36;

**"appeal tribunal"** means the Workers' Compensation Appeal Tribunal established under Part 4;

**"average net earnings"** means, with respect to a worker, the average net earnings of the worker as determined by the Board under sections 33.8 and 33.9;

**"Board"** means the Workers' Compensation Board;

**"board of directors"** means the board of directors appointed under section 81;

**"chief review officer"** means an officer of the Board who is appointed under section 96.2;

**"compensation"** includes health care;

**"construction"** includes reconstruction, repair, alteration and demolition;

**"consumer price index"** means the Consumer Price Index for Canada published by Statistics Canada under the *Statistics Act* (Canada);

**"dependant"** means a member of the family of a worker who was wholly or partly dependent on the worker's earnings at the time of the worker's death, or who but for the incapacity due to the accident would have been so dependent, and, except in section 17 (3) (a) to (h), (9) and (13), includes a spouse, parent or child who satisfies the Board that he or she had a reasonable expectation of pecuniary benefit from the

continuation of the life of the deceased worker;

**"employer"** includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry;

**"employment"**, when used in Part 1, means and refers to all or part of an establishment, undertaking, trade or business within the scope of that Part, and in the case of an industry not as a whole within the scope of Part 1 includes a department or part of that industry that would if carried on separately be within the scope of Part 1;

**"health care"**, when used in Part 1, includes the things which the Board under this Act is empowered to provide for injured workers;

**"industry"** includes establishment, undertaking, work, trade and business;

**"initial payment period"** means the period starting on the date of a worker's injury and ending on the last day of the 10th week for which compensation is payable under this Act to the worker for a temporary disability resulting from that injury;

**"invalid"** means physically or mentally incapable of earning;

**"invalid child"** includes a child who, though not an invalid at the date of death of the worker, becomes an invalid before otherwise ceasing to be entitled to compensation;

**"manufacturing"** includes making, preparing, altering, repairing, renovating, servicing, dyeing, cleaning, ornamenting, printing, finishing, packing, packaging, assembling the parts of and adapting for use or sale any raw material, goods, article or commodity;

**"member of family"** means

(a) a spouse, parent, grandparent, stepparent, child, grandchild, stepchild, sibling or half sibling, and

(b) a person who stood in the place of a parent to the worker or to whom the worker stood in place of a parent, whether related to the worker by blood or not;

**"metalliferous mining industry"** includes the operations of milling and concentrating, but does not include any other operation for the reduction of minerals;

**"occupational disease"** means

(a) a disease mentioned in Schedule B,

(b) a disease the Board may designate or recognize by regulation of general application,

(c) a disease the Board may designate or recognize by order dealing with a specific case, and

(d) the disease referred to in section 6.1 (1.1) or a disease prescribed by regulation for the purposes of section 6.1 (2), but only in respect of a worker to whom the presumption in either of those provisions applies, unless the disease is otherwise described by this definition,

and **"disease"** includes disablement resulting from exposure to contamination;

**"person"** includes, for the purpose of section 10, his or her personal representative;

**"physician"** means a person authorized under an enactment to practise in British

Columbia as a medical practitioner;

**"president"** means the president of the Board appointed under section 84.1;

**"qualified practitioner"** means a person authorized under an enactment to practise in British Columbia as a chiropractor, a dentist, a naturopathic physician or a podiatrist;

**"reconsider"** means to make a new decision in a matter previously decided where the new decision confirms, varies or cancels the previous decision or order;

**"regulation"**, when used in Part 1 in relation to regulations of the Board, means rules and regulations made by the Board under that Part;

**"retirement benefit"** means the lump sum payable under section 23.3;

**"review officer"** means an officer of the Board who is appointed under section 96.2;

**"specialist"** means a physician residing and practising in the Province and listed by the Royal College of Physicians and Surgeons of Canada as having specialist qualifications;

**"spouse"** means a person who

(a) is married to another person, or

(b) has lived with another person in a marriage-like relationship for a period of at least

(i) 2 years, or

(ii) if the person has had a child with the other person, 1 year;

**"surviving spouse"** means a person who was a spouse of a worker when the worker died;

**"worker"** includes

(a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;

(b) a person who is a learner, although not under a contract of service or apprenticeship, who becomes subject to the hazards of an industry within the scope of Part 1 for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment;

(c) a member of a fire brigade or an ambulance driver or attendant working with or without remuneration, when serving

(i) a municipality, a regional district, an urban area, an improvement district, a board of school trustees, a francophone education authority as defined in the *School Act*, a library board or a parks board, or

(ii) a board or commission having the management or conduct of work or services on behalf of any of the bodies in subparagraph (i);

(d) in respect of the industry of mining, a person while the person is actually engaged in taking or attending a course of training or instruction in mine rescue work under the direction or with the written approval of an employer in whose employment the person is employed as a worker in that industry, or while, with the knowledge and consent of an employer in that industry, either express or implied, he or she is actually engaged in rescuing or protecting or attempting to

rescue or protect life or property in the case of an explosion or accident which endangers either life or property in a mine, and this irrespective of whether during the time of his or her being so engaged the person is entitled to receive wages from the employer, or from any employer, or is performing the work or service as a volunteer;

(e) further, in respect of the industry of mining, a person while he or she is engaged as a member of the inspection committee, appointed or elected by the workers in the mine, to inspect the mine on behalf of the workers;

(f) an independent operator admitted by the Board under section 2 (2); and

(g) a person deemed by the Board to be a worker under section 3 (6).

## **Part 1 — Compensation to Workers and Dependants**

### **Division 1 — Scope of this Part**

#### **Application**

**2** (1) This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the Board.

(2) The Board may direct that this Part applies on the terms specified in the Board's direction

(a) to an independent operator who is neither an employer nor a worker as though the independent operator was a worker, or

(b) to an employer as though the employer was a worker.

(3) The application of this Part under subsection (2) to an employer does not exempt the employer, as an employer, from the application of this Part.

#### **Extending application**

**3** (1) to (3) [Repealed 1993-34-2.]

(4) Admissions under this section may be made at the time, in the manner, subject to the terms and conditions and for the period the Board considers adequate and proper.

(5) Where a person or group of persons carries on an undertaking that the Board thinks is in the public interest, the Board may, on the terms and conditions it directs,

(a) deem the person or group of persons, whether or not any of them receive payment for their services, to be workers for the purposes of this Act;

(b) on approval of the Lieutenant Governor in Council, deem the person or group of persons to be workers of the Crown in right of the Province; and

(c) where a person who is deemed to be a worker is not regularly employed, and having regard to all the circumstances, including his or her income, fix his or her average earnings at not less than \$124.86 per week or more than the maximum wage rate provided under section 33. *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(6) Where the Minister of Education, Skills and Training and the Minister of Labour approve a vocational or training program, and a school or other location as a place of that vocational or training program, the Board may, at the request of either minister, deem any person or class

of persons enrolled in the program to be workers of the Crown in right of the Province and compensation under this Act is then payable out of the accident fund for injuries arising out of and in the course of training for those workers, but where the injury results in a period of temporary disability with no loss of earnings,

- (a) a health care benefit only is payable except as provided in paragraph (b); and
- (b) where training allowances paid by Canada or the Province are suspended, the Board may, for the period it considers advisable, pay compensation in the amount of the training allowance.

(7) Where a person or group of persons is engaged in a work study program or other program of self improvement involving work, whether or not the person or group receives payment for the work, the Board may

- (a) on the application of an employer or a program organizer, and on the terms and conditions the Board directs, by order, admit the person or group as being within the scope of this Part, and, on admission, the person or group is deemed to be a worker or workers to whom this Part applies, and the Board may levy assessments on the employer or program organizer by the formula the Board determines; or
- (b) with the approval of the Lieutenant Governor in Council, deem a person or group engaged in the program to be workers of the Crown in right of the Province, on the terms and conditions the Board determines.

## **Fishing industry**

**4** (1) The Lieutenant Governor in Council may make regulations to

- (a) define the terms used in this section, and, for this purpose, the term "fish" may be defined to include any species of animal living in water, and the term "commercial fisher" may be defined to include the master and crew of a fishing vessel, the master and crew of a fish packing vessel and any other person who contributes in any manner to the catching or landing of fish for sale or commercial use;
- (b) provide that any provision of Part 1 relating to workers applies or may be applied to any commercial fishers working in or out of British Columbia ports, or on or about the waters of British Columbia, or resident in the Province, notwithstanding that they may not otherwise be workers under this Act;
- (c) provide that any provision of Part 1 relating to employers applies or may be applied to any commercial buyers or other commercial recipients of fish, or to any person engaged in the Province in transmitting payments to commercial fishers, notwithstanding that they may not otherwise be employers under this Act, and, to the extent the regulations provide, each buyer, recipient or payor is deemed to be the employer of all commercial fishers who contributed in any manner to the catching or landing of the fish bought, obtained or paid for by or through that person;
- (d) provide that methods of calculating and levying assessments additional to or different from the methods otherwise provided under Part 1 may be used for levying assessments for the purposes of this Part on commercial buyers and other commercial recipients of fish, and on a person engaged in the Province in transmitting payments to commercial fishers for fish whether landed in the

Province or elsewhere;

(e) create obligations, different from the terms of this Act, on commercial buyers and commercial recipients of fish, and masters of fishing vessels, to report to the Board injuries and occupational diseases sustained by commercial fishers, and to provide transportation for initial medical treatment;

(f) exclude a portion of the fishing industry or a category of workers or employers in that industry to whom a provision of this Part would otherwise apply from the application of that provision, and to substitute provisions contained in regulations made under this section; and

(g) delegate to the Board to the extent the regulations provide any power conferred by this section.

(2) Where it appears to the Board that a provision of this Act or of a regulation made under another section of this Act is inappropriate or unworkable in relation to commercial fishers, the fishing industry or commercial buyers, or other commercial recipients of the fish, the Board may, by regulation, make the rules and give the decisions it considers fair and appropriate having regard to the intent that all commercial fishers must as far as possible receive the benefit of and be subject to Part 1.

(3) Where the death of a commercial fisher resident in British Columbia arises out of and in the course of his or her occupation in the Province or waters off the Province after January 1, 1975, and the death is not otherwise compensable under this Part, the Board may treat the death in the same manner as if the commercial fisher were a worker employed by the Crown in right of the Province.

## **Division 2 — Compensation**

### **Compensation for personal injury**

5 (1) Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

(2) Where an injury disables a worker from earning full wages at the work at which the worker was employed, compensation is payable under this Part from the first working day following the day of the injury; but a health care benefit only is payable under this Part in respect of the day of the injury.

(3) Where the injury is attributable solely to the serious and wilful misconduct of the worker, compensation is not payable unless the injury results in death or serious or permanent disablement.

(4) In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment.

(5) Where the personal injury or disease is superimposed on an already existing disability, compensation must be allowed only for the proportion of the disability following the personal injury or disease that may reasonably be attributed to the personal injury or disease. The measure of the disability attributable to the personal injury or disease must, unless it is otherwise shown, be the amount of the difference between the worker's disability before and

disability after the occurrence of the personal injury or disease.

## **Mental disorder**

- 5.1** (1) Subject to subsection (2), a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental disorder
- (a) either
    - (i) is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
    - (ii) is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment,
  - (b) is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and
  - (c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

(2) The Board may require that a psychiatrist or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1) (b) and may consider that review in determining whether a worker is entitled to compensation for a mental disorder.

(3) Section 56 (1) applies to a psychiatrist or psychologist who makes a diagnosis referred to in this section.

(4) In this section:

**"psychiatrist"** means a physician who is recognized by the College of Physicians and Surgeons of British Columbia, or another accredited body recognized by the Board, as being a specialist in psychiatry;

**"psychologist"** means a person who is registered as a member of the College of Psychologists of British Columbia established under section 15 (1) of the *Health Professions Act* or a person who is entitled to practise as a psychologist under the laws of another province.

## **Occupational disease**

**6** (1) Where

- (a) a worker suffers from an occupational disease and is thereby disabled from earning full wages at the work at which the worker was employed or the death of a worker is caused by an occupational disease; and
- (b) the disease is due to the nature of any employment in which the worker was employed, whether under one or more employments,

compensation is payable under this Part as if the disease were a personal injury arising out of and in the course of that employment. A health care benefit may be paid although the worker is not disabled from earning full wages at the work at which he or she was employed.

(2) The date of disablement must be treated as the occurrence of the injury.

(3) If the worker at or immediately before the date of the disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease is deemed to have been due to the nature of that employment unless the contrary is proved.

(4) [Repealed 2002-56-3.]

(4.1) The Board may, by regulation,

(a) add to or delete from Schedule B a disease that, in the opinion of the Board, is an occupational disease,

(b) add to or delete from Schedule B a process or an industry, and

(c) set terms, conditions and limitations for the purposes of paragraphs (a) and (b).

(4.2) Despite subsection (4.1), the Board may designate or recognize a disease as being a disease that is peculiar to or characteristic of a particular process, trade or occupation on the terms and conditions and with the limitations set by the Board.

(5) [Repealed 1998-50-2.]

(6) [Repealed 1994-24-2.]

(7) **"Silicosis"** means a fibrotic condition of the lungs caused by the inhalation of silica dust.

(8) A worker in the metalliferous mining industry or coal mining industry who becomes disabled from uncomplicated silicosis or from silicosis complicated with tuberculosis is entitled to compensation for total or partial disability as provided by this Part, and where death results from the disability, the dependants of the worker are entitled to compensation as provided by this Part; but neither a worker nor a dependant is entitled to compensation for the disability or death unless the worker

(a) has been a resident of the Province for a period of at least 3 years last preceding the disablement, or unless at least 2/3 of the worker's exposure to dust containing silica was in the Province;

(b) was free from silicosis and tuberculosis before being first exposed to dust containing silica in the metalliferous mining or coal mining industry in this Province; and

(c) has been a worker exposed to dust containing silica in the metalliferous mining or coal mining industry in the Province for a period or periods aggregating 3 years preceding his or her disablement, or for a lesser period if the worker was not exposed to dust containing silica anywhere except in this Province.

(9) If the worker has been exposed to the inhalation of dust containing silica in 2 or more classes or subclasses of industry in the Province, the Board may apportion the cost of compensation among the funds provided by those classes or subclasses on the basis of the duration and severity of the exposure in each.

(10) When a worker has sustained pulmonary injury by a disabling form of pneumoconiosis as a result of exposure to dust conditions that are deemed by the Board to have contributed to the development of the disease in employment in the Province in an industry in which that disease is an occupational disease under this Part, the worker or the worker's dependants is or are entitled to compensation only if the worker was free from pneumoconiosis and

tuberculosis before being first exposed to those dust conditions in the Province, and if the worker's residence and exposure to the dust conditions have been of the duration required to entitle a worker to compensation for silicosis under subsection (8), and the cost of compensation may be apportioned in the manner provided by subsection (9).

(11) Where a deceased worker was, at the date of his or her death, under the age of 70 years and suffering from an occupational disease of a type that impairs the capacity of function of the lungs, and where the death was caused by some ailment or impairment of the lungs or heart of non-traumatic origin, it must be conclusively presumed that the death resulted from the occupational disease.

## **Firefighters' occupational disease presumption**

**6.1** (1) In this section, "**firefighter**" means a member of a fire brigade who is

- (a) described by paragraph (c) of the definition of "worker", and
- (b) assigned primarily to fire suppression duties, whether or not those duties include the performance of ambulance or rescue services.

(1.1) If a worker who is or has been a firefighter contracts primary site lung cancer, the disease must be presumed to be due to the nature of the worker's employment as a firefighter, unless the contrary is proved.

(2) If a worker who is or has been a firefighter contracts a prescribed disease, the disease must be presumed to be due to the nature of the worker's employment as a firefighter, unless the contrary is proved.

(3) The presumptions in subsections (1.1) and (2) apply only to a worker who

- (a) has worked as a firefighter for the minimum cumulative period prescribed for the disease, which minimum cumulative period may be defined differently, and be different, for different categories of firefighters,
- (b) throughout that period, has been regularly exposed to the hazards of a fire scene, other than a forest fire scene, and
- (c) is first disabled from the disease on or after the following date, as applicable:
  - (i) in the case of a disease that, on or before the date this subparagraph comes into force, was prescribed by regulation for the purposes of subsection (2), April 11, 2005;
  - (ii) in the case of primary site lung cancer, May 27, 2008;
  - (iii) in the case of a disease that, after the date this subparagraph comes into force, is prescribed by regulation for the purposes of subsection (2), the date on which that regulation takes effect.

(3.1) In addition to the requirements of subsection (3), the presumption for a primary site lung cancer applies only if

- (a) the worker has, in his or her lifetime, smoked a combined total of fewer than 365 cigarettes, cigars and pipes, or
- (b) the worker has been a non-smoker of tobacco products immediately before the date on which the worker is first disabled from that disease for the minimum period that may be prescribed, which minimum period may be different for different types or amounts of previous tobacco product usage.

(4) The Lieutenant Governor in Council may make regulations for the purposes of subsections

(2), (3) (a) and (3.1) (b).

(5) [Repealed 2009-7-2.]

### ***Emergency Intervention Disclosure Act***

**6.2** (1) In this section:

**"applicant"** means an applicant, as defined in the *Emergency Intervention Disclosure Act*, who has obtained a testing order under that Act respecting a source individual;

**"communicable disease"** means a communicable disease prescribed for the purposes of the *Emergency Intervention Disclosure Act*;

**"source individual"** has the same meaning as in the *Emergency Intervention Disclosure Act*.

(2) If a worker who is an applicant has contracted a communicable disease, it must be presumed, unless there is evidence to the contrary, that the communicable disease is due to the nature of the worker's employment, if

(a) the worker came into contact with the bodily substance of the source individual in the course of the worker's employment, and

(b) test results obtained under a testing order made under the *Emergency Intervention Disclosure Act* indicate that the source individual is infected with a pathogen that causes the communicable disease contracted by the applicant.

### **Loss of hearing**

**7** (1) Where a worker suffers loss of hearing of non-traumatic origin, but arising out of and in the course of employment under this Part, that is a greater loss than the minimum set out in Schedule D, the worker is entitled to compensation under this Part.

(2) Where the loss of hearing amounts to total deafness measured in the manner set out in Schedule D, but with no loss of earnings resulting from the loss of hearing, compensation must be calculated as for a disability equivalent to 15% of total disability under this Part.

(3) Where the loss of hearing does not amount to total deafness, and there is no loss of earnings resulting from the loss of hearing, compensation must be calculated as for a lesser percentage of total disability, and, unless otherwise ordered by the Board, must be based on the percentages set out in Schedule D.

(3.1) The Board may make regulations to amend Schedule D in respect of

(a) the ranges of hearing loss,

(b) the percentages of disability, and

(c) the methods or frequencies to be used to measure hearing loss.

(4) If a loss or reduction of earnings results from the loss of hearing, the worker is entitled to compensation for a total or partial disability as established under this Part.

(4.1) Compensation paid for a worker's loss of hearing under subsection (4) must not be less than the amount determined under subsection (2) or (3).

(5) Compensation under this section is not payable in respect of a period prior to September 1, 1975; but future compensation under this section is payable in respect of loss of hearing sustained by exposure to causes of hearing loss in the Province either before or

after that date, unless the exposure to causes of hearing loss terminated prior to that date.

(6) An application for compensation under this section must be accompanied or supported by a specialist's report and audiogram or by other evidence of loss of hearing that the Board prescribes.

(7) Where a worker suffers loss of hearing caused by exposure to causes of hearing loss in 2 or more classes or subclasses of industry in the Province, the Board may apportion the cost of compensation among the funds provided by those classes or subclasses on the basis of the duration or severity of the exposure in each.

### **Injuries happening out of Province**

**8** (1) Where the injury of a worker occurs while the worker is working elsewhere than in the Province which would entitle the worker or the worker's dependants to compensation under this Part if it occurred in the Province, the Board must pay compensation under this Part if

(a) a place of business of the employer is situated in the Province;

(b) the residence and usual place of employment of the worker are in the Province;

(c) the employment is such that the worker is required to work both in and out of the Province; and

(d) the employment of the worker out of the Province has immediately followed the worker's employment by the same employer within the Province and has lasted less than 6 months,

but not otherwise.

(2) [Repealed 1994-24-4.]

### **Interjurisdictional agreements and arrangements by the Board**

**8.1** (1) The Board may enter into an agreement or make an arrangement with Canada, a province or the appropriate authority of Canada or a province to provide for

(a) compensation, rehabilitation and health care to workers in accordance with the standards established under this Act or corresponding legislation in other jurisdictions,

(b) administrative co-operation and assistance between jurisdictions in all matters under this Act and corresponding legislation in other jurisdictions, or

(c) avoidance of duplication of assessments on workers' earnings.

(2) An agreement or arrangement under subsection (1) may

(a) waive or modify a residence or exposure requirement for eligibility for compensation, rehabilitation or health care, or

(b) provide for payment to the appropriate authority of Canada or a province for compensation, rehabilitation costs, or health care costs paid by it.

### **Election**

**9** (1) Where by the law of the country or place in which the injury or occupational disease occurs the worker or the worker's dependants are entitled to compensation in respect of it, they must elect whether they will claim compensation under the law of that country or place

or under this Part, and to give notice of the election. If the election is not made and notice given, it must be presumed that they have elected not to claim compensation under this Part; but if there is in existence an agreement entered into, or arrangement made, under section 8.1, any right of election is subject to the terms of that agreement or arrangement.

(2) Notice of the election must be given to the Board within 3 months after the occurrence of the injury or disablement from occupational disease, or, if it results in death, within 3 months after the death, or within any longer period that either before or after the expiration of the 3 months the Board allows.

### **Limitation of actions, election and subrogation**

- 10** (1) The provisions of this Part are in lieu of any right and rights of action, statutory or otherwise, founded on a breach of duty of care or any other cause of action, whether that duty or cause of action is imposed by or arises by reason of law or contract, express or implied, to which a worker, dependant or member of the family of the worker is or may be entitled against the employer of the worker, or against any employer within the scope of this Part, or against any worker, in respect of any personal injury, disablement or death arising out of and in the course of employment and no action in respect of it lies. This provision applies only when the action or conduct of the employer, the employer's servant or agent, or the worker, which caused the breach of duty arose out of and in the course of employment within the scope of this Part.
- (2) Where the cause of the injury, disablement or death of a worker is such that an action lies against some person, other than an employer or worker within the scope of this Part, the worker or dependant may claim compensation or may bring an action. If the worker or dependant elects to claim compensation, he or she must do so within 3 months of the occurrence of the injury or any longer period that the Board allows.
- (3) Where the Board is satisfied that due to the worker's physical or mental disability a worker is unable to exercise his or her right of election, and undue hardship will result, it may pay the compensation provided by this Part until the worker is able to make an election. If the worker then elects not to claim compensation, no further compensation may be paid, but the compensation so paid is a first charge against any sum recovered.
- (4) An application filed by a parent, guardian or the Official Guardian for compensation for the infant child of a deceased worker is a valid election on behalf of that child.
- (5) If after trial, or after settlement out of court with the written approval of the Board, less is recovered and collected than the amount of the compensation to which the worker or dependant would be entitled under this Part, the worker or dependant is entitled to compensation under this Part to the extent of the amount of the difference.
- (6) If the worker or dependant applies to the Board claiming compensation under this Part, neither the making of the application nor the payment of compensation under it restricts or impairs any right of action against the party liable, but as to every such claim the Board is subrogated to the rights of the worker or dependant and may maintain an action in the name of the worker or dependant or in the name of the Board; and if more is recovered and collected than the amount of the compensation to which the worker or dependant would be entitled under this Part, the amount of the excess, less costs and administration charges, must be paid to the worker or dependant. The Board has exclusive jurisdiction to determine whether to maintain an action or compromise the right of action, and its decision is final and conclusive.

(7) If, in an action brought by a worker or dependant of a worker or by the Board, it is found that the injury, disablement or death, as the case may be, was due partly to a breach of duty of care of one or more employers or workers under this Part, no damages, contributions or indemnity are recoverable for the portion of the loss or damage caused by the negligence of that employer or worker; but the portion of the loss or damage caused by that negligence must be determined although the employer or worker is not a party to the action.

(8) The provisions of this Part are in lieu of any right of action that the employer of the injured or deceased worker is or may, in respect of the personal injury or death of the worker, be entitled to maintain against another employer within the scope of this Part, or an independent operator to whom this Part applies by direction under section 2 (2) (a); but where the Board considers that

(a) a substantial amount of compensation has been awarded as a result of the injury or death of the worker; and

(b) the injury or death was caused or substantially contributed to by a serious breach of duty of care of an employer or an independent operator to whom this Part applies by direction under section 2 (2) (a) in another class or subclass,

the Board may order that the compensation be charged, in whole or in part, to the other class or subclass; but the provisions of this subsection do not affect any right which an employer may have against another employer, or an independent operator to whom this Part applies by direction under section 2 (2) (a), arising out of their indemnity agreement or contract.

(9) For the purpose of this section, "**worker**" includes an employer admitted under section 2 (2).

(10) In an action brought under this section, an award for damages is to include

(a) health care provided under this Part; and

(b) wages and salary paid by an employer during the period of disability for which regard has been had by the Board, or would have been had if the worker had elected to claim compensation, in fixing the amount of a periodical payment of compensation.

(11) Costs may, notwithstanding that a salaried employee of the Board acts as its solicitor or counsel, be awarded to and collected by the Board in an action taken by the Board under this section.

## **Repealed**

**11** [Repealed 2002-66-2.]

## **Worker who is minor is sui juris**

**12** A worker under the age of 19 years is sui juris for the purpose of this Part, and no other person has a cause of action or right to compensation for the personal injury or disablement except as expressly provided in this Part.

## **Compensation cannot be waived**

**13** (1) A worker may not agree with his or her employer to waive or to forego any benefit to which the worker or the worker's dependants are or may become entitled under this Part, and every agreement to that end is void.

(2) [Repealed 1998-50-3.]

### **No contribution from workers**

**14** (1) It is not lawful for an employer, either directly or indirectly, to deduct from the wages of the employer's worker any part of a sum which the employer is or may become liable to pay into the accident fund or otherwise under this Part, or to require or to permit the worker to contribute in any manner toward indemnifying the employer against a liability which the employer has incurred or may incur under this Part.

(2) Every person who contravenes subsection (1) commits an offence against this Part and is liable to repay to the worker any sum which has been so deducted from his or her wages or which he or she has been required or permitted to pay in contravention of subsection (1).

### **Compensation not assignable or liable to attachment**

**15** A sum payable as compensation or by way of commutation of a periodic payment in respect of it is not capable of being assigned, charged or attached, nor must it pass by operation of law except to a personal representative, and a claim must not be set off against it, except for money advanced by way of financial or other social welfare assistance owing to the Province or to a municipality, or for money owing to the accident fund.

### **Vocational rehabilitation**

**16** (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

(2) Where compensation is payable under this Part as the result of the death of a worker, the Board may make provisions and expenditures for the training or retraining of a surviving dependent spouse, regardless of the date of death.

(3) The Board may, where it considers it advisable, provide counselling and placement services to dependants.

## **Division 3 — Scale of Compensation**

### **Compensation in fatal cases**

**17** (1) In this section

"**child**" means

(a) a child under the age of 19 years, including a child of the deceased worker yet unborn;

(b) an invalid child of any age; and

(c) a child under the age of 25 years who is regularly attending an academic, technical or vocational place of education,

and "**children**" has a similar meaning;

"**federal benefits**" means the benefits paid for a dependant under the *Canada Pension Plan* as a result of a worker's death, other than the death benefit payable to the estate of a worker under section 57 of that Act.

(2) Where compensation is payable as the result of the death of a worker or as the result of injury resulting in the death,

(a) in addition to any other compensation payable under this section, an amount in respect of funeral and related expenses, as determined in accordance with the policies of the board of directors, must be paid out of the accident fund,

(b) the employer of the worker must bear the cost of transporting the body to the nearest business premises where funeral services are provided, and

(c) if burial does not take place there, the costs of any additional transportation, up to a maximum determined in accordance with the policies of the board of directors, may be paid out of the accident fund.

(2.1) No action for an amount larger than that established by subsection (2) lies in respect of the funeral, burial or cremation of the worker or cemetery charges in connection with it.

(3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:

(a) where the dependants are a surviving spouse and 2 or more children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those dependants, would equal the total of

(i) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum set out in paragraph (g); and

(ii) \$328.29 per month for each child beyond 2 in number; *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(b) where the dependants are a surviving spouse and one child, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those dependants, would equal 85% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum set out in paragraph (g);

(c) where the dependant is a surviving spouse who, at the date of death of the worker, is 50 years of age or over, or is an invalid spouse, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for that dependant, would equal 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, but the monthly payments must not be less than \$1 060.84; *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(d) where the dependant, at the date of death of the worker, is a surviving spouse who is not an invalid and is under the age of 50 years, and there are no dependent children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for that dependant, would equal the product of

(i) the percentage determined by subtracting 1% from 60% for each year that the age of that dependant, at the date of death of the worker, is under

the age of 50 years, and

(ii) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability,

but the percentage determined under subparagraph (i) must not be less than 30% and the monthly payments must not be less than \$1 060.84; *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(e) *[Repealed 2003-65-17.]*

(f) where there is no surviving spouse eligible for monthly payments under this section, and

(i) the dependant is a child, a monthly payment of a sum that, when combined with 50% of the federal benefits to or for that child, would equal 40% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability;

(ii) the dependants are 2 children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those children, would equal 50% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; or

(iii) the dependants are 3 or more children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those children, would equal the total of

(A) 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and

(B) \$328.29 per month for each child beyond 3 in number, *[Note: See Note on page 1 of the Act concerning dollar amount.]*

subject, in all cases, to the minimum set out in paragraph (g);

(g) the minimum allowances payable under paragraphs (a), (b) and (f) must be the allowances that would be payable if the allowances were calculated under those paragraphs in respect of a deceased worker with average earnings of \$35 367.14 per annum; *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(h) where there is

(i) no dependent spouse or child entitled to compensation under this section, but a worker leaves other dependants, a sum reasonable and proportionate to the pecuniary loss suffered by those dependants by reason of the death, to be determined by the Board, but not exceeding in the whole \$581.02 per month for life or a lesser period as determined by the Board; or *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(ii) a dependent spouse, or a dependent child or children, entitled to compensation under this section, but not a spouse and child or children, and, in addition, the worker leaves a dependent parent or parents, then, in addition to the compensation payable to the spouse or children, a sum, reasonable and proportionate to the pecuniary loss suffered by the

dependent parent or parents by the death, to be determined by the Board, but not exceeding \$581.02 per month for life or a lesser period as determined by the Board; *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(i) where

(i) no compensation is payable under the foregoing provisions of this subsection; or

(ii) the compensation is payable only to a spouse, a child or children or a parent or parents,

but the worker leaves a spouse, child or parent who, though not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker, payments, at the discretion of the Board, to that spouse, child or children, parent or parents, but not to more than one of those categories, not exceeding \$581.02 per month for life or a lesser period determined by the Board; and *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(j) where the worker leaves no dependent surviving spouse, or the surviving spouse subsequently dies, and the Board considers it desirable to continue the existing household, and when a suitable person acts as a foster parent in keeping up the household and taking care of and maintaining the children entitled to compensation, in a manner satisfactory to the Board, the same allowance is payable to the foster parent and children as would have been payable to a surviving spouse and children, and must continue as long as those conditions continue.

(4) Where an invalid spouse ceases to be an invalid, or a surviving spouse with dependent children no longer has dependent children or there is a reduction in the number of dependent children, the surviving spouse or children is then entitled to the same category of benefits as would have been payable if the death of the worker had occurred on the date the invalid spouse ceases to be an invalid or the surviving spouse no longer has dependent children, or the number of dependent children is reduced, as the case may be.

(5) Where there is a surviving spouse and a child or children, and the surviving spouse subsequently dies, the allowances to the children must, if they are in other respects eligible, continue and be calculated in the same manner as if the worker had died leaving no dependent spouse.

(6) Where at the date of death a spouse is not an invalid, but is suffering from a disability that results in a substantial impairment of earning capacity, the Board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had been an invalid.

(7) Where 2 workers are spouses and both are contributing to the support of a common household, each is deemed to be a dependant of the other.

(8) Where parents contribute to the support of a common household at which their children also reside, the children are deemed to be dependants of the parent whose death is compensable under this Part.

(9) Where compensation is payable as the result of the death of a worker, or of injury resulting in death, and where at the date of death the worker and dependent spouse were

living separate and apart, and

(a) there was in force at the date of death a court order or separation agreement providing periodic payments for support of the dependent spouse, or children living with that spouse, no compensation under subsection (3) is payable to the spouse or children living with the spouse; but monthly payments must be made in respect of that spouse and those children equal to the periodic payments due under the order or agreement; or

(b) there was no court order or separation agreement in force at the date of death providing periodic payments for support of the dependent spouse, or children living with that spouse, and

(i) the worker and dependent spouse were living separate and apart for a period of less than 3 months preceding the date of death of the worker, compensation is payable as provided in subsection (3); or

(ii) the worker and dependent spouse were separated with the intention of living separate and apart for a period of 3 months or longer preceding the death of the worker, monthly payments must be made up to the level of support which the Board believes the spouse and those children would have been likely to receive from the worker if the death had not occurred.

(10) Compensation payable under subsection (9) must never exceed the compensation that would have been payable under subsection (3) if there had been no separation.

(11) Compensation under this section is payable to a surviving spouse described in paragraph (b) of the definition of "spouse" only if a worker was living with and contributing to the support and maintenance of the spouse immediately preceding the worker's death.

(12) If

(a) a worker has left both

(i) a dependent surviving spouse described in paragraph (a) of the definition of "spouse" from whom, at the date of death, the worker was living separate and apart, and

(ii) a surviving spouse described in paragraph (b) of the definition of "spouse", with whom the worker was living, and to whose support and maintenance the worker was contributing, immediately preceding the worker's death, and

(b) there is a difference in

(i) the amount of compensation payable to the spouse referred to in paragraph (a) (i) of this subsection by reason of the separation, and

(ii) the amount of compensation that would have been payable to that person if that person and the worker had not been living separate and apart,

the Board may pay compensation, up to the amount of the difference, to the spouse referred to in paragraph (a) (ii) of this subsection.

(13) In addition to any other compensation provided, a dependent surviving spouse, common law spouse or foster parent in Canada to whom compensation is payable is entitled to a lump sum of \$2 526.30. *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(14) Where in any situation there is a need to apportion allowances payable to dependants

among those dependants, the formula for apportionment must be at the discretion of the Board; but, unless the Board has grounds for a different apportionment, the apportionment must be:

- (a) where there is a dependent spouse and one child, 2/3 to the dependent spouse and 1/3 to the child;
- (b) where there is a dependent spouse and more than one child, 1/2 to the dependent spouse and 1/2 among the children in equal shares; and
- (c) where there are children but no dependent spouse, among the children in equal shares.

(15) Where personal injury to, disablement of or death of a worker occurs in the course of the worker's employment as a direct result of enemy warlike action or counteraction taken against it and provision has been made for compensation in respect of it for the worker or the worker's dependants by the government of Canada, the worker or the dependants are entitled to compensation under this Part only when the compensation provided by the government of Canada is less than that provided by this Act, and then only to the extent of the difference.

(16) If a dependant is entitled to receive compensation

- (a) as a result of the death of a worker, and
- (b) as a result of the subsequent death of another worker,

the total compensation payable for the dependant as a result of those deaths is an amount that the Board considers appropriate.

(16.1) The compensation payable for a dependant under subsection (16) must not

- (a) be less than the highest of the amounts that would otherwise be payable in respect of the death of any of the workers, and
- (b) be more than 90% of the average net earnings of a worker whose wage rate is the maximum wage rate established under section 33 (6) and (7) for the year in which the last death referred to in subsection (16) (b) occurred.

(16.2) For the purposes of subsection (16.1), "**average net earnings**" means the average net earnings calculated in accordance with section 33.8.

(17) Where a situation arises that is not expressly covered by this section, or where some special additional facts are present that would, in the Board's opinion, make the strict application of this section inappropriate, the Board must make rules and give decisions it considers fair, using this section as a guideline.

### **Addition to payments**

**18** (1) Where, on July 1, 1974,

- (a) compensation is being paid to dependants in respect of deaths occurring prior to that date;
- (b) those dependants are not receiving or entitled to receive benefits under the Canada Pension Plan; and
- (c) the dependant is a widow who is 50 years of age or over, or is an invalid spouse, or the dependants are children, or a widow and children,

there must be added to the monthly payments the sum of \$439.58 for each such dependent

spouse and \$136.44 for each dependent child. [Note: See Note on page 1 of the Act concerning dollar amount.]

(2) Where dependants would qualify for the increases in subsection (1) but for the fact that they are receiving or entitled to receive benefits under the Canada Pension Plan, and where the amount of benefits under the Canada Pension Plan is less than the amounts set out in subsection (1), the monthly payments payable to those dependants under this Part must be increased by the amount by which the benefits under the Canada Pension Plan are less.

### **Surviving spouse of a deceased worker**

**19** (1) In this subsection and subsections (2) and (2.1)

**"former subsection"** means the section 19 (1) that came into force on April 17, 1985 or the section 19 (4) repealed in 1994;

**"interest"** means interest calculated at a rate and in a manner set by the Board for the purposes of this section;

**"monthly payments"** mean monthly payments under this Act to a widow, widower, former common law wife or former common law husband of a deceased worker;

**"person"** does not include a widow or former common law wife of a deceased worker if the widow or former common law wife remarried or entered into a new common law relationship before April 17, 1985.

(2) A person whose monthly payments were discontinued by application of a former subsection is entitled to

(a) monthly payments beginning on the later of

(i) the expiry of the 2 year period for which payment was made under the former subsection, or

(ii) the repeal of the former subsection,

(b) the amount, if any, by which, during the period from April 17, 1985 to the beginning of monthly payments under paragraph (a), the total amount of compensation described by section 17 that the person would have received if the former subsection had not been in force exceeds the sum paid to the person under the former subsection, and

(c) interest on any amount payable under paragraph (b).

(2.1) In calculating monthly payments for the purposes of subsection (2), adjustments are deemed to have been made under section 25, as it read immediately before being amended by the *Workers Compensation Amendment Act, 2002*, for the months the former subsection was in force.

(3) [Repealed 1985-68-122.]

(4) [Repealed 1994-24-7.]

### **Period for making payments under sections 17 to 19**

**19.1** The Board must make periodic payments under section 17, 18 or 19 for the life of the person to whom the payment is to be made, unless a shorter period applies under section 17, 18 or 19, as the case may be.

## **Proof of existence of dependants**

- 20 The Board may from time to time require the proof of the existence and condition of dependants in receipt of compensation payments that is deemed necessary by the Board, and pending the receipt of that proof may withhold further payments.

## **Health care**

- 21 (1) In addition to the other compensation provided by this Part, the Board may furnish or provide for the injured worker any medical, surgical, hospital, nursing and other care or treatment, transportation, medicines, crutches and apparatus, including artificial members, that it may consider reasonably necessary at the time of the injury, and thereafter during the disability to cure and relieve from the effects of the injury or alleviate those effects, and the Board may adopt rules and regulations with respect to furnishing health care to injured workers entitled to it and for the payment of it. The Board may make a daily allowance to an injured worker for the worker's subsistence when, under its direction, the worker is undergoing treatment at a place other than the place where he or she resides, and the power of the Board to make a daily allowance for subsistence under this section extends to an injured worker who receives compensation, regardless of the date the worker first became entitled to compensation.

(2) Where in a case of emergency, or for other justifiable cause, a physician or qualified practitioner other than the one provided by the Board is called in to treat the injured worker, and if the Board finds there was a justifiable cause and that the charge for the services is reasonable, the cost of the services must be paid by the Board.

(3) The Board may in its discretion authorize employers to furnish or provide health care at the expense of the Board and on terms fixed by it. Every employer must, at the employer's own expense, furnish to a worker injured in the employer's employment, when necessary, immediate conveyance and transportation to a hospital, physician or qualified practitioner for initial treatment.

(4) Where a worker received, before April 1, 1972, health care under

- (a) the *Canada Shipping Act*; or
- (b) a health care plan approved by the Board,

the worker is entitled to receive, in accordance with this section, additional health care.

(5) Where additional health care is provided by the Board under subsection (4), its cost may be charged in the manner the Board considers proper.

(6) Health care furnished or provided under any of the preceding subsections of this section must at all times be subject to the direction, supervision and control of the Board; and the Board may contract with physicians, nurses or other persons authorized to treat human ailments, hospitals and other institutions for any health care required, and to agree on a scale of fees or remuneration for that health care; and all questions as to the necessity, character and sufficiency of health care to be furnished must be determined by the Board. The fees or remuneration for health care furnished under this Act must not be more than would be properly and reasonably charged the worker if the worker were paying, and the amount must be fixed and determined by the Board, and no action for an amount larger than that fixed by the Board lies in respect of health care.

(7) Without limiting the power of the Board under this section to supervise and provide for the furnishing of health care in every case where it considers the exercise of that power is

expedient, the Board must permit health care to be administered, so far as the selection of a physician or qualified practitioner is concerned, by the physician or qualified practitioner who may be selected or employed by the injured worker.

(8) The Board may assume the responsibility of replacement and repair of

(a) artificial appliances, including artificial members damaged or broken as the result of an accident arising out of and in the course of the employment of the worker; and

(b) eyeglasses, dentures and hearing aids broken as a result of an accident arising out of and in the course of employment if that breakage is accompanied by objective signs of personal injury, or, where there is no personal injury, if the accident is otherwise corroborated and the Board is satisfied the worker was not at fault.

(9) Where an injury to a worker results in serious impairment of the worker's sight, the Board may, to protect the worker's remaining vision, provide the worker with protective eyeglasses.

### **Permanent total disability**

**22** (1) Subject to sections 34 and 35, if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the worker's average net earnings.

(2) The compensation awarded under this section must not be less than \$1 623.32 per month. *[Note: See Note on page 1 of the Act concerning dollar amount.]*

### **Permanent partial disability or disfigurement**

**23** (1) Subject to subsections (3) to (3.2) and sections 34 and 35, if a permanent partial disability results from a worker's injury, the Board must

(a) estimate the impairment of earning capacity from the nature and degree of the injury, and

(b) pay the worker compensation that is a periodic payment that equals 90% of the Board's estimate of the loss of average net earnings resulting from the impairment.

(2) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations which may be used as a guide in determining the compensation payable in permanent disability cases.

(3) Subject to sections 34 and 35, if

(a) a permanent partial disability results from a worker's injury, and

(b) the Board makes a determination under subsection (3.1) with respect to the worker,

the Board may pay the worker compensation that is a periodic payment that equals 90% of the difference between

(c) the average net earnings of the worker before the injury, and

(d) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

(3.1) A payment may be made under subsection (3) only if the Board determines that the combined effect of the worker's occupation at the time of the injury and the worker's disability resulting from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.

(3.2) In making a determination under subsection (3.1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation.

(4) Where permanent partial disability results from the injury, the minimum compensation awarded under this section must be calculated in the same manner as provided by section 29 (2) for temporary total disability but to the extent only of the partial disability.

(5) Where the worker has suffered a serious and permanent disfigurement which the Board considers is capable of impairing the worker's earning capacity, a lump sum in compensation may be paid, although the amount the worker was earning before the injury has not been diminished.

### **Period of payment for total or partial disability**

**23.1** Compensation payable under section 22 (1), 23 (1) or (3), 29 (1) or 30 (1) may be paid to a worker, only

(a) if the worker is less than 63 years of age on the date of the injury, until the later of the following:

- (i) the date the worker reaches 65 years of age;
- (ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board, and

(b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:

- (i) 2 years after the date of the injury;
- (ii) if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.

### **Retirement benefits**

**23.2** (1) This section applies to a worker who is receiving periodic payments under section 22 (1) or 23 (1) or (3).

(2) The Board must set aside, at the time a periodic payment is made to a worker, an amount that

- (a) is equal to 5% of the periodic payment, and
- (b) is in addition to the periodic payment.

(3) A worker may apply to the Board to contribute to the amount set aside or to be set aside under subsection (2) an amount that is not less than 1% and not greater than 5% of each subsequent periodic payment made to the worker.

(4) Subject to subsection (5), if the worker makes an application under subsection (3), the Board must, as soon as practicable, deduct the amount of the worker's contribution from

each subsequent periodic payment made to the worker and add this contribution to the amount set aside under subsection (2).

(5) The deductions made by the Board under subsection (4) may not be varied, except in response to an application by the worker to stop the deductions.

(6) A worker may only once

- (a) make an application under subsection (3), and
- (b) apply to stop the deductions.

(7) An application made under subsection (3) or (5) must be made in a form acceptable to the Board.

(8) The Board must provide each worker annually with a statement containing all relevant information about the funds accumulated by the Board for payment of the worker's retirement benefit.

### **Payment of retirement benefits**

**23.3** (1) Subject to subsection (3), on the date determined under subsection (2), a worker is entitled to receive a lump sum that equals the total of

- (a) the amounts set aside for payment to the worker under section 23.2 (2),
- (b) the contributions, if any, made by the worker under section 23.2 (4), and
- (c) the accumulated investment income earned on those amounts and contributions.

(2) A worker's entitlement under subsection (1) is effective

- (a) subject to paragraph (b), on the date the worker reaches 65 years of age, or
- (b) on the date of the last periodic payment to the worker, if that date is after the date the worker reaches 65 years of age.

(3) Despite section 35 (4), if a worker dies before receiving his or her retirement benefit under subsection (1), the Board must pay the lump sum to which the worker is entitled under that subsection to

- (a) a beneficiary designated by the worker, or
- (b) the worker's estate, if a beneficiary is not designated.

### **Handling of money to be paid as retirement benefit**

**23.4** (1) The Board must establish a reserve in the accident fund into which the amounts and contributions referred to in section 23.2 (2) and (4) must be deposited.

(2) The funds deposited in the reserve must be held and invested in the name of the reserve and those investments must clearly indicate that they are held in that reserve for payment of retirement benefits under section 23.3.

(3) If approved by the board of directors and on terms set by the Board, the Board may authorize a financial institution, as defined in the *Financial Institutions Act*, or a bank to administer the reserve referred to in subsection (1), and a financial institution or bank that is so authorized must comply with the relevant provisions of this Part as if it were the Board.

### **Retirement services and supports**

**23.5** (1) If a worker has a permanent total disability, the Board must assess, within the 3 month period before the retirement benefit is payable to the worker, the need or continued need of the worker for services and personal supports under sections 16 and 21.

(2) After the assessment under subsection (1) is completed, the Board must take all actions necessary to provide to the worker, for his or her life, the services and personal supports under sections 16 and 21 that the Board considers are necessary.

(3) This section does not limit the power of the Board to otherwise provide services and personal supports to workers at any time under sections 16 and 21.

### **Reconsidering benefits**

**24** (1) Despite section 96 (1), this section applies to the claims for compensation that the Board may by regulation determine, provided that

(a) the worker is still suffering from a compensable disability sustained more than 10 years before the application under subsection (2); and

(b) a permanent disability award was made by the Board based on a percentage of total disability of 12% or greater, or the case is of a kind in which the Board uses a projected loss of earnings method in calculating compensation.

(2) With respect to a claim for compensation to which this section applies, the Board must, on application by the worker, reconsider the compensation benefits; and, if it decides that, in its opinion, the worker is not receiving adequate compensation having regard to the projected loss of income resulting from the disability, periodic payments must be established or raised accordingly.

(3) Where a worker is under the age of 65 years, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of earnings resulting from the disability.

(4) Where a worker is 65 years of age or over, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of retirement income resulting from the disability.

(5) Where a worker is under the age of 65 years, periodic payments established or raised under this section are subject to readjustment by reference to subsection (4) on attaining the age of 65 years.

(6) The calculation of benefits under this section must be made in the manner the Board determines.

(7) Notwithstanding that a worker suffering a permanent disability has received an award that has been wholly or partly commuted, or an award for a fixed term, the worker may apply under this section, but the worker is deemed to be still receiving the periodic payments that have been commuted, or the life equivalent of the periodic payments made for a fixed term.

(8) Section 31 applies to the calculation of compensation under this section; but the calculation must not be limited by reference to average earnings at the time of injury.

(9) The periodic payments awarded to a worker following a reconsideration under this section must not exceed the maximum the Board would award to a worker in an occupational category similar to the occupation of the applicant worker before the injury if he or she had, at the effective date of the reconsideration under this section, suffered a compensable disability similar to the compensable disability being suffered by the applicant worker.

(10) A worker may reapply under this section for reconsideration of his or her compensation benefits after a further 10 years have elapsed since the last previous application under this section.

(11) Where a worker whose disability occurred before January 1, 1965 applies under this section within one year of the earliest date on which the worker becomes eligible to do so, an increase or establishment of benefits under this section is effective from September 1, 1975, and in all other cases the effective date for the commencement of an increase or establishment of benefits under this section is the date the application is received at the Board.

(12) A decision under this section must not result in periodic payments to a worker being lower than they would be if no application had ever been made under this section.

### **General indexing factor**

**25** (1) For the purposes of this section, the Board must, as of January 1 of each year,

(a) determine the percentage change in the consumer price index for Canada, for all items, for the 12 month period ending on October 31 of the previous year, as published by Statistics Canada, and

(b) subtract 1% from the percentage change determined under paragraph (a).

(2) The percentage resulting from calculations made under subsection (1) must not be greater than 4% or less than 0%.

(3) On January 1 of each year, the Board must adjust, in accordance with subsection (4), the periodic payments of compensation made in respect of an injury or a death occurring more than 12 months before the date of the adjustment.

(4) For the purposes of subsection (3), the Board must adjust the periodic payments of compensation to be paid in that calendar year for the injury or death by the percentage determined under subsection (1).

(5) If the Board starts or restarts periodic payments of compensation for an injury or a death that occurred more than 12 months before the payments are started or restarted, the Board must, under this section, adjust all periodic payments as if the payments were made continuously from the date of injury or death.

### **Repealed**

**25.1** [Repealed 2003-65-19.]

### **Variation of dollar amounts**

**25.2** (1) Subject to subsection (3), the Board must adjust every dollar amount referred to in this Act on January 1 of each year by applying the percentage change in the consumer price index for Canada, for all items, for the 12 month period ending on October 31 of the previous year, as published by Statistics Canada.

(2) On the Board making an adjustment of a dollar amount under subsection (1), the dollar amount referred to in this Act is deemed to be amended.

*[Note: For convenience, orders made under this section are reprinted at the end of this Act.]*

(3) Subsection (1) does not apply to a dollar amount referred to in section 33 (4), (6), (8) and (10).

## **Repealed**

### **25.3** [Repealed 2003-65-21.]

## **Transitional**

**26** (1) Where periodical payments for permanent disability were awarded by the Board prior to January 1, 1966, and where

(a) the award was for a percentage of total disability of 12% or greater, and the whole of the periodical payments was commuted prior to that date;

(b) a portion of the periodical payments equivalent to 12% of total disability or greater was commuted prior to that date; or

(c) the award was for a percentage of total disability of 12% or greater and was of periodical payments for a fixed term,

and where the worker to whom the award had been made is still suffering from the disability, the Board may, on the application of the worker, establish new periodic payments, which are to commence for the month in which the application is received at the Board.

(2) Where the award was for a fixed term that has not expired or been commuted, this section applies on expiry of the term.

(3) In order to calculate the rate of new periodic payments to be established under this section, the Board must determine

(a) the monthly payments that would have been payable on January 1, 1966 if the award had been of periodic payments for life and there had been no commutation, or, where the commutation was partial, the additional rate of monthly payments that would have been payable on that date if there had been no commutation; and

(b) the additional amount of monthly payments that would have been payable for the month during which the application is received by way of increases on the amounts calculated under paragraph (a) if those amounts had continued to be due; namely, the total of all increases that would have been made from January 1, 1966 to and including the last day of the month preceding the date the application is received.

(4) The rate of the new periodical payments to be established under this section must be the amount calculated under subsection (3) (b); but future adjustments under section 25 must be based on the sum of the amounts calculated under subsection (3) (a) and (b).

(5) This section does not apply where the purpose of the section has been achieved as a result of an application under section 24 or in some other way.

## **Transitional**

**27** Where dependants are receiving or are eligible to receive periodic payments in respect of the death of a worker occurring prior to July 1, 1974, and in respect of which payments there was no provision prior to that date for increases according to the consumer price index, those periodical payments must be adjusted as of August 1, 1975, so that after that date the periodical payments will be at the same rate as if the provisions of the Act relating to increases according to the consumer price index between January 1, 1966 and July 1, 1974 had been applicable.

## **Publish in Gazette**

- 28** There must be published in the Gazette amendments to the Act resulting from changes in the consumer price index.

## **Temporary total disability**

- 29** (1) Subject to sections 34 (1) and 35 (1), (4) and (5), if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the worker's average net earnings.

(2) The compensation awarded under this section must not be less than an amount equal to \$374.56 per week, unless the worker's average earnings are less than that sum per week, in which case the worker must receive compensation in an amount equal to the worker's average earnings. *[Note: See Note on page 1 of the Act concerning dollar amount.]*

## **Temporary partial disability**

- 30** (1) Subject to sections 34 (1) and 35 (1), (4) and (5), if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the difference between

(a) the worker's average net earnings before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

(2) Where temporary partial disability results from the injury, the minimum compensation awarded under this section must be calculated in the same manner as prescribed by section 29 (2) for temporary total disability but to the extent only of the partial disability.

## **Maximum compensation**

- 31** (1) Where a worker is receiving compensation for a permanent or temporary disability, the worker must not receive compensation for a further or other disability in an amount that would result in the worker receiving in the aggregate compensation in excess of the maximum payable for total disability.

(2) Where a worker has received a lump sum in lieu of the periodic payments that otherwise would have been payable for a permanent disability, the worker is, for the purposes of subsection (1), deemed to be still in receipt of the periodic payments.

## **Termination of periodic payments**

- 31.1** Despite section 23.1, the Board may not make a periodic payment to a worker under section 22 (1), 23 (1) or (3), 29 (1) or 30 (1) if the worker ceases to have the disability for which the periodic payment is to be made.

## **Recurrence of disability**

- 32** (1) For the purpose of determining the amount of compensation payable where there is a recurrence of temporary total disability or temporary partial disability after a lapse of 3 years

following the occurrence of the injury, the Board may calculate the compensation as if the recurrence were the happening of the injury if it considers that by doing so the compensation payable would more nearly represent the percentage of actual loss of earnings suffered by the worker by reason of the recurrence of the injury.

(2) Where a worker has been awarded compensation for permanent partial disability for the original injury and compensation for recurrence of temporary total disability under subsection (1) is calculated by reference to the average earnings of the worker at the date of the recurrence, the compensation must be without deduction of the compensation payable for the permanent partial disability; but the total compensation payable must not exceed the maximum payable under this Part at the date of the recurrence.

(3) Where more than 3 years after an injury a permanent disability or an increased degree of permanent disability occurs, the compensation payable for the permanent disability or increased degree of permanent disability may be calculated by reference to the average earnings of the worker at the date of the occurrence of the permanent disability or increased degree of permanent disability.

### **Average earnings**

**33** (1) The Board must determine the amount of average earnings and the earning capacity of a worker with reference to the worker's average earnings and earning capacity at the time of the worker's injury.

(2) Subject to section 3 (5), the Board must determine the amount of average earnings of a worker in accordance with this section and sections 33.1 to 33.7.

(3) A determination of the amount of average earnings of a worker under sections 33.1 to 33.7 may not exceed the maximum wage rate as determined under subsections (6) to (10).

(3.1) The Board must not include the following in determining the amount of average earnings of a worker:

- (a) the employer's payments on behalf of the worker for
  - (i) contributions payable under the *Canada Pension Plan*,
  - (ii) premiums payable under the *Employment Insurance Act* (Canada), and
  - (iii) contributions to a retirement, pension, health and welfare, life insurance or another benefit plan for the worker or the worker's dependants;
- (b) special expenses or allowances paid to the worker because of the nature of the worker's employment.

(3.2) The Board may include, in determining the amount of average earnings of a worker, income from employment benefits payable to the worker under the *Employment Insurance Act* (Canada) during the period for which average earnings are determined, only if, in the Board's opinion, the worker's employment during that period was in an occupation or industry that results in recurring seasonal or recurring temporary interruptions of employment.

(4) Notwithstanding any other provision of this Act, all periodic payments awarded as compensation for permanent partial disability to workers injured prior to March 18, 1943, who, on January 1, 1955, or after that are in receipt of those periodical payments must be calculated or recalculated at a rate of 66 2/3% of average earnings of not less than \$2 000 nor more than \$2 500 per annum; but compensation is not payable under this subsection for a period prior to January 1, 1955.

(5) The compensation payable to workers who, on July 1, 1974, are in receipt of compensation for permanent total disability must not be less than \$1 623.32 per month. *[Note: See Note on page 1 of the Act concerning dollar amount.]*

(6) Until changed under subsection (7), the maximum wage rate under subsection (1) is \$11 200 per year. *[Note: see subsection (10).]*

(7) Prior to the end of each calendar year, the Board must determine the maximum wage rate to be applicable for the following calendar year.

(8) The maximum wage rate to be determined under subsection (7) must be an amount that the Board thinks represents the same relationship to the sum of \$11 200 as the annual average of wages and salaries in the Province for the year preceding that in which the determination is made bears to the annual average of wages and salaries for the year 1972; and the resulting figure may be rounded to the nearest \$100. *[Note: see subsection (10).]*

(9) For the purpose of determining annual average of wages and salaries under subsection (8), the Board may use data published or supplied by Statistics Canada.

(10) Where a worker is injured after December 31, 1985, the references in subsections (6) and (8) to \$11 200 must be read as references to \$40 000, and the reference in subsection (8) to 1972 must be read as a reference to 1984. *[Note: See Note on page 1 of the Act concerning dollar amount.]*

### **General rule for determination of average earnings**

**33.1** (1) Subject to sections 33.5 to 33.7, the Board must determine, for the shorter of the following periods, the amount of average earnings of a worker based on the rate at which the worker was remunerated by each of the employers for whom he or she was employed at the time of the injury:

(a) the initial payment period;

(b) the period starting on the date of the worker's injury and ending on the date the worker's injury results in a permanent disability, as determined by the Board.

(2) Subject to sections 33.2 to 33.7, if a worker's disability continues after the end of the period referred to in subsection (1) (a) and (b) that is shorter for the worker, the Board must, for the period starting after the end of that shorter period, determine the amount of average earnings of the worker based on the worker's gross earnings, as determined by the Board, for the 12 month period immediately preceding the date of injury.

(3) If 2 or more sections of sections 33.2 to 33.7 apply to the same worker for the same injury, the Board must determine the section that best reflects the worker's circumstances and apply that section.

### **Exception to section 33.1 (2) – apprentice or learner**

**33.2** (1) This section applies to a worker who, at the time of injury, is an apprentice in a trade, an occupation or a profession, or is a person referred to in paragraph (b) of the definition of "worker".

(2) If a worker's injury results in a temporary disability that continues after the initial payment period, the Board must, for the period starting after the end of the initial payment period, determine the amount of average earnings of the worker based on the greater of the following:

(a) the rate at which the worker was remunerated by each of the employers for whom he or she was employed at the time of the injury;

(b) the worker's gross earnings, as determined by the Board, for the 12 month period immediately preceding the date of injury.

(3) If a worker's injury results in a permanent disability, the Board must, for the period starting on the date, as determined by the Board, that the injury resulted in a permanent disability, determine the amount of average earnings of the worker based on the gross earnings, as determined by the Board, for the 12 month period immediately preceding the date of injury, of a qualified person employed at the starting rate in the same trade, occupation or profession

(a) by the same employer, or

(b) if no person is so employed, by an employer in the same region.

#### **Exception to section 33.1 (2) – employed less than 12 months**

**33.3** In the case of a worker employed, on other than a casual or temporary basis, by the employer for less than 12 months immediately preceding the date of the injury, the Board's determination of the amount of average earnings under section 33.1 (2) must be based on the gross earnings, as determined by the Board, for the 12 month period immediately preceding the date of injury, of a person of similar status employed in the same type and classification of employment

(a) by the same employer, or

(b) if no person is so employed, by an employer in the same region.

#### **Exception to section 33.1 (2) – exceptional circumstances**

**33.4** (1) If exceptional circumstances exist such that the Board considers that the application of section 33.1 (2) would be inequitable, the Board's determination of the amount of average earnings of a worker may be based on an amount that the Board considers best reflects the worker's loss of earnings.

(2) Subsection (1) does not apply in the circumstances described in section 33.2, 33.3, 33.5 or 33.6.

#### **Exception to section 33.1 – casual worker**

**33.5** If a worker's pattern of employment at the time of the injury is casual in nature, the Board's determination of the amount of average earnings under section 33.1 from the date of injury must be based on the worker's gross earnings, as determined by the Board, for the 12 month period immediately preceding the date of injury.

#### **Exception to section 33.1 – person with coverage under section 2 (2)**

**33.6** If an independent operator or employer, to whom the Board directs that this Part applies under section 2 (2), has purchased coverage under this Act, the Board must determine the amount of average earnings under section 33.1 from the date of injury based on the gross earnings for which coverage is purchased.

#### **Exception to section 33.1 – person without earnings**

**33.7** If a worker had no earnings at the time of the injury, the Board must determine the

amount of average earnings of a worker under section 33.1 from the date of injury in a manner that the Board considers appropriate.

### **Determination of average net earnings — initial period of injury**

**33.8** (1) In this section, "**allowable deductions**" means the deductions estimated by the Board under this section, based on the worker's earnings, for the following:

- (a) premiums payable by a worker under the *Employment Insurance Act* (Canada);
- (b) contributions payable by a worker under the *Canada Pension Plan*;
- (c) probable income taxes payable by a worker under the *Income Tax Act* and the *Income Tax Act* (Canada).

(2) This section applies to the determination of average net earnings for a worker for whichever of the following periods is shorter for the worker:

- (a) the initial payment period;
- (b) the period starting on the date of the worker's injury and ending on the date the worker's injury results in a permanent disability, as determined by the Board.

(3) In order to determine a worker's average net earnings under this section, the Board must subtract the worker's allowable deductions for the immediately preceding calendar year from the worker's average earnings, as determined under sections 33.1 to 33.7.

(4) For the purposes of this section, premiums and contributions referred to in subsection (1) (a) and (b) are deemed to be payable by all workers.

(5) To estimate the probable income taxes for the purposes of this section, the Board must assume that

- (a) the following deductions under the *Income Tax Act* and the *Income Tax Act* (Canada) are made for a worker:
  - (i) the amounts that may be deducted under section 4.3 (1) (c) of the *Income Tax Act* and section 118 (1) (c) of the *Income Tax Act* (Canada), multiplied by 1.5;
  - (ii) the amounts that may be deducted under section 4.64 of the *Income Tax Act* and section 118.7 of the *Income Tax Act* (Canada), and
- (b) no other deductions may be made for a worker under the Acts referred to in paragraph (a).

### **Determination of average net earnings — long term injury**

**33.9** (1) In this section, "**allowable deductions**" means the deductions estimated by the Board under this section, based on the worker's earnings, for the following:

- (a) if premiums are payable by the worker under the *Employment Insurance Act* (Canada), those premiums;
- (b) if contributions are payable by the worker under the *Canada Pension Plan*, those contributions;
- (c) unless a worker is exempt from, or not subject to, the taxes imposed by the *Income Tax Act* and the *Income Tax Act* (Canada), probable income taxes payable by the worker under the *Income Tax Act* and the *Income Tax Act* (Canada).

(2) This section applies to the determination of average net earnings for a worker starting after the end of the period referred to in section 33.8 (2) (a) and (b) that is shorter for the worker.

(3) In order to determine a worker's average net earnings under this section, the Board must subtract the worker's allowable deductions for the immediately preceding calendar year from the worker's average earnings, as determined under sections 33.1 to 33.7.

(4) To estimate the probable income taxes for the purposes of this section, the Board must assume that the following are the only deductions that may be made for a worker under the *Income Tax Act* and the *Income Tax Act (Canada)*:

(a) the amounts that may be deducted under section 4.3 (1) (c) of the *Income Tax Act* and section 118 (1) (c) of the *Income Tax Act (Canada)*;

(b) the amounts that may be deducted under section 4.64 of the *Income Tax Act* and section 118.7 of the *Income Tax Act (Canada)*;

(c) the amounts that may be deducted under section 4.3 (1) (a), (b) or (e) of the *Income Tax Act* and section 118 (1) (a), (b) or (d) of the *Income Tax Act (Canada)*.

### **Schedule or procedure for determining average net earnings**

**33.91** (1) The Board may establish for each calendar year one or more schedules of allowable deductions, or procedures for determining allowable deductions, that may be used as a guide to determining the allowable deductions under sections 33.8 and 33.9.

(2) The Board is not required to consider a worker's actual circumstances

(a) in establishing a schedule or procedure under subsection (1), or

(b) in calculating the average net earnings of a worker under section 33.8 and 33.9.

### **Deduction from compensation in certain cases**

**34** (1) In fixing the amount of a periodic payment of compensation, consideration must be had to payments, allowances or benefits which the worker may receive from the worker's employer during the period of the disability, including a pension, gratuity or other allowance provided wholly at the expense of the employer, and a sum deducted under this section from the compensation otherwise payable may be paid to the employer out of the accident fund.

(2) Subject to sections 7 (4.1), 22 (2) and 23 (4), the Board must deduct, from the amount of a periodic payment of compensation paid to a worker under section 22 (1) or 23 (1) or (3) for an injury, an amount equal to 50% of any disability benefit that the worker is paid in respect of the injury under the *Canada Pension Plan*.

### **Manner of payment of compensation**

**35** (1) Payments of compensation must be made periodically at the times and in the manner and form the Board considers advisable and, in the case of minors or persons of unsound mind who the Board considers are incapable of managing their own affairs, may be made to the persons that the Board thinks are best qualified in all the circumstances to administer the payments, whether or not the person to whom the payment is made is the legal guardian of the person in respect of whom the payment is being made.

(2) The Board may in its discretion

(a) commute all or part of the future amounts that are to be set aside for payment of a retirement benefit and the periodic payments due or payable to the worker to one or more lump sum payments, to be applied as directed by the Board; and

(b) divide into periodic payments compensation payable in a lump sum.

(3) In case of death or permanent total disability or in case of permanent partial disability where the impairment of the earning capacity of the worker exceeds 10% of the worker's earning capacity at the time of the injury, commutation of periodic payments must not be made under subsection (2) except on the application of and at an amount agreed to by the dependant or worker entitled to the payments.

(4) Any compensation owing or accrued to a worker or pensioner for a period not exceeding 3 months before his or her death may, at the discretion of the Board, be paid to a surviving spouse or a person who takes charge of the funeral arrangements, free from debts of the deceased.

(5) Where a worker is receiving custodial care in a hospital or elsewhere, periodical payments of compensation due to the worker under this Part may be paid to or for the benefit of

(a) the worker to the extent the worker is able to make use of the money for his or her personal needs or is able to manage his or her own affairs; or

(b) any person who is dependent on the worker for support,

or in a case of temporary disability of the worker may be

(c) applied to the maintenance of a home to which the worker is likely to return on his or her recovery; or

(d) accumulated by the Board for payment to the worker on his or her recovery,

or in a case of permanent disability may be applied toward the cost of the worker's maintenance, but, in that case and where the worker is conscious, there must be paid to, or for the use of, the worker a comfort allowance of at least \$223.82 out of each periodic payment. [Note: See Note on page 1 of the Act concerning dollar amount.]

(6) Subsection (5) applies, regardless of the date of the injury.

## **Transitional**

**35.1** (1) In this section, "**transition date**" means the date that this section comes into force.

(2) Subject to subsection (7), this Act, as amended by the *Workers Compensation Amendment Act, 2002*, applies to an injury that occurs on or after the transition date.

(3) Subject to subsections (4) to (8), this Act, as it read immediately before the transition date, applies to an injury that occurred before the transition date.

(4) Subject to subsections (5) to (8), if a worker's permanent disability first occurs on or after the transition date, as a result of an injury that occurred before the transition date, this Act, as amended by the *Workers Compensation Amendment Act, 2002*, applies to the permanent disability.

(5) For the purposes of subsection (4), sections 22 (1) and 23 of this Act, as amended by the *Workers Compensation Amendment Act, 2002*, apply as if

(a) all references, other than references in section 23 (3) (d) (i),

- (i) to 90% were read as 75%, and
- (ii) to "average net earnings" were read as "average earnings determined under this Act immediately before the transition date", and

(b) section 23 (3) (d) (i) read as follows:

- (i) the average earnings that the worker is earning after the injury, as determined under this Act immediately before the transition date.

(6) Section 34 (2) of this Act, as enacted by the *Workers Compensation Amendment Act, 2002*, does not apply in the circumstances described in subsection (4).

(7) Subject to section 19 (2.1) of this Act, section 25 of this Act, as that section read on the date section 35.2 (5) came into force, applies to compensation paid on or after that date to a worker, irrespective of the date the worker was injured.

(8) If a worker has, on or after the transition date, a recurrence of a disability that results from an injury that occurred before the transition date, the Board must determine compensation for the recurrence based on this Act, as amended by the *Workers Compensation Amendment Act, 2002*.

### **Transitional – death of worker**

**35.2** (1) In this section, "**transition date**" means the date on which this section comes into force.

(2) Subject to subsection (5), this Act, as amended by the *Skills Development and Labour Statutes Amendment Act, 2003*, applies to the death of a worker that occurs on or after June 30, 2002.

(3) Subject to subsections (5) and (6), this Act, as it read immediately before June 30, 2002, applies to the death of a worker that occurred before June 30, 2002.

(4) Subject to subsections (5) and (6), in recalculating compensation under section 17 (4) or (5), the Board must, if the actual date of the death of a worker was before June 30, 2002, base the recalculation on this Act as it read immediately before June 30, 2002.

(5) Subject to section 19 (2.1) of this Act, section 25 of this Act, as amended by the *Skills Development and Labour Statutes Amendment Act, 2003*, applies to compensation paid on or after the transition date in respect of the death of a worker irrespective of the date the worker died.

(6) Commencing on the transition date, for the purposes of applying subsections (3) and (4), the Board must adjust the dollar amounts referred to in sections 17 and 18 and Schedule C of this Act, as it read immediately before June 30, 2002, in accordance with section 25.2 (1), as amended by the *Skills Development and Labour Statutes Amendment Act, 2003*.

(7) In applying section 17, as amended by *Skills Development and Labour Statutes Amendment Act, 2003*, to a death that occurred on or after June 30, 2002 but before the transition date, the Board must consider payments paid before the transition date.

## **Division 4 – Accident Fund and Assessments**

### **Accident fund**

**36** (1) The Board must continue and maintain the accident fund for payment of the compensation, outlays and expenses under this Part and for payment of expenses incurred in administering Part 3 of this Act.

(2) The Board is solely responsible for the management of the accident fund and must manage it with a view to the best interests of the workers' compensation system.

### **Classification of industries**

**37** (1) The following classes are established for the purpose of assessment in order to maintain the accident fund:

Class Primary resource

1:

Class Manufacturing

2:

Class Construction

3:

Class Transportation and warehousing

4:

Class Trade

5:

Class Public services

6:

Class General services

7:

Class Canadian Airlines International Ltd., Canadian Pacific Hotels Corporation, Canadian Pacific Railway Company, Cominco Ltd.

Class The Burlington Northern and Santa Fe Railway Company

9:

Class Air Canada, Canadian National Railway Company, Via Rail Canada Inc.

10:

Class British Columbia Assessment Authority, British Columbia Emergency Health Services, British Columbia Ferry Corporation, British Columbia Railway Company, Government of British Columbia, Workers' Compensation Board of British Columbia.

(2) The Board may do one or more of the following:

- (a) create new classes in addition to those referred to in subsection (1);
- (b) divide classes into subclasses and divide subclasses into further subclasses;
- (c) consolidate or rearrange any existing classes and subclasses;
- (d) assign an employer, independent operator or industry to one or more classes or subclasses;
- (e) withdraw from a class
  - (i) an employer, independent operator or industry,
  - (ii) a part of the class, or
  - (iii) a subclass or part of a subclass,

and transfer it to another class or subclass or form it into a separate class or subclass;

- (f) withdraw from a subclass
  - (i) an employer, independent operator or industry,
  - (ii) a part of the subclass, or
  - (iii) another subclass or part of another subclass,

and transfer it to another class or subclass or form it into a separate class or

subclass.

(3) If the Board exercises authority under subsection (2), it may make the adjustment and disposition of the funds, reserves and accounts of the classes and subclasses affected that the Board considers just and expedient.

(4) Without limiting subsection (2) or (3), for the purposes of transition in relation to the classes established by subsection (1) as enacted by section 31 of the *Labour Statutes Amendment Act, 1999*, the Board may

(a) assign or reassign employers, independent operators or industries to those classes as the Board considers advisable, and

(b) make the adjustment and disposition of the funds, reserves and accounts of the pre-existing classes that the Board considers advisable.

### **Employer to furnish estimate of payrolls**

**38** (1) Every employer must

(a) keep at all times at some place in the Province, the location of which the employer has given notice to the Board, complete and accurate particulars of the employer's payrolls;

(b) cause to be furnished to the Board

(i) when the employer becomes an employer within the scope of this Part; and,

(ii) at other times as required by a regulation of the Board of general application or an order of the Board limited to a specific employer,

an estimate of the probable amount of the payroll of each of the employer's industries within the scope of this Part, together with any further information required by the Board; and

(c) furnish certified copies of reports of the employer's payrolls, at or after the close of each calendar year and at the other times and in the manner required by the Board.

(2) Where the employer fails to comply with subsection (1), the employer is liable to pay and must pay as a penalty for the default a percentage of the assessment prescribed by the regulations or determined by the Board, and the Board may make its own estimate of the payrolls and may make its assessment and levy on that estimate, and the employer is bound by it.

(3) In computing the amount of the payroll for the purpose of assessment, regard must be had only to that portion of the payroll that represents workers and employment within the scope of this Part. Where the wages of a worker exceed the maximum wage for one year as fixed for the time being under section 33, a deduction may be made where practical in respect of the excess; and where the wages of a worker are shown to exceed the above maximum wage rate, the Board may make a deduction where practical in respect of the portion in excess of that rate; and where a worker within the scope of this Part works at a nominal wage or no wage, the amount of the worker's average earnings for purposes of this Part may be fixed by the Board.

(4) If an employer does not comply with subsection (1), or if a statement made in pursuance of its requirements is not true and accurate, the employer, for every failure to comply and for

every such statement, commits an offence against this Part.

### **Assessment for accident fund**

**39** (1) For the purpose of creating and maintaining an adequate accident fund, the Board must every year assess and levy on and collect from independent operators and employers in each class, by assessment rated on the payroll, or by assessment rated on a unit of production, or in a manner the Board considers proper, sufficient funds, according to an estimate to be made by the Board to

- (a) meet all amounts payable from the accident fund during the year;
- (b) provide a reserve in aid of industries or classes which may become depleted or extinguished;
- (c) provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all injuries which occur during the year;
- (d) provide a reserve to be used to meet the loss arising from a disaster or other circumstance which the Board considers would unfairly burden the employers in a class;
- (e) provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability; and
- (f) provide and maintain a reserve for payment of retirement benefits.

(2) Assessments may be made in the manner and form and by the procedure the Board considers adequate and expedient, and may be general as applicable to a class or subclass, or special as applicable to an industry or part or department of it.

(3) Assessments may, wherever it is considered expedient, be collected in half yearly, quarterly or monthly installments, or otherwise; and where it appears that the funds in a class are sufficient for the time being, an instalment may be abated or its collection deferred.

(4) If the Board thinks that there are not sufficient funds to provide the compensation or additional compensation required to be paid under this Part, it may levy and collect from employers within the scope of this Part sufficient funds for this purpose without regard to the date of injury or the period during which the employer carried on an industry under this Part; and the levy and collection may be made in the manner and at the times the Board considers equitable, and may be by way of addition to the usual assessment or by levy of special or additional assessment.

(5) If the estimated assessments in a class prove insufficient, the Board may make further assessments and levies as necessary, or the Board may temporarily advance the amount of a deficiency out of any reserve provided for that purpose and add that amount to any subsequent assessments.

(6) The Board must notify each employer of the amount of each assessment due in respect of the employer's industry and the time when it is payable. The notice may be sent by post to the employer, and is deemed to be given to the employer on the day the notice is mailed.

(7) If for any reason an employer liable to assessment is not assessed in any year, the employer is nevertheless liable to pay the Board the amount for which the employer should have been assessed, and payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.

(8) If it is found, on an estimate made by the Board, that more than sufficient funds have been provided for the purposes set out in subsection (1) (a), (b), (d) and (e), the excess may be transferred to the capitalized reserves.

(9) Where special circumstances, including legislative change, result in claims being made or liabilities being imposed on the accident fund in excess of what the Board considers should reasonably be funded by assessments levied during the current year, the Board must raise sufficient funds by assessments during that year to meet the estimated payments due within the year, but need not establish within the year reserves to meet future payments on those claims or liabilities, and the Board may establish those reserves by assessments levied over a period of years.

### **Assessment by notice**

**40** (1) Where the Board

(a) notifies an employer of assessment rates or percentages determined by the Board in respect of the industries in which the employer is engaged; and

(b) informs the employer of the manner in which the assessment is calculated, and the date it is payable,

the notice constitutes an assessment under section 39, and the employer must, within the time limited in the notice,

(c) make a return on the form provided or prescribed by the Board; and

(d) remit the amount of the assessment.

(2) Every employer who neglects or refuses to comply with subsection (1) is liable for the penalty prescribed by the regulations or determined by the Board, and that penalty is enforceable as an assessment under this Part.

### **Repealed**

**41** [Repealed 1993-34-7.]

### **Classification of rates**

**42** The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just; and where the Board thinks a particular industry or plant is shown to be so circumstanced or conducted that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the Board must confer or impose on that industry or plant a special rate, differential or assessment to correspond with the relative hazard or cost of compensation of that industry or plant, and for that purpose may also adopt a system of experience rating.

### **Power to vary rates**

**43** The Board may, in a manner that it determines, vary the rates of assessment as between different employers or levy supplementary assessments according to the estimated exposure of workers to industrial noise, and it may do so whether or not hearing protection is worn.

### **Temporary industries**

**44** (1) Where an employer engages in any industry within the scope of this Part and has not

been assessed in respect of it, the Board, if it considers that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the Board of a sum sufficient to pay the assessment for which the employer would be liable if the industry had been in existence when the last preceding assessment was made.

(2) Every employer who makes default in complying with a requirement of the Board under subsection (1) commits an offence against this Part.

### **Collection of assessments by suit or summarily**

**45** (1) If an assessment or part of it is not paid in accordance with the terms of the assessment and levy, the Board has a right of action against the defaulting employer in respect of the amount unpaid, together with costs of the action.

(2) Where default is made in the payment of an assessment, or part of it, the Board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it and the person by whom it was payable, and that certificate, or a copy of it certified by the secretary under the seal of the Board to be a true copy, may be filed with any district registrar of the Supreme Court, and when so filed becomes an order of that court and may be enforced as a judgment of the court against that person for the amount mentioned in the certificate.

### **Power to restrain industry where default**

**46** Where an employer defaults in the payment of an assessment, and an execution issued on a judgment entered with respect to the assessment is returned with a certificate from a sheriff or the sheriff's deputy that he or she was unable wholly to satisfy it, and where the judgment debtor continues to carry on an industry within the scope of this Part in which workers are employed, the Supreme Court, on an application made on behalf of the Board, without the issue of a writ or the commencement of an action, may restrain the judgment debtor from carrying on an industry within the scope of this Part until the amount due on the execution, and all assessments made by the Board, and the costs of the application are paid.

### **Penalty for default in payment or return**

**47** (1) If an assessment levied under this Part is not paid at the time when it becomes payable, the defaulting employer is liable to and must pay as a penalty for the default the percentage on the amount unpaid or the assessment for the preceding year, or the projected assessment for the current year, that may be prescribed by the regulations or determined by the Board, and the penalty may be added to the amount of the assessment and become a part of it, and where not added to the assessment must be enforced in the same manner as the payment of an assessment is enforced.

(2) An employer who refuses or neglects to make or transmit a payroll return or other statement required to be furnished by the employer under section 38 (1), or who refuses or neglects to pay an assessment, or the provisional amount of an assessment, or an instalment or part of it, must, in addition to any penalty or other liability to which the employer may be subject, pay the Board the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of any injury or occupational disease to a worker in the employer's employ which happens during the period of that default, and the payment of the amount may be enforced in the same manner as the payment of an assessment may be enforced.

(3) The Board, if satisfied that the default was excusable, may in any case relieve the employer in whole or in part from liability under this section.

### **Class accounts**

**48** (1) Separate accounts must be maintained of the amounts collected and expended in respect of every class, reserve and special fund, but the accident fund is, for the purpose of paying compensation, one fund and indivisible.

(2) If a deficit occurs in a class or subclass, the Board may charge to that class or subclass interest on the amount of the deficit at a rate that will reimburse the accident fund for any loss sustained by reason of the deficit, and may apportion the amount of the interest received and credit it to the class or subclass or special fund from which money was advanced to meet the deficit.

### **Adjustment of assessments**

**49** (1) As soon as practicable in each year the amount of the assessment for the preceding calendar year must be adjusted on the estimated requirements of the class and on the correctly ascertained payroll of each industry, and the employer must promptly make up and pay to the Board any deficiency, or the Board must refund to the employer any surplus, or credit the surplus on the succeeding assessment as the case may require. Where the ascertained payroll exceeds the estimate of it on which the employer was assessed, or where the employer remits less than the amount of the assessment due to the Board, the Board may on the adjustment charge to that employer interest on the amount of the deficiency in the assessment at a rate that in its opinion will reimburse the accident fund for any loss sustained by reason of the deficiency, and the interest must be added to the amount of the deficiency and becomes a part of it.

(2) Where in an industry a change of ownership or employership has occurred, the Board may levy any part of the deficiency or the unpaid amount of the assessment on any of the successive owners or employers, or pay or credit to any one or more of the owners the surplus that the case requires, but as between or among the successive owners the assessments in respect of the employment are, in the absence of an agreement between the respective owners or employers determining the same, apportionable, as nearly as may be, in accordance with the proportions of the payrolls of the respective periods of ownership or employer-ship.

### **Collection from contractors**

**50** Where work within the scope of this Part is performed under contract for a municipal corporation, or for a board or commission having the management of any work or service operated for a municipal corporation, an assessment in respect of the work may be paid by the corporation, board or commission, as the case may be, and the amount of the assessment may be deducted from money due the contractor in respect of the work.

### **Contractor liability**

**51** (1) Where work within the scope of this Part is undertaken for a person by a contractor, both the contractor and the person for whom the work is undertaken are liable for the amount of any assessment in respect of it, and the assessment may be levied on and collected from either of them, or partly from each; but in the absence of a term in the contract to the contrary the contractor is, as between the contractor and the person for whom the work is

performed, primarily liable for the amount of the assessment.

(2) Where work within the scope of this Part is performed under subcontract, both the contractor and the subcontractor are liable for the amount of the assessments in respect of the work; and the assessments may be levied on and collected from either, or partly from each; but in the absence of a term in the subcontract to the contrary the subcontractor is, as between the subcontractor and the contractor, primarily liable for the assessments.

(3) Where a contractor or subcontractor who is executing work in or for the purposes of an industry within the scope of this Part carried on by another person (in this subsection referred to as the "principal") is not assessed with respect to the work so executed, the workers of the contractor or subcontractor may, in the discretion of the Board, be deemed workers of the principal with respect to the industry so carried on by the principal.

(4) For the purposes of this section, a person, contractor, subcontractor or principal includes an employer within the scope of Part 1.

### **Priority as to amounts due Board**

**52** (1) Notwithstanding anything contained in any other Act, the amount due by an employer to the Board, or where an assignment has been made under subsection (4), its assignee, on an assessment made under this Act, or in respect of an amount which the employer is required to pay to the Board under this Act, or on a judgment for it, constitutes a lien in favour of the Board or its assignee payable in priority over all liens, charges or mortgages of every person, whenever created or to be created, with respect to the property or proceeds of property, real, personal or mixed, used in or in connection with or produced in or by the industry with respect to which the employer was assessed or the amount became payable, excepting liens for wages due to workers by their employer, and the lien for the amount due the Board or its assignee continues to be valid and in force with respect to each assessment until the expiration of 5 years from the end of the calendar year for which the assessment was levied.

(1.1) The exception in subsection (1) does not apply in respect of a lien for wages that is, by section 87 (5) of the *Employment Standards Act*, postponed to a mortgage or debenture.

(2) Where the employer is a corporation, the word "**property**" in subsection (1) includes the property of any director, manager or other principal of the corporation where the property is used in, or in connection with, the industry with respect to which the employer was assessed or the amount became payable, or was so used within the period in respect of which assessments are unpaid.

(3) Without limiting subsection (1), the Board may enforce its lien by proceedings under the *Court Order Enforcement Act*.

(4) The Board may assign its lien rights to a person, contractor or subcontractor who has fully discharged his or her liability for the amount of an assessment under section 51 by payment of it.

## **Division 5 — Procedure and Miscellaneous**

### **Worker's notification of injury**

**53** (1) In every case of an injury or disabling occupational disease to a worker in an industry within the scope of this Part, the worker, or in case of death the dependant, must as soon as practicable after the occurrence inform the employer by giving information of the disease or injury to the superintendent, first aid attendant, supervisor, agent in charge of the work

where the injury occurred or other appropriate representative of the employer, and the information must include the name of the worker, the time and place of the occurrence, and, in ordinary language, the nature and cause of the disease or injury.

(2) In the case of an occupational disease, the employer to be informed of the death or disablement is the employer who last employed the worker in the employment to the nature of which the disease was due.

(3) The worker must, if he or she is fit to do so and on request of the employer, provide to the employer particulars of the injury or occupational disease on a form prescribed by the Board and supplied to the worker by the employer.

(4) Failure to provide the information required by this section is a bar to a claim for compensation under this Part, unless the Board is satisfied that

(a) the information, although imperfect in some respects, is sufficient to describe the disease or injury suffered, and the occasion of it;

(b) the employer or the employer's representative had knowledge of it; or

(c) the employer has not been prejudiced, and the Board considers that the interests of justice require that the claim be allowed.

### **Employer's notification of injury**

**54** (1) Subject to subsection (6), an employer must report to the Board within 3 days of its occurrence every injury to a worker that is or is claimed to be one arising out of and in the course of employment.

(2) Subject to subsection (6), an employer must report to the Board, within 3 days of receiving information under section 53, every disabling occupational disease, or claim for or allegation of an occupational disease.

(3) An employer must report immediately to the Board and to its local representative the death of a worker where the death is or is claimed to be one arising out of and in the course of employment.

(4) The report must be on the form prescribed by the Board and must state

(a) the name and address of the worker;

(b) the time and place of the disease, injury or death;

(c) the nature of the injury or alleged injury;

(d) the name and address of any physician or qualified practitioner who attended the worker; and

(e) any other particulars required by the Board or by the regulations,

and may be made by mailing copies of the form addressed to the Board at the address the Board prescribes.

(5) The failure to make a report required by virtue of this section, unless excused by the Board on the ground that the report for some sufficient reason could not have been made, constitutes an offence against this Part.

(6) Without limiting in any way the authority of the Board under section 75, the Board may by regulation

(a) define and prescribe a category of minor injuries not required to be reported

under this section; and

(b) define or vary the time at which the obligation to report under this section commences.

(7) Where a report required by this section is not received by the Board within 7 days of an injury or death, or any other time prescribed by regulation under subsection (6), the Board may make an interim adjudication of the claim, and, where it allows the claim on an interim basis, may commence the payment of compensation in whole or in part.

(8) Any compensation paid under subsection (7), until 3 days after receipt by the Board of the report required by this section, may be levied and collected from the employer by way of additional assessment as a contribution to the accident fund, and payment may be enforced in like manner as other assessments.

(9) Where the Board is satisfied that the delay in reporting was excusable, it may relieve the employer in whole or in part of the additional assessment imposed under subsection (8).

### **Application for compensation**

**55** (1) An application for compensation must be made on the form prescribed by the Board or the regulations and must be signed by the worker or dependant; but, where the Board is satisfied that compensation is payable, it may be paid without an application.

(2) Unless an application is filed, or an adjudication made, within one year after the date of injury, death or disablement from occupational disease, no compensation is payable, except as provided in subsections (3), (3.1), (3.2) and (3.3).

(3) If the Board is satisfied that there existed special circumstances which precluded the filing of an application within one year after the date referred to in subsection (2), the Board may pay the compensation provided by this Part if the application is filed within 3 years after that date.

(3.1) The Board may pay the compensation provided by this Part for the period commencing on the date the Board received the application for compensation if

(a) the Board is satisfied that special circumstances existed which precluded the filing of an application within one year after the date referred to in subsection (2), and

(b) the application is filed more than 3 years after the date referred to in subsection (2).

(3.2) The Board may pay the compensation provided by this Part if

(a) the application arises from death or disablement due to an occupational disease,

(b) sufficient medical or scientific evidence was not available on the date referred to in subsection (2) for the Board to recognize the disease as an occupational disease and this evidence became available on a later date, and

(c) the application is filed within 3 years after the date sufficient medical or scientific evidence as determined by the Board became available to the Board.

(3.3) Despite section 96 (1), if, since July 1, 1974, the Board considered an application under the equivalent of this section in respect of death or disablement from occupational disease, the Board may reconsider that application, but the Board must apply subsection (3.2) of this section in that reconsideration.

(4) This section applies to an injury or death occurring on or after January 1, 1974 and to an occupational disease in respect of which exposure to the cause of the occupational disease in the Province did not terminate prior to that date.

### **Duty of physician or practitioner**

**56** (1) It is the duty of every physician or qualified practitioner attending or consulted on a case of injury to a worker, or alleged case of injury to a worker, in an industry within the scope of this Part

(a) to furnish the reports in respect of the injury in the form required by the regulations or by the Board, but the first report containing all information requested in it must be furnished to the Board within 3 days after the date of his or her first attendance on the worker;

(b) to furnish a report within 3 days after the worker is, in the opinion of the physician or qualified practitioner, able to resume work and, if treatment is being continued after resumption of work, to furnish further adequate reports;

(c) if the physician is a specialist whose opinion is requested by the attending physician, the worker or the Board, or if the physician continues to treat the worker after being consulted as a specialist, to furnish his or her first report to the Board within 3 days after completion of consultation; but if the specialist is regularly treating the worker, the specialist must submit reports as required in paragraphs (a) and (b); and

(d) to give all reasonable and necessary information, advice and assistance to the injured worker and the worker's dependants in making application for compensation, and in furnishing in connection with it the required certificates and proofs, without charge to the worker.

(2) Every physician or qualified practitioner who is authorized by this Act to treat an injured worker is subject to like duties and responsibilities, and any health care furnished by the physician or qualified practitioner is subject to the direction, supervision and control of the Board.

(3) Unless the Board otherwise directs, an account for medical services or health care must not be paid if it is submitted later than 90 days from the date that

(a) the last treatment was given; or

(b) the physician or person furnishing the medical service was first aware that the Board may be liable for his or her services,

whichever first occurs.

(4) A physician, qualified practitioner or other person authorized to render health care under this Part must confine his or her treatment to injuries to the parts of the body he or she is authorized to treat under the statute under which he or she is permitted to practise, and the giving of any unauthorized treatment is an offence against this Part.

(5) A physician, qualified practitioner or other person who fails to submit prompt, adequate and accurate reports and accounts as required by this Act or the Board commits an offence against this Part, and his or her right to be selected by a worker to render health care may be cancelled by the Board, or he or she may be suspended for a period to be determined by the Board. When the right of a person to render health care is so cancelled or suspended, the Board must notify the person of the cancellation or suspension, and must likewise inform the

governing body named in the Act under which the person is authorized to treat human ailments, and the person whose right to render health care is cancelled or suspended must also notify injured workers who seek treatment from the person of the cancellation or suspension.

### **Worker to submit to examination**

**57** (1) The Board may require a worker who applies for or is in receipt of compensation under this Part to be medically examined at a place reasonably convenient for the worker. If the worker fails to attend for the examination or obstructs the medical examiner, the worker's right to compensation is suspended until the examination has taken place, and no compensation is payable during the period of suspension.

(2) The Board may reduce or suspend compensation when the worker

(a) persists in insanitary or injurious practices which tend to imperil or retard his or her recovery; or

(b) refuses to submit to medical or surgical treatment which the Board considers, based on expert medical or surgical advice, is reasonably essential to promote his or her recovery.

### **Obligation to provide information**

**57.1** (1) A worker who applies for or is receiving compensation must provide the Board with the information that the Board considers necessary to administer the worker's claim.

(2) If a worker fails to comply with subsection (1), the Board may reduce or suspend payments to the worker until the worker complies.

### **Repealed**

**58** (1) and (2) [Repealed 2002-66-6.]

(3) to (5) [Repealed 2002-66-7.]

### **Repealed**

**59–62** [Repealed 2002-66-6.]

### **Repealed**

**63** (1) [Repealed 2002-66-7.]

(2) to (4) [Repealed 2002-66-6.]

### **Repealed**

**64–66** [Repealed 2002-66-6.]

### **Accounting and investment of excess funds**

**67** (1) The Board must establish and maintain an accounting system satisfactory to the Minister of Finance, and that minister may, at any time, inspect the accounting records of the Board and advise it on all matters respecting its accounts and other financial matters.

(2) Subject to the supervision and direction of the Minister of Finance, the Board must cause

all money in the accident and silicosis funds in excess of current requirements to be invested and reinvested and in doing so must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

## **Audit**

**68** (1) Unless the Auditor General is appointed in accordance with the *Auditor General Act* as the auditor of the Board, the Board must appoint an auditor to audit the accounts of the Board at least once each year.

(2) The remuneration of an auditor for auditing the accounts of the Board must be paid by the Board.

(3) For the purpose of an audit under this section, the Lieutenant Governor in Council may appoint a competent person to make and report on an actuarial valuation of the assets and liabilities of the accident fund, and the remuneration of that person to make and report on the valuation must be paid by the Board.

## **Annual report**

**69** (1) The Board must, on or before March 25 in each year, make a report to the Lieutenant Governor in Council of its transactions during the last preceding calendar year, and the report must contain the particulars the Lieutenant Governor in Council prescribes.

(2) Every report must be promptly laid by the Minister of Labour before the Legislature if it is then in session, or, if it is not then in session, within 15 days after the opening of the next session.

(3) The Board must publish and distribute among employers, workers and the general public the information in respect of the business transacted by the Board that in its judgment may be useful.

## **Repealed**

**70–72** [Repealed 1998-50-5.]

## **Levy from employer to cover amount of compensation**

**73** (1) If

(a) an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and

(b) the Board considers that this was due substantially to

(i) the gross negligence of an employer,

(ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or

(iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of this Act,

the Board may levy and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of \$52 221.94. [Note: See Note on page 1 of the Act concerning dollar amount.]

(2) The payment of an amount levied under subsection (1) may be enforced in the same

manner as the payment of an assessment may be enforced.

### **Repealed**

74 [Repealed 1998-50-7.]

### **Orders**

75 (1) In addition to the rules and regulations which may be made under this Part, the Board may issue the orders and directives it considers requisite for the due administration and carrying out of this Part, and may prescribe the form and use of payrolls, records, reports, certificates, declarations and documents that may be requisite, and, if considered necessary, may make regulations for those purposes.

(2) [Repealed 1998-50-8.]

(3) Every person who contravenes or fails to comply with a regulation made under this Part commits an offence and is liable on conviction to the fine prescribed by the regulations, but not exceeding \$4 994.49. [Note: See Note on page 1 of the Act concerning dollar amount.]

(4) and (5) [Repealed 1998-50-8.]

### **Effective date of regulations**

76 A regulation of the Board under this Part must specify the date on which it is to come into force, which date must be at least 90 days after its deposit under the *Regulations Act*.

### **General penalty**

77 (1) [Repealed 1998-50-10.]

(2) Every person who commits an offence under this Part for which no other punishment has been provided is liable on conviction to a fine not exceeding \$4 994.49. [Note: See Note on page 1 of the Act concerning dollar amount.]

### **Penalties**

78 The penalties imposed by or under the authority of this Part are recoverable under the *Offence Act* or by an action brought by the Board in a court of competent jurisdiction, and the penalties when collected must be paid over to the Board and form part of the accident fund.

## **Division 6 — Workers' Compensation Board**

### **Repealed**

79 [Repealed 2002-66-8.]

### **Board**

80 The Workers' Compensation Board is continued as a corporation.

### **Board of directors**

81 (1) The board of directors of the Workers' Compensation Board consists of

(a) 7 voting directors appointed by the Lieutenant Governor in Council as follows:

- (i) one director, representative of workers;
  - (ii) one director, representative of employers;
  - (iii) 2 directors, representative of the public interest;
  - (iv) one additional director, representative of the public interest, who is chair;
  - (v) one director who at the time of appointment is a professional providing health care or rehabilitation services to persons with disabilities;
  - (vi) one director who at the time of appointment is an actuary, and
- (b) the president who is a non-voting director.
- (c) [Repealed 2002-66-9.]
- (2) The Lieutenant Governor in Council must, for an appointment
- (a) under subsection (1) (a) (i), select a person from a list of at least 3 persons, each of whom is nominated by one or more organizations that represent workers or classes of workers,
  - (b) under subsection (1) (a) (ii), select a person from a list of at least 3 persons, each of whom is nominated by one or more organizations that represent employers or classes of employers,
  - (c) under subsection (1) (a) (v), select a person from a list of at least 3 persons, each of whom is nominated by one or more organizations that provide health care or rehabilitation services to persons with disabilities, and
  - (d) under subsection (1) (a) (vi), select a person from a list of at least 3 persons, each of whom is nominated by one or more professional organizations for actuaries.
- (3) Each director, other than the chair and president, holds office for a term of up to 3 years, as set by the Lieutenant Governor in Council.
- (4) A director, other than the chair, must not be appointed under subsection (1) (a) for a continuous period of more than 6 years.
- (5) The chair holds office for a term of up to 5 years, as set by the Lieutenant Governor in Council.
- (6) The chair may not be appointed for a continuous period of more than 10 years.
- (7) The chair may designate a director appointed under subsection (1) (a) (iii) to act in the chair's place during the chair's temporary absence, and while so acting the designated director has the power and authority of the chair.
- (8) The Board must pay directors appointed under subsection (1) (a)
- (a) remuneration in an amount determined by the Lieutenant Governor in Council, and
  - (b) reasonable travel and out of pocket expenses necessarily incurred in discharging their duties.
- (9) A payment referred to in subsection (8) must be paid out of the accident fund.

## **Powers and duties of board of directors**

- 82** (1) The board of directors must

(a) set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety, and

(b) set and supervise the direction of the Board.

(2) Without restricting subsection (1), the board of directors is responsible for the following:

(a) subject to the Act, selecting the president and determining the president's functions;

(b) approving the operating and capital budgets of the Board;

(c) establishing policies and accounting systems to ensure adequate funding of the accident fund;

(d) approving major programs and expenditures of the Board;

(e) approving the investment of funds of the Board in accordance with the requirements imposed under this Act;

(f) planning for the future of the Board;

(g) subject to this Act, enacting bylaws and passing resolutions

(i) for the conduct of the business of the Board, and

(ii) for the functions of the board of directors,

including enacting bylaws respecting the manner in which the policies of the board of directors are to be published.

(3) The board of directors may

(a) establish committees and give directions to those committees,

(b) authorize the Board to acquire and dispose of land, and

(c) delegate in writing a power or duty of the board of directors to the president of the Board, or another officer of the Board, and may impose limitations or conditions on the delegate's exercise of a power or performance of a duty.

## **Service plans**

**82.1** (1) On or before March 31 of each year, the Board must provide the minister with a service plan that

(a) addresses the 3 year period starting on January 1 of that year, and

(b) does the following:

(i) sets out the Board's priorities;

(ii) identifies specific objectives and performance measures for the Board;

(iii) provides a fiscal forecast for the Board, including a statement of all material assumptions and policy decisions underlying the forecast;

(iv) compares actual results of the previous year with the expected results identified in the previous year's service plan;

(v) presents other information that the Board considers appropriate.

(2) On receipt of the Board's service plan, the minister must promptly lay the plan before the Legislature if it is in session, otherwise within 15 days after the opening of the next session.

## **Meetings**

**83** (1) The chair must preside at meetings of the board of directors.

(2) Meetings of the board of directors must be held at the call of the chair at any place in British Columbia that the chair determines.

(3) A majority of the voting directors in office constitutes a quorum at a meeting of the board of directors.

(4) A vacancy on the board of directors does not impair the right of the other directors to act.

## **Repealed**

**83.1** [Repealed 2002-56-29.]

## **Standard of care of the directors**

**84** (1) A director, when exercising the powers and performing the functions and duties as a member of the board of directors, must

(a) act honestly and in good faith,

(b) act with a view to the best interests and objectives of the workers' compensation system,

(c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances, and

(d) act in a financially responsible and accountable manner.

(2) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of members of the board of directors.

## **President**

**84.1** (1) The board of directors must appoint a person to be president of the Board.

(2) Subject to this Act, the board of directors may enter into a contract with the president providing for the remuneration of the president and setting out the terms and conditions of the president's appointment.

(3) The president must be paid out of the accident fund.

(4) The president is responsible to the board of directors and he or she

(a) must attend and participate as a non-voting director at meetings of the board of directors,

(b) must implement the policies of the board of directors with respect to the administration of the Board and the Act,

(c) is responsible for all functions related to staff, other than the staff appointed by and reporting directly to the board of directors, and

(d) must carry out other functions and duties assigned to the president by the board of directors.

(5) The president may delegate in writing any of the president's powers and duties to another officer of the Board or another person and may impose limitations or conditions on the delegate's exercise of a power or performance of a duty.

## **Repealed**

## Staff

- 86** (1) The Board may appoint the officers and other employees it considers necessary to carry out the business and operations of the Board and may establish their duties and determine their remuneration.
- (2) Every person so appointed holds office during the pleasure of the Board, and his or her remuneration must be paid out of the accident fund.
- (3) The Board, subject to the approval of the Lieutenant Governor in Council, may establish and maintain a fund, to be known as the superannuation fund, for the payment of superannuation allowances to its employees or of allowances on the disability or death of its employees, by contributions from the employees of the Board and from the accident fund, and, subject to the like approval, may determine the amounts of superannuation or other allowances and the conditions on which they may be paid and the persons to whom they may be paid. The Board, subject to the like approval, may use the superannuation fund to purchase superannuation allowances for its employees from the Crown in right of Canada, from the Crown in right of the Province or from an insurer. The costs of administering the superannuation fund are part of the cost of the administration of this Act.
- (4) Notwithstanding any Act, the matters respecting the establishment and maintenance of the superannuation fund under subsection (3) or payment of superannuation allowances to employees or allowances on the disability or death of employees, including contributions to the fund by the Board and its employees and the amounts of superannuation or other allowances and the conditions on which and the persons to whom they may be paid, must not be the subject of a collective agreement between the Board and its employees.
- (5) [Repealed 1999-44-112.]
- (5.1) The *Labour Relations Code* does not apply to
- (a) a person employed
    - (i) for the purposes of policy development or providing policy advice, and
    - (ii) in the policy and regulation development bureau of the Board, and
  - (b) a person employed
    - (i) for the purpose of investigating the conduct of persons working for the Board, and
    - (ii) as an investigator in the special investigations branch of the Board.
- (6) and (7) [Repealed 2002-66-13.]

## Witnesses

- 87** (1) The Board, has the like powers as the Supreme Court to compel the attendance of witnesses and examine them under oath, and to compel the production and inspection of books, papers, documents and things.
- (2) The Board, may cause depositions of witnesses residing in or out of the Province to be taken before a person appointed by the Board in a similar manner to that prescribed by the Rules of the Supreme Court for the taking of like depositions in that court before a commissioner.

## **Inquiry**

**88** (1) The Board may act on the report of any of its officers, and any inquiry which it is considered necessary to make may be made by an officer of the Board or some other person appointed to make the inquiry, and the Board may act on his or her report as to the result of the inquiry.

(2) The officer and every other person appointed to make an inquiry has for the purposes of an inquiry under subsection (1) all the powers conferred on the Board by section 87.

(3) The Board, an officer of the Board or a person authorized by it for that purpose, may examine the books and accounts of every employer and make any other inquiry the Board considers necessary to ascertain whether a statement furnished to the Board under section 38 is an accurate statement of the matters which are required to be stated in it, or to ascertain the amount of the payroll of an employer, or to ascertain whether an industry or person is within the scope of this Part. For the purpose of the examination or inquiry, the Board or person authorized to make the examination or inquiry may give to the employer or the employer's agent notice in writing requiring the employer to bring or produce before the Board or person, at a place and time to be mentioned in the notice, which time must be at least 10 days after the giving of the notice, all documents, writings, books, deeds and papers in the possession, custody or power of the employer touching or in any way relating to or concerning the subject matter of the examination or inquiry referred to in the notice, and every employer and every agent of the employer named in and served with the notice must produce at the time and place required all documents, writings, books, deeds and papers according to the tenor of the notice.

(4) Every officer or person authorized by the Board to make examination or inquiry under this section may require and take affidavits, affirmations or declarations as to any matter of the examination or inquiry, and to take affidavits for the purposes of this Act, and in all those cases to administer oaths, affirmations and declarations and certify that they were made.

(5) An employer and every other person who obstructs or hinders the making of an examination or inquiry mentioned in subsection (3), or who refuses to permit it to be made, or who neglects or refuses to produce the documents, writings, books, deeds and papers at the place and time stated in the notice mentioned in subsection (3), commits an offence against this Part.

## **Repealed**

**89–93** [Repealed 2002-66-16.]

## **Workers' advisers and employers' advisers**

**94** (1) In this section, "**ministry**" means the ministry of the minister.

(1.1) Workers' advisers, employers' advisers and other employees necessary to enable the workers' advisers and employers' advisers to perform their duties under subsections (2) and (3), respectively, may be appointed as employees of the ministry under the *Public Service Act*.

(1.2) The minister may request that the Board reimburse the government for all amounts paid by the government for the reasonable expenses properly incurred by the government in administering workers' and employers' advisers programs.

(1.3) On receiving a request under subsection (1.2), the Workers' Compensation Board must,

out of the accident fund, pay the amount requested to the Minister of Finance.

(1.4) and (1.5) [Repealed 2008-12-29.]

(2) A workers' adviser must

(a) give assistance to a worker or to a dependant having a claim under this Act, except where the workers' adviser thinks the claim has no merit,

(b) on claims matters, communicate with or appear before the Board, and the appeal tribunal on behalf of a worker or dependant where the adviser considers assistance is required, and

(c) advise workers and dependants with regard to the interpretation and administration of this Act or any regulations or decisions made under it.

(3) An employers' adviser must

(a) give assistance to an employer respecting any claim under this Act of

(i) a worker, or

(ii) a dependant of a worker

of that employer, except where the employer's adviser thinks the claim has no merit,

(b) on claims matters, communicate with or appear before the Board, and the appeal tribunal on behalf of an employer where the adviser considers assistance is required, and

(c) advise employers with regard to the interpretation and administration of this Act or any regulations or decisions made under it.

(4) Employees of the ministry acting in the capacity of workers' advisers or employers' advisers need not be members of the Law Society of British Columbia, and if one of them is not, section 15 of the *Legal Profession Act* does not apply to him or her.

(5) An employers' adviser must not report or disclose to an employer information obtained from or at the Board of a type that would not be disclosed to the employer by the Board.

## **Lay advocates**

**94 . 1** (1) A person may

(a) give advice respecting the interpretation or administration of the Act, the policies of the board of directors, the Board's practices and procedures or any regulations, orders or decisions under the Act, or

(b) act on behalf of a person

(i) by communicating with the Board, an officer or employee of the Board, the appeal tribunal or any other person acting under this Act, or

(ii) by appearing before the Board, an officer or employee of the Board or the appeal tribunal.

(2) Section 15 of the *Legal Profession Act* does not apply to a person while the person performs the functions referred to in subsection (1).

## **Secrecy**

**95** (1) Officers of the Board and persons authorized to make examinations or inquiries under

this Part must not divulge or allow to be divulged, except in the performance of their duties or under the authority of the Board, information obtained by them or which has come to their knowledge in making or in connection with an examination or inquiry under this Part.

(1.1) If information in a claim file, or in any other material pertaining to the claim of an injured or disabled worker, is disclosed for the purposes of this Act by an officer or employee of the Board to a person other than the worker, that person must not disclose the information except

- (a) if anyone whom the information is about has identified the information and consented, in the manner required by the Board, to its disclosure,
- (b) in compliance with an enactment of British Columbia or Canada,
- (c) in compliance with a subpoena, warrant or order issued or made by a court, tribunal, person or body with jurisdiction to compel the production of information, or
- (d) for the purpose of preparing a submission or argument for a proceeding under this Part, Part 3 or Part 4.

(1.2) No court, tribunal or other body may admit into evidence any information that is disclosed in violation of subsection (1.1).

(2) Every person who violates subsection (1) or (1.1) commits an offence against this Part.

(3) The workers' advisers, the employers' advisers and their staff must have access at any reasonable time to the complete claims files of the Board and any other material pertaining to the claim of an injured or disabled worker; but the information contained in those files must be treated as confidential to the same extent as it is so treated by the Board.

## **Jurisdiction of Board**

**96** (1) Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court, and proceedings by or before the Board must not be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court, and an action may not be maintained or brought against the Board or a director, an officer, or an employee of the Board in respect of any act, omission or decision that was within the jurisdiction of the Board or that the Board, director, officer or employee believed was within the jurisdiction of the Board; and, without restricting the generality of the foregoing, the Board has exclusive jurisdiction to inquire into, hear and determine

- (a) the question whether an injury has arisen out of or in the course of an employment within the scope of this Part;
- (b) the existence and degree of disability by reason of an injury;
- (c) the permanence of disability by reason of an injury;
- (d) the degree of diminution of earning capacity by reason of an injury;
- (e) the amount of average earnings of a worker, whether paid in cash or board or lodging or other form of remuneration, for the purpose of levying assessments, and the average earnings of a worker for purposes of payment of compensation;
- (f) the existence, for the purpose of this Part, of the relationship of a member of

the family of a worker as defined by this Act;

(g) the existence of dependency;

(h) whether an industry or a part, branch or department of an industry is within the scope of this Part, and the class to which an industry or a part, branch or department of an industry within the scope of this Part should be assigned;

(i) whether a worker in an industry within the scope of this Part is within the scope of this Part and entitled to compensation under it; and

(j) whether a person is a worker, a subcontractor, a contractor or an employer within the meaning of this Part.

(2) Despite subsection (1), at any time, on its own initiative, or on application, the Board may reopen a matter that has been previously decided by the Board or an officer or employee of the Board under this Part if, since the decision was made in that matter,

(a) there has been a significant change in a worker's medical condition that the Board has previously decided was compensable, or

(b) there has been a recurrence of a worker's injury.

(3) If the Board determines that the circumstances in subsection (2) justify a change in a previous decision respecting compensation or rehabilitation, the Board may make a new decision that varies the previous decision or order.

(4) Despite subsection (1), the Board may, on its own initiative, reconsider a decision or order that the Board or an officer or employee of the Board has made under this Part.

(5) Despite subsection (4), the Board may not reconsider a decision or order if

(a) more than 75 days have elapsed since that decision or order was made,

(b) a review has been requested in respect of that decision or order under section 96.2, or

(c) an appeal has been filed in respect of that decision or order under section 240.

(6) Despite subsection (1), the Board may review a decision or order made by the Board or by an officer or employee of the Board under this Part but only as specifically provided in sections 96.2 to 96.5.

(7) Despite subsection (1), the Board may at any time set aside any decision or order made by it or by an officer or employee of the Board under this Part if that decision or order resulted from fraud or misrepresentation of the facts or circumstances upon which the decision or order was based.

(8) The Board may establish practices and procedures for carrying out its responsibilities under the Act, including specifying time periods within which certain steps must be taken and the consequences for failing to comply with those time periods.

(9) In circumstances it considers appropriate, the Board may recommend the use of alternate dispute resolution processes to assist in the resolution of matters under the Act.

## **Repealed**

**96.1** [Repealed 2002-66-20.]

## **Request for reviews**

**96.2** (1) Subject to subsection (2), a person referred to in section 96.3 may request a review

officer to review the following in a specific case:

- (a) a Board decision respecting a compensation or rehabilitation matter under Part 1;
- (b) a Board decision under Part 1 respecting an assessment or classification matter, a monetary penalty or a payment under section 47 (2), 54 (8) or 73 (1) by an employer to the Board of compensation paid to a worker;
- (c) a Board order, a refusal to make a Board order, a variation of a Board order or a cancellation of a Board order respecting an occupational health or safety matter under Part 3.

(2) No review may be requested under subsection (1) respecting the following:

- (a) an assessment under section 223 (1) (a);
- (b) a determination, an order, a refusal to make an order or a cancellation of an order under section 153;
- (c) an assignment of an employer or a subclass to a class or a subclass, except the assignment of an employer to a class or a subclass that
  - (i) has employers as members, and
  - (ii) does not have subclasses as members;
- (d) a withdrawal of an employer or a subclass from a class or subclass, except a withdrawal of an employer from a class or subclass that
  - (i) has employers as members, and
  - (ii) does not have subclasses as members;
- (e) the allocation of income, compensation payments, outlays, expenses, assets, liabilities, surpluses or deficits to or from the account of a class or subclass or to or from a reserve of the accident fund, except an allocation as it relates to a specific employer or an independent operator respecting
  - (i) the account of a class or subclass described in section 10 (8), or
  - (ii) the reserve described in section 39 (1) (b), (d) or (e);
- (f) the determination of an assessment rate for a class or subclass, except the modification to the assessment rate determined for an employer on the basis of the employer's own experience;
- (g) a decision to reopen or not to reopen a matter on an application under section 96 (2).

(3) A request for a review must be filed within 90 days after the Board's decision or order was made.

(4) On application, and where the chief review officer is satisfied that

- (a) special circumstances existed which precluded the filing of a request for review within the time period required in subsection (3), and
- (b) an injustice would otherwise result,

the chief review officer may extend the time to file a request for review even if the time to file has expired.

(5) Unless, on application, the chief review officer orders otherwise, the filing of a request for a review under subsection (3) does not operate as a stay or suspend the operation of the

decision or order under review.

(6) As soon as practicable after a request for a review is filed, the Board must provide the parties to the review with a copy of its records respecting the matter under review.

(7) Subject to subsection (8), for the purposes of a specific review, if the employer has ceased to be an employer within the meaning of Part 1, the chief review officer may deem an employers' adviser within the meaning of section 94 or an organized group of employers to be the employer.

(8) An organized group of employers may be recognized by the chief review officer for the purposes of subsection (7) only if the organized group includes among its members employers in the subclass of industry to which the employer who has ceased to be an employer belonged.

(9) The Board must appoint a chief review officer and one or more review officers to conduct reviews under this section.

(10) The *Labour Relations Code* does not apply to a chief review officer or a review officer.

### **Who may request review**

**96.3** (1) Any of the following persons who is directly affected by a decision referred to in section 96.2 (1) (a) may request a review of that decision:

- (a) a worker;
- (b) a deceased worker's dependant;
- (c) an employer.

(2) An employer or an independent operator who is directly affected by a decision referred to in section 96.2 (1) (b) may request a review of that decision.

(3) Any of the following persons who is directly affected by a decision or order referred to in section 96.2 (1) (c) may request a review of that decision or order:

- (a) a worker;
- (b) an employer within the meaning of Part 3;
- (c) an owner as defined in section 106;
- (d) a supplier as defined in section 106;
- (e) a union as defined in section 106;
- (f) a member of a deceased worker's family.

### **Conduct of review**

**96.4** (1) This section applies to a review requested under section 96.2.

(2) Subject to any Board practices and procedures for the conduct of a review, a review officer may conduct a review as the officer considers appropriate to the nature and circumstances of the decision or order being reviewed.

(3) If a party to the review does not make a submission within the time required by any Board practices and procedures for the conduct of a review, the review officer may

- (a) complete the review and make a decision on the basis of the information before him or her, or

(b) determine that the request for review is abandoned.

(4) A review officer may require an employer who is a party to a review respecting a matter referred to in section 96.2 (1) (c) to post a notice in a specified form and manner to bring the review to the attention of the employees of the employer.

(5) On application or on the chief review officer's own initiative, the chief review officer may suspend a review in a specific case in order to allow a review officer to deal with related matters at the same time.

(6) After taking into account any applicable period of suspension under subsection (5), the review officer must make a decision on a review

(a) within 150 days after the Board receives the request for review, or

(b) if a policy of the board of directors establishes a shorter time period than that specified in paragraph (a), within that shorter time period.

(7) The chief review officer may extend the applicable time period in subsection (6) (a) or (b) if the complexity of the proceedings in a review or the matter under review makes the time period impractical.

(8) The review officer may make a decision

(a) confirming, varying or cancelling the decision or order under review, or

(b) referring the decision or order under review back to the Board, with or without directions.

(9) Subject to sections 96.5 and 239, a decision by the review officer under subsection (8) is final and the Board must comply with that decision.

## **Reconsideration**

**96.5** (1) The chief review officer may direct a review officer to reconsider a decision under section 96.4 (8) in either of the following circumstances:

(a) on the chief review officer's own initiative;

(b) on application from a party to a completed review of a decision that may not be appealed to the appeal tribunal, if the chief review officer is satisfied that new evidence has become available or been discovered that

(i) is substantial and material to the decision, and

(ii) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

(2) Each party to a completed review may apply for reconsideration of a decision under subsection (1) (b) on one occasion only.

(3) Despite subsection (1), a review officer must not reconsider a decision

(a) more than 23 days after the decision was made, if a direction to reconsider was given under subsection (1) (a), or

(b) if the decision has been appealed under section 239.

## **Delegation of chief review officer's powers and duties**

**96.6** (1) The chief review officer may delegate in writing to a review officer a power or duty of

the chief review officer and may impose any limitations or conditions on the exercise of that power or performance of that duty.

(2) If the chief review officer has delegated a power or duty and subsequently ceases to hold office, the delegation continues in effect

(a) so long as the delegate continues in office, or

(b) until the delegation is revoked by a new chief review officer.

(3) The chief review officer may designate a review officer to act in the chief review officer's place during his or her temporary absence, and while acting in the chief review officer's place the designated review officer has the power and authority of the chief review officer.

### **Statutory powers**

**97** The Board may exercise any power or duty conferred or imposed on it by or under a statute of Canada or agreement between Canada and the Province.

### **Discontinuance or suspension of payments**

**98** (1) and (2) [Repealed 1985-68-124.]

(3) Despite sections 22 (1), 23 (1) or (3), 29 (1) and 30 (1), where it is found that a worker is confined to jail or prison, the Board may cancel, withhold or suspend the payment of compensation for the period it considers advisable. Where compensation is withheld or suspended, the Board may pay the compensation or any portion of it to the worker's spouse or children, or to a trustee appointed by the Board, who must expend it for the benefit of the worker, the worker's spouse or children.

(4) If

(a) a worker is not supporting the worker's spouse and children and they are likely to be a charge on the municipality where they reside, or

(b) an order has been made against the worker by a court of competent jurisdiction for spousal support or child support,

the Board may divert the compensation in whole or in part from the worker for the benefit of the worker's spouse or children.

(5) [Repealed 2011-25-478.]

### **Board decision-making**

**99** (1) The Board may consider all questions of fact and law arising in a case, but the Board is not bound by legal precedent.

(2) The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in that case.

(3) If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

### **Costs**

**100** The Board may award a sum it considers reasonable to the successful party to a contested

claim for compensation or to any other contested matter to meet the expenses the party has been put to by reason of or incidental to the contest, and an order of the Board for the payment by an employer or by a worker of a sum so awarded, when filed in the manner provided for the filing of certificates by section 45 (2), becomes a judgment of the court in which it is filed and may be enforced accordingly.

## **Repealed**

**101** [Repealed 2002-66-23.]

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