

Workers Compensation Act

Statute Revision 2018

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British Columbia

WORKERS COMPENSATION ACT

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PART 1 – SCOPE OF ACT

Division 1 – Interpretation

Definitions

1 In this Act:

“accident”, in relation to a worker, includes

- (a) a wilful and intentional act ~~that is not, not being~~ the act of the worker, and
- (b) ~~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~~ continued under section ~~23936~~ [Board to maintain accident fund];

“appeal tribunal” means the Workers' Compensation Appeal Tribunal ~~established~~ continued under ~~Part 7~~ Part 4 [Appeals to Appeal Tribunal];

“assessment” means an assessment under this Act of an amount to be paid to the Board;

“average net earnings” ~~means~~, with respect to a worker, means the average net earnings of the worker as determined by the Board under ~~section 220~~ sections

~~33.8 [average net earnings: short-term compensation] or 221 and 33.9 [average net earnings: long-term compensation], as applicable;~~

“Board” means the Workers’ Compensation Board continued under section 316 [Workers’ Compensation Board and its board of directors];

“board of directors” means the board of directors ~~appointed~~ under section 316 (2) 81;

“chief review officer” means an officer of the Board who is appointed as chief review officer under section ~~33096.2~~ [Board must appoint review officers];

“class”, in relation to an employer, independent operator or industry, means the applicable class established under section 244 [classification of industries];

“compensation” includes health care;

“compensation provision” means a provision of the following:

(a) Division 3 [Scope of Compensation Provisions] of this Part;

(b) Part 3 [Workers’ Compensation System];

(c) Part 4 [Compensation to Injured Workers and Their Dependants];

(d) Part 5 [Accident Fund and Employer Assessment];

(e) Part 6 [Review of Board Decisions];

“construction” includes reconstruction, repair, alteration and demolition;

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

“dependant”

(a) means

(i) a family member of the worker family of a worker who was wholly or partly dependent on the worker’s earnings at the time of the worker’s death, or

(ii) a family member of the worker who, but for the worker’s incapacity due to the accident or occupational disease, would have been wholly or partly dependent on the worker’s earnings, so dependent, and;

(b) ~~except other than in the following sections, section 17 (3) (a) to (h), (9) and (13),~~ includes a spouse, parent or child or parent of a deceased the worker who satisfies the Board that he or she the spouse, child or parent had a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased that worker;

(i) section 167 [lump sum payment to dependent spouse or foster parent];

(ii) section 169 [dependent spouse who is 50 years of age or older or is incapable of earning, no dependent children];

(iii) section 170 [dependent spouse who is under 50 years of age and not incapable of earning, no dependent children];

(iv) section 171 [dependent spouse and one or more dependent children];

(v) section 172 [one or more dependent children but no dependent spouse];

(vi) section 173 [dependent parents in addition to spouse or children];

(vii) section 174 [no dependent spouse or children: compensation to other dependants];

(viii) section 178 [dependent spouse living apart from worker at the date of death];

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

“**employers’ adviser**” means a person appointed as an employers’ adviser under section 350 [government to provide workers’ advisers and employers’ advisers];

“**employment**”, when used in a compensation provision, ~~Part 1,~~

(a) ~~means and refers to~~ all or part of an establishment, undertaking, trade or business within the scope of ~~that Part, the compensation provisions, and~~

(b) in the case of an industry that is not as a whole within the scope of Part 1 ~~the compensation provisions,~~ includes a department or part of ~~that the~~ industry that would be within the scope of those provisions if carried on separately; ~~be within the scope of Part 1;~~

“~~member of family~~” “**family member**”, in relation to a worker, means the following:

(a) a spouse, parent, grandparent, step-parent, child, grandchild, stepchild, sibling or ~~half sibling~~ half-sibling of the worker; ~~and~~

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

“**health care**”, when used in ~~Part 1,~~ a compensation provision, includes ~~the things which that~~ the Board ~~under this Act~~ is empowered under this Act to provide for injured workers;

“**industry**” includes establishment, undertaking, work, trade and business;

“**initial payment period**”, in relation to an injured worker, means the period described in section 210 (a) [average earnings: short-term compensation]; ~~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”, in relation to a worker, includes a child who

- ~~(a) was not an invalid at the date of death of the worker, and~~
- ~~(b) 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;

“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 disease, including a disablement resulting from exposure to contamination, that is

- ~~(a) a disease mentioned identified in ~~Schedule B, Schedule 1~~ [Presumption of Occupational Disease Related to Specific Process or Industry] of this Act,~~
- ~~(b) a disease the Board may designated or recognized by regulation under section 138 (2) [Board regulation of general application], of general application,~~
- ~~(c) a disease the Board may designated or recognized by order under section 138 (3) [Board order in specific case], dealing with a specific case, and~~
- ~~(d) a disease designated or recognized under section 138 (4) [disease peculiar to or characteristic of particular employment], or~~
- ~~(e) (d) the a disease~~
 - ~~(i) referred to in section 139 (2) section 6.1 (1.1) or (7) [firefighters: presumptions respecting heart disease],~~
 - ~~(ii) referred to in section 140 (2) (a) [firefighters: presumptions respecting primary site lung cancer], or~~
 - ~~(iii) or a disease prescribed by regulation of the Lieutenant Governor in Council for the purposes of section 140 (2) (b) 6.1 (2) [firefighters: presumptions respecting prescribed diseases],~~

but only in respect of a worker to whom the presumption in any of those provisions applies, unless the disease is otherwise described by this definition; ~~and “disease” includes disablement resulting from exposure to contamination;~~

“OHS provision” means a provision of the following:

- (a) Division 2 [Scope of OHS Provisions] of this Part;
- (b) Part 2 [Occupational Health and Safety];

“person” includes, for the purpose of section 10, ~~[Legal Effect Of Workers Compensation System]~~ 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 ~~32384.1~~ [Board president];

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

“reconsider” means to make a new decision in a matter previously decided ~~where~~ such that the new decision confirms, varies or cancels the previous decision or order;

“regulation”, when used in ~~Part 1~~ a compensation provision in relation to regulations of the Board, means rules and regulations made by the Board under a compensation provision; ~~that Part~~;

“retirement benefit”, in relation to a worker, means the lump sum payable to the worker under section ~~20623.3~~ [payment of retirement benefit];

“review officer” means an officer of the Board who is appointed as a review officer under section ~~33096.2~~ [Board must appoint review officers];

“silica dust” means dust containing silica;

“silicosis” means a fibrotic condition of the lungs caused by the inhalation of silica dust;

“specialist” means a physician residing and practising in British Columbia ~~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)(ii)~~ a period of at least 1 year, if the person has had a child with the other person, or 1 year;
 - ~~(ii)(i)~~ a period of at least 2 years in any other case; ~~or~~

“surviving spouse” means a person who was a spouse of a worker when the worker died;

“worker” includes the following:

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

- (b) a person who
 - (i) ~~is a learner, although~~ who is not under a contract of service or apprenticeship, ~~and~~
 - (ii) ~~who becomes~~ subject to the hazards of an industry within the scope of ~~Part 1~~ the compensation provisions for the purpose of undergoing training or probationary work specified ~~or stipulated~~ by the employer as a preliminary to employment;
- (c) a person who is a member of a fire brigade or an ambulance driver or attendant, working with or without remuneration, when the person is serving
 - (i) a municipality, ~~a regional district or , an urban area, an~~ improvement district,
 - (ii) a board of education school trustees, ~~a or francophone~~ education authority, as those terms are defined in the *School Act*,
 - (iii) a library board or a parks park board, or
 - (iv) ~~(ii)~~ a board or commission having the management or conduct of work or services on behalf of any of the bodies ~~in subparagraph (i);~~ referred to in subparagraphs (i) to (iii);
- (d) in respect of the industry of mining, a person
 - (i) ~~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 that~~ person is employed as a worker in that industry, ~~or~~
 - (ii) while, with the knowledge and consent of an employer in that industry, either express or implied, ~~he or she~~ the person 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 that~~ endangers either life or property in a mine, ~~and this irrespective of whether or not~~ during the time ~~of his or her being~~ that person is 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, ~~or~~
 - (iii) ~~(e)~~ further, in respect of the industry of mining, ~~a person while he or she~~ the person 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;
- (e) ~~(f)~~ an independent operator ~~admitted to whom the compensation provisions apply~~ by the Board direction under section 4 (2) ~~(a)2 (2)~~ [*extending application: independent operator who is neither an employer nor a worker*]; ~~and~~

~~(f)~~ ~~(g)~~ a person deemed by the Board to be a worker under section ~~6 (2)~~ ~~3~~ ~~(6)~~
[extending application: vocational or training programs];-

“workers’ adviser” means a person appointed as a workers’ adviser under section
350 [government to provide workers’ advisers and employers’ advisers],-

Division 2 – Scope of OHS Provisions

General application of OHS provisions Part

2108 ~~(1)~~—Subject to ~~subsection (2)~~, ~~this Part applies~~ section 3, the OHS provisions apply to

- ~~(a)~~ ~~(b)~~ every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government of British Columbia, and
- ~~(b)~~ ~~(a)~~ the Provincial government of British Columbia and every agency of the Provincial that government, and
- ~~(c)~~ the federal government of Canada, every agency of the federal that government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the federal government of Canada submits to the application of the OHS provisions. ~~this Part.~~

Exceptions from application – mines and industrial camps

3 ~~(1)~~ ~~108(2)~~—~~This Part~~ The OHS provisions and the regulations under those provisions do not apply in respect of the following:

- ~~(a)~~ mines to which the *Mines Act* applies;-
- ~~(b)~~ [Repealed 2004-8-32.]
- ~~(b)~~ ~~(e)~~ subject to subsection (3), unless a regulation under subsection (2) applies, the operation of industrial camps to the extent their operation is subject to regulations under the *Public Health Act*.

~~(2)~~ ~~(3)~~—The Lieutenant Governor in Council may, by regulation, provide that all aspects of ~~this Part and the regulations~~ the OHS provisions and the regulations under those provisions apply to camps referred to in subsection ~~(1)~~ ~~(b)(2)~~ ~~(e)~~, in which case ~~this Part and the those provisions and regulations~~ prevail over the regulations under the *Public Health Act* to the extent of any conflict.

Division 3 – Scope of Compensation Provisions

General application of compensation provisions Application

42 ~~(1)~~ ~~This Part applies~~ The compensation provisions apply to

- ~~(a)~~ all employers, in their capacity as employers, in British Columbia, and

- (b) all workers in British Columbia,
~~except other than~~ employers or workers exempted by order of the Board.
- (2) The Board may direct that ~~this Part applies~~ the compensation provisions apply on the terms specified in the Board's direction to
- (a) ~~to~~ an independent operator who is neither an employer nor a worker as if
~~though~~ the independent operator ~~was~~ were a worker, or
- (b) ~~to~~ an employer as if ~~though~~ the employer ~~was~~ were a worker.
- (3) The application of ~~this Part~~ the compensation provisions under subsection (2) (b) to an employer does not exempt the employer, ~~as an~~ in their capacity as an employer, from the application of ~~this Part~~ the compensation provisions.

Extending application: public interest undertakings ~~Extending application~~

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

5 (1) ~~3(5) — Where~~ In relation to a person or group of persons ~~carries~~ carrying on an undertaking that the Board ~~thinks~~ considers is in the public interest, the Board may, on the terms and conditions ~~it~~ the Board directs,

- (a) deem the person or group of persons, whether or not any of them receive payment for their services, to be a worker or workers for the purposes of this Act, ~~and~~ ;
- (b) on approval of the Lieutenant Governor in Council, deem the person or group of persons to be a worker or workers of the Crown in right of British Columbia, ~~the Province~~;

(2) ~~(4) —~~ Without limiting subsection (1), 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.

Extending application: vocational or training programs

6 (1) ~~3(6) — Where~~ This section applies if the Minister of Education, Skills and Training and ~~the Minister of Labour~~ the minister responsible for the administration of this Act approve

- (a) a vocational or training program, and
- (b) a school or other location as a place ~~of that~~ at which the vocational or training program is to be provided;

(2) The Board may, at the request of ~~either a~~ minister referred to in subsection (1), deem ~~any a~~ a person or class of persons enrolled in ~~the a~~ program approved under that subsection to be a worker or workers of the Crown in right of ~~the Province~~ British Columbia, ~~and~~

(3) In relation to a person who is deemed to be a worker under subsection (2), compensation under this Act is ~~then payable out of the accident fund under the~~

compensation provisions for injuries to the worker arising out of and in the course of training for that worker. those workers;

- (4) As limits on subsection (3), but where the if an injury results in a period of temporary disability with no loss of earnings,
- (a) subject to paragraph (b) of this subsection, a health care benefit only is payable, except as provided in paragraph (b); and
 - (b) where if training allowances paid by Canada or the Province British Columbia are suspended, the Board may, for the period it the Board considers advisable, pay compensation in the amount of the training allowance.
- (5) ~~(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.

Extending application: work study and other programs

- 7** (1) ~~3(7)~~ — Where This section applies in relation to a person or group of persons is engaged in a work study program or other program of self-improvement self-improvement involving work, whether or not the person or group of persons receives payment for the work,;
- (2) ~~the~~ 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 of persons as being within the scope of this Part the compensation provisions, and, ... or
 - (b) with the approval of the Lieutenant Governor in Council, deem a person or group of persons engaged in the program to be a worker or workers of the Crown in right of the Province, British Columbia, on the terms and conditions the Board determines.
- (3) ~~(4)~~ — Without limiting subsection (2), 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.
- (4) ~~(7) (a) .. on~~ On admission under subsection (2) (a),
- (a) the person or group of persons is deemed to be a worker or workers to whom this Part applies, the compensation provisions apply, and
 - (b) the Board may levy assessments on the applicable employer or program organizer by the formula the Board determines,; or

Application to fishing industry

- 84** (1) The Lieutenant Governor in Council may make regulations as follows: to
- (a) ~~define~~ defining the terms used in this section, and, for this purpose,

- (i) the term “fish” may be defined to include any species of animal living in water, and
- (ii) 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~~ providing that any provision of Part 1 a compensation provision relating to workers applies or may be applied to any commercial fishers
- (i) working in or out of British Columbia ports; or on or about the waters of British Columbia, or
- (ii) resident in British Columbia, the Province;
- ~~notwithstanding that even though the commercial fishers they may not otherwise be workers under this Act;~~
- (c) ~~provide~~ providing that any provision of Part 1 a compensation provision relating to employers applies or may be applied to
- (i) any commercial buyers or other commercial recipients of fish, or
- (ii) ~~to~~ any person engaged in the Province British Columbia in transmitting payments to commercial fishers for fish, whether the fish are landed in British Columbia or otherwise,
- ~~notwithstanding that they even though the persons referred to in subparagraph (i) or (ii) 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~~ providing that methods of calculating and levying assessments additional to or different from the methods otherwise provided under Part 1 the compensation provisions may be used for levying assessments, for the purposes of this Part those provisions, on persons referred to in paragraph (c) (i) and (ii); commereial buyers and other commereial 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~~ establishing obligations, different from the terms of this Act, on commercial buyers and other commercial recipients of fish, and on masters of fishing vessels,
- (i) to report to the Board injuries and occupational diseases sustained by commercial fishers, and
- (ii) to provide transportation for initial medical treatment of commercial fishers;

- (f) ~~exclude~~ excluding from application of a compensation provision a portion of the fishing industry or a category of workers or employers in that industry to which the provision ~~whom a provision of this Part~~ would otherwise apply, and to substitute provisions ~~contained in~~ of regulations ~~made~~ under this section; ~~and~~
- (g) ~~delegate~~ delegating to the Board, to the extent the regulations provide, ~~any~~ power conferred by paragraphs (a) to (f). ~~this section~~
- (2) ~~Where it appears to~~ If the Board considers that a provision of this Act, or a provision 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~~ the Board 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 the compensation provisions. ~~Part 1.~~
- (3) ~~Where~~ If the death of a commercial fisher resident in British Columbia
- (a) arises out of and in the course of ~~his or her~~ the commercial fisher's occupation in ~~the Province~~ British Columbia or waters off ~~the Province~~ British Columbia, after January 1, 1975, and
- (b) ~~the death~~ is not otherwise compensable under ~~this Part~~, the compensation provisions.

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 British Columbia. ~~the Province.~~

Division 4 – Part 2 – Liability of Employers in Industries Not Within the Scope of Compensation Provisions Part 1

Application of this Division

- 9102** (1) ~~Sections 103 to 105 apply~~ This Division applies only to the industries to which ~~Part 1 does~~ the compensation provisions do not apply and to the workers employed in those industries. ~~but~~
- (2) ~~those~~ Workers who are exempted under section 4 (1)2 [*Board orders for exemptions*] from the benefits of ~~Part 1~~ the compensation provisions are not, ~~by~~ under this section, excluded from the benefits of this Division. ~~sections 103 to 105.~~

Liability of Legal actions against employer

- 10103** (1) ~~Where~~ This section applies if personal injury is caused to a worker by reason of

- (a) a defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of the worker's employer, or
 - (b) ~~by reason of~~ the negligence of the worker's employer or of a person in the service of ~~the~~ that employer acting within the scope of ~~his or her~~ the person's employment;
- (2) The following have a right of action against the employer:
- (a) ~~the worker;~~ ~~or,~~
 - (b) if the injury results in death, the legal personal representatives of the worker, and any person entitled in case of death, ~~has an action against the employer.~~
- (3) ~~If~~ an action under this section is brought by the worker, the worker is entitled to recover from the employer the damages sustained by the worker by or ~~in consequence as a result of~~ the injury, ~~and~~
- (4) ~~If~~ an action under this section is brought by ~~the~~ legal personal representatives of the worker, or by or on behalf of persons entitled to damages under the *Family Compensation Act*, ~~they~~ those persons are entitled to recover the damages to which they are entitled ~~to~~ under that Act.
- (5) ~~(4)~~ — A worker is not, by reason only of continuing in the employment of the employer with knowledge of the defect or negligence ~~which~~ that caused ~~his or her~~ the worker's injury, deemed to have voluntarily incurred the risk of injury.

Legal actions in relation to work done under contract

- 11** (1) ~~103(2)~~ ~~Where~~ This section applies if
- (a) the execution of any work is being carried into effect under a contract,
 - (b) ~~and~~ the person for whom the work is done owns or supplies ways, works, machinery, plant, buildings or premises; and, by reason of a defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises, ~~them~~ personal injury is caused to a worker employed by the contractor or by a subcontractor, and
 - (c) the defect arose from the negligence of
 - (i) the person for whom the work or any part of it is done, or
 - (ii) ~~of some another~~ person in ~~his or her~~ that first person's service ~~and who is acting~~ within the scope of ~~his or her~~ this other person's employment;
- (2) The person for whom the work or ~~that~~ part of the work referred to in subsection (1) (c) is done is liable to ~~the~~ an action under section 10 as if the worker had been employed by that person, ~~him or her,~~ and for ~~that~~ this purpose the person is

deemed to be the employer of the worker within the meaning of this Division.
Part;

- (3) ~~but~~ ~~Despite subsection (2)~~, the contractor or subcontractor is liable to the action as if ~~this that~~ subsection had not been enacted, but not so that double damages are recoverable for the same injury.
- (4) ~~103(3)~~—Nothing in ~~subsection (2)~~ this section affects a right or liability of the person for whom the work is done and the contractor or subcontractor as between themselves.

Override and application of common law rules abrogated

- 12104** (1) A worker is deemed not to have undertaken the risks due to the negligence of ~~his or her~~ the worker's fellow workers, ~~and~~
- (2) Contributory negligence on the part of a worker is not a bar to recovery by the worker or by any person entitled to damages under the *Family Compensation Act* in an action for the recovery of damages for an injury sustained by or causing the death of the worker while in the service of ~~his or her~~ that worker's employer for which the employer would otherwise have been liable.
- (3) **105**—Contributory negligence on the part of the worker must ~~nevertheless~~ be taken into account in assessing the damages in an action.

PART 2 – OCCUPATIONAL HEALTH AND SAFETY

Division 1 – Interpretation and Purposes

Definitions in relation to OHS provisions

13106 In ~~this Part~~ the OHS provisions and ~~in the regulations under this Part~~ those provisions:

“**collective agreement**” ~~means~~ has the same meaning as in the *Fishing Collective Bargaining Act*, the *Labour Relations Code* or the *Public Service Labour Relations Act*;

“**employer**” means

- (a) an employer as defined in section 1,
- (b) a person who is deemed to be an employer under ~~Part 1~~ the compensation provisions or the regulations under ~~that Part~~, those provisions, and
- (c) the owner and the master of a fishing vessel for which there is crew to whom ~~Part 1~~ applies the compensation provisions apply as if the crew were workers,

but does not include a person exempted from the application of ~~this Part~~ the OHS provisions by order of the Board;

“**hazardous substance**” includes

- (a) a hazardous product within the meaning of the *Hazardous Products Act (Canada)*,
- (b) a substance designated as a hazardous substance by regulation, and
- (c) a biological, chemical or physical agent that, by reason of its properties, is hazardous to the health or safety of persons exposed to it;

“**joint committee**” means a joint health and safety committee under Division 5 ~~Division 4~~ [*Joint Committees and Worker Representatives*] of this Part;

“**multiple-employer workplace**” means a workplace where workers of 2 or more employers are working at the same time;

“**officer**” means a person appointed as an officer under section 329 (1)~~86 (1)~~ [*Board may appoint officers and other employees*] or a person authorized to act as an officer under section 18114 [*cooperation agreements and arrangements*];

“**order**” means an order under ~~this Part~~ the OHS provisions or the regulations;

“**owner**” includes

- (a) a trustee, receiver, mortgagee in possession, tenant, lessee, licensee or occupier of any lands or premises used or to be used as a workplace, and
- (b) a person who acts for or on behalf of an owner as an agent or delegate;

“**prime contractor**”, in relation to a multiple-employer workplace, means ~~the prime contractor for a workplace within the meaning of section 118;~~

“**prime contractor**” means, ~~in relation to a multiple-employer workplace,~~

- (a) the directing contractor, employer or other person who enters into a written agreement with the owner of ~~that the~~ workplace to be the prime contractor for the purposes of ~~this Part,~~ the OHS provisions, or
- (b) if there is no written agreement referred to in paragraph (a), the owner of the workplace;

“**regulation**” means a regulation under ~~this Part~~ the OHS provisions made by the Board or by the Lieutenant Governor in Council;

“**supplier**” means a person who manufactures, supplies, sells, leases, distributes, erects or installs

- (a) any tool, equipment, machine, or device, or
- (b) any biological, chemical or physical agent to be used by a worker;

“**union**” means

- (a) a trade union recognized under the *Labour Relations Code*, or
- (b) another organization of workers formed for purposes that include the regulation of relations between workers and employers, if the organization

has given notice to the employer and the Board that it is to be considered a union for the purposes of the OHS provisions; ~~this Part;~~

“variance order” means an order under section ~~60~~¹⁶⁴ [*Board may authorize variances from regulations*];

“wages” ~~means the~~ has the same meaning as in the *Employment Standards Act*;

“worker” means

- (a) a worker as defined in section 1, and
- (b) a person who is deemed to be a worker under ~~Part 1~~ the compensation provisions or the regulations under ~~that Part,~~ those provisions, or to whom ~~that Part applies~~ those provisions apply as if the person were a worker, but does not include a person exempted from the application of ~~this Part~~ the OHS provisions by order of the Board;

“worker health and safety representative” means a worker health and safety representative under section ~~45~~³⁹;

“worker representative” means,

- (a) in relation to a workplace for which there is a joint committee, a worker representative on the committee, and
- (b) in relation to a workplace for which there is a worker health and safety representative, that representative;

“workplace” means any place where a worker is or is likely to be engaged in any work and includes any vessel, vehicle or mobile equipment used by a worker in work; ~~;~~

~~“work-related”~~ **“work-related”** means arising from or in connection with work activities; ~~;~~

Purposes of OHS provisions

- 14107** (1) The purpose of ~~this Part~~ the OHS provisions is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from ~~work-related~~ work-related risks to their health and safety.
- (2) Without limiting subsection (1), the following are the specific purposes of the OHS provisions; this Part are
- (a) to promote a culture of commitment on the part of employers and workers to a high standard of occupational health and safety; ~~;~~
 - (b) to prevent ~~work-related~~ work-related accidents, injuries and illnesses; ~~;~~
 - (c) to encourage the education of employers, workers and others regarding occupational health and safety; ~~;~~
 - (d) to ensure an occupational environment that provides for the health and safety of workers and others; ~~;~~

- (e) to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party's authority and ability to do so;
- (f) to foster cooperative and consultative relationships between employers, workers and others regarding occupational health and safety, and to promote worker participation in occupational health and safety programs and occupational health and safety processes; ~~and~~
- (g) to minimize the social and economic costs of ~~work-related~~ work-related accidents, injuries and illnesses, in order to enhance the quality of life for British Columbians and the competitiveness of British Columbia in the Canadian and world economies.

Review of ~~Part~~ OHS provisions and regulations

- 15109** (1) The minister may appoint a committee to conduct a review of all or part of ~~this Part~~ the OHS provisions and the regulations and to report to the minister concerning its recommendations.
- (2) A review under this section must include a process of consultations with representatives of employers, workers and other persons affected by ~~this Part~~ the OHS provisions and the regulations.
- (3) For certainty, the costs of a review under this section are part of the costs of administering this Act.

Relationship with compensation provisions ~~Part 4~~

- 16110** (1) The failure to comply with ~~any provision of this Part~~ an OHS provision or the regulations does not affect the right of a worker to compensation, if otherwise entitled, under the compensation provisions. ~~Part 1 of this Act.~~
- (2) The liabilities and obligations of a person under ~~Part 1 of this Act~~ the compensation provisions are not decreased or removed by reason only of the person's compliance with the OHS provisions ~~of this Part~~ or the regulations.

Division 2 – Board Mandate

Board's mandate under OHS provisions ~~this Part~~

- 17111** (1) In accordance with the purposes of the OHS provisions, ~~this Part~~, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.
- (2) In carrying out its mandate, the Board has the following ~~functions, duties,~~ functions and powers:

- (a) to exercise ~~its~~ the Board's authority to make regulations to establish standards and requirements for the protection of the health and safety of workers and the occupational environment in which they work;
- (b) to undertake inspections, investigations and inquiries on matters of occupational health and safety and occupational environment;
- (c) to provide services to assist joint committees, worker health and safety representatives, employers and workers in maintaining reasonable standards for occupational health and safety and occupational environment;
- (d) to ensure that persons concerned with the purposes of ~~this Part~~ the OHS provisions are provided with information and advice relating to ~~its~~ the Board's administration and to occupational health and safety and occupational environment generally;
- (e) to encourage, develop and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;
- (f) to promote public awareness of matters related to occupational health and safety and occupational environment;
- (g) to prepare and maintain statistics relating to occupational health and safety and occupational environment, either by ~~itself~~ the Board acting alone or acting in conjunction with any other agency;
- (h) to undertake or support research and the publication of research on matters relating to ~~its~~ the Board's responsibilities under this Act;
- (i) to establish programs of grants and awards in relation to ~~its~~ the Board's responsibilities under this Act;
- (j) to provide assistance to persons concerned with occupational health and safety and occupational environment;
- (k) to cooperate and enter into arrangements and agreements with governments and other agencies and persons on matters relating to ~~its~~ the Board's responsibilities under the OHS provisions; ~~this Part~~;
- (l) to make recommendations to the minister respecting amendments to this Act, the regulations under ~~this Part~~ the OHS provisions or the compensation provisions Part 1 of this Act, or to other legislation that affects occupational health and safety or occupational environment;
- (m) to inquire into and report to the minister on any matter referred to it by the minister, within the time specified by the minister;
- (n) to fulfill ~~its~~ the Board's mandate under ~~this Part~~ the OHS provisions in a financially responsible manner;

- (o) to do other things in relation to occupational health and safety or occupational environment that the minister or Lieutenant Governor in Council may direct.

Cooperation agreements and arrangements

- 18114** (1) Without limiting section ~~3358.1~~ *[interjurisdictional agreements and arrangements]*, the Board may enter into agreements or make arrangements respecting cooperation, coordination and assistance related to occupational health and safety and occupational environment matters with the following:
- (a) the Provincial government of British Columbia, the government of Canada or the government of another province or territory; ~~or~~
 - (b) an agency of any of those governments, a government referred to in paragraph (a); ~~or~~
 - (c) with another appropriate authority.
- (2) In relation to an agreement or arrangement under subsection (1), the Board may
- (a) authorize Board officers to act on behalf of the other party to the agreement or arrangement, and
 - (b) authorize persons appointed by the other party to the agreement or arrangement to act as an officer under this Act, subject to any conditions or restrictions established by the Board.

Division 3 – Board Jurisdiction

Exclusive jurisdiction of Board in relation to OHS provisions jurisdiction under this Part

- 19113** (1) Subject to sections ~~288 and 289~~~~239 and 240,~~ *[matters that may be appealed to appeal tribunal]*, the Board has exclusive jurisdiction to inquire into, hear and determine all ~~those~~ matters and questions of fact and law arising or required to be determined under ~~this Part, the OHS provisions,~~ and the action or decision of the Board on those matters and questions is final and conclusive and is not open to question or review in any court.
- (2) Subsection (1) does not restrict the Board's authority under section 20.

Board authority to change previous decisions

- 20** (1) ~~113(2) Despite subsection (1), but~~ Subject to subsection ~~(2)~~~~(2.1)~~ of this section and sections ~~87 (1)~~~~189 (1)~~ *[notice required if Board order varied or cancelled]* and ~~89 (4)~~~~190 (4)~~ *[restriction on cancellation of order to stop use or supply of unsafe equipment]*, the Board may at any time, on its own initiative, make a new decision or order varying or cancelling a previous decision or order of the Board or of ~~any~~ an officer or employee of the Board respecting any matter that is within the jurisdiction of the Board under ~~this Part~~ the OHS provisions.

- ~~(2) (2.1)~~—The Board may not make a decision or an order under subsection ~~(1)~~ ~~(2)~~ if
- (a) a review has been requested under section ~~27096.2~~ *[request for review of Board decision]* in respect of the previous decision or order, or
 - (b) an appeal has been filed under section ~~289240~~ *[other Board decisions that may be appealed]* in respect of the previous decision or order.
- ~~(3) (2.2)~~—~~Despite subsection (1),~~ The Board may review a decision or order made under the OHS provisions by the Board or ~~by an officer or employee of the Board, under this Part~~ but only as specifically provided in Part 6 ~~sections 96.2 to 96.5~~ *[Review of Board Decisions]*.
- ~~(4) (2.3)~~—~~Despite subsection (1),~~ The Board may at any time set aside ~~any a~~ decision or order made under the OHS provisions by ~~it the Board~~ 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 on which the decision or order was based.

Division 4 – General Duties of Employers, Workers and Others

General duties of employers

- ~~2145~~ (1) Every employer must
- (a) ensure the health and safety of
 - (i) all workers working for that employer, and
 - (ii) any other workers present at a workplace at which that employer's work is being carried out, and
 - (b) comply with ~~this Part, the OHS provisions,~~ the regulations and any applicable orders.
- (2) Without limiting subsection (1), an employer must
- (a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers,
 - (b) ensure that the employer's workers
 - (i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,
 - (ii) comply with ~~this Part, the OHS provisions,~~ the regulations and any applicable orders, and
 - (iii) are made aware of their rights and duties under ~~this Part the OHS provisions~~ and the regulations,
 - (c) establish occupational health and safety policies and programs in accordance with the regulations,

- (d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer's workers,
- (e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,
- (f) make a copy of this Act and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,
- (g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and
- (h) cooperate with the Board, officers of the Board and any other person carrying out a duty under ~~this Part~~ the OHS provisions or the regulations.

General duties of workers

~~22116~~

- (1) Every worker must
 - (a) take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work, and
 - (b) comply with ~~this Part~~ the OHS provisions, the regulations and any applicable orders.
- (2) Without limiting subsection (1), a worker must
 - (a) carry out ~~his or her~~ the worker's work in accordance with established safe work procedures as required by ~~this Part~~ the OHS provisions and the regulations,
 - (b) use or wear protective equipment, devices and clothing as required by the regulations,
 - (c) not engage in horseplay or similar conduct that may endanger the worker or any other person,
 - (d) ensure that the worker's ability to work without risk to ~~his or her~~ that worker's health or safety, or to the health or safety of any other person, is not impaired by alcohol, drugs or other causes,
 - (e) report to the supervisor or employer
 - (i) any contravention of ~~this Part~~ the OHS provisions, the regulations or an applicable order of which the worker is aware, and
 - (ii) the absence of or defect in any protective equipment, device or clothing, or the existence of any other hazard, that the worker considers is likely to endanger the worker or any other person,

- (f) cooperate with the joint committee or worker health and safety representative for the workplace, and
- (g) cooperate with the Board, officers of the Board and any other person carrying out a duty under ~~this Part~~ the OHS provisions or the regulations.

General duties of supervisors

- ~~23117~~ (1) Every supervisor must
- (a) ensure the health and safety of all workers under the direct supervision of the supervisor,
 - (b) be knowledgeable about ~~this Part~~ the OHS provisions and those regulations applicable to the work being supervised, and
 - (c) comply with ~~this Part~~ the OHS provisions, the regulations and any applicable orders.
- (2) Without limiting subsection (1), a supervisor must
- (a) ensure that the workers under ~~his or her~~ the supervisor's direct supervision
 - (i) are made aware of all known or reasonably foreseeable health or safety hazards in the area where they work, and
 - (ii) comply with ~~this Part~~ the OHS provisions, the regulations and any applicable orders,
 - (b) consult and cooperate with the joint committee or worker health and safety representative for the workplace, and
 - (c) cooperate with the Board, officers of the Board and any other person carrying out a duty under ~~this Part~~ the OHS provisions or the regulations.

Coordination at multiple-employer workplaces

- ~~118~~ (1) In this section:
- ~~“multiple-employer workplace” means a workplace where workers of 2 or more employers are working at the same time;~~
- ~~“prime contractor” means, in relation to a multiple-employer workplace,~~
- ~~(a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or~~
 - ~~(b) if there is no agreement referred to in paragraph (a), the owner of the workplace.~~

- 24 (1) ~~(2)~~ — The prime contractor of a multiple-employer workplace must
- (a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and

(b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with ~~this Part~~ the OHS provisions and the regulations in respect of the workplace.

~~(2)~~ (3) — Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace.

General duties of owners

~~25119~~ Every owner of a workplace must

- (a) provide and maintain the owner's land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace,
- (b) give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace, and
- (c) comply with ~~this Part~~, the OHS provisions, the regulations and any applicable orders.

General duties of suppliers

~~26120~~ Every supplier must

- (a) ensure that any tool, equipment, machine or device, or any biological, chemical or physical agent, supplied by the supplier is safe when used in accordance with the directions provided by the supplier and complies with ~~this Part~~ the OHS provisions and the regulations,
- (b) provide directions respecting the safe use of any tool, equipment, machine or device, or any biological, chemical or physical agent, that is obtained from the supplier to be used at a workplace by workers,
- (c) ensure that any biological, chemical or physical agent supplied by the supplier is labelled in accordance with the applicable federal and provincial enactments,
- (d) if the supplier has responsibility under a leasing agreement to maintain any tool, equipment, machine, device or other thing, maintain it in safe condition and in compliance with ~~this Part~~, the OHS provisions, the regulations and any applicable orders, and
- (e) comply with ~~this Part~~, the OHS provisions, the regulations and any applicable orders.

Duties of directors and officers of a corporation

~~27121~~ Every director and every officer of a corporation must ensure that the corporation complies with ~~this Part~~, the OHS provisions, the regulations and any applicable orders.

General obligations are not limited by specific obligations

28122 A specific obligation imposed by ~~this Part the OHS provisions~~ or the regulations does not limit the generality of any other obligation imposed by ~~this Part those provisions~~ or the regulations.

~~Persons~~ Person may be subject to obligations in relation to more than one role

- 29123** (1) In this section, “**function**” means the function of employer, supplier, supervisor, owner, prime contractor or worker.
- (2) If a person has 2 or more functions under ~~this Part the OHS provisions~~ in respect of one workplace, the person must meet the obligations of each function.

Responsibility when obligations apply to more than one person

- 30124** (1) This section applies if ~~—(a)—~~one or more ~~provisions of this Part OHS provisions or provisions of the regulations~~ impose the same obligation on more than one person, ~~and~~
- (2) ~~—(b)—~~If one of the persons subject to the obligation complies with the applicable provision, the other persons subject to the obligation are relieved of that obligation only during the time when
- (a) ~~(e)~~ simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
 - (b) ~~(d)~~ the health and safety of persons at the workplace is not put at risk by compliance by only one person.

Division 5 – Joint Committees and Worker Representatives

~~When a~~ General requirement for employer to establish joint committee is required

- 31125** An employer must establish and maintain a joint health and safety committee
- (a) in each workplace where 20 or more workers of the employer are regularly employed, and
 - (b) in any other workplace for which a joint committee is required by order.

Variations in committee requirements

- 32126** (1) Despite section ~~31125~~, the Board may, by order, require or permit an employer to establish and maintain
- (a) more than one joint committee for a single workplace of the employer,
 - (b) one joint committee for more than one workplace or parts of more than one workplace of the employer, or
 - (c) one joint committee for the workplace or parts of the workplaces of a number of employers, if the workplaces are the same, overlapping or adjoining.

- (2) An order under subsection (1) may
 - (a) specify the workplace, workplaces or parts for which a joint committee is required or permitted, and
 - (b) provide for variations regarding the practice and procedure of a joint committee from the provisions otherwise applicable under ~~this Part~~ the OHS provisions or the regulations.

Membership of joint committee

33127 A joint committee for a workplace must be established in accordance with the following:

- (a) it must have at least 4 members or, if a greater number of members is required by regulation, that greater number;
- (b) it must consist of worker representatives and employer representatives;
- (c) at least half the members must be worker representatives;
- (d) it must have 2 co-chairs, one selected by the worker representatives and the other selected by the employer representatives.

Selection of worker representatives

34128 (1) The worker representatives on a joint committee must be selected from workers at the workplace who do not exercise managerial functions at that workplace, as follows:

- (a) if the workers are represented by one or more unions, the worker representatives are to be selected according to the procedures established or agreed on by the union or unions;
- (b) if none of the workers are represented by a union, the worker representatives are to be elected by secret ballot;
- (c) if some of the workers are represented by one or more unions and some are not represented by a union, the worker representatives are to be selected in accordance with paragraphs (a) and (b) in equitable proportion to their relative numbers and relative risks to health and safety;
- (d) if the workers do not make their own selection after being given the opportunity under paragraphs (a) to (c), the employer must seek out and assign persons to act as worker representatives.

(2) The employer or a worker may request the Board to provide direction as to how an election under subsection (1) (b) is to be conducted.

(3) The employer, or a union or a worker at a workplace referred to in subsection (1) (c), may request the Board to provide direction as to how the requirements of that provision are to be applied in the workplace.

Selection of employer representatives

- 35129** (1) The employer representatives on a joint committee must be selected by the employer from among persons who exercise managerial functions for the employer and, to the extent possible, who do so at the workplace for which the joint committee is established.
- (2) For certainty, an individual employer may act as an employer representative.

Duties and functions of joint committee

- 36130** A joint committee has the following duties and functions in relation to its workplace:
- (a) to identify situations that may be unhealthy or unsafe for workers and advise on effective systems for responding to those situations;
 - (b) to consider and expeditiously deal with complaints relating to the health and safety of workers;
 - (c) to consult with workers and the employer on issues related to occupational health and safety and occupational environment;
 - (d) to make recommendations to the employer and the workers for the improvement of the occupational health and safety and occupational environment of workers;
 - (e) to make recommendations to the employer on educational programs promoting the health and safety of workers and compliance with ~~this Part~~ the OHS provisions and the regulations and to monitor their effectiveness;
 - (f) to advise the employer on programs and policies required under the regulations for the workplace and to monitor their effectiveness;
 - (g) to advise the employer on proposed changes to the workplace, including significant proposed changes to equipment and machinery, or the work processes that may affect the health or safety of workers;
 - (h) to ensure that accident investigations and regular inspections are carried out as required by ~~this Part~~ the OHS provisions and the regulations;
 - (i) to participate in inspections, investigations and inquiries as provided in ~~this Part~~ the OHS provisions and the regulations;
 - (j) to carry out any other duties and functions prescribed by regulation.

Joint committee procedure

- 37131** (1) Subject to ~~this Part~~ the OHS provisions and the regulations, a joint committee must establish its own rules of procedure, including rules respecting how it is to perform its duties and functions.
- (2) A joint committee must meet regularly at least once each month, unless another schedule is permitted or required by regulation or order.

Board assistance in resolving disagreements within committee

- 38132** (1) If a joint committee is unable to reach agreement on a matter relating to the health or safety of workers at the workplace, a co-chair of the committee may report this to the Board, which may investigate the matter and attempt to resolve the matter.
- (2) If the Board considers that a joint committee is unable to reach agreement on a matter relating to the health or safety of workers at the workplace, the Board, on its own initiative, may investigate the matter and attempt to resolve the matter.

Employer must respond to committee recommendations

- 39133** (1) This section applies if a joint committee sends a written recommendation to an employer with a written request for a response from the employer.
- (2) Subject to subsections (4) and (5), the employer must respond in writing to the committee within 21 days of receiving the request, either
- (a) indicating acceptance of the recommendation, or
 - (b) giving the employer's reasons for not accepting the recommendation.
- (3) If the employer does not accept the committee's recommendations, a co-chair of the committee may report the matter to the Board, which may investigate and attempt to resolve the matter.
- (4) If it is not reasonably possible to provide a response before the end of the ~~21~~21-day ~~day~~ period, the employer must provide within that time a written explanation for the delay, together with an indication of when the response will be provided.
- (5) If the joint committee is not satisfied that the explanation provided under subsection (4) is reasonable in the circumstances, a co-chair of the committee may report this to the Board, ~~which~~
- (6) On receiving a report under subsection (5), the Board may investigate the matter and may, by order, establish a deadline by which the employer must respond.
- (7) (6) — Nothing in this section relieves an employer of the obligation to comply with ~~this Part~~ the OHS provisions and the regulations.

Time from work for meetings and other committee functions

- 40134** (1) A member of a joint committee is entitled to time off from work for
- (a) the time required to attend meetings of the committee, and
 - (b) other time that is reasonably necessary to prepare for meetings of the committee and to fulfill the other duties and functions ~~and duties~~ of the committee.

- (2) Time off under subsection (1) is deemed to be time worked for the employer, and the employer must pay the member for that time.

Educational leave for committee members

- 41135** (1) Each member of a joint committee is entitled to an annual educational leave totalling 8 hours, or a longer period if prescribed by regulation, for the purposes of attending occupational health and safety training courses conducted by or with the approval of the Board.
- (2) A member of the joint committee may designate another member as being entitled to take all or part of the member's educational leave.
 - (3) The employer must provide the educational leave under this section without loss of pay or other benefits and must pay for, or reimburse the worker for, the costs of the training course and the reasonable costs of attending the course.

Other employer obligations to support committee

- 42136** (1) The employer must provide the joint committee with the equipment, premises and clerical personnel necessary for the carrying out of its duties and functions.
- (2) On request of the joint committee, the employer must provide the committee with information respecting
 - (a) the identification of known or reasonably foreseeable health or safety hazards to which workers at the workplace are likely to be exposed,
 - (b) health and safety experience and work practices and standards in similar or other industries of which the employer has knowledge,
 - (c) orders, penalties and prosecutions under ~~this Part~~ the OHS provisions or the regulations relating to health and safety at the workplace, and
 - (d) any other matter prescribed by regulation.

Committee reports

- 43137** (1) After each joint committee meeting, the committee must prepare a report of the meeting and provide a copy to the employer.
- (2) The employer must
 - (a) if so requested by a union representing workers at the workplace, send a copy of the reports under subsection (1) to the union,
 - (b) retain a copy of the reports for at least 2 years from the date of the joint committee meeting to which they relate, and
 - (c) ensure that the retained reports are readily accessible to the joint committee members, workers of the employer, officers and other persons authorized by the Board or the minister.

Employer must post committee information

- ~~44138~~ At each workplace where workers of an employer are regularly employed, the employer must post and keep posted
- (a) the names and work locations of the joint committee members,
 - (b) the reports of the 3 most recent joint committee meetings, and
 - (c) copies of any applicable orders under this Division for the preceding 12 months.

Worker health and safety representative

- ~~45139~~ (1) A worker health and safety representative is required
- (a) in each workplace where there are more than 9 but fewer than 20 workers of the employer regularly employed, and
 - (b) in any other workplace for which a worker health and safety representative is required by order of the Board.
- (2) The worker health and safety representative must be selected in accordance with section ~~34128~~ *[selection of worker representatives on joint committee]* from among the workers at the workplace who do not exercise managerial functions at that workplace.
- (3) To the extent practicable, a worker health and safety representative has the same duties and functions as a joint committee.
- (4) Sections ~~39133~~ to ~~42136~~ *[rules respecting joint committees]* apply in relation to a worker health and safety representative as if the representative were a joint committee or member of a joint committee.

Participation of alternate for worker representative in inspections

- ~~46140~~ (1) This section applies if
- (a) ~~this Part~~ the OHS provisions or the regulations give a worker representative the right to be present for an inspection, investigation or inquiry at a workplace, and
 - (b) no worker representative is reasonably available;
- (2) The right to be present may be exercised by another worker who has previously been designated as an alternate by the worker representative.

Division 5

~~141 to 149~~ [Not in force.]

~~Division 6 – Prohibition Against Discriminatory Action~~
Division 6 – Worker Protection in Relation to Prohibited Actions

~~Prohibited actions that are considered discriminatory~~

- 47150** (1) For the purposes of this Division, ~~“discriminatory action”~~ **“prohibited action”** includes any act or omission by an employer or union, or by a person acting on behalf of an employer or union, that adversely affects a worker with respect to
- (a) any term or condition of employment, or
 - (b) any term or condition of membership in a union.
- (2) Without restricting subsection (1), ~~discriminatory prohibited action~~ **prohibited action** includes any of the following:
- (a) suspension, ~~lay-off~~ layoff or dismissal; ;
 - (b) demotion or loss of opportunity for promotion; ;
 - (c) transfer of duties, change of location of workplace, reduction in wages or change in working hours; ;
 - (d) coercion or intimidation; ;
 - (e) imposition of any discipline, reprimand or other penalty; ; ~~and~~
 - (f) the discontinuation or elimination of the job of the worker.

~~Discrimination against workers~~ **Worker protection from prohibited action**

- 48151** An employer or union, or a person acting on behalf of an employer or union, must not take or threaten ~~discriminatory~~ **a prohibited action** against a worker
- (a) for exercising any right or carrying out any duty in accordance with ~~this Part, the OHS provisions,~~ the regulations or an applicable order,
 - (b) for the reason that the worker has testified or is about to testify in any matter, inquiry or proceeding under this Act or the *Coroners Act* on an issue related to occupational health and safety or occupational environment, or
 - (c) for the reason that the worker has given any information regarding conditions affecting the occupational health or safety or occupational environment of that worker or any other worker to
 - (i) an employer or person acting on behalf of an employer,
 - (ii) another worker or a union representing a worker, or
 - (iii) an officer or any other person concerned with the administration of the OHS provisions. ~~this Part.~~

~~Complaint by worker against discriminatory~~ **respecting prohibited action or failure to pay wages**

- 49152** (1) This section applies to a worker who considers that

- (a) an employer or union, or a person acting on behalf of an employer or union, has taken, or threatened to take, ~~discriminatory prohibited~~ action against the worker contrary to section ~~48~~⁴⁵, or
 - (b) an employer has failed to pay wages to the worker as required by ~~this Part~~ the OHS provisions or the regulations.
- (2) The worker may have ~~the a matter referred to in subsection (1)~~ dealt with through the grievance procedure under a collective agreement, if any, or by complaint in accordance with this Division.
- (3) ~~(2)~~—A complaint under subsection ~~(2)~~⁽¹⁾ must be made in writing to the Board,
- (a) in the case of a complaint respecting a matter referred to in subsection (1) (a), within ~~one~~ year of the action considered to be ~~discriminatory prohibited~~, and
 - (b) in the case of a complaint respecting a matter referred to in subsection (1) (b), within 60 days after the wages became payable.
- (4) ~~(3)~~—~~In dealing with~~ relation to a matter referred to in subsection (1), whether dealt with under a collective agreement or by complaint to the Board, the burden of proving that there has been no such contravention is on the employer or the union, as applicable.

Response to complaint

- 50**~~53~~ (1) If the Board receives a complaint under section ~~49 (3)~~⁴⁵~~(2)~~, it must immediately inquire into the matter and, if the complaint is not settled or withdrawn, must
- (a) determine whether the alleged contravention occurred, and
 - (b) deliver a written statement of the Board's determination to the worker and to the employer or union, as applicable.
- (2) If the Board determines that the contravention occurred, the Board may make an order requiring one or more of the following:
- (a) that the employer or union cease the ~~discriminatory prohibited~~ action;
 - (b) that the employer reinstate the worker to ~~his or her~~ that worker's former employment under the same terms and conditions under which ~~the~~ that worker was formerly employed;
 - (c) that the employer pay, by a specified date, the wages required to be paid by ~~this Part~~ the OHS provisions or the regulations;
 - (d) that the union reinstate the membership of the worker in the union;
 - (e) that any reprimand or other references to the matter in the employer's or union's records on the worker be removed;

- (f) that the employer or the union pay the reasonable ~~out-of-pocket~~ out-of-pocket expenses incurred by the worker by reason of the ~~discriminatory~~ prohibited action;
- (g) that the employer or the union do any other thing that the Board considers necessary to secure compliance with ~~this Part~~ the OHS provisions and the regulations.

Division 7 – Information Requirements and Confidentiality

Posting of Requirement to post information

- 51154** (1) ~~Where~~ If this Part, the OHS provisions, the regulations or an order requires an employer or other person to post information at a workplace, the person must
- (a) post the information at or near the workplace in one or more conspicuous places where it is most likely to come to the attention of the workers, or
 - (b) otherwise bring it to the notice of and make it available to the workers at the workplace in accordance with the regulations.
- (2) If reasonably practicable, at least one place of posting under subsection (1) (a) must be at or near the equipment, works or area to which the information relates.
- (3) As an exception, if posting or notice referred to in subsection (1) is not reasonably practicable, the employer or other person must instead adopt other measures to ensure that the information is effectively brought to the attention of the workers.

Occupational health and safety information summary

- 52155** (1) An occupational health and safety information summary for a workplace or workplaces of an employer may be requested by any of the following:
- (a) the employer;_;
 - (b) a joint committee or worker representative of the employer;_;
 - (c) a union representing workers of the employer;_; ~~or~~
 - (d) if there is no joint committee or worker representative for a workplace, any worker of the employer working at the workplace.
- (2) On receiving a request under subsection (1), the Board must prepare a summary in relation to the workplace or workplaces for which the request is made of
- (a) the prescribed information relating to the previous calendar year, and
 - (b) any other data the Board considers necessary or advisable to provide.
- (3) A summary requested under this section must be sent to the person who made the request and, if the request was made by a person other than the employer, to the employer.

- (4) As soon as reasonably practicable after an employer receives a summary under this section, the employer must
 - (a) post a copy at the workplaces to which it relates,
 - (b) provide a copy to the joint committees or worker representatives, as applicable, and
 - (c) if workers at a workplace to which it relates are represented by a union, send a copy to the union.

Information that must be kept confidential

- 53156** (1) A person must not disclose or publish the following information, except for the purpose of administering this Act and the regulations or as otherwise required by law:
- (a) information obtained in a medical examination, test or X-ray of a worker made or taken under ~~this Part, the OHS provisions, Part 4 Part 7 [Appeals to Appeal Tribunal]~~ or the regulations, unless the worker consents or the information is disclosed in a form calculated to prevent the information from being identified with a particular person or case;
 - (b) information with respect to a claim under ~~Part 1 of this Act the compensation provisions~~ obtained by the person by reason of the performance of ~~any a~~ duty or the exercise of ~~any a~~ power under ~~this Part, the OHS provisions, Part 4 Part 7~~ or the regulations;
 - (c) information with respect to a trade secret, or with respect to a work process whether or not it is a trade secret, obtained by the person by reason of the performance of ~~any a~~ duty or the exercise of ~~any a~~ power under ~~this Part, the OHS provisions, Part 4 Part 7~~ or the regulations;
 - (d) information obtained under ~~this Part, the OHS provisions, Part 4 Part 7~~ or the regulations that is exempted or subject to a claim for exemption as confidential business information in respect of a hazardous substance, as referred to in section ~~111 (2) (m) 158 (2) (m)~~ [Board regulations in relation to hazardous and other substances];
 - (e) in the case of information received by the person in confidence by reason of the performance of ~~any a~~ duty or the exercise of ~~any a~~ power under ~~this Part, the OHS provisions, Part 4 Part 7~~ or the regulations, the name of the informant.
- (2) Except in the performance of ~~his or her~~ the person's duties,
- (a) an officer,
 - (b) a person who accompanies an officer under section ~~78 82~~ [representation on inspection], or

(c) a person who conducts a test or other examination under ~~this Part~~ the OHS provisions or Part 4 ~~Part 7~~ [Appeals to Appeal Tribunal] at the request of an officer

must not publish or disclose information obtained or made by the ~~officer or other person~~ in connection with ~~his or her~~ that person's duties or powers under ~~this Part or Part 4~~ the OHS provisions or Part 7.

- (3) Despite subsection (2), the Board may disclose or publish information referred to in that subsection, or authorize it to be disclosed or published, if the Board considers this advisable in the public interest.
- (4) Except for the purposes of an inquest under the *Coroners Act*, an officer or other person referred to in subsection (2) is not a compellable witness in a civil suit or other proceeding respecting any information provided to the person in confidence.
- (5) For the purposes of section 21 (1) (b) [*disclosure harmful to business interests of third party*] of the *Freedom of Information and Protection of Privacy Act*, information referred to in subsection (1) (c) or (d) or (2) of this section that is in the custody or under the control of the Board or the appeal tribunal, whether or not supplied to the Board or the appeal tribunal, is deemed to be supplied to the Board or the appeal tribunal in confidence if it is
 - (a) information with respect to a trade secret, or with respect to a work process whether or not it is a trade secret,
 - (b) exempted or subject to a claim for exemption as confidential business information in respect of a hazardous substance, as referred to in section ~~111 (2) (m)~~ 158 (2) (m), or
 - (c) commercial, financial, labour relations, scientific or technical information of an employer or supplier.
- (6) This section does not apply to prevent a person from providing information, including confidential business information, in a medical emergency for the purpose of diagnosis, medical treatment or first aid.

Information that must be provided in a medical emergency

~~54157~~ (1) ~~If This section applies in relation to a person who is a medical practitioner, a nurse or a person who is a prescribed health professional,~~

(2) On the request of a person referred to in subsection (1) who determines that

- (a) a medical emergency exists, and
- (b) information regarding a hazardous substance is needed for the purpose of diagnosis or providing medical treatment or first aid,

an employer, supplier or chemical manufacturer must immediately disclose to the requesting health professional all applicable information, including

confidential business information, that is in the possession of the employer, supplier or manufacturer.

- (3) ~~(2)~~—A person to whom information is provided under subsection ~~(2)~~(1) must keep confidential any information specified by the person providing the information as being confidential, except for the purpose for which it is provided.

~~**Division 8 – Miscellaneous Authority**~~
Division 8 – Certification and Other Specific Authorities

Certification and training of first aid attendants and instructors

55159 The Board may ~~do the following~~:

- (a) supervise the training of and train occupational first aid attendants and instructors;~~;~~
- (b) appoint examiners and conduct examinations for the purposes of this section;~~;~~
- (c) issue, renew and amend certificates to occupational first aid attendants and instructors;~~;~~
- (d) enter into arrangements by which other persons provide training, give examinations and issue certificates for the purposes of this section;~~;~~ ~~and~~
- (e) establish fees for the purposes of this section.

Installation and maintenance of required first aid equipment

56160 If an employer fails, neglects or refuses to install or maintain first aid equipment or service required by regulation or order, the Board may do one or more of the following:

- (a) have the first aid equipment and service installed, in which case the cost of this is a debt owed by the employer to the Board;
- (b) impose a special rate of assessment under ~~Part 4~~ Part 5 [Accident Fund and Employer Assessment]; ~~of this Act;~~
- (c) order the employer to immediately close down all or part of the workplace or work being done there until the employer complies with the applicable regulation or order.

Medical monitoring programs

57161 (1) If the Board considers this is advisable given the nature or conditions of a work activity, the Board may, by regulation, require employers of workers who carry out that activity or who are exposed to those conditions to establish a medical monitoring program in accordance with this section and the regulations.

- (2) The following apply to a medical monitoring program under this section:
 - (a) the program ~~is to~~ must be provided at the expense of the employer;
 - (b) a worker may not be compelled to participate in the program;
 - (c) a worker who participates in the program must be advised of the results of each examination.
- (3) A regulation under subsection (1) may prescribe the following:
 - (a) the medical examinations, including tests and X-rays, that are required;_;
 - (b) the type of health professional who is authorized to conduct the examinations;_;
 - (c) when examinations are required;_;
 - (d) the information that must be obtained and recorded;_;
 - (e) the information that must be provided to the worker;_; ~~and~~
 - (f) responsibilities for keeping the records related to the program.
- (4) The Board may require the health professional who conducted an examination for the purposes of this section, or the person keeping the records for the purposes of the program, to provide to the Board the information referred to in subsection (3) (d).

Medical certification requirements

- 58162**
- (1) If the Board considers this is advisable given the physical requirements of a specific type of work, the Board may, by regulation, require employers to ensure that workers performing that work are medically certified as to their physical fitness for the work.
 - (2) A regulation under subsection (1) may prescribe the following:
 - (a) the medical examinations, including tests and X-rays, that are required for certification;_;
 - (b) the type of health professional who is authorized to make the certification;_;
 - (c) when reevaluations and renewals of certificates are required;_;
 - (d) the information that must be obtained and recorded;_; ~~and~~
 - (e) who is to pay for the cost of the certification.
 - (3) The Board may require the health professional who conducted an examination for the purposes of this section to provide to the Board the information referred to in subsection (2) (d).

Certification and training of blasters

- 59163** The Board may do the following:
- (a) supervise the training of and train blasters and instructors;_;

- (b) appoint examiners and conduct examinations for the purposes of this section;
- (c) issue, renew and amend certificates to blasters and instructors;
- (d) enter into arrangements by which other persons provide training, give examinations and issue certificates for the purposes of this section; ~~and~~
- (e) establish fees for the purposes of this section.

Division 9 – Variance Orders

Board may authorize variances from regulations

- 60164** (1) On application, the Board may, by order, authorize a variance from a provision of the regulations.
- (2) A variance order may be made only if the Board is satisfied that the variance
- (a) affords protection for workers equal to or greater than the protection established by the provision being varied, or
 - (b) has substantially the same purpose and effect as the provision being varied.
- (3) A variance order may be made applicable to
- (a) a specified workplace, or
 - (b) a specified work process at all or specified workplaces of a specified employer.
- (4) As a limit on the authority under subsection (1), a provision in a regulation of the Lieutenant Governor in Council under ~~this Part~~ the OHS provisions may ~~only~~ be varied only if this is permitted by regulation of the Lieutenant Governor in Council.

Effective period for variance order

- 61165** (1) Unless another time is established in the order, a variance order ceases to have effect 3 years from the date on which it first comes into effect.
- (2) The Board may only establish an effective period longer than 3 years if the application for the variance expressly requested the longer period.

Application for variance

- 62166** (1) Subject to the regulations and subsection (2), an application for a variance must be made in writing to the Board and must include
- (a) a description of the requested variance,
 - (b) a statement of why the variance is requested, and

- (c) information with respect to the benefits and drawbacks in relation to the matters addressed by the applicable regulation that might reasonably be anticipated if the variation is allowed.
- (2) In the case of an application by a single worker for a variance order that would apply only to that worker, an application may be made as permitted by the Board.
- (3) The applicant must also provide the Board with the technical and any other information required by the Board to deal with the application.

Notice of application

- ~~63167~~ (1) If the variance would apply to an existing workplace, the applicant must
- (a) post a copy of the application at the workplace and keep it posted there until the decision on the requested variance is received by the applicant,
 - (b) provide a copy to the joint committee or worker representative, as applicable, and
 - (c) if workers at the workplace are represented by a union, send a copy to the union.
- (2) If the variance would apply to a workplace that is not yet in existence, immediately after submitting the application for variance,
- (a) the applicant must publish a notice of the application where it would reasonably be expected to come to the attention of persons who may be affected by the decision on the requested variance, and
 - (b) the notice must include, including
 - (i) ~~(a)~~—a description of the requested variance, and
 - (ii) ~~(b)~~—a statement of why the variance is requested;~~where it would reasonably be expected to come to the attention of persons who may be affected by the decision on the requested variance.~~

Consultation on application

- ~~64168~~ (1) After receiving an application for variance, the Board may give notice of the application and conduct consultations respecting that application as the Board considers advisable.
- (2) Before making a decision on an application, the Board must provide an opportunity for persons who may be affected by the requested variance to submit to the Board information respecting their position on the requested variance.
- (3) A union representing workers who may be affected by the requested variance is considered a person who may be affected for the purposes of subsection (2).

Decision on application

- ~~65169~~ (1) The Board must give written reasons for a decision on an application for a variance order.
- (2) The Board must give notice of its decision, including the written reasons and any variance order made, to the applicant and to any persons who submitted information under section ~~64 (2)+68 (2)~~.
- (3) The applicant must post a copy of the decision at each workplace to which it relates as follows:
- (a) if the application for a variance order was refused, the applicant must keep the decision posted for 7 days or the period required by the order, whichever is longer;
 - (b) if a variance order was made, the applicant must keep the order and written reasons posted throughout the time the variance is in effect.

Legal effect of variance

- ~~66170~~ (1) A variance order authorizes variance from the applicable provision of the regulations
- (a) only in accordance with the terms and conditions of the variance order, and
 - (b) only during the time that there is compliance with its terms and conditions.
- (2) For certainty, if the terms and conditions of a variance order are not met, the applicable provision of the regulations applies and the variance order is without effect.

Board regulations review must consider variance history

- ~~67171~~ The Board must consider the history of variance applications and variance orders as part of its process of regulations review ~~referred to in~~ under section ~~115228~~ *[ongoing review of Board regulations]*.

Division 10 – Employer Accident Reporting and Investigation

Immediate notice of certain accidents

- ~~68172~~ (1) An employer must immediately notify the Board of the occurrence of any accident that
- (a) resulted in serious injury to or the death of a worker,
 - (b) involved a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system or excavation,
 - (c) involved the major release of a hazardous substance,
 - ~~(d)(e.1)~~ involved a fire or explosion that had a potential for causing serious injury to a worker, or

~~(e)(d)~~ was an incident required by regulation to be reported.

- (2) Except as otherwise directed by an officer of the Board or a peace officer, a person must not disturb the scene of an accident that is reportable under subsection (1) except so far as is necessary to
 - (a) attend to persons injured or killed,
 - (b) prevent further injuries or death, or
 - (c) protect property that is endangered as a result of the accident.

Incidents that must be investigated

- 69173** (1) An employer must conduct a preliminary investigation under section ~~71175~~ and a full investigation under section ~~72176~~ respecting any accident or other incident that
- (a) is required to be reported ~~by~~ under section ~~68172~~,
 - (b) resulted in injury to a worker requiring medical treatment,
 - (c) did not involve injury to a worker, or involved only minor injury not requiring medical treatment, but had a potential for causing serious injury to a worker, or
 - (d) was an incident required by regulation to be investigated.
- (2) Subsection (1) does not apply in the case of a vehicle accident occurring on a public street or highway.

Investigation process

- 70174** (1) An investigation required under this Division must be carried out by persons knowledgeable about the type of work involved and, if they are reasonably available, with the participation of the employer or a representative of the employer and a worker representative.
- ~~(2) (1.1)~~—For the purposes of subsection (1), the participation of the employer or a representative of the employer and a worker representative includes, but is not limited to, the following activities:
- (a) viewing the scene of the incident with the persons carrying out the investigation;
 - (b) providing advice to the persons carrying out the investigation respecting the methods used to carry out the investigation, the scope of the investigation; or any other aspect of the investigation;
 - (c) other activities, as prescribed by the Board.
- ~~(2) [Repealed 2015-22-8.]~~
- (3) The employer must make every reasonable effort to have available for interview by a person conducting the investigation, or by an officer, all witnesses to the

incident and any other persons whose presence might be necessary for a proper investigation of the incident.

- (4) The employer must record the names, addresses and telephone numbers of persons referred to in subsection (3).

Preliminary investigation, report and follow-up action

- 71475** (1) An employer must, immediately after the occurrence of an incident described in section ~~69473~~, undertake a preliminary investigation to, as far as possible,
- (a) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and
 - (b) if unsafe conditions, acts or procedures are identified under paragraph (a) of this subsection, determine the corrective action necessary to prevent, during a full investigation under section ~~72476~~, the recurrence of similar incidents.
- (2) The employer must ensure that a report of the preliminary investigation is
- (a) prepared in accordance with the policies of the board of directors,
 - (b) completed within 48 hours of the occurrence of the incident,
 - (c) provided to the Board on request of the Board, and
 - (d) as soon as practicable after the report is completed, either
 - (i) provided to the joint committee or worker health and safety representative, as applicable, or
 - (ii) if there is no joint committee or worker health and safety representative, posted at the workplace.
- (3) Following the preliminary investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1) (b).
- (4) If the employer takes corrective action under subsection (3), the employer, as soon as practicable, must
- (a) prepare a report of the action taken, and
 - (b) either
 - (i) provide the report to the joint committee or worker health and safety representative, as applicable, or
 - (ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

Full investigation, report and follow-up action

- 72476** (1) An employer must, immediately after completing a preliminary investigation under section ~~71475~~, undertake a full investigation to, as far as possible,

- (a) determine the cause or causes of the incident investigated under section ~~71~~75,
 - (b) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and
 - (c) if unsafe conditions, acts or procedures are identified under paragraph (b) of this subsection, determine the corrective action necessary to prevent the recurrence of similar incidents.
- (2) The employer must ensure that a report of the full investigation is
- (a) prepared in accordance with the policies of the board of directors,
 - (b) submitted to the Board within 30 days of the occurrence of the incident, and
 - (c) within 30 days of the occurrence of the incident, either;
 - (i) provided to the joint committee or worker health and safety representative, as applicable, or
 - (ii) if there is no joint committee or worker health and safety representative, posted at the workplace.
- (3) The Board may extend the time period, as the Board considers appropriate, for submitting a report under subsection (2) (b) or (c).
- (4) Following the full investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1) (c).
- (5) If the employer takes corrective action under subsection (4), the employer, as soon as practicable, must
- (a) prepare a report of the action taken, and
 - (b) either
 - (i) provide the report to the joint committee or worker health and safety representative, as applicable, or
 - (ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

Employer or supervisor must not attempt to prevent reporting

~~73~~77 An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting any of the following to the Board:

- (a) an injury or allegation of injury, whether or not the injury occurred or is compensable under ~~Part 1, the compensation provisions~~;
- (b) an illness, whether or not the illness exists or is an occupational disease compensable under ~~Part 1, the compensation provisions~~;

- (c) a death, whether or not the death is compensable under the compensation provisions: Part 1, or
- (d) a hazardous condition or allegation of a hazardous condition in any work to which this Part applies: the OHS provisions apply.

Division 11 – Board Inspections, Investigations and Inquiries

Application of Division

74178 This Division, as it applies in relation to inspections, also applies to investigations and inquiries.

Authority to conduct inspections

- 75179** (1) An officer of the Board may enter a place, including a vehicle, vessel or mobile equipment, and conduct an inspection for one or more of the following purposes: the purpose of
- (a) preventing ~~work-related~~ work-related accidents, injuries or illnesses; ;
 - (b) ascertaining the cause and particulars of a ~~work-related~~ work-related accident, injury or illness or of an incident that had the potential to cause a ~~work-related~~ work-related accident, injury or illness; ;
 - (c) investigating a complaint concerning health, safety or occupational environment matters at a workplace; ; ~~or~~
 - (d) determining whether there is compliance with ~~this Part, the OHS provisions,~~ the regulations or an order.
- (2) An inspection may be conducted
- (a) at a reasonable hour of the day or night, or
 - (b) at any other time if the officer has reasonable grounds for believing that a situation exists that is or may be hazardous to workers.
- (3) An officer may do one or more of the following for the purposes of an inspection under this Division:
- (a) bring along any equipment or materials required for the inspection and be accompanied and assisted by a person who has special, expert or professional knowledge of a matter relevant to the inspection;
 - (b) inspect works, materials, products, tools, equipment, machines, devices or other things at the place;
 - (c) take samples and conduct tests of materials, products, tools, equipment, machines, devices or other things being produced, used or found at the place, including tests in which a sample is destroyed;
 - (d) require that a workplace or part of a workplace not be disturbed for a reasonable period ~~of time;~~

- (e) require that a tool, equipment, machine, device or other thing or process be operated or set in motion or that a system or procedure be carried out;
 - (f) inspect records that may be relevant and, on giving a receipt for a record, temporarily remove the record to make copies or extracts;
 - (g) require a person to produce within a reasonable time records in the person's possession or control that may be relevant;
 - (h) question persons with respect to matters that may be relevant, require persons to attend to answer questions and require questions to be answered on oath or affirmation;
 - (i) take photographs or recordings of the workplace and activities taking place in the workplace;
 - (j) attend a relevant training program of an employer;
 - (k) exercise other powers that may be necessary or incidental to the carrying out of the officer's ~~functions and duties~~ and functions under ~~this Part~~ the OHS provisions or the regulations.
- (4) The authority to conduct an inspection under this Division is not limited by any other OHS provision ~~of this Part~~ or ~~the~~ by any regulations giving specific authority in relation to the inspection.
- (5) If an officer of the Board requests this, a peace officer may assist the Board officer in carrying out ~~his or her~~ that officer's duties and functions ~~and duties~~ under ~~this Part~~ the OHS provisions or the regulations.

Restrictions on access to private residences

- ~~76181~~ (1) If a workplace, in addition to being a workplace, is occupied as a private residence, the authority under section ~~75179~~ may be used to enter the place only if
- (a) the occupier consents,
 - (b) the Board has given the occupier at least 24 hours' written notice of the inspection,
 - (c) the entry is made under the authority of a warrant under this Act or the *Offence Act*, or
 - (d) the Board has reasonable grounds for believing that the work activities or the workplace conditions are such that there is a significant risk that a worker might be killed or seriously injured or suffer a serious illness.
- (2) The authority under section ~~75179~~ must not be used to enter a place that is occupied as a private residence, but is not a workplace, except with the consent of the occupier or under the authority of a warrant under this Act or the *Offence Act*.

Officer must produce credentials on request

- ~~77180~~ (1) The Board must provide officers with written credentials of their appointment.
- (2) On request, an officer must produce the credentials provided under this section when exercising or seeking to exercise any of the powers conferred on the officer under the OHS provisions. ~~this Part.~~

Representation on inspection

- ~~78182~~ (1) Subject to this section, if an officer makes a physical inspection of a workplace under section ~~75179~~, the following are entitled to accompany the officer on the inspection:
- (a) the employer or a representative of the employer; ~~and~~
- (b) a worker representative or, if there is no worker representative or the worker representative is not reasonably available, a reasonably available worker selected by the officer as a representative; ~~and~~
- ~~are entitled to accompany the officer on the inspection.~~
- (2) A worker is to be considered not reasonably available for the purposes of subsection (1) if the employer objects to that person's participation in the inspection on the basis that it would unduly impede production, but the employer may only object to one person on this ground.
- (3) Despite subsection (1), an officer may conduct a physical inspection of a workplace in the absence of a person referred to in that subsection if the circumstances are such that it is necessary to proceed with the inspection without the person.
- (4) The time spent by a worker accompanying an officer under this section is deemed to be time worked for the employer, and the employer must pay the worker for that time.
- (5) Nothing in this section requires the Board or an officer to give advance notice of an inspection.
- (6) If an inspection involves the attendance of an officer at a workplace for a period longer than one day, the rights under this section may be abridged by direction of the officer.

Assistance on inspection

- ~~79186~~ (1) A person must provide all reasonable means in that person's power to facilitate an inspection under the OHS provisions. ~~this Part.~~
- (2) A person must not do any of the following:
- (a) hinder, obstruct, molest or interfere with, or attempt to hinder, obstruct, molest or interfere with, an officer in the exercise of a power or the

performance of a ~~function or duty~~ or function under ~~this Part~~ the OHS provisions or the regulations;

- (b) knowingly provide an officer with false information, or neglect or refuse to provide information required by an officer in the exercise of the officer's powers or performance of the officer's ~~functions or duties~~ or functions under ~~this Part~~ the OHS provisions or the regulations; ~~or~~
- (c) interfere with any monitoring equipment or device in a workplace placed or ordered to be placed there by the Board.

Person being questioned is entitled to have another person present

- 80184** (1) A person who is questioned by an officer on an inspection is entitled to be accompanied during the questioning by one other person of ~~his or her~~ the first person's choice who is reasonably available.
- (2) As a limit on the person's choice under subsection (1), the officer may exclude a person who the officer has questioned or intends to question in relation to the matter.
- (3) Subject to subsections (1) and (2), a person may be questioned by the officer either separate and apart from anyone else or in the presence of any other person permitted to be present by the officer.

Limited authority to seize evidence without warrant

- 81185** (1) An officer may seize something without a warrant if
- (a) the thing has been produced to the officer or is in plain view, and
 - (b) the officer has reasonable grounds for believing that ~~this Part~~ the OHS provisions, the regulations or an order has been contravened and that the thing would afford evidence of the contravention.
- (2) The officer must inform the person from whom a thing is seized under subsection (1) as to the reason for the seizure and must give the person a receipt for the thing.
- (3) The officer may remove a thing seized under subsection (1) or may detain it in the place in which it was seized.
- (4) As soon as reasonably practicable after something is seized under subsection (1), the officer must bring the thing, or a report of it, before a justice to be dealt with in accordance with the *Offence Act* as if it were seized ~~pursuant to~~ under a warrant under that Act.

Employer must post inspection reports

- 82183** If an officer makes a written report to an employer relating to an inspection, whether or not the report includes an order, the employer must promptly
- (a) post the report at the workplace to which it relates, and

- (b) give a copy of the report to the joint committee or worker health and safety representative, as applicable.

Division 12 – Enforcement

Compliance agreements with employers

~~83186.1~~ (1) The Board may enter into an agreement with an employer if the Board considers that

- (a) the employer has contravened, or failed to comply with, ~~a provision of this Part~~ an OHS provision or a provision of the regulations,
- (b) the employer has not contravened, or not failed to comply with, the same provision described in paragraph (a) within the ~~12-month~~ 12-month period immediately preceding the contravention or failure ~~as set out referred to in~~ that paragraph,
- (c) the health or safety of workers, for which the employer has responsibilities under this Act, is not at immediate risk, and
- (d) entering into the agreement is appropriate in the circumstances.

(2) An agreement ~~entered into~~ under subsection (1) must be in writing and must do the following:

- ~~(a) must be in writing;~~
- (a) (b) must describe one or more actions the employer agrees to take, which may include one or more expenditures the employer agrees to make, to remedy the employer's contravention or failure ~~as set out referred to in~~ subsection (1) (a) or the adverse effects that resulted from that contravention or failure;;
- (b) (e) must set out the time frame within which the employer, with respect to each action described under paragraph (a) (b) of this subsection, agrees to
 - (i) take the action, and
 - (ii) report to the Board on the action taken;;
- (c) (d) must specify the date the agreement ends;;
- (d) (e) must set out the required manner, form and content of the report referred to in paragraph ~~(e)~~ (b) (ii) of this subsection.; ~~and~~

(3) ~~The employer must,~~ As soon as practicable after ~~(a)~~ entering into an agreement under subsection (1), the employer must

- (a) (i) provide a copy of the agreement to the joint committee or worker health and safety representative, as applicable, or
- (b) (ii) if there is no joint committee or worker health and safety representative, post a copy of the agreement at the workplace.; ~~and~~

- ~~(4) (3)(b)~~—As soon as practicable after reporting to the Board under subsection (2) ~~(b)(e)~~ (ii), the employer must
- ~~(a) (i)~~—provide a copy of the report to the joint committee or worker health and safety representative, as applicable, or
 - ~~(b) (ii)~~—if there is no joint committee or worker health and safety representative, post a copy of the report at the workplace.
- ~~(5) (2)(f)~~—~~may~~, Subject to subsection ~~(6)(4)~~, an agreement under subsection (1) may be amended if agreed to by the Board and the employer.
- ~~(6) (4)~~—The Board must rescind an agreement ~~entered into~~ under subsection (1) if the Board considers that any of the following apply:
- (a) the employer has failed to
 - (i) take any of the actions described under subsection (2) ~~(a)(b)~~ within the time frame set out for the action ~~in~~ under subsection (2) ~~(b)(e)~~ (i), or
 - (ii) report to the Board within the time frame set out ~~in~~ under subsection (2) ~~(b)(e)~~ (ii);
 - (b) the employer intentionally provided false or misleading information in relation to the agreement; ~~or~~
 - (c) the health or safety of workers is at immediate risk, based on information received by the Board after the agreement was entered into.
- ~~(7) (5)~~—The Board may rescind an agreement ~~entered into~~ under subsection (1) if the Board considers that the agreement no longer adequately protects the health or safety of workers.
- ~~(8) (6)~~—A rescission of ~~an agreement~~ under subsection ~~(6)(4)~~ or ~~(7)(5)~~ takes effect immediately despite the employer not having received notice.
- ~~(9) (7)~~—As soon as practicable after rescinding an agreement under subsection ~~(6)(4)~~ or ~~(7)(5)~~, the Board must
- (a) make reasonable efforts to provide verbal notice of the rescission to the employer, and
 - (b) send written notice of the rescission to the employer.
- ~~(10) (8)~~—Section ~~344 (4) to (6) 221 (4) to (6)~~ *[issues related to sending or receipt of orders and other documents]* does not apply to the sending of written notice under subsection ~~(9) (b)(7)(b)~~ of this section.
- ~~(11) (9)~~—The employer must, as soon as practicable after receiving written notice under subsection ~~(9) (7)(b)~~,
- (a) provide a copy of the written notice to the joint committee or worker health and safety representative, as applicable, or

- (b) if there is no joint committee or worker health and safety representative, post a copy of the written notice at the workplace.

General authority to make orders

- 84187** (1) The Board may make orders for the carrying out of any matter or thing regulated, controlled or required by ~~this Part~~ the OHS provisions or the regulations, and may require that the order be carried out immediately or within the time specified in the order.
- (2) Without limiting subsection (1), the authority under that subsection includes authority to make orders as follows:
- (a) establishing standards that must be met and means and requirements that must be adopted in any work or workplace for the prevention of ~~work related~~ work-related accidents, injuries and illnesses;
 - (b) requiring a person to take measures to ensure compliance with this Act and the regulations or specifying measures that a person must take in order to ensure compliance with this Act and the regulations;
 - (c) requiring an employer to provide in accordance with the order a medical monitoring program as referred to in section ~~5746+~~;
 - (d) requiring an employer, at the employer's expense, to obtain test or ~~assessment~~ evaluation results respecting any thing or procedure in or about a workplace, in accordance with any requirements specified by the Board, and to provide that information to the Board;
 - (e) requiring an employer to install and maintain first aid equipment and service in accordance with the order;
 - (f) requiring a person to post or attach a copy of the order, or other information, as directed by the order or by an officer;
 - (g) establishing requirements respecting the form and use of reports, certificates, declarations and other records that may be authorized or required under the OHS provisions; ~~this Part~~;
 - (h) doing anything that is contemplated by ~~this Part~~ the OHS provisions to be done by order;
 - (i) doing any other thing that the Board considers necessary for the prevention of ~~work related~~ work-related accidents, injuries and illnesses.
- (3) ~~188(2)~~—An order may be made applicable to any person or category of persons and may include terms and conditions the Board considers appropriate.
- (4) ~~187(3)~~—The authority to make orders under this section does not limit and is not limited by the authority to make orders under another OHS provision ~~of this Part~~.

Contents and process for Other general matters relating to orders

~~85188~~ (1)(4) An officer of the Board may exercise the authority of the Board to make orders under the OHS provisions, this Part, subject to any restrictions or conditions established by the Board.

(2)(1) An order may be made orally or in writing but, if ~~it is~~ made orally, it must be confirmed in writing as soon as is reasonably practicable.

(3) If an order relates to a complaint made by a person to the Board or an officer, a copy of the order must be given to that person.

Posting of orders by officer

~~86193~~ (1) An officer may

- (a) post at a workplace, or
- (b) attach to any product, tool, equipment, machine, device or other thing, a copy of an order or a notice related to that order.

(2) An order posted or attached under subsection (1) must not be removed except

- (a) in accordance with the order, or
- (b) by an officer or a person authorized by an officer.

Notice of variation or cancellation of order

~~87189~~ (1) If the Board varies or cancels an order, it must give notice to the employer or other person in relation to whom the order was made.

(2) If the person given notice under subsection (1) was required under ~~this Part~~ the OHS provisions to post a copy of the original order or to provide copies of it to a joint committee, worker representative or union, ~~the~~ that person must post and provide copies of the notice in accordance with the same requirements.

Order may require compliance reports

~~88194~~ (1) An order may include a requirement for compliance reports in accordance with this section.

(2) The employer or other person directed by an order under subsection (1) must prepare a compliance report that specifies

- (a) what has been done to comply with the order, and
- (b) if compliance has not been achieved at the time of the report, a plan of what will be done to comply and when compliance will be achieved.

(3) If a compliance report includes a plan under subsection (2) (b), the employer or other person must also prepare a follow-up compliance report when compliance is achieved.

(4) In the case of compliance reports prepared by an employer, the employer must

- (a) post a copy of the original report and any follow-up compliance reports at the workplace in the places where the order to which it relates are posted,
- (b) provide a copy of the reports to the joint committee or worker health and safety representative, as applicable,
- (c) if the reports relate to a workplace where workers of the employer are represented by a union, send a copy to the union, and
- (d) if required by the Board, send a copy of the reports to the Board.

~~Orders~~ Order to stop using or supplying unsafe equipment, etc.

- ~~89190~~** (1) If the Board has reasonable grounds for believing that a thing that is being used or that may be used by a worker
- (a) is not in safe operating condition, or
 - (b) does not comply with ~~this Part~~ the OHS provisions or the regulations,
- the Board may order that the thing is not to be used until the order is cancelled by the Board.
- (2) If the Board has reasonable grounds for believing that a supplier is supplying a thing that
- (a) is not in safe operating condition, or
 - (b) does not comply with ~~this Part~~ the OHS provisions or the regulations,
- the Board may order that supplier to stop supplying the thing until the order is cancelled by the Board.
- (3) Despite section ~~85 (2)~~ 188 (1) [*orders may be made orally or in writing*], an order under this section may only be made in writing.
- (4) The Board may cancel an order under this section only if it is satisfied that the thing in respect of which the order was made is safe and complies with ~~this Part~~ the OHS provisions and the regulations.

~~Orders to Stop work~~ Stop-work orders

- ~~90191~~** (1) ~~The Board, in accordance with subsection (1.1),~~ If subsection (2) or (3) applies, the Board may order that
- (a) work at a workplace or any part of a workplace stop until the order to stop work is cancelled by the Board, and
 - (b) if the Board considers this is necessary, the workplace or any part of the workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access to the area until the danger is removed.
- (2) ~~(1.1)~~ —The Board may make an order under subsection (1) —~~(a)~~ —if the Board has reasonable grounds for believing there is a high risk of serious injury, serious illness or death to a worker at the workplace, ~~or~~

- (3) ~~(b)~~ — The Board may make an order under subsection (1) if
- ~~(a)(i)~~ an employer
 - ~~(i)(A)~~ has failed to comply with an OHS provision or a provision of this Part or the regulations, and
 - ~~(ii)(B)~~ within the ~~12-month~~ 12-month period immediately preceding the failure to comply as ~~set out~~ referred to in subparagraph (i), clause (A), has failed to comply with
 - ~~(A)(F)~~ has failed to comply with the same provision, described in clause (A), and
 - ~~(B)(H)~~ has failed to comply with an order respecting the failure to comply with that provision, described in subclause (F), and
 - ~~(b)(ii)~~ the Board has reasonable grounds for believing there is a risk of serious injury, serious illness or death to a worker at the workplace.
- (4) ~~(2)~~ — If an order is made under subsection (1) (b), ~~or (1.2) (a) (ii)~~, an employer, supervisor or other person must not require or permit a worker to enter the workplace or part of the workplace that is the subject of the order, except for the purpose of doing work that is necessary or required to remove the danger or the hazard and only if the worker
- (a) is protected from the danger or the hazard, or
 - (b) is qualified and properly instructed in how to remedy the unsafe condition with minimum risk to the worker's own health or safety.

Related stop-operation orders

- 91** (1) ~~191(1.2)~~ If the Board makes an order under section 90, ~~subsection (1)~~, the Board; may, in accordance with this section, make an order with respect to another workplace or any part of another workplace whose employer is the same as the employer at the workplace or any part of the workplace in respect of which the order under section 90 subsection (1) was made, may make an order, in accordance with subsections (1.3) and (1.4);
- ~~(a) that~~
- (2) ~~(1.3)~~ — ~~The Board may make an order under subsection (1.2)~~ If the Board has reasonable grounds for believing; ~~— (1.3)(a) with respect to an order made under subsection (1.2) (a), that, at the other workplace or any part of the other workplace, in respect of which that order is made, the same or similar unsafe working or workplace conditions exist as at the workplace or any part of the workplace in respect of which the order under section 90 subsection (1) was made, the Board may order that or~~
- ~~(a) (1.2) (a) (i)~~ — work at the other workplace or any part of the other workplace stop until the order to stop work is cancelled by the Board, and

~~(b) (1.2) (a) (ii)~~ — if the Board considers this is necessary, the other workplace or any part of the other workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access to the area until the danger is removed. ~~— or~~

~~(3) (1.3) — The Board may make an order under subsection (1.2) — If the Board has reasonable grounds for believing, — (1.3) (b) — with respect to an order made under subsection (1.2) (b); that, at the other workplace or any part of the other workplace, in respect of which that order is made, the same or similar unsafe working or workplace conditions would exist as at the workplace or any part of the workplace in respect of which the order under section 90 subsection (1) was made. — (1.2) (b) — the Board may make an order prohibiting the employer from starting work at the other workplace or any part of the other workplace.~~

~~(4) (1.4) — In making an order under subsection (1.2), this section, the Board is not required to specify the address of the other workplace or any part of the other workplace in respect of which the order is made.~~

~~(5) Section 90 (4) applies in relation to an order under subsection (2) (b) of this section.~~

Restrictions on stop-work orders and stop-operation orders

~~92~~ (1) ~~191(3)~~ — Despite section 85 (2) ~~188 (1)~~ [*orders may be made orally or in writing*], an order under ~~this section~~ 90 or 91

(a) may only be made in writing, and

(b) must be served on the employer, supervisor or other person having apparent supervision of the work or the workplace.

~~(2) 191(4)~~ — An order ~~under this section~~ referred to in subsection (1) expires 72 hours after it is made, unless the order has been confirmed in writing by the Board.

Effect of stop-work orders and stop-operation orders on workers

~~93~~192 (1) If, as a result of an order made under section 89, 90 or 91, ~~section 190 or 191~~, a worker is temporarily laid off, the employer must pay the worker the amount the worker would have earned or, if this cannot be readily determined, the amount the worker would have been likely to earn;

(a) for the day on which the order came into effect and for the next 3 working days during which the order is in effect, or

(b) for a longer period, if this is provided under a collective agreement.

(2) Nothing in this section prevents workers affected by an order referred to in subsection (1) from being assigned to reasonable alternative work during the time that the order is in effect.

Administrative penalties – OHS citations ~~lower maximum amount~~

- ~~94196.1~~ (1) The Board may, by order, impose on an employer an administrative penalty prescribed under section 112 [Board regulations in relation to OHS citations] ~~by a regulation of the Board, which penalty must not be more than \$1 025.42, if the Board is satisfied on a balance of probabilities that the employer has failed to comply with a provision of this Part, an OHS provision or regulation provision prescribed under that section. the regulations, as specified by a regulation of the Board.~~
- (2) An administrative penalty under this section must not be greater than \$1 039.72.
- (3) ~~(2)~~ —If an employer requests files a request under section 27096.2 [request for review of Board decision] a for review of a decision made under subsection (1) of this section, the employer must
- (a) post a copy of the request for review at the workplace to which the administrative penalty relates,
 - (b) provide a copy of the request for review to the joint committee or worker health and safety representative, as applicable, and
 - (c) if the workers at the workplace to which the administrative penalty relates are represented by a union, provide a copy of the request for review to the union.
- (4) ~~(3)~~ —An employer who has been ordered to pay an administrative penalty under this section must pay the amount of the penalty to the Board for deposit into the accident fund.
- (5) ~~(4)~~ —If an administrative penalty under this section is reduced or cancelled by a Board decision, or on a review under Part 6 [Review of Board Decisions] requested under section 96.2, the Board must refund the required amount to the employer out of the accident fund.

Administrative penalties – higher maximum amount

- ~~95196~~ (1) The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that any of the following circumstances apply:
- (a) the employer has failed to take sufficient precautions for the prevention of ~~work related~~ work-related injuries or illnesses; ~~;~~
 - (b) the employer has not complied with ~~this Part, an OHS provision, the regulations or an applicable order;~~ ; ~~or~~
 - (c) the employer's workplace or working conditions are unsafe. ~~not safe.~~
- (2) An administrative penalty which is under this section must not be greater than \$646 302.88. ~~must not be imposed under this section.~~

- (3) An administrative penalty under this section must not be imposed on an employer if the employer establishes that the employer exercised due diligence to prevent the circumstances described in subsection (1).
- (4) If an employer ~~requests~~ files a request under section ~~27096.2~~ 27096.2 ~~for~~ a for review of a decision under subsection (1) of this section, the employer must
 - (a) post a copy of the request for review at the workplace to which the administrative penalty relates,
 - (b) provide a copy of the request for review to the joint committee or worker health and safety representative, as applicable, and
 - (c) if the workers at the workplace to which the administrative penalty relates are represented by a union, provide a copy of the request for review to the union.
- (5) An employer who has been ordered to pay an administrative penalty under this section must pay the amount of the penalty to the Board for deposit into the accident fund.
- (6) If an administrative penalty under this section is reduced or cancelled by a Board decision, on a review requested under section ~~27096.2~~ 27096.2 or on an appeal to the appeal tribunal under ~~Part 7~~ Part 4, the Board must
 - (a) refund the required amount to the employer, ~~out of the accident fund~~, and
 - (b) pay interest on that amount calculated in accordance with the policies of the board of directors.
- (7) If an administrative penalty under this section is imposed on an employer, the employer must not be prosecuted under this Act in respect of the same facts and circumstances ~~upon~~ on which the Board based the administrative penalty.

Suspension or cancellation of certificates

- ~~96195~~ (1) If the Board has reasonable grounds for believing that a person who holds a certificate issued under ~~this Part~~ the OHS provisions or the regulations has breached a term or condition of the certificate or has otherwise contravened an OHS provision or a provision of this Part or the regulations, the Board may, by order,
 - (a) cancel or suspend the certificate, or
 - (b) place a condition on the use of that certificate that the Board considers ~~is~~ necessary in the circumstances.
- (2) An order under this section suspending a certificate must specify the length of time that the suspension is in effect or the condition that must be met before the suspension is no longer in effect.

~~197~~ [Repealed 2002-66-29.]

Court injunction on application of Board

97198 (1) On application of the Board and on being satisfied that there are reasonable grounds to believe that a person

(a) has contravened or is likely to contravene ~~this Part, the OHS provisions,~~ the regulations or an order, or

(b) has failed to comply with, or is likely to fail to comply with, ~~this Part, the OHS provisions,~~ the regulations or an order,

the Supreme Court may grant an injunction,

(c) in the case of paragraph (a), restraining the person from continuing or committing the contravention,

(d) in the case of paragraph (b), requiring the person to comply, or

(e) in the case of paragraph (a) or (b), restraining the person from carrying on an industry, or an activity in an industry, within the scope of ~~Part 1 the compensation provisions~~ for an indefinite or limited period or until the occurrence of a specified event.

(2) (1.1) — ~~For the purposes of granting an injunction respecting a person under subsection (1) (e), a person includes the following: If subsection (1) (e) applies and the person referred to in that provision is a company or corporation, an injunction under that provision may be made restraining the following persons:~~

(a) an individual who is a member of the board of directors of a company as a result of having been elected or appointed to that position;

(b) a person who is a member of the board of directors or other governing body of a corporation other than a company, regardless of the title by which that person is designated;

(c) the chair or any vice chair of the board of directors or other governing body of a corporation, if that chair or vice chair performs the functions of the office on a full-time basis, regardless of the title by which that person is designated;

(d) the president of a corporation, regardless of the title by which that person is designated;

(e) any vice president in charge of a principal business unit of a corporation, including sales, finance or production, regardless of the title by which that person is designated;

(f) any officer of a corporation, whether or not the officer is also a director of the corporation, who performs a policy-making function in respect of the corporation and who has the capacity to influence the direction of the corporation, regardless of the title by which that person is designated;

(g) a person who is not described in any of paragraphs (a) to (f) of this subsection but who performs the functions described in any of those

paragraphs, and who participates in the management of a company or corporation, other than a person who

- (i) participates in the management of the company or corporation under the direction or control of a shareholder or a person described in any of paragraphs (a) to (f),
- (ii) is a lawyer, accountant or other professional whose primary participation in the management of the company or corporation is the provision of professional services to the corporation,
- (iii) is, if the company or corporation is bankrupt, a trustee in bankruptcy who participates in the management of the company or corporation or exercises control over its property, rights and interests primarily for the purposes of the administration of the bankrupt's estate, or
- (iv) is a receiver, receiver manager or creditor who participates in the management of the company or corporation or exercises control over any of its property, rights and interests primarily for the purposes of enforcing a debt obligation of the company or corporation.

~~(3) (1.2)~~—For the purposes of subsection ~~(2)(1.1)~~, “**company**” and “**corporation**” have the same meaning as in the *Business Corporations Act*.

~~(4) (2)~~—An injunction under subsection (1) may be granted without notice to others if it is necessary to do so in order to protect the health or safety of workers.

~~(5) (3)~~—A contravention of ~~this Part, the OHS provisions,~~ the regulations or an order may be restrained under subsection (1) whether or not a penalty or other remedy has been provided by ~~the OHS provisions, this Part.~~

Divisions 13 and 14

~~—199 to 212 [Repealed 2002-66-30.]~~

Division 15—Division 13 – Offences

Offence to contravene OHS provision, Part, regulation or order

- 98213**
- (1) A person who contravenes an OHS provision, a provision of ~~this Part,~~ the regulations or an order commits an offence.
 - (2) If a corporation commits an offence referred to in subsection (1), an officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence also commits an offence.
 - (3) Subsection (2) applies whether or not the corporation is prosecuted for the offence.

Limits on prosecutions

- 99214** (1) The time limit for laying an information in respect of an offence is 2 years after the last occurrence of the act or omission on which the prosecution is based.
- (2) An information in respect of an offence may only be laid with the approval of the Board.

Defence of due diligence

- 100215** A person is not guilty of an offence if the person proves that the person exercised due diligence to prevent the commission of the offence.

Additional defence for workers

- 101216** A worker is not guilty of an offence if the worker proves that the offence was committed
- (a) as a result of instructions given by the worker's employer or supervisor, and
 - (b) despite the worker's objection.

General penalties

- 102217** On conviction for an offence, a person is liable to the following penalties:
- (a) in the case of a first conviction,
 - (i) a fine ~~of not more than~~ not greater than \$707 352.37 and, in the case of a continuing offence, to a further fine ~~of not more than~~ not greater than \$35 367.65 for each day during which the offence continues after the first day,
 - (ii) imprisonment for a term not ~~exceeding~~ longer than 6 months, or
 - (iii) both fine and imprisonment;
 - (b) in the case of a subsequent conviction,
 - (i) a fine ~~of not more than~~ not greater than \$1 414 704.73 and, in the case of a continuing offence, to a further fine ~~of not more than~~ not greater than \$70 735.24 for each day during which the offence continues after the first day,
 - (ii) imprisonment for a term not ~~exceeding~~ longer than 12 months, or
 - (iii) both fine and imprisonment.

Additional penalty to reclaim monetary benefit

- 103218** (1) On conviction for an offence, if the court is satisfied that monetary benefits accrued to the offender as a result of the commission of the offence, the court may order the offender to pay a fine in an amount equal to the estimation by the court of the amount of the monetary benefits.

- (2) A fine under subsection (1) is additional to any fine imposed under section ~~102217~~.

Additional powers on sentencing

~~104219~~ (1) If a person is convicted of an offence, in addition to any other punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order doing one or more of the following:

- (a) directing the person to perform community service in accordance with the requirements established by the court;
- (b) directing the person to pay to the Board an amount for the purpose of research or public education related to occupational health and safety;
- (c) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with ~~any a~~ prohibition, direction or requirement under this section;
- (d) directing the person to submit to the Board, on application by the Board within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;
- (e) directing that the facts relating to the commission of the offence be published by the Board at the expense of the person convicted, subject to any maximum amount or other restrictions established by the court;
- (f) prohibiting the person from working in a supervisory capacity at any workplace for a period ~~of not longer more~~ than 6 months from the date of conviction;
- (g) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under the OHS provisions, ~~this Part~~.

- (2) An order under subsection (1) comes into force on the day on which it is made or on another day specified by the court, but must not continue in force for more than 3 years after ~~that~~ the day it comes into force.

- (3) If the court makes an order under subsection (1)(b) or the Board incurs publication expenses under subsection (1)(e), the amount or expenses constitute a debt due to the Board.

Penalties to be paid into accident fund

~~105220~~ On receipt of payment of a fine ordered under this Division, the amount must be transferred for deposit into the accident fund.

~~Division 16~~ Division 14 – General Matters

Court orders for access

106222 Without limiting the authority under the *Offence Act*, a justice may issue warrants for the purposes of this Act as follows:

- (a) on being satisfied on evidence on oath or affirmation that a place is used as a workplace, the justice may issue a warrant authorizing an officer or other person named in the warrant to enter the place and conduct an inspection, investigation or inquiry;
- (b) on being satisfied on evidence on oath or affirmation that there are in any place records or other things for which there are reasonable grounds to believe that they are relevant to a matter under ~~this Part~~ the OHS provisions or the regulations, the justice may issue a warrant authorizing an officer or other person named in the warrant to enter the place and search for and seize any records or other things relevant to the matter in accordance with the warrant;
- (c) on being satisfied on evidence on oath or affirmation that access or review of a worker's medical records is reasonably required for the purposes of ~~this Part~~ the OHS provisions or the regulations, ~~a~~ the justice may issue a warrant authorizing an officer or other person named in the warrant to access and inspect the record in accordance with the warrant.

Costs of investigations, inspections and other services

107 ~~113(5)~~ — The Board may charge a class or subclass with the cost of investigations, inspections and other services provided to the class or subclass for the prevention of injuries and illnesses.

Collection by assessment or judgment

108223 (1) If a person fails to pay an amount owed to the Board under ~~this Part~~, the OHS provisions, the Board may,

- (a) if the person is an employer, direct that the amount be levied on the employer by way of an assessment, and
- (b) in any case, issue a certificate for the amount owed and file that certificate in the Supreme Court.

(2) An assessment under subsection (1) (a) is deemed to be an assessment under ~~Part 5~~ Part 4 [Accident Fund and Employer Assessment] ~~of this Act~~ and may be levied and collected under and in accordance with that Part.

(3) A certificate filed under subsection (1) (b) has the same effect, and all proceedings may be taken on it by the Board, as if it were a judgment of the court for the recovery of a debt of the amount stated in the certificate against the person named in it.

~~Division 17~~ – Division 15 – Regulations for OHS and Other Purposes

~~Cabinet~~ Lieutenant Governor in Council regulations

- 109224** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 [*general powers to make regulations*] of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) defining words or expressions used but not defined in the OHS provisions; ~~this Part~~;
 - (b) establishing criteria that must be applied and procedures that must be followed in making decisions under ~~this Part~~ the OHS provisions or the regulations;
 - (c) requiring a greater number for minimum membership of a joint committee as referred to in section ~~33 (a)~~^{127 (a)} and the circumstances ~~when~~ in which that greater number is required;
 - (d) establishing additional duties and functions ~~and duties~~ for joint committees as referred to in section ~~36 (j)~~^{130 (j)};
 - (e) establishing a longer period of educational leave as referred to in section ~~41 (1)~~^{135 (1)};
 - (f) establishing assistance that must be provided to a joint committee by the employer in addition to the requirements of section ~~42~~¹³⁶;
 - (g) prescribing information that must be included in an occupational health and safety information summary under section ~~52~~¹⁵⁵;
 - (h) prescribing classes of health professionals for the purposes of section ~~54~~¹⁵⁷ [*information that must be provided in a medical emergency*];
 - (i) specifying provisions of the regulations of the Lieutenant Governor in Council under ~~this Part~~ the OHS provisions for which a variance under Division 9 of this Part may be ordered.;
- (3) Without limiting subsections (1) and (2), the Lieutenant Governor in Council may make regulations as follows:
- (a) ~~(k)~~ amending the Act to reflect the deemed amendments under section ~~33~~^{25.2} [*annual adjustment of dollar amounts referred to in Act*];
 - (b) ~~(l)~~ respecting any other matter for which regulations of the Lieutenant Governor in Council are contemplated by this Act.

Board regulations generally

- 110225** (1) In accordance with its mandate under ~~this Part~~ the OHS provisions, the Board may make regulations the Board considers necessary or advisable in relation to occupational health and safety and occupational environment.

- (2) Without limiting subsection (1), the Board may make regulations as follows:
- (a) respecting standards and requirements for the protection of the health and safety of workers and other persons present at a workplace and for the well-being of workers in their occupational environment;
 - (b) respecting specific components of the general duties of employers, workers, suppliers, supervisors, prime contractors and owners under the OHS provisions; ~~this Part~~;
 - (c) requiring employers to prepare written policies or programs respecting occupational health and safety and occupational environment in accordance with the regulations;
 - (d) regulating or prohibiting the manufacture, supply, storage, handling or use of any tool, equipment, machine or device or the use of any workplace;
 - (e) respecting standards and requirements for the monitoring of atmospheric or other workplace conditions or to demonstrate compliance with ~~this Part~~, the OHS provisions, the regulations or an applicable order;
 - (f) restricting the performance of specified functions to persons possessing specified qualifications or experience, including establishing certification requirements and establishing or arranging certification and instructor training programs;
 - (g) requiring the preparation, maintenance and submission of records respecting statistical data related to occupational health and safety or occupational environment;
 - (h) respecting the form and manner of reporting on any matter required to be reported under ~~this Part~~ the OHS provisions or the regulations.;
- (3)(+) Without limiting subsections (1) and (2), the Board may make regulations respecting any other matter for which regulations, other than regulations of the Lieutenant Governor in Council, are contemplated by this Act.

Board regulations in relation to hazardous and other substances

- 111-58** (1) The Board may, for the purpose of protecting the health or safety of workers, make regulations in relation to hazardous substances and other substances that are potentially harmful to workers.
- (2) Without limiting subsection (1), the Board may make regulations as follows:
- (a) prohibiting or regulating the transportation, storage, handling, use or disposal of any biological, chemical or physical agent;
 - (b) prohibiting persons other than those meeting prescribed qualifications from transporting, storing, handling, using or disposing of any biological, chemical or physical agent;
 - (c) prohibiting or regulating the manufacture, import, supply or sale or other disposition of any biological, chemical or physical agent;

- (d) establishing requirements with respect to the testing, labelling or examination of any substance or material;
- (e) establishing requirements with respect to the labelling of biological, chemical or physical agents supplied by a supplier;
- (f) establishing requirements for records that must be kept in relation to hazardous substances and other substances that are potentially harmful to workers;
- (g) designating a biological, chemical or physical agent as a hazardous substance;
- (h) classifying hazardous substances;
- (i) establishing requirements with respect to the labelling or identification of a hazardous substance;
- (j) establishing requirements with respect to safety data sheets to be provided for a hazardous substance;
- (k) establishing requirements with respect to worker training and instruction in relation to hazardous substances;
- (l) establishing requirements with respect to the disclosure of information in respect of a hazardous substance, including disclosure of confidential business information;
- (m) providing for exemptions from disclosure of confidential business information in respect of a hazardous substance;
- (n) establishing or designating an agency, board or commission to determine whether information in respect of a hazardous substance is confidential business information;
- (o) respecting the procedures, powers and functions of an agency, board or commission referred to in paragraph (n);
- (p) respecting the reporting by physicians and others of cases in which workers are affected by hazardous substances.

Board regulations in relation to OHS citations

112 (1) ~~225(2)(f.1)~~ — The Board may make regulations for the purposes of section 94+96.1 [administrative penalties – OHS citations] as follows:;

- (a) specifying OHS provisions or provisions of the regulations that may be subject to administrative penalties under that section;
- (b) subject to subsection (2) of this section, prescribing administrative penalties or schedules of administrative penalties, any penalty of which must not be more than \$1 000, but which penalties or schedules of penalties that may
 - (i) vary according to the nature or frequency of the failure to comply or the number of workers affected by any failure to comply, or

- (ii) provide for greater penalties for a second penalty and for third or subsequent penalties in a ~~3-year~~ 3-year period or any other period that may be prescribed;

(2) A penalty prescribed under subsection (1) must not be greater than the amount specified in section 94 (2).

Notice and consultation before Board makes regulation

- 113226** (1) Before making a regulation under ~~this Part, the OHS provisions,~~ the Board
- (a) must give notice of the proposed regulation in the Gazette and in at least 3 newspapers, of which one must be published in the City of Victoria and one in the City of Vancouver,
 - (b) must hold at least one public hearing on the proposed regulation, and
 - (c) may conduct additional consultations with representatives of employers, workers and other persons the Board considers may be affected by the proposed regulation.
- (2) A defect or inaccuracy in the notice under subsection (1) (a) or in its publication does not invalidate a regulation made by the Board.

When Board regulation comes into force

- 114227** A regulation of the Board 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*.

Ongoing review of Board regulations

- 115228** The Board must undertake a process of ongoing review of and consultation on its regulations to ensure that they are consistent with current workplace practices, technological advances and other changes affecting occupational health and safety and occupational environment.

Minister may direct Board to consider changes to its regulations

- 116229** (1) The minister may direct the Board to consider whether the Board should make, repeal or amend its regulations in accordance with the recommendations of the minister.
- (2) If a direction under subsection (1) is made, the Board must consider the recommendations and report its response to the minister.
- (3) If the Board does not make, repeal or amend its regulations as recommended, the Lieutenant Governor in Council may, by regulation, make, repeal or amend the regulations of the Board in accordance with the recommendations of the minister.
- (4) On coming into force, a regulation under subsection (3) is deemed to be a regulation of the Board.

Authority and application of regulations generally

- 117230** (1) The authority to make regulations under this Division does not limit and is not limited by the authority to make regulations under another OHS provision ~~of this Part~~.
- (2) ~~The following apply to regulations under this Part the OHS provisions: may do one or more of the following:~~
- (a) the regulations may be made applicable to employers, workers, suppliers and any other persons working in or contributing to the production of an industry;
 - (b) the regulations may be different for different workplaces, industries, activities, persons, things or categories of any of these;
 - (c) the regulations may delegate a matter to, or confer a discretion on, the Board, an officer of the Board or another person.
- (3) A regulation under ~~this Part the OHS provisions~~ establishing a standard, code or rule may do so by adopting a standard, code or rule
- (a) published by a provincial, national or international body or standards association, or
 - (b) enacted as or under a law of this or another jurisdiction, including a foreign jurisdiction.
- (4) A standard, code or rule referred to in subsection (3)
- (a) may be adopted in whole, in part or with any changes considered appropriate, and
 - (b) may be adopted as it stands at a specific date, as it stands at the time of adoption or as amended from time to time.

PART 3 – WORKERS’ COMPENSATION SYSTEM

Division 1 – General Rules Respecting Compensation System

No contribution from workers

- 11814** (1) ~~It is not lawful for an employer, An employer must not,~~ either directly or indirectly,
- (a) ~~to deduct from the wages of the employer’s a worker of the employer any part of a sum which an amount that~~ the employer is or may become liable to pay into the accident fund or otherwise under ~~this Part, a compensation provision,~~ or
 - (b) ~~to require or to permit the a worker of the employer to contribute in any manner toward indemnifying the employer against a liability which that~~ the employer has incurred or may incur under ~~this Part a compensation provision.~~

- (2) ~~Every~~ A person who contravenes subsection (1)
- (a) commits an offence, against this Part and
 - (b) is liable to repay to the a worker any amount sum which has been so
 - (i) deducted from his or her the worker's wages in contravention of subsection (1) (a), or which he or she
 - (ii) that the worker has been required or permitted to pay-contribute in contravention of subsection (1) (b).

Compensation cannot be waived

11913 (1) ~~—A worker may not agree with his or her the worker's 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, the compensation provisions, and every agreement to that end is void.~~

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

Compensation not assignable or liable to attachment

12015 (1) ~~A sum~~ The following apply to an amount payable as compensation or by way of commutation of a periodic payment in respect of it-compensation:

- (a) the amount is not capable of being assigned, charged or attached;
- (b) ~~nor must it the amount must not~~ pass by operation of law except to a personal representative, and

(2) A claim must not be set off against it, an amount referred to in subsection (1), except for money

- (a) advanced by way of financial or other social welfare assistance owing to the Province or to government, or a municipality, or
- (b) ~~for money~~ owing to the accident fund.

Compensation for injured worker who is a minor is sui-juris

12112 ~~A worker under the age of 19 years is sui-juris~~ For the purpose-purposes of the compensation provisions, this Part,

- (a) a worker who is a minor has the capacity of a person who has reached 19 years of age, and
- (b) no other person has a cause of action or right to compensation for the personal injury or disablement of the worker except as expressly provided in the compensation provisions, this Part.

Division 2 – Board Jurisdiction and Other Authorities

Exclusive jurisdiction of Board in relation to compensation provisions

- 12296** (1) Subject to sections 288 and 289~~239 and 240~~ [*appeals to appeal tribunal*], the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under the compensation provisions, 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. ~~...~~
- (2) ~~96(1) ... and~~ Without restricting the generality of subsection (1), the foregoing, the Board has exclusive jurisdiction to inquire into, hear and determine the following:
- (a) ~~the question~~ whether an a worker's injury has arisen out of or in the course of an employment within the scope of ~~this Part~~; the compensation provisions;
 - (b) the existence and degree of a worker's disability by reason of an injury;
 - (c) the permanence of a worker's disability by reason of an injury;
 - (d) the degree of ~~diminution~~ impairment of a worker's earning capacity by reason of an injury;
 - (e) ~~(f)~~ the existence, for the purposes the purpose of this Part, of the compensation provisions, of the relationship of a ~~member of the family member~~ of a worker; as defined by this Act;
 - (f) ~~(g)~~ the existence of dependency in relation to a worker;
 - (g) ~~(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 amount of the average earnings of a worker for purposes of payment of compensation;
 - (h) ~~(j)~~ whether a person is a worker, ~~a subcontractor, a contractor or an employer~~ within the meaning of ~~this Part~~; the compensation provisions;
 - (i) ~~(e)~~ the amount of the 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;
 - (j) ~~(h)~~ whether an industry or a part, branch or department of an industry is within the scope of ~~this Part~~; the compensation provisions, and the class to which an industry or a part, branch or department of an industry within ~~the that scope of this Part~~ should be assigned;
 - (k) ~~(i)~~ whether a worker in an industry that is within the scope of this Part the compensation provisions is within the scope of ~~this Part~~ those provisions and entitled to compensation under those provisions. ~~it; and~~

(3) Subsection (1) does not restrict the Board's authority under the following provisions:

- (a) section 123 [Board authority to reconsider previous decisions];
- (b) section 124 [Board authority to set aside decision or order];
- (c) section 125 [Board authority to reopen matter: recurrence of injury or significant change in medical condition];
- (d) section 152 (2) [Board reconsideration relating to occupational disease].

Board authority to reconsider previous decisions

123 ~~(1) 96(4)~~—~~Despite subsection (1), Subject to subsection (2),~~ the Board may, on its own initiative, reconsider a decision or order made under a compensation provision by that the Board or an officer or employee of the Board, ~~has made under this Part.~~

~~(2) 96(5)~~—~~Despite subsection (4),~~ The Board may not reconsider a decision or order referred to in subsection (1) if any of the following apply:

- ~~(a) more than 75 days have elapsed since that the decision or order was made;~~
- ~~(b) a request for review has been requested filed under section 270 [making request for a review] in respect of that the decision or order; under section 96.2, or~~
- ~~(c) a notice of appeal has been filed under section 292 [how to appeal] in respect of that the decision or order, under section 240.~~

~~96(6)~~ ~~and orders. 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.~~

Board authority to set aside decision or order

124 ~~96(7)~~ ~~Despite subsection (1),~~ The Board may at any time set aside any a decision or order made under a compensation provision by it or by the Board or 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 on which the decision or order was based.

Board authority to reopen matter: recurrence of injury or significant change in medical condition

125 ~~(1) 96(2)~~—~~Despite subsection (1),~~ The Board may at any time, on its own initiative; or on application, ~~the Board may~~ reopen a matter that has had been previously decided under a compensation provision by the Board or an officer or employee of the Board under this Part if, since the decision was made in ~~that the matter,~~

- ~~(a) (b)~~ there has been a recurrence of a worker's injury, or;

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

~~(2) 96(3)~~—If the Board determines that the circumstances described in subsection ~~(1) (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.

Division 3 – Legal Effect of Workers' Compensation System

Definitions for purposes of this Division

126 For the purposes of this Division:

~~— 1 —~~ In this Act:

“**person**” includes ~~,~~ for the purpose of section 10, his or her the personal representative of a person;

~~10(9)~~—For the purpose of this section, “**worker**” includes an employer admitted to which the compensation provisions apply by direction under section 4 (2) (b)2(2) [Board direction].

Limitation on legal proceedings against employers or workers of actions, election and subrogation

12710 (1) Subject to subsection (2),

~~(a)~~ the compensation provisions of this Part are in lieu place 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, or a dependant or member of the family member of the worker is or may be entitled against

(i) the employer of the worker, or

(ii) against any an employer within the scope of this Part, the compensation provisions, or

(iii) against any other worker,

in respect of any personal injury, disablement or death of the worker arising out of and in the course of employment, and

(b) no action in respect of it lies in respect of such an injury, disablement or death.

~~(2)~~ This provision Subsection (1) applies only when if the action or conduct of

(a) the employer or, the employer's servant or agent, or

(b) the other worker, which

that caused the breach of duty of care arose out of and in the course of employment within the scope of the compensation provisions, this Part.

Worker or dependant may bring action against other persons or elect to claim compensation under this Act

- 128** (1) ~~10(2)~~ ~~Where~~ If the cause of the ~~an~~ injury, disablement or death of a worker is such that an action lies against ~~some~~ a person, other than an employer or worker within the scope of ~~this Part~~, the compensation provisions, the worker or dependant may
- (a) claim compensation under the compensation provisions, or
 - (b) ~~may~~ bring an action.
- (2) If ~~the~~ a worker or dependant of a worker elects to claim compensation under subsection (1) (a), ~~he or she~~ the worker or dependant must do so within 3 months of the occurrence of the injury, disablement or death of the worker or ~~any~~ a longer period that the Board allows.
- (3) ~~Where~~ If the Board is satisfied that
- (a) ~~due to the worker's physical or mental disability~~ a worker is unable to exercise ~~his or her right of election~~ the worker's right to elect to claim compensation under subsection (1) (a) due to the worker's physical or mental disability, and
 - (b) undue hardship will result,
- ~~it~~ the Board may pay the compensation provided ~~by this Part~~ under the compensation provisions until the worker is able to make an election.
- (4) If, after compensation is paid under subsection (3), the worker then elects not to claim compensation under subsection (1) (a),
- (a) no further compensation may be paid, ~~and but~~
 - (b) the compensation ~~so~~ that was paid is a first charge against any ~~sum~~ amount recovered.
- (5) ~~10(4)~~ ~~In relation to a minor child of a deceased worker~~, an application filed by a parent, a guardian or the ~~Official Public Guardian and Trustee~~ for compensation for the ~~infant child of a deceased worker~~ is a valid election on behalf of that child.

Circumstances where compensation may be paid after action is settled

- 129** ~~10(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~~ a worker or dependant would be entitled under ~~this Part~~, the compensation provisions, the worker or dependant is entitled to compensation under ~~this Part~~ those provisions to the extent of the amount of the difference.

Board has right of action if compensation is claimed

- 130** (1) ~~10(6)~~ If ~~the~~ a worker or dependant applies to the Board claiming compensation under the compensation provisions, ~~this Part~~, neither the making

of the application nor the payment of compensation under ~~it those provisions~~ restricts or impairs any right of action against the party liable.

~~(2) , but as to~~ In relation to every such claim referred to in subsection (1), 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~~

(3) The Board has exclusive jurisdiction to determine whether to maintain an action under this section or compromise the right of action, and its the Board's decision is final and conclusive.

(4) If, by an action under subsection (2), more is recovered and collected than the amount of the compensation to which the worker or dependant would be entitled under this Part, the compensation provisions, the amount of the excess, less costs and administration charges, must be paid by the Board 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.

Constraint on recovery if some fault attributable to employer or other worker

131 ~~10(7)~~ The following apply if, in an action brought by a worker, or by a dependant of a worker or by the Board, it is found that the injury, disablement or death of the worker, as applicable, the case may be, was due partly to a breach of duty of care of one or more employers or other workers under this Part, to which the compensation provisions apply:

(a) no damages, contributions or indemnity are recoverable for the portion of the loss or damage caused by the negligence of that such an employer or other worker; ; but

(b) the portion of the loss or damage caused by that negligence must be determined although the despite the employer, or other worker or both, as applicable, is not being a party to the action.

Limitation on legal proceedings by employer of injured or deceased worker

132 ~~10(8)~~ Subject to subsection (2), the provisions of this Part the compensation provisions are in lieu place of any right of action that the employer of the an injured or deceased worker is or may, in respect of the personal injury or death of the worker, be entitled to maintain against

(a) another employer within the scope of this Part, the compensation provisions, or

(b) an independent operator to whom this Part applies the compensation provisions apply by Board direction under section 4 (2) (a) ² (2) (a) [Board direction of application]. ;

(2) .but the provisions of this subsection do Subsection (1) does not affect any right which an employer may have against another employer, or against an

independent operator referred to in subsection (1) (b), to whom this Part applies by direction under section 2 (2) (a), arising out of their an indemnity agreement or contract between the employer of the worker and the other employer or independent operator.

Amounts to be awarded in legal proceedings under this Division

- 133** (1) ~~10(10)~~—In an action brought under this Division, section, an award for damages ~~is to~~ must include
- (a) health care provided under Part 4 this Part; [Compensation to Injured Workers and Their Dependants], and
 - (b) wages and salary paid by an employer during the period of disability
 - (i) ~~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 that were considered by the Board in setting the amount of a periodic payment of compensation, or~~
 - (ii) that would have been considered by the Board for that purpose if the worker had elected to claim compensation.
- (2) ~~10(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.~~Division even if a salaried employee of the Board acts as solicitor or counsel for the Board.

**PART 4 – COMPENSATION TO INJURED WORKERS
AND THEIR DEPENDANTS**

**Division 1 – Compensation for Injury, Mental Disorder and Occupational
Disease**

Compensation for personal injury or death

- 1345** (1) ~~Where, If,~~ in an industry within the scope of ~~this Part,~~ the compensation provisions, personal injury or death arising out of and in the course of ~~the a~~ worker's employment is caused to ~~a the~~ the worker, compensation as provided by under this Part must be paid by the Board out of the accident fund.
- (2) ~~(3)~~—~~Where~~ As an exception to subsection (1), if the injury is attributable solely to the serious and wilful misconduct of the worker, compensation is not payable unless the injury results in the worker's death or serious or permanent disablement.
- (3) ~~(4)~~—~~In cases where the injury is~~ The following apply in relation to an injury caused by accident;

- (a) ~~where~~ if the accident arose out of the worker's employment, unless the contrary is shown, it must be presumed that ~~it~~ the injury occurred in the course of ~~the that~~ employment;
- (b) ~~and where~~ if the accident occurred in the course of the worker's employment, unless the contrary is shown, it must be presumed that ~~it~~ the injury arose out of ~~the that~~ employment.
- (4) (2) ~~Where~~ If an injury disables a worker from earning full wages at the work at which the worker was employed, compensation other than a health care benefit is payable under this Part from the first working day following the day of the injury.
- (5) ~~but a~~ A health care benefit ~~only is payable under this Part~~ may be provided for an injured worker in respect of the day of the injury.

Mental disorder

- 1355.1** (1) Subject to subsection (3)(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 under this Part, only if all of the following apply: ~~the mental disorder~~
- (a) the mental disorder is 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) the mental disorder is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described, at the time of diagnosis, in the most recent ~~American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders~~ published by the American Psychiatric Association; ~~at the time of the diagnosis~~, and
- (c) the mental disorder 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)(1.1) If a worker who is or has been employed in an eligible occupation
- (a) is exposed to one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, and
- (b) has a mental disorder that, ~~is recognized, in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders,~~ at the time of the diagnosis ~~of the mental disorder~~ under subsection (1) (b) of this section, is recognized in the manual referred to in

that subsection as a mental or physical condition that may arise from exposure to a traumatic event,

the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, unless the contrary is proved.

~~(3)(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.

~~(4)(3)~~ Section ~~16356(4)~~ [*duties of physicians and qualified practitioners*] applies to a psychiatrist or psychologist who makes a diagnosis referred to in this section.

~~(5)(4)~~ In this section:

“correctional officer” means a correctional officer as defined by regulation of the Lieutenant Governor in Council;

“eligible occupation” means the occupation of correctional officer, emergency medical assistant, firefighter, police officer, sheriff or, without limitation, any other occupation prescribed by regulation of the Lieutenant Governor in Council;

“emergency medical assistant” means an emergency medical assistant as defined in section 1 of the *Emergency Health Services Act*;

“firefighter” means a member of a fire brigade who is

- (a) described in paragraph (c) of the definition of “worker” in section 1 or employed by the government of Canada, and
- (b) assigned primarily to fire suppression duties whether or not those duties include the performance of ambulance or rescue services;

“police officer” means an officer as defined in section 1 of the *Police Act*;

“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

- (a) a registrant of the college responsible for carrying out the objects of the *Health Professions Act* in respect of the health profession of psychology, or
- (b) entitled to practise as a psychologist under the laws of another province;

“sheriff” means a person lawfully holding the office of sheriff or lawfully performing the duties of sheriff by way of delegation, substitution, temporary appointment or otherwise.

Occupational disease: general compensation rules

- 1366** (1) ~~Where Compensation is payable under this Part in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker's employment, if~~
- (a) ~~as applicable,~~
 - (i) ~~a the worker suffers from has an occupational disease and is thereby disabled that disables the worker from earning full wages at the work at which the worker was employed, or~~
 - (ii) ~~the death of a the worker is caused by an occupational disease, and~~
 - (b) ~~the occupational disease is due to the nature of any employment in which the worker was employed, whether under one or more employments, and compensation is payable under this Part as if the disease were a personal injury arising out of and in the course of that employment.~~
- (2) ~~For the purposes of subsection (1), the date of disablement must be treated as the occurrence of the injury.~~
- (3) ~~(1) ...A health care benefit may be paid provided for a worker who has an occupational disease referred to in subsection (1) (b) although even though the worker is not disabled from earning full wages at the work at which he or she the worker was employed.~~

Schedule 1: presumption of occupational disease related to specified process or industry

- 137** (1) ~~6(3) — This section applies to a worker who is disabled as referred to in section 136 (1) (a) (i) as a result of an occupational disease described in column 1 of Schedule 1 of this Act.~~
- (2) ~~If, the worker at on or immediately before the date of the disablement, the worker was employed in a process or industry mentioned described in the second column 2 of Schedule 1 B opposite the occupational disease that has resulted in the disablement, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the occupational disease is deemed to must be presumed to have been due to the nature of that the worker's employment unless the contrary is proved.~~
- ~~(4) [Repealed 2002-56-3.]~~

Board powers in relation to recognition of occupational diseases

- 138** (1) ~~6(4.1) — The Board may, by regulation, do the following:~~
- (a) ~~add to or delete from Schedule 1 B of this Act a disease that, in the opinion of the Board, is an occupational disease;~~
 - (b) ~~add to or delete from that Schedule B a process or an industry; and~~
 - (c) ~~set terms, conditions and limitations for the purposes of paragraphs (a) and (b) of this subsection.~~

~~(2) s.1~~ “occupational disease” means...~~(b) a disease~~—The Board may, by regulation of general application, designate or recognize a disease as an occupational disease. ~~by regulation of general application,~~

~~(3) s.1~~ “occupational disease” means — ~~(c) a disease~~—The Board may, by order, designate or recognize ~~by order dealing with a disease as an occupational disease in a specific case,~~ ~~and~~

~~(4) 6(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.

~~6(5) [Repealed 1998-50-2.]~~

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

Firefighters: presumptions respecting heart injury and heart disease

139 (1) ~~6.1(6)~~—In subsections (7) to (9) of this section:

“firefighter” means a worker who is a member of a fire brigade and is assigned primarily to fire suppression duties, whether or not those duties include the performance of ambulance or rescue services;

“heart disease” includes disease of the pericardium or coronary arteries;

“heart injury” includes heart attack, cardiac arrest or arrhythmia.

(2) ~~6.1(7)~~—Subject to subsection (4), if a worker

(a) is disabled as a result of a heart disease, and

(b) was employed as a firefighter ~~at on~~ or immediately before the date of disablement from the heart disease,

the heart disease must be presumed to be due to the nature of the worker’s employment as a firefighter; unless the contrary is proved.

(3) ~~6.1(8)~~—Subject to subsection (4), if a worker

(a) is disabled as a result of a heart injury, and

(b) was employed as a firefighter ~~at on~~ or immediately before the date of disablement from the heart injury,

the heart injury must be presumed to have arisen out of and in the course of the worker’s employment as a firefighter; unless the contrary is proved.

(4) ~~6.1(9)~~—The presumptions in subsections (2)(7) and (3)(8) apply only to a worker who

(a) has been regularly exposed, throughout the worker’s employment as a firefighter, to the hazards of a fire scene, and

- (b) is first disabled as a result of the heart disease or heart injury, as ~~applicable, the case may be, on or after May 29, 2014. the date this subsection comes into force.~~

Firefighters: presumptions respecting lung cancer and other diseases

1406.1 (1) In ~~subsections (1.1) to (4)~~ of this section, “**firefighter**” means a member of a fire brigade who is

- (a) described in paragraph (c) [*worker serving a municipality, regional district or other local authority*] of the definition of “**worker**” in section 1 or employed by the government of Canada, and
- (b) assigned primarily to fire suppression duties, whether or not those duties include the performance of ambulance or rescue services.

~~(2) (1.1)~~—Subject to subsections (3) and (4), if a worker who is or has been a firefighter contracts

~~(a) primary site lung cancer, or the disease must be presumed to be due to the nature of the worker’s employment as a firefighter, unless the contrary is proved.~~

~~(b) (2) if a worker who is or has been a firefighter contracts a prescribed a disease prescribed by regulation under subsection (5),~~

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 subsection (2) do not apply to a worker unless the worker ~~subsections (1.1) and (2) apply only to a worker who~~

(a) has worked as a firefighter for the minimum cumulative period prescribed by regulation under subsection (5) for the applicable disease, which minimum cumulative period may be defined differently, and be different, for different categories of firefighters,

(b) throughout ~~that the~~ period referred to in paragraph (a), 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) (ii)~~—in the case of primary site lung cancer, May 27, 2008;

~~(ii) (i)~~—in the case of a disease that; was prescribed on or before March 18, 2009 for the purposes of subsection (2) (b), April 11, 2005; -the date this subparagraph comes into force, was prescribed by regulation for the purposes of subsection (2), April 11, 2005;

(iii) in the case of a disease ~~that, after the date this subparagraph comes into force, is prescribed by regulation after March 18, 2009 for the purposes of subsection (2) (b), the date on which that the regulation took or takes effect, as applicable.~~

~~(4) (3.1)~~—In addition to the ~~requirements of conditions~~ established by subsection (3), the presumption for a primary site lung cancer does not apply to a worker unless the worker applies only if

(a) ~~the worker has, in his or her the worker's~~ 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 prescribed by regulation under subsection (5). that may be prescribed, which minimum period may be different for different types or amounts of previous tobacco product usage.~~

~~(5) (4)~~—The Lieutenant Governor in Council may make regulations for the purposes of ~~subsections (2), (3) (a) and (3.1) (b).~~ this section, including regulations that

~~(a) (3)(a)~~—~~has worked as a firefighter for the minimum cumulative period prescribed for the disease, which establish~~ minimum cumulative periods for the purposes of subsection (3), which may be defined differently, and be different, for different categories of firefighters, and

~~(b) (3.1)(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 prescribed under this section; establish~~ minimum periods for the purposes of subsection (4), which period may be different for different types or amounts of previous tobacco product usage.

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

Mining industry silicosis

141 ~~(1) 6(8)~~—Subject to subsection (2),

(a) 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 under this Part, and

(b) ~~where if~~ death results from the worker's disability, the worker's dependants ~~of the worker~~ are entitled to compensation as provided by under this Part.;

~~(2) but neither A worker nor a~~ The worker or a dependant of the worker is not entitled to compensation for the disability or death referred to in subsection (1) unless the following apply: the worker

(a) either

- (i) ~~the worker has been a resident of the Province~~ British Columbia for a period of at least 3 years ~~last preceding~~ immediately before the disablement, or
- (ii) ~~unless at least 2/3 of the worker's exposure to silica dust containing silica was occurred in British Columbia; the Province;~~
- (b) ~~the worker did not have~~ was free from silicosis ~~and or~~ tuberculosis before being first exposed to silica dust containing silica in the metalliferous mining or coal mining industry in British Columbia; this Province; and
- (c) ~~has been a~~ the worker was exposed to silica dust containing silica in the metalliferous mining or coal mining industry in ~~the Province~~ British Columbia
 - (i) for a period or periods ~~aggregating totalling~~ 3 years preceding ~~his or her~~ the worker's disablement, or
 - (ii) for a ~~lesser shorter~~ period if the worker was not exposed to silica dust containing silica anywhere except in British Columbia. this Province.

Lung disease from exposure to dust conditions

- 142** (1) ~~6(10) — When~~ This section applies to compensation in relation to a worker who has sustained a pulmonary injury caused by a disabling form of pneumoconiosis as a result of exposure to dust conditions that are deemed by the Board to the Board considers have contributed to the development of the disease in employment in the Province British Columbia in an industry in which that disease is an occupational disease under this Part,;
- (2) ~~The worker or a dependant of the worker or the worker's dependants is or are is~~ entitled to compensation ~~only~~ if
- (a) ~~the worker was free from~~ did not have either pneumoconiosis ~~and or~~ tuberculosis before being first exposed in British Columbia to those the dust conditions referred to in subsection (1), in the Province; and
 - (b) ~~if~~ the worker's residence in British Columbia and exposure to the dust conditions have been of the duration required to entitle a worker to compensation for silicosis under section 141 subsection (8), section [occupational disease – mining industry silicosis], and the cost of compensation may be apportioned in the manner provided by subsection (9)

Death of worker with occupational disease that impairs the lungs

- 143** (1) ~~6(11) — Where~~ This section applies to a deceased worker was, at who, on the date of ~~his or her~~ the worker's death,
- (a) was under the age of 70 years of age, and

~~(b) suffering from had~~ an occupational disease of a type that impairs the capacity of function of the lungs, ~~and~~

(2) ~~where~~ If the death was caused by ~~some~~ an 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.

Communicable disease: presumption in relation to testing order ~~*Emergency Intervention Disclosure Act*~~

1446.2 (1) ~~In~~ This section applies to a worker if:

(a) ~~“applicant” means the worker is~~ an applicant, as defined in the *Emergency Intervention Disclosure Act*, who has obtained a testing order under that Act respecting a source individual, ~~as defined in that Act,~~

(b) ~~“communicable disease” means the worker has contracted 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~~

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

(d) ~~(b)~~ test results obtained under a ~~the~~ 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 ~~worker.~~ applicant.

(2) ~~...contracted a communicable disease,~~ It must be presumed, unless there is evidence to the contrary, that the communicable disease ~~of the worker~~ is due to the nature of the worker’s employment, ~~if~~

Non-traumatic hearing loss of hearing

1457 (1) A worker is entitled to compensation under this Part if ~~Where a~~

(a) ~~the worker suffers has a hearing loss of hearing~~ of non-traumatic origin, ~~but arising that arose~~ out of and in the course of employment ~~under this Part,~~ to which the compensation provisions apply, and

(b) the hearing loss

(i) was sustained by exposure to causes of hearing loss in British Columbia, and

(ii) ~~that~~ is a greater loss than the minimum set out in ~~Schedule D;~~
Schedule 2 [Non-Traumatic Hearing Loss] of this Act. ~~the worker~~
is entitled to compensation under this Part.

~~(2) (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 hearing loss ~~of hearing~~ that the Board prescribes.

~~(3) (3.1)~~—The Board may, by regulation, ~~make regulations to~~ amend Schedule ~~2D~~ in respect of the following:

- (a) the ranges of hearing loss;
- (b) the percentages of disability; ~~and~~
- (c) the methods or frequencies to be used to measure hearing loss.

Compensation if injury or disease superimposed on already existing disability

146 ~~5(5)~~—The following apply to compensation under this Part in relation to ~~Where the~~
personal injury or disease that is superimposed on an already existing disability;

- (a) ~~the compensation must be allowed only for~~ is limited to the proportion of the disability following the ~~personal~~ injury or disease that may reasonably be attributed to ~~that the personal~~ injury or disease;
- (b) 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 extent of the worker's disability before and disability after the occurrence of the ~~personal~~ injury or disease.

Division 2 – Compensation in Relation to Work Outside British Columbia

Injuries happening outside British Columbia of Province

1478 (1) This section applies if ~~Where the~~ injury of a worker occurs

- (a) a worker is injured while the worker is working elsewhere than in the Province outside British Columbia, and
- (b) ~~the injury which~~ would entitle the worker or the worker's dependants to compensation under this Part if ~~it the injury~~ occurred in British Columbia, the Province;

(2) The Board must pay compensation under this Part only if all of the following apply:

- (a) a place of business of the worker's employer is ~~situate~~ located in British Columbia; the Province;
- (b) the worker's residence and usual place of employment ~~of the worker~~ are located in British Columbia; the Province;
- (c) the employment is such that the worker is required to work both in and outside British Columbia; out of the Province; and

(d) the worker's employment of the worker out of the Province outside British Columbia

(i) has immediately followed the worker's employment in British Columbia by the same employer, and within the Province and

(ii) has lasted less than 6 months;

~~but not otherwise.~~

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

Election if compensation available under law of other place

1489 (1) ~~Where~~ This section applies if, by the law of the country or place in which the a worker's injury or occupational disease occurs—occurred, the worker or the worker's dependants are entitled to compensation in respect of the injury or occupational disease. it;

(2) ~~they~~ The worker or the worker's dependants must

(a) elect whether they will claim compensation

(i) under the law of that the country or place referred to in subsection (1), or

(ii) under this Part, and

(b) ~~to~~ give notice of the election.

(3) ~~(2)~~ —Notice of the election required under subsection (2) must be given to the Board as follows:

(a) unless paragraph (b) of this subsection applies, within 3 months after the occurrence of the injury or disablement from occupational disease; ~~or;~~

(b) ~~if~~ the injury or occupational disease results in death,

(i) within 3 months after the death, or

(ii) within any a longer period that the Board allows either before or after the expiration of the 3 months; the Board allows.

(4) ~~(1)~~ ..If the required election is not made and notice not given, it must be presumed that they the worker or the worker's dependants have elected not to claim compensation under this Part;

(5) ~~but if there is in existence~~ If an agreement or arrangement entered into, or arrangement made, under section 3358.1 [interjurisdictional agreements and arrangements]; applies, any right of election is subject to the terms of that agreement or arrangement.

Division 3 – Reporting of Injury or Disease and Process for Claiming Compensation

Worker obligation to give notice of injury or disease to employer

Worker's notification of injury

- 14953** (1) ~~In every case~~ This section applies in relation to every occurrence of an injury or disabling occupational disease to a worker in an industry that is within the scope of this Part the compensation provisions;
- (2) ~~The worker, or in case of death the dependant, must~~ As soon as practicable after the occurrence, the worker or, in the case of death, the worker's dependant must inform the employer of the occurrence as follows:
- (a) the information provided must include
 - (i) the name of the worker,
 - (ii) the time and place of the occurrence, and;
 - (iii) in ordinary language, the nature and cause of the injury or disease;
 - (b) inform the employer by giving information of the disease or injury the information must be provided to the superintendent, first aid attendant, supervisor; or agent in charge of the work where the injury occurred or to another 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.~~
- (3) ~~(2)~~ — In the case of an occupational disease, the employer who is to be informed under subsection (2) of the death or disablement is the employer who last employed the worker in the employment to the nature of in relation to which the occupational disease was due.
- (4) ~~(3)~~ — The worker ~~must, if he or she is fit to do so and~~ On request of the employer, the worker must, if fit to do so, provide to the employer particulars of the injury or occupational disease on a form ~~prescribed~~ directed by the Board and supplied to the worker by the employer.
- (5) ~~(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 worker's injury or disease suffered,~~ and the circumstances in which it occurred, occasion of it;
 - (b) the employer or the employer's representative had knowledge of it; ~~the injury or disease,~~ or
 - (c) the employer has not been prejudiced, and the Board considers that the interests of justice require that the claim be allowed.

Employer obligation to report injury or disease to Board

- 15054** (1) Subject to subsection ~~(7)(6)~~, an employer must report to the Board, within 3 days ~~of~~ after its occurrence, every injury to a worker that is or is claimed to be ~~one~~ an injury arising out of and in the course of the worker's employment.
- (2) Subject to subsection ~~(7)(6)~~, an employer must report to the Board, within 3 days ~~of~~ after receiving information under section ~~14953~~, every disabling occupational disease, or claim for or allegation of an occupational disease in relation to a worker.
- (3) An employer must report immediately to the Board and to ~~its~~ the Board's local representative the death of a worker ~~where~~ if the death is or is claimed to be ~~one~~ a death arising out of and in the course of the worker's employment.
- (4) ~~The~~ A report under this section must be on the form ~~prescribed~~ directed by the Board and must provide the following information: ~~state~~
- (a) the name and address of the worker;
 - (b) the time and place of the ~~disease, injury,~~ disease 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.
- ~~(5) and~~ A report under this section may be made by mailing copies of the form addressed to the Board at the address specified by the Board. ~~prescribes.~~
- ~~(6) (5) —~~ The failure ~~An employer who fails~~ to make a report required by ~~virtue of~~ under this section commits an offence 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.~~
- ~~(7) (6) —~~ Without limiting in any way the authority of the Board under section ~~23775~~ *[additional authority for orders, directives, rules and regulations]*, the Board may make regulations as follows: ~~by regulation~~
- (a) ~~define and prescribe~~ establishing a category of minor injuries not required to be reported under this section; ~~and~~
 - (b) ~~define or vary~~ establishing or varying the time at which the obligation to report under this section begins. ~~commences.~~
- ~~(8) (7) —~~ Where ~~If~~ a report required by under this section is not received by the Board within 7 days ~~of~~ after an injury or death, or any other time prescribed by regulation under subsection ~~(7)(6)~~, the Board
- (a) may make an interim adjudication of the claim, and;
 - (b) ~~where it~~ if the Board allows the claim on an interim basis, may ~~commence~~ begin the payment of compensation in whole or in part.

Application for compensation: form of application and time for making application

- 15155** (1) An application for compensation must
- (a) be made on the form ~~prescribed~~ directed by the Board or ~~the regulations prescribed by regulation,~~ and
 - (b) ~~must~~ be signed by the worker or the worker's dependant making the application. †
- (2) ~~but, where~~ If the Board is satisfied that compensation is payable, it may be paid without an application.
- (3) ~~(2) —~~ Except as provided in this section and section 152, no compensation is payable unless an application for compensation is filed, or an adjudicational determination under subsection (2) of this section is made, within one year after the date of the worker's injury, death or disablement from occupational disease, ~~no compensation is payable, except as provided in subsections (3), (3.1), (3.2) and (3.3).~~
- (4) ~~(3) —~~ The Board may pay the compensation provided under this Part if
- (a) an application is not filed within the period referred to in subsection (3),
 - (b) the Board is satisfied that ~~there existed~~ special circumstances existed ~~which that~~ precluded the filing within that period, of an application within one year after the date referred to in subsection (2), and
 - (c) ~~the Board may pay the compensation provided by this Part if the application is filed within 3 years after that the date referred to in subsection (3).~~
- (5) ~~(3.1) —~~ The Board may pay the compensation provided by under this Part for the period commencing beginning on the date the Board received the receives an application for compensation if
- (a) an application is not filed within the period referred to in subsection (3),
 - (b) ~~(a)~~ the Board is satisfied that special circumstances existed ~~which that~~ precluded the filing within that period, one year after the date referred to in subsection (2), and
 - (c) ~~(b)~~ the application is filed more than 3 years after the date referred to in subsection ~~(3)~~ (2).

Special circumstances: new evidence relating to occupational disease

- 152** (1) ~~55(3.2) —~~ The Board may pay the compensation provided by under this Part if
- (a) the application for compensation arises from a worker's death or disablement due to an occupational disease,
 - (b) sufficient medical or scientific evidence was not available on the date referred to in section 151 (3) 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 that sufficient medical or scientific evidence, as determined by the Board, became available to the Board.

~~(2) 55(3.3) Despite section 96 (1), if, If, since July 1, 1974, the Board considered an application for compensation under the equivalent of this section or section 151 in respect of a worker's death or disablement from occupational disease, the Board may reconsider that the application; but the Board must apply subsection (1) (3.2) of this section in that the reconsideration.~~

Worker has continuing obligation to provide information

~~15357.1~~ (1) A worker who applies for or is receiving compensation under this Part 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.

Worker to submit to obligation to comply with examination and treatment requirements

~~15457~~ (1) The Board may require a worker who applies for or is ~~in receipt of receiving~~ compensation under this Part to be medically examined at a place reasonably convenient for the worker.

~~(2) If the a worker fails to attend for the an examination under this section or obstructs the medical examiner,~~

~~(a) the worker's right to compensation is suspended until the examination has taken place, and~~

~~(b) no compensation is payable during the period of suspension.~~

~~(3) (2) The Board may reduce or suspend compensation for a worker if when the worker~~

~~(a) persists in ~~insanitary-unsanitary~~ or injurious practices ~~which-that~~ tend to imperil or ~~delay retard~~ his or her the worker's recovery, or~~

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

Division 4 – Vocational Rehabilitation, Health Care and Other Assistance

Vocational rehabilitation and other assistance

~~15516~~ (1) To aid in getting an injured worker ~~workers~~ back to work or to assist in lessening or removing a resulting disability, handicap, the Board may take the measures and make the expenditures ~~from the accident fund that it the Board~~ considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

- (2) ~~Where~~ If 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 if~~ it considers ~~it this~~ advisable, provide counselling and placement services to dependants of a worker.

Health care for injured worker

- 15621** (1) In addition to ~~the other compensation under provided by~~ this Part, the Board may ~~furnish or provide for the an~~ injured worker any medical, surgical, hospital, nursing and other care or treatment, transportation, medicines, crutches and apparatus, including artificial members, that ~~it the Board considers may consider~~ reasonably necessary at the time of the injury; and afterwards thereafter during the worker's disability to cure the injury or alleviate and relieve from the effects of the injury, or alleviate those effects, ...
- (2) ~~21(1) — and~~ The Board may adopt rules and regulations with respect to ~~furnishing the provision of~~ health care to injured workers ~~entitled to it and for the payment of such health care. it:~~
- (3) ~~21(1) —~~ The Board may make a daily allowance to an injured worker for the worker's subsistence ~~when, if, under its the Board's direction, the worker is undergoing treatment at a place other than the place where he or she that worker resides, and~~
- (4) ~~21(1) —~~ The power of the Board under subsection (3) 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.

Board powers in relation to provision of health care

- 157** (1) ~~21(6) —~~ Health care ~~furnished or provided~~ under any of ~~the preceding subsections of this section the following provisions must~~ at all times be subject to the direction, supervision and control of the Board; ~~and~~
- (a) section 156 [Board may provide health care for injured worker];
 - (b) section 158 [emergency care by physician or qualified professional];
 - (c) section 159 [employer authority and obligations in relation to health care].
- (2) ~~(6) —~~ All questions as to the necessity, character and sufficiency of health care to be ~~furnished must provided are to~~ be determined by the Board.
- (3) ~~(6) —~~ The Board may, for any health care required,
- (a) contract with physicians, nurses or other persons authorized to treat human ailments, and with hospitals and other institutions, for any health care required, and

~~(b) to agree on a scale of fees or remuneration for that health care, and~~

~~(4) The fees or remuneration for health care furnished provided under this Act must be set by the Board and must not be more greater than the worker 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~~

~~(5) No action for an amount larger greater than that fixed set by the Board lies in respect of health care.~~

Emergency care by physician or qualified professional

158 ~~21(2) Where in a case of emergency, or for other justifiable cause, The Board must pay the costs of services provided by a physician or qualified practitioner, other than the one provided by the Board Board, if~~

~~(a) the physician or qualified practitioner is called in to treat the an injured worker in a case of emergency or for other justifiable cause, and~~

~~(b) if the Board finds considers 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.~~

Employer authority and obligations in relation to health care

159 ~~(1) 21(3) — The Board may, in its at the Board's discretion, authorize an employer employers to furnish or provide health care at the expense of the Board and on the terms fixed set by the Board. it. . .~~

~~(2) 21(3). Every If a worker is injured in the course of employment, the worker's employer must, at the employer's own expense, furnish to a worker injured in the employer's employment, provide the injured worker, when necessary, with immediate conveyance and transportation to a hospital, physician or qualified practitioner for initial treatment.~~

Health care by physician or qualified practitioner selected by worker

160 ~~(1) 21(7) — Without limiting the power of the Board. The Board must permit health care to be administered, so far as the selection of a physician or qualified practitioner is concerned, by the a physician or qualified practitioner who may be selected or employed by the injured worker.~~

~~(2) 21(7) — Without limiting Subsection (1) does not limit the powers of the Board under this Division section to supervise and provide for the furnishing of respecting the supervision and provision of health care in every case where it the Board considers the exercise of that those powers is expedient, the Board must permit . . .~~

Replacement, repair and provision of physical assistance items

161 (1) ~~21(8)~~—The Board may assume the responsibility of replacement and repair of the following for a worker:

- (a) artificial appliances, including artificial members damaged or broken as the result of an accident arising out of and in the course of the worker's 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 the worker's employment if
 - (i) that breakage is accompanied by objective signs of personal injury to the worker, or;
 - (ii) where there is no personal injury, if the accident is otherwise corroborated and the Board is satisfied the worker was not at fault.

(2) ~~21(9)~~—~~Where~~ If an injury to a worker results in serious impairment of the worker's sight, the Board may, ~~to protect for the purpose of protecting~~ the worker's remaining vision, provide the worker with protective eyeglasses.

Retirement services and supports for workers with total disability

16223.5 (1) If a worker has a permanent total disability, the Board must assess, ~~within the 3-month 3-month period before the a retirement benefit under section 206 [retirement benefits for workers with permanent disability] is payable to the worker, evaluate the worker's need or continued need of the worker for services and personal supports under this Division. sections 16 and 21.~~

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

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

Duty of physician or Duties of physicians and qualified practitioners

16356 (1) ~~It is the duty of every~~ A 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 the compensation provisions, or of an alleged case of such an injury, has the following duties:~~

- (a) ~~to furnish~~ provide the reports in respect of the injury in the form required by ~~the regulations~~ regulation or directed by the Board, ~~but with~~ the first report containing all requested information requested in it must be furnished being provided to the Board within 3 days after the date of ~~his or her first~~ the physician's or qualified practitioner's first attendance on the worker;

- (b) ~~to furnish~~ provide a report to the Board 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~~ provide further adequate reports to the Board;
- (c) if the physician
 - (i) is a specialist whose opinion is requested by the attending physician, the worker or the Board, or
 - (ii) ~~if the physician~~ continues to treat the worker after being the physician is consulted as a specialist,
~~to furnish his or her~~ provide the first report to the Board within 3 days after ~~completion of the consultation is completed and, ;~~ but if the specialist physician is regularly treating the worker, ~~the specialist must submit to provide further reports to the Board as required in paragraphs (a) and (b); and~~
- (d) without charge to the worker, to give to the worker and the worker's dependants all reasonable and necessary information, advice and assistance ~~they need to to the injured worker and the worker's dependants~~
 - (i) ~~in making~~ make an application for compensation, and
 - (ii) ~~in furnishing in connection with it the required~~ provide the certificates and proofs required in relation to the application. ; ~~without charge to the worker.~~
- (2) Every physician or qualified practitioner ~~who is~~ authorized by ~~under~~ this Act to treat an injured worker is subject to ~~like the~~ duties and responsibilities established by subsection (1), and any health care furnished ~~provided~~ by the physician or qualified practitioner is subject to the direction, supervision and control of the Board.

Obligations of health care service providers

- 164** (1) ~~56(4)~~ — A Physician, qualified practitioner or other person authorized to ~~render~~ provide health care under ~~this Part~~ the compensation provisions must confine ~~his or her~~ their treatment to injuries that are injuries to the parts of the body that they are ~~he or she is~~ authorized to treat under the ~~statute~~ Act under which ~~he or she is~~ they are permitted to practise, ~~and~~
- (2) ~~The giving of any unauthorized treatment is~~ A person referred to in subsection (1) who gives treatment that is not authorized as referred to in that subsection commits an offence, against this Part.
- (3) ~~56(5)~~ — A physician, qualified practitioner or other person ~~A person referred to in subsection (1) who fails to submit prompt, adequate and accurate reports and accounts as required by this Act or by the Board commits an offence, against this Part,~~

- ~~(4) and his or her~~ If a person fails to submit reports and accounts as referred to in subsection (3), the Board may
- ~~(a) cancel the right of the person to be selected by a worker to render provide~~ health care, ~~may be cancelled by the Board, or~~
 - ~~(b) he or she may be suspended~~ suspend the person for a period to be determined by the Board.
- ~~(5) When~~ If the right of a person to ~~render provide~~ health care is ~~so~~ cancelled or suspended under subsection (4),
- ~~(a) the Board must~~
 - ~~(i) notify the person of the cancellation or suspension, and~~
 - ~~(ii) must likewise inform the governing body named in the Act under which the person is authorized to treat human ailments, and~~
 - ~~(b) the person whose right to render health care is cancelled or suspended must also notify injured workers who seek treatment from the that person of the cancellation or suspension.~~
- ~~(6) (3)~~ — Unless the Board otherwise directs, an account for medical services or other health care must not be paid if it is submitted later than 90 days ~~from~~ after the date of whichever of the following occurs first: ~~that~~
- ~~(a) the last treatment was given; or~~
 - ~~(b) the physician or person furnishing the medical service person providing the health care was first aware that the Board may be liable for his or her that person's services;~~
- ~~whichever first occurs.~~

Division 5 – Compensation in Relation to Death of Worker

Definitions and other interpretation rules Compensation in fatal cases

- ~~16517~~ (1) In this ~~Division~~ section
- “child”**, in relation to a deceased worker, means a child of the worker who
- ~~(a) a child is under the age of 19 years of age, including a child who was not yet born at the date of the worker's death, of the deceased worker yet unborn;~~
 - ~~(b) (c) a child is under the age of 25 years of age who is and regularly attending attends~~ an academic, technical or vocational place of education,
 - ~~(c) (b) an invalid is a child of any age who, at the date of the worker's death, had a physical or mental disability that resulted in the child being incapable of earning, or~~
 - ~~(d) at the date of the worker's death was not a child described in paragraph (c) but became such a child before otherwise ceasing to be entitled to compensation under this Part;~~

and “**children**” has a similar meaning;

“**dependent spouse**”, in relation to a deceased worker, means a surviving spouse of the worker who is a dependant of the worker;

“**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 [*death benefit*] of that Act.

(2) ~~17(7)~~ — ~~Where~~ If 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.

(3) ~~17(8)~~ — ~~Where~~ If 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.

Payment towards funeral and related expenses

166 (1) ~~17(2)~~ — ~~Where~~ The following apply if compensation is payable under this Part as the result of the death of a worker or as the result of injury resulting in the such death: ;

- (a) in addition to any other compensation payable under this Division, ~~section~~, the Board must pay 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 at the premises referred to in paragraph (b), ~~there~~, the Board may pay 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) ~~17(2.1)~~ — No action for an amount ~~larger~~ greater than that established ~~by~~ under subsection (1)~~(2)~~ lies in respect of the funeral, burial or cremation of the worker or related cemetery charges, ~~in connection with it~~.

Lump sum payment to dependent spouse or foster parent

167 ~~17(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 \$2 737.52.

Compensation payable to dependants of deceased worker

168 (1) ~~17(3)~~ — Subject to subsection (3), ~~Where~~ if compensation is payable as the result of the death of a worker or of injury resulting in such death, the Board must pay compensation ~~must be paid~~ to the dependants of the deceased worker in accordance with this Division. ~~as follows:~~

Period for making payments under sections 17 to 19

- (2) ~~19.1~~ — Unless a shorter period applies under this Division, the Board must make periodic payments under section 17, 18 or 19 this Division 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.

Dependent spouse who is 50 years of age or older or is incapable of earning, no dependent children

169 (1) ~~17(3)(c)~~ where This section applies if

(a) the dependant is a surviving spouse a deceased worker leaves a dependent spouse but does not leave any child dependants, and

(b) who, at the date of the worker's death, of the worker, the dependent spouse

(i) is was 50 years of age or over, older, or

(ii) had a physical or mental disability that resulted in the spouse being incapable of earning. is an invalid spouse,

- (2) Subject to subsection (3), the Board must make a monthly payment of a sum an amount that, when combined with 50% of the federal benefits payable to or for that dependant, the dependent spouse, 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 the worker's death, sustained a permanent total disability.

- (3) but the monthly payments A monthly payment under this section must not be less than \$1 149.55.

Dependent spouse who is under 50 years of age and not incapable of earning, no dependent children

170 (1) ~~17(3)(d)~~ where This section applies if

(a) a deceased worker leaves a dependent spouse but does not leave any child dependants, and

(b) the dependant, at the date of the worker's death, of the worker, is a surviving the dependent spouse

(i) who is not an invalid and is was under the age of 50 years of age, and there are no dependent children,

(ii) did not have a physical or mental disability that resulted in the spouse being incapable of earning.

- (2) Subject to subsection (3), the Board must make a monthly payment of a sum an amount that, when combined with 50% of the federal benefits payable to or for that dependant the dependent spouse, would equal the product of

- (a) ~~(i)~~—the percentage determined by subtracting 1% from 60% for each year that the age of ~~that dependant, the dependent spouse,~~ the dependent spouse, at the date of the worker's death, ~~of the worker,~~ is under the age of 50 years of age, and
- (b) ~~(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.;
- (3) ~~but the~~—The percentage determined under ~~subparagraph (i)~~ subsection (2) (a) must not be less than 30%, and ~~the monthly payments a monthly payment under this section~~ must not be less than \$1 149.55.;

Dependent spouse and one or more dependent children

- 171** (1) This section applies if a deceased worker leaves a dependent spouse and one or more child dependants.
- (2) ~~17(3)(b)~~—Subject to subsection (4), ~~where if~~ the dependants are a surviving dependent spouse and one child dependant, the Board must make a monthly payment of an amount a sum that, when combined with 50% of the federal benefits payable to or for ~~those the dependants referred to in subsection (1),~~ 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);
- (3) ~~17(3)(a)~~ ~~where~~—Subject to subsection (4), if the dependants are a surviving dependent spouse and 2 or more child dependants, children, the Board must make a monthly payment of an amount a sum that, when combined with 50% of the federal benefits payable to or for those dependants, would equal the total of
- (a) ~~(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
- (b) ~~(ii)~~—if there are more than 2 child dependants, \$355.72 per month for each child dependant beyond 2 ~~in that number.~~;
- (4) ~~17(3)(g)~~—The minimum allowances compensation payable under ~~paragraphs (a), (b) and (f)~~ this section must be the allowances compensation that would be payable if the allowances compensation were calculated under ~~those paragraphs~~ this section in respect of a deceased worker with average earnings of \$38 324.16 per year. ~~annum;~~
- (e) [Repealed 2003-65-17.]

One or more dependent children but no dependent spouse

- 172** (1) ~~17(3)(f) where there is~~ This section applies if a deceased worker leaves no surviving dependent spouse eligible for monthly payments under this Division section, and but does leave one or more child dependants.
- (2) (i) ~~the dependant is a~~ Subject to subsection (5), if there is one child dependant, the Board must make a monthly payment of a sum an amount 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;
- (3) (ii) ~~the dependants are 2 children,~~ Subject to subsection (5), if there are 2 child dependants, the Board must make a monthly payment of a sum an amount 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~~
- (4) (iii) ~~the dependants are 3 or more children,~~ Subject to subsection (5), if there are more than 2 child dependants, the Board must make a monthly payment of a sum an amount that, when combined with 50% of the federal benefits payable to or for those children, would equal the total of
- (a) ~~(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) ~~(B)~~ if there are more than 3 child dependants, \$355.72 per month for each child beyond 3 in that number; ~~subject, in all cases, to the minimum set out in paragraph (g);~~
- (5) ~~17(3)(g) The minimum allowances compensation payable under paragraphs (a), (b) and (f) this section must be the allowances compensation that would be payable if the allowances compensation were calculated under those paragraphs~~ this section in respect of a deceased worker with average earnings of \$38 324.16 per year. annum;

Compensation to dependent parents in addition to spouse or children

- 173** (1) ~~17(3)(h) where there is~~ (ii) ~~—~~ This section applies if a deceased worker
- (a) leaves either a dependent spouse, or a dependent child or children, or one or more child dependants entitled to compensation under this Division section, but not both a dependent spouse and one or more child dependants, child or children, and;
- (b) in addition, leaves a dependent parent or dependent parents;

~~(2) then, in~~ In addition to the compensation payable to the spouse or children, a sum, the Board must pay to the dependent parent or dependent parents an amount the Board considers is reasonable and proportionate to the pecuniary loss suffered by the dependent parent or dependent parents by reason of the worker's death, to be determined by the Board,

~~(3) but not exceeding~~ As a restriction on subsection (2), an amount paid under this section must not be greater than \$629.60 per month for life or for a lesser period as determined by the Board,

No dependent spouse or child: compensation to other dependants

174 ~~(1) 17(3)(h) where there is (i) — no~~ This section applies if a deceased worker does not leave a dependent spouse or a child dependant entitled to compensation under this Division, section, but a worker leaves does leave other dependants,;

~~(2) The Board must pay to the other dependants of the worker an amount the Board considers is a sum~~ reasonable and proportionate to the pecuniary loss suffered by those dependants by reason of the worker's death, to be determined by the Board,

~~(3) but not exceeding in the whole~~ As a restriction on subsection (2), the total of the amounts paid under this section must not be greater than \$629.60 per month for life or for a lesser period as determined by the Board, or

Compensation to persons other than dependants

175 ~~(1) 17(3)(i) where~~ This section applies if

(a) either

- ~~(i) no compensation is payable under the foregoing provisions of this subsection; sections 169 to 174 in relation to a deceased worker, or~~
- ~~(ii) the compensation is payable under those sections only to a spouse, a child or children or a parent or parents of the worker, and~~

~~(b) but~~ the worker leaves a spouse, a child or children or a parent or parents who, although 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,;

~~(2) payments,~~ At the discretion of the Board, payments may be made to that spouse, child or children, parent or parents, persons referred to in subsection (1) (b), but not to more than one of those the categories of persons referred to in that provision. ;

~~(3) As a restriction on subsection (2), the total of the amounts paid under this section must not be greater than not exceeding~~ \$629.60 per month for life or for a lesser period determined by the Board, and

Compensation to foster parent and dependent children

- 176** (1) ~~17(3)(j) — where~~ This section applies if
- (a) a deceased worker
 - (i) leaves a child or children entitled to compensation under this Division, and
 - (ii) ~~the worker either~~ leaves no dependent surviving spouse, or the surviving dependent spouse subsequently dies, and
 - (b) the Board considers it desirable to continue the existing household, and
 - (c) ~~when~~ a suitable person acts as a foster parent in keeping up the household and taking care of and maintaining the child or children, entitled to compensation, in a manner satisfactory to the Board,;
- (2) The same allowance compensation is payable to the foster parent and children as would have been payable to a surviving dependent spouse and child dependants, children, and the compensation must continue as long as those the conditions described in subsection (1) continue.

Apportionment between dependants

- 177** (1) ~~17(14) — Where in any situation there is a need to~~ Subject to subsection (2), if it is necessary to apportion allowances compensation payable to dependants among those dependants, the formula for apportionment must be is at the discretion of the Board,; ~~but,~~
- (2) Unless the Board has grounds for a different apportionment, the apportionment of the following must be in accordance with this subsection:
- (a) ~~where if~~ there is a dependent spouse and one child dependant, 2/3 of the compensation is payable to the dependent spouse and 1/3 to the child;
 - (b) ~~where if~~ there is a dependent spouse and more than one child dependant, 1/2 of the compensation is payable to the dependent spouse and 1/2 among the children in equal shares; and
 - (c) ~~where if there are children is~~ more than one child dependant but no dependent spouse, among the compensation is payable to the children in equal shares.

Dependent spouse living apart from worker at the date of death

- 178** (1) ~~17(9) — Where~~ This section applies if
- (a) compensation is payable as the result of under this Division in relation to a worker's death, the death of a worker, or of injury resulting in death, and
 - (b) ~~where~~ at the date of death, the worker and a dependent spouse of the worker were living separate and apart,; ~~and~~

~~(2) (9)(a) — there was in force~~ If, at the date of the worker's death, there was in force a court order or separation agreement providing periodic payments for support of the dependent spouse, or children living with that spouse,

~~(a) no compensation under sections 169 to 171 subsection (3) [compensation to dependent spouse or to dependent spouse and child or children] is payable to the spouse or children living with the spouse, and;~~

~~(b) but~~ subject to subsection (5), the Board must make 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~~

~~(3) (b) —~~ Subject to subsection (5), if

~~(a) there was no court order or separation agreement described in subsection (2) in force at the date of the worker's death, providing periodic payments for support of the dependent spouse, or children living with that spouse, and~~

~~(b) (i) —~~ (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 that date, the death of the worker,

the Board must make monthly payments ~~must be made~~ up to the level of support ~~which the Board believes considers~~ the spouse and ~~those~~ children would have been likely to receive from the worker if the death had not occurred.

~~(4) Subject to subsection (5), if~~

~~(a) there was no court order or separation agreement described in subsection (2) in force at the date of the worker's death, and~~

~~(b) (i) —~~ (i) the worker and dependent spouse were living separate and apart for a period of less than 3 months preceding the that date, of death of the worker,

compensation is payable as provided in ~~subsection (3); or~~ sections 169 to 176 [rules respecting specific compensation payment].

~~(5) 17(10) —~~ Compensation payable under this section subsection (9) must never exceed not be greater than the compensation that would have been payable under sections 169 to 176 subsection (3) if there had been no separation.

Restriction on compensation to spouse living in marriage-like relationship

179 ~~(1) 17(11) —~~ Subject to subsection (2), compensation under this Division section is payable to a worker's surviving spouse described in paragraph (b) [marriage-like relationship] of the definition of "spouse" in section 1, only if a the worker was living with and contributing to the support and maintenance of the that spouse immediately preceding before the worker's death.

(2) Subsection (1) does not apply in relation to compensation that is payable under section 178 (2) or (3) [payment in relation to court order or separation agreement].

Worker leaves more than one dependent spouse

180 (1) ~~17(12)~~ —If This section applies if a deceased worker has left both

(a) a worker has left both

(a) (i) a dependent surviving spouse who is a spouse described in paragraph (a) [spouse by marriage] of the definition of “spouse” in section 1 from whom, at the date of death, the worker was living separate and apart, and

(b) (ii) a surviving spouse described in paragraph (b) [marriage-like relationship] of the that definition of “spouse”, with whom the worker was living, and to whose support and maintenance the worker was contributing, immediately preceding before the worker’s death, and

(2) (b) —If there is a difference in between

(a) (i) the amount of compensation payable to the spouse referred to in subsection (1) (a) paragraph (a) (i) of this subsection [spouse by marriage] by reason of the separation, and

(b) (ii) the amount of compensation that would have been payable to that person spouse if that person the spouse 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 subsection (1) (b) paragraph (a) (ii) of this subsection [marriage-like relationship].

Change in circumstances: dependent spouse and dependent children – reduction in number of dependent children

181 (1) ~~17(4)~~ —This section applies if Where an invalid spouse ceases to be an invalid, or a surviving spouse with dependent children [dependent spouse with one or more child dependants] no longer has dependent children or

(a) a deceased worker has left both a dependent spouse and child dependants, and

(b) subsequently there is a reduction in the number of child dependants, dependent children,

(2) The surviving dependent spouse or and children is remaining child dependants are then entitled to the same category of benefits as compensation that would have been payable if the death of the worker’s death 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 child dependants was reduced, as the case may be.

Change in circumstances: spouse ceases to have dependent children

- 182** (1) ~~17(4)~~ — Where an invalid spouse ceases to be an invalid, or a surviving spouse ceases to be a surviving spouse, This section applies if
- (a) a deceased worker has left both a dependent spouse with and dependent children, and
 - (b) no longer has the dependent spouse subsequently ceases to have dependent children, or there is a reduction in the number of dependent children, the surviving spouse or children
- (2) ~~is then~~ The dependent spouse is entitled to the same category of benefits as would the compensation that would have been payable if the death of the worker's death had occurred on the date the invalid spouse ceases to be an invalid or the surviving dependent spouse no longer has ceased to have dependent children, or the number of dependent children is reduced, as the case may be.

Change in circumstances: spouse and dependent children – spouse dies

- 183** (1) ~~17(5)~~ Where This section applies if
- (a) there is a surviving a deceased worker leaves a dependent spouse and a child or one or more dependent children, and
 - (b) the surviving dependent spouse subsequently dies,;
- (2) ~~the allowances~~ Compensation to the dependent 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.

Change in circumstances: only dependent children – reduction in number of dependent children

- 184** (1) ~~17(4)~~ — Where an invalid spouse ceases to be an invalid, or a surviving spouse with dependent children no longer has dependent children or This section applies if
- (a) a deceased worker leaves dependent children and no dependent spouse, and
 - (b) subsequently there is a reduction in the number of dependent children,;
- (2) ~~the surviving spouse or children is then~~ The remaining dependent children are entitled to the same category of benefits as compensation that would have been payable if the death of the worker's death 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 was reduced, as the case may be.

Change in circumstances: dependent spouse ceases to be incapable of earning

- 185** (1) ~~17(4)~~ — This section applies if ~~Where~~

~~(a) a deceased worker leaves an invalid spouse~~ a dependent spouse who has had a physical or mental disability that resulted in the spouse being incapable of earning, and

~~(b) the dependent spouse subsequently ceases to have that disability, 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~~

~~(2) is then~~ The dependent spouse is entitled to the same category of benefits as compensation that would have been payable if ~~the death of the worker's death~~ had occurred on the date the ~~invalid dependent spouse ceased to have the disability, 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.~~

Compensation in relation to the death of more than one worker

~~186 (1) 17(16)~~ Subject to subsection (2), if a dependant is entitled to receive compensation under this Part

(a) as a result of the ~~worker's 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.

~~(2) 17(16.1)~~ The compensation payable for a dependant under subsection ~~(1)(16)~~ must not

(a) ~~must not~~ be less than the ~~highest-greatest~~ of the amounts that would otherwise be payable in respect of the death of any of the workers, and

(b) ~~must not be more-greater~~ than 90% of the average net earnings of a worker whose wage rate is the maximum wage rate established under section ~~20933 (6) and (7)~~ [maximum wage rate for average earnings] for the year in which the last death referred to in subsection ~~(1) (b)(16) (b)~~ occurred.

~~(3) 17(16.2)~~ For the purposes of subsection ~~(2), (16.1),~~ "average net earnings" means the average net earnings ~~for the worker are to be~~ calculated in accordance with section ~~22033.8~~ [determination of average net earnings: short-term compensation].

Board authority in relation to dependent spouse who has impairment of earning capacity

~~187 (1) 17(6)~~ Where at the date of death a spouse is not an invalid, ~~This section applies if, at the date of a worker's death, a dependent spouse of the worker does not have a physical or mental disability that results in the spouse being incapable of earning but is suffering from~~ does have a disability that results in a substantial impairment of earning capacity.

- (2) 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 the incapacity referred to in subsection (1). ~~been an invalid.~~

Proof of dependant status ~~existence of dependants~~

- 18820** (1) The Board may from time to time require the proof the Board considers necessary of the existence and condition of dependants ~~in receipt of receiving~~ compensation payments under this Part. ~~that is deemed necessary by the Board,~~
- (2) ~~and pending the receipt of that proof~~ If the Board requires proof under this section, the Board may withhold further compensation payments until that proof is received.

Board authority in relation to matters not otherwise dealt with

189 ~~17(17)~~ ~~Where-If~~

- (a) a situation arises that is not expressly covered by this Division, section, or
(b) ~~where~~ some special additional facts are present that the Board considers would, ~~in the Board's opinion,~~ make the strict application of this Division section inappropriate,

the Board must make rules and give ~~make~~ decisions ~~it~~ the Board considers fair, using this Division section as a guideline.

Division 6 – Compensation for Worker Disability

Compensation subject to general rules

190 Compensation under this Division is subject to the following provisions:

- (a) section 230 [manner of compensation payment: periodic or lump sum];
(b) section 231 [payment of compensation in specific circumstances];
(c) section 232 [Board authority to discontinue or suspend payments];
(d) section 233 [deduction in relation to payments from employer].

Temporary total disability

- 19129** (1) Subject to subsection (2), 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 of an amount that equals 90% of the worker's average net earnings.
- (2) ~~The Compensation awarded to be paid under this section~~
- (a) must not be less than an amount equal to that equals \$405.87 per week if the worker's average earnings per week are greater than or equal to that amount, and unless

~~(b) must be an amount that equals the worker's average earnings if the worker's average earnings per week are less than the amount referred to in paragraph (a), that sum per week, in which case the worker must receive compensation in an amount equal to the worker's average earnings.~~

Temporary partial disability

- 19230** (1) Subject to ~~subsection (2), 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 of an amount 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 to be paid under this section must be calculated in the same manner as prescribed by accordance with section 191 (2)29 (2) for temporary total disability but to the extent only of the partial disability.~~

Recurrence of temporary disability more than 3 years after injury

- 19332** (1) ~~For the purpose of determining the amount of compensation payable where This section applies if there is a recurrence of temporary total disability or temporary partial disability of a worker after a lapse of 3 years following the occurrence of the injury to the worker.;~~
- (2) For the purpose of determining the amount of compensation payable to the worker, the Board may calculate the compensation as if the date of the recurrence was the date of the injury were the happening of the injury if it the Board considers that, by doing so, the compensation payable would more nearly closely represent the percentage of actual loss of earnings suffered by of the worker by reason of the recurrence of the injury.
- (3) ~~(2) —~~ Subject to subsection (4), if ~~Where~~
- (a) a worker has been awarded receives compensation for permanent partial disability for the original injury, and
 - (b) compensation for recurrence of temporary total disability under subsection (2)(4) is calculated by reference to the average earnings of the worker at the date of the recurrence,
- the compensation under this section must be calculated without deduction of the compensation payable for the permanent partial disability.;

- ~~(4) but~~ The total compensation payable under this section must not ~~exceed~~ be greater than the maximum payable under this Part at the date of the recurrence.

Permanent total disability

- 19422** (1) Subject to subsection (2), ~~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 of an amount that equals 90% of the worker's average net earnings.
- (2) ~~The Compensation awarded to be paid~~ under this section must not be less than \$1 759.04 per month.

Permanent partial disability: general rules

- 19523** (1) Subject to section 196, ~~subsections (3) to (3.2) section~~, and sections 34 and 35, if a permanent partial disability results from a worker's injury, the Board must
- (a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and
 - (b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.
- ~~(2) (4) — Where permanent partial disability results from the injury, The minimum compensation awarded to be paid under this section must be calculated in the same manner as provided by accordance with section 191 (2) (2) [compensation for temporary total disability] for temporary total disability but to the extent only of the permanent partial disability.~~
- ~~(3) (2) — The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations which that may be used as a guide in determining the compensation payable in permanent partial disability cases.~~

Permanent partial disability: exception to general rules

- 196** (1) ~~23(3.1) — A payment may be made under subsection (3) only~~ This section applies in relation to a permanent partial disability if the Board determines that the combined effect of
- (a) the worker's occupation at the time of the injury, and
 - (b) the worker's disability resulting from the injury
- is so exceptional that an amount determined under ~~subsection (4)~~ section 195 does not appropriately compensate the worker for the injury.
- ~~(2) (3.2) — In making a determination under subsection (1) (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.~~

- (3) Subject to sections 34 and 35, if ~~(a) a permanent partial disability results from a worker's injury, and (b) If~~ the Board makes a determination under subsection ~~(1), (3.1)~~ with respect to the worker, the Board may pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
- ~~(a) (e)~~ the average net earnings of the worker before the injury, and
 - ~~(b) (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.

Permanent disability or increase in permanent disability occurring more than 3 years after injury

- ~~197~~ (1) ~~32(3) Where~~ This section applies if, more than 3 years after ~~an~~ a worker's injury,
- ~~(a) a permanent disability resulting from the injury occurs, or~~
 - ~~(b) an increased degree of permanent disability resulting from the injury occurs.~~
- (2) Despite section 208 (1) [*determination of average earnings as at time of injury*], ~~The compensation payable for the permanent disability or increased degree of permanent disability may be calculated~~ the Board may calculate the compensation 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, as applicable.

Loss of Hearing-Non-traumatic hearing loss: compensation where no resulting loss of earnings and compensation where earnings affected

- ~~198~~ (1) ~~7~~ This section applies in relation to compensation payable to a worker under section 145 [*non-traumatic hearing loss*].
- (2) ~~Where~~ If
- ~~(a) the loss of hearing the worker's hearing loss amounts to total deafness measured in the manner set out described in Schedule D, Schedule 2 [Non-Traumatic Hearing Loss] of this Act, and~~
 - ~~(b) but with there is no loss of earnings resulting from the hearing loss, of hearing,~~
- compensation must be calculated as for a disability equivalent to 15% of total disability ~~under this Part.~~

- (3) ~~Where-If~~
- (a) ~~the loss of hearing~~ the worker's hearing loss does not amount to total deafness measured in the manner referred to in subsection (2), and
 - (b) there is no loss of earnings resulting from the hearing loss, ~~of hearing~~, compensation must be calculated as for a ~~lesser-lower~~ lower percentage of total disability than that specified in subsection (2); and, unless otherwise ordered by the Board, must be based on the percentages set out in Schedule ~~D.2~~ 2 of this Act.
- (4) If a loss or reduction of earnings results from the ~~loss of hearing loss~~, the worker is entitled to compensation for a total or partial disability as established provided under this Division. Part.
- (5) ~~(4.1)~~—Compensation paid for a worker's hearing loss ~~of hearing~~ under subsection (4) must not be less than the amount determined under subsection (2) or (3).

Permanent disfigurement

- ~~199~~ 23(5) ~~Where the worker has suffered~~ If a worker experiences a serious and permanent disfigurement ~~which that~~ the Board considers ~~is~~ capable of impairing the worker's earning capacity, the Board may pay a lump sum in compensation ~~may be paid, although and may do so even if~~ the amount the worker was earning before the injury has not been reduced, ~~diminished~~.

Maximum compensation in the case of further disability

- ~~2003~~ (1) ~~Where-If~~ 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 that, in total, is~~ in excess of the maximum payable for total disability.
- (2) ~~Where-If~~ a worker has received a lump sum in ~~lieu~~ place of the periodic payments that otherwise would have been payable for a permanent disability, the worker is deemed, for the purposes of subsection (1), ~~deemed to still receive~~ be still in receipt of the periodic payments.

Period of Payment for total or partial Payment period for worker disability compensation

- ~~20123.1~~ (1) Subject to subsection (2), compensation payable periodic payment of compensation under this Division section 22 (1), 23 (1) or (3), 29 (1) or 30 (1) may be paid to an injured worker; only as follows:
- (a) if the worker is ~~less than~~ under 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) of the injury~~, the date the worker would retire, as determined by the Board.

Termination of periodic payments

- ~~(2) 31.1~~ — ~~Despite section 23.1, As a restriction on subsection (1), the Board may not make a periodic payment to a worker under this Division 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.:~~

Deductions in relation to Canada Pension Plan disability benefit from compensation in certain cases

- ~~202~~ (1) ~~34(2)~~ — ~~Subject to sections 7 (4.1), 22 (2) and 23 (4), the Board must deduct, from the amount of~~ This section applies to a worker who receives
- ~~(a) a periodic payment of compensation paid to a worker under section 19422 (1), or 19523 (1) or 196 (1)23 (3) [compensation for permanent disability] for in respect of an injury, and~~
 - ~~(b) an amount equal to 50% of any a disability benefit that the worker is paid in respect of the injury under the Canada Pension Plan in respect of the injury.:~~
- (2) ~~34(2)~~ — ~~Subject to sections 194 (2), 195 (2) and 198 (5)7 (4.1), 22 (2) and 23 (4) [minimum compensation payments], the Board must deduct, from the amount of a periodic payment referred to in subsection (1) (a), of compensation paid to a worker under section 22 (1) or 23 (1) or (3) for an injury, an amount equal to that equals 50% of any disability benefit paid as referred to in subsection (1) (b), that the worker is paid in respect of the injury under the Canada Pension Plan.~~

Reconsidering benefits Reconsideration of prescribed compensation claims

- ~~20324~~ (1) ~~Despite section 96 (1), This section applies to the claims for compensation that the Board may, by regulation, determine.:~~
- (2) A worker may apply for reconsideration of compensation payable to the worker if provided that
- (a) the worker's claim is of a type prescribed under subsection (1),

~~(b) (a) the worker is still suffering from~~ continues to have a compensable disability that was sustained more than 10 years before the worker's application under ~~subsection (2); this section is made, and~~

~~(c) (b) either~~

~~(i) a the permanent disability award was made~~ compensation determined by the Board for the worker was based on a percentage of total disability of 12% or greater, or

~~(ii) the worker's case is of a kind in which the Board uses a projected loss of earnings method in calculating the compensation.~~

~~(3) (7) Notwithstanding that a worker suffering a permanent disability A worker may apply under this section even though the worker has received~~

~~(a) an award compensation for permanent disability that has been wholly or partly commuted under section 230 [commutation of periodic payments to lump sum payment], or~~

~~(b) an award compensation for a fixed term,~~

~~the worker may apply under this section, but, for the purposes of this section, 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.~~

~~(4) (2) Despite section 122 (1) [Board decisions are final], if a worker's application under this section is with respect to a claim for compensation to which this section applies, the Board must, on application by the worker,~~

~~(a) the Board must reconsider the compensation benefits provided to the worker, and;~~

~~(b) if, having regard to the projected loss of income resulting from the worker's disability, the Board considers that 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, the Board must increase or establish periodic payments must be established or raised accordingly.~~

~~(5) For the purposes of subsection (4), the Board must consider compensation to be adequate if,~~

~~(a) (3) Where in the case of a worker who is under 65 years of age, the age of 65 years, compensation is considered adequate for the purposes of this section if it equals the amount of compensation provided to the worker is at least 75% of the projected loss of earnings resulting from the worker's disability, and~~

~~(b) (4) Where in the case of a worker who is 65 years of age or older, over, compensation is considered adequate for the purposes of this section if it equals the amount of compensation provided to the worker is at least 75%~~

of the projected loss of retirement income resulting from the worker's disability.

- (6) ~~(5)~~ — ~~Where a worker is under the age of 65 years, Periodic payments increased or established or raised under this section for a worker who is under 65 years of age are subject to readjustment, by reference to subsection (5) (b)(4), on the worker reaching 65 years of age, attaining the age of 65 years.~~
- (7) ~~(6)~~ — The calculation of benefits compensation under this section must be made in the manner the Board determines.
- (8) Section ~~20034~~ *[maximum compensation in the case of further disability]* 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 an applicant worker following a reconsideration that are increased or established under this section must not exceed the maximum the Board would ~~award to establish, at the time of the reconsideration decision, for a worker in an occupational category similar to the occupation that of the applicant worker before the injury if he or she had, at the effective date of the reconsideration under this section, suffered that other worker had~~ a compensable disability similar to the compensable disability being suffered by of the applicant worker.
- (10) ~~(12)~~ — A reconsideration decision under this section must not result in periodic payments to a worker being ~~lower~~ less than they would ~~be~~ have been if no application had ever been made 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 compensation benefits under this section is the date the application for reconsideration is received ~~at~~ by the Board.
- (12) ~~(10)~~ — A worker may reapply under this section for reconsideration of ~~his or her~~ the worker's compensation ~~benefits after a further 10 years after have elapsed since the last~~ worker's most recent application under this section.

Retirement benefit in relation to permanent disability benefits

- 20423-2** (1) This section applies to a worker who is receiving periodic payments under section ~~194 (1), 195 (1) or 196 (3)~~ ~~22 (1) or 23 (1) or (3)~~ *[compensation for permanent disability]*.
- (2) The Board must set aside, at the time a periodic payment is made to a worker, an amount that
- (a) ~~is equal~~ equals to 5% of the periodic payment, and

(b) is in addition to the periodic payment.

~~(3) (8)~~—The Board must provide each worker ~~annually~~ with an annual statement containing all relevant information about the funds accumulated by the Board for payment of the worker's retirement benefit.

Worker contributions to retirement benefit

205 (1) ~~23.2(3)~~—A worker may apply to the Board to contribute to the amount set aside or to be set aside under ~~section 204~~~~subsection (2)~~ an amount that is not less than 1% and not greater than 5% of each subsequent periodic payment made to the worker.

(2) ~~23.2(4)~~—Subject to subsection ~~(3)(5)~~, if ~~the a~~ worker makes an application under this section, ~~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 ~~section 204~~~~subsection (2)~~.

(3) ~~23.2(5)~~—The deductions made by the Board under subsection ~~(2)(4)~~ may not be varied, except in response to an application by the worker to stop the deductions.

(4) ~~23.2(6)~~—A worker may ~~only once~~

- (a) only once make an application for deductions under subsection ~~(2)(3)~~, and
- (b) only once ~~apply~~ make an application to stop the deductions under subsection (3).

(5) ~~23.2(7)~~—An application made under ~~subsection (3) or (5)~~ this section must be made in a form acceptable to the Board.

Payment of retirement benefit benefits

~~206~~~~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 ~~204~~, ~~23.2 (2)~~;
- (b) the contributions, if any, made by the worker under section ~~205~~, ~~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) of this subsection, on the date the worker reaches 65 years of age, or

- (b) ~~on the if the~~ date of the last periodic payment to the worker, ~~if that date is~~ after the date the worker reaches 65 years of age, on the date of that last periodic payment.
- (3) Despite section ~~231 (4)35 (4)~~ [*Board discretion respecting amount accrued to worker*], if a worker dies before receiving ~~his or her the~~ worker's retirement benefit under subsection (1) of this section, the Board must pay the lump sum to which the worker ~~is entitled would have been 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 Board administration of money to be paid as retirement benefit

- 20723.4** (1) The Board must establish a reserve in the accident fund into which the amounts and contributions referred to in sections 204 and 205~~section 23.2 (2) and (4)~~ must be deposited.
- (2) The funds deposited in the reserve under subsection (1) 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 ~~206~~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 compensation provisions of this Part as if ~~it the~~ financial institution or bank were the Board.

Division 7 – Worker's Average Earnings and Earning Capacity

Determination of worker's average earnings and earning capacity

- 20833** (1) The Board must determine the amount of a worker's average earnings and the worker's 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 a worker's average earnings ~~of a worker~~ in accordance with this Division, 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 subject to the restriction that the amount may not exceed the maximum wage rate as determined under section 209, subsections (6) to (10):~~
- (3) ~~(3.1) —~~ The Board must not include the following in determining the amount of a worker's 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.
- (4) ~~(3.2)~~ — ~~The Board may include, in determining the amount of average earnings of a worker, if income from employment benefits was payable to the a worker under the *Employment Insurance Act* (Canada) during the period for which average earnings are to be determined, the Board may include that income in the determination only if the Board considers that, 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.~~
- (5) The compensation payable to workers who, on July 1, 1974, are in receipt of receive compensation for permanent total disability must not be less than \$1 759.04 per month.

Annual determination of maximum wage rate for average earnings

- 209** (1) ~~33(7)~~ — ~~Prior to~~ Before the end of each calendar year, the Board must determine the maximum wage rate to be applicable for the following calendar year.
- (2) ~~33(8)~~ — ~~The maximum wage rate to be determined under subsection (7) this section must be an amount, which may be rounded to the nearest \$100, that the Board thinks considers represents the same relationship to the sum of \$11 200 amount of \$40 000 as~~
- (a) the annual average of wages and salaries in British Columbia ~~the Province~~ for the year preceding ~~that the year~~ in which the determination is being made
bears to
 - (b) the annual average of wages and salaries in British Columbia for the year 1984, 1972; ~~and the resulting figure may be rounded to the nearest \$100.~~
- (3) ~~33(9)~~ — For the purpose of determining annual average of wages and salaries under this section, subsection (8), the Board may use data published or supplied by Statistics Canada.

General rule for Determination of Average earnings: short-term compensation

21033.1 (1) — Subject to this Division, sections 33.5 to 33.7, the Board must determine, for the shorter of the following periods, the amount of a worker's 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~~ that worker was employed at the time of the injury:

- (a) the initial payment period, being the period :
 - (i) starting on the date of the injury, and
 - (ii) ending on the last day of the tenth week for which compensation is payable under this Part to the worker for a temporary disability resulting from that injury;
- (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.

Average earnings: long-term compensation

211 ~~33.1~~(2) — Subject to this Division, sections 33.2 to 33.7, if a worker's disability continues after the end of the shorter period referred to in section 210, subsection (1) ~~(a) and (b) that is shorter for the worker~~, the Board must, for the period starting after the end of that ~~shorter~~ shorter period, determine the amount of the worker's average earnings of the worker based on the worker's gross earnings, as determined by the Board, for the ~~12-month~~ 12-month period immediately preceding the date of the worker's injury.

Exception to section 33.1 — person Worker without earnings: short-term and long-term compensation

21233.7 If a worker had no earnings at the time of the injury, the Board must determine the amount of a worker's average earnings of a worker under ~~section 33.1~~ from the date of injury in a manner that the Board considers appropriate.

Worker in public interest undertaking: short-term and long-term compensation

- 213** (1) ~~3(5)(e) — where~~ This section applies to a person who is
- (a) deemed to be a worker under section 5 [extending application: public interest undertakings], and
 - (b) is not regularly employed;
- (2) ~~— and~~ The Board may, on the terms and conditions the Board directs, fix the amount of a person's average earnings having regard to all the circumstances, including ~~his or her~~ the person's income, ~~fix his or her average earnings at not~~
- (3) As a restriction, an amount fixed under subsection (2) must not be less than \$135.30 per week, or more than the maximum wage rate provided under section 33.

Exception section 33.1 – Casual worker: short-term and long-term compensation

21433.5 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 the worker's 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~~ 12-month period immediately preceding the date of injury.

**Exception to section 33.1 – person with coverage under section 2 (2)
Employer or independent operator with purchased coverage: short-term and long-term compensation**

21533.6 If an employer or independent operator ~~or employer~~, to whom the Board directs that ~~this Part applies~~ the compensation provisions apply under section ~~42~~ (2); [*coverage for independent operators and employers*] has purchased coverage under this Act, the Board must determine the amount of the employer's or independent operator's 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 (2)
Worker who is apprentice or learner: long-term compensation**

- 21633.2** (1) This section applies to a worker who, at the time of injury, ~~is was~~
- (a) an apprentice in a trade, ~~an~~ occupation or ~~a~~ profession, or
 - (b) ~~is~~ a person referred to in paragraph (b) [*training preliminary to employment*] of the definition of "worker" in section 1.
- (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 the worker's 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~~ the worker was employed at the time of the injury;
 - (b) the worker's gross earnings, as determined by the Board, for the ~~12-month~~ 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 the worker's average earnings ~~of the worker~~ based on the gross earnings, as determined by the Board, for the ~~12-month~~ 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) –~~

Worker employed for less than 12 months: long-term compensation

- ~~21733.3~~** (1) ~~In the case of~~ This section applies to a worker who was employed, on other than a casual or temporary basis, by the worker's employer for less than 12 months immediately preceding the date of the injury.
- (2) The Board's determination of the amount of the worker's average earnings under section ~~21133.1(2)~~ [long-term compensation] must be based on the gross earnings, as determined by the Board, for the ~~12-month~~ 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: long-term compensation

- ~~21833.4~~** (1) If exceptional circumstances exist such that the Board considers that the application of section ~~21133.1(2)~~ would be inequitable, the Board's determination of the amount of a worker's 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 214, 215, 216 or 21733.2, 33.3, 33.5 or 33.6.

Determination if multiple rules apply

- ~~219~~** ~~33.1(3)~~ — If 2 or more of sections ~~212 to 21833.2 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.

Division 8 – Average Net Earnings of Worker

Determination of Average net earnings: short-term compensation – initial period of injury

- ~~220~~** (1) ~~33.8(2)~~ — This section applies to the determination of the amount of a worker's average net earnings ~~for a worker~~ for the period under section 210 [average earnings: short-term compensation] that applies to the worker. ~~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.~~
- (2) (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: The Board must estimate the following deductions based on the worker's earnings for the calendar year immediately preceding the injury:~~

- ~~(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).~~

(3) In order to determine the amount of a worker's average net earnings under this section, the Board must ~~subtract the worker's allowable deductions for the immediately preceding calendar year~~ deduct the amounts estimated under subsection (2) from the worker's average earnings, as determined under sections 33.1 to 33.7. Division 7 of this Part.

(4) For the purposes of this section, premiums and contributions referred to in subsection ~~(1)~~ (2) (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 are the only deductions that may be made for a worker under the *Income Tax Act* and the *Income Tax Act* (Canada); ~~are made for a worker:~~

- ~~(a)~~ (i) the amounts that may be deducted under
 - (i) section 4.3 (1) (c) [*BC basic personal credit – single status*] of the *Income Tax Act*, and
 - (ii) section 118 (1) (c) [*equivalent*] of the *Income Tax Act* (Canada),
each multiplied by 1.5;
- ~~(b)~~ (ii) the amounts that may be deducted under
 - (i) section 4.64 [*BC credit for EI premium and CPP contribution*] of the *Income Tax Act*, and
 - (ii) section 118.7 [*equivalent*] 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 compensation – longterm injury

221 (1) ~~33.9(2)~~—This section applies to the determination of the amount of a worker's average net earnings for a worker starting after the end of the applicable period referred to in section 220 (1), section 33.8 (2) (a) and (b) that is shorter for the worker.

(2) ~~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: The Board must estimate the following deductions based on the worker's earnings for the calendar year immediately preceding the injury:~~

- (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 those Acts. ~~the *Income Tax Act* and the *Income Tax Act* (Canada).~~
- (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~~ deduct the amounts estimated under subsection (2) from the worker's average earnings; as determined under Division 7 of this Part~~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
 - (i) section 4.3 (1) (c) [BC basic personal credit – single status] of the *Income Tax Act*, and
 - (ii) section 118 (1) (c) [equivalent] of the *Income Tax Act* (Canada);
 - (b) the amounts that may be deducted under
 - (i) section 4.64 [B.C. credit for EI premium and CPP contribution] of the *Income Tax Act*, and
 - (ii) section 118.7 [equivalent] of the *Income Tax Act* (Canada);
 - (c) the amounts that may be deducted under
 - (i) section 4.3 (1) (a), (b) or (e) [other personal credits] of the *Income Tax Act*, and
 - (ii) section 118 (1) (a), (b) or (d) [equivalent] of the *Income Tax Act* (Canada).

Schedule or procedure for determining average net earnings

- ~~22233.91~~ (1) The Board may establish for each calendar year one or more schedules of ~~allowable deductions under section 220 or 221,~~ or procedures for determining ~~allowable those deductions,~~ that may be used as a guide to determining the ~~allowable deductions under those sections.~~ 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~~ the worker under this Division~~section 33.8 and 33.9.~~

Division 9 – Transitional and Related Compensation Matters

Periodic payments awarded before 1966 for permanent injury~~Transitional~~

- 22326** (1) ~~Where~~ This section applies in relation to periodical-periodic payments for permanent disability that were awarded to a worker by the Board prior to before January 1, 1966 if, and where
- (a) ~~(b)~~ a portion of the periodical-periodic payments equivalent to 12% of total disability or greater was commuted prior to that date; before January 1, 1966, or
 - (b) ~~(a)~~ the award was for a percentage of total disability of 12% or greater; and the whole of the periodical-periodic payments was commuted before January 1, 1966, or prior to that date;
 - (c) the award was for a percentage of total disability of 12% or greater and was of periodical-periodic payments for a fixed term;
- (2) ~~(1) and where the~~ If a worker to whom the an award referred to in subsection (1) had been made is still suffering from was made still has the disability, the Board may, on the application of the worker, establish new periodic payments that, which are to commence-begin for the month in which the application is received at by the Board.
- (3) ~~In order to calculate~~ For the purpose of calculating the rate of new periodic payments to be established under this section, the Board must determine the following:
- (a) as applicable,
 - (i) if the commutation was partial, the additional rate of monthly payments that would have been payable on January 1, 1966 if there had been no commutation, and
 - (ii) if the commutation was complete, 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, which additional amount is to be; 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 before the month in which the application is was received.
- (4) The rate of the new periodical-periodic payments to be established under this section must be the amount calculated under subsection (3) (b), but future

adjustments under section ~~334~~²⁵ [annual adjustment of periodic payment amounts] must be based on the ~~sum total~~ of the amounts calculated under subsection (3) (a) and (b) ~~of this section~~.

- (5) This section does not apply ~~where the purpose of the section if its purpose has been achieved as a result of an application under section 203~~²⁴ [reconsideration of prescribed compensation claims] or in some other way.

Workers receiving health care before April 1, 1972

~~224~~ (1) ~~21(4)~~ — ~~Where a worker received, If, before April 1, 1972, a worker received health care under~~

- (a) the *Canada Shipping Act*, R.S.C. 1970, c. S-9, or
- (b) a health care plan approved by the Board,

the worker is entitled to receive, ~~additional health care~~ in accordance with Division 4 [Vocational Rehabilitation, Health Care and Other Assistance] of this Part. ~~this section, additional health care.~~

- (2) ~~21(5)~~ — ~~Where If additional health care is provided by the Board under subsection (4), this section, its the Board's cost of providing the health care may be charged in the a manner the Board considers proper.~~

Compensation in relation to worker death before July 1, 1974

~~225~~¹⁸ (1) ~~Where, If, on July 1, 1974,~~

- (a) compensation ~~is was~~ being paid to one or more dependants in respect of deaths occurring ~~prior to before~~ that date,[;]
- (b) those dependants ~~are were~~ not receiving or were not entitled to receive benefits under the *Canada Pension Plan*,[;] and
- (c) as applicable,

(i) ~~the dependant is was~~ a widow who ~~is was~~ 50 years of age or ~~over~~ older or ~~is an invalid spouse, had a physical or mental disability that resulted in the spouse being incapable of earning,~~

(ii) ~~the dependants are were~~ children, or

(iii) ~~the dependants were~~ a widow and children,

there must be added to the monthly payments under the compensation provisions the ~~sum amount~~ of \$476.32 for each such dependent ~~spouse widow~~ and \$147.85 for each dependent child.

- (2) ~~Where If~~

(a) dependants would qualify for the increases ~~in under~~ subsection (1) but for the fact that they are receiving or entitled to receive benefits under the *Canada Pension Plan*, and

~~(b) where the amount of benefits under the *Canada Pension Plan* is less than the amounts set out specified in subsection (1),~~

~~the monthly payments payable to those dependants under this Part the compensation provisions must be increased by the amount by which the benefits under the *Canada Pension Plan* are less than the specified amounts.~~

~~(3) 19.1 — The Board must make periodic payments under section 17, 18 or 19 this section 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.~~

Compensation in relation to hearing loss before September 1, 1975

~~226 7 — (5) — Compensation is not payable to a worker under this section 145 [non-traumatic hearing loss] is not payable~~

~~(a) in respect of a period prior to before September 1, 1975, or and; but~~

~~(b) 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 if the worker's exposure to causes of hearing loss in British Columbia ended terminated prior to before that date.~~

Compensation in relation to worker injury before January 1, 1986

~~227 33(10) — Where In relation to a worker is injured after December 31, 1985, before January 1, 1986, section 209 (2) [maximum wage rate] is to be read as if~~

~~(a) the reference to \$40 000 were a reference to \$11 200, and the references in subsections (6) and (8) to \$11 200 must be read as references to \$40 000, and~~

~~(b) the reference to 1984 were a reference to 1972. in subsection (8) to 1972 must be read as a reference to 1984.~~

Compensation in relation to worker death before June 30, 2002 Transitional death of worker

~~22835.2 (1) In this section;~~

~~“former Act” means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492;~~

~~“transition date” means December 31, 2003, being the date on which this section comes came into force.~~

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

~~(3) Subject to subsections (5) and (6), this the former Act, as it read immediately before June 30, 2002, applies to the a death referred to in subsection (2). 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) sections 181 to 185~~ [compensation adjustment when there are changes in circumstances] of this Act, the Board must, if the actual date of the worker's death ~~of a worker~~ was before June 30, 2002, base the recalculation on ~~this the former~~ Act as it read immediately before June 30, 2002.
- (5) ~~Subject to section 19 (2.1) of this Act, Section 33425~~ [annual adjustment of periodic payment amounts] 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 a worker's 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~~ [compensation in fatal cases] and 18 [addition to payments in relation to worker death before July 1, 1974] and Schedule C [Payments to Widows] of ~~this the former~~ Act, as it read immediately before June 30, 2002, in accordance with section ~~333 (1)25.2 (1)~~ [annual adjustment of dollar amounts referred to in Act] of this Act, ~~as amended by the Skills Development and Labour Statutes Amendment Act, 2003.~~

Compensation in relation to worker injury before June 30, 2002 Transitional

22935.1 (1) In this section:;

“former Act” means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492;

“transition date” means June 30, 2002, being the date on which ~~that~~ this section comes ~~was~~ came into force.

- (2) ~~Subject to subsection (7), this Act, as amended by the Workers Compensation Amendment Act, 2002, This section~~ applies to an injury ~~that occurs on or after that occurred before~~ the transition date.
- (3) Subject to subsections (4) to (8), ~~this the former~~ 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~~ sections 194 to 196 [compensation for permanent disability] of this Act, as amended by the *Workers Compensation Amendment Act, 2002*, apply as if
 - (a) all references, other than references in section 196 (3) (b) (i) ~~23 (3) (d) (i)~~ [permanent partial disability: exception to general rules], ~~—(i)—~~ to “90%” were read as “75%”, ~~and~~

~~(b) (ii) all references, other than references in section 196 (3) (b) (i), to “average net earnings” were read as references to “average earnings determined under this the former Act immediately before the transition date”, and~~

~~(c) (b) section 196 (3) (b) (i) 23 (3) (d) (i) read as follows:~~

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

(6) Section ~~20234 (2) [deductions in relation to Canada Pension Plan disability benefit] of this Act, as enacted by the Workers Compensation Amendment Act, 2002,~~ does not apply in the circumstances described in subsection (4) ~~of this section.~~

(7) ~~Subject to section 19 (2.1) of this Act, Section 33425 [annual adjustment of periodic payment amounts] 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 on or after December 31, 2003, being the date on which section 228 (5) came into force,~~ 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.~~

Division 10 – Compensation Payments and Other General Matters

Manner of compensation payment: periodic or lump sum ~~of compensation~~

23035 (1) ~~Subject to this section,~~ payments of compensation ~~under this Part~~ must be made periodically at the times and in the manner and form the Board considers advisable, ~~and,...~~

(2) The Board may, ~~in its~~ at the Board’s discretion, do the following:

(a) commute all or part of

(i) the periodic payments due or payable to a worker or dependant, and

(ii) 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 that is otherwise payable in as a lump sum.

(3) In the case of a worker’s

(a) death, or

(b) permanent total disability, or

(c) in case of permanent partial disability where the impairment of the earning capacity of the worker exceeds ~~is greater than~~ 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 worker or dependant or worker entitled to the payments.

Payment of compensation in specific circumstances

23135 (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 payments of compensation to

(a) a minor, minors or

(b) persons a person of unsound mind who the Board considers ~~are~~ incapable of managing ~~their~~ the person's own affairs,

the payments may be made to ~~the persons the person~~ that the Board ~~thinks are~~ considers best qualified in all the circumstances to administer the payments, whether or not ~~the that person to whom the payment is made~~ is the legal guardian of the person in respect of whom the payment is being made.

~~(2) (5) — Where~~ If an injured worker is receiving custodial care in a hospital or elsewhere, ~~periodical periodic~~ periodic payments of compensation due to the worker under this Part may be dealt with as follows, may be paid to or for the benefit of ~~(6). Subsection (5) applies, regardless of the date of the injury:—~~

~~(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;~~

(a) or in a case of temporary disability of the worker, the payments may be

(i) (e) — applied to the maintenance of a home to which the worker is likely to return on his or her the worker's recovery;— or

(ii) (d) — accumulated by the Board for payment to the worker on his or her the worker's recovery;—

(b) or in a case of permanent disability of the worker, the payments may be applied toward the cost of the worker's maintenance;—

(c) in any case, the payments may be paid to or for the benefit of

(i) the worker, to the extent the worker is able to make use of the compensation for personal needs or is able to manage the worker's own affairs, or

(ii) any person who is dependent on the worker for support.

(3) but, in that case and where ~~As a restriction on subsection (2) (b), if the worker is conscious, there must be paid~~ the Board must pay to the worker, or for the use

of; the worker, a comfort allowance of at least \$242.52 out of each periodic payment.

(4) Any compensation owing or accrued to a worker ~~or pensioner~~ for a period not ~~exceeding longer than~~ 3 months before ~~his or her~~ the worker's 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.

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

Discontinuance or suspension of Board authority to discontinue, suspend or otherwise deal with compensation payments

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

232 (1) ~~(3)~~ — Despite sections 22 (1), 23 (1) or (3), 29 (1) and 30 (1), where it is found that if a worker is confined to jail ~~or~~ prison, the Board may cancel, withhold or suspend the payment of compensation for the period ~~it~~ the Board considers advisable.

~~(2) Where~~ if compensation is withheld or suspended under subsection (1), the Board may pay the compensation or any portion of it to

(a) the worker's spouse or the worker's children, or

(b) ~~to~~ a trustee appointed by the Board, who must ~~expend it~~ use the payment for the benefit of the worker, the worker's spouse or the worker's 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~~

~~(3) (b)~~ — If an order for spousal support or child support has been made against the a worker by a court of competent jurisdiction, ~~for spousal support or child support,~~ the Board may divert all or part of the compensation payable to the worker in whole or in part from the worker for the benefit of the worker's spouse or children.

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

Deduction in relation to payments from employer from compensation in certain cases

2334 (1) In ~~fixing~~ setting the amount of a periodic payment of compensation to a worker, ~~consideration must be had to~~ the Board must consider payments, allowances or benefits ~~which that~~ the worker may receive from the worker's employer during the period of the worker's disability, including a pension, gratuity or other allowance provided wholly at the expense of the employer, ~~and~~

~~(2) a sum~~ An amount deducted under this section from the compensation otherwise payable to a worker may be paid to the worker's employer out of the accident fund.

Restriction on compensation in relation to injury or death from warlike actions

234 (1) ~~17(15)~~ ~~Where~~ This section applies if

(a) ~~a worker's 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 such enemy action, it and

(b) provision has been made by the government of Canada for compensation in respect of it for the worker or the worker's dependants in respect of the injury, disablement or death, by the government of Canada,

(2) The worker or the worker's dependants are entitled to compensation under this Part only when if 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.

Confidentiality obligations in relation to compensation claims information

235 (1) ~~95(1.1)~~ ~~If information in a claim file, or in any other material pertaining relating 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 other person must not disclose the information except as follows:~~

(a) ~~(b)~~ in compliance with an enactment of British Columbia or Canada;

(b) ~~(e)~~ 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~~

(c) ~~(d)~~ for the purpose of preparing a submission or argument for a proceeding under this Part, Part 3 or Part 4, a compensation provision, an OHS provision or Part 7 [Appeals to Appeal Tribunal];

(d) ~~(a)~~ if anyone whom the information is about a person, the person has identified the information and consented, in the manner required by the Board, to its disclosure of that information;

(2) ~~95(1.2)~~ ~~No~~ A court, tribunal or other body may not admit into evidence any information that is disclosed in violation contravention of subsection (1)(1.1).

(3) ~~95(2)~~ ~~Every~~ A person who violates contravenes subsection (1)(1) or (1.1) commits an offence, against this Part.

Penalties in relation to offences under the compensation provisions General penalty

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

236 (1) ~~77(2)~~ ~~Every~~ A person who commits an offence under this Part a compensation provision for which no other punishment has been provided is liable on conviction to a fine not exceeding greater than \$5 412.08.

(2) ~~75(3)~~ ~~Every~~ person who contravenes or fails to comply with a regulation made under this Part a compensation provision commits an offence and is liable

on conviction to the fine prescribed by the regulations, but ~~not exceeding that~~ fine must not be greater than \$5 412.08.

~~(3) 78~~ —The Penalties imposed by or under the authority of this Part the compensation provisions

(a) are recoverable under the *Offence Act* or by an action brought by the Board in a court of competent jurisdiction, and

(b) the penalties when collected, must be paid over to the Board and to form part of the accident fund.

Additional Board authority for compensation orders, directives, rules and regulations

23775 (1) In addition to the rules and regulations ~~which that~~ may be made under the compensation provisions, this Part, the Board may

(a) issue the orders and directives if the Board considers requisite necessary for the due administration and carrying out of those provisions, this Part, and

(b) may prescribe establish rules respecting the form and use of payrolls, records, reports, certificates and , declarations and other records documents that may be needed for those purposes, requisite, and;

(2) If considered the Board considers this necessary, the Board may make regulations for those the purposes referred to in subsection (1).

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

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

Effective date of Board's compensation regulations

23876 A regulation of the Board under ~~this Part~~ a compensation provision must specify the date on which if the regulation is to come into force, which date must be at least 90 days after its deposit under the *Regulations Act*.

PART 5 – ACCIDENT FUND AND EMPLOYER ASSESSMENT

Division 4 – Division 1 – Accident Fund and Assessments for Purposes of Fund

Accident fund

23936 (1) The Board must continue and maintain the accident fund

(a) for payment of the compensation, outlays and expenses under this Part the compensation provisions, and

(b) for payment of expenses incurred in the Board's administration of this Act, and administering Part 3 of this Act.

(c) for payment to the government required under section 283 (2) [*appeal tribunal expenses*] or 350 (4) [*workers' advisers and employers' advisers expenses*].

- (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.

Assessment for Board estimate of amounts needed for accident fund

24039 (1) For the purpose of assessment under section 241, the Board must every year make an estimate of sufficient funds to do the following: 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) ~~(d)~~ provide a reserve to be used to meet the loss arising from a disaster or other circumstance ~~which that~~ the Board considers would unfairly burden the employers in a class;
- (d) ~~(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~~
- (e) ~~(e)~~ provide in each year capitalized reserves sufficient to meet the ~~periodical periodic~~ payments of compensation accruing in future years in respect of all injuries which occur during the year;
- (f) provide and maintain a reserve for payment of retirement benefits.

- (2) ~~39(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) ~~to (d), (b), (d) and (e)~~, the excess may be transferred to the capitalized reserves of the fund.

Annual employer assessments for accident fund purposes

24139 (1) For the purpose of ~~creating~~ continuing and maintaining an adequate accident fund, the Board must every year assess and levy on and collect from ~~independent operators and employers~~ and independent operators in each class established under section 244 [classification of industries] sufficient funds as estimated for the year under section 240, 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 ..

- (2) ~~(1)~~ ~~by~~ An assessment under this section must be rated on the payroll, or by assessment rated on a unit of production, or made in a another manner the Board considers proper;

Additional assessment amounts

242 ~~(1)~~ ~~39(4)~~ — If the Board ~~thinks~~ considers that there are not sufficient funds to provide the compensation ~~or additional compensation~~ required to be paid under ~~the compensation provisions, this Part,~~

(a) the Board it may levy on and collect from employers within the scope of this Part the compensation provisions 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; within the scope of those provisions, and — the levy and collection may be made in the manner and at the times the Board considers equitable, and

(b) the levy and collection may be by way of addition to the usual assessment or by levy of special or additional assessment, and;

(c) the levy and collection may be made in the manner and at the times the Board considers equitable.

(2) ~~39(5)~~ — If the estimated assessments in a class prove insufficient, the Board

(a) may make further assessments and levies as necessary, or

(b) 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.

(3) ~~39(9)~~ — The following apply if 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;

(a) the Board must raise sufficient funds by assessments during that year to meet the estimated payments due within the year;

(b) but the Board need not establish within the year reserves to meet future payments on those claims or liabilities; and the Board may instead establish those reserves by assessments levied over a period of years.

General rules in relation to assessments

243 ~~(1)~~ ~~39(2)~~ — Assessments

(a) may be made in the manner and form and by the procedure the Board considers adequate and expedient, and

(b) may be general as applicable to a class or subclass, or special as applicable to an industry or part or department of an industry. it.

~~(2) 39(3)~~ Assessments may, wherever it is considered If the Board considers this to be expedient, assessments may be collected in half-yearly, quarterly or monthly instalments, or otherwise, and

~~(3) where it appears~~ If the Board considers that the funds in a class are sufficient for the time being, an instalment may be abated, reduced or cancelled or its collection deferred.

Classification of industries

~~24437~~ (1) The following classes are established for the purpose of assessment in order to maintain the accident fund:

Class 1: Primary resources

Class 2: Manufacturing

Class 3: Construction

Class 4: Transportation and warehousing

Class 5: Trade

Class 6: Public sector services

Class 7: General sector services

Class 8: Canadian Airlines International Ltd., Canadian Pacific Hotels Corporation, Canadian Pacific Railway Company, Cominco Ltd.

Class 9: The Burlington Northern and Santa Fe Railway Company

Class 10: Air Canada, Canadian National Railway Company, Via Rail Canada Inc.

Class 11: 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~~ establish 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 any of the following from a class and transfer it to another class or subclass or form it into a separate class or subclass:

(i) an employer, independent operator or industry; ~~or~~

(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 any of the following from a subclass and transfer it to another class or subclass or form it into a separate class or 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.

Employer to furnish obligation to provide payroll estimates and reports of payrolls

24538

- (1) ~~Every~~ An employer must do the following:
- (a) keep at all times at ~~some a~~ place in British Columbia the Province, ~~the location of which the employer has given notice to the Board~~, complete and accurate particulars of the employer's payrolls;
 - (b) notify the Board of the current location of the place referred to in paragraph (a):
 - (c) ~~(b) cause to be furnished~~ provide to the Board an estimate of the probable amount of the payroll of each of the employer's industries within the scope of the compensation provisions, together with any further information required by the Board.
 - (i) when the employer becomes an employer within the scope of ~~this Part; those provisions, and;~~
 - (ii) at other times as required by ~~a Board regulation of the Board of general application or by 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~~
 - (d) ~~(e) furnish~~ provide to the Board certified copies of reports of the employer's payrolls, ~~at on~~ or after the ~~close end~~ of each calendar year and at the other times and in the manner required by the Board.
- (2) ~~Where the~~ If an employer fails to comply with subsection (1),
- (a) the employer is liable to pay and must pay, as a penalty for the ~~failure, the default~~ a percentage of the assessment prescribed by ~~the regulations~~ Board regulation or determined by the Board, and

(b) the Board may make its own estimate of the payrolls and ~~may~~ make its assessment and levy based on that estimate, and in which case the employer is bound by the estimate, assessment and levy. it:

(3) ~~(4)~~ — If an employer ~~does not~~ fails to comply with subsection (1), or if a statement made ~~in pursuance of its~~ under the requirements of that subsection is not true and accurate, the employer ~~commits an offence;~~ for every such failure to comply and for every such statement, ~~commits an offence against this Part.~~

Use of payroll information for purpose of assessment

~~246~~ (1) ~~38(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 the compensation provisions. ~~this Part.~~

(2) ~~Where the wages of a worker exceed~~ If a worker's wages are greater than the maximum wage rate for the year one year as fixed for the time being as determined under section 20933, a deduction may be made where practical in respect of the portion in excess of that rate. ; and

(3) ~~where~~ If the wages of a worker are shown to exceed the above be greater than the maximum wage rate referred to in subsection (2), the Board may make a deduction where practical in respect of the portion in excess of that rate. ; and

(4) ~~where~~ If a worker within the scope of this Part works at a nominal wage or no wage, the Board may fix the amount of the worker's average earnings for purposes of this Part the compensation provisions. may be fixed by the Board.

Classification-Variation of assessment rates

~~24742~~ (1) 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~~ the Board considers just. ; and

(2) ~~where~~ If the Board thinks considers that a particular industry or plant is shown to be so circumstanced or conducted such 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

(a) ~~must confer or impose on that industry or plant~~ establish a special rate, differential or assessment for that industry or plant to correspond with the relative hazard or cost of compensation of ~~that the~~ industry or plant, and

(b) ~~for that the purpose referred to in paragraph (a).~~ may also adopt a system of experience rating.

Power to vary rates

(3) ~~43~~ — The Board may, in a manner that ~~it~~ the Board determines,

(a) vary the rates of assessment as between different employers, or

- (b) levy supplementary assessments according to the estimated exposure of workers to industrial noise, ~~and~~
- (4) The Board it may do so make that variance or levy under subsection (3) whether or not hearing protection is worn.

Class accounts for accident fund

- 24848** (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 the account of a class or subclass, the Board
- (a) 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
- (b) may apportion the amount of the interest received and credit ~~it that amount~~ to the class or subclass or special fund from which money was advanced to meet the deficit.

Division 2 – Special Assessment Rules

Compensation charged to different employer class or subclass

- 249** (1) ~~10(8) but where~~ This section applies if the Board considers that
- (a) a substantial amount of compensation ~~has been awarded~~ is to be paid under the compensation provisions as a result of the injury or death of ~~the~~ a worker, and
- (b) the injury or death was caused or substantially contributed to by a serious breach of duty of care of
- (i) an employer, or
- (ii) an independent operator to whom this Part applies the compensation provisions apply by Board direction under section 42 (2) (a) that is in another a different class or subclass from that of the worker's employer.
- (2) The Board may order that the compensation be charged, in whole or in part, to the other class or subclass of an employer referred to in subsection (1) (b) (i) or an independent operator referred to in subsection (1) (b) (ii).

Apportionment in other circumstances

- 250** (1) ~~6(9)~~ —If compensation is paid
- (a) under section 141 [mining industry silicosis] in relation to a the worker who was has been exposed to the inhalation of silica dust containing silica

in 2 or more classes or subclasses of industry in British Columbia, the Province, or

(b) ~~6(10)~~ under section 142 [lung disease from exposure to dust conditions] in relation to a worker who was exposed to dust conditions in 2 or more classes or subclasses of industry in British Columbia,

~~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.

(2) ~~7(7) — Where~~ If compensation is paid under section 145 [non-traumatic hearing loss] a worker suffers loss of ~~in relation to a worker's hearing loss~~ caused by exposure to causes of hearing loss in 2 or more classes or subclasses of industry in British Columbia, 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.

Levy of contribution from specific employer

25173 (1) This section applies if

(a) an injury, death or disablement from occupational disease in respect of which compensation under Part 4 [Compensation to Injured Workers and Their Dependants] is payable occurs to a worker, and

(b) the Board considers that ~~this~~ the injury, death or occupational disease 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 2 ~~Part 3~~ [Occupational Health and Safety], of this Act,

(2) The Board may levy on 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 \$56 588.17.

(3) ~~(2)~~ The payment of an amount levied under subsection (1) this section may be enforced in the same manner as the payment of an assessment may be enforced.

Division 3 – Collection of Assessments

Assessment notice to employers

252 (1) ~~39(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.

- (2) ~~The A~~ notice under subsection (1) may be sent by ~~post mail~~ to the employer, and is deemed to be given to the employer on the day the notice is mailed.

Assessment operates by Board notice

25340 (1) ~~Where~~If 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 the assessment is payable,~~
- the notice constitutes an assessment under ~~section 39, this Part,~~ and the employer must, within the ~~time limited~~ time frame set out 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~~An employer who neglects or refuses to comply with subsection (1) is liable for the penalty prescribed by ~~the regulations~~ Board regulation or determined by the Board, and that penalty is enforceable as an assessment under this Part.

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

Annual adjustment of assessments

- 25449** (1) As soon as practicable in each year, the Board must adjust the amount of the assessments for the preceding calendar year ~~must be adjusted based~~ on the estimated requirements of the class and on the correctly ascertained payroll of each industry, ~~and~~

(2) In relation to the adjustment under subsection (1), as applicable,

- (a) the employer must promptly make up and pay to the Board any deficiency, or
- (b) the Board must refund to the employer any surplus, or credit the surplus on the succeeding assessment, as the case may require. ∴.

Interest may be charged on amounts owed on assessment

255 (1) ~~49(1). Where~~ This section applies if

- (a) ~~the ascertained payroll of an industry ascertained under section 254 (1) exceeds is greater than the estimated payroll of it on which the an~~ employer in that industry was assessed, or
- (b) ~~where the an~~ employer remits less than the amount of the assessment due to the Board. ∴

- (2) The Board may, on the adjustment under section 254 (1), charge to ~~that the~~ employer interest on the amount of the deficiency in the assessment at a rate

~~that in its opinion the Board considers~~ will reimburse the accident fund for any loss sustained by reason of the deficiency, ~~and~~

- (3) ~~the Interest under subsection (2) must be added to the amount of the deficiency and becomes a part of that amount. it:~~

Collection after change in owners or employers

~~256~~ (1) ~~49(2) — Where in an industry~~ This section applies if a change of ownership or employership has occurred in an industry;

(2) The Board may, as applicable,

(a) levy any part of the a deficiency or the unpaid amount of the assessment as referred to in section 255 on any of the successive owners or employers, or

(b) pay or credit the amount that is surplus to the assessment to any one or more of ~~the those~~ owners, ~~the surplus that the case requires~~;

(3) ~~but as between or among the successive owners the assessments in respect of the employment are, in the absence of an~~ Unless there is an agreement between the respective successive owners or employers determining the apportionment of assessment, the same, assessment is apportionable between or among the successive owners, as nearly as may be, in accordance with the proportions of the payrolls of the respective periods of ownership or employership.

Collection from municipal contractors

~~25750~~ (1) ~~Where~~ This section applies to work within the scope of ~~this Part the compensation provisions that~~ is performed under contract for

(a) a municipal corporation, or

(b) ~~for~~ a board or commission having the management of any work or service operated for a municipal corporation;

(2) An assessment in respect of the work may be paid by the corporation, board or commission referred to in subsection (1), 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 and other liability for assessment

~~25851~~ (1) ~~Where~~ The following applies if work within the scope of ~~this Part the compensation provisions~~ is undertaken for a person by a contractor;

(a) both the contractor and the person for whom the work is undertaken are liable for the amount of ~~any an~~ assessment in respect of the work; ~~it, and~~

(b) the assessment may be levied on and collected from either of them, or partly from each;

- (c) ~~but~~ in the absence of a term in the contract for the work 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~~ The following applies if work within the scope of ~~this Part~~ the compensation provisions is performed under subcontract:;
- (a) both the contractor and the subcontractor are liable for the amount of ~~the assessments~~ an assessment in respect of the work; ~~and~~
- (b) the assessment ~~assessments~~ may be levied on and collected from either of them, or partly from each;
- (c) ~~but~~ in the absence of a term in the subcontract for the work to the contrary, the subcontractor is, as between the subcontractor and the contractor, primarily liable for the amount of the assessment. ~~assessments~~.
- (3) The workers of a contractor or subcontractor may, at the discretion of the Board, be deemed to be workers of another person if
- (a) ~~a~~ the contractor or subcontractor is doing work in or for the purposes of an industry carried on by ~~another~~ the other person, ~~(in this section referred to as the "principal")~~;
- (b) ~~that~~ the industry is within the scope of the compensation provisions, and
- (c) the contractor or subcontractor is not assessed with respect to the work.;
- ~~the workers of the contractor or subcontractor may, at the discretion of the Board, be deemed to be workers of the principal with respect to the industry carried on by the principal.~~
- (4) For the purposes of this section, a person, contractor; or subcontractor ~~or principal~~ includes an employer within the scope of the compensation provisions. ~~Part 1.~~

Employer still liable if assessment not made

- ~~259~~ 39(7) If for any reason an employer liable to assessment is not assessed in any year,
- (a) the employer is nevertheless liable to pay the Board the amount for which the employer should have been assessed, and
- (b) payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.

Temporary industries – requirement for payment or security

- ~~26044~~ (1) ~~Where~~ This section applies if
- (a) an employer engages in ~~any~~ an industry within the scope of ~~this Part~~ the compensation provisions and has not been assessed in respect of ~~it~~, the industry, and
- (b) the Board, ~~if it~~ considers that the industry is to be carried on only temporarily.;

- (2) The Board may require the employer to
- (a) pay to the Board or to give security for the payment to the Board of a sum an amount sufficient to pay the assessment for which the employer would be liable if the industry had been in existence when the last preceding most recent assessment under section 241 [annual employer assessments for accident fund purposes] was made, or
 - (b) give security for payment to the Board of the amount described in paragraph (a).
- (3) ~~(2)~~ — Every An employer who makes default in complying fails to comply with a requirement of the Board under subsection (2)(1) commits an offence against this Part.

Penalty for default in payment or return

- 26147** (1) Subject to subsection (3), if an assessment levied under this Part the compensation provisions 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 applicable percentage on of the following, as prescribed by Board regulation or determined by the Board:
- (a) the amount unpaid, or
 - (b) the assessment for the preceding year, or
 - (c) the projected assessment for the current year,
- that may be prescribed by the regulations or determined by the Board
- (2) , and The A penalty under subsection (1)
- (a) may be added to the amount of the assessment and become a part of it, the assessment, and
 - (b) where if the penalty is not added to the assessment, must be enforced in the same manner as the payment of an assessment is enforced.
- (3) ~~The Board~~. If satisfied that the default was excusable, the Board may in any a specific case relieve the employer in whole or in part from liability under this section.

Employer assessment in relation to injury not reported as required

- 262** (1) This section applies if the Board pays compensation under section 150 (8) [payment of compensation where employer defaults in reporting].
- (2) ~~54(8)~~ — Any If compensation is paid under subsection (7), section 150 (8) until before 3 days after receipt by the Board of receives the report required by this that section, that compensation 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 the same manner as other assessments.

- (3) ~~54(9)~~ ~~Where~~ ~~If~~ 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 ~~this section~~ ~~subsection (8)~~.

Employer payment for compensation provided during period of default

- 263** (1) ~~47(2)~~ This section applies if an employer who
- (a) refuses or neglects to make or ~~transmit~~ ~~provide~~ a payroll estimate ~~return~~ or other ~~statement~~ ~~record~~ required to be ~~furnished~~ ~~provided~~ by the employer under section ~~245 (1)~~ ~~38 (1)~~ [*employer obligation to provide payroll estimates and reports*], or
 - (b) ~~who~~ refuses or neglects to pay
 - (i) an assessment, ~~or~~
 - (ii) the provisional amount of an assessment, or
 - (iii) an instalment or part of it, ~~an assessment or a provisional amount of an assessment.~~
- (2) Subject to subsection (4), the employer 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 an injury or occupational disease to a worker in the employer's employ which that happens during the period of that the default referred to in subsection (1).
- (3) ~~, and~~ The payment of ~~the an~~ amount required to be paid under subsection (2) may be enforced in the same manner as the payment of an assessment may be enforced.
- (4) ~~47(3)~~ ~~The Board~~, If satisfied that the default was excusable, the Board may in any a specific case relieve the employer in whole or in part from liability under this section.

Collection of assessments by legal action or certificate suit or summarily

- 26445** (1) If an assessment or part of it ~~an assessment~~ 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~~ ~~If~~ default is made in the payment of an assessment or part of an assessment, or part of it, the Board may issue ~~its a~~ certificate stating
- (a) that the assessment was made,
 - (b) the amount remaining unpaid on account of ~~it the~~ assessment, and
 - (c) the person by whom ~~it the~~ amount was payable, and

- (3) ~~that~~ A certificate under subsection (2), or a copy of it certified by the secretary of the Board under the seal of the Board to be a true copy, may be filed with any district registrar of the Supreme Court, and
- (4) ~~when so filed~~ On filing under subsection (3), the certificate becomes an order of the Supreme Court that court and may be enforced as a judgment of the that court against that the person named in the certificate for the amount mentioned stated in the certificate.

Priority as to amounts due to the Board

- 26552** (1) ~~Notwithstanding anything contained in any other Act, the~~ This section applies to an amount due to the Board by from an employer or, to the Board, or where if an assignment has been made under subsection (7)(4), its from the assignee,
- (a) on an assessment made under this Act, or
 - (b) in respect of an amount which the employer is required to pay to the Board under this Act, or
 - (c) on a judgment for an amount referred to in this subsection. it;
- (2) Despite any other Act but subject to subsection (3), an amount referred to in subsection (1) 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.;
- (3) The Board's priority under subsection (2) does not apply to excepting liens for wages due to workers by their employer, other than (1.1) The exception in subsection (1) does not apply in respect of a lien for wages that is, by under section 87 (5) [lien for unpaid wages] of the Employment Standards Act, postponed to a mortgage or debenture.;
- (4) ~~(2) — Where the~~ In relation to an employer that is a corporation, the word "property" reference to "property" in subsection (2)(1) includes the property of any a director, manager or other principal of the corporation where the property
- (a) that is used in, or in connection with, the industry with respect to which the employer was assessed or the amount became payable, or
 - (b) that was so used as described in paragraph (a) within the period in respect of which assessments of the employer are unpaid.
- (5) ~~(1) and~~ The lien under subsection (2) 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.

~~(6) (3)~~—Without limiting subsection ~~(2)~~~~(4)~~, the Board may enforce its lien by proceedings under the *Court Order Enforcement Act*.

~~(7) (4)~~—The Board may assign its lien rights to a ~~person, contractor, or subcontractor~~ or other person referred to in section 258 [contractor and other liability for assessment] who has fully discharged ~~his or her~~ the person's liability for the amount of an assessment under that section by payment of that amount. ~~section 51 by payment of it.~~

Power to Court order restraining industry if employer defaults

- 26646** (1) The Supreme Court may make an order under subsection (2) if
- (a) an employer defaults in the payment of an assessment,
 - (b) 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~~ the sheriff or deputy was unable wholly to satisfy the execution, and
 - (c) an industry, or an activity in an industry, within the scope of ~~this Part~~ the compensation provisions is commenced or continues to be carried on by one or more of the following persons:
 - (i) the judgment debtor;
 - (ii) if the judgment debtor is a company, within the meaning of the *Business Corporations Act*, an individual who is a member of the board of directors of the judgment debtor as a result of having been elected or appointed to that position;
 - (iii) if the judgment debtor is a corporation other than a company, within the meaning of the *Business Corporations Act*, a person who is a member of the board of directors or other governing body of the judgment debtor, regardless of the title by which that person is designated;
 - (iv) the chair or ~~any a~~ vice chair of the board of directors or other governing body of the judgment debtor, if that chair or vice chair performs the functions of the office on a full-time basis, regardless of the title by which that person is designated;
 - (v) the president of the judgment debtor, regardless of the title by which that person is designated;
 - (vi) ~~any a~~ vice president in charge of a principal business unit of the judgment debtor, including sales, finance or production, regardless of the title by which that person is designated;
 - (vii) ~~any an~~ officer of the judgment debtor, whether or not the officer is also a director of the judgment debtor, who performs a policy-making function in respect of the judgment debtor and who has the capacity to influence the direction of the judgment debtor, regardless of the title by which that person is designated;

- (viii) a person who is not described in any of subparagraphs (ii) to (vii) of this paragraph but who performs the functions described in any of those subparagraphs, and who participates in the management of the judgment debtor, other than a person who
 - (A) participates in the management of the judgment debtor under the direction or control of a shareholder or a person described in any of subparagraphs (ii) to (vii),
 - (B) is a lawyer, accountant or other professional whose primary participation in the management of the judgment debtor is the provision of professional services to the judgment debtor,
 - (C) is, if the judgment debtor is bankrupt, a trustee in bankruptcy who participates in the management of the judgment debtor or exercises control over its property, rights and interests primarily for the purposes of the administration of the bankrupt's estate, or
 - (D) is a receiver, receiver manager or creditor who participates in the management of the judgment debtor or exercises control over any of its property, rights and interests primarily for the purposes of enforcing a debt obligation of the judgment debtor.
- (2) In the circumstances described in subsection (1), the Supreme Court, on an application made on behalf of the Board, without the commencement of an action, may make an order restraining one or more persons described in subsection (1) (c) ~~(i) to (viii)~~ from carrying on an industry, or an activity in an industry, within the scope of ~~this Part~~ the compensation provisions until the amount due on the execution, all the assessments made by the Board and the costs of the application are paid.

PART 6 – REVIEW OF BOARD DECISIONS

Definitions in relation to reviews

267 For the purposes of this Part:

“employer” means,

- (a) in relation to a review under section 268 (1) (a) [reviews in relation to OHS provisions], an employer as defined in section 13 [OHS definitions], and
- (b) in relation to a review under section 268 (1) (b) or (c) [reviews in relation to compensation provisions],
 - (i) an employer as defined in section 1,

- (ii) a person who is deemed to be an employer under the compensation provisions or the regulations under those provisions, or
- (iii) the owner and the master of a fishing vessel for which there is crew to whom the compensation provisions apply as if the crew were workers;

“worker” means the following:

- (a) a worker as defined in section 1;
- (b) a person who is deemed to be a worker under the compensation provisions or the regulations under those provisions;
- (c) a person to whom the compensation provisions apply as if the person were a worker.

Requests for review_s

~~26896.2~~ (1) Subject to subsection (2), a person referred to in the applicable provision of section 26996.3 may request a review officer to review the following in a specific case:

- (a) ~~(e)~~ a Board order respecting an occupational health or safety matter under the OHS provisions, a refusal to make a Board such an order, or a variation or cancellation of a Board such an order; or a cancellation of a Board order respecting an occupational health or safety matter under Part 3.
- (b) ~~(a)~~ a Board decision respecting a compensation or rehabilitation matter under Part 1 the compensation provisions;
- (c) ~~(b)~~ a Board decision under Part 1 the compensation provisions respecting
 - (i) an assessment or classification matter,
 - (ii) a monetary penalty, or
 - (iii) a an employer payment to the Board under any of the following: section 47 (2), 54 (8) or 73(1) by an employer to the Board of compensation paid to a worker;
 - (A) section 251 [levy of contribution from specific employer];
 - (B) section 262 (2) [employer assessment in relation to injury not reported as required];
 - (C) section 263 [employer payment for compensation in relation to injuries during period of default].

(2) ~~No review may~~ A review may not be requested under subsection (1) respecting the following:

- (a) ~~(b)~~ in relation to section 50153 [response to complaint respecting prohibited actions against a worker], a determination, an order, a refusal to make an order or a cancellation of an order under that section; 153;

- ~~(b)(a)~~ an assessment under section ~~108223~~ (1) (a) [*levy of amount owed by employer under the OHS provisions*];
- (c) an assignment of an employer ~~or a subclass~~ to a class or ~~a subclass~~, ~~except other than~~ 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)~~ an assignment of a subclass to a class or subclass;
- ~~(e)~~ ~~(d)~~ a withdrawal of an employer ~~or a subclass~~ from a class or subclass, ~~except a other than the~~ withdrawal of an employer from a class or subclass that
 - (i) has employers as members, and
 - (ii) does not have subclasses as members;
- ~~(f)~~ a withdrawal of a subclass from a class or subclass;
- ~~(g)~~ ~~(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 other than~~ an allocation as it relates to a specific employer or an independent operator respecting
 - ~~(i)~~ ~~(ii)~~ the reserve ~~described~~ referred to in section ~~240 (1) (b), (c) or (d)~~ ~~39 (1) (b), (d) or (e)~~ [*reserve purposes*] ~~or~~;
 - ~~(ii)~~ ~~(i)~~ the account of a class or subclass ~~described~~ referred to in section ~~24940 (8)~~ [*compensation charged to different employer class or subclass*]; ~~or~~
- ~~(h)~~ ~~(f)~~ the determination of an assessment rate for a class or subclass, ~~except other than~~ the modification to the assessment rate determined for an employer on the basis of the employer's own experience;
- ~~(i)~~ ~~(g)~~ a decision to reopen or not to reopen a matter on an application under section ~~125 (1) 96 (2)~~ [*recurrence of injury or significant change in medical condition*].

Who may request a review

~~26996.3~~ ~~(1) (3)~~ — Any of the following persons who is directly affected by a decision or order referred to in section ~~268 (1) (a) 96.2 (1) (e)~~ [*OHS decisions*] may request a review of ~~that the~~ decision or order:

- (a) a worker;
- ~~(b)~~ ~~(f)~~ — a family member of a deceased worker; ~~worker's family~~;
- ~~(c)~~ ~~(b)~~ an employer as defined in section 13 [*OHS definitions*]; ~~within the meaning of Part 3~~;
- ~~(d)~~ ~~(e)~~ an owner as defined in section 13406;
- ~~(e)~~ ~~(d)~~ a supplier as defined in section 13406;

~~(f) (e)~~—a union as defined in section ~~13106~~;

~~(2) (1)~~—Any of the following ~~persons~~ who is directly affected by a decision referred to in section ~~268 (1) (b)~~ ~~96.2 (1) (a)~~ [*compensation or rehabilitation decisions*] may request a review of ~~that~~ the decision:

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

~~(3) (2)~~—An employer or ~~an~~ independent operator who is directly affected by a decision referred to in section ~~268 (1) (c)~~ ~~96.2 (1) (b)~~ [*assessment, classification and other decisions affecting employers and independent operators*] may request a review of ~~that~~ the decision.

Making request for a review reviews

270 ~~(1) 96.2(3)~~—A request for a review must be filed as follows:

- ~~(a) (b)~~ if a shorter time period is not prescribed ~~as set out in~~ under paragraph ~~(b) (a)~~, within 90 days after the Board's decision or order is made;
- ~~(b) (a)~~ if a time period shorter than 90 days ~~with respect to the type of decision or order to be reviewed~~ is prescribed by regulation of the Lieutenant Governor in Council with respect to the type of decision or order to be reviewed, which prescribed time period must be less than 90 days, within ~~that~~ the shorter time period, ~~or~~

~~(2) (4)~~—The chief review officer may extend the time to file a request for a review, including making an extension after the time to file has expired, if this is done on application, and where the chief review officer is satisfied that

- (a) special circumstances existed ~~which~~ that ~~preclude or precluded~~ the filing of a request for a review within the applicable time period required ~~in~~ by subsection ~~(3) (1)~~, 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.~~

~~(3) (5)~~—Unless, on application, the chief review officer orders otherwise, The filing of a request for a review under subsection (3) this section does not operate as a stay or suspend the operation of the decision or order under review unless, on application, the chief review officer orders otherwise.

General matters in relation to requests for review

271 ~~(1) 96.2(6)~~—As soon as practicable after a request for a review is filed under section 270, the Board must provide the parties to the review with a copy of its the Board's records respecting the matter under review.

~~(2) (7)~~—Subject to subsection ~~(3)(8)~~, for the purposes of a specific review, if the employer has ceased to be an employer within the meaning of ~~Part 1, the compensation provisions,~~ 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.

~~(3) (8)~~—An organized group of employers may be recognized by the chief review officer ~~for the purposes of~~ under subsection ~~(2)(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.

Conduct of review

- ~~27296.4~~ (1) This section applies to a review requested under section ~~27096.2~~.
- (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 referred to in subsection (2), ~~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 the review officer, ~~him or her,~~ or
 - (b) determine that the request for a 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 ~~268 (1) (a)96.2(1)(e)~~ [*OHS decisions*] 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, within the following time period:
- ~~(a) (b)~~ if a time period is not established as set out in paragraph ~~(b)(a)~~ of this subsection, within 150 days after the Board receives the request for a review;:-
 - ~~(b) (a)~~ if a policy of the board of directors establishes a time period that is less than 150 days after the Board receives a request for a review, ~~which time period may be different for different types of decisions or orders,~~ within that the shorter time period, ~~or~~
- ~~(7)~~ A time period referred to in subsection (6) (b) may be different for different types of decisions or orders.

~~(8)~~ ~~(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.

~~(9)~~ ~~(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.

~~(10)~~ ~~(9)~~ —Subject to sections ~~27396.5~~ *[reconsideration directed by chief review officer]* and ~~288239~~ *[appeal of review decisions]*, a decision by the review officer under subsection ~~(9)~~~~(8)~~ is final and the Board must comply with ~~that the~~ the decision.

Reconsideration directed by chief review officer

~~27396.5~~ (1) The chief review officer may direct a review officer to reconsider a decision under section ~~272~~ ~~(9)~~~~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 ~~288239~~ *[appeal of review decisions]*.

Delegation of chief review officer's powers and duties

~~27496.6~~ (1) The chief review officer may delegate ~~in writing~~ to a review officer a power or duty of the chief review officer, ~~and~~

~~(2) A delegation under subsection (1) must be in writing and may impose any limitations or include limits and conditions on the exercise of that the power or performance of that the duty.~~

~~(3)~~ ~~(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.

~~(4) (3)~~—The chief review officer may designate a review officer to act in the chief review officer's place during ~~his or her~~ the chief review officer's 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.

Payment of compensation following review

275258 (1) If, following a review under ~~section 96.2, this Part,~~ a review officer's decision requires payments to be made to a worker or a deceased worker's dependants, the Board must

- (a) begin any periodic payments, and
- (b) pay any lump sum due under section ~~167(4)~~ 167(13) [*payment to dependent spouse or foster parent*].

(2) In the absence of fraud or misrepresentation, an amount paid under subsection (1) to a worker or a deceased worker's dependants is not recoverable.

(3) If a review officer has made a decision described under subsection (1), the Board must defer the payment of any compensation applicable to the time period before that decision

- (a) for a period of 40 days following the review officer's decision, and
- (b) if the review officer's decision is appealed under section ~~288(3)~~ 288(3) [*appeal of review decisions*], for a further period until the appeal tribunal has made a final decision or the appeal has been withdrawn, as the case may be.

(4) Subsection (3) applies despite the following: section 19.1, 22 (1), 23 (1) or (3), 29 (1) or 30 (1):

- (a) section 168 (2) [*dependants of deceased worker*];
- (b) section 191 (1) [*temporary total disability*];
- (c) section 192 (1) [*temporary partial disability*];
- (d) section 194 (1) [*permanent total disability*];
- (e) section 195 (1) [*permanent partial disability: general rules*];
- (f) section 196 (3) [*permanent partial disability: exception to general rules*].

Effect of review in relation to employer payment obligations **Payment of interest**

276259 (1) The commencement of a review under this Part ~~section 96.2 or of an appeal under this Part respecting a matter described in section 96.2 (1) (b)~~ does not relieve an employer from paying an amount in respect of a matter that is the subject of the review, ~~or appeal.~~

- (2) If the decision on a review ~~under this Part or an appeal referred to in subsection (1)~~ requires the refund of an amount to an employer, interest calculated in accordance with the policies of the board of directors must be paid to the employer on that refunded amount.

~~PART 4~~ PART 7 – APPEALS TO APPEAL TRIBUNAL

Division 1 – Appeal Tribunal

Definitions

~~277~~231 In this Part:

“**chair**” means the chair of the appeal tribunal appointed under section 278 (2) ~~(a)~~232 (2) (a);

“**extraordinary member**” means a member of the appeal tribunal appointed under section 278 (2) (c) ~~232 (2) (e)~~;

~~249(1)~~ ~~— In this section,~~ “**health professional**” means a medical practitioner, a person entitled to practise medicine under the laws of another jurisdiction or any other person with prescribed qualifications;

“**members of the appeal tribunal**” means the chair, vice chairs and extraordinary members appointed under section 278 (2) ~~232 (2)~~ and temporary substitute members appointed under section 278 (9) ~~232 (10)~~;

“**presiding member**” means the member of the appeal tribunal chairing a panel of the tribunal;

“**vice chair**” means a vice chair of the appeal tribunal appointed under section 278 (2) (b) ~~232 (2) (b)~~;

“**worker**” means..

Appeal tribunal and membership established

~~278~~232 (1) The Workers’ Compensation Appeal Tribunal is ~~continued~~established.

- (2) The appeal tribunal consists of the following members appointed after a merit-based process:
- (a) the chair appointed by the Lieutenant Governor in Council;
 - (b) one or more vice chairs appointed by the chair, after consultation with the minister;
 - (c) any extraordinary members appointed by the chair, after consultation with the minister, with representation from individuals with experience in employers’ interests and from individuals with experience in workers’ interests.

- (3) The chair holds office for an initial term of 3 to 5 years and may be reappointed, after a merit-based process, for one or more successive terms of up to 5 years each.
- (4) The vice chairs hold office for an initial term of 2 to 4 years and may be reappointed, after a merit-based process, for additional terms of up to 5 years.
- (5) An extraordinary member holds office for the period ~~of time~~ required to discharge ~~his or her~~ the person's duties as a member of a panel appointed by the chair under section ~~285238~~(5) (b) or (6) (b) [*appointment of extraordinary members*].
- (6) Individuals are not eligible for appointment as vice chairs unless they have successfully completed a merit-based process established or approved by the chair.
- ~~(7) [Repealed 2004-45-175.]~~
- ~~(7)~~ ~~(8)~~ — Before beginning their duties, members of the appeal tribunal must take an oath of office in the form and manner prescribed by the Lieutenant Governor in Council.
- ~~(8)~~ ~~(9)~~ — The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to members or officers of the appeal tribunal.
- ~~(9)~~ ~~(10)~~ — Despite subsections (3) to (5), if a member of the appeal tribunal is absent or incapacitated for an extended period ~~of time~~ or expects to be absent for an extended period ~~of time~~,
 - (a) the Lieutenant Governor in Council, if the member is the chair, or
 - (b) the chair, if the member is a vice chair or extraordinary member,may appoint another person, who would otherwise be qualified for appointment as a member, to replace the member until the member returns to full duty or the member's term expires, whichever comes first.
- ~~(10)~~ ~~(11)~~ — The appointment of a person to replace a member under subsection ~~(9)~~~~(10)~~ is not affected by the member returning to less than full duty.

End of appointment to appeal tribunal

- 279233**
- (1) A member of the appeal tribunal may resign at any time by giving written notice to the chair or, in the case of the chair, to the minister.
 - (2) If a member resigns or ~~their~~ the member's appointment expires, the chair may authorize that ~~individual person~~ to continue to exercise powers as a member of the appeal tribunal in any appeal in which that individual had jurisdiction immediately before the end of ~~their~~ the person's term.
 - (3) The Lieutenant Governor in Council may terminate the appointment of the chair for cause.

- (4) The chair may, after consultation with the minister, terminate the appointment of a member of the appeal tribunal for cause.

Role of appeal tribunal chair

- 280234** (1) The chair is responsible for the general operation of the appeal tribunal.
- (2) Without restricting subsection (1), the chair is responsible for the following:
- (a) appointing vice chairs and extraordinary members in accordance with any procedures or requirements prescribed by the Lieutenant Governor in Council;
 - (b) establishing quality adjudication, performance and productivity standards for members of the appeal tribunal and regularly evaluating the members according to those standards;
 - (c) developing a ~~3-year~~ 3-year strategic plan and an annual operations plan for the appeal tribunal;
 - (d) establishing any forms, practices and procedures required for the efficient and ~~cost-effective~~ cost-effective conduct of appeals to the appeal tribunal, including
 - (i) the time periods within which steps must be taken,
 - (ii) requiring pre-hearing conferences, and
 - (iii) employing voluntary alternate dispute resolution processes;
 - (e) making any forms, practices and procedures established under paragraph (d) accessible to the public;
 - (f) establishing administrative practices and procedures for the effective operation of the appeal tribunal;
 - (g) providing for public access to decisions of the appeal tribunal in a manner that protects the privacy of the parties to the proceedings;
 - (h) establishing a list of health professionals for the purposes of section 301249 [health professional assistance to appeal tribunal]; ~~establishing a list of health professionals;~~
 - (i) presiding over meetings of the appeal tribunal;
 - (j) establishing panels;
 - (k) ordering the consideration of related matters in one hearing before the appeal tribunal;
 - (l) establishing a code of conduct, including conflict of interest provisions, that governs the conduct of the members, officers, employees and contractors of the appeal tribunal;
 - (m) preparing the annual report of the appeal tribunal;
 - (n) appointing officers of the appeal tribunal;

- (o) for the purpose of judicial proceedings, preparing a certificate attaching the record of the appeal tribunal in the matter of a particular appeal or decision of the tribunal, including any practices and procedures applied by the tribunal.
- (3) The chair may exercise any power and perform any duty or function of the appeal tribunal or of a member of the appeal tribunal.
- ~~(4) (6)~~——The chair may designate another member of the appeal tribunal to act in the chair's place during the chair's temporary absence, and while acting in the chair's place the designated member has the power and authority of the chair.
- ~~(5) (7)~~——The chair must attend not fewer than 4 meetings of the board of directors each calendar year to exchange information on matters of common interest and importance to the workers' compensation system.

Delegation of chair's powers and duties

- ~~281~~ (1) ~~234(4)~~——Subject to section ~~304 (9)~~~~251(9)~~ [*chair authority in relation to policies of the board of directors*], the chair may delegate in writing to another member of the appeal tribunal, or to an officer of the appeal tribunal, a power or duty of the chair and may impose limitations or conditions on the exercise of that power or performance of that duty.
- ~~(2) (5)~~——If the chair has delegated a power or duty of the chair 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 chair.

Appeal tribunal staff

- ~~282~~~~235~~ (1) Employees necessary to exercise the powers and perform the duties of the appeal tribunal may be appointed under the *Public Service Act*.
- (2) The *Public Sector Pension Plans Act* and the *Public Service Benefit Plan Act* apply to the employees of the appeal tribunal.
- (3) Despite the *Public Service Act*, the appeal tribunal may engage or retain consultants and contractors that the appeal tribunal considers necessary to exercise ~~its~~~~the tribunal's~~ powers and perform its duties, and may determine the functions and remuneration of those consultants and contractors.

Compensation and expenses of appeal tribunal members

- ~~283~~~~236~~ (1) In accordance with general directives of the Treasury Board, members must be reimbursed for reasonable travelling and ~~out-of-pocket~~~~out-of-pocket~~ expenses necessarily incurred in carrying out their duties.

- (2) In accordance with general directives of the Treasury Board, the minister must set the remuneration for those members who are to receive remuneration.
- (3) For the purposes of subsection (2), the Treasury Board may specify different rates of remuneration for different classes of members.
- (4) The chair of the appeal tribunal must determine the class to which a member is assigned for the purposes of remuneration.
- (5) The *Public Sector Pension Plans Act* and the *Public Service Benefit Plan Act* apply to the members of the appeal tribunal.

Finances for appeal tribunal administration and operation

- 284237** (1) All money required for the administration and operation of the appeal tribunal must be paid by the government, but on request of the minister the Board must reimburse the government for all amounts so paid.
- (2) On ~~receipt of~~ receiving a request ~~from the minister~~ under subsection (1), the Board must pay the amount requested to the Minister of Finance out of the accident fund.

Appeal panels

- 285238** (1) All appeals to the appeal tribunal must be heard by panels appointed under this section.
- (2) The chair must establish the panels of the appeal tribunal.
- (3) The chair may
- (a) terminate an appointment to a panel,
 - (b) fill a vacancy on a panel, and
 - (c) refer an appeal that is before one panel to another panel.
- (4) Subject to subsections (5) and (6), panels must consist of the chair sitting alone or a vice chair sitting alone.
- (5) If the chair determines that a matter under appeal requires consideration by a ~~3-member~~ 3-member panel, the chair may appoint a panel with either of the following memberships:
- (a) the chair or a vice chair, acting as presiding member, plus 2 additional vice chairs;
 - (b) the chair or a vice chair, acting as presiding member, plus one extraordinary member with experience in employers' interests and one extraordinary member with experience in workers' interests.
- (6) If the chair determines that the matters in an appeal are of special interest or significance to the workers' compensation system as a whole, the chair may appoint a panel of up to 7 members with either of the following memberships:

- (a) the chair or a vice chair, acting as presiding member, plus additional vice chairs;
 - (b) the chair or a vice chair, acting as presiding member, plus additional vice chairs and extraordinary members.
- (7) If a panel is constituted under subsection (6) (b),
- (a) there must be an equal number of extraordinary members appointed who have experience in employers' interests and who have experience in workers' interests, and
 - (b) the extraordinary members must not constitute a majority of the membership of the panel.
- (8) A panel has the power and authority of the appeal tribunal in an appeal assigned to the panel under this section.
- (9) If a panel consists of more than one member, the decision of the majority is the appeal tribunal's decision; ~~but, if there is no majority, the decision of the presiding member is the appeal tribunal's decision.~~
- (10) Despite subsections (6) and (7), if a member of a panel constituted under subsection (6) is unable to complete an appeal, the chair may direct the remaining members of the panel to complete the appeal and make the decision of the appeal tribunal.
- (11) If a panel is comprised of one member and that member is unable for any reason to complete the member's duties, the chair of the appeal tribunal, with the consent of all parties to the appeal, may appoint a new panel to continue to hear and determine the appeal on terms agreed to by the parties, and the vacancy does not invalidate the proceeding.

Annual report to minister

286 (1) ~~234(8)~~—On or before March 25 of each year, the chair must make a report to the minister respecting the appeal tribunal's operations for the preceding calendar year.

(2) ~~234(9)~~—The minister may require the annual report referred to in subsection (1) ~~(8)~~ to address specified matters and to be in a specified form.

Division 2 – Appeal Rights

Definitions in relation to appeals

287 For the purposes of this Part:

“review decision” means a decision of a review officer that may be appealed under section 288 *[review decisions that may be appealed]*;

“worker” means the following:

- (a) a worker as defined in section 1; ~~and~~
- (b) a person who is deemed to be a worker under Part 1 the compensation provisions or the regulations under those provisions; ~~that Part, or~~
- (c) a person to whom ~~that Part applies~~ compensation provisions apply as if the person were a worker.

Appeal of Review decisions that may be appealed

- 288239** (1) Subject to subsection (2), a final decision made by a review officer in a review under Part 6 section 96.2 [Review of Board Decisions], including a decision declining to conduct a review under that Part, section, may be appealed to the appeal tribunal.
- (2) The following decisions made by a review officer may not be appealed to the appeal tribunal:
- (a) a decision in a prescribed class of decisions respecting the conduct of a review;
 - (b) ~~(e)~~ a decision respecting an order under Part 2 Part 3 [Occupational Health and Safety], other than ~~an order~~ any of the following orders:
 - (i) an order relied upon on to impose an administrative penalty under section 95 (1) 196 (1) [administrative penalties – higher maximum amount];
 - (ii) an order imposing an administrative penalty under section 95 (1) 196 (1); ~~or~~
 - (iii) an order made under section 96 195 [certificates issued under OHS provisions] to cancel or suspend a certificate;
 - (c) ~~(b)~~ a decision respecting matters referred to in section 155 116 [vocational rehabilitation];
 - (d) ~~(e)~~ a decision respecting the application under section 195 (1) 23 (1) [compensation for permanent partial disability] of rating schedules compiled under section 23 (2) where subsection (3) of that section if the specified percentage of impairment has no range or has a range that ~~does not exceed~~ is not greater than 5%;
 - (e) ~~(d)~~ a decision respecting commutations under section 230 35 [commutation of lump sum payment];

Appeal of Other Board decisions that may be appealed

- 289240** (1) The following may be appealed to the appeal tribunal:
- (a) ~~A~~ a determination, an or order, a refusal to make an order or a cancellation of an order made under section 50 153 [response to worker

complaint respecting prohibited action]; ~~may be appealed to the appeal tribunal.~~

(b) a refusal to make an order under that section;

(c) a cancellation of an order under that section.

- (2) A decision to reopen or not to reopen a matter on an application under section ~~125~~~~96~~(2) [*recurrence of injury or significant change in medical condition*] may be appealed to the appeal tribunal.

Who may appeal: matters related to OHS provisions

~~290~~ (1) ~~241~~(3) ~~For the purposes of section 239, any of the following persons who is directly affected by a decision of the review officer in respect of~~ In relation to a review officer decision respecting a matter referred to in section 268 (1) (a)~~96.2~~ ~~(1) (e) [reviews in relation to OHS provisions], any of the following who is directly affected by the decision may appeal that decision:~~

(a) a worker;

~~(b) (f) a family member of a deceased worker;~~ 's family.

~~(c) (b) an employer as defined in section 13 [definitions in relation to OHS provisions];~~ within the meaning of Part 3;

~~(d) (e) an owner as defined in section 13~~~~106;~~

~~(e) (d) a supplier as defined in section 13~~~~106;~~

~~(f) (e) a union as defined in section 13~~~~106.~~

- (2) ~~241~~(4) ~~For the purposes of section 240 (1), any of the following persons who is directly affected by~~ In relation to a decision or an order referred to in section 289~~240~~ (1) [*response to worker complaint respecting prohibited action*], any of the following who is directly affected by the decision or order may appeal that decision or order:

(a) a worker;

(b) an employer as defined in section 13; ~~within the meaning of Part 3;~~

(c) a union as defined in section ~~13~~~~106.~~

Who may appeal: matters related to compensation provisions

~~291~~~~241~~ (1) ~~For the purposes of section 239, any of the following persons who is directly affected by a decision of the review officer in respect of~~ In relation to a review decision respecting a matter referred to in section 268 (1) (b)~~96.2~~ ~~(1) (a) [compensation or rehabilitation matters], any of the following who is directly affected by the decision may appeal that decision:~~

(a) a worker;

(b) a ~~deceased worker's~~ dependant of a deceased worker;

(c) an employer.

- (2) ~~For the purposes of section 239, an employer or an independent operator who is directly affected by a decision of the review officer in respect of~~ In relation to a review decision respecting a matter referred to in section 268 (1) (c) 96.2 (1) (b) [employer assessment, classification, payments and penalties], an employer or independent operator who is directly affected by the decision may appeal that decision.
- (3) ~~(5) — For the purposes of~~ In relation to a decision referred to in section 289 (2) 240 (2) [decision in relation to an application under section 125], a worker or an employer who is directly affected by a ~~the decision referred to in section 240 (2)~~ may appeal that decision.
- (4) ~~(6) — In this section, subsections (1) (c), (2) and (5),~~ “employer” means the following:
- (a) an employer as defined in section 1;
 - (b) a person who is deemed to be an employer under ~~Part 4~~ the compensation provisions or the regulations under ~~that Part~~ those provisions; ~~and~~
 - (c) the owner and the master of a fishing vessel for which there is crew to whom ~~Part 4~~ the compensation provisions apply as if the crew were workers.

How to appeal

- ~~292~~242 (1) A person ~~referred to in~~ authorized under section 290 or 291 241 to appeal a particular decision or order may appeal the decision or order ~~to the appeal tribunal~~ by filing a notice of appeal with the appeal tribunal.
- (2) A notice of appeal must
- (a) be made in writing or in another form authorized by the appeal tribunal’s rules,
 - (b) identify the decision or order that is being appealed,
 - (c) state why the decision or order is incorrect or why it should be changed,
 - (d) state the outcome requested,
 - (e) ~~contain~~ include the name, address and telephone number of the appellant,
 - (f) ~~and~~ if the appellant has an agent to act on the appellant’s behalf in respect of the appeal, include the name of the agent and a telephone number at which the agent may be contacted during regular business hours,
 - (g) ~~(f)~~ include an address for delivery of any notices in respect of the appeal, and
 - (h) ~~(g)~~ be signed by the appellant or the appellant’s agent.
- (3) If a notice of appeal is deficient, the appeal tribunal may allow a reasonable period ~~of time~~ within which the notice may be corrected.

Time limit for appeal

- 293243** (1) A notice of appeal respecting a decision referred to in section ~~288239~~ [review decisions that may be appealed] must be filed within 30 days after the decision being appealed was made.
- (2) A notice of appeal respecting a decision referred to in section ~~289240~~ [other Board decisions that may be appealed] must be filed within 90 days after the decision or order being appealed was made.
- (3) The chair may extend the time to file a notice of appeal under this section, including making an extension after the time to file has expired, if this is done on application; and where the chair is satisfied that
- (a) special circumstances existed ~~which that preclude or precluded the filing of a notice of appeal within the applicable time period required in by~~ subsection (1) or (2), and
 - (b) an injustice would otherwise result; ~~the chair may extend the time to file a notice of appeal even if the time to file has expired.~~

General rule: appeal does not stay decision ~~No stay of appealed decision~~

- 294244** Unless the appeal tribunal orders otherwise, the filing of a notice of appeal under section ~~292242~~ does not operate as a stay or affect the operation of the decision or order under appeal.

Division 3 – Appeal Procedure

Board records and provision of policies and records

- 295245** (1) The Board must provide the appeal tribunal with copies of all current policies of the board of directors.
- (2) As soon as practicable, the appeal tribunal must notify the Board of an appeal filed under this Part.
- (3) As soon as practicable after being given notice under subsection (2), the Board must provide the appeal tribunal and the parties to the appeal with a copy of ~~its~~ the Board's records respecting the matter under appeal.
- (4) On request of the appeal tribunal and as soon as practicable, the Board must advise the appeal tribunal of ~~a~~ any policy of the board of directors that is applicable to the matter under appeal.
- (5) As soon as practicable after receiving advice under subsection (4), the appeal tribunal must advise the parties to the appeal of ~~a~~ any policy of the board of directors that the Board has advised the appeal tribunal is applicable to the matter under appeal.

Application of *Administrative Tribunals Act* to appeal tribunal

296245.1 The following provisions of the *Administrative Tribunals Act* apply to the appeal tribunal:

- (a) Part 1 [*Interpretation and Application*];
- (b) section 7.1 [*validity of tribunal acts*];
- (c) Part 3 [*Clustering*];
- (d) the following provisions of Part 4 [*Practice and Procedure*]:
 - (i) ~~(d)~~—section 11 [*general power to make practice and procedure rules*];
 - (ii) ~~(e)~~—section 13 [*practice directives tribunal may make*];
 - (iii) ~~(f)~~—section 14 [*general power to make orders*];
 - (iv) ~~(g)~~—section 15 [*interim orders*];
 - (v) ~~(h)~~—section 28 [*facilitated settlement*];
 - (vi) ~~(i)~~—section 29 [*disclosure protection*];
 - (vii) ~~(j)~~—section 30 [*tribunal duties*];
 - (viii) ~~(k)~~—section 31 [*summary dismissal*];
 - (ix) ~~(l)~~—section 32 [*representation of parties to an application*];
 - (x) ~~(m)~~—section 35 (1) to (3) [*recording tribunal proceedings*];
 - (xi) ~~(n)~~—section 37 [*applications involving similar questions*];
 - (xii) ~~(o)~~—section 38 [*examination of witnesses*];
 - (xiii) ~~(p)~~—section 42 [*discretion to receive evidence in confidence*];
- (e) the following provisions of Part 5 [*Jurisdictions over Legal Questions*]:
 - (i) ~~(q)~~—section 45 [*tribunal without jurisdiction over Canadian Charter of Rights and Freedoms issues*];
 - (ii) ~~(r)~~—section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];
- (f) the following provisions of Part 6 [*Costs and Sanctions*]:
 - (i) ~~(s)~~—section 48 [*maintenance of order at hearings*];
 - (ii) ~~(t)~~—section 49 [*contempt proceeding for uncooperative witness or other person*];
- (g) ~~(u)~~ section 52 [*notice of decision*];
- (h) ~~(v)~~ Part 8 [*Immunities*];
- (i) ~~(w)~~ Part 9 [*Accountability and Judicial Review*], ~~except other than~~ section 59 [*standard of review without privative clause*];
- (j) the following provisions of Part 10 [*Miscellaneous*]:
 - (i) ~~(x)~~—section 60 (1) (a), (b) and (g) to (i) and (2) [*power to make regulations*];

~~(ii) (y)~~—section 61 [*application of Freedom of Information and Protection of Privacy Act*].

Appeal tribunal proceedings

297246 (1) Subject to any rules, practices or procedures established by the chair, the appeal tribunal may conduct an appeal in the manner it considers necessary, including conducting hearings in writing or orally with the parties present in person, by ~~means of~~ teleconference or videoconference facilities or by other electronic means.

(2) Without restricting subsection (1), the appeal tribunal may do one or more of the following:

~~(a) and (b)~~—[~~Repealed 2004-45-183.~~]

~~(a)(e)~~ inquire into the matter under appeal and consider all information obtained;

~~(b)(d)~~ request the Board to investigate further into a matter relating to a specific appeal and report in writing to the appeal tribunal;

~~(c)(e)~~ require the parties to the appeal to attend a pre-hearing conference to discuss procedural and substantive issues relating to the conduct of the appeal;

~~(d)(f)~~ require the parties to the appeal to make a pre-hearing disclosure of their evidence, including requiring the pre-hearing examination of a party on oath or by affidavit;

~~(e)(g)~~ recommend to the parties to the appeal that an alternate dispute resolution process be used to assist in the resolution of a matter under appeal;

~~(f)(h)~~ require an employer who is a party to an appeal respecting a matter referred to in section ~~268 (1) (a)~~~~96.2 (1) (e)~~ [*reviews in relation to OHS provisions*] to post a notice in the specified form and manner bringing the appeal to the attention of the employees of the employer;

~~(g)(i)~~ request any person or representative group to participate in an appeal if the tribunal considers that this participation will assist the tribunal to fully consider the merits of the appeal.

(3) If, in an appeal, the appeal tribunal considers there to be a matter that should have been determined but that was not determined by the Board, the appeal tribunal may refer that matter back to the Board for determination and suspend the appeal proceedings until the Board provides the appeal tribunal with that determination.

(4) If the appeal tribunal refers a matter back to the Board for determination under subsection (3), the appeal tribunal must consider the Board's determination in the context of the appeal and no review of that determination may be requested under section ~~268~~~~96.2~~ [*requests for review*].

- (5) If a party fails to comply with an order of the appeal tribunal or with the rules of practice and procedure of the appeal tribunal, including any time limits specified for taking any actions, ~~after giving notice to that party~~ the appeal tribunal may, after giving notice to that party, do one or more of the following:
- (a) schedule a written, electronic or oral hearing;
 - (b) continue with the appeal and make a decision based on the evidence before ~~it, the appeal tribunal~~, with or without providing an opportunity for submissions;
 - (c) dismiss the application.

Evidence admissible in appeal tribunal proceedings

- ~~298246.1~~ (1) The appeal tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.
- (2) Despite subsection (1), the appeal tribunal may exclude anything unduly repetitious.
- (3) Nothing is admissible before the appeal tribunal that is inadmissible in a court because of a privilege under the law of evidence.
- (4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.
- (5) Notes or records kept by a person appointed by the appeal tribunal to conduct a dispute resolution process in relation to an appeal are inadmissible in appeal tribunal proceedings.

Witnesses and production of information

- ~~299247~~ (1) At any time before or during a hearing, but before ~~its~~ the appeal tribunal's decision, the appeal tribunal may make an order requiring a person
- (a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an appeal, or
 - (b) to produce for the appeal tribunal or a party a document or other thing in the person's possession or control, as specified by the appeal tribunal, that is admissible and relevant to an issue in an appeal.
- (2) ~~(1.1)~~—The appeal tribunal may apply to the Supreme Court for an order
- (a) directing a person to comply with an order made by the appeal tribunal under subsection (1), or
 - (b) directing any directors and officers of a person to cause the person to comply with an order made by the appeal tribunal under subsection (1).

~~(3)~~ (2) — On an appeal, the appeal tribunal may cause depositions of witnesses residing in or out of ~~the Province~~ British Columbia to be taken before a person appointed by the appeal tribunal in a similar manner to that prescribed by the Supreme Court Civil Rules for the taking of like depositions in the Supreme Court before a commissioner.

~~(4)~~ (3) — Despite subsections (1) to ~~(3)~~(2), an officer, ~~an~~ employee or a contractor of the Board may only be compelled to give evidence or produce ~~books, papers, documents~~ records and things that

- (a) relate to the issues in a specific appeal, and
- (b) are necessary for the appeal tribunal to address those issues and to make a decision in the appeal.

~~(5)~~ (4) — Despite subsections (1) to ~~(3)~~(2), a member of the board of directors or an officer, ~~an~~ employee or a contractor of the Board may not be compelled to give evidence or produce records ~~books, papers, documents~~ and things respecting the development or adoption of the policies of the board of directors.

Deemed employer

300248 (1) Subject to subsections (2) and (3), for the purposes of a specific appeal, if the employer has ceased to be an employer within the meaning of ~~Part 4~~ the compensation provisions, the appeal tribunal may deem an employers' adviser ~~within the meaning of section 94~~ or an organized group of employers to be the employer.

(2) An organized group of employers may be recognized by the appeal tribunal for the purposes of subsection (1) 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.

(3) If, for the purposes of the review under ~~Part 6~~ section 96.2 [*Review of Board Decisions*] of a decision respecting a specific matter, ~~an organized group of employers or an employers' adviser~~ or organized group of employers was deemed to be the employer, the ~~group or employers' adviser or group~~, as applicable, ~~the case may be~~, is deemed to be the employer for the purposes of appealing the review officer's decision in that matter and participating in the appeal.

Health professional assistance to appeal tribunal

~~249~~ (1) In this section, "**health professional**" means a medical practitioner, a person entitled to practise medicine under the laws of another jurisdiction or any other ~~person with prescribed qualifications~~.

301 (1) ~~249~~(2) — The chair must establish a list of health professionals who may be retained to provide independent assistance or advice on the request of the appeal tribunal in an appeal.

~~(2)~~ ~~(3)~~ — The list established by the chair under subsection ~~(1)~~~~(2)~~ must not include ~~any~~ a person who is employed by the Board.

~~(3)~~ ~~(4)~~ — After taking into account any fee schedule established by the Board for services provided by health professionals, the chair may determine the terms and conditions, including remuneration and reimbursement of expenses, under which a health professional may be retained by the appeal tribunal under ~~this~~ section 302.

Health professional assistance in specific cases

302 ~~(1)~~ ~~249~~~~(6)~~ — Subject to subsection ~~(8)~~, if the appeal tribunal determines that independent assistance or advice from a health professional would assist in reaching a decision on an appeal, the presiding member may retain a health professional from the list under section 301 ~~described in subsection (2)~~ to provide such assistance or advice.

~~(2)~~ ~~(7)~~ — When a health professional is retained under ~~subsection (6)~~, ~~this section~~, the presiding member must set the terms of reference for the advice, including requiring a written report, setting any time periods for providing the report and specifying any questions to be answered in the report.

~~(3)~~ ~~(8)~~ — If ~~the~~ a health professional retained under ~~subsection (6)~~ ~~this section~~ considers it necessary to examine a worker in order to provide the independent assistance or advice set out in the terms of reference under subsection ~~(2)~~~~(7)~~, the health professional may require the worker to attend for an examination by giving the worker written notice.

~~(4)~~ ~~(9)~~ — If the worker fails to ~~present himself or herself for~~ attend the examination required under subsection ~~(3)~~~~(8)~~ or obstructs that examination without reasonable cause, the appeal tribunal may, after giving notice to the worker, do one or more of the following:

- (a) direct the health professional to reschedule the examination of the worker and give the worker notice of the rescheduled examination;
- (b) direct the health professional to provide a report without examining the worker;
- (c) make a determination that the worker has abandoned the appeal.

~~(5)~~ ~~(10)~~ — The appeal tribunal must give a copy of the health professional's written report to the parties to the appeal.

~~(6)~~ ~~(11)~~ — The parties to an appeal may make submissions to the appeal tribunal in respect of the report provided to them under subsection ~~(5)~~~~(10)~~.

~~(7)~~ ~~(12)~~ — The appeal tribunal may suspend an appeal until a health professional's report to be provided under this section in respect of that appeal is received by the appeal tribunal.

- ~~(8)~~ ~~(5)~~—Except with the written consent of the parties to the appeal, the appeal tribunal must not retain a health professional to provide independent assistance or advice in respect of a specific appeal if the health professional
- (a) has previously examined the worker whose claim is the subject of the appeal,
 - (b) is treating or has previously treated the worker,
 - (c) has been consulted in the treatment of the worker,
 - (d) has acted as a consultant to the employer,
 - (e) is a partner of or practises with a health professional described in this subsection, or
 - (f) is otherwise in circumstances that could result in a reasonable apprehension of bias.

- ~~(9)~~ ~~(13)~~—Subsection ~~(8)~~ ~~(5)~~ does not prohibit the appeal tribunal in an appeal
- (a) from requesting a health professional to provide ~~it~~ the appeal tribunal with medical evidence or to clarify or interpret medical evidence previously provided by the health professional, or
 - (b) from compensating the health professional for the services described in paragraph (a) of this subsection.

- ~~(10)~~ ~~(14)~~—Evidence or advice given under subsection ~~(9)~~ ~~(13)~~ is not independent assistance or advice within the meaning of this section.

Appeal tribunal decision making ~~decision-making~~

- 303250** (1) The appeal tribunal may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent.
- (2) The appeal tribunal must make its decision based on the merits and justice of the case, but in ~~so doing~~ this the appeal tribunal must apply ~~a policy~~ any policies of the board of directors that ~~is~~ are applicable in that case.
- (3) Despite subsection (1), the appeal tribunal is bound by a prior decision of a panel appointed under section ~~285 (6)238 (6)~~ [*matters of importance to the workers' compensation system as a whole*] unless
- (a) the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances addressed in the prior decision,
 - (b) ~~subsequent to~~ after the prior decision, a policy of the board of directors that the panel relied ~~upon~~ on in the prior decision was repealed, replaced or revised, or
 - (c) the prior decision has been overruled under subsection ~~(4)~~ ~~(3.1)~~ of this section.
- ~~(4)~~ ~~(3.1)~~—Despite subsection (3), a panel appointed under section ~~285 (6)238 (6)~~ may overrule a prior decision of another panel appointed under that section.

- (5) ~~(4)~~ — If the appeal tribunal is hearing an appeal respecting the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the appeal tribunal must resolve that issue in a manner that favours the worker.

Application of policies of the board of directors

- ~~304251~~ (1) The appeal tribunal may refuse to apply a policy of the board of directors only if the policy is so patently unreasonable that it is not capable of being supported by ~~the~~ this Act and ~~its~~ the regulations under this Act.
- (2) If, in an appeal, the appeal tribunal considers that a policy of the board of directors should not be applied, that issue must be referred to the chair and the appeal proceedings must be suspended until the chair makes a determination under subsection (4) or the board of directors makes a determination under subsection (6), as the case may be.
- (3) As soon as practicable after an issue is referred under subsection (2), the chair must determine whether the policy should be applied.
- (4) If the chair determines under subsection (3) that the policy should be applied, the chair must refer the matter back to the appeal tribunal and the tribunal is bound by that determination.
- (5) If the chair determines under subsection (3) that the policy should not be applied, the chair must
- (a) send a notice of this determination, including the chair's written reasons, to the board of directors, and
 - (b) suspend, until the board of directors makes a determination under subsection (6), any other appeal proceedings that are pending before the appeal tribunal and that the chair considers to be affected by the same policy. ~~until the board of directors makes a determination under subsection (6).~~
- (6) Within 90 days after ~~receipt of~~ receiving a notice under subsection (5) (a), the board of directors must review the policy and determine whether the appeal tribunal may refuse to apply it under subsection (1).
- (7) On a review under subsection (6), the board of directors must provide the following with an opportunity to make written submissions:
- (a) the parties to the appeal referred to in subsection (2);
 - (b) the parties to any appeals that were pending before the appeal tribunal on the date the chair sent a notice under subsection (5) (a) and that were suspended under subsection (5) (b).
- (8) After the board of directors makes a determination under subsection (6), the board of directors must refer the matter back to the appeal tribunal, and the appeal tribunal is bound by that determination.

- (9) The chair must not make a general delegation of ~~his or her~~ the chair's authority under subsection (3), (4) or (5); but, if the chair ~~believes~~ considers there may be a reasonable apprehension of bias, the chair may delegate this authority to a vice chair or to a panel of the appeal tribunal for the purposes of a specific appeal.

Suspension of appeal proceedings pending Board decision

- ~~305252~~ (1) On application of the appellant or on the chair's own initiative, the chair may suspend appeal proceedings if a Board's decision respecting a matter that is related to the appeal is pending.
- (2) Within 30 days after the Board's decision referred to in subsection (1) is made, the appellant may request the appeal tribunal to continue the appeal proceedings and, on ~~receipt of~~ receiving that request, the appeal tribunal must continue the proceedings.
- (3) If the appellant requests the appeal tribunal to continue the appeal proceedings before the Board's decision referred to in subsection (1) is made, the chair may
- (a) direct the appeal tribunal to continue the proceedings, or
 - (b) continue the suspension until the Board's decision is made.
- (4) The chair may extend the time to make a request under subsection (2), including making an extension of the time after the time to make the request has expired, if this is done on application and, and where the chair is satisfied that
- (a) special circumstances existed ~~which that preclude or precluded~~ the making of a request within the time required ~~in by~~ subsection (2), and
 - (b) an injustice would otherwise result;
- ~~the chair may extend the time to make a request under subsection (2) even if the time to make the request has expired.~~

Decision on appeal

- ~~306253~~ (1) On an appeal, the appeal tribunal may confirm, vary or cancel the appealed decision or order.
- (2) Despite subsection (1), on an appeal under section ~~289 (2)~~ 240 (2) [*other Board decisions that may be appealed*], the appeal tribunal may make one of the following decisions:
- (a) the matter that is the subject of the application under section ~~12596 (2)~~ must be reopened;
 - (b) the matter that is the subject of the application under section ~~12596 (2)~~ may not be reopened.
- (3) The appeal tribunal's final decision on an appeal must be made in writing with reasons.

- (4) Subject to any suspensions of the appeal proceedings permitted under this Part, the appeal tribunal must make its final decision on an appeal
 - (a) within 180 days after the appeal tribunal receives a copy of the records provided under section ~~295 (3)~~^{245 (3)} [Board provision of policies and records] respecting the matter under appeal, or
 - (b) if a shorter time period is prescribed by the Lieutenant Governor in Council, within that shorter time period.
- (5) The chair may extend the applicable time period under subsection (4) if
 - (a) the complexity of the proceedings in the appeal or of the matter under appeal makes the time period impractical, or
 - (b) the appellant requests a delay in the proceedings to submit new evidence or make additional submissions.
- (6) If the appellant has requested a delay for a reason referred to in subsection (5) (b), the chair may extend the time for not more than 45 days.
- (7) If the time is extended under subsection (6), the chair, on application, must extend the time for an additional period not ~~exceeding longer than~~ that granted under subsection (6) to allow the other parties to the appeal to submit new evidence or to make additional submissions.
- (8) The chair may extend the time under this section even if the applicable time period under subsection (4) has expired.

Amendment to final decision

- ~~307253.1~~ (1) If a party applies or on the appeal tribunal's own initiative, the appeal tribunal may amend a final decision to correct any of the following:
- (a) a clerical or typographical error;
 - (b) an accidental or inadvertent error, omission or other similar mistake;
 - (c) an arithmetical error made in a computation.
- (2) Unless the appeal tribunal determines otherwise, an amendment under subsection (1) must not be made more than 90 days after all parties have been served with the final decision.
 - (3) Within 90 days after being served with the final decision, a party may apply to the appeal tribunal for clarification of the final decision and the appeal tribunal may amend the final decision only if the appeal tribunal considers that the amendment will clarify the final decision.
 - (4) The appeal tribunal may not amend a final decision other than in those circumstances described in subsections (1) to (3).
 - (5) This section must not be construed as limiting the appeal tribunal's ability, on request of a party, to reopen an appeal in order to cure a jurisdictional defect.

Division 4 – General

Exclusive jurisdiction of appeal tribunal

308254 The appeal tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under this Part and to make any order permitted to be made, including the following:

- (a) all appeals from review ~~officers'~~ decisions as permitted under section ~~288239~~ [review decisions that may be appealed];
- (b) all appeals from Board decisions or orders as permitted under section ~~289240~~ [other Board decisions that may be appealed];
- (c) all matters that the appeal tribunal is requested to determine under section ~~311257~~ [request for certification to court];
- (d) all other matters for which ~~the Lieutenant Governor in Council by a regulation under section 315~~ [regulations respecting this Part] permits an appeal to the appeal tribunal under this Part.

Appeal tribunal decision or action final

- 309255**
- (1) Any decision or action of the chair or the appeal tribunal under this Part is final and conclusive and is not open to question or review in any court.
 - (2) Proceedings by or before the chair or appeal tribunal under this Part must not
 - (a) be restrained by injunction, prohibition or other process or proceeding in any court, or
 - (b) be removed by certiorari or otherwise into any court.
 - (3) The Board must comply with a final decision of the appeal tribunal made in an appeal under this Part.
 - (4) A party in whose favour the appeal tribunal makes a final decision, or a person designated in the final decision, may file a certified copy of the final decision with the Supreme Court.
 - (5) A final decision filed under subsection (4) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

Reconsideration of appeal tribunal decision

- 310256**
- (1) This section applies to the following: ~~a decision in~~
 - (a) a decision in a completed appeal by the appeal tribunal under this Part or under Part 2 [Transitional Provisions] of the Workers Compensation Amendment Act (No. 2), 2002; ~~and~~
 - (b) a decision in a completed appeal by the appeal division under a former enactment or under Part 2 of the Workers Compensation Amendment Act (No. 2), 2002.

- (2) A party to a completed appeal may apply to the chair for reconsideration of the decision in that appeal if new evidence has become available or been discovered.
- (3) On receipt of receiving an application under subsection (2), the chair may refer the decision to the appeal tribunal for reconsideration if the chair is satisfied that the evidence referred to in the application
 - (a) is substantial and material to the decision, and
 - (b) did not exist at the time of the appeal hearing or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.
- (4) Each party to a completed appeal may apply for reconsideration of a decision under this section on one occasion only.

Request for appeal tribunal certification to court

- 311257** (1) ~~Where an~~ If a court action is commenced based on
 - ~~(a) (b)~~ a personal injury, ~~or~~
 - ~~(b) (e)~~ death, or
 - ~~(c) (a)~~ a disability caused by occupational disease,the court or a party to the action may request the appeal tribunal to make a determination under subsection (2) and to certify that determination to the court.
- (2) For the purposes of subsection (1), the appeal tribunal may determine any matter that is relevant to the action and within the Board's jurisdiction under this Act, including determining whether
 - (a) a person was, at the time the cause of action arose, a worker,
 - (b) ~~the a worker's injury, disability or death or disability of a worker~~ arose out of, and in the course of, the worker's employment,
 - (c) an employer or the employer's servant or agent was, at the time the cause of action arose, employed by another employer, or
 - (d) an employer was, at the time the cause of action arose, engaged in an industry within the meaning of the compensation provisions. ~~Part 1.~~
 - (3) This Part, except section ~~306 (4)253 (4)~~ *[time for making final decision]*, applies to proceedings under this section as if the proceedings were an appeal under this Part.

Payment of compensation following appeal

- 312** (1) ~~258(5)~~—If the appeal tribunal's decision on an appeal requires the payment of compensation, all or part of which was deferred under ~~subsection (3), section 275 (3)~~ *[payment following review decision]*, interest must be paid on the deferred amount of that compensation as specified in subsection ~~(2)(6)~~.

~~(2) (6)~~ Interest payable under subsection ~~(1) (5)~~ must be calculated in accordance with the policies of the board of directors and begins

- (a) 41 days after the review officer made ~~his or her~~ the appealed decision, or
- (b) on an earlier day determined in accordance with the policies of the board of directors.

Effect of appeal in relation to employer payment obligations ~~Payment of interest~~

313259 (1) The commencement of ~~a review under section 96.2 or of an appeal under this Part~~ respecting a matter described in section ~~268 (1) (c) 96.2 (1) (b)~~ *[employer assessments, classifications, monetary penalties or compensation payments]* does not relieve an employer from paying an amount in respect of a matter that is the subject of the ~~review or~~ appeal.

(2) If the decision on the appeal ~~a review or an appeal referred to in subsection (1)~~ requires the refund of an amount to an employer, interest calculated in accordance with the policies of the board of directors must be paid to the employer on that refunded amount.

Confidentiality obligations

314260 (1) Members of the appeal tribunal and officers, employees and contractors of the appeal tribunal must not disclose any information obtained by them or of which they have been informed while performing their duties and functions under this Part, except as may be necessary to discharge their obligations under this Part.

(2) If information in a claim file or in any other material ~~pertaining to respecting~~ the claim of an injured or ~~a~~ disabled worker is disclosed for purposes of this Part to a person other than the worker, that person must not disclose the information except as permitted in circumstances described in section ~~23595 (1.1)~~ *[confidentiality – compensation claim information]*.

(3) ~~Every~~ A person who ~~violates~~ contravenes subsection (1) or (2) commits an offence.

Regulations respecting this Part ~~Lieutenant Governor in Council regulations~~

224 ~~(1) The Lieutenant Governor in Council may make regulations referred to in section 41 [general powers to make regulations] of the Interpretation Act.~~

315 ~~(2) Without limiting subsection (1), the~~ The Lieutenant Governor in Council may make regulations as follows:

- (a) ~~(j)~~ prescribing any
 - (i) decisions or orders under this Act that may be appealed to the appeal tribunal ~~Part 4 under this Part,~~
 - (ii) prescribing who may appeal those decisions or orders, and

- (iii) ~~prescribing~~ classes of decisions for purposes of section ~~288 (2)~~ ~~(a)239 (2) (a)~~ [review decisions that may not be appealed];
- (b) ~~(k.1)~~ — respecting the awarding of costs by the appeal tribunal in an appeal under ~~Part 4~~ this Part;
- (c) ~~(k.3)~~ — prescribing the circumstances under which the appeal tribunal may order the Board to reimburse the expenses incurred by a party to an appeal under ~~Part 4~~ this Part;
- (d) ~~(k.2)~~ — prescribing qualifications of health professionals for purposes of section ~~301249~~ [health professional assistance to appeal tribunal];

~~Division 6 – Workers’ Compensation Board~~

PART 8 – WORKERS’ COMPENSATION BOARD AND GENERAL MATTERS

Division 1 – Workers’ Compensation Board and Board of Directors

Workers’ Compensation Board and its board of directors

- 31680** (1) The Workers’ Compensation Board is continued as a corporation.
- (2) ~~81(1)~~ — The board of directors of the Workers’ Compensation Board consists of
- (a) 9 voting directors appointed by the Lieutenant Governor in Council in accordance with section 317, and as follows: (i)...
 - (b) the president appointed by the board of directors under section 323, who is a non-voting director.

Voting directors Board of directors

- 317** (1) ~~81(1)(a)~~ 9 voting directors appointed by the ~~The voting directors are to be appointed by the~~ Lieutenant Governor in Council as follows:
- (a) ~~(iv)~~ ~~one additional~~ director, representative of the public interest, who is chair;
 - (b) ~~(iii)~~ 2 additional directors, representative of the public interest;
 - (c) ~~(i)~~ one director, representative of workers;
 - (d) ~~(ii)~~ one director, representative of employers;
 - (e) ~~(viii)~~ one director who is or was a professional in the area of occupational health and safety; ~~and~~
 - (f) ~~(vii)~~ one director who is or was a professional in the area of law or law enforcement;
 - (g) ~~(v)~~ one director who at the time of appointment is a professional providing health care or rehabilitation services to persons with disabilities;
 - (h) ~~(vi)~~ one director who at the time of appointment is an actuary;

- ~~(b) the president who is a non-voting director.~~
- (2) The Lieutenant Governor in Council must make selections for an appointment under this section in accordance with the following:
- (a) for appointment under subsection (1) ~~(c), (a) (i)~~, selection of 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) for appointment under subsection (1) ~~(d), (a) (ii)~~, selection of 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) ~~(f)~~ for appointment under subsection (1) ~~(e), (a) (viii)~~, selection of a person from a list of at least 3 persons, each of whom is nominated by one or more organizations that provide occupational health and safety services;
 - (d) ~~(e)~~ for appointment under subsection (1) ~~(f), (a) (vii)~~, selection of a person from a list of at least 3 persons, each of whom is nominated by one or more organizations for professionals in law or law enforcement; ~~and~~
 - (e) ~~(e)~~ for appointment under subsection (1) ~~(g), (a) (v)~~, selection of 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;
 - (f) ~~(d)~~ for appointment under subsection (1) ~~(h), (a) (vi)~~, selection of a person from a list of at least 3 persons, each of whom is nominated by one or more professional organizations for actuaries;
- (3) ~~(10)~~ — In this section, In relation to an appointment under subsection (1) (f), “law enforcement” means any of the following:
- (a) policing, including criminal intelligence operations;
 - (b) investigations that lead or could lead to a penalty or sanction being imposed; ~~or~~
 - (c) proceedings that lead or could lead to a penalty or sanction being imposed.

Term of office and remuneration for voting directors

- 318** (1) ~~81(3)~~ — Each voting 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.
- (2) ~~81(5)~~ — The chair holds office for a term of up to 5 years, as set by the Lieutenant Governor in Council.
- (3) ~~81(4)~~ — A voting director, other than the chair, must not be appointed ~~under subsection (1) (a)~~ for a continuous period of more than 6 years.
- (4) ~~81(6)~~ — The chair may not be appointed for a continuous period of more than 10 years.

~~(5) 81(8)~~—The Board must pay voting 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~~ out-of-pocket expenses necessarily incurred in discharging their duties.

~~81(9)~~ A payment referred to in subsection (8) must be paid out of the accident fund.

Policies of the board of directors

~~82~~ (1) ~~The board of directors must~~

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

Powers and duties of General responsibilities of the board of directors

32082 (1) The board of directors must set and supervise the direction of the Board.

~~(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~~ this 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.;

- (4) ~~(b)~~—The board of directors may authorize the Board to acquire and dispose of land, ~~and~~

Meetings and other proceedings of the board of directors

32183

- (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.

- (5) ~~81(7)~~—The chair may designate a director appointed under ~~subsection (1) (a) (iii)~~ section 317 (1) (b) [*representative of the public interest*] 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 when acting in the chair's place.

Standard of care of the obligations for directors

32284

- (1) A director, when exercising the powers and performing the duties and 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.

Board president appointment and responsibilities

32384.1

- (1) The board of directors must appoint a person to be president of the Board.
- (2) ~~(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~~ this 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 duties and functions ~~and duties~~ assigned to the president by the board of directors.

~~(3) (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.~~

Delegation by board of directors or president

324 (1) ~~82 (3)(e)~~ The board of directors may 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.

(2) ~~84.1(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.

Division 2 – Board Administration

Annual service plan plans

32582.1 (1) On or before April 30 of each year, the Board must provide the minister with a service plan that ~~(a)~~—addresses the ~~3-year~~ 3-year period starting on January 1 of that year; and ~~(b)~~—does the following:

~~(a) (i)~~—sets out the Board's priorities;

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

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

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

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

(2) After receiving the annual service plan, the minister must promptly, ~~with respect to the service plan referred to in subsection (1)~~,

(a) lay the ~~service plan~~ before the Legislative Assembly, if the Legislative Assembly is in session, or

(b) file the ~~service plan~~ with the Clerk of the Legislative Assembly, if the Legislative Assembly is not in session.

Annual report to minister

32669 (1) ~~The Board must~~, On or before April 30 ~~in of~~ each year, the Board must make to the minister a report of ~~its~~ the Board's transactions during the last preceding

calendar year, and the report must include any other information the minister specifies. ~~contain the particulars the minister specifies.~~

- (2) ~~112~~ — The annual report of the Board under this section ~~69~~ must include
- (a) a review of ~~its~~ the Board's activities under this Part ~~Part 2~~ [*Occupational Health and Safety*] for the year, including financial, statistical and performance information, and
 - (b) an ~~assessment~~ evaluation of the occupational health and safety record of workplaces in British Columbia.
- (3) ~~(2)~~ — After receiving the annual report, the minister must promptly ~~, with respect to the report referred to in subsection (1),~~
- (a) lay the report before the Legislative Assembly, if the Legislative Assembly is in session, or
 - (b) file the report with the Clerk of the Legislative Assembly, if the Legislative Assembly is not in session.

Financial management ~~Accounting and investment of excess funds~~

- 32767** (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~~ the Board 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 ~~fund and silicosis funds~~ fund in excess of current requirements to be invested and reinvested and, in doing this, ~~so~~ must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

Audit requirement

- 32868** (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.

Board may appoint officers and other employees Staff

- 32986** (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~~ A person so appointed under this section holds office during the pleasure of the Board, ~~and his or her remuneration must be paid out of the accident fund.~~
- (3) ~~(5.1)~~—The *Labour Relations Code* does not apply to the following:
- (a) a person employed
 - (i) for the purposes of policy development or providing policy advice, and
 - (ii) in the policy and regulation development ~~bureau~~ division 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.

Board must appoint review officers

- 330** (1) ~~96.2~~ ~~(9)~~—The Board must appoint a chief review officer and one or more review officers to conduct reviews under ~~this section.~~ Part 6 [Review of Board Decisions].
- (2) ~~(10)~~—The *Labour Relations Code* does not apply to a chief review officer or a review officer.

Superannuation fund

- 331** (1) ~~86(3)~~—The Board may
- (a) establish and maintain a fund, to be known as the superannuation fund, for the payment of superannuation allowances to ~~its~~ the Board's 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
 - (b) ~~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.
- (2) The Board 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~~ British Columbia or from an insurer.
- (3) The costs of administering the superannuation fund are part of the cost of the administration of this Act.

- (4) ~~Notwithstanding~~ Despite any other Act, the matters respecting the establishment and maintenance of the superannuation fund under ~~subsection (3)~~ this section or payment of superannuation allowances to employees or allowances on the disability or death of employees, including the following, must not be the subject of a collective agreement between the Board and its employees:
- (a) contributions to the fund by the Board and its employees; ~~and~~
 - (b) the amounts of superannuation or other allowances; ~~and~~
 - (c) the conditions on which and the persons to whom superannuation or other allowances they may be paid, ~~must not be the subject of a collective agreement between the Board and its employees~~
- (5) ~~[Repealed 1999-44-118.]~~
- (6) and (7) ~~[Repealed 2002-66-13.]~~

Protection for Board, directors, officers and employees

332 ~~113(4)~~ — 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

- (a) that was within the jurisdiction of the Board, ~~under this Part,~~ or
- (b) that the Board, director, officer or employee believed was within the jurisdiction of the Board, ~~under this Part.~~

~~96(1) 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; . . .~~

Division 3 – Other Board Powers and Responsibilities

Variation Annual adjustment of dollar amounts referred to in Act

- 33325.2** (1) Subject to subsection ~~(2)~~(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~~ 12-month period ending on October 31 of the previous year, ~~as published by Statistics Canada.~~
- (2) ~~(3)~~ — Subsection (1) does not apply to a dollar amount referred to in the following: section 33 (4), (6), (8) and (10)
- (a) section 209 (2) [maximum wage rate for applicable year];
 - (b) section 227 [compensation for workers injured before 1986].

- ~~(3) (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.

Publish in Gazette

- ~~(4) 28~~—~~There~~ Adjustments under subsection (1) must be published in the Gazette, ~~amendments to the Act resulting from changes in the consumer price index.~~

Annual adjustment of periodic payment amounts ~~General indexing factor~~

- ~~33425~~ (1) ~~For the purposes of this section,~~ The Board must, ~~as of~~ on or before January 1 of each year,
- (a) determine the percentage change in the consumer price index for Canada, for all items, for the ~~12-month~~ 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.

Interjurisdictional agreements and arrangements by the Board

- ~~3358.1~~ (1) The Board may enter into ~~an~~ agreements or make ~~an~~ arrangements with Canada, a province or a territory, or with the appropriate authority of Canada, ~~or a province or a territory,~~ respecting the following: ~~to provide for~~
- ~~(a) (b)~~ administrative co-operation ~~cooperation~~ and assistance between jurisdictions in all matters under this Act and corresponding legislation in other jurisdictions; ~~or~~
 - ~~(b) (a)~~ the provision of compensation, rehabilitation and health care to workers in accordance with the standards established under this Act or corresponding legislation in other jurisdictions; ~~;~~

- (c) avoidance of duplication of assessments on workers' earnings.
- (2) An agreement or arrangement under ~~subsection (1)~~ this section 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~~ an appropriate authority of Canada or an appropriate authority of a province or a territory for compensation, rehabilitation costs; or health care costs paid by the authority. ~~it.~~

Exercise of powers under federal Acts or agreements

33697 The Board may exercise any power or duty conferred or imposed on it by or under a statute of Canada or an agreement between Canada and British Columbia. ~~the Province.~~

Information respecting Board activities

337 ~~69(3)~~ The Board must publish and distribute among employers, workers and the general public the information ~~in respect of~~ respecting the business transacted by the Board that ~~in its judgment it considers~~ may be useful.

Division 4 – Board Practices, Procedures and Related Matters

Board practices and procedures

338 ~~96(8)~~ The Board may establish practices and procedures for carrying out its responsibilities under ~~the~~ this Act, including specifying time periods within which certain steps must be taken and the consequences for failing to comply ~~with~~ within those time periods.

Board decision making decision-making

- 33999**
- (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~~ on the merits and justice of the case, but in ~~so doing~~ this the Board must apply ~~a policy~~ the policies of the board of directors that are ~~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.

Protection of Board proceedings

340 ~~113(3) 96(1)pt~~ Proceedings by or before the Board ~~under this Part~~ must not be

- (a) restrained by injunction, prohibition or other process or proceeding in any court, or

~~(b) be removed by certiorari or otherwise into any court, ---~~

~~96(1) ...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;~~

Authority to act on advice of officers and persons conducting inquiries Inquiry

~~341~~ ~~88(1)~~ The Board may act

~~(a) on the report of any of its officers, and~~

~~(b) 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 in relation to an inquiry under this Part, on his or her on the report of the person making the inquiry as to the result of the that inquiry.~~

Authority to compel witnesses and production of evidence

~~34287~~ (1) The Board has the ~~like same~~ powers as the Supreme Court

~~(a) to compel the attendance of witnesses and examine them under oath, and~~

~~(b) to compel the production and inspection of books, papers, documents records and things.~~

~~(2) The Board may ~~cause require~~ depositions of witnesses residing in or out of the Province British Columbia to be taken before a person appointed by the Board and in a similar manner similar to that prescribed established by the Rules of the Supreme Court for the taking of like depositions in that court before a commissioner.~~

Authority to award costs in relation to contested matters

~~343100~~ (1) ~~The Board may award a sum it considers reasonable to the successful party. This section applies in relation to a contested claim for compensation or to any other contested matter.~~

~~(2) The Board may award to the successful party an amount the Board considers reasonable to meet the expenses to which the party has been put to by reason of or incidental to contesting the matter, the contest, and~~

~~(3) An order of the Board for the payment by an employer or by a worker of an amount awarded under this section, a sum so awarded, when filed in the manner provided for the filing of certificates by under section 264 (2)45 (2) [collection of unpaid assessment], becomes a judgment of the court in which it the order is filed and may be enforced accordingly.~~

Service of orders and other documents

~~344221~~ (1) A document that must be served on or sent to a person under this Act may be

- (a) personally served on the person,
 - (b) ~~sent by mail~~ mailed to the person's last known address, or
 - (c) transmitted electronically, by ~~facsimile transmission~~ fax or otherwise, to the address or number requested by the person.
- (2) If a document is ~~sent by mail~~ mailed, the document is deemed to have been received ~~on the 8th day~~ 8 days after it was mailed.
 - (3) If a document is transmitted electronically, the document is deemed to have been received when the person transmitting the document receives an electronic acknowledgement of the transmission.
 - (4) If, through absence, accident, illness or other cause beyond the party's control, a party who acts in good faith does not receive the copy until a later date than the date provided under subsection (2) or (3), that subsection does not apply.
 - (5) If a notice or document is not served in accordance with this section, the proceeding is not invalidated if
 - (a) the contents of the notice or document were known by the person to be served within the time allowed for service,
 - (b) the person to be served consents, or
 - (c) the failure to serve does not result in prejudice to the person or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.
 - (6) If, in relation to a proceeding under Part 7 [Appeals to Appeal Tribunal], the appeal tribunal is of the opinion that, because there are so many parties to ~~a~~ the proceeding or for any other reason, it is impracticable to give notice of a hearing to a party by a method referred to in subsection (1) ~~(a) to (e)~~, the appeal tribunal may give notice of a hearing by public advertisement or otherwise as the appeal tribunal directs.

Alternative dispute resolution

345 ~~96(9)~~ In circumstances it considers appropriate, the Board may recommend the use of ~~alternate~~ alternative dispute resolution processes to assist in the resolution of matters under ~~the~~ this Act.

Division 5 – Board Inquiry Powers

General inquiry authority

34688 (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~~ If the Board considers that an inquiry is necessary, the inquiry may be made by an officer of the Board or some by another person appointed by the Board 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) this section, the person making the inquiry has~~ all the powers conferred on the Board by under section 34287 [authority to compel witnesses and production of evidence].

Examinations and other inquiries respecting employer information

- 347** (1) ~~88(3)~~—The Board, an officer of the Board or a person authorized by ~~it the Board for that this purpose;~~ may examine the books and accounts of ~~every an~~ employer and make any other inquiry the Board considers necessary to ~~ascertain determine any of the following: 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~~
- (a) whether an industry or person is within the scope of the compensation provisions; this Part.
 - (b) the amount of the payroll of the employer;
 - (c) whether a statement provided to the Board under section 245 [employer to provide estimate of payroll] is an accurate statement of the matters that are required to be stated in it.
- (2) For the purpose of ~~the examination or an inquiry under this section,~~ the Board or person authorized to make the ~~examination or inquiry~~ may give notice in writing to the an employer or the agent of an employer ~~employer's agent notice in writing~~ requiring the employer to bring or produce before the Board or person, at a ~~place and time and place to be mentioned specified~~ place and time specified in the notice, ~~which time must be at least 10 days after the giving of the notice, all documents, writings, books, deeds and papers all records~~ 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.~~
- (3) The time specified in a notice under subsection (2) must be at least 10 days after the notice is given. ;
- (4) ~~Every An employer and every or agent of the employer~~ named in and served with ~~the a notice under subsection (2) must, produce~~ at the time and place ~~required specified in the notice, produce all records documents, writings, books, deeds and papers according to the tenor of in accordance with~~ the notice.
- (5) ~~An employer and every other A person who~~ does any of the following commits an offence:
- (a) obstructs or hinders the making of an examination or inquiry under this section; mentioned in subsection (3); or
 - (b) who refuses to permit it such an inquiry to be made; ; or

~~(c) who neglects or refuses to produce the required records, documents, writings, books, deeds and papers at the time and place and time specified in the notice mentioned in under subsection (2)(3), commits an offence against this Part.~~

Oaths, affidavits and other declarations in relation to inquiries

348 ~~88(4)~~ Every ~~An~~ officer of the Board or a person authorized by the Board to make examination or an inquiry under this section ~~section 346 or 347~~ may

(a) require and take affidavits, affirmations or declarations as to any matter of the examination or inquiry,

(b) ~~and to~~ take affidavits for the purposes of this Act, and

(c) ~~in relation to these, all these cases to~~ administer oaths, affirmations and declarations and certify that they were made.

Confidentiality obligations in relation to inquiries ~~Secrecy~~

34995 (1) Officers of the Board and persons authorized to make examinations or inquiries ~~an inquiry~~ under this ~~Division Part~~ must not, ~~divulge or allow to be divulged,~~ except in the performance of their duties or under the authority of the Board, ~~disclose or allow to be disclosed~~ information obtained by them or which has come to their knowledge in making or in connection with ~~an examination or an inquiry~~ under this ~~Division Part~~.

(2) ~~Every A~~ person who ~~contravenes~~ violates subsection (1) ~~or (1.1)~~ commits an offence ~~and 77(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 greater than exceeding \$5 412.08.~~

Division 6 – Workers’ Advisers, Employers’ Advisers and Other Assistance

Workers’ advisers and employers’ advisers

350 (1) ~~94(1.1)~~ Workers’ advisers, employers’ advisers and other employees necessary to enable the workers’ advisers and employers’ advisers to perform their duties under this ~~Division~~ subsections (2) and (3), respectively, may be appointed ~~under the Public Service Act~~ as employees of the ~~minister’s~~ ministry, ~~under the Public Service Act~~.

(1) ~~In this section, “ministry” means the ministry of the minister.~~

(2) (4) ~~—~~ The following ~~apply to a ministry employee appointed under subsection (1) as a workers’ adviser or employers’ adviser: Employees of the ministry acting in the capacity of workers’ advisers or employers’ advisers~~

(a) ~~the employee need not be members a member of the Law Society of British Columbia; and~~

~~(b) if one of them is not, section 15 [restrictions on practice of law] of the Legal Profession Act does not apply to him or her. the employee if that employee is not a member of the Law Society of British Columbia.~~

~~(3) (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.

~~(4) (1.3)~~—On receiving a request under subsection ~~(3)(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.]~~

Role of workers' advisers

351 ~~94(2)~~—A workers' adviser must

- (a) give assistance to a worker or ~~to a~~ dependant having a claim under this Act, ~~except where~~ unless the workers' adviser ~~thinks~~ considers 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~~ if the adviser considers assistance is required, and
- (c) advise workers and dependants ~~with regard to~~ regarding the interpretation and administration of this Act or any regulations or decisions made under this Act. it.

Role of employers' advisers

352 ~~94(3)~~—An employers' adviser must

- (a) give assistance to an employer respecting any claim under this Act of
 - (i) a worker of the employer, or
 - (ii) a dependant of such a worker ~~of that employer, except where~~ unless the employer's adviser ~~thinks~~ considers 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~~ if the adviser considers assistance is required, and
- (c) advise employers ~~with regard to~~ regarding the interpretation and administration of this Act or any regulations or decisions made under this Act. it.

Information and confidentiality rules for advisers and staff

- 353** (1) ~~95(3)~~—The workers’ advisers, the employers’ advisers and ~~their~~ the staff of those advisers must have access at any reasonable time to the complete claims files of the Board and any other material ~~pertaining~~ relating to the claim of an injured or disabled worker;
- (2) ~~but~~ The advisers and staff referred to in subsection (1) must treat the information contained in those the claims files ~~must be treated~~ as confidential to the same extent as ~~it~~ the information is ~~so~~ treated by the Board.
- (3) ~~94(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

- 35494.1** (1) A person may
- (a) give advice respecting the interpretation or administration of ~~the~~ this Act, the policies of the board of directors, the Board’s practices and procedures or any regulations, orders or decisions under ~~the~~ this Act, or
 - (b) act on behalf of a person by
 - (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 [*restrictions on practice of law*] of the *Legal Profession Act* does not apply to a person while the person performs ~~the~~ functions referred to in subsection (1).

~~SCHEDULE A~~

{Schedule A repealed 1993-34-13}

SCHEDULE B1

**PRESUMPTION OF OCCUPATIONAL DISEASE RELATED TO
SPECIFIC PROCESS OR INDUSTRY**

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
1	Poisoning by:	

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
	(1)(a) Lead	Where there is an exposure to lead or lead compounds.
	(2)(b) Mercury	Where there is an exposure to mercury or mercury compounds.
	(3)(c) Arsenic or arsine	Where there is an exposure to arsenic or arsenic compounds.
	(4)(d) Cadmium	Where there is an exposure to cadmium or cadmium compounds.
	(5)(e) Manganese	Where there is an exposure to manganese or manganese compounds.
	(6)(f) Phosphorus, phosphine or due to the anti-cholinesterase action of organic phosphorus compounds	Where there is an exposure to phosphorus or phosphorus compounds.
	(7)(g) Organic solvents, <u>including</u> (n-hexane, carbon tetrachloride, trichloroethane, trichloroethylene, acetone, benzene, toluene, <u>and</u> xylene and others)	Where there is exposure to organic solvents.
	(8)(h) Carbon monoxide	Where there is exposure to products of combustion; or <u>to</u> any other source of carbon monoxide.
	(9)(i) Hydrogen sulphide	Where there is excessive exposure to hydrogen sulphide.
	(10)(j) Nitrous fumes, (including silo-filler's disease)	Where there is excessive exposure to nitrous fumes, including the oxides of nitrogen.
	(11)(k) Nitriles, hydrogen cyanide or its soluble salts	Where there is exposure to chemicals containing -CN group, including certain pesticides.
	(12)(l) Phosgene	Where there is excessive exposure to phosgene, including its occurrence as a breakdown product of chlorinated compounds by combustion.

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
	(13)(m) Other toxic substances	Where there is exposure to such toxic gases, vapours, mists, fumes or dusts.
2	Infection caused by:	
	(1)(a) Psittacosis virus	Where there is established contact with ornithosis-infected avian species or material.
	(2)(b) <u>Salmonella organisms,</u> Staphylococcus aureus, Salmonella organisms, <u>or Hepatitis B virus</u>	Employment w Where close and frequent contact with a source or sources of the infection has been established and the employment necessitates (a)(1) the treatment, nursing or examination of or interviews with patients or ill persons, or (b)(2) the analysis or testing of body tissues or fluids, or (c)(3) research into salmonellae, pathogenic staphylococci or Hepatitis B virus.
	(3)(e) Brucella organisms, <u>including</u> (Undulant fever)	Where there is contact with animals, <u>animal</u> carcasses or animal by-products.
	(4)(d) Tubercle bacillus	Employment w Where close and frequent contact with a source or sources of tuberculous infection has been established and the employment necessitates (a)(1) the treatment, nursing or examination of patients or ill persons, or (b)(2) the analysis or testing of body tissues or fluids, or (c)(3) research into tuberculosis by a worker who, (i) when first engaged, or after an absence from employment of the types mentioned in these regulations for a period of more than one year, when re-engaged in such employment was free from evidence of tuberculosis, and (ii) continued to be free from evidence of tuberculosis for 6 months after being so employed, <u>(except in the case of primary tuberculosis as proven by a negative tuberculin test at the time of employment).</u> In the case of an employee <u>a worker</u> previously compensated for tuberculosis, any subsequent tuberculosis after the disease has

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
		<p>become inactive and has remained inactive for a period of 3 years or more shall not be deemed <u>is not to be considered</u> to have occurred as a result of the original disability for the purpose of the Act, unless the worker is still engaged in employment listed above or the Board is satisfied that the subsequent tuberculosis is the direct result of the tuberculosis for which the worker has been compensated.</p>
3	<p>Pneumoconiosis:</p> <p>(1)(a) Silicosis</p> <p>(2)(b) Asbestosis</p> <p>(3)(c) Other pneumoconioses</p>	<p>Where there is exposure to airborne silica dust, including <u>in metalliferous mining and coal mining.</u></p> <p>Where there is exposure to airborne asbestos dust.</p> <p>Where there is exposure to the airborne dusts of coal, beryllium, tungsten carbide, aluminium <u>aluminum</u> or other dusts known to produce fibrosis of the lungs.</p>
43 A	<p>Diffuse pleural thickening or fibrosis, whether unilateral or bilateral</p>	<p>Where there is exposure to airborne asbestos dust and the worker has not previously had suffered and <u>is does</u> not currently have suffering collagen disease, chronic uremia, drug-induced fibrosis, tuberculosis or other infection, trauma; or disease capable of causing pleural thickening or fibrosis.</p>
53 B	<p>Benign pleural effusion, whether unilateral or bilateral</p>	<p>Where there is exposure to airborne asbestos dust and the worker has not previously had suffered and <u>does is</u> not currently have suffering collagen disease, chronic uremia, tuberculosis or other infection, trauma; or disease capable of causing pleural effusion.</p>
64	<p>Cancer:</p> <p>(a) [Deleted B.C. Reg. 224/2010.]</p> <p>(1)(a.1) Primary carcinoma of the lung when associated with <u>asbestosis</u>:</p>	<p>Where there is exposure to airborne asbestos dust.</p>

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
	(i) asbestosis or	Where there is exposure to airborne asbestos dust.
	<u>(2)(ii) Primary carcinoma of the lung when associated with bilateral diffuse pleural thickening over 2 mm thick</u>	Where there is exposure to airborne asbestos dust and the worker has not previously had <u>suffered</u> collagen disease, chronic uremia, drug-induced fibrosis, tuberculosis or other infection or trauma capable of causing pleural thickening.
	<u>(3)(a.2) Primary carcinoma of the lung</u>	Where there is exposure to airborne asbestos dust for a period of 10 years or more of employment in one or more of the following industries: <u>(a)(1)</u> asbestos mining; <u>(b)(2)</u> insulation or filter material production; <u>(c)(3)</u> construction, (where there is disturbance of asbestos-containing materials); <u>(d)(4)</u> plumbing or electrical work; <u>(e)(5)</u> pulp mill work; <u>(f)(6)</u> shipyard work; <u>(g)(7)</u> longshoring.
	<u>(4)(b) Mesothelioma, whether (pleural or peritoneal)</u>	Where there is exposure to airborne asbestos dust.
	<u>(5)(e) Carcinoma, associated with asbestosis, of the larynx or pharynx associated with asbestosis</u>	Where there is exposure to airborne asbestos dust.

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
	(6)(d) Gastrointestinal cancer, (including all primary cancers associated with the oesophagus <u>esophagus</u> , stomach, small bowel, colon and rectum excluding the anus, and without regard to the site of the cancer in the gastrointestinal tract or the histological structure of the cancer)	Where there is exposure to asbestos dust if, during the period between the first exposure to asbestos dust and the diagnosis of gastrointestinal cancer, there has been a period of, or periods adding up to, 20 years of continuous exposure to asbestos dust and such exposure represents or is a manifestation of the major component of the occupational activity in which the exposure occurred.
	(7)(e) Primary cancer of the lung	Where there is prolonged exposure to <u>any of the following</u> : (a)(1) aerosols and gases containing arsenic, chromium, nickel or their compounds; or (b)(2) bis-(chloromethyl) ether; or (c)(3) the dust of uranium, or radon gas and its decay products; or (d)(4) particulate polycyclic aromatic hydrocarbons.
	(8)(f) Leukemia or pre-leukemia	Where there is prolonged exposure to benzene or to ionizing radiation.
	(9)(g) Primary cancer of the skin	Where there is ____ (a) prolonged contact with coal tar products, arsenic or cutting oils, or ____ (b) prolonged exposure to solar ultraviolet light.
	(10)(h) Primary cancer of the epithelial lining of the urinary bladder, ureter or renal pelvis	Where there is prolonged exposure to beta-naphthylamine, benzidine; or 4-nitrodiphenyl.
	(11)(i) Primary cancer of the mucous lining of the nose or nasal sinuses	Where there is prolonged exposure to ____ (a) dusts, fumes or mists containing nickel, or ____ (b) the dusts of hard woods.
	(12)(j) Angiosarcoma of the liver	Where there is exposure to vinyl chloride monomer.

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
7	5 [Repealed B.C. Reg 188/00.] Asthma	Where there is exposure to <u>any of the following</u> : (a) (1) western red cedar dust; or (b) (2) isocyanate vapours or gases; or (c) (3) the dusts, fumes or vapours of other chemicals or organic material known to cause asthma.
87	Extrinsic allergic alveolitis (including farmers' lung and mushroom workers' lung)	Where there is repeated exposure to respirable organic dusts.
98	Acute upper respiratory inflammation, acute pharyngitis, acute laryngitis, acute tracheitis, acute bronchitis, acute pneumonitis; or acute pulmonary edema, (excluding any allergic reaction, reaction to environmental tobacco smoke; or effect of an infection)	Where (a) there is exposure to a high concentration of fumes, vapours, gases, mists; or dusts of substances that have irritating or inflammatory properties, and (b) the respiratory symptoms occur within 48 hours of the exposure; or, within 72 hours where <u>if there is exposure to nitrogen dioxide or phosgene, within 72 hours of the exposure.</u>
109	Metal fume fever	Where there is exposure to the fumes of zinc or other metals.
1140	Fluorosis	Where there is exposure to high concentrations of fluorine or fluorine compounds, <u>whether</u> in gaseous or particulate form.
1244	Neurosensory hearing loss	Where there is prolonged exposure to excessive noise levels.
1342	Bursitis:	
	(a)(1) Knee bursitis (inflammation of the prepatellar, suprapatellar; or superficial infrapatellar bursa)	Where (a) there is repeated jarring impact against <u>the involved bursa</u> , or (b) where there are significant periods of kneeling on; <u>the involved bursa.</u>

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
	(b)(2) Shoulder bursitis (inflammation of the subacromial or subdeltoid bursa)	Where there is frequently repeated or sustained abduction or flexion of the shoulder joint greater than 60° degrees and where such activity represents a significant component of the employment.
1413	Tendinopathy:	
	(1)(a) Hand-wrist tendinopathy	Where there is use of the affected tendon(s) <u>tendon or tendons</u> to perform a task or series of tasks that involves any two <u>2</u> of the following <u>and where such activity represents a significant component of the employment:</u> (a)(1) frequently repeated motions or muscle contractions that place strain on the affected tendon(s) <u>tendon or tendons</u> ; (b)(2) significant flexion, extension, ulnar deviation or radial deviation of the affected hand or wrist; (c)(3) forceful exertion of the muscles utilized <u>used</u> in handling or moving tools or other objects with the affected hand or wrist; <u>and where such activity represents a significant component of the employment.</u>
	(2)(b) Shoulder tendinopathy	Where there is frequently repeated or sustained abduction or flexion of the shoulder joint greater than 60° degrees and where such activity represents a significant component of the employment.
1514	Decompression sickness	Where there is exposure to increased air pressure.
1615	Contact dermatitis	Where there is excessive exposure to irritants, allergens or sensitizers ordinarily causative of dermatitis.
1716	Hand-arm vibration syndrome	Where there have <u>has</u> been at least 1 000 hours of exposure to tools or equipment which <u>that</u> causes the transfer of significant vibration to the hand or arm of the worker.
1817	Radiation injury or disease:	
	(1)(a) Due to ionizing radiation	Where there is exposure to ionizing radiation.
	(2)(b) Due to non-ionizing radiation:	
	(a)(i) conjunctivitis, <u>or</u> keratitis	Where there is exposure to ultra-violet light.

Item	Column 1 Description of Disease	Column 2 Description of Process or Industry
	(b)(ii) cataract or other thermal damage to the eye	Where there is excessive exposure to infra-red, microwave or laser radiation.
1948	Erosion of incisor teeth	Where there is exposure to acid fumes or mist.

SCHEDULE C

[Schedule C repealed 2003-65-27.]

SCHEDULE D2

NON-TRAUMATIC-TRAUMATIC HEARING LOSS

Complete loss of hearing in both ears equals 15% of total disability. Complete loss of hearing in one ear with no loss in the other equals 3% of total disability.

Loss of Hearing in Decibels Measured in Each Ear in Turn	Percentage of Total Disability	
	Ear Most Affected PLUS Ear Least Affected	
0-27	0	0
28-32	0.3	1.2
33-37	0.5	2.0
38-42	0.7	2.8
43-47	1.0	4.0
48-52	1.3	5.2
53-57	1.7	6.8
58-62	2.1	8.4
63-67	2.6	10.4
68 or more	3.0	12.0

The loss of hearing in decibels in the first column is the arithmetic average of thresholds of hearing measured in each ear in turn by pure tone, air conduction audiometry at frequencies of 500, 1 000 and 2 000 Hertzian waves, the measurements being made with an audiometer calibrated according to standards prescribed by the Board.

REVISION SCHEDULE 1 – AMENDMENT TO REVISED ACT

1 The Workers Compensation Act is amended by adding the following Division to Part 2 [Occupational Health and Safety] of the Act:

~~Division 5~~ – Division 5.1 – Right to Refuse Unsafe Work

Definition

46.1 In this Division, “**right to refuse unsafe work**” means the right under section 46.2.

Worker may refuse unsafe work

- ~~46.2141~~ (1) Subject to this section, a worker may refuse to carry out work if the worker has reasonable grounds for believing that the work is unsafe.
- (2) For the purposes of this Division, work is unsafe if
- (a) the work activities,
 - (b) the conditions of the work, or
 - (c) the conditions that would result if the work were done
- are such that there is or would be a significant risk that the worker or another person might be killed, be seriously injured or suffer experience serious illness.
- (3) The right to refuse under subsection (1) does not apply if the refusal would directly endanger the health or safety of another person.
- (4) The right to refuse under subsection (1) continues until
- (a) the employer has taken remedial action to the satisfaction of the worker, or
 - (b) an officer has investigated the matter and has advised the worker to return to work.

Worker must immediately report a refusal

- ~~46.3142~~ (1) A worker who exercises ~~his or her~~ the worker’s right to refuse unsafe work must immediately report the refusal and the reasons for it to ~~his or her~~ the worker’s supervisor or to the employer.
- (2) Until any investigation under ~~this Part~~ the OHS provisions is completed, the worker must remain available at the workplace during ~~his or her~~ the worker’s normal working hours.

Supervisor or employer must respond to report

- ~~46.4143~~ A supervisor or employer who receives a report from a worker under section ~~46.3142~~ must immediately investigate the matter, and must either
- (a) ensure that any unsafe condition is remedied without delay, or

- (b) if in ~~his or her~~ the supervisor's or employer's opinion the work is not unsafe or the circumstances referred to in section ~~46.2144~~ (3) [*endangerment of other person*] apply, so inform the worker.

If worker continues to refuse

- 46.5144** (1) If the matter is not resolved under section ~~46.4143~~ and the worker continues to refuse under section ~~46.2144~~, the supervisor or employer must investigate the matter in the presence of the refusing worker and a worker representative.
- (2) As an exception, if there is no worker representative or the worker representative is not reasonably available, a reasonably available worker selected by the refusing worker as a representative is entitled to accompany the supervisor or employer on an investigation under subsection (1).
- (3) A worker is to be considered not reasonably available for the purposes of subsection (2) if the supervisor or employer objects to that person's participation in the investigation on the basis that it would unduly impede production, but the supervisor or employer may only object to one person on this ground.
- (4) If the worker continues to refuse after the investigation under this section, the employer and the worker must report the matter to the Board.

Investigation and determination by officer

- 46.6145** (1) If a report is made to the Board under section ~~46.5144~~, an officer must promptly investigate the situation and determine whether the work is unsafe and whether the refusing worker had reasonable grounds for believing the work to be unsafe.
- (2) In addition to the persons entitled under section ~~78182~~ [*representation on inspection*], the refusing worker is entitled to accompany the officer on any physical inspection of the workplace conducted for the purposes of the investigation under this section.
- (3) The officer must
- (a) advise the worker, the employer and the joint committee or worker health and safety representative of the officer's determinations under subsection (1), and
 - (b) if the officer determines that the work is not unsafe, advise the worker to return to work.
- (4) If an investigation under this section determines that work is unsafe, the officer conducting the investigation must order the employer to take appropriate remedial action.
- (5) For certainty, if an investigation under this section determines that the worker did not have reasonable grounds for believing that the work was unsafe, disciplinary action by the employer in relation to the matter may not be the

subject of a complaint under Division 6 [*Worker Protection in Relation to Prohibited Actions*] of this Part.

Employer may reassign worker to other work

- 46.7146** (1) Subject to this section, if a worker exercises the right to refuse unsafe work,
- (a) the employer may temporarily reassign the worker to reasonable alternative work, and
 - (b) the worker must accept the reassignment until ~~he or she~~ the worker returns to work in accordance with section ~~46.2144~~ (4).
- (2) A reassignment under subsection (1) does not affect the refusing worker's right to be present under section ~~46.5144~~ (1) or ~~46.6145~~ (2).
- (3) A reassignment under subsection (1) may not be the subject of a complaint under Division 6 of this Part.

Effect of refusal on workers exercising right and assisting in investigation

- 46.8147** (1) If a worker is reassigned to other work under section ~~46.7146~~, the employer must pay the worker the same wages as would have been paid had the worker continued in the worker's normal work.
- (2) If a worker who is exercising the right to refuse unsafe work has not been reassigned under section ~~46.7146~~, the employer must, until the circumstances of section ~~46.2144~~ (4) (a) or (b) are met, pay the worker the same wages as would have been payable had the worker continued to work.
- (3) The time spent by a worker accompanying the employer or supervisor under section ~~46.5144~~ (1) or an officer under section ~~46.6145~~ (2) is deemed to be time worked for the employer, and the employer must pay the worker for that time.

Effect of refusal on work of other workers

- 46.9148** (1) If workers are unable to proceed with their assigned work because of another worker's refusal under section ~~46.2144~~, unless otherwise provided in a collective agreement, the workers are deemed, for the purpose of calculating wages, to be at work until work resumes or until the end of their scheduled work period, whichever period is shorter.
- (2) Unless otherwise provided in a collective agreement, workers due to work on a scheduled work period after a work period to which subsection (1) applies are entitled to be paid in accordance with the *Employment Standards Act*.
- (3) An employer may assign reasonable alternative work to workers to whom subsection (1) or (2) applies.

Requirements before another worker is assigned to do refused work

~~46.91149~~ If a worker exercises the right to refuse unsafe work, no other worker may be assigned to do that work until the matter has been dealt with under sections ~~46.2141~~ to ~~46.6145~~, unless the other worker has been advised by the supervisor or employer of

- (a) the refusal by the worker exercising the right,
- (b) the reason for the refusal, and
- (c) ~~his or her~~ that other worker's rights under section ~~46.2141~~.

Commencement

- 2** Section 1 of this Schedule comes into force by regulation of the Lieutenant Governor in Council.