

This Act is current to August 26, 2025

See the [Tables of Legislative Changes](#) for this Act's legislative history, including any changes not in force.

## **WORKERS COMPENSATION ACT**

### **[RSBC 2019] CHAPTER 1**

*Deposited with Clerk of the Legislative Assembly on August 23, 2019*

*[Note: the dollar amounts shown in sections 94, 95, 102, 167, 169, 170 to 175, 191, 194, 208, 213, 225, 231, 236, 251 and 349 may not reflect the current consumer price index adjustments referred to in section 333, and the maximum wage rate shown in section 209 (2) and 227 may not be current.]*

*Current information may be found on the Workers' Compensation Board website at [www.worksafebc.com/en/law-policy/claims-rehabilitation/claims-related-consumer-price-index](http://www.worksafebc.com/en/law-policy/claims-rehabilitation/claims-related-consumer-price-index) or may be obtained by calling your WorkSafeBC regional office.]*

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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 the act of the worker,
- and

- (b) a fortuitous event occasioned by a physical or natural cause;

**"accident fund"** means the fund continued under section 239 [*Board to maintain accident fund*];

**"action"** includes proceedings brought in the civil resolution tribunal under the *Civil Resolution Tribunal Act*;

**"appeal tribunal"** means the Workers' Compensation Appeal Tribunal continued under Part 7 [*Appeals to Appeal Tribunal*];

**"asbestos abatement contractor"** means an employer

- (a) who carries on the business of asbestos abatement work, or
- (b) who, on behalf of another person, carries out asbestos abatement work in the course of carrying on another industry of the employer;

**"asbestos abatement work"** means any of the following activities carried out for the purpose of the abatement of asbestos in relation to a building or in relation to any other thing or place prescribed by regulation of the Lieutenant Governor in Council:

- (a) identifying material that is or may be asbestos-containing material;
- (b) collecting samples of material that is or may be asbestos-containing material;
- (c) assessing the risk posed by material that is or may be asbestos-containing material;
- (d) assessing the risk posed by working with or near material that is or may be asbestos-containing material;
- (e) removing, repairing or transporting, or disposing of, material that is or may be asbestos-containing material;
- (f) any activity prescribed by regulation of the Lieutenant Governor in Council;
- (g) planning how an activity referred to in any of paragraphs (a) to (f) is to be carried out;
- (h) supervising an activity referred to in any of paragraphs (a) to (f);

**"asbestos-containing material"** means asbestos-containing material as defined by regulation of the Board;

**"assessment"** means an assessment under this Act of an amount to be paid to the Board;

**"average net earnings"**, with respect to a worker, means the average net earnings of the worker as determined by the Board under section 220 *[average net earnings: short-term compensation]* or 221 *[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 under section 316 (2);

**"chief review officer"** means an officer of the Board who is appointed as chief review officer under section 330 *[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);

**"court"** includes the civil resolution tribunal under the [Civil Resolution Tribunal Act](#);

**"dependant"**

- (a) means

- (i) a family member of the 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, and
- (b) other than in the following sections, includes a spouse, child or parent of the worker who satisfies the Board that the spouse, child or parent had a reasonable expectation of pecuniary benefit from the continuation of the life of 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,

- (a) means all or part of an establishment, undertaking, trade or business within the scope of the compensation provisions, and
- (b) in the case of an industry that is not as a whole within the scope of the compensation provisions, includes a department or part of the industry that would be within the scope of those provisions if carried on separately;

**"family member"**, in relation to a worker, means the following:

- (a) a spouse, parent, grandparent, step-parent, child, grandchild, stepchild, sibling or half-sibling of the worker;
- (b) a person, whether related to the worker by blood or not, who stood in place of a parent of the worker or to whom the worker stood in place of a parent;

**"firefighter"** means a member of a fire brigade, working with or without remuneration, who is assigned primarily to

- (a) fire suppression duties, whether or not those duties include the performance of ambulance or rescue services,
- (b) investigation duties respecting the cause, origin or circumstances of a fire, or
- (c) any combination of both fire suppression duties as described in paragraph (a) and fire investigation duties as described in paragraph (b);

**"health care"**, when used in a compensation provision, includes things that the Board 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*];

**"licence"** means a licence issued under section 59.05 [*licence may be issued*];

**"licensee"**, unless a contrary intention appears, means a person who is licensed under section 59.05;

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

**"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]*;

**"online platform worker"** means a person who performs prescribed work that the person accepts through an online platform;

**"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 323 *[Board president]*;

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

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

**"regulation"**, when used in a compensation provision in relation to regulations of the Board, means rules and regulations made by the Board under a compensation provision;

**"retirement benefit"**, in relation to a worker, means the lump sum payable to the worker under section 206 *[payment of retirement benefit]*;

**"review officer"** means an officer of the Board who is appointed as a review officer under section 330 *[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 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

(i) a period of at least 1 year, if the person has had a child with the other person, or

(ii) a period of at least 2 years in any other case;

**"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 who is not under a contract of service or apprenticeship, and
  - (ii) becomes subject to the hazards of an industry within the scope of the compensation provisions for the purpose of undergoing training or probationary work specified by the employer as a preliminary to employment;
- (c) a firefighter;
- (d) in respect of the industry of mining, a person
  - (i) 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 that person is employed as a worker in that industry,
  - (ii) while, with the knowledge and consent of an employer in that industry, either express or implied, 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 that endangers either life or property in a mine, whether or not during the time 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) while 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) an independent operator to whom the compensation provisions apply by the Board direction under section 4 (2)  
(a) *[extending application: independent operator who is neither an employer nor a worker];*
- (f) a person deemed by the Board to be a worker under section 6 (2) *[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]*.

## **Online platform workers**

**1.1** For the purposes of this Act,

- (a) an online platform worker is to be considered a worker, whether or not the online platform worker is a worker or employee under any law, and
- (b) the operator of the online platform through which an online platform worker accepts prescribed work is to be considered the employer of the online platform worker.

## **Division 2 — Scope of OHS Provisions**

### **General application of OHS provisions**

**2** Subject to section 3, the OHS provisions apply to

- (a) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the government of British Columbia,
- (b) the government of British Columbia and every agency of that government, and
- (c) the government of Canada, every agency of 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 government of Canada submits to the application of the OHS provisions.

### **Exceptions from application — mines and industrial camps**

- 3 (1) 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) 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) The Lieutenant Governor in Council may, by regulation, provide that all aspects of the OHS provisions and the regulations under those provisions apply to camps referred to in subsection (1) (b), in which case 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**

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

#### **Extending application: public interest undertakings**

- 5 (1) In relation to a person or group of persons carrying on an undertaking that the Board considers is in the public interest, the Board may, on the terms and conditions 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.
- (2) 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) This section applies if the minister responsible for the *School Act* or the minister responsible for the *College and Institute Act*, as applicable, and 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 at which the vocational or training program is to be provided.
- (2) The Board may, at the request of a minister referred to in subsection (1), deem a person or class of persons enrolled in a program approved under that subsection to be a worker or workers of the Crown in right of British Columbia.
- (3) In relation to a person who is deemed to be a worker under subsection (2), compensation under this Act is payable under the compensation provisions for injuries to the worker arising out of and in the course of training for that worker.
- (4) As limits on subsection (3), 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, and
  - (b) if training allowances paid by Canada or British Columbia are suspended, the Board may, for the period the Board considers advisable, pay compensation in the amount of the training allowance.
- (5) 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) This section applies in relation to a person or group of persons engaged in a work study program or other program of self-improvement involving work, whether or not the person or group of persons receives payment for the work.
- (2) 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 the compensation provisions, and
  - (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 British Columbia, on the terms and conditions the Board determines.
- (3) 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) On admission under subsection (2) (a),
- (a) the person or group of persons is deemed to be a worker or workers to whom the compensation provisions apply, and
  - (b) the Board may levy assessments on the applicable employer or program organizer by the formula the Board determines.

### **Application to fishing industry**

- 8 (1) The Lieutenant Governor in Council may make regulations as follows:
- (a) 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) providing that 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,

even though the commercial fishers may not otherwise be workers under this Act;

- (c) providing that a compensation provision relating to employers applies or may be applied to
  - (i) any commercial buyers or other commercial recipients of fish, or
  - (ii) any person engaged in British Columbia in transmitting payments to commercial fishers for fish, whether the fish are landed in British Columbia or otherwise,

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) providing that methods of calculating and levying assessments additional to or different from the methods otherwise provided under the compensation provisions may be used for levying assessments, for the purposes of those provisions, on persons referred to in paragraph (c) (i) and (ii);
- (e) 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) 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 would otherwise apply, and to substitute provisions of regulations under this section;
  - (g) delegating to the Board, to the extent the regulations provide, power conferred by paragraphs (a) to (f).
- (2) If the Board considers that a provision of this Act, or a provision of a regulation 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 fish, the Board may, by regulation, make the rules and give the decisions 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.
- (3) If the death of a commercial fisher resident in British Columbia
  - (a) arises out of and in the course of the commercial fisher's occupation in British Columbia or waters off British Columbia, and
  - (b) is not otherwise compensable under 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.

## **Division 4 — Liability of Employers in Industries Not Within the Scope of Compensation Provisions**

### **Application of this Division**

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

## **Legal actions against employer**

**10** (1) 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) the negligence of the worker's employer or of a person in the service of that employer acting within the scope of the person's employment.

(2) The following have a right of action against the employer:

- (a) the worker;
- (b) if the injury results in death, the legal personal representatives of the worker, and any person entitled in case of death.

(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 as a result of the injury.

(4) If an action under this section is brought by legal personal representatives of the worker, or by or on behalf of persons entitled to damages under the [\*Family Compensation Act\*](#), those persons are entitled to recover the damages to which they are entitled under that Act.

(5) A worker is not, by reason only of continuing in the employment of the employer with knowledge of the defect or negligence that caused the worker's injury, deemed to have voluntarily incurred the risk of injury.

## **Legal actions in relation to work done under contract**

**11** (1) This section applies if

- (a) the execution of any work is being carried into effect under a contract,
- (b) 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,

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) another person in that first person's service who is acting within the scope of this other person's employment.

- (2) The person for whom the work or part of the work referred to in subsection (1) (c) is done is liable to an action under section 10 as if the worker had been employed by that person, and for this purpose the person is deemed to be the employer of the worker within the meaning of this Division.
- (3) Despite subsection (2), the contractor or subcontractor is liable to the action as if that subsection had not been enacted, but not so that double damages are recoverable for the same injury.
- (4) Nothing in 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**

- 12** (1) A worker is deemed not to have undertaken the risks due to the negligence of the worker's fellow workers.
- (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 that worker's employer for which the employer would otherwise have been liable.
- (3) Contributory negligence on the part of the worker must 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**

**13** In the OHS provisions and the regulations under those provisions:

**"collective agreement"** 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 the compensation provisions or the regulations under those provisions, and
- (c) 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,

but does not include a person exempted from the application of 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 [*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"**, unless a contrary intention appears, means

- (a) a person appointed as an officer under section 329 (1) [*Board may appoint officers and other employees*], or
- (b) a person authorized under section 18 (2) (b) [*cooperation agreements and arrangements*] to act as an officer;

**"order"** means an order under 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

- (a) the directing contractor, employer or other person who enters into a written agreement with the owner of the workplace to be the prime contractor for the purposes of 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 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;

**"variance order"** means an order under section 60 [*Board may authorize variances from regulations*];

**"wages"** 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 the compensation provisions or the regulations under those provisions, or to whom those provisions apply as if the person were a worker,

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

**"worker health and safety representative"** means a worker health and safety representative under section 45;

**"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"** means arising from or in connection with work activities.

## **Purposes of OHS provisions**

**14** (1) The purpose of 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 risks to their health and safety.

(2) Without limiting subsection (1), the following are the specific purposes of the OHS provisions:

- (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 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;
- (g) to minimize the social and economic costs of 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 OHS provisions and regulations**

- 15** (1) The minister may appoint a committee to conduct a review of all or part of 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 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**

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

## **Division 2 — Board Mandate**

### **Board mandate under OHS provisions**

- 17** (1) In accordance with the purposes of the OHS provisions, 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 duties, functions and powers:
- (a) to exercise 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 the OHS provisions are provided with information and advice relating to 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 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 the Board's responsibilities under this Act;
  - (i) to establish programs of grants and awards in relation to 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 the Board's responsibilities under the OHS provisions;
- (l) to make recommendations to the minister respecting amendments to this Act, the regulations under the OHS provisions or the compensation provisions 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 the Board's mandate under 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**

- 18** (1) Without limiting section 335 [*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 government of British Columbia, the government of Canada or the government of another province or territory;
  - (b) an agency of a government referred to in paragraph (a);
  - (c) 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**

- 19** (1) Subject to sections 288 and 289 [*matters that may be appealed 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 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) Subject to subsection (2) of this section and sections 87 (1) [*notice required if Board order varied or cancelled*] and 89 (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 an officer or employee of the Board respecting any matter that is within the jurisdiction of the Board under the OHS provisions.
- (2) The Board may not make a decision or an order under subsection (1) if
- (a) a review has been requested under section 270 [*request for review of Board decision*] in respect of the previous decision or order, or
  - (b) an appeal has been filed under section 289 [*other Board decisions that may be appealed*] in respect of the previous decision or order.
- (3) The Board may review a decision or order made under the OHS provisions by the Board or an officer or employee of the Board, but only as specifically provided in Part 6 [*Review of Board Decisions*].
- (4) The Board may at any time set aside a decision or order made under the OHS provisions by the Board or an officer or employee of the Board if that decision or order resulted from fraud or

misrepresentation of the facts or circumstances on which the decision or order was based.

## **Division 4 — General Duties of Employers, Workers and Others**

### **General duties of employers**

**21** (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 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 the OHS provisions, the regulations and any applicable orders, and
  - (iii) are made aware of their rights and duties under 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 the OHS provisions or the regulations.

### **General duties of workers**

#### **22 (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 the OHS provisions, the regulations and any applicable orders.

#### **(2) Without limiting subsection (1), a worker must**

- (a) carry out the worker's work in accordance with established safe work procedures as required by 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 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 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 the OHS provisions or the regulations.

### **General duties of supervisors**

**23** (1) Every supervisor must

- (a) ensure the health and safety of all workers under the direct supervision of the supervisor,
- (b) be knowledgeable about the OHS provisions and those regulations applicable to the work being supervised, and
- (c) comply with the OHS provisions, the regulations and any applicable orders.

(2) Without limiting subsection (1), a supervisor must

- (a) ensure that the workers under 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 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 the OHS provisions or the regulations.

### **Coordination at multiple-employer workplaces**

**24** (1) 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 the OHS provisions and the regulations in respect of the workplace.

- (2) 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**

**25** 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 the OHS provisions, the regulations and any applicable orders.

### **General duties of suppliers**

**26** 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 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

the OHS provisions, the regulations and any applicable orders, and

- (e) comply with the OHS provisions, the regulations and any applicable orders.

### **Duties of directors and officers of a corporation**

- 27** Every director and every officer of a corporation must ensure that the corporation complies with the OHS provisions, the regulations and any applicable orders.

### **General obligations are not limited by specific obligations**

- 28** A specific obligation imposed by the OHS provisions or the regulations does not limit the generality of any other obligation imposed by those provisions or the regulations.

### **Person may be subject to obligations in relation to more than one role**

- 29** (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 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**

- 30** (1) This section applies if one or more OHS provisions or provisions of the regulations impose the same obligation on more than one person.
- (2) 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) simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
  - (b) 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**

### **General requirement for employer to establish joint committee**

**31** 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**

**32** (1) Despite section 31, 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 the OHS provisions or the regulations.

### **Membership of joint committee**

**33** 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**

- 34** (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**

- 35** (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**

- 36** 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 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 the OHS provisions and the regulations;
- (i) to participate in inspections, investigations and inquiries as provided in the OHS provisions and the regulations;
- (j) to carry out any other duties and functions prescribed by regulation.

### **Joint committee procedure**

- 37** (1) Subject to 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**

- 38** (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**

- 39** (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-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.
- (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) Nothing in this section relieves an employer of the obligation to comply with the OHS provisions and the regulations.

## **Time from work for meetings and other committee functions**

- 40** (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 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**

- 41** (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**

- 42** (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 the OHS provisions or the regulations relating to health and safety at the workplace, and



(d) any other matter prescribed by regulation.

### **Committee reports**

**43** (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**

**44** 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**

**45** (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 34 [*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 39 to 42 [*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**

- 46** (1) This section applies if
- (a) 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 6 — Worker Protection in Relation to Prohibited Actions**

### **Prohibited action**

- 47** (1) For the purposes of this Division, "**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), prohibited action includes any of the following:
- (a) suspension, 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;
  - (f) the discontinuation or elimination of the job of the worker.

### **Worker protection from prohibited action**

- 48** An employer or union, or a person acting on behalf of an employer or union, must not take or threaten a prohibited action against a worker
- (a) for exercising any right or carrying out any duty in accordance with 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.

### **Complaint by worker respecting prohibited action or failure to pay wages**

- 49** (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 prohibited action against the worker contrary to section 48, or
  - (b) an employer has failed to pay wages to the worker as required by the OHS provisions or the regulations.
- (2) The worker may have 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) A complaint under subsection (2) 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 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) In 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** (1) If the Board receives a complaint under section 49 (3), 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 prohibited action;
  - (b) that the employer reinstate the worker to that worker's former employment under the same terms and conditions under which that worker was formerly employed;
  - (c) that the employer pay, by a specified date, the wages required to be paid by 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 expenses incurred by the worker by reason of the prohibited action;
  - (g) that the employer or the union do any other thing that the Board considers necessary to secure compliance with the OHS provisions and the regulations.

## **Division 7 — Information Requirements**

### **Requirement to post information**

- 51** (1) If 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**

- 52** (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;
  - (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**

- 53** (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 the OHS provisions, 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 the compensation provisions obtained by the person by reason of the performance of a duty or the exercise of a power under the OHS provisions, 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 a duty or the exercise of a power under the OHS provisions, Part 7 or the regulations;
  - (d) information obtained under the OHS provisions, 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) [*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 a duty or the exercise of a power under the OHS provisions, Part 7 or the regulations, the name of the informant.

(2) Except in the performance of the person's duties,

- (a) an officer,
- (b) a person who accompanies an officer under section 78 *[representation on inspection]*, or
- (c) a person who conducts a test or other examination under the OHS provisions or Part 7 *[Appeals to Appeal Tribunal]* at the request of an officer

must not publish or disclose information obtained or made by the person in connection with that person's duties or powers under 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), 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**

- 54** (1) This section applies in relation to a person who is a medical practitioner, nurse or 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) A person to whom information is provided under subsection (2) 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 — Certification and Other Specific Authorities**

### **Certification and training of first aid attendants and instructors**

- 55** 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 certificates to occupational first aid attendants and instructors, and renew and amend those certificates;
  - (d) enter into arrangements by which other persons provide training, give examinations and issue, renew and amend certificates for the purposes of this section;
  - (e) establish fees for the purposes of this section.



## **Installation and maintenance of required first aid equipment**

- 56** 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 5 [*Accident Fund and Employer Assessment*];
  - (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**

- 57** (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 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;

(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**

**58** (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 re-evaluations and renewals of certificates are required;
- (d) the information that must be obtained and recorded;
- (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**

**59** 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 certificates to blasters and instructors, and renew and amend those certificates;
- (d) enter into arrangements by which other persons provide training, give examinations and issue, renew and amend certificates for the purposes of this section;

- (e) establish fees for the purposes of this section.

### **Certification and training related to asbestos abatement**

**59.01** (1) In this section, "**relevant person**" means an employer, worker, instructor, or independent asbestos abatement operator within the meaning of section 59.02.

(2) The Board may do the following:

- (a) supervise the training of and train a relevant person in the carrying out of asbestos abatement work;
- (b) appoint examiners and conduct examinations for the purposes of this section;
- (c) issue certificates to relevant persons, and renew and amend those certificates, for the purpose of carrying out asbestos abatement work;
- (d) enter into arrangements by which other persons provide training, give examinations and issue, renew and amend certificates for the purposes of this section;
- (e) establish fees for the purposes of this section.

### **Division 8.1 — Licensing in Relation to Asbestos Abatement**

#### **Definition in relation to licensing**

**59.02** (1) In this Division, "**independent asbestos abatement operator**" means an independent operator

- (a) who is neither an employer nor a worker, and
- (b) who
  - (i) carries on the business of asbestos abatement work, or
  - (ii) carries out asbestos abatement work, on behalf of another person, in the course of carrying on another industry of the independent operator.

(2) For certainty, the definition of "independent asbestos abatement operator" in subsection (1) includes an independent operator to whom the compensation provisions are made, under section 4 (2) (a) *[general application of compensation provisions]*, to apply.

#### **Licence required**

- 59.03** An asbestos abatement contractor must not carry out or offer to carry out asbestos abatement work unless the asbestos abatement contractor
- (a) holds a valid licence, or
  - (b) is in a class of asbestos abatement contractors that is exempted by regulation of the Lieutenant Governor in Council from the requirement to hold a licence.

### **How to apply for licence**

- 59.04** An asbestos abatement contractor or an independent asbestos abatement operator may apply for a licence by submitting to the Board an application that
- (a) is in the form and manner, and contains the information, required by the Board, and
  - (b) is accompanied by any other information and records required by the Board.

### **Licence may be issued**

- 59.05** (1) On application in accordance with section 59.04, the Board may issue a licence authorizing a person to offer to carry out, and carry out, asbestos abatement work.
- (2) It is a condition of a licence issued under subsection (1) that the licensee may not employ a worker, other than a worker who is certified under section 59.01 [*certification and training related to asbestos abatement*], for the purposes of carrying out asbestos abatement work.
- (3) A licence issued under subsection (1)
- (a) may have a term of up to 3 years,
  - (b) is subject to the terms and conditions, if any, prescribed by regulation of the Lieutenant Governor in Council, and
  - (c) is not transferable.
- (4) The Board may impose on a specific licence issued under subsection (1) any terms or conditions the Board considers appropriate in the circumstances.
- (5) The Board may vary or rescind a term or condition imposed under subsection (4).

## Refusal of licence

**59.06** (1) The Board may refuse to issue a licence to an applicant if the Board is satisfied that

- (a) the applicant has provided false or misleading information on the application for the licence,
- (b) the applicant has
  - (i) failed to meet or comply with a requirement under this Act or with a term or condition of another licence issued to the applicant,
  - (ii) been refused a licence or been refused, in British Columbia or another jurisdiction, a similar authorization in relation to asbestos abatement,
  - (iii) held a licence that has been suspended or cancelled or held, in British Columbia or another jurisdiction, a similar authorization in relation to asbestos abatement that has been suspended or cancelled, or
  - (iv) been subject, in British Columbia or another jurisdiction, to a penalty for contravening a law, which contravention calls into question the honesty or integrity of the applicant, or
- (c) a person who is associated with the applicant at the time the application is made has
  - (i) failed to meet or comply with a requirement under this Act or with a term or condition of a licence issued to the person,
  - (ii) been refused a licence or been refused, in British Columbia or another jurisdiction, a similar authorization in relation to asbestos abatement,
  - (iii) held a licence that has been suspended or cancelled or held, in British Columbia or another jurisdiction, a similar authorization in relation to asbestos abatement that has been suspended or cancelled, or
  - (iv) been subject, in British Columbia or another jurisdiction, to a penalty for contravening a law, which contravention calls into question the honesty or integrity of the person.

- (2) Without limiting subsection (1), the Board may refuse to issue a licence in the circumstances, if any, prescribed by regulation of the Lieutenant Governor in Council.
- (3) For the purposes of subsection (1) (c), a person is considered to be associated with an applicant if, at the time the application is made,
- (a) the person is a corporation and the applicant is
    - (i) a director or officer of the person,
    - (ii) an affiliate, within the meaning of the *Business Corporations Act*, of the person, or
    - (iii) a corporation in respect of which a director or officer is also a director or officer of the person,
  - (b) the person is an individual and the applicant is a corporation in respect of which the person is a director or officer, or
  - (c) any circumstance prescribed by regulation of the Lieutenant Governor in Council is met.

### **Suspension or cancellation of licence**

- 59.07** (1) The Board may suspend or cancel a licence if the Board is satisfied that
- (a) the licensee, or a person who is a director or officer of the licensee at the time of the proposed suspension or cancellation, has failed to meet or comply with a requirement under this Act,
  - (b) the licensee has failed to meet or comply with a term or condition of the licence or another licence issued to the licensee or has held another licence that has been suspended or cancelled,
  - (c) a person who is associated with the licensee at the time of the proposed suspension or cancellation has failed to meet or comply with a term or condition of a licence issued to the person or has held a licence that has been suspended or cancelled, or
  - (d) the licensee, or a person who is a director or officer of the licensee at the time of the proposed suspension or cancellation, has, in British Columbia or another jurisdiction,

- (i) been refused an authorization in relation to asbestos abatement that is similar to a licence,
  - (ii) held an authorization in relation to asbestos abatement that is similar to a licence and that has been suspended or cancelled, or
  - (iii) been subject to a penalty for contravening a law, which contravention calls into question the honesty or integrity of the licensee or the person.
- (2) Without limiting subsection (1), the Board may suspend or cancel a licence
  - (a) on the request of the licensee, or
  - (b) in the circumstances, if any, prescribed by regulation of the Lieutenant Governor in Council.
- (3) For the purposes of subsection (1) (c), a person is considered to be associated with a licensee if, at the time of the proposed suspension or cancellation,
  - (a) the person is a corporation and the licensee is
    - (i) a director or officer of the person,
    - (ii) an affiliate, within the meaning of the *Business Corporations Act*, of the person, or
    - (iii) a corporation in respect of which a director or officer is also a director or officer of the person,
  - (b) the person is an individual and the licensee is a corporation in respect of which the person is a director or officer, or
  - (c) any circumstance prescribed by regulation of the Lieutenant Governor in Council is met.
- (4) If the Board suspends or cancels a licence, the rights and privileges conferred by the licence are, as applicable,
  - (a) suspended for the period during which the licence is suspended, or
  - (b) terminated, in the case of a cancellation.

### **Notice of licensing decisions**

**59.08** The Board must, as soon as practicable, serve on the applicant or licensee, as the case may be, written notice of any of the following decisions:

- (a) a decision under section 59.05 (4) or (5) to impose, vary or rescind a term or condition on a licence;
- (b) a decision under section 59.06 (1) or (2) to refuse to issue a licence;
- (c) a decision under section 59.07 (1) or (2) (b) to suspend or cancel a licence.

### **Registry of licensees**

**59.09** (1) The Board must establish and maintain a registry that includes the following information about each person who is or was a licensee:

- (a) the name of the person;
  - (b) if applicable, the business name under which the person operates;
  - (c) the contact information, as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*, of the person;
  - (d) the current status of the person's licence;
  - (e) any other information the Board considers advisable in the public interest.
- (2) The Board must publish the information referred to in subsection (1) (a) and (b) and may also publish the information referred to in subsection (1) (d) and (e).
- (3) The information referred to in subsection (2)
- (a) must be published on a publicly accessible website, and
  - (b) may also be published in any other manner the Board considers appropriate to bring the information to the public's attention.
- (4) The Board may determine the period of time for which information about a person who is no longer a licensee is included in the registry or published under subsection (3).

## **Division 9 — Variance Orders**

### **Board may authorize variances from regulations**

- 60** (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 the OHS provisions may be varied only if this is permitted by regulation of the Lieutenant Governor in Council.

### **Effective period for variance order**

- 61** (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**

- 62** (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**

- 63** (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
    - (i) a description of the requested variance, and
    - (ii) a statement of why the variance is requested.

### **Consultation on application**

- 64** (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**

- 65** (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).
- (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**

- 66** (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**

- 67** The Board must consider the history of variance applications and variance orders as part of its process of regulations review under section 115 *[ongoing review of Board regulations]*.

## **Division 10 — Employer Accident Reporting, Investigation and Related Prohibitions**

### **Immediate notice of certain accidents**

- 68** (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) involved a fire or explosion that had a potential for causing serious injury to a worker, or
  - (e) 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**

- 69** (1) An employer must conduct a preliminary investigation under section 71 and a full investigation under section 72 respecting any accident or other incident that
- (a) is required to be reported under section 68,
  - (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**

- 70** (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) 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.
- (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**

- 71** (1) An employer must, immediately after the occurrence of an incident described in section 69, 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 72, 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**

- 72** (1) An employer must, immediately after completing a preliminary investigation under section 71, undertake a full investigation to, as far as possible,
- (a) determine the cause or causes of the incident investigated under section 71,
  - (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 or making claims**

- 73** (1) 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 the compensation provisions;
  - (b) an illness, whether or not the illness exists or is an occupational disease compensable under the compensation provisions;
  - (c) a death, whether or not the death is compensable under the compensation provisions;
  - (d) a hazardous condition or allegation of a hazardous condition in any work to which the OHS provisions apply.
- (2) 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

- (a) making or maintaining an application for compensation under the compensation provisions, or
- (b) receiving compensation under the compensation provisions.

## **Division 11 — Board Inspections, Investigations and Inquiries**

### **Application of Division**

- 74** This Division, as it applies in relation to inspections, also applies to investigations and inquiries.

### **Authority to conduct inspections**

- 75** (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:
- (a) preventing work-related accidents, injuries or illnesses;
  - (b) ascertaining the cause and particulars of a work-related accident, injury or illness or of an incident that had the potential to cause a work-related accident, injury or illness;
  - (c) investigating a complaint concerning health, safety or occupational environment matters at a workplace;
  - (d) determining whether there is compliance with the OHS provisions, the regulations or an order;
  - (e) determining whether to issue, suspend or cancel a licence under Division 8.1 [*Licensing in Relation to Asbestos Abatement*] of this Part or determining whether a licensee meets or is in compliance with the terms or conditions of such a licence.
- (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;
  - (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 duties and functions under the OHS provisions or the regulations.
- (4) The authority to conduct an inspection under this Division is not limited by any other OHS provision or 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 that officer's duties and functions under the OHS provisions or the regulations.

### **Restrictions on access to private residences**

- 76** (1) If a workplace, in addition to being a workplace, is occupied as a private residence, the authority under section 75 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 75 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**

- 77** (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.

### **Representation on inspection**

- 78** (1) Subject to this section, if an officer makes a physical inspection of a workplace under section 75, the following are entitled to accompany the officer on the inspection:
- (a) the employer or a representative of the employer;
  - (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;
  - (c) an independent asbestos abatement operator, within the meaning of section 59.02 [*definition in relation to licensing*], or a representative of the independent asbestos abatement operator.

- (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**

- 79** (1) A person must provide all reasonable means in that person's power to facilitate an inspection under the OHS provisions.
- (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 duty or function under 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 duties or functions under the OHS provisions or the regulations;
  - (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**

- 80** (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 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**

- 81** (1) An officer may seize a thing 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 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 a thing 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 under a warrant under that Act.

### **Warrants — investigations**

- 81.1** (1) In this section, "**place**" and "**workplace**" include any vessel, vehicle or mobile equipment.
- (2) On an application without notice and subject to this section, if a justice is satisfied by information provided under oath that there are reasonable grounds to believe that an offence against this Act or the regulations has been or is being committed, and that evidence respecting the commission of the offence will be obtained through

the execution of a warrant, the justice may issue a warrant authorizing an officer, subject to this section, to

- (a) enter the place in respect of which the warrant is issued, and
- (b) do a thing described in the warrant.

(3) Without limiting subsection (2), a warrant issued under this section may authorize an officer to do any of the following:

- (a) bring along any equipment or materials required to execute the warrant and be accompanied and assisted by a person who has special, expert or professional knowledge of a matter relevant to the execution of the warrant;
- (b) search the place and seize works, materials, products, tools, equipment, machines, devices or other things at the place;
- (c) take samples and conduct tests of works, materials, products, tools, equipment, machines, devices or other things 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;
- (e) require that any tool, equipment, machine, device or other thing or process be operated or set in motion or that any system or procedure be carried out;
- (f) search records that may be relevant and seize the records or, on giving a receipt for the records, temporarily remove the records 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 and require the persons to answer those questions;
- (i) take photographs or recordings of a 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 executing the warrant.

- (4) A warrant issued under this section may contain terms and conditions that the justice considers advisable in the circumstances.
- (5) An officer must inform a person from whom a thing is seized under this section as to the reason for the seizure and must give the person a receipt for the thing.
- (6) An officer may remove a thing seized under this section or detain it in the place in which it was seized.
- (7) As soon as reasonably practicable after a thing is seized under this section, 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 under a warrant under that Act.
- (8) If an officer is of the opinion that it is impracticable for the officer to appear personally before a justice to apply for a warrant in accordance with this section, the officer may submit an information on oath by telephone or other means of telecommunication and, for this purpose, section 22 of the *Offence Act* applies.

### **Employer must post inspection reports**

- 82** 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**

- 83** (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, 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 period immediately preceding the contravention or failure 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 under subsection (1) must be in writing and must do the following:

- (a) 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 referred to in subsection (1) (a) or the adverse effects that resulted from that contravention or failure;
- (b) set out the time frame within which the employer, with respect to each action described under paragraph (a) of this subsection, agrees to
  - (i) take the action, and
  - (ii) report to the Board on the action taken;
- (c) specify the date the agreement ends;
- (d) set out the required manner, form and content of the report referred to in paragraph (b) (ii) of this subsection.

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

- (a) provide a copy of the agreement 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 agreement at the workplace.

(4) As soon as practicable after reporting to the Board under subsection (2) (b) (ii), the employer must

- (a) provide a copy of the report 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 report at the workplace.

(5) Subject to subsection (6), an agreement under subsection (1) may be amended if agreed to by the Board and the employer.

- (6) The Board must rescind an agreement 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) within the time frame set out for the action under subsection (2) (b) (i), or
    - (ii) report to the Board within the time frame set out under subsection (2) (b) (ii);
  - (b) the employer intentionally provided false or misleading information in relation to the agreement;
  - (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) The Board may rescind an agreement under subsection (1) if the Board considers that the agreement no longer adequately protects the health or safety of workers.
- (8) A rescission under subsection (6) or (7) takes effect immediately despite the employer not having received notice.
- (9) As soon as practicable after rescinding an agreement under subsection (6) or (7), 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) Section 344 (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) of this section.
- (11) The employer must, as soon as practicable after receiving written notice under subsection (9),
- (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**



- 84** (1) The Board may make orders for the carrying out of any matter or thing regulated, controlled or required by 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 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 57;
  - (d) requiring an employer, at the employer's expense, to obtain test or 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;
  - (h) doing anything that is contemplated by the OHS provisions to be done by order;
  - (i) doing any other thing that the Board considers necessary for the prevention of work-related accidents, injuries and illnesses.
- (3) An order may be made applicable to any person or category of persons and may include terms and conditions the Board considers appropriate.

- (4) 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.

### **Other general matters relating to orders**

- 85** (1) An officer of the Board may exercise the authority of the Board to make orders under the OHS provisions, subject to any restrictions or conditions established by the Board.
- (2) An order may be made orally or in writing but, if 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**

- 86** (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**

- 87** (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 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, that person must post and provide copies of the notice in accordance with the same requirements.

### **Order may require compliance reports**

- 88** (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.

### **Order to stop using or supplying unsafe equipment**

- 89** (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 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 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) [*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 the OHS provisions and the regulations.

### **Stop-work orders**

- 90** (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) The Board may make an order under subsection (1) 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.
- (3) The Board may make an order under subsection (1) if
- (a) an employer
    - (i) has failed to comply with an OHS provision or a provision of the regulations, and
    - (ii) within the 12-month period immediately preceding the failure to comply as referred to in subparagraph (i),
      - (A) has failed to comply with the same provision, and
      - (B) has failed to comply with an order respecting the failure to comply with that provision, and
  - (b) 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) If an order is made under subsection (1) (b), 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) If the Board makes an order under section 90, 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 was made.
- (2) If the Board has reasonable grounds for believing that, at the other workplace or any part of the other workplace, 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 was made, the Board may order that
- (a) 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) 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.
- (3) If the Board has reasonable grounds for believing that, at the other workplace or any part of the other workplace, 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 was made, the Board may make an order prohibiting the employer from starting work at the other workplace or any part of the other workplace.
- (4) In making an order under 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) Despite section 85 (2) [*orders may be made orally or in writing*], an order under 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) An order 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** (1) If, as a result of an order made under section 89, 90 or 91, 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**

- 94** (1) The Board may, by order, impose on an employer an administrative penalty prescribed under section 112 [*Board regulations in relation to OHS citations*] if the Board is satisfied on a balance of probabilities that the employer has failed to comply with an OHS provision or regulation provision prescribed under that section.
- (2) An administrative penalty under this section must not be greater than \$1 285.16.

#### **Editorial Note**

- (3) If an employer files a request under section 270 [*request for review of Board decision*] for review of a decision under 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) 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) 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*], the Board must refund the required amount to the employer.

### **Administrative penalties — higher maximum amount**

- 95** (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 injuries or illnesses;
  - (b) the employer has not complied with an OHS provision, the regulations or an applicable order;
  - (c) the employer's workplace or working conditions are unsafe.
- (2) An administrative penalty under this section must not be greater than \$798 867.87.

#### **Editorial Note**

- (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 files a request under section 270 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 270 or on an appeal to the appeal tribunal under Part 7, the Board must
  - (a) refund the required amount to the employer, 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 on which the Board based the administrative penalty.

### **Suspension or cancellation of certificates**

- 96** (1) If the Board has reasonable grounds for believing that a person who holds a certificate issued under 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 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 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.

### **Court injunction on application of Board**



**97** (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 the OHS provisions, the regulations or an order, or
- (b) has failed to comply with, or is likely to fail to comply with, 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, and
- (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 the compensation provisions for an indefinite or limited period or until the occurrence of a specified event.

(2) 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) For the purposes of subsection (2), "**company**" and "**corporation**" have the same meaning as in the [\*Business Corporations Act\*](#).
- (4) 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) A contravention of 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.

## **Division 13 — Offences**

### **Offence to contravene OHS provision, regulation or order**

- 98** (1) A person who contravenes an OHS provision, a provision of 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**

- 99** 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) [Repealed 2020-20-6.]

### **Defence of due diligence**

- 100** 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**

- 101** 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**

- 102** On conviction for an offence, a person is liable to the following penalties:
- (a) in the case of a first conviction,
    - (i) a fine not greater than \$874 328.59 and, in the case of a continuing offence, to a further fine not greater than \$43 716.45 for each day during which the offence continues after the first day,

- (ii) imprisonment for a term not longer than 6 months,  
or
  - (iii) both fine and imprisonment;
- (b) in the case of a subsequent conviction,
- (i) a fine not greater than \$1 748 657.15 and, in the case of a continuing offence, to a further fine not greater than \$87 432.86 for each day during which the offence continues after the first day,
  - (ii) imprisonment for a term not longer than 12 months,  
or
  - (iii) both fine and imprisonment.

**Editorial Note**

**Additional penalty to reclaim monetary benefit**

- 103** (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 102.

**Additional powers on sentencing**

- 104** (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 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 in any manner the court considers appropriate, subject to any maximum amount for publication expenses or other restrictions established by the court, by
    - (i) the convicted person at that person's expense, or
    - (ii) the Board at the expense of the convicted person;
  - (f) prohibiting the person from working in a supervisory capacity at any workplace for a period not longer 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.
- (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 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.
- (4) If a convicted person fails to comply with an order referred to in subsection (1) (e) (i), the Board may publish the facts and recover the publication expenses from the person.

### **Court may consider victim impact statements**

- 104.1** (1) In this section, "**victim impact statement**" means a written statement describing the physical or emotional harm, property damage or economic loss suffered by an individual as a result of an offence committed against this Act or the regulations.
- (2) For the purpose of determining a penalty or punishment, as applicable, under sections 102 to 104, the court may consider victim impact statements.

### **Penalties to be paid into accident fund**

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

## **Division 14 — General Matters**

### **Court orders for access**

- 106** 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 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 the OHS provisions or the regulations, 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** (1) 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.
- (2) A charge under subsection (1) may be levied on the class or subclass by way of an assessment.

### **Collection by assessment or judgment**

- 108** (1) If a person fails to pay an amount owed to the Board under 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 [*Accident Fund and Employer Assessment*] 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 15 — Regulations for OHS and Other Purposes**

### **Lieutenant Governor in Council regulations**

- 109** (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) prescribing work for the purposes of the definition of "online platform worker" and section 1.1 (b);
    - (a.1) respecting online platforms and work accepted through online platforms;
    - (a.2) defining words or expressions used but not defined in the OHS provisions;
  - (b) establishing criteria that must be applied and procedures that must be followed in making decisions under the OHS provisions or the regulations;
    - (b.1) prescribing things or places for the purposes of the definition of "asbestos abatement work" in section 1 and prescribing different things or places for the purposes of different provisions of this Act;
  - (c) requiring a greater number for minimum membership of a joint committee as referred to in section 33 (a) and the circumstances in which that greater number is required;

- (d) establishing additional duties and functions for joint committees as referred to in section 36 (j);
  - (e) establishing a longer period of educational leave as referred to in section 41 (1);
  - (f) establishing assistance that must be provided to a joint committee by the employer in addition to the requirements of section 42;
  - (g) prescribing information that must be included in an occupational health and safety information summary under section 52;
  - (h) prescribing classes of health professionals for the purposes of section 54 *[information that must be provided in a medical emergency]*;
  - (h.1) exempting a class of asbestos abatement contractors from the requirement under section 59.03 (a) *[licence required]* to be licensed and prescribing any conditions of exemption;
  - (h.2) respecting terms or conditions for the purposes of section 59.05 (3) (b) *[licence may be issued]*;
  - (h.3) respecting circumstances in which the Board may refuse to issue a licence under section 59.06 (2) *[refusal of licence]* or suspend or cancel a licence under section 59.07 (2) *[suspension or cancellation of licence]*;
  - (h.4) respecting circumstances in which a person is considered to be associated with an applicant for a licence, for the purposes of section 59.06 (3) (c), or with a licensee, for the purposes of section 59.07 (3) (c), as applicable;
  - (i) specifying provisions of the regulations of the Lieutenant Governor in Council under 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) amending the Act to reflect the deemed amendments under section 333 *[annual adjustment of dollar amounts referred to in Act]*;
  - (b) respecting any other matter for which regulations of the Lieutenant Governor in Council are contemplated by this



Act.

### **Board regulations generally**

**110** (1) In accordance with its mandate under 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;
- (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 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 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** (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) The Board may make regulations for the purposes of section 94 *[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 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, and
  - (ii) provide for greater penalties for a second penalty and for third or subsequent penalties in a 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**

**113** (1) Before making a regulation under 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**

- 114** 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**

- 115** 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**

- 116** (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**

**117** (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.

(2) The following apply to regulations under the OHS provisions:

- (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 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**

**118** (1) An employer must not, either directly or indirectly,

- (a) deduct from the wages of a worker of the employer any part of an amount that the employer is or may become liable to pay into the accident fund or otherwise under a compensation provision, or

- (b) require or permit a worker of the employer to contribute in any manner toward indemnifying the employer against a liability that the employer has incurred or may incur under a compensation provision.

(2) A person who contravenes subsection (1)

- (a) commits an offence, and
- (b) is liable to repay to a worker any amount
  - (i) deducted from the worker's wages in contravention of subsection (1) (a), or
  - (ii) that the worker has been required or permitted to contribute in contravention of subsection (1) (b).

### **Compensation cannot be waived**

**119** A worker may not agree with 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 the compensation provisions, and every agreement to that end is void.

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

**120** (1) The following apply to an amount payable as compensation or by way of commutation of a periodic payment in respect of compensation:

- (a) the amount is not capable of being assigned, charged or attached;
- (b) the amount must not pass by operation of law except to a personal representative.

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

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

### **Compensation for injured worker who is a minor**

**121** For the purposes of the compensation provisions,

- (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.

## **Division 2 — Board Jurisdiction and Other Authorities**

### **Exclusive jurisdiction of Board in relation to compensation provisions**

- 122** (1) Subject to sections 288 and 289 [*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, 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) Without restricting the generality of subsection (1), the Board has exclusive jurisdiction to inquire into, hear and determine the following:
- (a) whether a worker's injury has arisen out of or in the course of an employment within the scope of 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 impairment of a worker's earning capacity by reason of an injury;
  - (e) the existence, for the purposes of the compensation provisions, of the relationship of a family member of a worker;
  - (f) the existence of dependency in relation to a worker;
  - (g) the amount of the average earnings of a worker for purposes of payment of compensation;
  - (h) whether a person is a worker, subcontractor, contractor or employer within the meaning of the compensation provisions;
  - (i) 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;
- (j) whether an industry or a part, branch or department of an industry is within the scope of the compensation provisions, and the class to which an industry or a part, branch or department of an industry within that scope should be assigned;
  - (k) whether a worker in an industry that is within the scope of the compensation provisions is within the scope of those provisions and entitled to compensation under those provisions.
- (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) Subject to subsection (2), the Board may, on its own initiative, reconsider a decision or order made under a compensation provision by the Board or an officer or employee of the Board.
- (2) Subject to subsection (3), 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 the decision or order was made;
  - (b) a request for review has been filed under section 270 *[making request for a review]* in respect of the decision or order;
  - (c) a notice of appeal has been filed under section 292 *[how to appeal]* in respect of the decision or order.
- (3) The Board may, on its own initiative, reconsider a decision or order after the 75 days referred to in subsection (2) (a) have elapsed, if the decision or order contains an obvious error or omission.



## **Board authority to set aside decision or order**

- 124** The Board may at any time set aside a decision or order made under a compensation provision by the Board or an officer or employee of the Board if that decision or order resulted from fraud or misrepresentation of the facts or circumstances on which the decision or order was based.

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

- 125** (1) The Board may at any time, on its own initiative or on application, reopen a matter that had been previously decided under a compensation provision by the Board or an officer or employee of the Board if, since the decision was made in the matter,
- (a) there has been a recurrence of a worker's injury, or
  - (b) there has been a significant change in a worker's medical condition that the Board had previously decided was compensable.
- (2) If the Board determines that the circumstances described in subsection (1) 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:

**"person"** includes the personal representative of a person;

**"worker"** includes an employer to which the compensation provisions apply by direction under section 4 (2) (b) [*Board direction*].

### **Limitation on legal proceedings against employers or workers**

- 127** (1) Subject to subsection (2),
- (a) the compensation provisions are in 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 family member of the worker is or may be entitled against

- (i) the employer of the worker,
- (ii) an employer within the scope of the compensation provisions, or
- (iii) 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 lies in respect of such an injury, disablement or death.

(2) Subsection (1) applies only if the action or conduct of

- (a) the employer or the employer's servant or agent, or
- (b) the other worker,

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

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

**128** (1) If the cause of an injury, disablement or death of a worker is such that an action lies against a person, other than an employer or worker within the scope of the compensation provisions, the worker or dependant may

- (a) claim compensation under the compensation provisions, or
- (b) bring an action.

(2) If a worker or dependant of a worker elects to claim compensation under subsection (1) (a), the worker or dependant must do so within 3 months of the occurrence of the injury, disablement or death of the worker or a longer period that the Board allows.

(3) If the Board is satisfied that

- (a) a worker is unable to exercise 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,

the Board may pay the compensation provided 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

(b) the compensation that was paid is a first charge against any amount recovered.

(5) In relation to a minor child of a deceased worker, an application filed by a parent, a guardian or the Public Guardian and Trustee for compensation for the child is a valid election on behalf of that child.

### **Circumstances where compensation may be paid after action is settled**

**129** 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 a worker or dependant would be entitled under the compensation provisions, the worker or dependant is entitled to compensation under those provisions to the extent of the amount of the difference.

### **Board has right of action if compensation is claimed**

**130** (1) If a worker or dependant applies to the Board claiming compensation under the compensation provisions, neither the making of the application nor the payment of compensation under those provisions restricts or impairs any right of action against the party liable.

(2) In relation to every 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.

(3) The Board has exclusive jurisdiction to determine whether to maintain an action under this section or compromise the right of action, and 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 the compensation provisions, the amount of the excess, less costs and administration charges, must be paid by the Board to the worker or dependant.

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

**131** The following apply if, in an action brought by a worker, by a dependant of a worker or by the Board, it is found that the injury, disablement or death of the worker, as applicable, was due partly to a breach of duty of care of one or more employers or other workers 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 such an employer or other worker;
- (b) the portion of the loss or damage caused by that negligence must be determined despite the employer, other worker or both, as applicable, not being a party to the action.

### **Limitation on legal proceedings by employer of injured or deceased worker**

**132** (1) Subject to subsection (2), the provisions of the compensation provisions are in place of any right of action that the employer of 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 the compensation provisions, or
- (b) an independent operator to whom the compensation provisions apply by Board direction under section 4 (2) (a) *[Board direction of application]*.

(2) Subsection (1) does not affect any right an employer may have against another employer, or against an independent operator referred to in subsection (1) (b), arising out of 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) In an action brought under this Division, an award for damages must include

- (a) health care provided under Part 4 *[Compensation to Injured Workers and Their Dependants]*, and
- (b) wages and salary paid by an employer during the period of disability
  - (i) 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) Costs may be awarded to and collected by the Board in an action taken by the Board under this 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**

- 134** (1) If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.
- (2) 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) The following apply in relation to an injury caused by accident:
- (a) if the accident arose out of the worker's employment, unless the contrary is shown, it must be presumed that the injury occurred in the course of that employment;
  - (b) if the accident occurred in the course of the worker's employment, unless the contrary is shown, it must be presumed that the injury arose out of that employment.
- (4) 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) A health care benefit may be provided for an injured worker in respect of the day of the injury.

## **Mental disorder**

**135** (1) Subject to subsection (3), a worker is entitled to compensation for a mental disorder, payable as if the mental disorder were a personal injury arising out of and in the course of a worker's employment, if that mental disorder does not result from an injury for which the worker is otherwise entitled to compensation under this Part, and only if all of the following apply:

- (a) the mental disorder is either
  - (i) a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
  - (ii) 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 Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association;
- (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) 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, at the time of the diagnosis under subsection (1) (b), 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) 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) Section 163 [*duties of physicians and qualified practitioners*] applies to a psychiatrist or psychologist who makes a diagnosis referred to in this section.

(5) 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](#);

**"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**

**136** (1) 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) the worker has an occupational disease that disables the worker from earning full wages at the work at which the worker was employed, or

(ii) the death of 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.

(2) For the purposes of subsection (1), the date of disablement must be treated as the occurrence of the injury.

(3) A health care benefit may be provided for a worker who has an occupational disease referred to in subsection (1) (b) even though the worker is not disabled from earning full wages at the work at which the worker was employed.

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

**137** (1) 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, on or immediately before the date of the disablement, the worker was employed in a process or industry described in column 2 of Schedule 1 opposite the occupational disease that has resulted in the disablement, the occupational disease must be presumed to have been due to the nature of the worker's employment unless the contrary is proved.

### **Board powers in relation to recognition of occupational diseases**

**138** (1) The Board may, by regulation, do the following:

(a) add to or delete from Schedule 1 of this Act a disease that, in the opinion of the Board, is an occupational disease;

(b) add to or delete from that Schedule a process or an industry;

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



- (2) The Board may, by regulation of general application, designate or recognize a disease as an occupational disease.
- (3) The Board may, by order, designate or recognize a disease as an occupational disease in a specific case.
- (4) 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.

### **Firefighters: presumptions respecting heart injury and heart disease**

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

**"heart disease"** includes disease of the pericardium or coronary arteries;

**"heart injury"** includes heart attack, cardiac arrest or arrhythmia.

(2) Subject to subsection (4), if a worker

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

(b) was employed as a firefighter 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) Subject to subsection (4), if a worker

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

(b) was employed as a firefighter 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) The presumptions in subsections (2) and (3) 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, on or after May 29, 2014.

### **Firefighters: presumptions respecting lung cancer and other diseases**

**140** (1) Subject to subsections (2) and (3), if a worker who is or has been a firefighter contracts

(a) primary site lung cancer, or

(b) a disease prescribed by regulation under subsection (4),

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

(2) The presumptions in subsection (1) do not apply to a worker unless the worker

(a) has worked as a firefighter for the minimum cumulative period prescribed by regulation under subsection (4) for the applicable disease,

(b) throughout the period referred to in paragraph (a), has been regularly exposed to the hazards of a fire scene, and

(c) is first disabled from the disease on or after the following date, as applicable:

(i) in the case of primary site lung cancer, May 27, 2008;

(ii) in the case of a disease that was prescribed on or before March 18, 2009 for the purposes of subsection (1) (b), April 11, 2005;

(iii) in the case of a disease prescribed after March 18, 2009 for the purposes of subsection (1) (b), the date on which the regulation took or takes effect, as applicable.

(3) In addition to the conditions established by subsection (2), the presumption for primary site lung cancer does not apply to a worker unless the worker

(a) has, in the worker's lifetime, smoked a combined total of fewer than 365 cigarettes, cigars and pipes, or

(b) 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 (4).

(4) The Lieutenant Governor in Council may make regulations for the purposes of this section, including regulations that

(a) establish minimum cumulative periods for the purposes of subsection (2), which may be defined differently, and be

- different, for different categories of firefighters, and
- (b) establish minimum periods for the purposes of subsection (3), which may be different for different types or amounts of previous tobacco product usage.

### **Mining industry silicosis**

**141** (1) 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 under this Part, and
- (b) if death results from the worker's disability, the worker's dependants are entitled to compensation as provided under this Part.

(2) 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:

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

### **Lung disease from exposure to dust conditions**

**142** (1) 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 the Board considers have contributed to the development of the disease in employment in 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 is entitled to compensation if

- (a) the worker did not have either pneumoconiosis or tuberculosis before being first exposed in British Columbia to the dust conditions referred to in subsection (1), and
- (b) 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 [*occupational disease — mining industry silicosis*].

### **Death of worker with occupational disease that impairs the lungs**

**143** (1) This section applies to a deceased worker who, on the date of the worker's death,

- (a) was under 70 years of age, and
- (b) had an occupational disease of a type that impairs the capacity of function of the lungs.

(2) If the death was caused by 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**

**144** (1) This section applies to a worker if

- (a) 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) the worker has contracted a communicable disease prescribed for the purposes of the [Emergency Intervention Disclosure Act](#),
- (c) the worker came into contact with the bodily substance of the source individual in the course of the worker's employment, and

- (d) test results obtained under the testing order indicate that the source individual is infected with a pathogen that causes the communicable disease contracted by the worker.
- (2) 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.

### **Non-traumatic hearing loss**

- 145** (1) A worker is entitled to compensation under this Part if
- (a) the worker has a hearing loss of non-traumatic origin that arose out of and in the course of employment 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) is a greater loss than the minimum set out in Schedule 2 [*Non-Traumatic Hearing Loss*] of this Act.
- (2) 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 that the Board prescribes.
- (3) The Board may, by regulation, amend Schedule 2 in respect of the following:
- (a) the ranges of hearing loss;
  - (b) the percentages of disability, including the maximum percentages of total disability;
  - (c) the methods or frequencies to be used to measure hearing loss.

### **Compensation if injury or disease superimposed on already existing disability**

- 146** The following apply to compensation under this Part in relation to personal injury or disease that is superimposed on an already existing disability:
- (a) the compensation is limited to the proportion of the disability following the injury or disease that may reasonably be attributed to that injury or disease;

- (b) the measure of the disability attributable to the injury or disease must, unless it is otherwise shown, be the difference between the extent of the worker's disability before and disability after the occurrence of the injury or disease.

## **Division 2 — Compensation in Relation to Work Outside British Columbia**

### **Injuries happening outside British Columbia**

**147** (1) This section applies if

- (a) a worker is injured while working outside British Columbia, and
- (b) the injury would entitle the worker or the worker's dependants to compensation under this Part if the injury occurred in British Columbia.

(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 located in British Columbia;
- (b) the worker's residence and usual place of employment are located in British Columbia;
- (c) the employment is such that the worker is required to work both in and outside British Columbia;
- (d) the worker's employment outside British Columbia
  - (i) has immediately followed the worker's employment in British Columbia by the same employer, and
  - (ii) has lasted less than 6 months.

### **Election if compensation available under law of other place**

**148** (1) This section applies if, by the law of the country or place in which a worker's injury or occupational disease occurred, the worker or the worker's dependants are entitled to compensation in respect of the injury or occupational disease.

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

- (a) elect whether they will claim compensation

- (i) under the law of the country or place referred to in subsection (1), or
    - (ii) under this Part, and
  - (b) give notice of the election.
- (3) 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;
  - (b) if the injury or occupational disease results in death,
    - (i) within 3 months after the death, or
    - (ii) within a longer period that the Board allows before or after the expiration of the 3 months.
- (4) If the required election is not made and notice not given, it must be presumed that the worker or the worker's dependants have elected not to claim compensation under this Part.
- (5) If an agreement or arrangement under section 335 [*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**

- 149** (1) 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 the compensation provisions.
- (2) 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) 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.
- (3) In the case of an occupational disease, the employer who is to be informed under subsection (2) is the employer who last employed the worker in the employment in relation to which the occupational disease was due.
- (4) 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 directed by the Board and supplied to the worker by the employer.
- (5) 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 worker's injury or disease and the circumstances in which it occurred,
  - (b) the employer or the employer's representative had knowledge of 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**

- 150** (1) Subject to subsection (7), an employer must report to the Board, within 3 days after its occurrence, every injury to a worker that is or is claimed to be an injury arising out of and in the course of the worker's employment.
- (2) Subject to subsection (7), an employer must report to the Board, within 3 days after receiving information under section 149, 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 the death of a worker if the death is or is claimed to be a death arising out of and in the course of the worker's employment.



- (4) A report under this section must be on the form directed by the Board and must provide the following information:
- (a) the name and address of the worker;
  - (b) the time and place of the 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;
  - (e) any other particulars required by the Board or by the regulations.
- (5) 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.
- (6) An employer who fails to make a report required 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.
- (7) Without limiting the authority of the Board under section 237 *[additional authority for orders, directives, rules and regulations]*, the Board may make regulations as follows:
- (a) establishing a category of minor injuries not required to be reported under this section;
  - (b) establishing or varying the time at which the obligation to report under this section begins.
- (8) If a report required under this section is not received by the Board within 7 days after an injury or death, or any other time prescribed by regulation under subsection (7), the Board
- (a) may make an interim adjudication of the claim, and
  - (b) if the Board allows the claim on an interim basis, may begin the payment of compensation in whole or in part.

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

- 151** (1) An application for compensation must
- (a) be made on the form directed by the Board or prescribed by regulation, and
  - (b) be signed by the worker or the worker's dependant making the application.

- (2) If the Board is satisfied that compensation is payable, it may be paid without an application.
- (3) Except as provided in this section and section 152, no compensation is payable unless an application for compensation is filed, or a determination under subsection (2) of this section is made, within one year after the date of the worker's injury, mental disorder, death or disablement from occupational disease.
- (4) 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 special circumstances existed that precluded filing within that period, and
  - (c) the application is filed within 3 years after the date referred to in subsection (3).
- (5) The Board may pay the compensation provided under this Part for the period beginning on the date the Board receives an application for compensation if
  - (a) an application is not filed within the period referred to in subsection (3),
  - (b) the Board is satisfied that special circumstances existed that precluded filing within that period, and
  - (c) the application is filed more than 3 years after the date referred to in subsection (3).

**Special circumstances: new evidence relating to occupational disease**

- 152** (1) The Board may pay the compensation provided 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) 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) 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 the application but must apply subsection (1) of this section in the reconsideration.

### **Worker has continuing obligation to provide information**

- 153** (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 obligation to comply with examination and treatment requirements**

- 154** (1) The Board may require a worker who applies for or is receiving compensation under this Part to be medically examined at a place reasonably convenient for the worker.
- (2) If a worker fails to attend 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) The Board may reduce or suspend compensation for a worker if the worker
- (a) persists in unsanitary or injurious practices that tend to imperil or delay the worker's recovery, or
  - (b) refuses to submit to medical or surgical treatment that the Board considers, based on expert medical or surgical advice, reasonably essential to promote the worker's recovery.

## **Division 3.1 — Return to Work and Other Duties in Relation to Injured Workers**

### **Definition and application**

- 154.1** (1) In this Division, "**injury**" includes an occupational disease and a mental disorder.

- (2) This Division applies in relation to an employer and a worker of the employer if, because of an injury that arose out of and in the course of the worker's employment, the worker has been disabled from earning full wages at the work at which the worker was employed at the time of the injury.

### **Duty to cooperate**

**154.2** (1) An employer must cooperate with a worker and the Board in the worker's early and safe return to, or continuation of, work by doing the following:

- (a) subject to subsection (3), contacting the worker as soon as practicable after the worker is injured and maintaining communication with the worker;
- (b) identifying suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work;
- (c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;
- (d) any other thing required by the Board.

(2) A worker must cooperate with an employer and the Board in the worker's early and safe return to, or continuation of, work by doing the following:

- (a) subject to subsection (3), contacting the employer as soon as practicable after the worker is injured and maintaining communication with the employer;
- (b) on request of the employer, assisting the employer to identify suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work;
- (c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;
- (d) any other thing required by the Board.

(3) The obligations referred to in subsections (1) (a) and (2) (a) do not apply if, having regard to all of the circumstances, contact and communication between the employer and the worker are likely to imperil or delay the worker's recovery.

- (4) The Board must determine whether an employer or worker has failed to comply with this section if
  - (a) the employer or worker notifies the Board of a dispute regarding compliance, and
  - (b) the dispute cannot otherwise be resolved.
- (5) A determination under subsection (4) must be made within 60 days after the Board is notified of the dispute or within a longer period that the Board may determine.
- (6) If a worker fails to comply with subsection (2), the Board may reduce or suspend payments of compensation to the worker until the worker complies.

### **Duty to maintain employment**

**154.3** (1) Except as provided in subsection (2), this section applies in relation to an employer and a worker of the employer if the worker has been employed by the employer, on a full- or part-time basis, for a continuous period of at least 12 months before the date the worker was injured.

- (2) This section does not apply in relation to the following:
  - (a) a person who is a worker only because the person is deemed under the Act to be a worker;
  - (b) an employer who regularly employs fewer than 20 workers;
  - (c) a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council.
- (3) If a worker is fit to work but not fit to carry out the essential duties of the worker's pre-injury work, an employer must offer to the worker the first suitable work that becomes available.
- (4) If a worker is fit to carry out the essential duties of the worker's pre-injury work, an employer must
  - (a) offer that pre-injury work to the worker, or
  - (b) offer to the worker alternative work of a kind and at wages that are comparable to the worker's pre-injury work and wages from that work.

- (5) An employer must, to the point of undue hardship, make any change to the work or the workplace that is necessary to accommodate a worker.
- (6) An employer's obligations under this section end as follows:
- (a) all of the employer's obligations under this section end on the second anniversary of the date a worker is injured if the worker has not returned to work by that date;
  - (b) the employer's obligation under subsection (4) ends on the second anniversary of the date a worker is injured if, by that date, the worker is carrying out suitable work.
- (7) The Board must, if an employer and a worker disagree with each other, determine
- (a) whether the worker is fit to carry out suitable work or fit to carry out the essential duties of the worker's pre-injury work, and
  - (b) whether suitable work is available.
- (8) If an employer terminates a worker's employment within 6 months after the worker begins to carry out suitable work or begins to carry out the essential duties of the worker's pre-injury work or alternative work, the employer is deemed to have failed to comply with subsection (3) or (4), as applicable.
- (9) Subsection (8) does not apply if the employer can establish, to the Board's satisfaction, that the termination was unrelated to the worker's injury.
- (10) The Board must, on the request of a worker, determine whether an employer has failed to comply with this section.
- (11) The Board is not required to consider a request under subsection (10) if
- (a) the Board considers the request has no merit, or
  - (b) both of the following apply:
    - (i) the worker's employment is terminated within 6 months after the worker begins to carry out suitable work or begins to carry out the essential duties of the worker's pre-injury work or alternative work;
    - (ii) the request is made more than 3 months after the worker's employment is terminated.

- (12) The Board may pay to a worker, for a period of up to one year, an amount equal to the compensation to which the worker was entitled under section 191 *[temporary total disability]* or 192 *[temporary partial disability]*, as applicable, if
- (a) an employer has failed to comply with this section, and
  - (b) the worker is no longer entitled to the compensation under section 191 or 192.

### **Conflict with collective agreement**

- 154.4** (1) If section 154.2 or 154.3 conflicts with a term of a collective agreement that is binding on an employer in relation to a worker, the section in conflict prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement.
- (2) Subsection (1) of this section does not operate to displace a term of the collective agreement that deals with seniority.

### **Administrative penalties respecting this Division**

- 154.5** (1) The Board may, by notice sent to an employer, impose on the employer an administrative penalty determined by the Board if the Board is satisfied on a balance of probabilities that the employer has failed to comply with a provision of section 154.2 *[duty to cooperate]* or 154.3.
- (2) A notice under subsection (1) must be in the form and contain the information required by the Board.
- (3) An administrative penalty under this section must not be greater than the maximum wage rate as determined under section 209 *[maximum wage rate for average earnings]*.
- (4) An employer on whom an administrative penalty is imposed under this section must pay the amount of the penalty to the Board for deposit into the accident fund.
- (5) If an administrative penalty under this section is reduced or cancelled by a Board decision, on a review under Part 6 *[Review of Board Decisions]* or on an appeal to the appeal tribunal under Part 7 *[Appeals to Appeal Tribunal]*, the Board must
- (a) refund the required amount to the employer, and
  - (b) pay interest on that amount calculated in accordance with the policies of the board of directors.

## **Regulations in relation to the duty to maintain employment**

- 154.6** The Lieutenant Governor in Council may make regulations prescribing classes of employers or workers, or prescribing industries or classes of industries, for the purposes of section 154.3 (2) (c) [*duty to maintain employment*].

## **Division 4 — Vocational Rehabilitation, Health Care and Other Assistance**

### **Vocational rehabilitation and other assistance**

- 155** (1) To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.
- (2) 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 dependent spouse, regardless of the date of death.
- (3) The Board may, if it considers this advisable, provide counselling and placement services to dependants of a worker.

### **Health care for injured worker**

- 156** (1) In addition to other compensation under this Part, the Board may provide for an injured worker any services or supplies, including related transportation, that the Board considers reasonably necessary at the time of the injury and afterwards during the worker's disability to cure the injury or alleviate the effects of the injury.
- (1.1) The services and supplies referred to in subsection (1) may be provided before the Board determines a worker's entitlement to compensation under this Part if the Board is satisfied that medical evidence indicates that without such services or supplies the worker is at risk of a significant deterioration in health.
- (1.2) If a service or supply is provided under subsection (1.1) and the Board later determines that the worker is not eligible for compensation under this Part, the worker is not required to reimburse the Board for that service or supply.



- (2) The Board may adopt rules and regulations with respect to the provision of health care to injured workers and for the payment of such health care.
- (3) The Board may make a daily allowance to an injured worker for the worker's subsistence if, under the Board's direction, the worker is undergoing treatment at a place other than the place where that worker resides.
- (4) The power of the Board under subsection (3) 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) Health care provided under any of the following provisions must at all times be subject to the direction, supervision and control of the Board:
- (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) All questions as to the necessity, character and sufficiency of health care to be provided are to be determined by the Board.
- (3) 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, and
  - (b) agree on a scale of fees or remuneration for that health care.
- (4) The fees or remuneration for health care provided under this Act must be set by the Board and must not be greater than the worker would be properly and reasonably charged if the worker were paying.
- (5) No action for an amount greater than that set by the Board lies in respect of health care.

### **Emergency care by physician or qualified professional**

- 158** The Board must pay the costs of services provided by a physician or qualified practitioner, other than one provided by the Board, if
- (a) the physician or qualified practitioner is called in to treat an injured worker in a case of emergency or for other justifiable cause, and
  - (b) the Board considers there was a justifiable cause and that the charge for the services is reasonable.

### **Employer authority and obligations in relation to health care**

- 159** (1) The Board may, at the Board's discretion, authorize an employer to provide health care at the expense of the Board and on the terms set by the Board.
- (2) If a worker is injured in the course of employment, the worker's employer must, at the employer's own expense, 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) The Board must permit health care to be administered, so far as the selection of a physician or qualified practitioner is concerned, by a physician or qualified practitioner who may be selected or employed by the injured worker.
- (2) Subsection (1) does not limit the powers of the Board under this Division respecting the supervision and provision of health care in every case where the Board considers the exercise of those powers is expedient.

### **Replacement, repair and provision of physical assistance items**

- 161** (1) 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;
  - (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, the accident is otherwise corroborated and the Board is satisfied the worker was not at fault.

(2) If an injury to a worker results in serious impairment of the worker's sight, the Board may, 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**

- 162** (1) If a worker has a permanent total disability, the Board must, within the 3-month period before 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 for services and personal supports under this Division.
- (2) After the evaluation under subsection (1) is completed, the Board must take all actions necessary to provide to the worker, for the worker's life, the services and personal supports under this Division that the Board considers necessary.
- (3) This section does not limit the powers of the Board to otherwise provide services and personal supports to workers at any time under this Division.

### **Duties of physicians and qualified practitioners**

- 163** (1) A physician or qualified practitioner attending or consulted on a case of injury to a worker in an industry within the scope of the compensation provisions, or of an alleged case of such an injury, has the following duties:
- (a) to provide the reports in respect of the injury in the form required by regulation or directed by the Board, with the first report containing all requested information being provided to the Board within 3 days after the date of the physician's or qualified practitioner's first attendance on the worker;
  - (b) to 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 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) continues to treat the worker after the physician is consulted as a specialist,

to provide the first report to the Board within 3 days after the consultation is completed and, if the physician is regularly treating the worker, to provide further reports to the Board as required in paragraphs (a) and (b);

(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

(i) make an application for compensation, and

(ii) provide the certificates and proofs required in relation to the application.

(2) Every physician or qualified practitioner authorized under this Act to treat an injured worker is subject to the duties and responsibilities established by subsection (1), and any health care 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) Physicians, qualified practitioners or other persons authorized to provide health care under the compensation provisions must confine their treatment to injuries that are injuries to the parts of the body that they are authorized to treat under the Act under which they are permitted to practise.

(2) A person referred to in subsection (1) who gives treatment that is not authorized as referred to in that subsection commits an offence.

(3) 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.

(4) 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 provide health care, or
  - (b) suspend the person for a period determined by the Board.
- (5) If the right of a person to provide health care is cancelled or suspended under subsection (4),
  - (a) the Board must
    - (i) notify the person of the cancellation or suspension, and
    - (ii) inform the applicable governing body under the *Health Professions Act*, and
  - (b) the person must notify injured workers who seek treatment from that person of the cancellation or suspension.
- (6) 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 after the date of whichever of the following occurs first:
  - (a) the last treatment was given;
  - (b) the person providing the health care was first aware that the Board may be liable for that person's services.

## **Division 5 — Compensation in Relation to Death of Worker**

### **Definitions and other interpretation rules**

**165** (1) In this Division:

**"child"**, in relation to a deceased worker, means a child of the worker who

- (a) is under 19 years of age, including a child who was not yet born at the date of the worker's death,
- (b) is under 25 years of age and regularly attends an academic, technical or vocational place of education,
- (c) 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;

**"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) 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) 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) The following apply if compensation is payable under this Part as the result of the death of a worker or of injury resulting in such death:

- (a) in addition to any other compensation payable under this Division, 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;
- (b) the employer of the worker must bear the cost of transporting the body to the nearest business premises where funeral services are provided;
- (c) if burial does not take place at the premises referred to in paragraph (b), 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.

(2) No action for an amount greater than that established under subsection (1) lies in respect of the funeral, burial or cremation of the worker or related cemetery charges.

### **Lump sum payment to dependent spouse or foster parent**

**167** In addition to any other compensation provided, a dependent spouse or foster parent in Canada to whom compensation is payable is entitled to a lump sum of \$3 383.72.

## **Compensation payable to dependants of deceased worker**

**168** (1) Subject to subsection (2), 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 to the dependants of the deceased worker in accordance with this Division.

(2) Unless a shorter period applies under this Division, the Board must make periodic payments under this Division for the life of the person to whom the payment is to be made.

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

**169** (1) This section applies if

- (a) a deceased worker leaves a dependent spouse but does not leave any child dependants, and
- (b) at the date of the worker's death, the dependent spouse
  - (i) was 50 years of age or older, or
  - (ii) had 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 an amount that, when combined with 50% of the federal benefits payable to or for 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) A monthly payment under this section must not be less than \$1 420.89.

#### **Editorial Note**

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

**170** (1) This section applies if

- (a) a deceased worker leaves a dependent spouse but does not leave any child dependants, and
- (b) at the date of the worker's death, the dependent spouse
  - (i) was under 50 years of age, and
  - (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 an amount that, when combined with 50% of the federal benefits payable to or for the dependent spouse, would equal the product of
- (a) the percentage determined by subtracting 1% from 60% for each year that the age of the dependent spouse, at the date of the worker's death, is under 50 years of age, and
  - (b) 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) The percentage determined under subsection (2) (a) must not be less than 30%, and a monthly payment under this section must not be less than \$1 420.89.

**Editorial Note**

**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) Subject to subsection (4), if the dependants are a dependent spouse and one child dependant, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for 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.
- (3) Subject to subsection (4), if the dependants are a dependent spouse and 2 or more child dependants, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for those dependants, would equal the total of
- (a) 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) if there are more than 2 child dependants, \$439.69 per month for each child dependant beyond that number.

**Editorial Note**

- (4) The minimum compensation payable under this section must be the compensation that would be payable if the compensation were



calculated under this section in respect of a deceased worker with average earnings of \$47 370.91 per year.

**Editorial Note**

**One or more dependent children but no dependent spouse**

- 172** (1) This section applies if a deceased worker leaves no dependent spouse eligible for monthly payments under this Division but does leave one or more child dependants.
- (2) Subject to subsection (5), if there is one child dependant, the Board must make a monthly payment of 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) Subject to subsection (5), if there are 2 child dependants, the Board must make a monthly payment of 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.
- (4) Subject to subsection (5), if there are more than 2 child dependants, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for those children, would equal the total of
- (a) 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, and
  - (b) if there are more than 3 child dependants, \$439.69 per month for each child beyond that number.

**Editorial Note**

- (5) The minimum compensation payable under this section must be the compensation that would be payable if the compensation were calculated under this section in respect of a deceased worker with average earnings of \$47 370.91 per year.

**Editorial Note**

**Compensation to dependent parents in addition to spouse or children**

- 173** (1) This section applies if a deceased worker

- (a) leaves either a dependent spouse or one or more child dependants entitled to compensation under this Division, but not both a dependent spouse and one or more child dependants, and
  - (b) leaves a dependent parent or dependent parents.
- (2) In addition to the compensation payable to the spouse or children, 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.
- (3) As a restriction on subsection (2), an amount paid under this section must not be greater than \$778.22 per month for life or for a lesser period as determined by the Board.

**Editorial Note**

**No dependent spouse or child: compensation to other dependants**

- 174** (1) This section applies if a deceased worker does not leave a dependent spouse or a child dependant entitled to compensation under this Division, but does leave other dependants.
- (2) The Board must pay to the other dependants of the worker an amount the Board considers is reasonable and proportionate to the pecuniary loss suffered by those dependants by reason of the worker's death.
- (3) As a restriction on subsection (2), the total of the amounts paid under this section must not be greater than \$778.22 per month for life or for a lesser period as determined by the Board.

**Editorial Note**

**Compensation to persons other than dependants**

- 175** (1) This section applies if
- (a) either
    - (i) no compensation is payable under sections 169 to 174 in relation to a deceased worker, or
    - (ii) compensation is payable under those sections only to a spouse, a child or children or a parent or parents of the worker, and
  - (b) 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) At the discretion of the Board, payments may be made to persons referred to in subsection (1) (b), but not to more than one of 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 \$778.22 per month for life or for a lesser period determined by the Board.

**Editorial Note**

### **Compensation to foster parent and dependent children**

**176** (1) This section applies if

- (a) a deceased worker
    - (i) leaves a child or children entitled to compensation under this Division, and
    - (ii) either leaves no dependent spouse or the dependent spouse subsequently dies,
  - (b) the Board considers it desirable to continue the existing household, and
  - (c) a suitable person acts as a foster parent in keeping up the household and taking care of and maintaining the child or children, in a manner satisfactory to the Board.
- (2) The same compensation is payable to the foster parent and children as would have been payable to a dependent spouse and child dependants, and the compensation must continue as long as the conditions described in subsection (1) continue.

### **Apportionment between dependants**

- 177** (1) Subject to subsection (2), if it is necessary to apportion compensation payable to dependants among those dependants, the formula for apportionment is at the discretion of the Board.
- (2) Unless the Board has grounds for a different apportionment, apportionment of the following must be in accordance with this subsection:
- (a) if there is a dependent spouse and one child dependant, 2/3 of the compensation is payable to the spouse and 1/3

to the child;

- (b) if there is a dependent spouse and more than one child dependant, 1/2 of the compensation is payable to the spouse and 1/2 among the children in equal shares;
- (c) if there is more than one child dependant but no dependent spouse, the compensation is payable to the children in equal shares.

### **Dependent spouse living apart from worker at the date of death**

**178** (1) This section applies if

- (a) compensation is payable under this Division in relation to a worker's death, and
- (b) at the date of death, the worker and a dependent spouse of the worker were living separate and apart.

(2) 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 [*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) subject to subsection (5), the Board must make monthly payments in respect of that spouse and those children equal to the periodic payments due under the order or agreement.

(3) 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) 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 Board must make monthly payments up to the level of support the Board considers the spouse and 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) the worker and dependent spouse were living separate and apart for a period of less than 3 months preceding that date,

compensation is payable as provided in sections 169 to 176 [*rules respecting specific compensation payment*].

- (5) Compensation payable under this section must not be greater than the compensation that would have been payable under sections 169 to 176 if there had been no separation.

### **Restriction on compensation to spouse living in marriage-like relationship**

**179** (1) Subject to subsection (2), compensation under this Division 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 the worker was living with and contributing to the support and maintenance of that spouse immediately 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) This section applies if a deceased worker has left both

- (a) a dependent 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) a spouse described in paragraph (b) [*marriage-like relationship*] of that definition with whom the worker was living, and to whose support and maintenance the worker was contributing, immediately before the worker's death.

- (2) If there is a difference between

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

- (b) the amount of compensation that would have been payable to that spouse if 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) [*marriage-like relationship*].

### **Change in circumstances: dependent spouse and dependent children — reduction in number of dependent children**

**181** (1) This section applies if

- (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.

(2) The dependent spouse and remaining child dependants are then entitled to the compensation that would have been payable if the worker's death had occurred on the date the number of child dependants was reduced.

### **Change in circumstances: spouse ceases to have dependent children**

**182** (1) This section applies if

- (a) a deceased worker has left both a dependent spouse and dependent children, and
- (b) the dependent spouse subsequently ceases to have dependent children.

(2) The dependent spouse is entitled to the compensation that would have been payable if the worker's death had occurred on the date the dependent spouse ceased to have dependent children.

### **Change in circumstances: spouse and dependent children — spouse dies**

**183** (1) This section applies if

- (a) a deceased worker leaves a dependent spouse and one or more dependent children, and
- (b) the dependent spouse subsequently dies.

(2) Compensation to the dependent children must 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) 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 remaining dependent children are entitled to the compensation that would have been payable if the worker's death had occurred on the date the number of dependent children was reduced.

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

**185** (1) This section applies if

- (a) a deceased worker leaves 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.

(2) The dependent spouse is entitled to the compensation that would have been payable if the worker's death had occurred on the date the dependent spouse ceased to have the disability.

**Compensation in relation to the death of more than one worker**

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

- (a) as a result of the worker's death, 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) The compensation payable for a dependant under subsection (1)

- (a) must not be less than the greatest of the amounts that would otherwise be payable in respect of the death of any of the workers, and
- (b) must not be greater than 90% of the average net earnings of a worker whose wage rate is the maximum wage rate

established under section 209 [*maximum wage rate for average earnings*] for the year in which the last death referred to in subsection (1) (b) occurred.

- (3) For the purposes of subsection (2), the average net earnings for the worker are to be calculated in accordance with section 220 [*determination of average net earnings: short-term compensation*].

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

- 187** (1) 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 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).

### **Proof of dependant status**

- 188** (1) The Board may from time to time require the proof the Board considers necessary of the existence and condition of dependants receiving compensation payments under this Part.
- (2) 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** If

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

the Board must make rules and make decisions the Board considers fair, using this Division 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

**191** (1) Subject to subsection (2), 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) Compensation to be paid under this section

- (a) must not be less than an amount that equals \$501.67 per week if the worker's average earnings per week are greater than or equal to that amount, and

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- (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).

## Temporary partial disability

**192** (1) Subject to subsection (2), 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) The minimum compensation to be paid under this section must be calculated in accordance with section 191 (2) but to the extent only of the partial disability.

### **Recurrence of temporary disability more than 3 years after injury**

**193** (1) 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 if the Board considers that, by doing so, the compensation payable would more closely represent the percentage of actual loss of earnings of the worker by reason of the recurrence of the injury.

- (3) Subject to subsection (4), if

- (a) a worker receives compensation for permanent partial disability for the original injury, and
- (b) compensation for recurrence of temporary total disability under subsection (2) 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) The total compensation payable under this section must not be greater than the maximum payable under this Part at the date of the recurrence.

### **Permanent total disability**

**194** (1) Subject to subsection (2), 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) Compensation to be paid under this section must not be less than \$2 174.27 per month.

### **Permanent partial disability: general rules**

- 195** (1) Subject to section 196, 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) The minimum compensation to be paid under this section must be calculated in accordance with section 191 (2) [*compensation for temporary total disability*] but to the extent only of the permanent partial disability.
- (3) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations 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) This section applies in relation to a permanent partial disability if an amount required under section 195 is less than an amount required under this section.
- (2) [Repealed 2020-20-17.]
- (3) The Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
- (a) the average net earnings of the worker 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.

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

- 197** (1) This section applies if, more than 3 years after 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 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.

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

- 198** (1) This section applies in relation to compensation payable to a worker under section 145 [*non-traumatic hearing loss*].
- (1.1) If there is no loss of earnings resulting from the worker's hearing loss, the compensation payable to the worker is the amount determined under subsection (2) or (3).
- (2) If the worker's hearing loss amounts to a complete loss of hearing, measured in the manner described in Schedule 2 [*Non-Traumatic Hearing Loss*] of this Act, the compensation is the amount calculated as if for a disability equivalent to the maximum percentage of total disability specified in that Schedule.
- (3) If the worker's hearing loss does not amount to a complete loss of hearing, measured in the manner described in Schedule 2 of this Act, the compensation
- (a) must be less than the amount of compensation determined under subsection (2) of this section, and
  - (b) unless otherwise ordered by the Board, is the amount calculated as if for a disability equivalent to the percentage of total disability determined in accordance with Schedule 2.
- (4) If a loss of earnings results from the hearing loss, the worker is entitled to compensation for a total or partial disability as otherwise provided under this Division.
- (5) Compensation paid for a worker's hearing loss under subsection (4) must not be less than the amount determined under subsection (2) or (3).

## **Permanent disfigurement**

- 199** If a worker experiences a serious and permanent disfigurement that the Board considers capable of impairing the worker's earning capacity, the Board may pay a lump sum in compensation and may do so even if the amount the worker was earning before the injury has not been reduced.

## **Maximum compensation in the case of further disability**

- 200** (1) 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 compensation that, in total, is in excess of the maximum payable for total disability.
- (2) If a worker has received a lump sum in 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), to still receive the periodic payments.

## **Payment period for worker disability compensation**

- 201** (1) Subject to subsection (2), periodic payment of compensation under this Division may be paid to an injured worker only as follows:
- (a) if the worker is 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;
  - (b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:
    - (i) 2 years after the date of the injury;
    - (ii) if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.
- (2) As a restriction on subsection (1), the Board may not make a periodic payment to a worker under this Division if the worker ceases to have the disability for which the periodic payment is to be made.

- (3) A determination made under subsection (1) (a) (ii) as to a date on which a worker would retire after reaching age 65 may be made after a worker has reached age 63, and the Board may, when making the determination, consider the worker's circumstances at the time of that determination.

### **Deductions in relation to *Canada Pension Plan* disability benefit**

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

### **Reconsideration of prescribed compensation claims**

- 203** (1) This section applies to claims for compensation that the Board may, by regulation, determine.
- (2) A worker may apply for reconsideration of compensation payable to the worker if
- (a) the worker's claim is of a type prescribed under subsection (1),
  - (b) the worker continues to have a compensable disability that was sustained more than 10 years before the worker's application under this section is made, and
  - (c) either
    - (i) the permanent disability 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) A worker may apply under this section even though the worker has received

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

(b) compensation for a fixed term,

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) 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,

(a) the Board must reconsider the compensation 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 the worker is not receiving adequate compensation, the Board must increase or establish periodic payments accordingly.

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

(a) in the case of a worker who is under 65 years of age, 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) in the case of a worker who is 65 years of age or older, 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) Periodic payments increased or established under this section for a worker who is under 65 years of age are subject to readjustment, by reference to subsection (5) (b), on the worker reaching 65 years of age.

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

(8) Section 200 [*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) Periodic payments to an applicant worker that are increased or established under this section must not exceed the maximum the Board would establish, at the time of the reconsideration decision, for a worker in an occupational category similar to that of the applicant worker before the injury if that other worker had a compensable disability similar to the compensable disability of the applicant worker.
- (10) A reconsideration decision under this section must not result in periodic payments to a worker being less than they would have been if no application had ever been made under this section.
- (11) The effective date for the commencement of an increase or establishment of compensation under this section is the date the application for reconsideration is received by the Board.
- (12) A worker may reapply under this section for reconsideration of the worker's compensation 10 years after the worker's most recent application under this section.

### **Retirement benefit in relation to permanent disability**

- 204** (1) This section applies to a worker who is receiving periodic payments under section 194 (1), 195 (1) or 196 (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) equals 5% of the periodic payment, and
  - (b) is in addition to the periodic payment.
- (3) The Board must provide each worker 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) A worker may apply to the Board to contribute to the amount set aside or to be set aside under section 204 an amount that is not less than 1% and not greater than 5% of each subsequent periodic payment made to the worker.
- (2) Subject to subsection (3), if a worker makes an application under this section, 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.

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

(4) A worker may

(a) only once make an application for deductions under subsection (2), and

(b) only once make an application to stop the deductions under subsection (3).

(5) An application made under this section must be made in a form acceptable to the Board.

### **Payment of retirement benefit**

**206** (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,

(b) the contributions, if any, made by the worker under section 205, 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) if the date of the last periodic payment to the worker is after the date the worker reaches 65 years of age, on the date of that last periodic payment.

(3) Despite section 231 (4) [*Board discretion respecting amount accrued to worker*], if a worker dies before receiving the worker's retirement benefit under subsection (1) of this section, the Board must, on the death of the worker, pay the lump sum to which the worker 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.

## **Board administration of money to be paid as retirement benefit**

- 207** (1) The Board must establish a reserve in the accident fund into which the amounts and contributions referred to in sections 204 and 205 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.
- (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 as if 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**

- 208** (1) The Board must determine the amount of a worker's average earnings and the worker's earning capacity with reference to the worker's average earnings and earning capacity at the time of the worker's injury.
- (2) The Board must determine the amount of a worker's average earnings in accordance with this Division, subject to the restriction that the amount may not exceed the maximum wage rate as determined under section 209.
- (3) The Board must not include the following in determining the amount of a worker's average earnings:
- (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 other 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) If income from employment benefits was payable to 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 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, receive compensation for permanent total disability must not be less than \$2 174.27 per month.

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### **Annual determination of maximum wage rate for average earnings**

- 209** (1) Before the end of each calendar year, the Board must determine the maximum wage rate applicable for the following calendar year.

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- (1.1) As an exception to subsection (1), the maximum wage rate for 2021 is \$100 000.
- (2) The maximum wage rate to be determined under this section must be an amount, which may be rounded to the nearest \$100, that the Board considers represents the same relationship to the amount of \$100 000 as
  - (a) the annual average of wages and salaries in British Columbia for the year preceding the year in which the determination is being madebears to
  - (b) the annual average of wages and salaries in British Columbia for the year 2019.

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- (3) For the purpose of determining annual average of wages and salaries under this section, the Board may use data published or supplied by Statistics Canada.

### **Average earnings: short-term compensation**

- 210** Subject to this Division, the Board must determine, for the shorter of the following periods, the amount of a worker's average earnings based on

the rate at which the worker was remunerated by each of the employers for whom 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** Subject to this Division, if a worker's disability continues after the end of the shorter period referred to in section 210, the Board must, for the period starting after the end of that period, determine the amount of the worker's average earnings based on the worker's gross earnings, as determined by the Board, for the 12-month period immediately preceding the date of the worker's injury.

### **Worker without earnings: short-term and long-term compensation**

**212** If a worker had no earnings at the time of the injury, the Board must determine the amount of a worker's average earnings 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) This section applies to a person who is
- (a) deemed to be a worker under section 5 [*extending application: public interest undertakings*], and
  - (b) not regularly employed.
- (2) 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 the person's income.
- (3) As a restriction, an amount fixed under subsection (2) must not be less than \$167.24 per week.

### **Casual worker: short-term and long-term compensation**

- 214** 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 from the date of injury must be based on the worker's gross earnings, as determined by the Board, for the 12-month period immediately preceding the date of injury.

### **Employer or independent operator with purchased coverage: short-term and long-term compensation**

- 215** If an employer or independent operator to whom the Board directs that the compensation provisions apply under section 4 (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 from the date of injury based on the gross earnings for which coverage is purchased.

### **Worker who is apprentice or learner: long-term compensation**

- 216** (1) This section applies to a worker who, at the time of injury, was
- (a) an apprentice in a trade, occupation or profession, or
  - (b) 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 based on the greater of the following:
- (a) the rate at which the worker was remunerated by each of the employers for whom 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 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 based on the gross earnings, as determined by the Board, for the 12-month period immediately

preceding the date of injury, of a qualified person employed at the starting rate in the same trade, occupation or profession

(a) by the same employer, or

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

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

**217** (1) 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 211 [*long-term compensation*] must be based on the gross earnings, as determined by the Board, for the 12-month period immediately preceding the date of injury, of a person of similar status employed in the same type and classification of employment

(a) by the same employer, or

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

### **Exceptional circumstances: long-term compensation**

**218** (1) If exceptional circumstances exist such that the Board considers that the application of section 211 would be inequitable, the Board's determination of the amount of a worker's average earnings 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 217.

### **Determination if multiple rules apply**

**219** If 2 or more of sections 212 to 218 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**

### **Average net earnings: short-term compensation**

- 220** (1) This section applies to the determination of the amount of a worker's average net earnings for the period under section 210 *[average earnings: short-term compensation]* that applies to the worker.
- (2) The Board must estimate the following deductions for the calendar year immediately preceding the injury, based on the worker's average earnings as determined under Division 7 of this Part:
- (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 deduct the amounts estimated under subsection (2) from the worker's average earnings as determined under Division 7 of this Part.
- (4) For the purposes of this section, premiums and contributions referred to in subsection (2) (a) and (b) are deemed to be payable by all workers.
- (5) To estimate 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),each multiplied by 1.5;
  - (b) 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).

## Average net earnings: long-term compensation

**221** (1) This section applies to the determination of the amount of a worker's average net earnings after the end of the applicable period referred to in section 220 (1).

(2) The Board must estimate the following deductions for the calendar year immediately preceding the injury, based on the worker's average earnings as determined under Division 7 of this Part:

- (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.

(3) In order to determine a worker's average net earnings under this section, the Board must deduct the amounts estimated under subsection (2) from the worker's average earnings as determined under Division 7 of this Part.

(4) To estimate 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 (d.1) [*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**

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

## **Division 9 — Transitional and Related Compensation Matters**

### **Periodic payments awarded before 1966 for permanent injury**

- 223** (1) This section applies in relation to periodic payments for permanent disability that were awarded to a worker by the Board before January 1, 1966 if
- (a) a portion of the periodic payments equivalent to 12% of total disability or greater was commuted before January 1, 1966,
  - (b) the award was for a percentage of total disability of 12% or greater and the whole of the periodic payments was commuted before January 1, 1966, or
  - (c) the award was for a percentage of total disability of 12% or greater and was of periodic payments for a fixed term.
- (2) If a worker to whom an award referred to in subsection (1) was made still has the disability, the Board may, on the application of the worker, establish new periodic payments that are to begin for the month in which the application is received by the Board.
- (3) 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;
  - (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 the total of all increases that would have been made from January 1, 1966 to and including the last day of the month before the month in which the application was received.
- (4) The rate of the new periodic payments to be established under this section must be the amount calculated under subsection (3) (b), but future adjustments under section 334 [*annual adjustment of periodic payment amounts*] must be based on the total of the amounts calculated under subsection (3) (a) and (b) of this section.
- (5) This section does not apply if its purpose has been achieved as a result of an application under section 203 [*reconsideration of prescribed compensation claims*] or in some other way.

### **Workers receiving health care before April 1, 1972**

**224** (1) 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.

- (2) If additional health care is provided by the Board under this section, the Board's cost of providing the health care may be charged in a manner the Board considers proper.

### **Compensation in relation to worker death before July 1, 1974**

**225** (1) If, on July 1, 1974,

- (a) compensation was being paid to one or more dependants in respect of deaths occurring before that date,
- (b) those dependants were not receiving or were not entitled to receive benefits under the *Canada Pension Plan*, and
- (c) as applicable,
  - (i) the dependant was a widow who was 50 years of age or older or had a physical or mental disability that resulted in the spouse being incapable of earning,
  - (ii) the dependants were children, or
  - (iii) the dependants were a widow and children,

there must be added to the monthly payments under the compensation provisions the amount of \$588.75 for each such dependent widow and \$182.74 for each dependent child.

**Editorial Note**

(2) If

- (a) dependants would qualify for the increases under subsection (1) but for the fact that they are receiving or entitled to receive benefits under the *Canada Pension Plan*, and
- (b) the amount of benefits under the *Canada Pension Plan* is less than the amounts specified in subsection (1),

the monthly payments payable to those dependants under 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) The Board must make periodic payments under this section for the life of the person to whom the payment is to be made.

**Compensation in relation to hearing loss before September 1, 1975**

**226** Compensation is not payable to a worker under section 145 [*non-traumatic hearing loss*]

- (a) in respect of a period before September 1, 1975, or
- (b) if the worker's exposure to causes of hearing loss in British Columbia ended before that date.

## Compensation in relation to worker injury before January 1, 1986

**227** In relation to a worker injured before January 1, 1986, section 209 (2) *[maximum wage rate]* is to be read as if

- (a) the reference to \$100 000 were a reference to \$11 200, and
- (b) the reference to 2019 were a reference to 1972.

### Editorial Note

## Compensation in relation to worker death before June 30, 2002

**228** (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 came into force.

- (2) This section applies to a worker's death that occurred before June 30, 2002.
- (3) Subject to subsections (5) and (6), the former Act, as it read immediately before June 30, 2002, applies to a death referred to in subsection (2).
- (4) Subject to subsections (5) and (6), in recalculating compensation under 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 was before June 30, 2002, base the recalculation on the former Act as it read immediately before June 30, 2002.
- (5) Section 334 *[annual adjustment of periodic payment amounts]* applies to compensation paid on or after the transition date in respect of a worker's death, irrespective of the date the worker died.
- (6) 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 the former Act, as it read immediately before June 30, 2002, in accordance with section 333 (1) *[annual adjustment of dollar amounts referred to in Act]* of this Act.

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

**229** (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 this section came into force.

- (2) This section applies to an injury that occurred before the transition date.
- (3) Subject to subsections (4) to (8), 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 applies to the permanent disability.
- (5) For the purposes of subsection (4), sections 194 to 196 [*compensation for permanent disability*] of this Act apply as if
  - (a) all references, other than references in section 196 (3) (b) (i) [*permanent partial disability: exception to general rules*], to "90%" were read as "75%",
  - (b) all references, other than references in section 196 (3) (b) (i), to "average net earnings" were read as references to "average earnings determined under the former Act immediately before the transition date", and
  - (c) section 196 (3) (b) (i) read as follows:
    - (i) the average earnings that the worker is earning after the injury, as determined under the former Act immediately before the transition date.
- (6) Section 202 [*deductions in relation to Canada Pension Plan disability benefit*] does not apply in the circumstances described in subsection (4) of this section.
- (7) Section 334 [*annual adjustment of periodic payment amounts*] applies to compensation paid 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.

## **Division 10 — Compensation Payments and Other General Matters**

### **Manner of compensation payment: periodic or lump sum**

**230** (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.

(2) The Board may, 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,to one or more lump sum payments, to be applied as directed by the Board;
- (b) divide into periodic payments compensation that is otherwise payable as a lump sum.

(3) In the case of a worker's

- (a) death,
- (b) permanent total disability, or
- (c) permanent partial disability where the impairment of the earning capacity of the worker 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 entitled to the payments.

### **Payment of compensation in specific circumstances**

**231** (1) In the case of payments of compensation to

- (a) a minor, or
- (b) a person of unsound mind who the Board considers incapable of managing the person's own affairs,

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

- (2) If an injured worker is receiving custodial care in a hospital or elsewhere, periodic payments of compensation due to the worker may be dealt with as follows, regardless of the date of the injury:
- (a) in a case of temporary disability of the worker, the payments may be
    - (i) applied to the maintenance of a home to which the worker is likely to return on the worker's recovery, or
    - (ii) accumulated by the Board for payment to the worker on the worker's recovery;
  - (b) 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) As a restriction on subsection (2) (b), if the worker is conscious, the Board must pay to the worker, or for the use of the worker, a comfort allowance of at least \$299.77 out of each periodic payment.

#### Editorial Note

- (4) Any compensation owing or accrued to a worker for a period not longer than 3 months before 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.

### Payment of interest

**231.1** (1) In this section, "**effective date**", in relation to a payment of compensation, means the date on which entitlement to the payment of compensation arises, as determined by a review officer or the appeal tribunal.

- (2) Interest must be paid on any amount of compensation that
- (a) is determined to be payable following a review under Part 6 *[Review of Board Decisions]* or an appeal under section 288

*[review decisions that may be appealed], and*

(b) remains unpaid for a period of at least 180 days after the effective date.

(3) Interest payable under subsection (2) must be calculated in accordance with the policies of the board of directors and begins on the effective date.

(4) Despite this section, if interest is payable on an amount of compensation under section 312 *[payment of compensation following appeal]*, interest is not payable under this section on that amount of compensation in respect of the same period.

### **Board authority to discontinue, suspend or otherwise deal with compensation payments**

**232** (1) If a worker is confined to prison, the Board may cancel, withhold or suspend the payment of compensation for the period the Board considers advisable.

(2) 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) a trustee appointed by the Board, who must use the payment for the benefit of the worker, the worker's spouse or the worker's children.

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

### **Deduction in relation to payments from employer**

**233** (1) In setting the amount of a periodic payment of compensation to a worker, the Board must consider payments, allowances or benefits 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.

(2) 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) This section applies if

- (a) a worker's personal injury, disablement or death occurs in the course of the worker's employment as a direct result of enemy warlike action or counteraction taken against such enemy action, and
- (b) provision has been made by the government of Canada for compensation for the worker or the worker's dependants in respect of the injury, disablement or death.

(2) The worker or the worker's dependants are entitled to compensation under this Part only 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) If information in a claim file, or in any other material 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) in compliance with an enactment of British Columbia or Canada;
- (b) 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;
- (c) for the purpose of preparing a submission or argument for a proceeding under a compensation provision, an OHS provision or Part 7 [*Appeals to Appeal Tribunal*];
- (d) if the information is about a person, the person has identified the information and consented, in the manner required by the Board, to disclosure of that information.

(2) A court, tribunal or other body may not admit into evidence any information that is disclosed in contravention of subsection (1).

(3) A person who contravenes subsection (1) commits an offence.

## **Penalties in relation to offences under the compensation provisions**

**236** (1) A person who commits an offence under a compensation provision for which no other punishment has been provided is liable on conviction to a fine not greater than \$6 689.64.

**Editorial Note**

(2) Every person who contravenes or fails to comply with a regulation made under a compensation provision commits an offence and is liable on conviction to the fine prescribed by the regulations, but that fine must not be greater than \$6 689.64.

**Editorial Note**

(3) Penalties imposed by or under the authority of 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) when collected, must be paid over to the Board to form part of the accident fund.

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

**237** (1) In addition to the rules and regulations that may be made under the compensation provisions, the Board may

- (a) issue the orders and directives the Board considers necessary for the administration and carrying out of those provisions, and
- (b) establish rules respecting the form and use of payrolls, reports, certificates and declarations and other records that may be needed for those purposes.

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

**Effective date of Board's compensation regulations**

**238** (1) Subject to subsection (2), a regulation of the Board under a compensation provision must specify the date on which the regulation is to come into force, which date must be at least 90 days after its deposit under the *Regulations Act*.

(2) The Board may specify a date that is less than 90 days after the date of deposit as the effective date of a regulation made under section

138 (1) in relation to an occupational disease that is an infection caused by a communicable viral pathogen.

## **Part 5 — Accident Fund and Employer Assessment**

### **Division 1 — Accident Fund and Assessments for Purposes of Fund**

#### **Accident fund**

- 239** (1) The Board must continue and maintain the accident fund
- (a) for payment of compensation, outlays and expenses under the compensation provisions,
  - (b) for payment of expenses incurred in the Board's administration of this Act, and
  - (c) for payment to the government required under section 284 (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.

#### **Board estimate of amounts needed for accident fund**

- 240** (1) For the purpose of assessment under section 241, the Board must every year make an estimate of sufficient funds to do the following:
- (a) meet all amounts payable from the accident fund during the year;
  - (b) provide a reserve in aid of industries or classes which may become depleted or extinguished;
  - (c) provide a reserve to be used to meet the loss arising from a disaster or other circumstance that the Board considers would unfairly burden the employers in a class;
  - (d) provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability;
  - (e) provide in each year capitalized reserves sufficient to meet the 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) 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), the excess may be transferred to the capitalized reserves of the fund.

### **Annual employer assessments for accident fund purposes**

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

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

### **Additional assessment amounts**

**242** (1) If the Board considers that there are not sufficient funds to provide the compensation required to be paid under the compensation provisions,

- (a) the Board may levy on and collect from employers within the scope of 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 within the scope of those provisions,
- (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) If the estimated assessments in a class prove insufficient, the Board

- (a) may make further assessments and levies as necessary, or
- (b) 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) The following apply if 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) the Board need not establish within the year reserves to meet future payments on those claims or liabilities and may instead establish those reserves by assessments levied over a period of years.

### **General rules in relation to assessments**

#### **243 (1) 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.
- (2) If the Board considers this to be expedient, assessments may be collected in half-yearly, quarterly or monthly instalments, or otherwise.
- (3) If the Board considers that the funds in a class are sufficient for the time being, an instalment may be reduced or cancelled or its collection deferred.

### **Classification of industries**

#### **244 (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                  |
| Class 7: | General sector                 |

- Class 8: Canadian Pacific Railway Limited, Teck Resources Limited
- Class 9: BNSF Railway Company
- Class 10: Air Canada, Canadian National Railway, Via Rail Canada Inc.
- Class 11: British Columbia Assessment Authority, British Columbia Ferry Services Inc., Government of British Columbia, Workers' Compensation Board.

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

- (a) 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;
  - (ii) a part of the class;
  - (iii) a subclass or part of a 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;
  - (iii) another subclass or part of another 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 obligation to provide payroll estimates and reports**

**245** (1) An employer must do the following:

- (a) keep at all times at a place in British Columbia 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) 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 those provisions, and
    - (ii) at other times as required by Board regulation of general application or by an order of the Board limited to a specific employer;
  - (d) provide to the Board certified copies of reports of the employer's payrolls, on or after the end of each calendar year and at the other times and in the manner required by the Board.
- (2) If an employer fails to comply with subsection (1),
- (a) the employer must pay, as a penalty for the failure, the percentage of the assessment prescribed by Board regulation or determined by the Board, and
  - (b) the Board may make its own estimate of the payrolls and make its assessment and levy based on that estimate, in which case the employer is bound by the estimate, assessment and levy.
- (3) If an employer fails to comply with subsection (1), or if a statement made 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.

### **Use of payroll information for purpose of assessment**

- 246** (1) 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.
- (2) If a worker's wages are greater than the maximum wage rate for the year as determined under section 209, a deduction may be made where practical in respect of the portion in excess of that rate.

- (3) If the wages of a worker are shown to 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.
- (4) If a worker works at a nominal wage or no wage, the Board may fix the amount of the worker's average earnings for purposes of the compensation provisions.

### **Variation of assessment rates**

- 247** (1) The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class, as the Board considers just.
- (2) If the Board considers that a particular industry or plant is 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 establish a special rate, differential or assessment for that industry or plant to correspond with the relative hazard or cost of compensation of the industry or plant, and
  - (b) for the purpose referred to in paragraph (a), may also adopt a system of experience rating.
- (3) The Board may, in a manner that 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.
- (4) The Board may make that variance or levy under subsection (3) whether or not hearing protection is worn.

### **Class accounts for accident fund**

- 248** (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 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) This section applies if the Board considers that

- (a) a substantial amount of compensation has been awarded as a result of the injury or death of 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 the compensation provisions apply by Board direction under section 4 (2) (a)

that is in 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 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) If compensation is paid

- (a) under section 141 [*mining industry silicosis*] in relation to a worker who was exposed to the inhalation of silica dust in 2 or more classes or subclasses of industry in British Columbia, or
- (b) 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) If compensation is paid under section 145 [*non-traumatic hearing loss*] 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 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**

**251** (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 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 [*Occupational Health and Safety*].

- (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 \$69 946.25.

#### **Editorial Note**

- (3) The payment of an amount levied under 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) 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) A notice under subsection (1) may be sent by 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**

**253** (1) 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 the assessment is payable,

the notice constitutes an assessment under this Part, and the employer must, within the 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) An employer who neglects or refuses to comply with subsection (1) is liable for the penalty prescribed by Board regulation or determined by the Board, and that penalty is enforceable as an assessment under this Part.

### **Annual adjustment of assessments**

**254** (1) As soon as practicable in each year, the Board must adjust the amount of the assessments for the preceding calendar year based on the estimated requirements of the class and on the correctly ascertained payroll of each industry.

(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) This section applies if

- (a) the payroll of an industry ascertained under section 254 (1) is greater than the estimated payroll on which an employer in that industry was assessed, or
- (b) 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 the employer interest on the amount of the deficiency in the assessment at a rate the Board considers will reimburse the accident fund for any loss sustained by reason of the deficiency.
- (3) Interest under subsection (2) must be added to the amount of the deficiency and becomes a part of that amount.

## **Demand on third party**

**255.1** (1) If the Board has reason to believe that a person is or is likely to become indebted to an employer that owes an amount to the Board under this Act, the Board may demand in writing that the person pay to the Board, on account of the employer's liability to the Board, all or part of the money otherwise payable to the employer.

- (2) A person on whom a demand is made under this section must, if indebted to the employer, pay to the Board or to someone specified by the Board the amount demanded, within 15 days after the later of
  - (a) the date the demand is served, and
  - (b) the date the person named in the demand becomes indebted to the employer.

- (3) The Board's receipt for money paid by a person in response to a demand made under this section is proof that the person's liability to the employer that owes money to the Board is discharged to the extent of the amount stated in the receipt.

- (4) For the purposes of this section, a savings institution is indebted to an employer that owes money to the Board for money or a beneficial interest in money in the savings institution
  - (a) on deposit to the credit of that employer when a demand is served under this section,

- (b) held in trust by a depositor for that employer when a demand is served under this section, or
  - (c) deposited to the credit of that employer after a demand is served under this section.
- (5) A demand made under this section continues in effect until it is satisfied or until it is cancelled by the Board.

### **Failure to comply with demand**

**255.2** (1) If a person on whom a demand is made under section 255.1 does not comply with the demand,

- (a) the Board may enforce recovery of the amount stated in the demand as if it were an unpaid assessment owed to the Board by the person, and
  - (b) sections 108 and 264 of this Act apply to the recovery of that amount.
- (2) If a person on whom a demand is made under section 255.1 denies indebtedness to an employer that owes money to the Board, the Board may require that person to produce information the Board considers necessary to establish that there is no indebtedness.

### **Collection after change in owners or employers**

**256** (1) This section applies if a change of ownership or employership has occurred in an industry.

- (2) The Board may, as applicable,
  - (a) levy any deficiency in an assessment 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 those owners.
- (3) Unless there is an agreement between the successive owners or employers determining the apportionment of assessment, 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**

**257** (1) This section applies to work within the scope of the compensation provisions that is performed under contract for

- (a) a municipal corporation, or
  - (b) 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**

**258** (1) The following applies if work within the scope of 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 an assessment in respect of the work;
- (b) the assessment may be levied on and collected from either of them, or partly from each;
- (c) 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) The following applies if work within the scope of the compensation provisions is performed under subcontract:

- (a) both the contractor and the subcontractor are liable for the amount of an assessment in respect of the work;
- (b) the assessment may be levied on and collected from either of them, or partly from each;
- (c) 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.

(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) the contractor or subcontractor is doing work in or for the purposes of an industry carried on by another person,
- (b) the industry is within the scope of the compensation provisions, and

- (c) the contractor or subcontractor is not assessed with respect to the work.
- (4) For the purposes of this section, a person, contractor or subcontractor includes an employer within the scope of the compensation provisions.

### **Director's liability**

**258.1** (1) Subject to this section, if a corporation has failed to pay an amount owed to the Board under this Act, the directors of the corporation at the time the corporation was required to pay the amount are jointly and severally liable with that corporation to pay that amount.

- (2) A director is not liable under subsection (1) unless one of the following has occurred:
  - (a) a certificate has been filed under section 108 (1) (b) or 264 (3) with respect to the amount the corporation is liable to pay and execution for that amount has been returned unsatisfied in whole or in part;
  - (b) the corporation has been dissolved or has commenced liquidation proceedings in any jurisdiction;
  - (c) the corporation has, under the *Bankruptcy and Insolvency Act* (Canada),
    - (i) made an assignment in bankruptcy,
    - (ii) filed a notice of intention to make a proposal with the official receiver, or
    - (iii) made a proposal under Division 1 of Part III of that Act;
  - (d) a bankruptcy order has been made against the corporation under the *Bankruptcy and Insolvency Act* (Canada);
  - (e) the corporation has obtained a court order granting a stay of proceedings under section 11.02 of the *Companies' Creditors Arrangement Act* (Canada);
  - (f) the corporation has been or is subject in any jurisdiction to a proceeding similar in nature to a proceeding referred to in paragraphs (c) to (e) of this subsection.
- (3) A director is not liable under subsection (1) if the director exercised the care, diligence and skill that a reasonably prudent person would

exercise in comparable circumstances to prevent the corporation's failure to pay an amount owed to the Board.

- (4) No action lies and no proceeding may be commenced to recover an amount payable by a director under subsection (1) after 2 years have elapsed since the date that the director ceased to be a director of the corporation.
- (5) If a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings,
  - (a) the director is entitled to the same priority to which the Board would have been entitled if the amount had not been paid, and
  - (b) if a certificate that relates to that amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, and the Board may make that assignment.
- (6) If a director is liable for an amount under subsection (1),
  - (a) the Board may enforce recovery of the amount as if it were an unpaid assessment owed to the Board by the person, and
  - (b) sections 108 and 264 apply to the recovery of that amount.

### **Employer still liable if assessment not made**

**259** 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**

**260** (1) This section applies if

- (a) an employer engages in an industry within the scope of the compensation provisions and has not been assessed in respect of the industry, and



- (b) the Board considers that the industry is to be carried on only temporarily.
- (2) The Board may require the employer to
  - (a) pay to the Board an amount sufficient to pay the assessment for which the employer would be liable if the industry had been in existence when the 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) An employer who fails to comply with a requirement of the Board under subsection (2) commits an offence.

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

- 261** (1) Subject to subsection (3), if an assessment levied under the compensation provisions is not paid at the time when it becomes payable, the defaulting employer must pay, as a penalty for the default, the applicable percentage of the following, as prescribed by Board regulation or determined by the Board:
- (a) the amount unpaid;
  - (b) the assessment for the preceding year;
  - (c) the projected assessment for the current year.
- (2) A penalty under subsection (1)
- (a) may be added to the amount of the assessment and become a part of the assessment, and
  - (b) 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) If satisfied that the default was excusable, the Board may in 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) If compensation is paid under section 150 (8) before 3 days after the Board receives the report required by 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 the same manner as other assessments.
- (3) 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.

### **Employer payment for compensation provided during period of default**

**263** (1) This section applies if an employer

- (a) refuses or neglects to make or provide a payroll estimate or other record required to be provided by the employer under section 245 (1) [*employer obligation to provide payroll estimates and reports*], or
  - (b) refuses or neglects to pay
    - (i) an assessment,
    - (ii) the provisional amount of an assessment, or
    - (iii) an instalment or part of 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 an injury or occupational disease to a worker in the employer's employ that happens during the period of the default referred to in subsection (1).
- (3) The payment of 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) If satisfied that the default was excusable, the Board may in a specific case relieve the employer in whole or in part from liability under this section.

### **Collection of assessments by legal action or certificate**

- 264** (1) If an assessment or part of 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) If default is made in the payment of an assessment or part of an assessment, the Board may issue a certificate stating
- (a) that the assessment was made,
  - (b) the amount remaining unpaid on account of the assessment, and
  - (c) the person by whom the amount was payable.
- (3) 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.
- (4) On filing under subsection (3), the certificate becomes an order of the Supreme Court and may be enforced as a judgment of that court against the person named in the certificate for the amount stated in the certificate.

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

- 265** (1) Despite anything contained in any other Act, the following amounts due by an employer to the Board or, if an assignment has been made under subsection (7), to its assignee constitute a lien in favour of the Board or its assignee:
- (a) an amount due on an assessment made under this Act;
  - (b) an amount which an employer is required to pay to the Board under this Act;
  - (c) an amount which an employer is required to pay to the Board on a judgment.
- (1.1) A lien described in subsection (1) is 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.
- (1.2) Subsection (1.1) does not apply in respect of the following:
- (a) liens for wages due to workers by their employer;

(b) liens under section 50 (1) of the *Temporary Foreign Worker Protection Act*.

- (2) A lien under subsection (1) 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.
- (3) The exception in subsection (1.2) (a) respecting liens for wages due to workers by their employer does not apply in respect of a lien for wages that is, by section 87 (5) of the *Employment Standards Act*, postponed to a mortgage or debenture.
- (4) The exception in subsection (1.2) (b) respecting liens under section 50 (1) of the *Temporary Foreign Worker Protection Act* does not apply in respect of a lien for wages that is, by section 50 (4) of the *Temporary Foreign Worker Protection Act*, postponed to a mortgage or debenture.
- (5) Where the employer is a corporation, the word "**property**" in subsection (1) includes the property of any director, manager or other principal of the corporation where the property is used in, or in connection with, the industry with respect to which the employer was assessed or the amount became payable, or was so used within the period in respect of which assessments are unpaid.
- (6) Without limiting subsection (1), the Board may enforce its lien by proceedings under the *Court Order Enforcement Act*.
- (7) The Board may assign its lien rights to a person, contractor or subcontractor who has fully discharged their liability for the amount of an assessment under section 258 by payment of it.

### **Court order restraining industry if employer defaults**

- 266** (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 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 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 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) 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) 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) from carrying on an industry, or an activity in an industry, within the scope of 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**

**268** (1) Subject to subsection (2), a person referred to in the applicable provision of section 269 may request a review officer to review the following in a specific case:

- (a) a Board order respecting an occupational health or safety matter under the OHS provisions, a refusal to make such an order or a variation or cancellation of such an order;
- (b) a Board decision respecting a compensation or rehabilitation matter under the compensation provisions;
- (c) a Board decision under the compensation provisions respecting
  - (i) an assessment or classification matter,
  - (ii) an administrative or other monetary penalty,
  - (iii) an employer payment to the Board under any of the following:
    - (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*], or

- (iv) a matter set out in section 154.2 [*duty to cooperate*] or 154.3 [*duty to maintain employment*];

(d) a Board decision respecting

- (i) an imposition or variation of a term or condition on a licence under section 59.05 (4) or (5) [*licence may be issued*],
- (ii) a refusal to issue a licence under section 59.06 [*refusal of licence*], or
- (iii) a suspension or cancellation of a licence under section 59.07 [*suspension or cancellation of licence*].

(2) A review may not be requested under subsection (1) respecting the following:

- (a) in relation to section 50 [*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;
- (b) an assessment under section 108 (1) (a) [*levy of amount owed by employer under the OHS provisions*];
- (c) an assignment of an employer to a class or subclass, other than the assignment of an employer to a class or 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) a withdrawal of an employer from a class or subclass, 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) 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, other than an allocation as it relates to a specific employer or an independent operator respecting



- (i) the reserve referred to in section 240 (1) (b), (c) or (d) *[reserve purposes]* or
- (ii) the account of a class or subclass referred to in section 249 *[compensation charged to different employer class or subclass]*;
- (h) the determination of an assessment rate for a class or subclass, other than the modification to the assessment rate determined for an employer on the basis of the employer's own experience.
- (i) [Repealed 2020-20-29.]

### **Who may request a review**

**269** (1) Any of the following who is directly affected by a decision or order referred to in section 268 (1) (a) *[OHS decisions]* may request a review of the decision or order:

- (a) a worker;
- (b) a family member of a deceased worker;
- (c) an employer as defined in section 13 *[OHS definitions]*;
- (d) an owner as defined in section 13;
- (e) a supplier as defined in section 13;
- (f) a union as defined in section 13.

(2) Any of the following who is directly affected by a decision referred to in section 268 (1) (b) *[compensation or rehabilitation decisions]* may request a review of the decision:

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

(3) An employer or independent operator who is directly affected by a decision referred to in section 268 (1) (c) *[assessment, classification and other decisions affecting employers and independent operators]* may request a review of the decision.

(4) An asbestos abatement contractor or an independent asbestos abatement operator, within the meaning of section 59.02 *[definition in relation to licensing]*, who is directly affected by a decision referred to in section 268 (1) (d) may request a review of the decision.

## **Making request for a review**

**270** (1) A request for a review must be filed as follows:

- (a) if a shorter time period is not prescribed under paragraph (b), within 90 days after the Board's decision or order is made;
  - (b) if a time period shorter than 90 days is prescribed by regulation of the Lieutenant Governor in Council with respect to the type of decision or order to be reviewed, within the shorter time period.
- (2) 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 the chief review officer is satisfied that
  - (a) special circumstances existed that preclude or precluded the filing of a request for a review within the applicable time period required by subsection (1), and
  - (b) an injustice would otherwise result.
- (3) The filing of a request for a review under 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) 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 the Board's records respecting the matter under review.

- (2) Subject to subsection (3), for the purposes of a specific review, if the employer has ceased to be an employer within the meaning of the compensation provisions, the chief review officer may deem an employers' adviser or an organized group of employers to be the employer.
- (3) An organized group of employers may be recognized by the chief review officer under subsection (2) 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**

**272** (1) This section applies to a review requested under section 270.

(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), the review officer may

(a) complete the review and make a decision on the basis of the information before the review officer, 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) [*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) if a time period is not established as set out in paragraph (b) of this subsection, within 150 days after the Board receives the request for a review;

(b) 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, within the shorter time period.

(7) A time period referred to in subsection (6) (b) may be different for different types of decisions or orders.

(8) 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) 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) Subject to sections 273 [*reconsideration directed by chief review officer*] and 288 [*appeal of review decisions*], a decision by the review officer under subsection (9) is final and the Board must comply with the decision.

### **Reconsideration directed by chief review officer**

- 273** (1) The chief review officer may direct a review officer to reconsider a decision under section 272 (9) 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 288 [*appeal of review decisions*].

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

- 274** (1) The chief review officer may delegate to a review officer a power or duty of the chief review officer.
- (2) A delegation under subsection (1) must be in writing and may include limits and conditions on the exercise of the power or performance of the duty.

- (3) 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) The chief review officer may designate a review officer to act in the chief review officer's place during 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**

- 275** (1) If, following a review under 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 [*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 [*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:
- (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**

**276** (1) The commencement of a review under this Part does not relieve an employer from paying an amount in respect of a matter that is the subject of the review.

(2) If the decision on a review under this Part 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 7 — Appeals to Appeal Tribunal**

### **Division 1 — Appeal Tribunal**

#### **Definitions**

**277** In this Part:

**"chair"** means the chair of the appeal tribunal appointed under section 278 (2) (a);

**"extraordinary member"** means a member of the appeal tribunal appointed under section 278 (2) (c);

**"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) and temporary substitute members appointed under section 278 (9);

**"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).

#### **Appeal tribunal and membership**

**278** (1) The Workers' Compensation Appeal Tribunal is continued.

- (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 required to discharge the person's duties as a member of a panel appointed by the chair under section 285 (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) 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) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to members or officers of the appeal tribunal.
- (9) Despite subsections (3) to (5), if a member of the appeal tribunal is absent or incapacitated for an extended period or expects to be absent for an extended period,
- (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) The appointment of a person to replace a member under subsection (9) is not affected by the member returning to less than full duty.

### **End of appointment to appeal tribunal**

- 279** (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 the member's appointment expires, the chair may authorize that 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 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**

- 280** (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 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 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 301 [*health professional assistance to appeal tribunal*];
  - (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) 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) 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) Subject to section 304 (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) 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** (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 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** (1) In accordance with general directives of the Treasury Board, members must be reimbursed for reasonable travelling and 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**

- 284** (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 receiving a request under subsection (1), the Board must pay the amount requested to the Minister of Finance out of the accident fund.

## **Appeal panels**

- 285** (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 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 composed of one member and that member is unable for any reason to complete the member's duties, the chair of the appeal tribunal 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) 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) The minister may require the annual report referred to in subsection (1) 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;
- (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 compensation provisions apply as if the person were a worker.

### **Review decisions that may be appealed**

**288** (1) Subject to subsection (2), a final decision made by a review officer in a review under Part 6 [*Review of Board Decisions*], including a decision declining to conduct a review under that Part, 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) a decision respecting an order under Part 2 [*Occupational Health and Safety*], other than any of the following orders:
  - (i) an order relied on to impose an administrative penalty under section 95 (1) [*administrative penalties — higher maximum amount*];
  - (ii) an order imposing an administrative penalty under section 95 (1);
  - (iii) an order under section 96 [*certificates issued under OHS provisions*] to cancel or suspend a certificate;
- (b.1) a decision respecting a licence under Division 8.1 [*Licensing in Relation to Asbestos Abatement*] of Part 2;
- (c) a decision respecting matters referred to in section 155 [*vocational rehabilitation*];
- (d) a decision respecting the application under section 195 (1) [*compensation for permanent partial disability*] of rating schedules compiled under subsection (3) of that section if the specified percentage of impairment has no range or has a range that is not greater than 5%;

- (e) a decision respecting commutations under section 230  
*[commutation of lump sum payment]*.

### **Other Board decisions that may be appealed**

**289** (1) The following may be appealed to the appeal tribunal:

- (a) a determination or order under section 50 *[response to worker complaint respecting prohibited action]*;
- (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 *[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) In relation to a review officer decision respecting a matter referred to in section 268 (1) (a) *[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) a family member of a deceased worker;
- (c) an employer as defined in section 13 *[definitions in relation to OHS provisions]*;
- (d) an owner as defined in section 13;
- (e) a supplier as defined in section 13;
- (f) a union as defined in section 13.

(2) In relation to a decision or order referred to in section 289 (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;
- (c) a union as defined in section 13.

### **Who may appeal: matters related to compensation provisions**

**291** (1) In relation to a review decision respecting a matter referred to in section 268 (1) (b) *[compensation or rehabilitation matters]*, any of the following who is directly affected by the decision may appeal that decision:

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

(2) In relation to a review decision respecting a matter referred to in section 268 (1) (c) *[employer assessment, classification, payments and penalties]*, an employer or independent operator who is directly affected by the decision may appeal that decision.

(3) In relation to a decision referred to in section 289 (2) *[decision in relation to an application under section 125]*, a worker or employer who is directly affected by the decision may appeal that decision.

(4) In this section, "**employer**" means the following:

- (a) an employer as defined in section 1;
- (b) a person who is deemed to be an employer under the compensation provisions or the regulations under those provisions;
- (c) 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.

## **How to appeal**

**292** (1) A person authorized under section 290 or 291 to appeal a particular decision or order may appeal the decision or order 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) include the name, address and telephone number of the appellant,
  - (f) 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) include an address for delivery of any notices in respect of the appeal, and
  - (h) 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 within which the notice may be corrected.

### **Time limit for appeal**

- 293** (1) A notice of appeal respecting a decision referred to in section 288 *[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 289 *[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 the chair is satisfied that
- (a) special circumstances existed that preclude or precluded the filing of a notice of appeal within the applicable time period required by subsection (1) or (2), and
  - (b) an injustice would otherwise result.

### **General rule: appeal does not stay decision**

- 294** Unless the appeal tribunal orders otherwise, the filing of a notice of appeal under section 292 does not operate as a stay or affect the operation of the decision or order under appeal.

## **Division 3 — Appeal Procedure**

### **Board provision of policies and records**

- 295** (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 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 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 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**

**296** 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) section 11 *[general power to make practice and procedure rules]*;
  - (ii) section 13 *[practice directives tribunal may make]*;
  - (iii) section 14 *[general power to make orders]*;
  - (iv) section 15 *[interim orders]*;
  - (v) section 28 *[facilitated settlement]*;
  - (vi) section 29 *[disclosure protection]*;
  - (vii) section 30 *[tribunal duties]*;
  - (viii) section 31 *[summary dismissal]*;
  - (ix) section 32 *[representation of parties to an application]*;
  - (x) section 35 (1) to (3) *[recording tribunal proceedings]*;
  - (xi) section 37 *[applications involving similar questions]*;
  - (xii) section 38 *[examination of witnesses]*;
  - (xiii) section 42 *[discretion to receive evidence in confidence]*;

- (e) [Repealed 2020-20-31.]
- (f) the following provisions of Part 6 *[Costs and Sanctions]*:
  - (i) section 48 *[maintenance of order at hearings]*;
  - (ii) section 49 *[contempt proceeding for uncooperative witness or other person]*;
- (g) section 52 *[notice of decision]*;
- (h) Part 8 *[Immunities]*;
- (i) Part 9 *[Accountability and Judicial Review]*, other than section 59 *[standard of review without privative clause]*;
- (j) the following provisions of Part 10 *[Miscellaneous]*:
  - (i) section 60 (1) (a), (b) and (g) to (i) and (2) *[power to make regulations]*;
  - (ii) section 61 *[application of Freedom of Information and Protection of Privacy Act]*.

## **Appeal tribunal proceedings**

**297** (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 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) inquire into the matter under appeal and consider all information obtained;
- (b) request the Board to investigate further into a matter relating to a specific appeal and report in writing to the appeal tribunal;
- (c) 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) 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) 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) require an employer who is a party to an appeal respecting a matter referred to in section 268 (1) (a) *[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) 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 *[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, 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 the appeal tribunal, with or without providing an opportunity for submissions;
  - (c) dismiss the application.

### **Evidence admissible in appeal tribunal proceedings**

- 298** (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**

- 299** (1) At any time before or during a hearing, but before 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) 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) On an appeal, the appeal tribunal may cause depositions of witnesses residing in or out of 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) Despite subsections (1) to (3), an officer, employee or contractor of the Board may only be compelled to give evidence or produce 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) Despite subsections (1) to (3), a member of the board of directors or an officer, employee or contractor of the Board may not be compelled to give evidence or produce records and things respecting the development or adoption of the policies of the board of directors.

### **Deemed employer**

**300** (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 the compensation provisions, the appeal tribunal may deem an employers' adviser 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 [*Review of Board Decisions*] of a decision respecting a specific matter, an employers' adviser or organized group of employers was deemed to be the employer, the employers' adviser or group, as applicable, 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**

**301** (1) The chair must establish a list of health professionals who may be retained to provide independent assistance or advice in an appeal.

(2) The list established by the chair under subsection (1) must not include a person who is employed by the Board.

(3) 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 section 302.

### **Health professional assistance in specific cases**

**302** (1) Subject to subsection (8), if, on its own initiative, 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 to provide such assistance or advice.

(1.1) Subject to subsection (8), the presiding member must retain a health professional to provide independent assistance or advice in an appeal if all of the following apply:

- (a) the appeal tribunal receives a request under subsection (1.2) from an employer, a worker or a dependant of a deceased worker;
- (b) the medical condition of the worker is at issue in the appeal;
- (c) the appeal tribunal determines that the independent assistance or advice would assist in reaching a decision on the appeal.

(1.2) If an employer, a worker or a dependant of a deceased worker is a party to an appeal, the employer, worker or dependant may request that the appeal tribunal retain a health professional to provide independent assistance or advice in the appeal.

(1.3) A request under subsection (1.2) must be made in writing or in another form authorized by the appeal tribunal's rules.

(1.4) A health professional may be retained from the list established under section 301.

(2) When a health professional is retained under 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) If a health professional retained under 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), the health professional may require the worker to attend for an examination by giving the worker written notice.

(4) If the worker fails to attend the examination required under subsection (3) 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) The appeal tribunal must give a copy of the health professional's written report to the parties to the appeal.
- (6) The parties to an appeal may make submissions to the appeal tribunal in respect of the report provided to them under subsection (5).
- (7) 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) 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) Subsection (8) does not prohibit the appeal tribunal in an appeal
  - (a) from requesting a health professional to provide 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) Evidence or advice given under subsection (9) is not independent assistance or advice within the meaning of this section.

### **Appeal tribunal decision making**

- 303** (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 doing this the appeal tribunal must apply any policies of the board of directors that 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) [*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) after the prior decision, a policy of the board of directors that the panel relied on in the prior decision was repealed, replaced or revised, or
  - (c) the prior decision has been overruled under subsection (4) of this section.
- (4) Despite subsection (3), a panel appointed under section 285 (6) may overrule a prior decision of another panel appointed under that section.
- (5) 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**

- 304** (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 this Act and 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.
- (6) Within 90 days after 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 the chair's authority under subsection (3), (4) or (5) but, if the chair 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**

- 305** (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 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 the chair is satisfied that
- (a) special circumstances existed that preclude or precluded the making of a request within the time required by subsection (2), and
  - (b) an injustice would otherwise result.

### **Decision on appeal**

- 306** (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) [*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 125 must be reopened;
  - (b) the matter that is the subject of the application under section 125 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) [*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 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**

- 307** (1) On application by a party, or on the appeal tribunal's own initiative, the appeal tribunal may amend a final decision to
- (a) correct any of the following:
    - (i) a clerical or typographical error;
    - (ii) an accidental or inadvertent error, omission or similar mistake;
    - (iii) an arithmetical error made in a computation, or
  - (b) clarify the final decision.

- (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) [Repealed 2020-20-32.]
- (4) The appeal tribunal may not amend a final decision other than in those circumstances described in subsection (1).
- (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**

**308** 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 decisions as permitted under section 288 *[review decisions that may be appealed]*;
- (b) all appeals from Board decisions or orders as permitted under section 289 *[other Board decisions that may be appealed]*;
- (c) all matters that the appeal tribunal is requested to determine under section 311 *[request for certification to court]*;
- (d) all other matters for which 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**

**309** (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**

**310** (1) This section applies to the following:

- (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*;
  - (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 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**

**311** (1) If a court action is commenced based on

- (a) a personal injury,
- (b) death, or

(c) 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) a worker's injury, death or disability 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.

(3) This Part, except section 306 (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) If the appeal tribunal's decision on an appeal requires the payment of compensation, all or part of which was deferred under section 275 (3) *[payment following review decision]*, interest must be paid on the deferred amount of that compensation as specified in subsection (2).

(2) Interest payable under subsection (1) must be calculated in accordance with the policies of the board of directors and begins

- (a) 41 days after the review officer made 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**

**313** (1) The commencement of an appeal under this Part respecting a matter described in section 268 (1) (c) *[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 appeal.

- (2) If the decision on the appeal 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**

**314** (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 is disclosed for the purposes of this Part to a person other than the person the information is about, the person to whom the information is disclosed must not disclose the information except in the circumstances listed in section 235 (1) (a) to (d) [*confidentiality — compensation claim information*].

- (3) A person who contravenes subsection (1) or (2) commits an offence.

### **Regulations respecting this Part**

**315** The Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing
  - (i) decisions or orders under this Act that may be appealed under this Part,
  - (ii) who may appeal those decisions or orders, and
  - (iii) classes of decisions for purposes of section 288 (2)
    - (a) [*review decisions that may not be appealed*];
- (b) respecting the awarding of costs by the appeal tribunal in an appeal under this Part;
- (c) prescribing the circumstances under which the appeal tribunal may order the Board to reimburse the expenses incurred by a party to an appeal under this Part;
- (d) prescribing qualifications of health professionals for purposes of section 301 [*health professional assistance to appeal tribunal*].

## **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**

**316** (1) The Workers' Compensation Board is continued as a corporation.

(2) 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
- (b) the president appointed by the board of directors under section 323, who is a non-voting director.

#### **Voting directors**

**317** (1) The voting directors are to be appointed by the Lieutenant Governor in Council as follows:

- (a) one director, representative of the public interest, who is chair;
- (b) 2 additional directors, representative of the public interest;
- (c) one director, representative of workers;
- (d) one director, representative of employers;
- (e) one director who is or was a professional in the area of occupational health and safety;
- (f) one director who is or was a professional in the area of law or law enforcement;
- (g) one director who at the time of appointment is a professional providing health care or rehabilitation services to persons with disabilities;
- (h) one director who at the time of appointment is an actuary.

(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), 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), 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) for appointment under subsection (1) (e), 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) for appointment under subsection (1) (f), 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;
  - (e) for appointment under subsection (1) (g), 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) for appointment under subsection (1) (h), 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) 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;
  - (c) proceedings that lead or could lead to a penalty or sanction being imposed.

### **Term of office and remuneration for voting directors**

- 318** (1) Each voting director, other than the chair, holds office for a term of up to 3 years, as set by the Lieutenant Governor in Council.
- (2) The chair holds office for a term of up to 5 years, as set by the Lieutenant Governor in Council.
- (3) A voting director, other than the chair, must not be appointed for a continuous period of more than 6 years.

- (4) The chair may not be appointed for a continuous period of more than 10 years.
- (5) The Board must pay voting directors
  - (a) remuneration in an amount determined by the Lieutenant Governor in Council, and
  - (b) reasonable travel and out-of-pocket expenses necessarily incurred in discharging their duties.

### **Policies of the board of directors**

**319** 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, rehabilitation and assessment.

### **General responsibilities of the board of directors**

**320** (1) The board of directors must 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 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 establish committees and give directions to those committees.

- (4) The board of directors may authorize the Board to acquire and dispose of land.

### **Meetings and other proceedings of the board of directors**

- 321** (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) The chair may designate a director appointed under section 317 (1) (b) [*representative of the public interest*] to act in the chair's place during the chair's temporary absence, and the designated director has the power and authority of the chair when acting in the chair's place.

### **Standard of care obligations for directors**

- 322** (1) A director, when exercising the powers and performing the duties and functions 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**

- 323** (1) The board of directors must appoint a person to be president of the Board.
- (2) The president is responsible to the board of directors and

- (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 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 assigned to the president by the board of directors.
- (3) 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.

### **Delegation by board of directors or president**

- 324** (1) 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) 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**

- 325** (1) On or before April 30 of each year, the Board must provide the minister with a service plan that addresses the 3-year period starting on January 1 of that year and does the following:
- (a) sets out the Board's priorities;
  - (b) identifies specific objectives and performance measures for the Board;
  - (c) provides a fiscal forecast for the Board, including a statement of all material assumptions and policy decisions underlying the forecast;

- (d) compares actual results of the previous year with the expected results identified in the previous year's service plan;
  - (e) presents other information that the Board considers appropriate.
- (2) After receiving the annual service plan, the minister must promptly
  - (a) lay the plan before the Legislative Assembly, if the Legislative Assembly is in session, or
  - (b) file the plan with the Clerk of the Legislative Assembly, if the Legislative Assembly is not in session.

### **Annual report to minister**

- 326** (1) On or before April 30 of each year, the Board must make to the minister a report of the Board's transactions during the last preceding calendar year, and the report must include any other information the minister specifies.
- (2) The annual report under this section must include
- (a) a review of the Board's activities under Part 2 [*Occupational Health and Safety*] for the year, including financial, statistical and performance information, and
  - (b) an evaluation of the occupational health and safety record of workplaces in British Columbia.
- (3) After receiving the annual report, the minister must promptly
- (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**

- 327** (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 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 in excess of

current requirements to be invested and reinvested and, in doing this, must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

### **Audit requirement**

- 328** (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**

- 329** (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) A person appointed under this section holds office during the pleasure of the Board.
- (3) 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 division of the Board;
  - (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) The Board must appoint a chief review officer and one or more review officers to conduct reviews under Part 6 [*Review of Board Decisions*].
- (2) The *Labour Relations Code* does not apply to a chief review officer or a review officer.

### **Superannuation fund**

- 331** (1) The Board may
- (a) establish and maintain a fund, to be known as the superannuation fund, for the payment of superannuation allowances to 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) 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 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) Despite any other Act, the matters respecting the establishment and maintenance of the superannuation fund under 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;
  - (b) amounts of superannuation or other allowances;
  - (c) conditions on which and the persons to whom superannuation or other allowances may be paid.

### **Protection for Board, directors, officers and employees**

- 332** An action may not be maintained or brought against the Board or a director, officer or employee of the Board in respect of any act, omission

or decision

- (a) that was within the jurisdiction of the Board, or
- (b) that the Board, director, officer or employee believed was within the jurisdiction of the Board.

### **Division 3 — Other Board Powers and Responsibilities**

#### **Annual adjustment of dollar amounts referred to in Act**

**333** (1) Subject to subsection (2), the Board must adjust every dollar amount referred to in this Act on January 1 of each year by applying the percentage change in the consumer price index for Canada, for all items, for the 12-month period ending on October 31 of the previous year.

(2) Subsection (1) does not apply to a dollar amount referred to in the following:

- (a) section 209 (2) [*maximum wage rate for applicable year*];
- (b) section 227 [*compensation for workers injured before 1986*].

(3) 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.

(4) Adjustments under subsection (1) must be published in the Gazette.

#### **Annual adjustment of periodic payment amounts**

**334** (1) On or before January 1 of each year, the Board must

- (a) determine the percentage change in the consumer price index for Canada, for all items, for the 12-month period ending on October 31 of the previous year, and
- (b) if the percentage change under paragraph (a) is greater than 4%, determine a percentage in accordance with subsection (2).

(2) The percentage determined by the Board under subsection (1) (b) must be at least 4% and must not be greater than the percentage change determined under subsection (1) (a).

(3) On January 1 of each year, the Board must adjust, in accordance with subsection (4), the periodic payments of compensation to be paid in



the calendar year in respect of an injury or death occurring more than 12 months before the date of the adjustment.

- (4) For the purposes of subsection (3), the periodic payments of compensation must be adjusted as follows:
- (a) if the percentage change determined under subsection (1) (a) is negative, the adjustment is 0%;
  - (b) if the percentage change determined under subsection (1) (a) is greater than 4%, the adjustment is equal to the percentage determined under subsection (1) (b);
  - (c) in any other case, the adjustment is the percentage change determined under subsection (1) (a).
- (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**

**335** (1) The Board may enter into agreements or make arrangements with Canada, a province or a territory, or with the appropriate authority of Canada, a province or a territory, respecting the following:

- (a) administrative cooperation and assistance between jurisdictions in all matters under this Act and corresponding legislation in other jurisdictions;
- (b) 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 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 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.

### **Exercise of powers under federal Acts or agreements**

**336** 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.

### **Information respecting Board activities**

**337** The Board must publish and distribute among employers, workers and the general public the information respecting the business transacted by the Board that it considers may be useful.

## **Division 4 — Board Practices, Procedures and Related Matters**

### **Board practices and procedures**

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

### **Board decision making**

- 339** (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 on the merits and justice of the case, but in doing this the Board must apply the policies of the board of directors that are 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** Proceedings by or before the Board must not be
- (a) restrained by injunction, prohibition or other process or proceeding in any court, or
  - (b) removed by certiorari or otherwise into any court.

### **Authority to act on advice of officers and persons conducting inquiries**

**341** The Board may act

- (a) on the report of any of its officers, and
- (b) in relation to an inquiry under this Part, on the report of the person making the inquiry as to the result of that inquiry.

**Authority to compel witnesses and production of evidence**

**342** (1) The Board has the 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 records and things.
- (2) The Board may require depositions of witnesses residing in or out of British Columbia to be taken before a person appointed by the Board and in a manner similar to that established by the Rules of the Supreme Court for the taking of depositions in that court.

**Authority to award costs in relation to contested matters**

**343** (1) This section applies in relation to a contested claim for compensation or 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 by reason of or incidental to contesting the matter.
- (3) An order of the Board for payment by an employer or worker of an amount awarded under this section, when filed in the manner provided for the filing of certificates under section 264 (2) [*collection of unpaid assessment*], becomes a judgment of the court in which the order is filed and may be enforced accordingly.

**Service of orders and other documents**

**344** (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) mailed to the person's last known address, or
- (c) transmitted electronically, by fax or otherwise, to the address or number requested by the person.

- (2) If a document is mailed, the document is deemed to have been received 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 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), the appeal tribunal may give notice of a hearing by public advertisement or otherwise as the appeal tribunal directs.

### **Alternative dispute resolution**

- 345** In circumstances it considers appropriate, the Board may recommend the use of alternative dispute resolution processes to assist in the resolution of matters under this Act.

## **Division 5 — Board Inquiry Powers**

### **General inquiry authority**

- 346** (1) If the Board considers that an inquiry is necessary, the inquiry may be made by an officer of the Board or by another person appointed by the Board to make the inquiry.

- (2) For the purposes of an inquiry under this section, the person making the inquiry has the powers conferred on the Board under section 342 *[authority to compel witnesses and production of evidence]*.

### **Examinations and other inquiries respecting employer information**

- 347** (1) The Board, an officer of the Board or a person authorized by the Board for this purpose may examine the books and accounts of an employer and make any other inquiry the Board considers necessary to determine any of the following:
- (a) whether an industry or person is within the scope of the compensation provisions;
  - (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 an inquiry under this section, the Board or person authorized to make the inquiry may give notice in writing to an employer or agent of an employer requiring the employer to bring or produce before the Board or person, at a time and place specified in the notice, 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 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) An employer or agent named in and served with a notice under subsection (2) must, at the time and place specified in the notice, produce all records in accordance with the notice.
- (5) A person who does any of the following commits an offence:
- (a) obstructs or hinders the making of an inquiry under this section;
  - (b) refuses to permit such an inquiry to be made;
  - (c) neglects or refuses to produce the required records at the time and place specified in the notice under subsection (2).

### **Oaths, affidavits and other declarations in relation to inquiries**

**348** An officer of the Board or a person authorized by the Board to make an inquiry under section 346 or 347 may

- (a) require and take affidavits, affirmations or declarations as to any matter of the inquiry,
- (b) take affidavits for the purposes of this Act, and
- (c) in relation to these, administer oaths, affirmations and declarations and certify that they were made.

### **Confidentiality obligations in relation to inquiries**

**349** (1) Officers of the Board and persons authorized to make an inquiry under this Division must not, 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 inquiry under this Division.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not greater than \$6 689.64.

**Editorial Note**

## **Division 6 — Workers' Advisers, Employers' Advisers and Other Assistance**

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

**350** (1) Workers' advisers, employers' advisers and other employees necessary to enable the workers' advisers and employers' advisers to perform their duties under this Division may be appointed under the *Public Service Act* as employees of the minister's ministry.

(2) The following apply to a ministry employee appointed under subsection (1) as a workers' adviser or employers' adviser:

- (a) the employee need not be a member of the Law Society of British Columbia;
- (b) section 15 [*restrictions on practice of law*] of the *Legal Profession Act* does not apply to the employee if that employee is not a member of the Law Society of British Columbia.

(3) 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) On receiving a request under subsection (3), the Board must pay the amount requested to the Minister of Finance.

### **Role of workers' advisers**

**351** A workers' adviser must

- (a) give assistance to a worker or dependant having a claim under this Act, unless the workers' adviser 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 if the adviser considers assistance is required, and
- (c) advise workers and dependants regarding the interpretation and administration of this Act or any regulations or decisions made under this Act.

### **Role of employers' advisers**

**352** 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 workerunless the employer's adviser 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 if the adviser considers assistance is required, and
- (c) advise employers regarding the interpretation and administration of this Act or any regulations or decisions made under this Act.

### **Information and confidentiality rules for advisers and staff**

**353** (1) The workers' advisers, the employers' advisers and the staff of those advisers must have access at any reasonable time to the complete

claims files of the Board and any other material relating to the claim of an injured or disabled worker.

- (2) The advisers and staff referred to in subsection (1) must treat the information contained in the claims files as confidential to the same extent as the information is treated by the Board.
- (3) 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

**354** (1) A person may

- (a) give advice respecting the interpretation or administration of this Act, the policies of the board of directors, the Board's practices and procedures or any regulations, orders or decisions under this Act, or
  - (b) act on behalf of a person by
    - (i) communicating with the Board, an officer or employee of the Board, the appeal tribunal or any other person acting under this Act, or
    - (ii) 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 functions referred to in subsection (1).

## Division 7 — Fair Practices Commissioner

### Definitions

**355** In this Division:

**"fair practices commissioner"** means an officer of the Board who is appointed as the fair practices commissioner under section 356 (1);

**"personal information"** has the same meaning as in the [Freedom of Information and Protection of Privacy Act](#).

### Fair practices commissioner

**356** (1) The board of directors must appoint an officer as the fair practices commissioner to advise the Board on matters of fairness.



- (2) The fair practices commissioner is to be appointed for a term of 3 years and may be reappointed for additional 3-year terms.
- (3) The *Labour Relations Code* does not apply to the fair practices commissioner.
- (4) The fair practices commissioner may do the following:
- (a) investigate complaints by employers, workers and dependants of workers regarding alleged unfairness in their dealings with the Board;
  - (b) make recommendations to the Board to
    - (i) resolve complaints referred to in paragraph (a), or
    - (ii) address systemic problems with the fairness of the Board's dealings as indicated by such complaints;
  - (c) make recommendations to the Board about systemic problems with the fairness of
    - (i) the application of policies of the board of directors, or
    - (ii) practices and procedures of the Board;
  - (d) undertake any other activity prescribed by regulation of the Lieutenant Governor in Council.
- (5) Despite subsection (4), the fair practices commissioner may not comment on or make recommendations respecting the following:
- (a) the merits of a Board decision under the OHS provisions or the compensation provisions, or the merits of a decision of a review officer or the appeal tribunal;
  - (b) a matter that is the subject of a proceeding or a decision of a court or tribunal, as defined in section 1 of the *Judicial Review Procedure Act*;
  - (c) the setting or revision of a policy of the board of directors under section 319 [*policies of the board of directors*];
  - (d) the carrying out of a matter for which the board of directors is responsible under section 320 [*general responsibilities of the board of directors*];
  - (e) any other matter prescribed by regulation of the Lieutenant Governor in Council.

- (6) The Lieutenant Governor in Council may make regulations respecting any matter contemplated by this section.

### **Annual report of fair practices commissioner**

**357** (1) On or before April 30 of each year, the fair practices commissioner must

- (a) prepare a report that includes the information required by the board of directors, other than personal information, in relation to the preceding calendar year, and
- (b) provide a copy of the report to the board of directors.

(2) After receiving the report under subsection (1), the board of directors must promptly

- (a) provide a copy of the report to the minister, and
- (b) publish the report on a publicly accessible website.

### **Schedule 1**

#### **Presumption of Occupational Disease Related to Specific Process or Industry**

Item	Column 1 <b>Description of Disease</b>	Column 2 <b>Description of Process or Industry</b>
1	Poisoning by:	
	(1) Lead	Where there is exposure to lead or lead compounds.
	(2) Mercury	Where there is exposure to mercury or mercury compounds.
	(3) Arsenic or arsine	Where there is exposure to arsenic or arsenic compounds.
	(4) Cadmium	Where there is exposure to cadmium or cadmium compounds.
	(5) Manganese	Where there is exposure to manganese or manganese compounds.
	(6) Phosphorus, phosphine or the anti-cholinesterase action of organic phosphorus compounds	Where there is exposure to phosphorus or phosphorus compounds.
	(7) Organic solvents, including n-hexane, carbon tetrachloride, trichloroethane, trichloroethylene, acetone, benzene, toluene and xylene	Where there is exposure to organic solvents.

	(8) Carbon monoxide	Where there is exposure to products of combustion or to any other source of carbon monoxide.
	(9) Hydrogen sulphide	Where there is excessive exposure to hydrogen sulphide.
	(10) Nitrous fumes, including silo-filler's disease	Where there is excessive exposure to nitrous fumes, including the oxides of nitrogen.
	(11) Nitriles, hydrogen cyanide or its soluble salts	Where there is exposure to chemicals containing - CN group, including certain pesticides.
	(12) Phosgene	Where there is excessive exposure to phosgene, including its occurrence as a breakdown product of chlorinated compounds by combustion.
	(13) Other toxic substances	Where there is exposure to such toxic gases, vapours, mists, fumes or dusts.
2	Infection caused by:	
	(1) Psittacosis virus	Where there is established contact with ornithosis-infected avian species or material.
	(2) Salmonella organisms, Staphylococcus aureus, or Hepatitis B virus	<p>Where close and frequent contact with a source or sources of the infection has been established and the employment necessitates</p> <ul style="list-style-type: none"> <li>(a) the treatment, nursing or examination of or interviews with patients or ill persons,</li> <li>(b) the analysis or testing of body tissues or fluids, or</li> <li>(c) research into salmonellae, pathogenic staphylococci or Hepatitis B virus.</li> </ul>
	(3) Brucella organisms, including Undulant fever	Where there is contact with animals, animal carcasses or animal by-products.
	(4) Tubercle bacillus	<p>Where close and frequent contact with a source or sources of tuberculous infection has been established and the employment necessitates</p> <ul style="list-style-type: none"> <li>(a) the treatment, nursing or examination of patients or ill persons,</li> <li>(b) the analysis or testing of body tissues or fluids, or</li> <li>(c) research into tuberculosis by a worker who, <ul style="list-style-type: none"> <li>(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</li> <li>(ii) continued to be free from evidence of tuberculosis for 6 months after being so employed, except in the case of primary tuberculosis as proven by a negative tuberculin test at the time of employment. In the case of a worker previously compensated for tuberculosis,</li> </ul> </li> </ul>

		any subsequent tuberculosis after the disease has become inactive and has remained inactive for a period of 3 years or more is not to be considered to have occurred as a result of the original disability, 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.
3	Pneumoconiosis:	
	(1) Silicosis	Where there is exposure to airborne silica dust, including in metalliferous mining and coal mining.
	(2) Asbestosis	Where there is exposure to airborne asbestos dust.
	(3) Other pneumoconioses	Where there is exposure to the airborne dusts of coal, beryllium, tungsten carbide, aluminum or other dusts known to produce fibrosis of the lungs.
4	Diffuse pleural thickening or fibrosis, whether unilateral or bilateral	Where there is exposure to airborne asbestos dust and the worker has not previously had and does not currently have collagen disease, chronic uremia, drug-induced fibrosis, tuberculosis or other infection, trauma or disease capable of causing pleural thickening or fibrosis.
5	Benign pleural effusion, whether unilateral or bilateral	Where there is exposure to airborne asbestos dust and the worker has not previously had and does not currently have collagen disease, chronic uremia, tuberculosis or other infection, trauma or disease capable of causing pleural effusion.
6	Cancer:	
	(1) Primary carcinoma of the lung when associated with asbestosis	Where there is exposure to airborne asbestos dust.
	(2) Primary carcinoma of the lung when associated with bilateral diffuse pleural thickening over 2 mm thick	Where there is exposure to airborne asbestos dust and the worker has not previously had collagen disease, chronic uremia, drug-induced fibrosis, tuberculosis or other infection or trauma capable of causing pleural thickening.
	(3) Primary carcinoma of the lung	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: <ul style="list-style-type: none"> <li>(a) asbestos mining;</li> <li>(b) insulation or filter material production;</li> <li>(c) construction, where there is disturbance of asbestos-containing materials;</li> <li>(d) plumbing or electrical work;</li> </ul>

	<p>(e) pulp mill work;</p> <p>(f) shipyard work;</p> <p>(g) longshoring.</p>
(4) Mesothelioma, whether pleural or peritoneal	Where there is exposure to airborne asbestos dust.
(5) Carcinoma, associated with asbestosis, of the larynx or pharynx	Where there is exposure to airborne asbestos dust.
(6) Gastrointestinal cancer, including all primary cancers associated with the esophagus, 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) Primary cancer of the lung	<p>Where there is prolonged exposure to any of the following:</p> <p>(a) aerosols and gases containing arsenic, chromium, nickel or their compounds;</p> <p>(b) bis(chloromethyl) ether;</p> <p>(c) the dust of uranium, or radon gas and its decay products;</p> <p>(d) particulate polycyclic aromatic hydrocarbons.</p>
(8) Leukemia or pre-leukemia	Where there is prolonged exposure to benzene or to ionizing radiation.
(9) Primary cancer of the skin	<p>Where there is</p> <p>(a) prolonged contact with coal tar products, arsenic or cutting oils, or</p> <p>(b) prolonged exposure to solar ultraviolet light.</p>
(10) 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) Primary cancer of the mucous lining of the nose or nasal sinuses	<p>Where there is prolonged exposure to</p> <p>(a) dusts, fumes or mists containing nickel, or</p> <p>(b) the dusts of hard woods.</p>
(12) Angiosarcoma of the liver	Where there is exposure to vinyl chloride monomer.

7	Asthma	Where there is exposure to any of the following:  (a) western red cedar dust; (b) isocyanate vapours or gases; (c) the dusts, fumes or vapours of other chemicals or organic material known to cause asthma.
8	Extrinsic allergic alveolitis, including farmers' lung and mushroom workers' lung	Where there is repeated exposure to respirable organic dusts.
9	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, if there is exposure to nitrogen dioxide or phosgene, within 72 hours of the exposure.
10	Metal fume fever	Where there is exposure to the fumes of zinc or other metals.
11	Fluorosis	Where there is exposure to high concentrations of fluorine or fluorine compounds, whether in gaseous or particulate form.
12	Neurosensory hearing loss	Where there is prolonged exposure to excessive noise levels.
13	Bursitis:	
	(1) Knee bursitis (inflammation of the prepatellar, suprapatellar or superficial infrapatellar bursa)	Where  (a) there is repeated jarring impact against the involved bursa, or  (b) there are significant periods of kneeling on the involved bursa.
	(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° and where such activity represents a significant component of the employment.
14	Tendinopathy:	
	(1) Hand-wrist tendinopathy	Where there is use of the affected tendon or tendons to perform a task or series of tasks that involve any 2 of the following and where such activity represents a significant component of the employment:

		<p>(a) frequently repeated motions or muscle contractions that place strain on the affected tendon or tendons;</p> <p>(b) significant flexion, extension, ulnar deviation or radial deviation of the affected hand or wrist;</p> <p>(c) forceful exertion of the muscles used in handling or moving tools or other objects with the affected hand or wrist.</p>
	(2) Shoulder tendinopathy	Where there is frequently repeated or sustained abduction or flexion of the shoulder joint greater than 60° and where such activity represents a significant component of the employment.
15	Decompression sickness	Where there is exposure to increased air pressure.
16	Contact dermatitis	Where there is excessive exposure to irritants, allergens or sensitizers ordinarily causative of dermatitis.
17	Hand-arm vibration syndrome	Where there has been at least 1 000 hours of exposure to tools or equipment that causes the transfer of significant vibration to the hand or arm of the worker.
18	Radiation injury or disease:	
	(1) Due to ionizing radiation	Where there is exposure to ionizing radiation.
	(2) Due to non-ionizing radiation:	
	(a) conjunctivitis or keratitis	Where there is exposure to ultraviolet light.
	(b) cataract or other thermal damage to the eye	Where there is excessive exposure to infrared, microwave or laser radiation.
19	Erosion of incisor teeth	Where there is exposure to acid fumes or mist.
20	Infection that is	Where
	(1) caused by communicable viral pathogens, and	(a) there is a risk of exposure to a source or sources of infection significantly greater than that to the public at large,
	(2) the subject of one or more of the following:	(b) the risk of exposure occurs during the applicable notice or emergency under column 1, and
	(a) notice given under section 52 (2) of the <i>Public Health Act</i> ;	(c) the risk of exposure occurs within the geographical area of the applicable notice or emergency under column 1.
	(b) a state of emergency declared under section 9 (1) of the <i>Emergency Program Act</i> ;	
	(c) a state of local emergency declared under section 12 (1) of the <i>Emergency Program Act</i> ;	
	(d) an emergency declared under section 173 of the <i>Vancouver Charter</i> .	

## **Schedule 2**

### **Non-Traumatic Hearing Loss**

#### **Interpretation of table**

- 1** In the table in this Schedule,
  - (a) a range of decibels set out in column 1 reflects hearing loss measured in accordance with section 2 of this Schedule,
  - (b) a percentage of disability set out in column 2 opposite a range of decibels set out in column 1 is the percentage of disability for the ear most affected by the hearing loss, and
  - (c) a percentage of disability set out in column 3 opposite a range of decibels set out in column 1 is the percentage of disability for the ear least affected by the hearing loss.

#### **Measuring hearing loss**

- 2** (1) Loss of hearing is measured
  - (a) by calculating the average of the threshold of hearing in each ear measured at the frequencies of 1 000, 2 000, 3 000 and 4 000 Hertz, in turn, by pure-tone air- or bone-conduction audiometry, and
  - (b) using an audiometer calibrated by a facility that meets the requirements established by the Board.
- (2) For the purposes of section 198 (2) of this Act, a loss of hearing in the range of decibels set out in column 1 of item 11 of the table in this Schedule constitutes a complete loss of hearing.

#### **Percentage of total disability**

- 3** For the purposes of section 198 of this Act,
  - (a) the percentage of total disability is the sum of the percentage of disability for the ear most affected by the hearing loss and the percentage of disability for the ear least affected by the hearing loss,
  - (b) the maximum percentage of total disability for a complete loss of hearing in one ear and no loss of hearing in the other ear is 6%, and
  - (c) the maximum percentage of total disability for a complete loss of hearing in both ears is 36%.



**TABLE**

Item	Column 1 Range of Hearing Loss (decibels)	Column 2 Percentage of Disability for Ear Most Affected	Column 3 Percentage of Disability for Ear Least Affected
1	0-34	0	0
2	35-39	0.3	1.5
3	40-44	1.0	5.0
4	45-49	1.7	8.5
5	50-54	2.3	11.5
6	55-59	3.0	15.0
7	60-64	3.7	18.5
8	65-69	4.3	21.5
9	70-74	5.0	25.0
10	75-79	5.7	28.5
11	80 or more	6.0	30.0

### Revision Schedules

#### Revision Schedule 1 — Amendments to Revised Act

##### Editorial Note

##### Section(s)      Affected Act

1-3      *Workers Compensation Act, R.S.B.C. 2019, c. 1*

##### Commencement

**4** This Schedule comes into force by regulation of the Lieutenant Governor in Council.

#### Revision Schedule 2 — Consequential Amendments to Other Acts

##### Editorial Note

##### Section(s)      Affected Act

1      *Administrative Tribunals Appointment and Administration Act*  
2      *Coroners Act*  
3      *Criminal Injury Compensation Act*  
4      *Employment Standards Act*  
5      *Environmental Management Act*  
6      *Family Maintenance Enforcement Act*  
7      *Fire Services Act*  
8      *Insurance (Vehicle) Act*

9	<i>Medicare Protection Act</i>
10	<i>Public Sector Employers Act</i>
11	<i>Public Service Labour Relations Act</i>
12	<i>Regulations Act</i>
13-14	<i>Wills, Estates and Succession Act</i>

## Consumer Price Index Adjustments

**B.C. Reg. 272/2024**, deposited November 27, 2024, under the **WORKERS COMPENSATION ACT** [section 333]. Resolution of the Workers' Compensation Board, dated November 26, 2024.

The Workers' Compensation Board orders that, effective January 1, 2025,

(a) the dollar amounts referred to in the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, set out in column 2 of the attached Schedule are adjusted, in accordance with section 333 (1) of the Act, to the dollar amounts set out in column 3 of the attached Schedule, and

(b) B.C. Reg. 246/2023 is repealed.

— A. NASER, *President, Workers' Compensation Board*.

## Schedule

Column 1 <i>Workers Compensation Act</i> section number	Column 2 Current dollar (\$) amount	Column 3 Adjusted dollar (\$) amount on January 1, 2025
94 (2)	1 259.74	1 285.16
95 (2)	783 068.26	798 867.87
102 (a) (i)	857 036.56 42 851.85	874 328.59 43 716.45
102 (b) (i)	1 714 073.09 85 703.66	1 748 657.15 87 432.86
167	3 316.80	3 383.72
169 (3)	1 392.79	1 420.89
170 (3)	1 392.79	1 420.89
171 (3) (b)	430.99	439.69
171 (4)	46 434.03	47 370.91
172 (4) (b)	430.99	439.69
172 (5)	46 434.03	47 370.91
173 (3)	762.83	778.22
174 (3)	762.83	778.22

175 (3)	762.83	778.22
191 (2) (a)	491.75	501.67
194 (2)	2 131.27	2 174.27
208 (5)	2 131.27	2 174.27
213 (3)	163.93	167.24
225 (1)	577.11 179.13	588.75 182.74
231 (3)	293.84	299.77
236 (1)	6 557.34	6 689.64
236 (2)	6 557.34	6 689.64
251 (2)	68 562.89	69 946.25
349 (2)	6 557.34	6 689.64