

# Nova Scotia



# LABOUR LAW POSTINGS

# Pay Equity Act

## CHAPTER 337

### OF THE

#### REVISED STATUTES, 1989

amended 1990, c. 41; 2000, c. 28, s. 88

### An Act to Provide for Pay Equity

#### Short title

1 This Act may be cited as the Pay Equity Act. R.S., c. 337, s. 1.

#### Purpose

2 The purpose of this Act is to increase the pay of employees in classes which are predominately female where it is determined, by the process set out in this Act, that, by reason of sex discrimination, those employees are paid less than they should be. R.S., c. 337, s. 2.

#### Interpretation

3 (1) In this Act,

(a) "Civil Service" means the Civil Service as defined by the Civil Service Act;

(b) "classification" means a position or group of positions that have the same classification title, require the same or like qualifications and have the same salary grade or range of salary rates;

(c) "Commission" means the Pay Equity Commission established by this Act;

(d) "corrections employee" means a person employed in a correctional facility pursuant to the Corrections Act;

(e) "Crown corporation" means a corporation listed in Schedule A to this Act as amended from time to time by the Governor in Council;

(f) "employee" means a permanent employee, whether full-time or part-time, or a term employee employed for a term of more than one year and includes a regular casual employee;

(g) "employee representative" means a bargaining agent within the meaning of the Teachers Collective Bargaining Act or the Trade Union Act and the Union within the meaning of the Civil Service Collective Bargaining Act or the Corrections Act and in all other cases means the person selected in the manner determined by the Commission;

(h) "employee unit" means a group of employees represented by the same employee representative unless the employer and employee representative agree otherwise;

(i) "employer" means an employer to whom this Act applies;

(j) "female-dominated class" means a group of ten or more employees with the same employer in the same classification, where sixty per cent or more of the employees are female;

(k) "highway worker" means a certified employee pursuant to a collective agreement between the employee agent and the Minister of Transportation as authorized by order in council dated the sixteenth day of January, 1973;

(l) "hospital" means a hospital to which the Hospitals Act

applies;

(m) "male-dominated class" means a group of ten or more employees with the same employer in the same classification, where sixty per cent or more of the employees are male;

(n) "Minister" means the Minister of Labour;

(na) "municipal enterprise" means an autonomous agency, board, commission, association or corporation of which the majority of the board of directors or board of management are appointed by one or more municipalities and includes a home referred to in Sections 14 to 17 of the Homes for Special Care Act;

(nb) "municipality" means a municipality as defined by the Municipal Affairs Act;

(o) "pay" means salary or compensation of an employee in respect of employment but does not include benefits such as the value of living and residential allowances, automobile allowances, clothing allowances, gratuities, overtime or payments in lieu of overtime;

(p) "pay equity process" means the process of negotiation, agreement, consultation, identification, evaluation and adjustment in respect of pay equity as provided for by this Act;

(q) "school board" means a school board within the meaning of the Education Act;

(r) "university" means a body listed in Schedule B to this Act as amended from time to time by the Governor in Council.

#### Determination of numbers

(2) For the purpose of clauses (j) and (m) of subsection (1), numbers shall be determined as of

(a) in respect of employees referred to in clause (a) or (b) of subsection (1) of Section 4, the twenty-fifth day of May, 1988;

(b) in respect of employees referred to in clause (c) of subsection (1) of Section 4, the date this clause comes into force; and

(c) in respect of employees referred to in clause (d) of subsection (1) of Section 4, such date as is specified in the regulations. R.S., c. 337, s. 3; 1990, c. 41, s. 1.

#### Application of Act

4 (1) This Act applies to

(a) employees in the Civil Service, corrections employees, highway workers and employees of the Victoria General Hospital and the Nova Scotia Hospital who are not in the Civil Service and, in respect of those persons, Her Majesty in right of the Province;

(b) Crown corporations, hospitals and school boards and to their employees;

(c) universities, municipalities and municipal enterprises and to their employees; and

(d) public-sector corporations or bodies specified in the regulations and to their employees.

#### Provisions not affected

(2) Nothing in this Act affects the provisions in the Human Rights Act and the Labour Standards Code prohibiting discrimination based upon sex. R.S., c. 337, s. 4; 1990, c. 41, s. 2.

#### Supervision of Act

5 The Minister has the general supervision and management of this Act. R.S., c. 337, s. 5.

#### Pay Equity Commission

6 (1) There is hereby established the Pay Equity Commission.

#### Composition

(2) The Commission is composed of such persons, including representatives of labour and management, as the Governor in Council determines.

#### Presiding member

(3) The Governor in Council shall designate a member of the Commission to preside over meetings of the Commission.

#### Term

(4) Each member of the Commission holds office for a term determined by the Governor in Council and may be re-appointed.

#### Effect of vacancy

(5) A vacancy on the Commission does not impair the right of the remaining members to act.

#### Oath of office

(5A) Each member of the Commission shall, before acting as such, take and subscribe, before a judge of the Supreme Court or the county court and file with the Minister, an oath or affirmation of office in the following form or to like effect:

I do solemnly swear (or affirm) that I will faithfully, truly and impartially, to the best of my judgement, skill and ability, execute and perform the office of member of the Pay Equity Commission and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the Commission. So help me God.

#### Privileges and immunities

(5B) A member of the Commission has all the privileges

and immunities of a commissioner appointed pursuant to the Public Inquiries Act.

### Remuneration and expenses

(6) The members of the Commission shall receive such remuneration as the Governor in Council may determine and shall be reimbursed for reasonable expenses actually incurred in carrying out the business of the Commission. R.S., c. 337, s. 6; 1990, c. 41, s. 3.

### Duties of Commission

7 (1) The Commission shall

- (a) determine the manner in which an employee representative is to be selected where required to be selected pursuant to this Act;
- (b) monitor the implementation of pay equity;
- (c) determine, in accordance with this Act, those matters upon which an employer and its employee representatives fail to agree;
- (d) provide information respecting pay equity to concerned persons;
- (e) provide advice in implementing pay equity;
- (f) prepare and maintain statistics respecting pay equity;
- (g) prepare and disseminate educational material respecting pay equity;
- (h) perform such additional duties as the Minister may determine.

### Finality of decision

(2) Where the Commission makes a determination pursuant to clause (c) of subsection (1), its decision is final. R.S., c. 337, s. 7.

### Personnel

8 The Commission may, in accordance with the Civil Service Act, employ an administrator and such other persons as are necessary for the Commission to perform its duties pursuant to this Act. R.S., c. 337, s. 8; 2000, c. 28, s. 88.

### Report by employer

9 (1) At least once every month after the pay equity process begins in respect of a particular employer or at such times as the Commission may determine, the employer shall submit a report to the Commission setting out the progress in implementing pay equity.

### Report by employee representative

(2) An employee representative may submit a report to the Commission at any time respecting the progress in implementing pay equity.

### Report by Commission

(3) At least once every twelve months and at such other times as the Minister may determine, the Commission shall submit a report to the Minister setting out the progress in implementing pay equity.

### Tabling of Commission reports

(4) Within thirty days of receipt or, where the House of Assembly is not then sitting, within thirty days of the House next sitting, the Minister shall table in the House of Assembly the reports received pursuant to subsection (3). R.S., c. 337, s. 9; 1990, c. 41, s. 4.

### Powers of Commission

10 (1) The Commission may, for the purpose of this Act and the regulations,

- (a) summon witnesses;
- (b) require the production of documents and the supplying of information;
- (c) administer oaths;
- (d) issue orders or directions to ensure compliance.

### Privacy

(2) In exercising its powers and performing its duties pursuant to this Act, the Commission shall act in a manner that respects any request of an employer or employee for privacy in respect of confidential financial, personal or other matters without prejudicing the rights of the employee or employer, respectively, pursuant to this Act.

### Order of Commission as order of court

(3) An order issued pursuant to clause (d) of subsection (1) may be made an order of the Supreme Court and thereupon enforced in a like manner as any order of such Court.

### Endorsement

(4) To make an order made pursuant to clause (d) of subsection (1) an order of the Supreme Court, the person presiding over the meeting of the Commission at which the order was made shall endorse a copy of the order certified by that person to be a true copy as follows:

Make the within an order of the Supreme Court.

Dated this . . . . . day of . . . . ., 19. . . . .

Pay Equity Commission

and that person shall forward the order so endorsed to the prothonotary of the Supreme Court who shall, on receipt thereof, enter the same as a record, and it thereupon becomes and is an order of the Supreme Court and is enforceable as any order thereof. R.S., c. 337, s. 10; 1990, c. 41, s. 5.

### For whom process begins September 1, 1988

11 (1) The pay equity process begins on the first day of September, 1988, for employees in the Civil Service, corrections employees, highway workers and employees of the Victoria General Hospital and Nova Scotia Hospital who are not in the Civil Service.

### For whom process begins September 1, 1989

(2) The pay equity process begins on the first day of September, 1989, for employees of Crown corporations, hospitals, other than the Victoria General Hospital or the Nova Scotia Hospital, and school boards.

### For whom process begins October 1, 1990

(3) The pay equity process begins on the first day of October, 1990, for employees of universities, municipalities and municipal enterprises.

### For whom process begins by regulation

(4) The pay equity process begins on the day specified in the regulations for employees of public-sector corporations or bodies specified in the regulations. R.S., c. 337, s. 11; 1990, c. 41, s. 6.

### Evaluation system

12 Within six months of the pay equity process beginning, an employer and all of its employee representatives shall endeavour to agree upon a single system, that does not discriminate on the basis of sex, for the evaluation of all female-dominated classes and male-dominated classes employed by the employer and, where there is failure to agree within the six months, a determination shall be made within a further two months by the Commission and such determination is an agreement for the purpose of Section 13. R.S., c. 337, s. 12.

### Application of evaluation system

13 (1) Upon agreement on an evaluation system and within twenty-one months of the pay equity process beginning, an employer and all of its employee representatives shall apply, or cause to be applied, the agreed-upon evaluation system to determine and compare the value of the work performed by the female-dominated classes and male-dominated classes employed by the employer and to eliminate sex discrimination in pay for work performed by employees in female-dominated classes.

### Determination by Commission

(2) Where the Commission is of the opinion that an employer and its employee representatives are not applying the agreed-upon evaluation system in a timely fashion, the Commission may make such determinations as it considers necessary to complete the application of the evaluation system within the required time.

### Identification of sex discrimination

(3) Sex discrimination in pay is to be identified by undertaking comparisons between each female-dominated class in an employee unit and all male-dominated classes employed by the employer, whether in the same or another employee unit, in terms of pay and in terms of the value of the work performed.

### Not sex discrimination

(4) In making the comparisons required by this Section, there is no sex discrimination in pay where a pay difference is the result of

- (a) a formal seniority system that does not discriminate on the basis of sex;
- (b) a temporary employee-training or employee-development program or assignment which is equally available to male and female employees and leads to career advancement for those involved in the program or assignment;
- (c) a merit pay plan that is based on formal performance ratings, that has been brought to the attention of the employees and that does not discriminate on the basis of sex;
- (d) a skills shortage that is causing a temporary inflation in pay because the employer is encountering difficulties in recruiting employees with the requisite skills.

### Criteria

(5) The criteria to be applied in determining the value of work as required by this Section are the skill, effort and responsibility normally required in the performance of the work and the conditions under which the work is performed. R.S., c. 337, s. 13.

### Pay equity adjustments

14 (1) Upon completion of the application of the evaluation system and within twenty-four months of the pay equity process beginning, an employer and each of its employee representatives in respect of each of its employee units shall endeavor to agree respecting the quantum, allocation and orderly implementation, over a

period not exceeding four years, of the pay equity adjustments required to achieve pay equity and, where there is failure to agree within the twenty-four months respecting

(a) the quantum or allocation of the adjustments, a determination shall be made by the Commission within a further two months;

(b) the orderly implementation of the adjustments, the adjustments shall be divided equally over four successive years,

and such determination or division is an agreement for the purpose of Section 15.

#### Determination of adjustments

(2) In determining pay equity adjustments,

(a) a female-dominated class shall be assigned a schedule or range of pay with a top rate of pay equal to the top rate of pay of a male-dominated class in accordance with Section 17; and

(b) all positions in the female-dominated class shall receive the same adjustment in dollar terms. R.S., c. 337, s. 14.

#### Entitlement to adjustments

15 (1) Twenty-four months after the pay equity process begins, an employee is entitled to the pay adjustments agreed to pursuant to Section 14.

#### Implementation

(2) Upon agreement on the pay adjustments pursuant to Section 14, an employer shall implement the pay adjustments in accordance with the agreement.

#### Prohibitions

(3) In achieving pay equity, no employer shall

(a) reduce the pay of any employee; or

(b) move an employee to a lower step of a schedule or range of pay that has been adjusted upward to implement pay equity. R.S., c. 337, s. 15.

#### Consequential adjustments

16 Where an employee receives a pay adjustment pursuant to subsection (2) of Section 15, the pay of every person to whom the employee is responsible or subordinate shall be considered by the employer to determine whether an adjustment should be made because of the duties and responsibilities of that person in relation to the duties and responsibilities of that employee. R.S., c. 337, s. 16; revision corrected.

#### Achievement of pay equity

17 Pay equity is achieved in a female-dominated class when the pay rate for the class is equal to

(a) where there is only one male-dominated class of the same employer performing work of equal or comparable value, the pay rate of that class;

(b) where there are two or more male-dominated classes of the same employer performing work of equal or comparable value, at least the pay rate of the class with the lowest pay rate;

(c) where there is no male-dominated class of the same employer performing work of equal or comparable value and only one male-dominated class with a previously higher pay rate and performing work of lower value, the pay rate of that class; or

(d) where there is no male-dominated class of the same employer performing work of equal or comparable value and two or more male-dominated classes with higher pay rates and performing work of lower value, the pay rate of the class with the highest pay rate. R.S., c. 337, s. 17.

#### Duties of employer

18 (1) Throughout the pay equity process an employer shall

(a) meet and negotiate with its employee representatives;

(b) disclose to the employee representatives information in its possession or control relevant to the pay equity process; and

(c) bargain in good faith, making every reasonable effort to reach agreement.

#### Duty of employee representative

(2) Throughout the pay equity process, each employee representative shall bargain in good faith with the employer, making every reasonable effort to reach agreement.

#### Separate bargaining process

(3) The bargaining process respecting pay equity is to be separate and apart from the normal negotiations for a collective agreement between an employer and its employee representatives. R.S., c. 337, s. 18.

#### Conflict between agreements

19 Where there is a conflict between an agreement on pay equity made pursuant to this Act and another agreement, the agreement on pay equity prevails over the provisions of the other agreement with respect to pay. R.S., c. 337, s. 19.

#### Filing of agreements

20 (1) Every agreement made pursuant to this Act shall be filed forthwith by the employer with the Commission and thereupon is binding upon the parties thereto.

#### Inspection and copies

(2) An employer or an employee to whom an agreement on pay equity pertains may inspect any such agreement filed in the office of the Commission and is entitled to a copy of the agreement upon payment of a reasonable charge therefor. R.S., c. 337, s. 20.

#### Regulations

21 (1) The Governor in Council may make regulations

(a) respecting the content of reports to and by the Commission;

(b) adding to or deleting from the list of corporations in Schedule A to this Act;

(ba) adding to the list of bodies in Schedule B to this Act or excluding from this Act other bodies coming within the classes or categories referred to in clause (c) of subsection (1) of Section 4;

(bb) specifying, from time to time, public-sector corporations or bodies to whom this Act applies, including corporations or bodies expressly excluded from this Act, and in each case the date the pay equity process begins and the date as of which numbers are to be determined for the purpose of clauses (j) and (m) of subsection (1) of Section 3;

(c) defining any word or expression used in this Act and not defined herein;

(d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

#### Regulations Act

(2) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the Regulations Act. R.S., c. 337, s. 21; 1990, c. 41, s. 7.

#### SCHEDULE A

Cancer Treatment Research Foundation of Nova Scotia  
Halifax-Dartmouth Bridge Commission  
Nova Scotia Council on Applied Science and Technology  
Nova Scotia Legal Aid Commission  
Nova Scotia Liquor Commission  
Nova Scotia Liquor License Board  
Nova Scotia Power Corporation  
Nova Scotia Research Foundation Corporation  
Nova Scotia Resources Limited  
Novaco Limited  
Public Archives of Nova Scotia  
Sydney Steel Corporation  
Waterfront Development Corporation  
Workers Compensation Board  
R.S., c. 337, Sch.; 1990, c. 41, s. 8.

#### SCHEDULE B

Acadia University  
Atlantic School of Theology  
Dalhousie University  
Mount Saint Vincent University  
Nova Scotia College of Art and Design  
St. Francis Xavier University  
St. Marys University  
Technical University of Nova Scotia  
Université Sainte-Anne  
University College of Cape Breton  
University of Kings College  
1990, c. 41, s. 8.

**LABOUR STANDARDS CODE  
MINIMUM WAGE ORDERS  
NOTICE OF ADJUSTMENTS**

In accordance with the following regulations made under Sections 50 and 52 of the *Labour Standards Code*, R.S.N.S. 1989, c. 246:

- (a) subsection 6A(1) of the Minimum Wage Order (General), N.S. Reg. 5/99, made by Order in Council 1999-56 dated February 17, 1999,
- (b) subsection 4A(1) of the Minimum Wage Order (Construction and Property Maintenance), N.S. Reg. 202/2003, made by Order in Council 2003-507 dated November 28, 2003, and
- (c) subsection 5A(1) of the Minimum Wage Order (Logging and Forest Operations), N.S. Reg. 5/99, made by Order in Council 1999-56 dated February 17, 1999,

the Minister of Labour and Advanced Education, Kelly Regan, hereby gives notice that the minimum wages as calculated under those regulations are adjusted as follows:

**Minimum Wage Order (General)**

(as adjusted under subsection 6(2) of the regulations)

Effective Date	Class of Employees	Rate per Hour
April 1, 2015	Experienced	\$10.60
	Inexperienced	\$10.10

**Minimum Wage Order (Construction and Property Maintenance)**

(as adjusted under subsection 4(2) of the regulations)

Effective Date	Rate per Hour
April 1, 2015	\$10.60

**Minimum Wage Order (Logging and Forest Operations)**

(as adjusted under subsection 5(2) of the regulations)

Effective Date	Class of Employees	Rate
April 1, 2015	Time workers	\$10.60 per hour
	Other workers	\$2075.70 per month

DATED at Halifax, Nova Scotia, this 22nd day of January, 2015.

Kelly Regan  
Minister of Labour and Advanced Education

# LOCATION OF FIRST AID

**Work location of first aid  
equipment and supplies:**

Location: \_\_\_\_\_

**How to summon first aid services:**

Person Responsible: \_\_\_\_\_

# Equal Pay

An employer and any person acting on his behalf shall not pay a female employee or a male employee at a rate of wages less than the rate of wages paid to a female employee at a rate of wages less than the rate of wages paid to a male employee employed by him for substantially the same work performed in the same establishment, the performance of which requires substantially equal skill, effort and responsibility, and which is performed under similar working conditions.

Where an employer or person acting on the employer's behalf establishes that a different rate of wages is justified based on payment in accordance with

- (a) a seniority system;
- (b) a merit system;
- (c) a system that measures wages by quantity or quality of production; or
- (d) another differential based on a factor other than sex,

a difference in the rate of wages between a male and a female employee based on any of the factors referred to in clauses (a) to (d) does not constitute a failure to comply with this Section.

No employer shall reduce the rate of wages of an employee in order to comply with this Section.

Every employer shall post and keep posted, in a conspicuous place in the employer's establishment, a copy of this Section so that all employees may have ready access to and see the same.

# Emergency Phone Numbers

<b>Emergency Contact</b>	<b>Phone Number</b>	<b>Address/Location</b>
<b>Fire</b>		
<b>Police</b>		
<b>Ambulance</b>		
<b>Physician</b>		
<b>Hospital</b>		



# The Occupational Health Committee Members

for this workplace are:

Name	Name



**NO  
SMOKING**



Post your organization's **Workplace Violence Prevention** policy here:

*If your company is required to have a Violence Prevention Policy, this policy must be prominently posted in the workplace.*

*N.S. Reg. 209/2007, s. 9*



Post your organization's **Schedule** here:

*Every employer bound by a schedule shall cause a copy of the schedule to be posted and maintained for as long as it remains in force in a conspicuous place where his employees engaged in their duties may readily see and read it.*

Post your **Restricted Labour Hours** notice here:

*An employer engaged in an industry to which Section 61 of the Nova Scotia Labour Standards Code is declared to apply shall*

- (a) notify by means of notices posted conspicuously in the establishment the hours at which work begins and ends, and, where work is carried on by shifts, the hours at which each shift begins and ends; and*
- (b) notify in the same way the rest intervals accorded during the period of work that are not reckoned as part of the working hours.*

*R.S.N.S. 1989, c. 246, s.45*

*R.S.N.S. 1989, c. 246, s. 65*



Post your organization's **Joint Health and Safety Committees Meeting Minutes** here:

*The employer at a place of employment shall ensure that the names of the committee of the place of the employment and the minutes of the most recent committee are posted in a prominent place or places at the place of employment.*

S.N.S. 1996, c. 7, s. 37

# Workers' Compensation Act

CHAPTER 10

OF THE

ACTS OF 1994-95

**amended** 1999, c. 1; 2000, c. 4, s. 93; 2001, c. 6, s. 127;  
2002, c. 5, ss. 56-58; 2002, c. 41; 2003, c. 5; 2005, c. 31

## An Act to Reform the Law Respecting Compensation for Workers

### Short title

**1** This Act may be cited as the *Workers' Compensation Act, 1994-95*, c. 10, s. 1.

### Interpretation

**2** In this Act,

(a) "accident" includes

- (i) a wilful and intentional act, not being the act of the worker claiming compensation,
- (ii) a chance event occasioned by a physical or natural cause, or
- (iii) disablement, including occupational disease, arising out of and in the course of employment,

but does not include stress other than an acute reaction to a traumatic event;

(b) "Accident Fund" means the fund provided for the payment of any compensation or other expenditures made pursuant to Part I;

(c) "Appeals Tribunal" means the Workers Compensation Appeals Tribunal established pursuant to this Act;

(d) "assessment" includes any assessment, part of an assessment, penalty or other amount that may be collected in the same manner as an assessment may be collected, and any cost of enforcing the assessment or entering judgment;

(e) "Board" means the Workers' Compensation Board of Nova Scotia;

(f) "Board of Directors" means the Board of Directors established pursuant to Section 151;

(g) "Canada Pension Plan" means the pension plan established by the *Canada Pension Plan*;

(h) "child" includes a child born outside marriage, a grandchild, a child of a spouse by a former marriage and a child to whom a worker stands *in loco parentis*;

(i) "class of employer" includes any class of employer determined by the Board;

(j) "collateral benefits" means

- (i) any periodic benefit the worker is entitled to receive or is receiving pursuant to the *Unemployment Insurance Act (Canada)*, payable in connection with the injury for which compensation is payable pursuant to Part I of this Act,
- (ii) any payment to the worker by the worker's employer, including any benefit, gratuity or allowance, payable in connection with the injury for which compensation is payable pursuant to Part I of this Act, or
- (iii) any other benefit the Board may prescribe by regulation;

(k) "day" includes a shift;

(l) "dependant" means a member of the family of a worker who was wholly or substantially dependent upon the worker's earnings at the time of the worker's injury or death, or who, but for the loss of earnings due to the injury or death, would have been so dependent;

(m) "Director" means a member of the Board of Directors, and includes the Chair and the Deputy Chair of the Board;

(n) "employer" means an employer within the scope of Part I and includes

- (i) every person having in the persons service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry within the scope of Part I,
- (ii) the principal, contractor and subcontractor referred to in Sections 140 and 141,
- (iii) a receiver, liquidator, executor or administrator and any person appointed by a court, who has authority to carry on the business of an employer,
- (iv) a municipal corporation,
- (v) a public service commission,
- (vi) any person who authorizes or permits a learner to be in or about an industry for the purpose described in clause (q),
- (vii) Her Majesty in right of the Province,

- (viii) Her Majesty in right of Canada in so far as Her Majesty submits to the operation of Part I,
  - (ix) any person operating a boat, vessel, ship, dredge, tug, scow or other craft usually employed or intended to be employed in an industry to which Part I applies and, with respect to the industry of fishing, the owner or operator of a boat or vessel rented, chartered or otherwise provided to a worker employed in the fishing industry and used in or in connection with an industry carried on by the employer to which Part I applies, and
  - (x) in relation to a particular employer, the whole or any part of any establishment, undertaking, work, operation, trade or business within the scope of Part I;
- (o) "extended earnings-replacement benefit" means an earnings-replacement benefit payable to a worker from the later of
- (i) the date on which the Board determines the worker has a permanent impairment pursuant to Section 34, and
  - (ii) the date on which the worker completes a rehabilitation program pursuant to Section 112, where the worker is engaged in a rehabilitation program on or after the date the Board determines the worker has a permanent impairment pursuant to Section 34;
- (p) "injury" means personal injury, but does not include any type or class of personal injury excluded by regulation pursuant to Section 10;
- (q) "learner" means
- (i) an apprentice, or
  - (ii) any person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of any industry to which Part I applies for the purpose of undergoing testing, training or probationary work as a preliminary to employment;
- (r) "medical aid" includes
- (i) any health care service, product or device that may be authorized by the Board and is provided to a worker as a result of a compensable injury, including those forms and reports required by the Board respecting the aid or services, and
  - (ii) reasonable expenses, authorized by the Board, incurred by a worker in order to obtain medical aid;
- (s) "member of the family" means a worker's spouse, parent, grandparent, stepparent, child, grandchild, stepchild, brother, sister, half-brother or half-sister, or a person who stands *in loco parentis* to the worker or to whom the worker stands *in loco parentis*;
- (t) "Minister" means the Minister of Labour;
- (u) "municipality" means a city, incorporated town, municipality of a county or district or a regional municipality;
- (v) "occupational disease" means a disease arising out of and in the course of employment and resulting from causes or conditions
- (i) peculiar to or characteristic of a particular trade or occupation, or
  - (ii) peculiar to the particular employment,
- and includes silicosis and ~~pneumonoconiosis~~[pneumoconiosis];
- (w) "person" includes a partnership;
- (x) " ~~pneumonoconiosis~~[pneumoconiosis]" means permanent alteration of lung structure due to the inhalation of dust and the tissue reactions of the lung to its presence;
- (y) "principal" includes a person engaged in the manufacture, purchase or sale of forest products who finances, in whole or in part, the operations of another person in the lumbering industry;
- (z) "Quebec Pension Plan" means the Quebec Pension Plan established pursuant to Chapter R-9 of the Revised Statutes of Quebec, 1977, as amended;
- (aa) "regulation" means a regulation made or approved by the Governor in Council pursuant to Section 184;
- (ab) "spouse" includes a person who, not being married to a worker,
- (i) was wholly or substantially dependent upon the worker's earnings at the time of the worker's injury or death, or who, but for the loss of earnings due to the injury or death, would have been so dependent, and
  - (ii) cohabited with the worker as husband and wife at the time of the worker's injury or death and immediately prior to the worker's injury or death for a period of at least twelve continuous months;
- (ac) "subclass of employer" includes any subclass of employer determined by the Board;
- (ad) "temporary earnings-replacement benefit" means any earnings-replacement benefit payable to a worker prior to the date on which an extended earnings-replacement benefit, if any, becomes payable;
- (ae) "worker" means a worker within the scope of Part I, and includes
- (i) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied,
  - (ii) an officer, director or manager of an employer, where the person is actively engaged in the business and is carried on the payroll of the business at the person's actual earnings,
  - (iii) a learner,
  - (iv) a student admitted pursuant to Section 6,
  - (v) a member of a municipal volunteer fire department admitted pursuant to Section 5,
  - (vi) in respect of the industry of fishing, a person who becomes a member of the crew of a vessel under any profit-sharing arrangement,
  - (vii) in respect of the industry of mining, a person while actually engaged in taking or attending a course of training or instruction in mine rescue work under the direction or with the approval, express or implied, of an employer in whose employment the person is employed as a worker in that industry,

(viii) in respect of any industry, a person while actually engaged in rescuing or protecting or attempting to rescue or protect life or property in the case of an explosion, a fire or other emergency, that endangers either life or property in or about the industry in which the person is employed,

(ix) any other person who, pursuant to Part I, the regulations or an order of the Board, is deemed to be a worker, and

(x) in relation to compensation payable to a dependant, a dependant,

but, subject to Section 4, does not include

(xi) a receiver, liquidator or other person appointed by a court or a judge with power to manage or carry on the business of an employer for winding-up or other purposes,

(xii) an employer, or

(xiii) a member of the family of an employer or a member of the family of a director of a corporation who

(A) is employed by the employer or the corporation, and

(B) lives with the employer or director as a member of the employer's or director's household. 1994-95, c. 10, s. 2.

## PART I

### WORKERS COMPENSATION

#### SCOPE

#### Application of Part I

**3 (1)** This Part applies to employers and workers engaged in, about or in connection with any industry prescribed by the Governor in Council by regulation.

**(2)** The Governor in Council may, by regulation, exclude any employer, class of employer, or class of worker engaged in, about or in connection with any industry prescribed pursuant to subsection (1).

**(3)** A class of employer prescribed pursuant to subsection (2) may include a class of employer employing fewer than the prescribed number of workers.

**(4)** A class of workers prescribed pursuant to subsection (2) may include classes based on

(a) the nature of work or duties;

(b) the nature of the business or undertaking;

(c) a geographical area within which work is performed;

(d) the source of remuneration;

(e) the method by which workers are assigned to places to perform work;

(f) a description of any program or scheme in which work is performed; or

(g) any one or more of the factors described in clauses (a) to (f). 1994-95, c. 10, s. 3.

#### Power to extend application of Part

**4 (1)** Subject to subsection 3(2), the Board may, on application, admit to the operation of this Part any person not otherwise within the operation of this Part.

**(2)** The Board may, on the application of an independent contractor, admit the independent contractor to the operation of this Part as if the independent contractor were a worker where the independent contractor performs work, the nature of which falls within the scope of this Part.

**(3)** Where an independent contractor is admitted to the operation of this Part, the independent contractor is

(a) a worker in so far as this Part applies to workers employed by an employer; and

(b) an employer, in so far as this Part applies to employers of a worker.

**(4)** In this Section, "independent contractor" means a person who is not an employer or a worker but who performs work that, if the person were a worker other than by operation of subsection (3), would be within the scope of this Part.

**(5)** The Board may, on the application of a person who is an employer but who is not a worker within the meaning of this Part, determine that that person is a worker within the operation of this Part and entitled to compensation pursuant to this Part.

**(6)** The Board may, on the application of an employer, admit to the operation of this Part a person referred to in subclause 2(ae)(xiii).

**(7)** The Board may admit a person to the operation of this Part pursuant to subsection (1), (2), (5) or (6) subject to any terms of admission that, in the opinion of the Board, are necessary or expedient. 1994-95, c. 10, s. 4.

#### Application of Part to volunteer fire department

**5 (1)** On the application of a municipality within whose boundaries a volunteer fire department is located and serves, the Board may admit the volunteer fire department to the application of this Part.

**(2)** Where the Board admits a volunteer fire department pursuant to subsection (1),

(a) the members of the volunteer fire department are workers; and

(b) the municipality is the employer of the members of the volunteer fire department,



for the purpose of this Part.

**(3)** The members of a volunteer fire department shall be considered to be in the course of their employment from the time they

(a) arrive at the place where a training exercise begins until the exercise has been completed; or

(b) receive a notification, by any means, of a fire or emergency, including the time of travel to the fire station, fire scene or the site of the emergency where they perform duties until, after being released from duty, they return home, to the place where the notification was received, to their place of regular employment or to any place for treatment, refreshment or recreation, whichever they reach first.

**(4)** The Board shall, by regulation, determine the minimum and maximum earnings of the members of the volunteer fire department for the purpose of calculating the average earnings of the volunteer fire department pursuant to subsection (5).

**(5)** The municipality deemed to be the employer of a volunteer fire department pursuant to subsection (2) shall choose an amount between the minimum and maximum amounts determined by the Board pursuant to subsection (4) to apply as the average earnings for the members of the volunteer fire department.

**(6)** The amount chosen by a municipality pursuant to subsection (5) applies to every member of that municipality's volunteer fire department.

**(7)** The municipality deemed to be the employer of a volunteer fire department pursuant to subsection (2) shall notify the Board of

(a) the number of members in the municipality's volunteer fire department; and

(b) the average earnings of the members of the volunteer fire department for the purpose of this Part. 1994-95, c. 10, s. 5.

#### **Application of Part to students**

**6 (1)** The Governor in Council may, by order, admit any student of

(a) a school as defined in the *Education Act*;

(b) a vocational school, regional vocational school, technical institution, or any educational facility under the supervision and management of the Minister of Education; or

(c) a community college as defined in the *Community College[s] Act*,

to the application of this Part.

**(2)** Where the Governor in Council admits any student to the application of this Part pursuant to subsection (1),

(a) the student is a worker for the purpose of this Part; and

(b) the Board shall fix an amount that shall be deemed to be the student's average earnings for the purpose of this Part.

**(3)** Where a student is admitted to the application of this Part pursuant to subsection (1), the assessment determined by the Board shall be paid out of the Consolidated Fund of the Province.

**(4)** On the application of an educational facility other than an educational facility referred to in subsection (1), the Board may admit any student of the facility to the application of this Part.

**(5)** Where the Board admits any student to the application of this Part pursuant to subsection (4),

(a) the student is a worker for the purpose of this Part; and

(b) the Board shall fix an amount that shall be deemed to be the students average earnings for the purpose of this Part.

**(6)** Where a student is admitted to the application of this Part, pursuant to subsection (4), the assessment determined by the Board shall be paid by the students educational facility or in the manner prescribed by the Governor in Council by regulation. 1994-95, c. 10, s. 6.

#### **Application to municipality**

**7** The exercise and performance of the powers and duties of

(a) a municipality; and

(b) any commission or board having the management and conduct of any work or service owned or operated by a municipality,

is, for the purpose of this Part, the trade or business of the municipality, commission or board. 1994-95, c. 10, s. 7.

#### **Temporary hiring**

**8** Where the employer of a worker temporarily lets or hires the services of the worker to another person,

(a) the worker continues to be the worker of the employer for the purpose of this Part, while the worker is working for the other person;

(b) the person who lets or hires the services of the worker is the employer of the worker for the purpose of this Part, while the worker is working for that person; and

(c) the employer of the worker and the person who lets or hires the services of the worker are jointly and severally liable to fulfil any obligations of an employer as set out in this Part. 1994-95, c. 10, s. 8.

#### **Deemed worker**

**9** Notwithstanding the other provisions of this Part, where a person who is not a worker within the scope of this Part performs work for the benefit of another person, the Board may

(a) deem the first person to be a worker and the second person to be the employer of the first person, within the meaning of this Part; and

(b) determine an amount that shall be deemed to be the earnings of the worker, for the purpose of this Part. 1994-95, c. 10, s. 9.

## ELIGIBILITY

### Payment of compensation

**10 (1)** Where, in an industry to which this Part applies, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation to the worker as provided by this Part.

**(2)** The compensation payable pursuant to subsection (1) shall be paid out of the Accident Fund.

**(3)** Where a personal injury is attributable wholly or primarily to the serious and wilful misconduct of the worker, the Board shall not pay compensation to the worker unless the personal injury

(a) results in death or serious and permanent impairment; or

(b) is likely, in the opinion of the Board, to result in serious and permanent impairment.

**(4)** Where the accident arose out of employment, unless the contrary is shown, it shall be presumed that it occurred in the course of employment, and where the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

**(5)** Where a personal injury by accident referred to in subsection (1) results in loss of earnings or permanent impairment

(a) due in part to the injury and in part to causes other than the injury; or

(b) due to an aggravation, activation or acceleration of a disease or disability existing prior to the injury,

compensation is payable for the proportion of the loss of earnings or permanent impairment that may reasonably be attributed to the injury.

**(6)** The Board may, by regulation, exclude any type or class of personal injury or occupational disease from the operation of this Part.

**(7)** The Board may, by regulation, include any type or class of personal injury or occupational disease on terms or conditions, including rates, types and durations of compensation other than those specified in this Part, that the Board may prescribe. 1994-95, c. 10, s. 10.

### Interpretation

**10A** In this Act, "chronic pain" means pain

(a) continuing beyond the normal recovery time for the type of personal injury that precipitated, triggered or otherwise predated the pain; or

(b) disproportionate to the type of personal injury that precipitated, triggered or otherwise predated the pain,

and includes chronic pain syndrome, fibromyalgia, myofascial pain syndrome, and all other like or related conditions, but does not include pain supported by significant, objective, physical findings at the site of the injury which indicate that the injury has not healed. 1999, c. 1, s. 1.

### Exclusions

**10B** Notwithstanding this Act, Chapter 508 of the Revised Statutes, 1989, or any of its predecessors, the *Interpretation Act* or any other enactment,

(a) except for the purpose of Section 28, a personal injury by accident that occurred on or after March 23, 1990, and before February 1, 1996, is deemed never to have included chronic pain;

(b) a personal injury by accident that occurred before February 1, 1996, is deemed never to have created a vested right to receive compensation for chronic pain;

(c) no compensation is payable to a worker in connection with chronic pain, except as provided in this Section or in Section 10E or 10G or, in the case of a worker injured on or after February 1, 1996, as provided in the Functional Restoration (Multi-Faceted Pain Services) Program Regulations contained in Order in Council 96-207 made on March 26, 1996, as amended from time to time and, for greater certainty, those regulations are deemed to have been validly made pursuant to this Act and to have been in full force and effect on and after February 1, 1996. 1999, c. 1, s. 1.

### Interpretation of Sections 10D and 10E

**10C** In Sections 10D and 10E, "former Act" means Chapter 508 of the Revised Statutes. 1999, c. 1, s. 1.

### Substituted benefit

**10D (1)** Subject to subsection (2), where a worker

(a) was injured before March 23, 1990;

(b) was granted a permanent partial disability or a permanent total disability benefit under Section 43 or 45 of the former Act as a result of the injury referred to in clause (a); and

(c) was granted an amended interim earnings loss benefit pursuant to the Amended Interim Earnings Loss Policy adopted by the Board on November 24, 1993, pursuant to the former Act and the worker's benefit was reduced on or before the coming into force of this Act,

the Board shall pay to the worker the benefit the worker was receiving pursuant to the Amended Interim Earnings Loss Policy adopted by the Board on November 24, 1993, pursuant to the former Act and, for greater certainty, this benefit is in substitution for any permanent partial disability or permanent total disability the worker was receiving with respect to the claim on which the amended interim earnings loss benefit was paid where it is a greater benefit on the coming into force of this Section.

**(2)** Where a worker referred to in subsection (1) has an appeal pending before the Workers' Compensation Appeals Tribunal on the coming into force of this Section, the worker is entitled to the benefit referred to in subsection (1) only if the worker abandons the appeal before the Appeals Tribunal.

**(3)** For greater certainty, where a worker abandons an appeal pursuant to subsection (2), the appeal is null and void and no further appeal may be taken with respect to the matter.

**(4)** For greater certainty, the benefit referred to in subsection (1) shall be paid to the worker until the worker attains the age of sixty-five years.

**(5)** For the purpose of this Section, an appeal does not include an appeal seeking medical aid. 1999, c. 1, s. 1.

#### **Permanent-impairment benefit**

**10E** Where a worker

- (a) was injured on or after March 23, 1990, and before February 1, 1996;
- (b) has chronic pain that commenced following the injury referred to in clause (a); and
- (c) as of November 25, 1998, was in receipt of temporary earnings-replacement benefits; or
- (d) as of November 25, 1998, had a claim under appeal

- (i) for reconsideration,
- (ii) to a hearing officer,
- (iii) to the Appeals Tribunal, or
- (iv) to the Nova Scotia Court of Appeal,

or whose appeal period with respect to an appeal referred to in subclauses (i) to (iv) had not expired,

the Board shall pay to the worker a permanent-impairment benefit based on a permanent medical impairment award of twenty-five per cent multiplied by fifty per cent, and an extended earnings replacement benefit, if payable pursuant to Sections 37 to 49, multiplied by fifty per cent and any appeal referred to in clause (d) is null and void regardless of the issue or issues on appeal. 1999, c. 1, s. 1.

#### **Finality of decision**

**10F** A decision of the Appeals Tribunal on a matter referred to in Section 10E is not subject to appeal, review or challenge in any court. 1999, c. 1, s. 1.

#### **Entitlement to medical aid**

**10G** A worker who is entitled to receive a benefit pursuant to Section 10E may also be entitled to receive medical aid and Sections 102 to 111 apply *mutatis mutandis*. 1999, c. 1, s. 1.

#### **Regulations**

**10H (1)** The Governor in Council may make regulations to implement the benefits referred to in Sections 10D to 10G.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1999, c. 1, s. 1.

#### **Effective date of benefits**

**10I (1)** The benefits referred to in Sections 10D and 10E shall be paid effective January 1, 1999.

**(2)** For greater certainty, a worker referred to in Sections 10D or 10E is not entitled to a benefit pursuant to those Sections for a period of time prior to January 1, 1999. 1999, c. 1, s. 1.

#### **Presumption re coal miners**

**11** Any worker found dead in the underground workings of a coal mine is presumed to have died as a result of personal injury by accident arising out of and in the course of the worker's employment, unless there is evidence sufficient to rebut the presumption. 1994-95, c. 10, s. 11.

#### **Compensation for occupational disease**

**12 (1)** Where an occupational disease is due to the nature of any employment to which this Part applies in which a worker was engaged, whether under one or more employments, and

- (a) the occupational disease results in loss of earnings or permanent impairment; or
- (b) the worker's death is caused by the occupational disease,

the worker is entitled to compensation as if the occupational disease was a personal injury by accident.

**(2)** Where a worker suffers from an occupational disease, the date of the worker's injury, for the purpose of this Act, is the earliest of

- (a) the date on which the occupational disease results in loss of earnings;
- (b) the date on which the Board determines the worker has a permanent impairment caused by the occupational disease; or
- (c) the date on which the worker's death is caused by the occupational disease.

**(3)** Where any worker

- (a) was employed at or immediately before the date of injury in any process, trade or occupation prescribed by the Board by regulation; and
- (b) the disease contracted by the worker is set opposite to the description of the process, trade or occupation in the regulations,

the disease contracted by the worker is presumed, unless the contrary is shown, to have been due to the worker's employment in that process, trade or occupation.

**(4)** Nothing in this Section affects the right of a worker to compensation in respect of a disease to which this Section does not apply, if the disease is the result of any injury in respect of which the worker is entitled to compensation pursuant to this Part.

(5) Notwithstanding subsection (1), no compensation is payable to a worker who suffers from an occupational disease where, at the time of entering into employment, the worker has made a wilful and false representation that the worker did not previously suffer from the occupational disease for which the worker is claiming compensation. 1994-95, c. 10, s. 12.

#### **Silicosis or pneumoconiosis**

##### **13 (1) Where**

(a) the occupational disease from which the worker suffers is silicosis or ~~pneumoconiosis~~[pneumoconiosis]; and

(b) the worker was exposed to silica dust or coal dust outside the Province,

compensation is payable to the worker if the provisions of subsection 12(1) are satisfied and

(c) the worker was a resident of the Province during the three years immediately preceding the date of the injury determined pursuant to subsection 12(2); and

(d) at least fifty per cent of the worker's exposure to silica dust or coal dust was in the worker's employment in an industry to which this Part applies.

(2) Where compensation is payable pursuant to subsection (1), the worker is eligible for compensation proportionate to the period of the worker's total exposure to silica dust or coal dust that occurred within the Province.

##### **(3) Where**

(a) compensation is payable pursuant to subsection (1); and

(b) compensation is also payable to the worker in a jurisdiction outside the Province as a result of the worker's exposure to silica dust or coal dust,

the Board may reduce any compensation payable pursuant to this Part by the amount payable pursuant to the legislation of the other jurisdiction. 1994-95, c. 10, s. 13.

#### **Time limit for submitting claim**

**14 (1)** No compensation is payable pursuant to Section 13 unless the claim for compensation is filed with the Board

(a) within five years after the worker ceased to be regularly employed in an industry where the worker was exposed to silica dust or coal dust; and

(b) within one year after the worker or worker's dependant learns that the injury or death resulted from silicosis or ~~pneumoconiosis~~[pneumoconiosis].

(2) Notwithstanding subsection (1), the Board may pay a claim for uncomplicated silicosis where

(a) the worker is a resident of the Province at the time the claim is made; and

(b) the worker has not been exposed to silica dust elsewhere than in the Province.

(3) The Board shall not pay compensation pursuant to subsection (2) for any period of time prior to the date the worker's claim is filed with the Board.

(4) Notwithstanding subsections (1) and (2), the Board in its discretion, upon written application, may at any time reconsider or receive a claim for compensation based upon the injury or death of a worker resulting from silicosis or ~~pneumoconiosis~~[pneumoconiosis] and consider the claim on its merits and may pay compensation, but no compensation shall be paid for any period of time prior to the date the application, pursuant to this subsection, is filed with the Board. 1994-95, c. 10, s. 14.

#### **Compensation for exposure to radiation**

**15 (1)** Where the occupational disease from which the worker suffers was caused by exposure to radiation, the worker is eligible for compensation proportionate to the amount of the worker's total exposure to radiation that occurred within the Province.

(2) Every employer, who makes use of X-rays, isotopes or any other form of radiation likely to prove a hazard to a worker exposed to it, shall make, retain and furnish to the Board a record of the exposure on a form and in a manner prescribed or approved by the Board. 1994-95, c. 10, s. 15.

#### **Payments subject to agreements**

**16** Sections 13, 14 and 15 are subject to any agreement entered into pursuant to Section 166 with respect to the sharing of costs between the Board and a workers' compensation board or similar authority in any jurisdiction where the worker was exposed to silica dust, coal dust or radiation. 1994-95, c. 10, s. 16.

#### **Medical examination for occupational disease**

**17** The Board or an employer, with the approval of the Board, may, from time to time, in writing, require any worker employed by the employer to undergo a medical examination for the purpose of determining whether or to what extent the worker is affected by an occupational disease. 1994-95, c. 10, s. 17.

#### **Apportionment of cost of claim**

**18** Where an occupational disease is contracted gradually, the Board may apportion the cost of compensation and other expenditures made by the Board among the employers who have employed the worker in employment to which the occupational disease is due. 1994-95, c. 10, s. 18.

### RESIDENCY AND ELECTION TO CLAIM

#### **Residency rules**

**19** Subject to Sections 20 to 27 and Section 166, no compensation is payable to a worker pursuant to this Part unless

(a) the place where the worker usually works for the employer is in the Province; and

(b) the accident occurs in the Province. 1994-95, c. 10, s. 19.

#### **Accident during absence from Province**

**20 (1) Where**

- (a) a worker's residence is within the Province;
  - (b) the place where the worker usually works for the employer is within the Province;
  - (c) the place of business or chief place of business of the employer is within the Province;
  - (d) an accident occurs while a worker is employed outside the Province; and
  - (e) at the time of the accident the worker had been employed outside the Province for less than six months,
- the worker may claim compensation pursuant to this Part as if the accident had occurred in the Province.

**(2) Where**

- (a) a worker's residence is within the Province;
  - (b) the place where the worker usually works for the employer is within the Province;
  - (c) the place of business or chief place of business of the employer is within the Province; and
  - (d) the employment of the worker outside the Province lasts or is likely to last for six or more months,
- the worker's employer may apply to the Board to be assessed on the earnings of the worker.

**(3) Where**

- (a) an application made pursuant to subsection (2) is approved by the Board; and
- (b) an accident occurs while the worker is employed outside the Province,

the worker may claim compensation pursuant to this Part as if the accident had occurred in the Province. 1994-95, c. 10, s. 20.

**Application by employer to be assessed**

**21 (1) Where**

- (a) the residence of a worker is outside the Province;
- (b) the place where the worker usually works for the employer is outside the Province; and
- (c) the worker's employment within the Province lasts or is likely to last for more than five days,

the worker's employer shall apply to the Board to be assessed on the earnings of the worker and the worker is a worker for the purpose of subsection 3(1).

**(2) repealed 1999, c. 1, s. 2.**

1994-95, c. 10, s. 21; 1999, c. 1, s. 2.

**Accident during temporary absence**

**22 Where**

- (a) the residence of a worker is outside the Province;
- (b) the place where the worker usually works for the employer is within the Province;
- (c) the place of business or chief place of business of the employer is within the Province;
- (d) an accident occurs while the worker is outside the Province; and
- (e) at the time of the accident the worker was outside the Province merely for some temporary purpose connected with the worker's employment within the Province,

the worker may claim compensation pursuant to this Part as if the accident had occurred in the Province. 1994-95, c. 10, s. 22.

**Compensation where entitlement outside Province**

**23 Where**

- (a) an accident occurs while a worker is outside the Province;
- (b) the place of business or chief place of business of the employer is outside the Province; and
- (c) the worker is entitled to compensation pursuant to the law of the place where the accident occurred,

the worker may not claim compensation pursuant to this Part, whether the worker's residence is within or outside the Province, unless

- (d) the place where the worker usually works for the employer is within the Province; and
  - (e) at the time of the accident the worker was outside the Province merely for some temporary purpose connected with the worker's employment within the Province.
- 1994-95, c. 10, s. 23.

**Accident outside Province in transportation industry**

**24 Where**

- (a) an accident occurs outside the Province in connection with the operation of
  - (i) a ship, boat or other vessel, or
  - (ii) an aircraft, train, truck, bus or other vehicle used to transport goods or passengers;
- (b) the worker's residence is within the Province; and
- (c) the work or service performed by the worker is required to be performed both within and outside the Province,

the worker may claim compensation pursuant to this Part as if the accident had occurred in the Province. 1994-95, c. 10, s. 24.

#### **Assessment of employer**

**25** Where a worker is employed outside the Province and the circumstances of

- (a) the place of business or chief place of business of the worker's employer;
- (b) the residence of the worker; and
- (c) the worker's usual place of employment,

are such that, if an accident occurred while the worker was outside the Province, the worker could claim compensation as if the accident had occurred in the Province, the worker's employer shall declare and be assessed on the earnings of the worker in the same way and in the same amounts as though the worker was employed within the Province. 1994-95, c. 10, s. 25.

#### **Liability of employer where earnings not reported**

**26 (1)** Where

- (a) compensation is payable for an injury that occurred outside the Province; and
- (b) the worker's employer has not reported the full earnings of the worker to whom the injury occurred,

the employer is liable, unless relieved by the Board, for the full amount of compensation and other expenditures made by the Board.

**(2)** The Board may collect the amount for which the employer is liable pursuant to subsection (1) in the same manner as the collection of an assessment. 1994-95, c. 10, s. 26.

#### **Election to claim compensation**

**27 (1)** Where a worker is entitled to compensation pursuant to

- (a) the laws of the jurisdiction where the accident occurred; and
- (b) this Part,

the worker shall decide to be compensated according to either the laws of the jurisdiction where the accident occurred, or this Part.

**(2)** Notice in writing of a decision made pursuant to subsection (1) shall be given to the Board within six months of the occurrence of the accident.

**(3)** Where, pursuant to subsection (1), a worker

- (a) decides to claim compensation in the jurisdiction where the accident occurred; or
- (b) fails to make an election,

the worker may not claim compensation pursuant to this Part. 1994-95, c. 10, s. 27.

#### **THIRD PARTY CLAIMS AND SUBROGATION**

#### **Compensation as exclusive right**

**28 (1)** The rights provided by this Part are in lieu of all rights and rights of action to which a worker, a worker's dependant or a worker's employer are or may be entitled against

- (a) the worker's employer or that employer's servants or agents; and
- (b) any other employer subject to this Part, or any of that employer's servants or agents,

as a result of any personal injury by accident

(c) in respect of which compensation is payable pursuant to this Part; or

(d) arising out of and in the course of the worker's employment in an industry to which this Part applies.

**(2)** Clause (1)(b) does not apply where the injury results from the use or operation of a motor vehicle registered or required to be registered pursuant to the *Motor Vehicle Act*. 1994-95, c. 10, s. 28.

#### **Determination whether right of action is barred**

**29 (1)** Any party to an action may apply to the Chief Appeal Commissioner of the Appeals Tribunal for determination of whether the right of action is barred by this Part.

**(2)** An application made pursuant to subsection (1) shall be determined by the Appeals Tribunal constituted according to Section 238.

**(3)** The Appeals Tribunal has exclusive jurisdiction to make a determination of whether the right of action is removed by this Part.

**(4)** The decision of the Appeals Tribunal pursuant to this Section is final and conclusive and not open to appeal, challenge or review in any court, and if the Appeals Tribunal determines that the right of action is barred by this Part, the action is forever stayed. 1994-95, c. 10, s. 29.

#### **Claims against other persons**

**30 (1)** Where a worker suffers a personal injury by accident arising out of and in the course of employment in such circumstances as to entitle the worker or the worker's dependants to an action against some person other than a person against whom all rights of action are barred pursuant to Section 28, the worker or the worker's dependants, if entitled to compensation under this Part, may claim such compensation, or may bring such action, provided a written notice of election to bring such action is made to the Board.

**(2)** A written election shall be received by the Board within one hundred and eighty days of the date of the accident and, notwithstanding any enactment, the time for filing a written election shall not be extended.

**(3)** Where any compensation is paid prior to the date of election, the Board is subrogated to the position of the worker or the worker's dependants to the extent of such payment and shall be paid in priority from any amount the worker or dependant receives from any action pursuant to subsection (1).

**(4)** Where no written election is received by the Board within one hundred and eighty days, the Board is

(a) subrogated to the position of the worker or dependant for the whole or any outstanding part of the cause of action; and

(b) vested with all the rights of the worker or dependant to the cause of action.

**(5)** Where the Board is subrogated to a cause of action pursuant to subsection (4), an action may be taken against any person

(a) by the Board in the name of the worker, the worker's personal representative or a dependant of the worker, without the consent of the person in whose name the action was taken;

(b) by the Board in its own name; or

(c) where the Board does not exercise its rights pursuant to clause (a) or (b), by the worker, the worker's personal representative or a dependant of the worker, with the prior consent of the Board.

**(6)** Where a cause of action is pursued by a worker under subsection (1) or clause (5)(c) and less is recovered and collected than the amount of the compensation to which the worker or the worker's dependants would be entitled under this Part, the worker or the worker's dependants are entitled to compensation under this Part to the extent of the amount of such difference, provided that the prior written approval of the Board to such settlement has been given.

**(7)** When the Board is subrogated to a cause of action the Board has full discretion to conduct the litigation as the Board deems appropriate.

**(8)** Where a worker has received compensation prior to the election referred to in subsection (1), any settlement of any right of action by the worker or the worker's dependants shall be of no effect unless made with the prior written approval of the Board.

**(9)** The Board may, at any time and on any terms, agree to a settlement in respect of a cause of action it is subrogated to pursuant to subsection (4).

**(10)** The cost of any medical aid rendered to a worker may be recovered in the action by the Board taking the cause of action referred to in subsection (4).

**(11)** A worker shall co-operate with the Board in respect of a cause of action referred to in subsection (4) and if, in the opinion of the Board, the worker has failed to co-operate with the Board, the Board may suspend, reduce or terminate compensation being paid to the worker pursuant to this Part.

**(12)** Where the Board is subrogated to a cause of action pursuant to this Section, any settlement of the cause of action by any party or parties, other than the Board, is of no force and effect unless made with the written approval of the Board. 1999, c. 1, s. 3.

#### **Application of money recovered**

**31 (1)** Money recovered in an action or settlement of the action pursuant to Section 30 shall be paid to the Board.

**(2)** Where any amount received by the Board is in excess of the cost, as determined by the Board, of the compensation payable to the worker by the Board and other expenditures payable by the Board, the Board shall pay the excess amount to the worker, the worker's personal representative or the worker's dependant.

**(3)** Where the Board accepts an amount in full settlement of the cause of action, the Board has the authority to release the person paying the money, or the person on whose behalf the money is paid, from all liability in the cause of action including any rights of the worker or the worker's dependants. 1999, c. 1, s. 3.

*Note: Sections 30 and 31 were enacted by 1999, c. 1, subsection 3(1). Subsection (2) provides that Sections 30 and 31 apply to causes of action arising on or after October 1, 1998, and, notwithstanding subsection (1), for causes of action arising on or after October 1, 1998, and before the coming into force of subsection (1), the one hundred and eighty day period referred to in subsection (1) commences on the coming into force of subsection (1).*

#### **Right of action in another jurisdiction**

**32** Where a worker or worker's dependant entitled to compensation pursuant to this Part has a right of action in a jurisdiction other than the Province in connection with the loss of earnings or permanent impairment for which compensation is payable,

(a) the Board may request the worker or worker's dependant to take an action in that other jurisdiction; and

(b) the worker or worker's dependant shall assign the right to damages recoverable, and all damages that the worker or worker's dependant recovers, under that action to the Board,

and the Board may withhold payment of compensation to the worker or worker's dependant until the worker or worker's dependant takes the action or makes the assignment. 1994-95, c. 10, s. 32.

#### **Bar to third party proceedings**

**33 (1)** No party in any action may bring any action or proceeding for contribution or indemnity against any employer or worker against whom the plaintiff in the action is barred from taking an action pursuant to this Part.

**(2)** Where the defendant in the action is barred from taking third party proceedings against an employer or worker pursuant to subsection (1) and the employer or worker

contributed to the damage or loss of the plaintiff in the action, the court shall hold the defendant liable only for that portion of the damage or loss caused by the defendant's own fault or negligence. 1994-95, c. 10, s. 33.

#### PERMANENT-IMPAIRMENT BENEFIT

##### **Permanent-impairment benefit**

**34 (1)** Where a permanent impairment results from an injury, the Board shall pay the worker a permanent-impairment benefit.

**(2)** The existence and degree of a worker's permanent impairment shall be

(a) determined by the Board; and

(b) expressed as a percentage of total impairment.

**(3)** The Board

(a) shall establish a permanent-impairment rating schedule to be applied in calculating the award for a permanent impairment resulting from an injury; and

(b) may prescribe the rating schedule referred to in clause (a) as a regulation.

**(4)** Subject to subsection (5), the Board shall determine the amount of a worker's permanent-impairment benefit by multiplying

(a) thirty per cent of eighty-five per cent of the worker's net average earnings calculated in accordance with Sections 37 to 46; by

(b) the percentage of permanent impairment suffered by the worker, calculated in accordance with the rating schedule established pursuant to subsection (3).

**(5)** Subject to Section 71, the permanent-impairment benefit established by subsection (4) is payable for the lifetime of the worker.

**(6)** This Section does not apply in respect of a worker who dies as a result of an injury before a determination of the degree of permanent impairment is made. 1994-95, c. 10, s. 34.

##### **Compensation for coal miners**

**35** Any coal miner who

(a) has worked at the face of a mine or in similar conditions twenty years or more; and

(b) suffers from a permanent impairment that is a loss of lung function,

shall be compensated according to the permanent impairment as calculated pursuant to Section 34. 1994-95, c. 10, s. 35.

##### **Presumption respecting firefighter**

**35A (1)** In this Section, "firefighter" means an employee, including officers and technicians, employed by a municipality and assigned exclusively to fire protection and fire prevention duties notwithstanding that those duties may include the performance of ambulance or rescue services, and includes a member of a volunteer fire department who performs those duties.

**(2)** Where a worker who is or has been a firefighter suffers an accident that is a cancer or other disease that is prescribed by the Governor in Council by regulation, the accident is presumed to be an occupational disease, the dominant cause of which is the employment as a firefighter, unless the contrary is proven.

**(3)** The presumption in subsection (2) applies only to a worker who has been a member of a fire protection service of a municipality or a volunteer fire department for a minimum period prescribed by the Governor in Council by regulation and who has been regularly exposed to the hazards of a fire scene, other than a forest-fire scene, throughout that period.

**(4)** The presumption in subsection (2) applies to accidents that happen on or after January 1, 1993.

**(5)** The Governor in Council may make regulations

(a) prescribing diseases for the purpose of subsection (2);

(b) prescribing periods of employment or volunteer work for the purpose of subsection (3),

and may prescribe different periods for different diseases prescribed for the purpose of subsection (2).

**(6)** The exercise by the Governor in Council of the authority contained in subsection (5) is regulations within the meaning of the *Regulations Act*.

**(7)** Subsection 83(2) does not apply with respect to a firefighter who learned before this Section came into force that the firefighter suffered from a disease prescribed pursuant to this Section.

**(8)** For greater certainty, compensation payable for the period before this Section came into force shall be calculated in accordance with this Part and not in accordance with the former Act. 2003, c. 5, s. 2.

##### **Presumption where 100% impairment**

**36** Where

(a) any worker has a permanent impairment rated at one hundred per cent on the permanent-impairment rating schedule established pursuant to Section 34; and

(b) the worker dies,

the worker's death is presumed to be the result of the injury, unless there is evidence sufficient to rebut the presumption. 1994-95, c. 10, s. 36.

#### EARNINGS-REPLACEMENT BENEFITS



### Earnings-replacement benefit

**37 (1)** Where a loss of earnings results from an injury, an earnings-replacement benefit is payable to the worker in accordance with this Section.

**(2)** The amount of any earnings-replacement benefit payable to a worker is the difference between

(a) an amount equal to seventy-five per cent of the worker's loss of earnings; and

(b) the amount of any permanent-impairment benefit payable to the worker pursuant to Section 34.

**(3)** The amount of any earnings-replacement benefit payable to a worker after the worker has received

compensation pursuant to subsection (2) for a total of twenty-six weeks is the difference between

(a) an amount equal to eighty-five per cent of the worker's loss of earnings; and

(b) the amount of any permanent-impairment benefit payable to the worker pursuant to Section 34.

**(4)** Notwithstanding subsection (1), the Board shall not pay compensation pursuant to subsection (1) until the worker who is injured is unable to continue to work with the employer for whom the worker was working when the injury occurred for a period of time during which the worker would have received remuneration from that employer equivalent to two fifths of the worker's net average weekly compensation.

**(5)** The Board shall not pay compensation to a worker in respect of the period of time referred to in subsection (4) except as provided for in subsection (6).

**(6)** Where a loss of earnings results from an injury for more than five weeks, the Board shall pay to the worker the amount deducted pursuant to subsection (4).

**(7)** *repealed 1999, c. 1, s. 4.*

**(8)** *repealed 1999, c. 1, s. 4.*

**(9)** Subject to subsection (10) and Sections 72 and 73, earnings-replacement benefits are payable until the earlier of

(a) the date the Board determines that the loss of earnings has ended or no longer results from the injury; and

(b) the date the worker attains the age of sixty-five years.

**(10)** Where a worker is sixty-three years of age or older at the commencement of the worker's loss of earnings, the Board may pay the earnings-replacement benefits for a period of not more than twenty-four months following the date the loss of earnings commences.

**(11)** The loss of earnings referred to in subsection (1) shall be calculated in accordance with Section 38.

**(12)** Earnings-replacement benefits are payable periodically, in the manner and form and at times determined by the Board. 1994-95, c. 10, s. 37; 1999, c. 1, s. 4.

### LOSS OF EARNINGS

#### Calculation of loss of earnings

**38** For the purpose of this Part, the loss of earnings of the worker is the difference between

(a) the worker's net average weekly earnings before the loss of earnings commences; and

(b) the net average weekly amount that the Board determines the worker

(i) is earning,

(ii) is capable of earning in suitable and reasonably available employment,

(iii) is receiving or is entitled to receive as a periodic benefit pursuant to the Canada Pension Plan or the Quebec Pension Plan, in which case, the Board shall include fifty per cent of the benefit,

after the loss of earnings commences. 1994-95, c. 10, s. 38.

#### Calculation of net average earnings

**39 (1)** For the purpose of this Part, the net average earnings of a worker are the worker's gross average earnings calculated in accordance with Section 42, less the probable deductions for

(a) income tax payable by the worker;

(b) Canada Pension Plan premiums or Quebec Pension Plan premiums payable by the worker;

(c) unemployment-insurance premiums payable by the worker; and

(d) any other type of deduction the Board may prescribe by regulation.

**(2)** The income tax payable pursuant to clause (1)(a) may be calculated by using

(a) the worker's income from employment and, where unemployment-insurance benefits have been included in average earnings, the worker's income from unemployment-insurance benefits as income; and

(b) the worker's basic personal tax credits or exemptions and tax credits or exemptions for a person who is a dependant of the worker pursuant to the *Income Tax Act* (Canada) as deductions.

**(3)** The Board shall, as of January 1st in each year, establish a schedule or procedure for determining the probable deductions required by subsection (1).

**(4)** In establishing a schedule and procedure pursuant to subsection (3) and in calculating probable deductions pursuant to subsection (1), it is not necessary that the Board consider a worker's actual circumstances or deductions. 1994-95, c. 10, s. 39.

#### **Relevant times**

**40 (1)** Subject to subsections (2) and (3), a workers net average earnings and maximum earnings are the workers net average earnings and maximum earnings as of the date of injury.

**(2)** Where a workers loss of earnings resulting from an injury has ended, and the worker subsequently suffers a loss of earnings

(a) resulting from the same injury; and

(b) the subsequent loss of earnings occurs more than twelve months after the initial loss of earnings has ended,

the workers net average earnings and maximum earnings are

(c) the workers net average earnings and maximum earnings before the initial loss of earnings; or

(d) the workers net average earnings and maximum earnings at the time of the subsequent loss of earnings,

whichever appears to the Board to best represent the actual loss of earnings suffered by the worker by reason of the injury.

**(3)** Where a workers loss of earnings resulting from an injury commences more than twelve months after the injury, the workers net average earnings are

(a) the workers net average earnings and maximum earnings before the injury; or

(b) the workers net average earnings and maximum earnings before the loss of earnings commences,

whichever appears to the Board to best represent the actual loss of earnings suffered by the worker by reason of the injury. 1994-95, c. 10, s. 40.

#### **AVERAGE EARNINGS**

#### **Maximum gross annual earnings**

**41** The maximum amount for a workers gross annual earnings for the purpose of this Part is

(a) where the injury occurs before the coming into force of this Part, the maximum amount established from time to time pursuant to a predecessor Act;

(b) thirty-eight thousand dollars on the coming into force of this Part; and

(c) on and after January 1, 1996, a percentage, determined by the Governor in Council, of the average industrial wage for the Province. 1994-95, c. 10, s. 41.

#### **Gross average earnings**

**42 (1)** Subject to this Section, a worker's gross average earnings are

(a) the worker's regular salary or wages; and

(b) any other types or amounts of income as the Board may prescribe by regulation,

calculated over a period up to three years immediately preceding the commencement of the loss of earnings, expressed as a weekly amount.

**(2)** In choosing the period for the purpose of subsection (1), the Board may

(a) choose any period that, in the opinion of the Board, allows it to best represent the actual loss of earnings suffered by the worker as a result of the injury; and

(b) vary the period from time to time.

**(3)** In prescribing types and amounts of income pursuant to subsection (1) the Board

(a) shall not prescribe as income pregnancy or parental benefits received pursuant to the *Unemployment Insurance Act* (Canada); and

(b) may make distinctions between temporary and extended earnings-replacement benefits. 1994-95, c. 10, s. 42.

#### **Earnings where impracticable to compute**

**43** Where it is impracticable to compute the earnings of a worker as a consequence of

(a) the length of time the worker has been employed; or

(b) the casual nature of the worker's employment,

the Board may determine the worker's earnings in the way that appears to the Board to best represent the actual loss of earnings suffered by the worker by reason of the injury. 1994-95, c. 10, s. 43.

#### **Earnings where concurrent contracts of employment**

**44** Where a worker enters into concurrent contracts of service with two or more employers, the worker's average earnings shall be computed on the basis of what the worker was earning from all the worker's employers. 1994-95, c. 10, s. 44.

#### **Earnings where worker is a learner**

**45 (1)** Where the Board is satisfied that a worker's average earnings before the loss of earnings commences do not fairly represent the worker's actual loss of earnings because the worker was a learner, the Board may deem the worker's average earnings to be an amount that it determines better reflects the probable earnings of the worker had the worker, in the normal course, become qualified in the worker's trade or occupation.

(2) The Board may, by regulation, prescribe a maximum amount of average earnings that may be deemed for the purpose of this Section. 1994-95, c. 10, s. 45.

#### **Earnings where worker is young**

**46 (1)** Where the Board is satisfied that a worker's average earnings before the loss of earnings commences do not fairly represent the worker's actual loss of earnings because of the worker's age, the Board may deem the worker's average earnings to be an amount that it determines better reflects the probable earnings of the worker.

(2) Subsection (1) does not apply to a worker who had attained the age of thirty years on or before the date of the injury.

(3) The Board may, by regulation, prescribe a maximum amount of average earnings that may be deemed for the purpose of this Section. 1994-95, c. 10, s. 46.

#### **Allocation of cost of additional earnings**

**47** The Board may allocate to any fund or funds any additional cost or portion of the cost incurred pursuant to Section 44, 45 or 46 as a result of

(a) including earnings from a worker's employment in an industry to which this Part does not apply;

(b) including earnings from employers other than the employer at which the injury occurs; and

(c) adjusting earnings pursuant to Sections 45 and 46. 1994-95, c. 10, s. 47.

#### **Maximum compensation**

**48 (1)** Notwithstanding any other provision of this Part, the total amount of compensation payable to a worker pursuant to this Part and any predecessor Act shall not exceed

(a) seventy-five per cent of the net maximum earnings for the most recent year in which the worker suffered an injury resulting in loss of earnings; and

(b) eighty-five per cent of the net maximum earnings for the most recent year in which the worker suffered an injury resulting in loss of earnings, after the worker has received compensation pursuant to clause (a) for a total of twenty-six weeks.

(2) To give effect to subsection (1), the Board may

(a) consider the length of time a worker is in receipt of any compensation during any year and the resulting effect on probable income tax, Canada Pension Plan premiums, Quebec Pension Plan premiums, or unemployment-insurance premiums payable by the worker, and recalculate the compensation based on those considerations;

(b) deem any entitlement to a refund or reduction of the probable income tax, Canada Pension Plan premiums, Quebec Pension Plan premiums, or unemployment-insurance premiums payable by the worker to be earnings that the worker is capable of earning after the injury;

(c) deduct from compensation to which the worker may become entitled to prevent any payment of compensation in excess of the amounts set out in subsection (1);

(d) prescribe, by regulation, criteria to reduce the deduction referred to in clause (c);

(e) consider any compensation paid in excess of the compensation set out in subsection (1) to be overpayments of compensation.

(3) Subsection (1) does not apply to any worker who was, on the date this Part comes into force, receiving compensation pursuant to a predecessor Act the total amount of which exceeded the amounts set out in subsection (1), until there is for any reason a decrease in the amount of compensation payable to the worker so that the compensation payable to the worker is equal to or less than the amount set out in subsection (1). 1994-95, c. 10, s. 48.

**49 repealed 1999, c. 1, s. 5.**

### ANNUITY

#### **Annuity for worker**

**50 (1)** When a worker becomes entitled to an extended earnings-replacement benefit, the Board shall reserve an amount equal to five per cent of the extended earnings-replacement benefit and any permanent-impairment benefit payable to the worker to provide an annuity for the worker.

(2) Where a worker would have been entitled to an extended earnings-replacement benefit but for subsection 37(3), the Board shall reserve an amount equal to five per cent of the extended earnings-replacement benefit that would have been payable to provide an annuity for the worker.

(3) The amount reserved pursuant to subsections (1) and (2) shall be paid and administered in accordance with Sections 51 to 58. 1994-95, c. 10, s. 50.

### GENERAL ANNUITY PROVISIONS

#### **Application of annuity provisions**

**51** Sections 52 to 58 apply to any amount reserved as an annuity pursuant to Section 50 or 66. 1994-95, c. 10, s. 51.

#### **Payment and term of annuity**

**52 (1)** Any amount reserved as an annuity, together with accrued interest, is payable

(a) in periodic instalments beginning at

(i) the date the worker attains the age of sixty-five years, or

(ii) in the case of a person receiving a survivor pension, the date the survivor pension terminates pursuant to subsection 60(3); or

(b) at any time and in the manner the Board determines, where the amount reserved by the Board as an annuity is less than an amount prescribed by the Board by regulation.

(2) The term of the annuity shall be determined by the Board. 1994-95, c. 10, s. 52.

#### **Annuity not deducted from other compensation**

**53** The Board shall not deduct any amount payable as an annuity from any other compensation paid by the Board. 1994-95, c. 10, s. 53.

#### **Payment into fund or plan**

**54 (1)** Any amount reserved as an annuity may be

(a) paid into a fund established by the Board; or

(b) if requested by the recipient, paid into a registered retirement plan.

**(2)** Any fund established pursuant to clause (1)(a) may, with the approval of the Board of Directors, be administered by a recognized financial institution. 1994-95, c. 10, s. 54.

#### **Annuity is in addition to other benefits**

**55** The annuity created pursuant to Section 50 is in addition to and not in lieu of any benefit paid pursuant to the Canada Pension Plan, the Quebec Pension Plan or the *Old Age Security Act* (Canada). 1994-95, c. 10, s. 55.

#### **Payment where worker dies before annuity payable**

**56 (1)** Where a person for whom the Board reserves an annuity dies before the date fixed in Section 52, the Board may pay

(a) where the person is survived by a spouse, to the spouse; or

(b) where the person is survived by a dependent child or children but not a spouse, to the dependent child or children,

a lump sum equivalent to the value of the accumulated capital and interest.

**(2)** Where the lump sum referred to in subsection (1) is greater than an amount that may be determined by the Board by regulation, the Board may reserve the lump sum as an annuity to be administered by the Board in accordance with Section 54. 1994-95, c. 10, s. 56.

#### **Payment where worker dies after annuity payable**

**57** Where the recipient of an annuity dies before the term of the annuity expires, the balance of the annuity shall be paid

(a) to any person who has been designated, in a manner satisfactory to the Board, by the recipient;

(b) where no designation is made pursuant to clause (a) and the recipient is

(i) survived by a spouse, to the spouse, or

(ii) survived by a dependent child or children but not a spouse, to the dependent child or children. 1994-95, c. 10, s. 57.

#### **Payment of annuity into Accident Fund**

**58 (1)** Where

(a) there is no surviving spouse or dependent child for the purpose of Section 56 or 57; or

(b) the recipient has not made a designation for the purpose of Section 57,

the accumulated capital and interest shall be paid into the Accident Fund.

**(2)** Where money payable under an annuity is unclaimed more than six years from the day the Board determines the first unclaimed payment is due, the accumulated capital and interest shall be paid into the Accident Fund.

**(3)** Where the Board has paid an annuity into the Accident Fund pursuant to subsections (1) or (2), the Board is not liable to make any payment under the annuity. 1994-95, c. 10, s. 58.

### **SURVIVOR BENEFITS**

#### **Interpretation of Sections 60 to 68**

**59** For the purpose of Sections 60 to 68,

(a) "death benefit" means a sum not less than fifteen thousand dollars prescribed by the Board by regulation;

(b) "dependent-child benefit" means an amount, not less than one hundred and ninety-six dollars, prescribed by the Board by regulation;

(c) "survivor pension" means an amount equal to eighty-five per cent of the workers net average earnings before the accident. 1994-95, c. 10, s. 59.

#### **Survivor benefits**

**60 (1)** Where a worker dies as the result of an injury, the amount of compensation payable is

(a) the necessary expenses of the burial of the worker not exceeding four thousand dollars, or a larger amount prescribed by the Board by regulation;

(b) the expenses, or a portion of the expenses the Board considers reasonable, for transportation of the body of the worker from the place of death to the worker's usual place of residence, not exceeding an amount prescribed by the Board by regulation;

(c) where the worker has a dependent spouse,

(i) a death benefit, and

(ii) a survivor pension; and

(d) where the worker has dependent children, each dependent child under the age of eighteen years shall receive the dependent-child benefit on a monthly basis.

**(2)** The amount paid pursuant to subclause (1)(c)(ii) shall not exceed the amount that would have been payable to the worker as a combined extended earnings-replacement benefit and permanent-impairment benefit for permanent total loss of earnings.

**(3)** Subject to subsection (4), a survivor pension payable pursuant to subsection (1) is payable until the worker would have attained the age of sixty-five years or until the surviving spouse attains the age of sixty-five years, whichever is later.

**(3A)** Notwithstanding subsection (3), a survivor pension payable pursuant to subsection (1) is payable for life where

(a) the worker was injured before February 1, 1996; and

(b) the worker died as a result of the injury on or after February 1, 1996.

**(3B)** Where, pursuant to this Section, a survivor pension is payable for life, Section 66 does not apply.

**(4)** Where no compensation is payable pursuant to subsection (1), the Board may, subject to subsection (5),

(a) recognize persons other than a worker's spouse or children as dependants; and

(b) pay compensation proportionate to the pecuniary loss or loss of valuable services suffered by any person recognized pursuant to clause (a) as a result of the worker's death.

**(5)** The compensation payable pursuant to subsection (4) shall not exceed the amount that would have been payable to the worker as a combined extended earnings-replacement benefit and permanent-impairment benefit for permanent total loss of earnings, to all of the worker's dependants.

**(6)** The Board shall pay compensation pursuant to subsection (4) until the earlier of

(a) the date when, in the opinion of the Board, the worker's support for the dependants might reasonably have been expected to cease; and

(b) five years after the date of the first payment made pursuant to subsection (4).

**(7)** Where a worker dies and at the time of the worker's death is in receipt of compensation payable to the worker pursuant to this Act, the dependent spouse or dependent children of the worker shall receive by way of compensation an amount equal to three times the monthly payment that would have been payable to the worker if the worker were alive.

**(8)** Notwithstanding subsection (7), where a worker dies and at the time of the worker's death is in receipt of compensation payable to the worker pursuant to this Act for a permanent impairment rated at one hundred per cent on the permanent-impairment rating schedule established pursuant to Section 34, the dependent spouse or dependent children of the worker shall receive by way of compensation in addition to the amount provided in subsection (7) a further amount equal to nine times the monthly payment that would have been payable to the worker if the worker were alive. 1994-95, c. 10, s. 60; 1999, c. 1, s. 6.

#### **Certain dependant spouses**

**60A (1)** In this Section, "former Act" means Chapter 508 of the Revised Statutes, 1989, as it read from time to time before the coming into force of this Section.

**(2)** This Section applies to a dependent spouse whose survivor benefits under the former Act were, before October 1, 1992, discontinued on remarriage pursuant to Section 61 of the former Act.

**(3)** A dependent spouse may apply to the Board to have survivor benefits reinstated pursuant to this Section and the Board may reinstate the benefits.

**(4)** An application pursuant to subsection (3) shall be made in writing.

**(5)** No application may be made pursuant to subsection (3) by the estate of a dependent spouse.

**(6)** No benefits shall be reinstated pursuant to this Section for a period of time

(a) before January 1, 1999, for a dependent spouse whose survivor benefits under the former Act were discontinued before April 17, 1985; or

(b) before the later of April 17, 1985, and the date the survivor benefits were discontinued under the former Act for a dependent spouse whose survivor benefits under the former Act were discontinued on or after April 17, 1985, and before October 1, 1992.

**(7)** The Board, with the approval of the Governor in Council, may make regulations

(a) respecting the calculation of benefits pursuant to this Section;

(b) respecting the manner of reinstating benefits pursuant to this Section;

(c) deemed necessary or advisable to carry out effectively the intent and purpose of this Section.

**(8)** The exercise by the Board of the authority contained in subsection (7) is regulations within the meaning of the *Regulations Act*. 1999, c. 1, s. 7; 2002, c. 5, s. 56.

#### **Payment where no spouse**

**61 (1)** Where

(a) a worker dies leaving no spouse or where the spouse of the worker dies; and

(b) there is a suitable person standing in the place of the parent and maintaining the worker's household,

the Board may, subject to subsection (2), pay compensation, in an amount and in the manner determined by the Board, to the person.

**(2)** The total of the dependent-child benefits paid to the worker's children and the compensation paid pursuant to subsection (1) shall not exceed the amount that would have been payable to the worker as a combined extended earnings-replacement benefit and permanent-impairment benefit for permanent total loss of earnings. 1994-

95, c. 10, s. 61.

#### **Additional payment to dependent child**

**62 (1)** Where a dependant

- (a) is a child under the age of eighteen years; and
- (b) both of the dependant's parents are deceased,

the Board may, in addition to any amount the dependant may be entitled to pursuant to this Part, pay the dependant any further amount the Board may determine.

**(2)** The total of all amounts paid to dependent children shall not exceed the amount that would have been payable to the worker as a combined extended earnings-replacement benefit and permanent-impairment benefit for permanent total loss of earnings. 1994-95, c. 10, s. 62.

#### **Limitation on survivor pension**

**63 (1)** The Board shall pay only one survivor pension in respect of a workers death.

**(2)** Where more than one person qualifies for a survivor pension as a spouse, the Board may apportion the survivor pension. 1994-95, c. 10, s. 63.

#### **Duration of dependent child benefit**

**64 (1)** Subject to subsections (2) and (3), any payment of compensation to a dependant child shall cease when the dependent child

- (a) attains the age of eighteen years; or
- (b) dies,

whichever is earlier.

**(2)** Where a dependent child is in full-time attendance

- (a) at a secondary or post secondary educational facility approved by the Board; or
- (b) in any other program of education approved by the Board,

the Board may make or continue to make payments of compensation to the dependant child up to the end of the school year in which the child attains the age of twenty-five years.

**(3)** Subject to subsection (4), where a dependant child is physically or mentally incapable of earning, the Board may pay compensation until the dependent child

- (a) is, in the opinion of the Board, physically or mentally capable of earning; or
- (b) dies,

whichever is earlier.

**(4)** The Board shall pay compensation pursuant to subsections (2) and (3) only as long as, in the opinion of the Board, the worker might reasonably have been expected to continue to support the child. 1994-95, c. 10, s. 64.

#### **Apportionment of compensation among dependants**

**65** Where the Board

- (a) pays compensation to more than one of a worker's dependants; and
- (b) ceases to pay compensation to any one of the dependants,

the remaining dependant or dependants are entitled to receive the amount of compensation they would have received had they been the only dependant or dependants entitled to compensation at the time of the death of the worker. 1994-95, c. 10, s. 65.

#### **Annuity for surviving spouse**

**66 (1)** Where the Board is paying a survivor pension, the Board shall reserve an amount equal to five per cent of the survivor pension to provide an annuity for the surviving spouse.

**(2)** The amount reserved pursuant to subsection (1) shall be paid and administered in accordance with Sections 51 to 58. 1994-95, c. 10, s. 66.

#### **Limit on number of benefits**

**67** Where any person

- (a) is entitled to be paid a survivor pension or a dependent-child benefit as a result of the death of a worker; and
- (b) subsequently becomes entitled to be paid a survivor pension or a dependent-child benefit as a result of the death of another worker,

that person shall be paid only the greater of the survivor pensions or dependent-child benefits. 1994-95, c. 10, s. 67.

#### **Autopsies**

**68 (1)** The Board may request the permission of any dependant or dependants to have an autopsy performed and, where the dependant or dependants refuse to permit the autopsy, the Board may refuse any claim for compensation made pursuant to this Part.

**(2)** Notwithstanding subsection (1), any request made by the Board for an autopsy must be made prior to the time the body of the worker is buried.

(3) The expenses of the autopsy shall be paid out of the Accident Fund. 1994-95, c. 10, s. 68.

#### INDEXING

##### "consumer price index" defined

**69** In this Section and Section 70, "consumer price index" means the "all-items" Consumer Price Index for the Province as published monthly by Statistics Canada except where

(a) no figure is published for a particular month; or

(b) after the coming into force of this Section, Statistics Canada uses a new method to determine the consumer price index for the Province for a particular month and the new method results in a change of more than one percentage point when compared with the former method,

in which cases the Board shall determine an amount that, in its opinion, represents the annual rate of increase in consumer prices for the Province. 1994-95, c. 10, s. 69.

##### Calculation of indexing factor

**70 (1)** Commencing January 1, 2000, the Board shall, as of the first day of January in each year, determine an indexing factor based on one half of the percentage change in the consumer price index for the preceding year.

(2) As of the first day of January in each year, commencing January 1, 2000, the Board shall adjust the amount of compensation payable as

(a) permanent-impairment benefits;

(b) extended earnings-replacement benefits;

(c) survivor pensions;

(d) dependent-child benefits; and

(e) permanent pensions payable pursuant to a predecessor Act,

by applying the indexing factor determined pursuant to subsection (1) to the amount of compensation payable for the preceding year.

(3) Nothing in this Section entitles a person to claim additional compensation for

(a) any period before the effective date of an increase in compensation pursuant to subsection (2); or

(b) any award commuted or paid as a lump sum before the effective date of the increase.

(4) Where a worker has been receiving a temporary earnings-replacement benefit for more than twelve continuous months, the Board shall, as of the next following January 1st, adjust the compensation payable to the worker at the rate and according to the procedure provided in subsection (2). 1994-95, c. 10, s. 70.

#### REVIEW OF COMPENSATION

##### Review of permanent-impairment benefit

**71 (1)** The Board may review and adjust its determination of the amount of compensation payable as a permanent-impairment benefit where there is, in the Board's opinion, a change in the worker's condition that

(a) was not taken into account at the most recent determination of the worker's permanent-impairment rating by the Board; and

(b) *repealed 1999, c. 1, s. 8.*

(2) The Board shall not review or adjust a permanent-impairment benefit pursuant to subsection (1) until sixteen months have elapsed from the time of the Board's most recent determination of the worker's permanent-impairment rating. 1994-95, c. 10, s. 71; 1999, c. 1, s. 8.

##### Review of temporary earnings-replacement benefit

**72** The Board may review and adjust its determination of the amount of compensation payable to a worker as a temporary earnings-replacement benefit at any time. 1994-95, c. 10, s. 72.

##### Review of extended earnings-replacement benefit

**73 (1)** Subject to subsection (2), the Board may review and adjust its determination of the amount of compensation payable to a worker as an extended earnings-replacement benefit

(a) once, commencing in the thirty-sixth month after the date of the initial award of the benefit;

(b) once, commencing in the twenty-fourth month after a review pursuant to clause (a) is completed, if at the time the review pursuant to clause (a) is completed the Board is of the opinion that a further review is necessary;

(c) after a review of the permanent-impairment rating of the worker pursuant to subsection 71(1) results in an adjustment of the permanent-impairment rating of at least ten percentage points according to the schedule established pursuant to Section 34; and

(d) at any time, where the extended earnings-replacement benefit was based on a misrepresentation of fact.

(2) The Board shall not vary the amount of compensation payable as an extended earnings-replacement benefit unless the amount of the variation would be equal to at least ten per cent of the amount of compensation being paid at the time of review.

(2A) Notwithstanding subsections (1) and (2), where a worker's permanent-impairment benefit is adjusted pursuant to Section 71, the Board may adjust the amount of compensation payable as an extended earnings-replacement benefit pursuant to this Section so that the adjusted permanent-impairment and extended earnings-replacement benefits total eighty-five per cent of the loss of earnings calculated pursuant to Section 38.

**(3)** An award of an extended earnings-replacement benefit is final, subject to subsection (1), and shall not be further reviewed or adjusted. 1994-95, c. 10, s. 73; 1999, c. 1, s. 9.

#### **Effect of certain losses of earnings**

**73A (1)** Notwithstanding Section 73, where a worker who is receiving an extended earnings-replacement benefit suffers a loss of earnings that

(a) is temporary;

(b) results from the injury for which the extended earnings-replacement benefit is being paid; and

(c) was not taken into account in the most recent setting or review of the extended earnings-replacement benefit,

the Board may pay to the worker a temporary earnings-loss supplement.

**(2)** A temporary earnings-loss supplement shall be calculated in accordance with Sections 37 to 49. 1999, c. 1, s. 10.

#### **PAYMENT OF COMPENSATION**

##### **Payment of compensation**

**74 (1)** Payments of compensation shall be made in the manner and form as may appear to the Board to be most convenient.

**(2)** Subject to subsection (3), the Board may, where in the opinion of the Board it is to the advantage of the worker to do so,

(a) commute any compensation payable as periodic payments to a lump sum; and

(b) pay any compensation payable as a lump sum in periodic payments.

**(3)** Without restricting the generality of subsections (1) and (2), where

(a) a workers permanent-impairment rating according to the rating schedule prescribed pursuant to Section 34 does not exceed thirty per cent; or

(b) no extended earnings-replacement benefit is payable to a worker after a review pursuant to clause 73(1)(a),

the Board may pay to the worker a lump sum in lieu of the workers permanent-impairment benefit. 1994-95, c. 10, s. 74.

##### **Computation and payment of benefit**

**75 (1)** Subject to subsection (2), where a temporary earnings-replacement benefit is payable, it shall be computed in accordance with Section 37.

**(2)** Where a temporary earnings-replacement benefit is payable as the result of a recurrence of an injury, compensation shall be computed and be payable from the day on which the loss of earnings resulting from the recurrence commences unless one year has elapsed since the workers temporary earnings-replacement benefit for the injury ended, in which case, subsection (1) applies.

**(3)** Where an extended earnings-replacement benefit is payable, it shall be computed and be payable from the later of

(a) the date on which the Board determines the worker has a permanent impairment pursuant to Section 34; or

(b) the date on which the worker completes a rehabilitation program, where the worker is engaged in a rehabilitation program on or after the date on which the Board determines the worker has a permanent impairment pursuant to Section 34.

**(4)** Where compensation is payable for permanent impairment, it shall be computed and be payable from the date on which the Board determines the worker has a permanent impairment pursuant to Section 34. 1994-95, c. 10, s. 75.

##### **Effect of payment from employer**

**76 (1)** In fixing the amount of any compensation, the Board shall have regard to any payment, allowance or benefit which the worker receives from the worker's employer or any other person in anticipation of compensation being paid pursuant to this Part and may deduct that amount from any compensation payable.

**(2)** Any sum deducted from payments of compensation pursuant to subsection (1) may be paid to the employer or other person to reimburse the employer or other person for the payment, allowance or benefit. 1994-95, c. 10, s. 76.

##### **Exemptions from general law and set-offs**

**77 (1)** Except with the approval of the Board, no person shall assign, seize, charge, attach or otherwise encumber or transfer any compensation payable pursuant to this Part.

**(2)** No compensation payable pursuant to this Part shall pass by operation of law, except to a personal representative of the person receiving compensation.

**(3)** Without limiting the Board's remedies for recovery, any amount owed to the Board pursuant to this Part, including any amount owed as a penalty pursuant to this Part, may be set off by the Board against any compensation that is or may become payable to any person indebted to the Board. 1994-95, c. 10, s. 77.

##### **Power to suspend, withhold or re-direct**

**78 (1)** Where a worker entitled to compensation pursuant to this Part is confined to a psychiatric institution, prison or other institution, the Board may

(a) suspend;

(b) withhold; or

(c) re-direct to the worker's dependants or to a trustee for the dependants approved by the Board,

the whole or any part of any compensation payable to the worker.



**(2)** Where a worker entitled to compensation pursuant to this Part

(a) is a minor;

(b) is mentally incompetent; or

(c) is not, in the opinion of the Board, capable of administering the payments of compensation for the worker's own benefit,

the Board may re-direct to the persons dependants or to a trustee approved by the Board, the whole or any part of any compensation payable to the worker. 1994-95, c. 10, s. 78.

#### **Payment where worker dies**

**79** Where any worker

(a) is entitled to compensation pursuant to this Part; and

(b) dies before any compensation accrued payable at the time of the worker's death has been paid,

the Board may pay the compensation to any dependant of the worker or to any person who cared for the worker prior to the death of the worker. 1994-95, c. 10, s. 79.

#### **Withholding of compensation**

**80** The Board may withhold compensation payable to a parent with respect to the death of any child under the age of fourteen years where the employment of the child was in violation of any enactment. 1994-95, c. 10, s. 80.

#### **Board may deny or reduce compensation**

**81** The Board may deny a claim for compensation or reduce the amount of compensation payable to a worker where

(a) the worker previously made a claim for an injury of the same nature as the injury in respect of which the claim is made;

(b) the worker has a medical condition that, in the opinion of the Board, requires the worker to be removed temporarily or permanently from working at a particular type of employment because the medical condition could result in an injury of the same nature as the injury in respect of which the claim is made;

(c) the worker's claim is made after the Board requested the worker to discontinue working at the particular type of employment in order to avoid injuries of the same nature as the injury in respect of which the claim is made;

(d) the Board has offered to provide the worker with the rehabilitation assistance the Board considers necessary to enable the worker to become employable in another class of employment; and

(e) the worker continues or returns to employment at the particular type of employment without the approval of the Board. 1994-95, c. 10, s. 81.

### DUTIES OF WORKERS

#### **Filing of claim**

**82** Where a worker is eligible to apply for compensation pursuant to this Part, the worker shall forthwith file with the Board

(a) a claim for compensation;

(b) the attending physician's report; and

(c) any further evidence of the claim as may be required from time to time by the Board. 1994-95, c. 10, s. 82.

#### **Notice of accident or injury**

**83 (1)** In the case of an injury that is not an occupational disease, the Board shall not pay compensation except where

(a) the worker has given the employer notice of the accident as soon as practicable after the happening of the accident and before the worker has voluntarily left the employment where the worker was injured; and

(b) the worker's claim for compensation is made within twelve months of the happening of the accident.

**(2)** In the case of an occupational disease, the Board shall not pay compensation except where

(a) the worker has given the employer notice of the injury as soon as practicable after the worker learns that the worker suffers from an occupational disease; and

(b) the worker's claim for compensation is made within twelve months after the worker learns that the worker suffers from the occupational disease for which the worker is claiming compensation.

**(3)** The notice required pursuant to clause (1)(a) shall

(a) give the name and address of the worker; and

(b) state the cause of the accident and the place the accident happened.

**(4)** The notice required pursuant to clause (2)(a) shall contain the particulars set out in subsection (3) and is to be given to the employer who last employed the worker in the employment causing the disease.

**(5)** Failure to give notice pursuant to this Section bars the right to compensation unless, upon the application of the worker, the Board determines that

(a) any right of the worker's employer pursuant to this Part; and

(b) the subrogated interest of the Board,

has not been prejudiced by the failure, in which case the Board may extend the time for filing a claim.

**(6)** Subsection (5) does not apply where five years or more have elapsed from

(a) the happening of the accident; or

(b) the date when the worker learns that the worker suffers from an occupational disease,

as the case may be. 1994-95, c. 10, s. 83.

#### **Duty to mitigate and co-operate**

**84 (1)** Every worker shall

(a) take all reasonable steps to reduce or eliminate any permanent impairment and loss of earnings resulting from an injury;

(b) seek out and co-operate in any medical aid or treatment that, in the opinion of the Board, promotes the worker's recovery;

(c) take all reasonable steps to provide to the Board full and accurate information on any matter relevant to a claim for compensation; and

(d) notify the Board immediately of any change in circumstances that affects or may affect the worker's initial or continuing entitlement to compensation.

**(2)** The Board may suspend, reduce or terminate any compensation otherwise payable to a worker pursuant to this Part where the worker fails to comply with subsection (1). 1994-95, c. 10, s. 84.

#### **Medical examination**

**85 (1)** Subject to subsections (2) and (3), any worker who claims compensation pursuant to this Part shall submit to a medical examination if requested to do so by

(a) the worker's employer;

(b) the Board;

(c) the Appeals Tribunal; or

(d) the Medical Review Commission pursuant to Section 205.

**(2)** Where a worker objects to a request pursuant to clause (1)(a), the Board may determine if the request is reasonable.

**(3)** Where the Board determines, pursuant to subsection (2), that the request is not reasonable, the worker is not required to submit to the medical examination.

**(4)** The Board may suspend, reduce or terminate any compensation otherwise payable to a worker pursuant to this Part where the worker fails to comply with subsection (1). 1994-95, c. 10, s. 85.

### **DUTIES OF EMPLOYER**

#### **Notice to Board of accident and further reports**

**86 (1)** Where an accident occurs in such circumstances as may entitle a worker to compensation, the worker's employer shall notify the Board, within five business days of becoming aware of the occurrence of the accident, or any other period as the Governor in Council may prescribe by regulation, of

(a) the occurrence and nature of the accident;

(b) the time the accident occurred;

(c) the name and address of the worker;

(d) the place the accident happened;

(e) the name and address of the physician or surgeon, if any, by whom the worker was or is attended for any injury;

(f) the name and address of the hospital or other health care institution, if any, where the worker was or is attended for any injury; and

(g) any other information required by the Board.

**(2)** The employer shall make any further report regarding the injured worker required by the Board. 1994-95, c. 10, s. 86.

#### **No agreement to waive compensation**

**87 (1)** No worker shall agree to waive any compensation the worker may become entitled to pursuant to this Part.

**(2)** Any waiver made contrary to subsection (1) is void. 1994-95, c. 10, s. 87.

#### **Prohibitions on employer conduct**

**88** No employer shall, directly or indirectly,

(a) deduct from the earnings or employment benefits of any of the employer's workers any sum that the employer is or may become liable to pay into the Accident Fund;

(b) require or permit any of the employer's workers to contribute in any manner towards indemnifying the employer against any liability imposed on the employer pursuant to this Part;

(c) collect, receive or retain from any worker any contributions towards the expense of medical aid;

(d) deduct from any accumulated sick leave of an injured worker any amount respecting a period of time during which the worker is receiving an earnings-replacement benefit as a result of an injury;

(e) influence or attempt to influence a worker not to claim or receive compensation pursuant to this Part; or

(f) discipline or discriminate against a worker who reports an accident or makes a claim for or receives compensation pursuant to this Act. 1994-95, c. 10, s. 88.

#### RE-EMPLOYMENT

#### **Application and interpretation of Sections 90 to 101**

**89 (1)** Sections 90 to 101 do not apply to

(a) any employer that, in the opinion of the Board, regularly employs fewer than twenty workers or such other number of workers less than twenty as the Board may prescribe by regulation;

(b) any class or ~~sub-class~~[subclass] of employers or workers exempted by the Board by regulation by reason of the nature of the industry; or

(c) the construction industry, unless included by the Board by regulation.

**(2)** Sections 90 to 101 apply only to injuries occurring on or after the coming into force of Sections 90 to 101.

**(3)** For the purpose of Sections 90 to 101,

(a) "alternative employment" means employment that is comparable to the workers pre-injury work in nature, earnings, qualifications, opportunities and other aspects;

(b) "suitable work" means work which the worker has the necessary skills to perform, is medically able to perform and which does not pose a health or safety hazard to the worker or any co-workers. 1994-95, c. 10, s. 89.

#### **Duty to re-employ**

**90** The employer of a worker shall offer to re-employ a worker, in accordance with Sections 89 to 101, where the worker

(a) has been unable to work as a result of the injury; and

(b) had been employed by the employer, at the date of the injury, for at least twelve continuous months. 1994-95, c. 10, s. 90.

#### **Duty to accommodate**

**91 (1)** The employer shall, in order to fulfil the employers obligations pursuant to Sections 89 to 101, accommodate the work or the workplace to the needs of a worker who requires accommodation as a result of the injury to the extent that the accommodation does not cause the employer undue hardship.

**(2)** The Board may determine whether the employer has fulfilled the employers obligations pursuant to subsection (1). 1994-95, c. 10, s. 91.

#### **Duration of duty**

**92 (1)** Subject to subsection (2), an employer is obligated pursuant to Sections 89 to 101 until the earlier of the day that

(a) is two years after the date of the injury to the worker; or

(b) the worker attains the age of sixty-five years.

**(2)** Where an employer re-employs a worker pursuant to Sections 89 to 101 less than six months before the time described in clause (1)(a), the employer is obligated, pursuant to Sections 89 to 101, for six months after the date of re-employment. 1994-95, c. 10, s. 92.

#### **Employer not bound where offer refused**

**93** Where

(a) an employer has offered re-employment to a worker pursuant to Sections 89 to 101; and

(b) the worker has refused the employers offer,

the employer is no longer bound by the provisions of Sections 89 to 101 in relation to that worker. 1994-95, c. 10, s. 93.

#### **Presumption of non-compliance**

**94** An employer who

(a) re-employs a worker pursuant to Section 90; and

(b) terminates the workers employment within six months of the day the re-employment commenced,

is presumed, unless the contrary is shown, not to have fulfilled the employers obligations pursuant to Sections 89 to 101. 1994-95, c. 10, s. 94.

#### **Determination by Board**

**95 (1)** Any worker may apply to the Board for a determination as to whether the employer has fulfilled the employers obligations pursuant to Sections 89 to 101.

**(2)** Where

(a) any worker has made an application pursuant to subsection (1); or

(b) the Board considers it advisable,

the Board may determine whether an employer has fulfilled the employers obligations pursuant to Sections 89 to 101.

**(3)** The Board is not required to consider an application made pursuant to subsection (1) by a worker who has been re-employed and whose employment is terminated, if the application is made more than three months after the date of termination of employment.

**(4)** In making a determination pursuant to subsection (1), the Board may consider whether the employer has failed to reinstate the worker pursuant to Sections 89 to 101 for any reason that, in the opinion of the Board,

(a) was beyond the control of the employer and could not have been foreseen and avoided by the exercise of due diligence; or

(b) provides a reasonable justification for the failure. 1994-95, c. 10, s. 95.

#### **Determination by Board**

**96 (1)** The Board may determine, with respect to an injured worker who has not returned to work with the pre-injury employer, whether the worker is able to perform

(a) the essential duties of the workers pre-injury employment; or

(b) suitable work.

**(2)** The Board may, from time to time, make a re-determination pursuant to subsection (1).

**(3)** The Board shall notify the workers employer in writing when it has made a determination or a re-determination pursuant to subsection (1). 1994-95, c. 10, s. 96.

#### **Duty of employer on receiving notice**

**97 (1)** The employer, immediately upon receiving actual notice, or notice from the Board pursuant to Section 96, that a worker is able to perform the essential duties of the workers pre-injury employment, shall offer to reinstate the worker in the position the worker held on the date of the injury.

**(2)** Where the Board is satisfied that the employer is unable to reinstate the worker pursuant to subsection (1), the employer shall offer to provide the worker with alternative employment with the employer.

**(3)** Where the Board is satisfied that the employer is unable to reinstate the worker pursuant to subsection (1) or provide the worker with alternative employment with the employer pursuant to subsection (2), the employer shall offer to provide the worker with suitable work. 1994-95, c. 10, s. 97.

#### **Duty of employer on receiving notice**

**98 (1)** The employer, immediately upon receiving actual notice, or notice from the Board pursuant to Section 96, that a worker is able to perform suitable work, shall offer to the worker the first opportunity to accept suitable work that may become available with the employer.

**(2)** Where

(a) an employer has provided a worker with suitable work pursuant to subsection (1) or subsection 97(3);

(b) the worker is or becomes able to perform work that is more comparable to the workers pre-injury work; and

(c) work that is more comparable to the workers pre-injury work is available with the workers employer,

the employer shall offer to the worker the work that is more comparable to the workers pre-injury work. 1994-95, c. 10, s. 98.

#### **Reinstatement or penalty**

**99 (1)** Where the Board determines that an employer has not fulfilled the employers obligations pursuant to Sections 89 to 101, the Board may

(a) by order, require the employer to

(i) reinstate the worker in the workers pre-injury employment, where the worker is able to perform the essential duties of the workers pre-injury employment,

(ii) offer the worker alternative employment, pursuant to subsection 97(2),

(iii) offer the worker suitable work; or

(b) levy a penalty on the employer not exceeding the greater of

(i) the full amount of any compensation payable to the worker and any expenditures made by the Board in respect of the worker, during the year after the injury, and

(ii) the amount of the workers net average earnings for the year preceding the injury,

or both.

**(2)** The Board may collect any penalty levied pursuant to clause (1)(b) in the same manner as the collection of an assessment.

**(3)** A penalty levied pursuant to clause (1)(b) may, in the discretion of the Board, be reduced or withdrawn where the Board is satisfied that

(a) the employer has offered the worker suitable work;

(b) the employer has assisted the worker in finding suitable work with another employer; or

(c) the employer cannot, for any reason the Board considers satisfactory, re-employ the worker.

**(4)** The levying of a penalty pursuant to clause (1)(b) or any action taken by an employer to reduce the penalty pursuant to subsection (3) does not excuse the employer from the obligations on the employer contained in Sections 89 to 101. 1994-95, c. 10, s. 99.

#### **Effect of Sections 89 to 101**

**100 (1)** Where

- (a) Sections 89 to 101 conflict with a collective agreement that is binding on the employer; and
- (b) the obligations of the employer pursuant to this Section afford a worker better re-employment terms than the terms available to the worker pursuant to the collective agreement,

Sections 89 to 101 prevail over the collective agreement, with the exception of any seniority provisions.

**(2)** Sections 89 to 101 do not prevail over any established rule or practice respecting hiring and placement in the workers trade or occupation if, in the opinion of the Board, the rule or practice is reasonable.

**(3)** Where there is a conflict between the provisions of Sections 89 to 101 and Section 71 of the *Labour Standards Code*, Section 71 of the *Labour Standards Code* prevails. 1994-95, c. 10, s. 100.

**Failure to re-employ not ground for compensation**

**101** No worker is entitled to any amount as compensation to which the worker would not otherwise have been entitled as a result of the failure of the workers employer to fulfil the employers obligations pursuant to Sections 89 to 100. 1994-95, c. 10, s. 101.

MEDICAL AID

**Medical aid**

**102 (1)** The Board may provide for any worker entitled to compensation pursuant to this Part, or any worker who would have been entitled to compensation had the worker suffered a loss of earnings equivalent to the amount determined pursuant to subsection 37(4), any medical aid the Board considers necessary or expedient as a result of the injury.

**(2)** The medical aid provided pursuant to subsection (1) shall be

- (a) furnished or arranged for by the Board as it may direct or approve;
- (b) subject to the supervision and control of the Board; and
- (c) paid for out of the Accident Fund.

**(3)** The Board may include the costs of providing medical aid in any amount charged to the employer or to the employer's class or subclass. 1994-95, c. 10, s. 102.

**Personal care allowance**

**103** Where an injury renders a worker incapable of performing necessary personal care, the Board may

- (a) provide a monthly allowance to the worker for the worker's necessary personal care; or
- (b) provide the necessary personal care. 1994-95, c. 10, s. 103.

**Exclusive jurisdiction of Board**

**104** All questions as to the necessity, character and sufficiency of any medical aid furnished shall be determined by the Board. 1994-95, c. 10, s. 104.

**Schedule of fees or charges**

**105 (1)** The Board may set a schedule of fees or charges payable for medical aid.

**(2)** No person shall bring an action to recover any amount in excess of any fee or charge set by the Board pursuant to subsection (1). 1994-95, c. 10, s. 105.

**Time limit for submitting account**

**106** The Board shall not pay any account rendered against it for medical aid by a physician, surgeon, hospital or other health care professional or institution unless application for payment is made within six months after the medical aid has been rendered. 1994-95, c. 10, s. 106.

**Employer to furnish transportation**

**107 (1)** Every employer shall, at the employer's own expense, furnish to any worker in the employer's employment, who is in need of it as the result of a workplace injury, immediate and appropriate transportation to a hospital or a physician located within the area or within a reasonable distance of the place of injury.

**(2)** Where the employer fails to provide transportation pursuant to subsection (1), any person, or the Board, may obtain transportation for the injured worker.

**(3)** Any employer failing to comply with subsection (1) is, in addition to any other penalty that may be imposed by the Board, liable to pay for the transportation provided pursuant to subsection (2).

**(4)** The amount described in subsection (3) may be collected by the Board in the same manner as the collection of an assessment. 1994-95, c. 10, s. 107.

**Board to be charged for medical aid**

**108** No person shall make any charge against any person, other than the Board, for medical aid rendered to a worker pursuant to this Part. 1994-95, c. 10, s. 108.

**Board to be provided with information**

**109 (1)** Every physician, surgeon, hospital official or other health-care professional consulted regarding any worker claiming compensation pursuant to this Part shall

- (a) provide to the Board any information requested by the Board; and
- (b) provide all reasonable and necessary information or other assistance to any worker to enable the worker to establish a claim for compensation.

(2) Upon request of the Board, any person who acquires information pursuant to the *Health Services and Insurance Act* including, for greater certainty, Maritime Medical Care Incorporated, shall provide to the Board the information requested by the Board concerning any worker claiming compensation pursuant to this Part.

(3) The Board shall not make a request pursuant to subsection (2) unless the worker consents.

(4) The Board may establish a schedule of fees or charges payable for forms and reports. 1994-95, c. 10, s. 109.

#### **Hospital to report death of worker**

**110** Where the death of a worker occurs while the worker is confined to a hospital, the hospital authority shall report the death to the Board immediately after it has occurred. 1994-95, c. 10, s. 110.

#### **Board may pay for surgical procedure**

**111 (1)** The Board may provide a worker with any surgical procedure or medical treatment that will, in the Board's opinion, reduce the amount of compensation payable to the worker in the future.

(2) The expense of any surgical procedure or medical treatment provided pursuant to subsection (1) may be paid out of the Accident Fund. 1994-95, c. 10, s. 111.

### REHABILITATION

#### **Board may take measures to assist worker**

**112 (1)** The Board may make any expenditures and take any measures that, in the Board's opinion, will

(a) aid injured workers in returning to work; and

(b) reduce the effects of workers' injuries.

(2) The Board may pay any expenditures made pursuant to subsection (1) out of the Accident Fund. 1994-95, c. 10, s. 112.

#### **Duty of worker to co-operate**

**113 (1)** Every worker shall, where rehabilitation is offered by the Board, co-operate with the Board in the development and implementation of a rehabilitation program.

(2) The Board may suspend, reduce or terminate any compensation made to a worker pursuant to this Part where the worker fails to co-operate in the development or implementation of a rehabilitation program. 1994-95, c. 10, s. 113.

### ACCIDENT FUND AND ASSESSMENTS

#### **Accident Fund established**

**114** The compensation and other expenditures provided for in this Part shall be paid out of a fund to be called the Accident Fund. 1994-95, c. 10, s. 114.

#### **Annual assessment on employers**

**115 (1)** For the purpose of creating and maintaining an adequate Accident Fund, the Board shall in every year make an assessment on and collect from the employers, subject to this Part, sufficient funds to

(a) meet the cost of all claims payable during the year;

(b) subject to Section 116, meet the future cost of all claims for injuries occurring during the year;

(c) pay the expenses incurred in administering this Act; and

(d) pay all other amounts payable from the Accident Fund.

(2) In addition to the amounts levied and collected pursuant to subsection (1), the Board may assess and collect from employers in any industry, class or subclass or from any employer any amount required in order to create a reserve fund for the purpose of providing

(a) a contingent fund to aid any class, subclass or employer;

(b) a special fund to pay any increase in the capitalization or periodic compensation payments due in future years that could not otherwise be paid without placing an undue burden on the employers in any class or subclass;

(c) a special fund to retire any liability of the Board outstanding before the date this Part comes into force, including an amount that may be assessed and collected from all employers levied assessment rates under this Act, to retire any liability for which reimbursement from the Consolidated Fund of the Province was provided before April 1, 2002;

(d) a reserve fund for equalizing assessments between classes, subclasses or employers;

(e) a special fund to be used to meet any loss arising from disaster or any other circumstances that, in the opinion of the Board, would unduly burden any employer or the employers in any class or subclass.

(3) The Board may add any surplus credited to any class, subclass or employer to any fund established pursuant to subsection (2).

(4) The Governor in Council may, at any time prior to January 1, 2000, give binding directions to the Board on the manner in which it carries out its duties pursuant to this Section.

(5) A direction given pursuant to subsection (4) shall not apply to a period on or after January 1, 2000.

(6) Notwithstanding subsection (4), a direction given pursuant to that subsection is not binding on the Board if, in following the direction, the Board cannot comply with the requirements of Section 116.

(7) Notwithstanding anything contained in this Section, the amount paid out of the Accident Fund each year with respect to the costs of administering the *Occupational*

*Health and Safety Act* shall be that proportion of the total costs of administering that Act that the number of employees employed by employers assessed pursuant to this Act bears to the total number of employees in the Province covered by the *Occupational Health and Safety Act*. 1994-95, c. 10, s. 115; 1999, c. 1, s. 11; 2002, c. 5, s. 57.

#### **"annual operating deficit"**

**116 (1)** In this Section and Section 117, "annual operating deficit" means a negative difference after subtracting the capitalized costs of compensation and related expenses payable out of the Accident Fund from the revenue from assessments for the fiscal year.

**(2)** It is the duty of the Board at all times to maintain the Accident Fund so that with the reserves, exclusive of any special reserve, it will be sufficient to meet all the payments to be made out of the Accident Fund in respect of compensation as they become payable and so as not to unduly or unfairly burden the employers in any class in future years with payments that are to be made in those years in respect of injuries that have happened previously.

**(3)** Subject to subsection (4), it is not mandatory for the Board to provide and maintain a reserve fund at all times equal to the capitalized value of the payments of compensation that will become due in future years unless the Board is of the opinion that it is necessary to do so in order to comply with subsection (2).

**(4)** Where in any year there is an annual operating deficit in respect of that year, it is the duty of the Board to ensure that, by the end of the third year following the year in which the annual operating deficit occurred, the deficit is eliminated. 1994-95, c. 10, s. 116.

#### **Application of Section 116**

**117** Section 116 does not apply to any annual operating deficit or unfunded liability incurred prior to the date this Part comes into force. 1994-95, c. 10, s. 117.

#### **No rights for former employer**

**118** No employer who has ceased to be an employer for the purpose of this Part shall

(a) have any interest in or right to the Accident Fund; or

(b) bring any action or make any claim against the Board in respect of the Accident Fund. 1994-95, c. 10, s. 118.

#### **Separate accounts**

**119 (1)** Separate accounts shall be kept for

(a) all amounts collected and expended for every class, subclass or employer; and

(b) every fund established by the Board.

**(2)** Notwithstanding subsection (1), the Accident Fund is one indivisible fund for the purpose of paying compensation. 1994-95, c. 10, s. 119.

#### **Employers divided into classes**

**120 (1)** For purposes of assessment, the Board may

(a) divide employers into classes and subclasses;

(b) rearrange or make new classes or subclasses of employers;

(c) transfer any employer to any other class or subclass.

**(2)** Where an employer engages in more than one industry, the Board may assign the employer to more than one class or subclass.

**(3)** Where an employer's industry covers more than one class or subclass, the Board may assign the employer to

(a) the class or subclass of its primary business or undertaking, determined in any manner the Board considers appropriate; or

(b) more than one class or subclass.

**(4)** The Board may levy different assessment rates on employers in the same class or subclass. 1994-95, c. 10, s. 120.

#### **Amounts of assessment**

**121 (1)** The Board may establish rates of assessment among any class or subclass and where, in the opinion of the Board, the record, risk, cost or experience in any class or subclass over a period of time determined by the Board differs from the average in other classes or subclasses, the Board may

(a) confer or impose a special rate, differential or assessment to correspond with the relative hazard of the class or subclass; and

(b) adopt a system of rating to take into account the relative costs of claims of the class or subclass.

**(2)** Where, in the opinion of the Board, the record, risk, cost or experience of injuries among the workers of an employer is better than the average among the workers of other employers in the same class or subclass over a period of time determined by the Board, the Board may

(a) reduce the amount of any assessment made upon that employer; or

(b) refund a portion of any assessment paid by that employer.

**(3)** Where, in the opinion of the Board, the record, risk, cost or experience of injuries among the workers of an employer is worse than the average among the workers of other employers in the same class or subclass over a period of time determined by the Board, the Board may

(a) increase the amount of any assessment made upon that employer; or

(b) make a special additional assessment upon that employer.

**(4)** In determining the record, risk, cost and experience of an employer, the Board may deem the cost of any compensation payable as the result of a worker's death to be

the average cost of fatal injury claims in the previous year.

(5) Where, in the opinion of the Board, sufficient precautions have been taken for the prevention of injuries to an employer's workers, the Board may reduce the amount of any assessment for which the employer is liable.

(6) Where, in the opinion of the Board, sufficient precautions have not been taken for the prevention of injuries to an employer's workers, the Board may increase the amount of any assessment for which the employer is liable.

(7) The Board shall, on or before January 1, 1996, establish and implement an experience rating program for the purpose of subsections (1) to (4) that relates an employer's assessment to the factors described in those subsections. 1994-95, c. 10, s. 121.

#### **Adjustment of funds, reserves and accounts**

122 (1) Where the Board exercises any power pursuant to Section 120, the Board may adjust the funds, reserves and accounts of any class or subclass of employer affected.

(2) Where the Board reclassifies an employer in order to correct a mistake of law or fact, a refund of any amount over-assessed or the collection of any amount under-assessed is limited to one year preceding the year in which the correction is made.

(3) The limitation on collection of an under-assessment in subsection (2) does not apply where the mistake was due to a misrepresentation by or on behalf of the employer. 1994-95, c. 10, s. 122.

#### **Notice of assessment**

123 (1) The Board shall provide notice of an assessment to every employer assessed, in any manner the Board considers necessary or expedient.

(2) Any notice provided pursuant to subsection (1) shall indicate the amount owing by the employer and the time the assessment is payable. 1994-95, c. 10, s. 123.

#### **Method of calculating assessments**

124 (1) Assessments may be rated upon the employer's payroll, or may be calculated in any other manner the Board considers necessary or expedient.

(2) Where the Board computes or adjusts the amount of payroll of any employer in any industry, the Board shall exclude that portion of the remuneration of any worker that is in excess of the amount referred to in Section 41.

(3) Where the Board computes or adjusts the amount of any employer's payroll, the Board shall base the computation or adjustment only on the payroll of those workers of the employer who are subject to this Part.

(4) Where the Board calculates any assessment other than ~~ratable~~[rateably] on the employers payroll, Sections 127, 128 and 130 apply with the necessary changes. 1994-95, c. 10, s. 124.

#### **Procedure for collection of assessments**

125 (1) Assessments may be made and collected in any manner and form, and at any time, and by any procedure that, in the opinion of the Board, is adequate and expedient.

(2) The Board may, by regulation, prescribe the manner, form, time and procedure for assessments applicable to any industry, class or subclass.

(3) Notwithstanding anything contained in this Section, the Board shall, on or before January 1, 2000, implement a procedure for collecting assessments on a periodic basis based on actual rather than estimated payroll for the year.

(4) Notwithstanding anything contained in this Section, a notice indicating the rate of assessment for an employer for a year shall be sent to the employer no later than September 1st of the preceding year. 1994-95, c. 10, s. 125; 1999, c. 1, s. 12.

#### **General or special assessments**

126 (1) The Board may make general or special assessments.

(2) A special assessment made pursuant to subsection (1) may be applicable to any industry, class, subclass or employer, or any industry carried on by an employer.

(3) Where any estimated assessment for any class, subclass or employer is insufficient for the purpose for which it is collected, the Board may

(a) make any further assessment necessary; or

(b) advance the amount of the insufficiency out of any reserve and add the insufficiency to any subsequent assessment.

(4) Where the funds for any class, subclass or employer are sufficient for the time being, the Board may defer the collection of any assessment or instalment. 1994-95, c. 10, s. 126.

#### **Employer to provide information**

127 Every employer shall, within ten days of becoming an employer and at any other time as required by the Board, provide the Board with an estimate of the employer's payroll for the remainder of the current year and for the following year, together with any other information the Board may require for the purpose of

(a) assigning the employer to a class or subclass; and

(b) making any assessment pursuant to this Part. 1994-95, c. 10, s. 127.

#### **Adjustment of assessment**

128 (1) Where the necessary information is obtained, the Board may adjust any assessment for the preceding calendar year for any employer to reflect the employer's actual payroll.

(2) Where an estimate of probable payroll by an employer, or by the Board pursuant to Section 130, is less than the actual amount of the payroll determined at the end of



the calendar year, the employer is liable to pay to the Board an amount equal to the difference between

- (a) the amount that the employer was assessed; and
- (b) the amount that the employer is assessed on the basis of actual payroll,

together with interest at a rate and on terms prescribed by the Board by regulation.

**(3)** The payment of the amounts described in subsection (1) may be enforced in the same manner as the payment of an assessment.

**(4)** Where an estimate of probable payroll by an employer, or by the Board pursuant to Section 130, is more than the actual amount of the payroll determined at the end of the calendar year, the Board shall refund or, in its discretion, credit the employer with an amount equal to the difference between

- (a) the amount that the employer was assessed; and
- (b) the amount that the employer is assessed on the basis of actual payroll,

together with interest at a rate and on terms prescribed by the Board by regulation. 1994-95, c. 10, s. 128.

#### **Records required to be kept by employer**

**129 (1)** Every employer shall keep a record of

- (a) the name of every worker employed;
- (b) the dates and times worked by the worker;
- (c) the earnings and the rate of earnings of the worker;
- (d) the amount of any bonus or other remuneration paid to the worker or to which the worker is entitled;
- (e) any allowance made to a worker for the use of the worker's motor vehicle; and
- (f) any other information the Board may by regulation require.

**(2)** The employer shall provide the records referred to in subsection (1) to the Board as required by the Board.

**(3)** A regulation made pursuant to clause (1)(f) may be general, or may be applicable to any industry, class, subclass or employer, or any industry carried on by an employer. 1994-95, c. 10, s. 129.

#### **Board may deem amount of payroll**

**130 (1)** Where an employer

- (a) fails to keep records pursuant to Section 129 that in the Board's opinion are adequate;
- (b) fails to produce the records kept pursuant to Section 129 when required by the Board;
- (c) fails to provide the Board with an estimate of payroll pursuant to Section 127; or
- (d) provides the Board with an estimate of payroll the Board considers too low,

the Board may, in addition to any other penalty that may be imposed, deem the amount of the employer's payroll for the purpose of making an assessment on the employer.

**(2)** Where

- (a) any employee of an incorporated company is a shareholder in the incorporated company;
- (b) the employee is remunerated, in whole or in part, with a share of the company's profits; and
- (c) the employer does not make an accurate estimate of payroll for the employee,

the Board may, in addition to any other penalty that may be imposed, deem the amount of the employer's payroll for the purpose of making an assessment on the employer. 1994-95, c. 10, s. 130.

#### **Person to provide information to Board**

**131** Where required by the Board, every person shall provide the Board with

- (a) information regarding the workers the person employs or may employ;
- (b) the industry the person is engaged in; and

(c) any other information required by the Board to enable the Board to determine if the person is engaging in an industry subject to this Part. 1994-95, c. 10, s. 131.

#### **Assessor to provide information**

**132** Every assessor appointed pursuant to the *Assessment Act* shall provide to the Board, at the Board's request,

- (a) the name and address;
- (b) the nature of any business;
- (c) the number of employees; and

(d) any other information required by the Board,

for all the employers in every industry, except the farming industry, within the assessor's district. 1994-95, c. 10, s. 132.

#### **Municipality to provide information**

**133** Every municipality shall provide to the Board, at the Board's request, the records of building permits granted in the municipality. 1994-95, c. 10, s. 133.

#### **Self-insured employers**

**134 (1)** The Board may, by regulation, establish a schedule of self-insured employers.

**(2)** The Board may, by regulation, transfer a self-insured employer to another class or to a new class, in which case the Board shall make any adjustments and disposition of funds, reserves and accounts, and require payment of any funds, as it considers necessary to ensure that no class is adversely affected.

**(3)** Employers included in the schedule of self-insured employers are liable individually to pay an amount based on the cost of claims in respect of the workers of the self-insured employer plus the administrative costs incurred by the Board with respect to those claims plus the cost of any statutory obligations that apply to the self-insured employer.

**(4)** The Board may, in the manner and at times it considers appropriate, levy and collect money in the same manner as an assessment

(a) from employers included in the schedule of self-insured employers; and

(b) required to pay for increases in compensation for past injuries from employers who are or have been included in the schedule of self-insured employers.

**(5)** The Board may require a self-insured employer to provide financial security with respect to the cost of future obligations incurred by the self-insured employer. 1994-95, c. 10, s. 134; 1999, c. 1, s. 13.

#### **Rating Review Commission**

**134A (1)** There is hereby established a Rating Review Commission composed of one person representing the Board and such number of persons, representing equally employer and employee groups, as determined by the Minister.

**(2)** The members of the Rating Review Commission shall be appointed by the Minister for such terms and on such conditions as determined by the Minister.

**(3)** The Minister shall designate one of the members of the Rating Review Commission to be the chair of the Commission.

**(4)** The Governor in Council shall prescribe the remuneration to be paid to members of the Rating Review Commission. 1999, c. 1, s. 14.

#### **Functions of Commission**

**134B** The Rating Review Commission shall review the system used to classify employers for assessment purposes and make recommendations to the Board of Directors with respect to the classification system. 1999, c. 1, s. 14.

### LIABILITY FOR ASSESSMENTS

#### **Employer required to pay assessment**

**135 (1)** Every employer is liable for and shall pay to the Board, without demand, any assessment levied on the employer by the Board.

**(2)** The Board has a right of action against any employer in respect of any assessment. 1994-95, c. 10, s. 135.

#### **Liability of corporate directors**

**136 (1)** Where

(a) an employer is a corporation; and

(b) the corporation defaults on the payment of an assessment levied pursuant to this Part,

every person who is a director of the corporation at the time of the default is jointly and severally liable with the corporation for the amount of assessment unpaid.

**(2)** A director who satisfies a claim made pursuant to subsection (1) is entitled to contribution from

(a) the other directors; and

(b) the corporation,

liable for the claim. 1994-95, c. 10, s. 136.

#### **Liability of assessable employer**

**137 (1)** Where, for any reason, an employer liable to assessment is not assessed in any year, the employer is nevertheless liable to pay to the Board the amount for which the employer should have been assessed.

**(2)** Any amount described in subsection (1) may be collected by the Board in the same manner as the collection of an assessment. 1994-95, c. 10, s. 137.

#### **Liability of successor employer**

**138 (1)** Subject to subsection (2), where

(a) any employer has any amount of assessment unpaid; and

(b) the business or any part of the business of the employer

(i) has been sold, leased, transferred or disposed of, whether by operation of law or otherwise,

(ii) has changed ownership, reincorporated or restructured in any other way, or

(iii) has been contracted out to avoid obligations pursuant to this Act,

the Board may

(c) deem any person to be the successor of the employer; and

(d) levy and collect from the successor any amount of any assessment outstanding before the event described in clause (b).

**(2)** No person shall be deemed the successor of an employer pursuant to clause (1)(c) unless the person has, in the opinion of the Board, a real and substantial connection to the employer after the event described in clause (1)(b).

**(3)** Any amount required to be paid pursuant to clause (1)(d) may be collected by the Board in the same manner as the collection of an assessment. 1994-95, c. 10, s. 138.

#### **Payment of assessment by temporary employer**

**139 (1)** Where the Board determines

(a) that an employer is engaging temporarily in an industry to which this Part applies; or

(b) that for any other reason it may be difficult to collect an assessment from an employer to which this Part applies,

the Board may require the employer to pay, or give security for payment of, an amount sufficient to pay all the assessments the Board may make with respect to the employer.

**(2)** Any amount required to be paid pursuant to subsection (1) may be collected by the Board in the same manner as the collection of an assessment.

**(3)** Where an employer fails to comply with a requirement of the Board pursuant to subsection (1), the Supreme Court of Nova Scotia may, upon application of the Board, issue an order to restrain the employer from carrying on business in an industry to which this Part applies until the employer complies with the requirement. 1994-95, c. 10, s. 139.

#### **Contractor and principal liable for assessment**

**140 (1)** Where a contractor undertakes any work for a principal in an industry to which this Part applies, both the contractor and the principal are liable for any assessment the Board may levy in respect of any work performed for the principal by the contractor.

**(2)** The Board may collect any amount required to be paid pursuant to subsection (1) from the principal or the contractor, or partly from one and partly from the other.

**(3)** Where a principal has paid an assessment levied pursuant to subsection (1), the principal may recover the amount of the assessment from the contractor. 1994-95, c. 10, s. 140.

#### **Liability of subcontractor**

**141 (1)** Where a subcontractor undertakes any work for a contractor in any industry to which this Part applies

(a) the subcontractor;

(b) the contractor; and

(c) the principal who is employing the contractor,

are liable for any assessment the Board may levy in respect of any work performed for the contractor by the subcontractor.

**(2)** The Board may collect any amount required to be paid pursuant to subsection (1) from the principal, the contractor or the subcontractor, or partly from any one and partly from any other.

**(3)** Where a principal has paid an assessment pursuant to subsection (1), the principal may recover the amount of the assessment from the contractor or the subcontractor.

**(4)** Where a contractor has paid an assessment pursuant to subsection (1), the contractor may recover the amount of the assessment from the subcontractor. 1994-95, c. 10, s. 141.

#### **Board may deem workers**

**142 (1)** Where a contractor or subcontractor has not been assessed for any work carried on by the contractor or subcontractor, the Board may deem

(a) any worker of the contractor or subcontractor to be a worker of the principal; or

(b) any worker of the subcontractor to be a worker of the contractor.

**(2)** In the absence of any term to the contrary in the contract or subcontract

(a) the principal may recover from the contractor the amount or proportionate part of the assessment paid by the principal with respect to the contractor or the contractor's workers or with respect to the subcontractor or the subcontractor's workers; and

(b) the contractor may recover from the subcontractor the amount or proportionate part of the assessment paid by the contractor with respect to the subcontractor or the subcontractor's workers. 1994-95, c. 10, s. 142.

#### **Holdbacks and set-offs**

**143 (1)** Where a principal is or may become liable for an assessment levied against any contractor carrying out work for the principal, the principal may withhold from any

amount owed to the contractor an amount estimated by the Board to be equal to the amount of the assessment.

**(2)** Where a contractor is or may become liable for an assessment levied against any subcontractor carrying out work for the contractor, the contractor may withhold from any amount owed to the subcontractor an amount estimated by the Board to be equal to the amount of the assessment.

**(3)** In any action that

(a) a contractor may bring against the principal; or

(b) a subcontractor may bring against a contractor,

the defendant may set off the amount of an assessment paid pursuant to subsection (2) against the plaintiff's claim.

**(4)** Where, pursuant to subsection (3), a defendant has set off the amount of the assessment,

(a) the Board shall determine and collect the amount of assessment due to it; and

(b) the plaintiff is entitled to the remaining amount of the ~~set off~~[set-off].

**(5)** The amount of any holdback made pursuant to subsection (1) or (2) is deemed to be held in trust for the Board. 1994-95, c. 10, s. 143.

#### **Assessment paid by municipality or commission**

**144** Where any work in an industry to which this Part applies is performed under contract for any municipality or public service commission, any assessment in respect of the work may be paid by the municipality or commission, and the amount of the assessment may be deducted from any amount owed to the contractor. 1994-95, c. 10, s. 144.

#### **Unpaid assessment bears compound interest**

**145** Notwithstanding any other Act, any assessment due pursuant to this Part bears compound interest on the amount unpaid at the rate and in the manner prescribed by the Board by regulation, notwithstanding the taking of judgment, and the interest may be collected by the Board in the same manner as the collection of an assessment. 1994-95, c. 10, s. 145.

### COLLECTION OF ASSESSMENTS

#### **Certificate**

**146 (1)** Where default is made in the payment of any assessment, the Board may issue a certificate stating

(a) that an assessment was made, or the nature of the matter with respect to which the amount is due or payable;

(b) the amount remaining unpaid; and

(c) the name of the person who has defaulted in payment.

**(2)** A certificate issued by the Board may be filed with any prothonotary of the Supreme Court of Nova Scotia.

**(3)** Notwithstanding any other Act, the Supreme Court of Nova Scotia has jurisdiction over any amount stated in the certificate.

**(4)** A certificate filed with the Supreme Court of Nova Scotia pursuant to subsection (2) shall, when sealed with the seal of the Supreme Court, become an order of the Supreme Court, and judgment in the amount specified in the certificate, together with any fees allowed by the Supreme Court in the case of a default judgment, may be entered against the person named in the certificate.

**(5)** A judgment issued pursuant to subsection (4) may be enforced by execution or otherwise in the same manner as any other judgment of the Supreme Court of Nova Scotia.

**(6)** The Board may enter judgment pursuant to this Section against any executor or administrator of a deceased person without obtaining the leave of the Supreme Court of Nova Scotia. 1994-95, c. 10, s. 146.

#### **Lien on real or personal property**

**147 (1)** Notwithstanding any other Act, any assessment, or judgment entered pursuant to that assessment, constitutes a first lien upon all personal or real property that is

(a) used in or in connection with; or

(b) produced in or by,

the industry for which the employer has been assessed, whether or not the property is owned by the employer.

**(2)** Subject to subsection (4), the lien created by subsection (1) is payable in priority to any other claim or encumbrance of any kind, held by any person, including Her Majesty in right of the Province.

**(3)** Without restricting the generality of subsection (2), the lien created by subsection (1) is payable in priority to any writ, judgment, debt, lien, charge, security interest created pursuant to an enactment, right of distress, assignment or assignment of book debts, and regardless of whether the claim or encumbrance is legal or equitable, absolute or not absolute, specific or floating, crystallized or otherwise perfected, or created or yet to be created.

**(4)** The first lien created by subsection (1) is subject only to any lien created by or pursuant to an enactment that is intended to secure workers' wages.

**(5)** The first lien created by subsection (1)

(a) attaches immediately upon the making of the assessment;

(b) attaches to all property subsequently coming within the class of property described in subsection (1) until the assessment and any judgment with respect to the assessment has been fully paid; and

(c) follows any property on which it attaches into whosoever's hands the property comes.

**(6)** Where any property to which a lien has attached pursuant to subsection (1) is sold or otherwise disposed of, the amount of any assessment and any judgment with respect to the assessment is a first charge on the proceeds of the sale or other disposition of the property.

**(7)** The Board may file a certified copy of any assessment in any registry of deeds or where the real property is registered pursuant to the *Land Registration Act*, may record a certified copy of any assessment in a parcel register or the judgment roll pursuant to the *Land Registration Act*, and any real property of the employer that is not already bound by the lien created by this Section is bound by the lien to the same extent as a registered judgment or mortgage from the date the certificate is registered.

**(8)** Any judgment entered with respect to an assessment filed in accordance with subsection (7) binds the employer's property from the date the assessment was filed.

**(9)** Where a person other than the employer has an interest in any real or personal property to which a lien has attached pursuant to this Section, the property shall, for the purposes of enforcing the lien, be deemed the property of the employer only.

**(10)** In this Section, "industry" includes any establishment, undertaking, work, operation, trade or business included within the scope of this Part. 1994-95, c. 10, s. 147; 2001, c. 6, s. 127.

#### **Liability for amount of lien and recovery**

**148 (1)** Any person who

(a) takes possession of any property to which a lien created pursuant to Section 147 attaches; and

(b) disposes of the property in any manner,

is liable to the Board for any amount payable pursuant to the lien, up to the value of the property disposed of by the person.

**(2)** Where any person owes the Board an amount pursuant to this Section, the Board may collect the amount as if the amount was an assessment and as if the person was an employer.

**(3)** Where any person has disposed of property to which a lien attached and paid an amount to the Board pursuant to subsection (1), that person may recover the amount paid to the Board from the person from which the property to which the lien attached was obtained.

**(4)** Subsection (1) does not apply to a good faith purchaser for value without notice of the lien where the vendor sells the property to the purchaser in the ordinary course of trade. 1994-95, c. 10, s. 148.

#### **Injunction where employer in default**

**149** The Supreme Court of Nova Scotia may, upon the application of the Board, issue an order to restrain any employer from carrying on business where

(a) the employer is in default in the payment of an assessment;

(b) a judgment entered in respect of the assessment is returned with a certificate of the sheriff or the sheriff's deputy that the judgment could not be satisfied; and

(c) the employer continues to carry on business in the industry to which this Part applies. 1994-95, c. 10, s. 149.

#### **Priority under other Acts**

**150** The amount of any assessment the liability for which accrued before the date of assignment, death or commencement of winding up, shall be paid in priority to all other debts in the distribution of an employer's property pursuant to the *Assignments and Preferences Act*, the *Trustee Act* and the *Companies' Winding Up Act*. 1994-95, c. 10, s. 150.

### GOVERNANCE

#### **Workers Compensation Board continued**

**151 (1)** This Part shall be administered by the body corporate known as the Workers' Compensation Board of Nova Scotia, which is hereby continued.

**(2)** There shall be a Board of Directors of the Board, consisting of not more than ten persons appointed by the Governor in Council.

**(3)** In appointing members of the Board of Directors, the Governor in Council

(a) shall appoint one member to serve as Chair;

(b) shall appoint one member to serve as Deputy Chair;

(c) shall endeavour to appoint equal numbers of members representing employers and workers;

(d) *repealed 2005, c. 31, s. 1.*

and

(e) may appoint alternate members to the Board of Directors and in so doing shall endeavour to appoint equal numbers of alternate members representing employers and workers.

**(4)** The Deputy Chair appointed pursuant to clause (3)(b) shall sit as a non-voting member of the Board of Directors unless required to act for the Chair pursuant to Section 155.

**(5)** Every member of the Board of Directors shall serve part time unless the Governor in Council, by order, determines otherwise.

**(6)** No person presiding at a meeting of the Board of Directors is entitled to vote at the meeting, except in the case of a tie vote.

**(7)** Where a member of the Board of Directors

(a) is absent from the Province;

(b) is unable to act as a member of the Board of Directors; or

(c) leaves the position of member of the Board of Directors vacant,

the Governor in Council may appoint a person to act temporarily for the member.

**(8) Where**

(a) the term of office of a member of the Board of Directors expires; or

(b) a member of the Board of Directors resigns,

the member may, at the discretion of the Chair, act as a non-voting member of the Board of Directors in order to complete any duty or matter that arose before the effective date of the resignation or the expiry of the term of office.

**(9)** A vacancy on the Board of Directors does not impair the ability of the Board of Directors to act. 1994-95, c. 10, s. 151; 2005, c. 31, s. 1.

**Terms of office**

**152 (1)** The Chair and the Deputy Chair shall be appointed for a term of not more than five years and may be re-appointed.

**(2)** Members of the Board of Directors, except for the Chair and the Deputy Chair shall be appointed for a term of not more than four years and may be re-appointed. 1994-95, c. 10, s. 152.

**Remuneration and expenses**

**153 (1)** The remuneration of all members of the Board of Directors shall be fixed by the Governor in Council and paid out of the Accident Fund.

**(2)** Members of the Board of Directors shall be reimbursed for reasonable travelling and other expenses incurred by them in connection with the work of the Board of Directors. 1994-95, c. 10, s. 153.

**Procedure**

**154** The Board of Directors shall sit and conduct its proceedings in the manner it considers most convenient. 1994-95, c. 10, s. 154.

**Quorum and duties of person in Chair**

**155 (1)** The quorum of the Board of Directors is

(a) the Chair or Deputy Chair; and

(b) one half of the voting members of the Board of Directors.

**(2)** Subject to subsection (3), the Chair

(a) shall call all meetings of the Board of Directors;

(b) shall preside at all meetings of the Board of Directors; and

(c) may, in the event of a tie vote, cast the deciding vote.

**(3) Where**

(a) the Chair is absent from the Province;

(b) the Chair is unable to act as Chair; or

(c) there is a vacancy in the office of Chair,

the Deputy Chair shall exercise the powers and discharge the duties of the Chair.

**(4) Where**

(a) the Chair is absent from the Province or unable to act as Chair or there is a vacancy in the office of the Chair; and

(b) the Deputy Chair is absent from the Province or unable to act as Chair or there is a vacancy in the office of the Deputy Chair,

the Chair may designate a Director to serve as Acting Chair, or if the Chair is unable to make the designation, the Minister may designate a member of the Board of Directors to serve as Acting Chair.

**(5)** The Acting Chair shall exercise the powers and discharge the duties of the Chair.

**(6)** Whenever the Deputy Chair or an Acting Chair appears to have acted for or instead of the Chair pursuant to this Section, the Deputy Chair or Acting Chair, as the case may be, shall be presumed to have acted in accordance with and pursuant to the authority of subsection (3) or (5), respectively. 1994-95, c. 10, s. 155.

**Delegation of authority by Chair**

**156 (1)** The Chair may delegate any power or duty conferred on the Chair by this Act or the regulations to the Deputy Chair.

**(2)** Where the Deputy Chair appears to have acted for or instead of the Chair pursuant to this Section, the Deputy Chair shall be presumed to have acted in accordance with and pursuant to the authority of subsection (1). 1994-95, c. 10, s. 156.

**Delegation of authority by Board**

**157 (1)** The Board of Directors may delegate to any persons or class of persons any power or duty conferred upon it pursuant to this Part.

**(2)** Any person may sub-delegate any power or duty conferred on the person by the Board of Directors pursuant to subsection (1), where the person is permitted to do so by the Board of Directors.

**(3)** Any decision, order or ruling of a person to whom power has been

(a) delegated pursuant to subsection (1); or

(b) sub-delegated pursuant to subsection (2),

is a decision, order or ruling of the Board of Directors.

**(4)** Where a person appears to have acted for or instead of the Board of Directors pursuant to this Section, that person shall be presumed to have acted in accordance with and pursuant to the authority of subsection (1) or (2), respectively.

**(5)** The Chair may establish committees of the Board of Directors and shall designate members of the Board of Directors to sit on the committees. 1994-95, c. 10, s. 157.

#### **Functions of Board and Chief Executive Officer**

**158 (1)** The Board of Directors may

(a) appoint; and

(b) fix the duties and remuneration of,

a Chief Executive Officer of the Board.

**(2)** The Chief Executive Officer is responsible

(a) to the Board of Directors through the Chair;

(b) for the day-to-day management of the business of the Board;

(c) for advising the Board of Directors on all matters of policy;

(d) for overseeing the administration and implementation of the policies and budgets of the Board of Directors; and

(e) for carrying out any other function or duty assigned by the Board of Directors. 1994-95, c. 10, s. 158.

#### **Appointment and remuneration of employees**

**159 (1)** The Board may

(a) appoint; and

(b) fix the duties and remuneration of,

the officers and employees the Board considers necessary to carry out the provisions of this Act.

**(2)** The remuneration fixed pursuant to subsection (1) shall be paid out of the Accident Fund. 1994-95, c. 10, s. 159.

#### **Annual report**

**160 (1)** The Board shall, as soon as possible after the close of each calendar year, and not later than the next following April 1st, make a report to the Minister respecting its operations and transactions during the year.

**(2)** The report shall contain

(a) a statement of the Board's accounts;

(b) commencing January 1, 1996, a five-year plan respecting the operations of the Board, the particulars of which shall be prescribed by the Governor in Council; and

(c) any further particulars prescribed by the Governor in Council.

**(3)** The report shall be laid before the House of Assembly

(a) immediately, if the House of Assembly is then sitting; or

(b) within fifteen days of the beginning of the next sitting of the House of Assembly, if the House of Assembly is not sitting. 1994-95, c. 10, s. 160; 1999, c. 1, s. 15.

#### **Report to Minister**

**160A (1)** The Board shall, within ninety days after the end of each quarter, make a report to the Minister respecting its operations and transactions during the period covered by the report.

**(2)** The quarterly reports referred to in subsection (1) shall contain a statement of the Board's accounts and such other information and particulars as are prescribed by the Minister or the Governor in Council.

**(3)** The quarterly reports referred to in subsection (1) shall be laid before the House of Assembly

(a) immediately, if the House of Assembly is then sitting; or

(b) within fifteen days of the beginning of the next sitting of the House of Assembly, if the House of Assembly is not sitting. 1999, c. 1, s. 16.

## **Review Committee**

**161 (1)** The Governor in Council shall, within three months from the beginning of the year 2001, appoint a Review Committee to review, report on and make recommendations to the Governor in Council in accordance with the terms of reference established by the Governor in Council.

**(2)** The Governor in Council shall

- (a) fix the remuneration of the members of the Review Committee;
- (b) designate one member of the Review Committee to be the Chair of the Committee and one member of the Committee to be the Vice-chair;
- (c) endeavour to appoint to the Review Committee equal numbers of persons representing employers and workers;
- (d) fix the quorum for meetings of the Review Committee;
- (e) prescribe the length of time the Review Committee shall sit and the date by which the Committee shall make its report and recommendations to the Governor in Council;
- (f) lay the report before the House of Assembly
  - (i) immediately, if the House of Assembly is then sitting, or
  - (ii) within fifteen days of the beginning of the next sitting of the House of Assembly, if the House of Assembly is not then sitting.

**(3)** The Minister shall

- (a) provide any technical, clerical and other administrative help necessary for the operation of the Review Committee; and
- (b) fix the remuneration of any person employed pursuant to clause (a).

**(4)** The Board shall, out of the Accident Fund, pay for

- (a) any remuneration fixed pursuant to subsection (2) or (3); and
- (b) the necessary expenses incurred by any member of the Review Committee in carrying out that members duties pursuant to this Section.

**(5)** The report shall be laid before the House of Assembly

- (a) immediately, if the House is sitting; or
- (b) by tabling the report with the Clerk of the House if the House is not sitting. 1994-95, c. 10, s. 161; 1999, c. 1, s. 17.

## **Funding for research and safety programs**

**162 (1)** The Board may conduct or provide funding for research and safety programs on

- (a) injury prevention, safety in the workplace and treatment of workplace injuries; and
- (b) scientific, medical or other issues relating to workers' compensation.

**(2)** The Board may make any expenditure from the Accident Fund required to conduct or provide funding for a research or safety program pursuant to subsection (1).

**(3)** The Board may

- (a) charge any expenditure made pursuant to subsection (2) against any industry, class of employer, subclass of employer or employer to which, in the opinion of the Board, the research or safety program relates; and
- (b) collect the expenditure in the same manner as the collection of an assessment. 1994-95, c. 10, s. 162.

## **Agreement respecting payment of medical costs**

**163** The Board may enter into an agreement with the Nova Scotia Health Services and Insurance Commission respecting methods of payment of the costs of medical aid provided pursuant to this Part. 1994-95, c. 10, s. 163.

## **Administration of Federal laws**

**164** The Board may administer any Act of the Parliament of Canada or order of the Governor General in Council respecting

- (a) the payment of compensation to any person named in the Act;
- (b) employment safety. 1994-95, c. 10, s. 164.

## **Co-operation with Department of Labour**

**165 (1)** The Board and the Occupational Health and Safety Division of the Department of Labour may co-operate in any way, including the sharing of information otherwise privileged or confidential, in order to promote occupational health and safety and achieve their goals.

**(2)** Without limiting the generality of subsection (1), the Board and the Occupational Health and Safety Division of the Department of Labour may exchange

- (a) any information regarding compliance with any enactment respecting occupational health and safety; and
- (b) any information or statistics regarding workplace injuries or occupational diseases required by the Board in order to properly carry out the provisions of Section 121. 1994-95, c. 10, s. 165.

## **Interjurisdictional agreements**



**166 (1)** The Board may, with the approval of the Board of Directors, enter into agreements with the Government of Canada or a workers' compensation board or similar body in any other jurisdiction that provide for

- (a) co-operation in matters relating to compensation for or rehabilitation of workers injured in the course of employment;
- (b) the payment of compensation for injuries to workers employed partly within the Province and partly within another jurisdiction;
- (c) the avoidance of duplicate assessments, and the adjustment of assessments an employer is or might be liable to on the earnings of workers employed partly within the Province and partly in another jurisdiction;
- (d) the sharing of the cost of claims in proportion to the estimated amount of a worker's exposure to the probable cause of the injury in each jurisdiction.

**(2)** The Board may make payments out of and receive payments into the Accident Fund to carry out the terms of an agreement made pursuant to subsection (1). 1994-95, c. 10, s. 166.

#### **Immunity from suit**

**167** No person may bring an action or other proceeding for damages in any court of law against

- (a) the Board;
- (b) any member of the Board of Directors;
- (c) any officer or employee of the Board;
- (d) the Appeals Tribunal or any member of the Appeals Tribunal; or
- (e) any member of the Medical Review Commission established pursuant to Section 203,

for any action or omission within the jurisdiction conferred by this Part, or beyond the jurisdiction conferred by this Part, where the person responsible for the action or omission acted in good faith. 1994-95, c. 10, s. 167.

#### **Non-compellability**

**168** No person who is

- (a) a member of the Board of Directors;
- (b) an officer or employee of the Board;
- (c) a member of the Appeals Tribunal; or
- (d) a member of a Medical Commission panel,

shall be required to give evidence in any action or proceeding to which the Board is not a party with regard to information obtained in the discharge of any power or duty undertaken in connection with the Board. 1994-95, c. 10, s. 168.

#### **Board may prescribe forms**

**169** The Board may prescribe the form and use of any payroll, record, report, certificate, declaration or other document required to properly carry out the provisions of this Part. 1994-95, c. 10, s. 169.

#### **Head office and branch offices**

**170 (1)** The offices of the Board shall be situated in the City of Halifax.

**(2)** The Board may establish and maintain a branch office at any place in the Province.

**(3)** The Board shall

- (a) establish and maintain a branch office at or near the City of Sydney; and
- (b) include a medical officer on the staff of the Sydney office. 1994-95, c. 10, s. 170.

#### **Real property of Board**

**171 (1)** With the approval of the Governor in Council, the Board may acquire, deal with and dispose of real property.

**(2)** The approval of the Governor in Council is not required where the Board acquires, disposes of or deals with real property as an investment.

**(3)** Real property acquired by the Board pursuant to subsection (1) is not subject to municipal taxation.

**(4)** The Board shall pay a grant in lieu in respect of any real property exempt from taxation under the provisions of this Section in accordance with the formula currently in use in the Department of Municipal Affairs for payment on like property. 1994-95, c. 10, s. 171.

#### **Investment and borrowing powers**

**172 (1)** The Board may

- (a) invest any funds arising under any provisions of this Part or under the Board's control according to investment and lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments to avoid undue risk of loss and obtain a reasonable return; and
- (b) borrow from any chartered bank, by way of overdraft or otherwise, any sums the Board considers necessary to properly carry out the provisions of this Part.

**(2)** The funds, investments and income of the Board are free from every form of taxation. 1994-95, c. 10, s. 172.

### **Deemed public service**

**173 (1)** For all purposes of the *Public Service Superannuation Act*, the Chief Executive Officer of the Board and every person employed by the Board pursuant to the provisions of Section 159 is deemed to be a person employed in the public service of the Province and service in employment of the Board is deemed to be and to have been public service.

**(2)** The Governor in Council may, when appointing members of the Board of Directors, determine that the *Public Service Superannuation Act* applies to a particular member or members.

**(3)** The Board shall deduct monthly from the salary of every member of the Board of Directors designated pursuant to subsection (1), the Chief Executive Officer of the Board and every employee thereof such amount as is directed by the Governor in Council to be deducted from the salary of every employee in the public service of the Province and shall pay over the same to the Minister of Finance, which amounts when so received shall be paid into and form part of the Superannuation Fund under the *Public Service Superannuation Act*.

**(4)** Where by the *Public Service Superannuation Act* any payment is directed to be made into the Superannuation Fund by the Government or by the Minister of Finance, or where by such Act any superannuation allowance or other sum is directed to be paid out of the Consolidated Fund of the Province, in respect of any member or employee designated pursuant to subsection (1), the Chief Executive Officer of the Board or any employee of the Board, such payment, superannuation allowance or other sum shall be paid by the Board out of the Accident Fund. 1994-95, c. 10, s. 173.

### **Proof of document**

**174** A copy of any document or record of the Board or the Appeals Tribunal appearing to be certified by an authorized officer or employee of the Board or the Appeals Tribunal to be a true copy of the document or record is proof that the document or record is a true copy, and shall be admitted in evidence as *prima facie* proof of the facts stated in it without proof of the signature or official character of the person signing it. 1994-95, c. 10, s. 174.

### **Auditor**

**175 (1)** The Board of Directors shall appoint a public accountant licensed pursuant to the *Public Accountants Act* to audit the Board's accounts.

**(2)** The remuneration of the auditor appointed pursuant to subsection (1) shall be fixed and paid by the Board. 1994-95, c. 10, s. 175.

### **Certain court actions**

**176 (1)** Where, in a court in the Province, a question arises with respect to anything in this Part, the court shall not judge the question until after notice is served on the Board and the Minister in accordance with this Section.

**(2)** Subject to subsection (3), the notice referred to in subsection (1) shall be served at least thirty days before the day of argument.

**(3)** The court may, on an *ex parte* application made for the purpose, order an abridgement of the time for service of the notice referred to in subsection (2).

**(4)** The notice referred to in subsection (1) shall state

(a) the action, cause, matter or proceeding in which the question arises or application is made;

(b) the provision in question;

(c) the day and place for the hearing of the question; and

(d) the particulars of the issue being argued.

**(5)** The Minister and the Board may appear and be heard in any action, cause, matter or proceeding to which subsection (1) applies.

**(6)** Where the Minister or the Board appear in an action, cause, matter or proceeding to which subsection (1) applies, the Minister or the Board are parties for the purpose of appeal from an adjudication in the action, cause, matter or proceeding. 1994-95, c. 10, s. 176.

### **Expenses paid from Accident Fund**

**177 (1)** All expenses incurred in the administration of this Part shall be paid out of

(a) the Accident Fund; and

(b) any grants from the Consolidated Fund of the Province the Governor in Council may approve.

**(2)** Where, at the request of the Board or the Governor in Council, the Auditor General performs an audit with respect to any matter relating to Part I or Part II of this Act, the expenses incurred by the Auditor General in conducting the audit shall be paid out of the Accident Fund. 1994-95, c. 10, s. 177; 1999, c. 1, s. 18.

## **POWERS OF THE BOARD**

### **Power of inquiry**

**178 (1)** Any member of the Board of Directors and any officer or employee of the Board who exercises any power of inquiry on behalf of the Board, and any member of the Appeals Tribunal, has the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act* and, without limiting the generality of the foregoing, may

(a) summon witnesses and require them to give oral or written evidence on oath or affirmation;

(b) require the production of any document or thing the Board or the Appeals Tribunal considers necessary for the full investigation and consideration of any matter;

(c) accept oral or written evidence, except evidence inadmissible by any statute or that would be inadmissible in a court by reason of any privilege under the law of evidence; and

(d) punish persons guilty of contempt.

**(2)** Nothing in this Section 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 as evidence in any proceedings. 1994-95, c. 10, s. 178.

#### **Witness expenses**

**179** The Board or the Appeals Tribunal may provide reasonable travelling and living expenses to any person summoned as a witness pursuant to Section 178. 1994-95, c. 10, s. 179.

#### **Examination of documents**

**180 (1)** The Board may examine any document or other record of any person in order to determine

- (a) the accuracy of any statement furnished to the Board by an employer;
- (b) the amount of an employer's payroll; and
- (c) whether the person is subject to this Part.

**(2)** The Board may, at any reasonable time, enter any office or other premises connected with an employer's business in order to

- (a) carry out the provisions of subsection (1);
- (b) inspect any material, machinery, appliance or article;
- (c) inspect the site of, or interview witnesses to, an accident; or
- (d) interview any person respecting any matter related to this Part.

**(3)** Any authorized person who enters an employer's office or other premises pursuant to subsection (1) may remove any document or other record from the employer's office or premises for the purpose of making a copy of the document or other record.

**(4)** Where an authorized person removes a document or record from an employer's office or other premises pursuant to subsection (3), the person shall

- (a) provide the employer or other person in possession of the document or record with a receipt for the document or other record taken; and
- (b) return the document or other record to the employer or other person in possession of the document or record as soon as the copying is completed.

**(5)** Where an employer or other person in possession of the document or record

- (a) refuses to allow a book or account to be examined pursuant to subsection (1);
- (b) refuses entry to the employer's or other person's office or other premises pursuant to subsection (2); or
- (c) refuses to allow the removal of a document or record for the purpose of making a copy pursuant to subsection (3),

the Board may apply to the Supreme Court of Nova Scotia without notice to the employer or other person in possession of the document or record for an order requiring the employer to comply with this Section.

**(6)** The Board may authorize any officer or employee of the Board, or any compliance officer, to enforce the provisions of this Section. 1994-95, c. 10, s. 180.

#### **Compliance officers**

**181 (1)** For the purpose of Section 180 and this Section, "compliance officer" means any officer or employee of the Board authorized to enforce this Part, and includes

- (a) a member of the Royal Canadian Mounted Police; and
- (b) a member of a municipal police force within the meaning of any regulation made pursuant to the *Police Act*.

**(2)** The Board shall issue a card or other form of identification to any compliance officer.

**(3)** A card or other form of identification issued pursuant to subsection (2) is proof, unless the contrary is shown, that the person identified by the card or other identification is a compliance officer.

**(4)** A compliance officer has the powers, privileges and immunities of a peace officer. 1994-95, c. 10, s. 181.

#### **Board documents as evidence**

**182** A copy of a document or record made pursuant to Section 180

- (a) is admissible as evidence in any court; and
- (b) has the same evidentiary value as the original document or record. 1994-95, c. 10, s. 182.

#### **Policies**

**183 (1)** For the purpose of this Act, "policy" means a written statement of policy adopted by the Board of Directors and designated by the Board of Directors in writing as a statement of policy, and "policies" has a like meaning.

**(2)** The Board of Directors may adopt policies consistent with this Part and the regulations to be followed in the application of this Part or the regulations.

**(3)** The Board of Directors may invite submissions from interested parties before adopting a policy pursuant to this Section.

**(4)** Every policy adopted by the Board of Directors pursuant to subsection (2) shall be available to the public.

**(5)** Until a different policy is adopted, every policy adopted by the Board of Directors pursuant to subsection (2) is binding on the Board itself, the Chair, every officer and employee of the Board and on the Appeals Tribunal.

**(5A)** Notwithstanding subsection (5), a policy adopted by the Board is only binding on the Appeals Tribunal where the policy is consistent with this Part or the regulations.

**(6)** Any policy adopted by the Board of Directors may be retrospective or prospective in application and may be made retroactive to any date designated by the Board of Directors.

**(6A)** Notwithstanding subsection (6), a policy of the Board of Directors may only be made retroactive where the policy benefits a worker.

**(7)** The Chair, every officer and employee of the Board and the Appeals Tribunal may, in the performance of functions under this Part, interpret the policies, but it is not within the jurisdiction of the Chair, an officer or an employee of the Board to refuse to apply a policy on the ground that it is inconsistent with this Act or the regulations.

**(8)** Any participant may appeal a final order of a hearing officer made pursuant to Section 197 to the Nova Scotia Court of Appeal on the ground that a policy upon which the decision of the hearing officer depends is not consistent with this Act or the regulations but there shall not be an appeal on any other question of law or fact.

**(9)** Subsections 256(2) to (6) apply *mutatis mutandis* to appeals under subsection (7), provided however, it shall not be necessary to provide notice to the Chief Appeal Commissioner. 1994-95, c. 10, s. 183; 1999, c. 1, s. 19.

## Regulations

**184 (1)** The Board may, with the approval of the Governor in Council, make any regulation

(a) authorized pursuant to this Part; and

(b) that, in the opinion of the Board, is required to properly carry out the provisions of this Part.

**(2)** Without restricting the generality of subsection (1), the Board, with the approval of the Governor in Council, may make regulations

(a) prescribing any time limit not prescribed in this Part that the Board considers necessary for the efficient operation of the Board;

(b) defining or further defining any word or expression not otherwise defined in this Part.

**(3)** Notwithstanding subsection (1), the Governor in Council may make any regulation that may be made by the Board.

**(4)** The exercise by the Board or the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*.

**(5)** *repealed 1999, c. 1, s. 20.*

1994-95, c. 10, s. 184; 1999, c. 1, s. 20.

## Retroactive regulation

**184A** Notwithstanding the *Regulations Act* or anything contained in this Part, a regulation made pursuant to this Part may be made retroactive to any date where the regulation benefits a worker. 1999, c. 1, s. 21.

## ~~DECISION-MAKING~~[DECISION-MAKING]

### Jurisdiction and powers of Board

**185 (1)** Subject to the rights of appeal provided in this Act, the Board has exclusive jurisdiction to inquire into, hear and determine all questions of fact and law arising pursuant to this Part, and any decision, order or ruling of the Board on the question is final and conclusive and is not subject to appeal, review or challenge in any court.

**(2)** Notwithstanding subsection (1) but subject to Sections 71 to 73, the Board may

(a) reconsider any decision, order or ruling made by it; and

(b) confirm, vary or reverse the decision, order or ruling. 1994-95, c. 10, s. 185.

### Basis for decisions of Board

**186** The decisions, orders and rulings of the Board shall always be based upon the real merits and justice of the case and in accordance with this Act, the regulations and the policies of the Board. 1994-95, c. 10, s. 186.

### Applicant entitled to benefit of doubt

**187** Notwithstanding anything contained in this Act, on any application for compensation an applicant is entitled to the benefit of the doubt which means that, where there is doubt on an issue respecting the application and the disputed possibilities are evenly balanced, the issue shall be resolved in the workers favour. 1994-95, c. 10, s. 187.

### Participants in decision-making

**188** Both the worker and the worker's employer may participate in

(a) any adjudication made pursuant to Section 185; and

(b) *repealed 1999, c. 1, s. 22.*

1994-95, c. 10, s. 188; 1999, c. 1, s. 22.

### Service of documents

**189 (1)** For the purpose of this Part, any notice or other communication sent through the mail is deemed to have been received by the addressee five business days after the day it was mailed.

**(2)** Subject to subsection (3), any notice or other document that must be served in a proceeding pursuant to this Part, may be served personally or by express post.

**(3)** The Board may authorize any other form of service it considers appropriate in the circumstances. 1994-95, c. 10, s. 189.

#### **Extension of time limits**

**190** Subject to Section 83, the Board may, at any time, extend any time limit prescribed by this Part or the regulations where, in the opinion of the Board, an injustice would otherwise result. 1994-95, c. 10, s. 190.

#### **Admissibility of record**

**191** Any copy of a document or other record may be admitted as evidence pursuant to this Part where the Board is satisfied as to its authenticity. 1994-95, c. 10, s. 191.

#### **Release of information by Board**

**192** No person who is

- (a) a member of the Board of Directors;
- (b) an officer or employee of the Board;
- (c) a member or employee of the Appeals Tribunal; or
- (d) a member of a Medical Review Commission panel,

shall release any information obtained by virtue of the person's office or employment except in accordance with the *Freedom of Information and Protection of Privacy Act*, unless the information is released

- (e) in the performance of the person's office or employment;
- (f) with the approval of the Board of Directors or the Chief Appeal Commissioner; or
- (g) pursuant to this Part. 1994-95, c. 10, s. 192.

#### **Worker entitled to copy of documents**

**193 (1)** Any worker may receive a copy of any document or record in the Board's possession respecting the claim of the worker.

**(2)** Where the Board has determined that a document or record contains medical information that would be harmful to the worker if released to the worker, the Board may

- (a) release the document or record to the worker's physician; and
- (b) inform the worker that it has released the document or record to the worker's physician.

**(3)** An employer, who is a participant in

- (a) *repealed 1999, c. 1, s. 23.*
- (b) an appeal to a hearing officer,

may, subject to any procedure that may be adopted by the Board, receive a copy of any document or record in the Board's possession that the Board considers relevant to the appeal.

**(4)** No decision, order or ruling of the Board on an issue in which the employer has a direct interest shall be based on any document or record to which the employer has been denied access pursuant to this Section.

**(5)** Subject to subsection (6), the Board may charge a fee for providing any copy of a document or record pursuant to this Section.

**(6)** A worker is entitled to one copy of any document or record requested pursuant to subsection (1) without charge where the worker's claim has been denied by the Board. 1994-95, c. 10, s. 193; 1999, c. 1, s. 23.

#### **Agreements**

**194** The Board may, in order to properly carry out the provisions and achieve the objectives of this Part, enter into agreements with

- (a) any agency of the Government of Canada;
- (b) any agency of the Province; or
- (c) a workers' compensation board or similar body in any other jurisdiction,

for the exchange of information otherwise confidential or privileged. 1994-95, c. 10, s. 194.

#### **Agreements with Canada**

**194A** The Board may enter into any agreement with the Government of Canada or its agencies that, in the opinion of the Board, is necessary to carry out effectively the intent and purpose of this Act. 1999, c. 1, s. 24.

#### **Medical records privileged**

**195** Every report submitted to the Board or the Appeals Tribunal by a physician, surgeon, hospital official or other health care professional

- (a) is a privileged communication of the person submitting the report; and
- (b) is not admissible as evidence in any action against the physician, surgeon, hospital official or health care professional. 1994-95, c. 10, s. 195.

*196 repealed 1999, c. 1, s. 25.*

**Appeal to hearing officer**

**197 (1)** Any worker or the workers employer may request that an appeal from a decision made pursuant to Section 185 be heard by a hearing officer.

**(2)** An appeal pursuant to this Section shall be commenced by filing a written notice of appeal within thirty days of the participants being notified of the decision of the Board pursuant to Section 185.

**(3)** Subject to Section 199, an appeal pursuant to this Section shall be heard by a hearing officer.

**(4)** The participants in an appeal pursuant to this Section are

(a) in the case of a decision respecting compensation, the worker and the workers employer;

(b) in the case of a decision respecting an assessment, the employer; and

(c) any other person who, in the opinion of the hearing officer, has a direct and immediate interest in the matter.

**(5)** A hearing officer to whom an appeal pursuant to this Section has been referred may hold an oral hearing where requested, in writing, by any participant in the appeal.

**(6)** The participants to an appeal pursuant to this Section may present evidence and make submissions on their own behalf or with assistance.

**(7)** A hearing officer may adjourn the hearing of an appeal in order to make a reference pursuant to Section 199.

**(8)** Subject to subsection (7), a hearing officer shall render a decision on an appeal within sixty days of the completion of the hearing. 1994-95, c. 10, s. 197; 1999, c. 1, s. 26.

**Decision by hearing officer**

**198 (1)** A hearing officer shall decide the appeal according to the provisions of this Part, the regulations and the policies of the Board, and

(a) documentary evidence previously submitted to or collected by the Board;

(b) any additional evidence the participants present;

(c) the decision under appeal;

(d) the submissions of the participants; and

(e) any other evidence the hearing officer may request or obtain.

**(2)** A decision of a hearing officer that disposes of an appeal shall be communicated to the participants in writing. 1994-95, c. 10, s. 198.

**Referral to Chair**

**199 (1)** Where a hearing officer is of the opinion

(a) that an appeal raises an issue of law and general policy that should be reviewed by the Board of Directors pursuant to Section 183; or

(b) that an appeal raises important or novel questions or issues of general significance that should be decided by the Appeals Tribunal pursuant to Part II,

the hearing officer shall postpone or adjourn the appeal and refer the appeal to the Chair.

**(2)** The Chair may direct that an appeal referred to the Chair pursuant to subsection (1) be

(a) reviewed by the Board of Directors pursuant to Section 183;

(b) heard and decided by the Appeals Tribunal pursuant to Part II; or

(c) returned to the hearing officer.

**(3)** All appeals that, in the opinion of the Chair, raise the same issue or issues as an appeal postponed or adjourned pursuant to this Section are deemed to be postponed or adjourned for the same period with respect to those issues.

**(4)** Notwithstanding subsection (1), a hearing officer may make an interim award in an amount and for a period of time as determined by the hearing officer while a matter is postponed or adjourned pursuant to this Section. 1994-95, c. 10, s. 199.

**Postponement by Chair**

**200 (1)** Where an appeal is brought pursuant to Section 197, the Chair may postpone or adjourn the appeal and direct that the appeal be

(a) reviewed by the Board of Directors, where the Chair is of the opinion that an appeal raises an issue of law and general policy that should be reviewed by the Board of Directors pursuant to Section 183; or

(b) heard and decided by the Appeals Tribunal, where the Chair is of the opinion that the appeal raises important or novel questions or issues of general significance that should be decided by the Appeals Tribunal pursuant to Part II.

**(2)** All appeals that, in the opinion of the Chair, raise the same issue or issues as an appeal postponed or adjourned pursuant to this Section are deemed to be postponed or adjourned for the same period with respect to those issues.

**(3)** Subject to Section 202, where the Chair postpones or adjourns a hearing pursuant to clause (1)(a), the Chair shall ensure that the final disposition of the appeal is left solely to the independent judgement of the hearing officer.

**(4)** Notwithstanding subsection (1), the hearing officer may make an interim award in an amount and for a period of time as determined by the hearing officer while a matter is postponed or adjourned pursuant to this Section. 1994-95, c. 10, s. 200.

#### **Adoption of policy by Board**

**201 (1)** The Board of Directors may adopt and issue a policy pursuant to Section 183 in consequence of any determination made pursuant to Sections 199 or 200.

**(2)** A policy adopted pursuant to subsection (1) is

(a) effective immediately; and

(b) applicable to appeals that have already been commenced including any appeal adjourned pursuant to Section 199 or 200. 1994-95, c. 10, s. 201.

#### **Duration of postponement or adjournment**

**202** Where an appeal has been postponed or adjourned pursuant to Section 197, 199 or 200, the postponement or adjournment shall not last longer than the earliest of

(a) three months or, where the Board determines that exceptional circumstances exist, not longer than twelve months;

(b) the day the Board issues a policy pursuant to Section 201; or

(c) the day the Board of Directors notifies the hearing officer that the Board will not be issuing a policy pursuant to Section 201. 1994-95, c. 10, s. 202.

#### **Medical Review Commission**

**203 (1)** For the purpose of Sections 204 and 205,

(a) "Commission" means the Medical Review Commission established by this Section;

(b) "Co-ordinator" means the Co-ordinator of the Commission; and

(c) "medical opinion" means a written statement of a medical conclusion and the facts and reasons on which the conclusion is based in respect of an individual worker.

**(2)** There is hereby established a Medical Review Commission.

**(3)** The Minister shall

(a) appoint duly qualified medical practitioners to the Commission; and

(b) endeavour to ensure representation on the Commission of all specialities relevant to the work of the Board.

**(4)** The Minister shall designate one of the members of the Commission as the Co-ordinator of the Commission.

**(5)** The Co-ordinator shall serve on terms and conditions agreed to by the Minister and the Co-ordinator.

**(6)** The Governor in Council shall prescribe the remuneration to be paid to members of the Commission.

**(7)** The deliberations of the Commission and the opinions issued pursuant to this Section are not subject to appeal, review or challenge in any court. 1994-95, c. 10, s. 203.

#### **Reference to Commission**

**204 (1)** Where the Board or the Appeals Tribunal requires a medical opinion in the course of

(a) any claim for compensation; or

(b) any appeal provided for in this Act,

the Board or the Appeals Tribunal may refer the matter to the Commission.

**(2)** Subject to subsection (6), where a matter is referred to the Commission pursuant to subsection (1), the Co-ordinator shall

(a) assign the matter to a panel of not more than three members of the Commission; and

(b) where the panel has more than one member, designate a chair of the panel.

**(3)** Every panel to which a matter is assigned by the Co-ordinator shall give an opinion that is

(a) the opinion shared by the majority of the Commissioners on the panel; or

(b) if no opinion is shared among the Commissioners, the opinion of the chair of the panel.

**(4)** The opinion of the panel as determined pursuant to subsection (3), together with any dissenting opinions, shall be communicated to the Board or the Appeals Tribunal for the Board's or the Tribunals consideration.

**(5)** Subject to subsection (6), the Co-ordinator may appoint duly qualified medical practitioners who are not members of the Commission to sit on a panel of the Commission.

**(6)** Without the written consent of the participants in the matter referred to the Commission by the Board or the Appeals Tribunal, no medical practitioner shall serve as a member of a panel of the Commission where the medical practitioner has

(a) examined or treated the worker in connection with the injury that is the subject of the claim;

(b) regularly treated the worker as the worker's doctor;

(c) acted as a consultant in the treatment of the worker's injuries; or

(d) is a partner of a medical practitioner referred to in clause (a), (b) or (c). 1994-95, c. 10, s. 204.

#### **Powers of panel**

**205 (1)** A panel of the Commission may

(a) interview, hold a meeting or correspond with any person, including the worker and any medical practitioner who has provided reports to or given evidence before the Board or the Appeals Tribunal; and

(b) require the worker to undergo an examination by a member of the Commission or a duly qualified medical practitioner specified by the Commission.

**(2)** A panel of the Commission is not required to

(a) hold a hearing; or

(b) receive evidence or any other submissions.

**(3)** The Commission shall inform the Board or the Appeals Tribunal where a worker refuses to undergo a medical examination required by a panel of the Commission. 1994-95, c. 10, s. 205.

#### **Stated case to Court of Appeal**

**206 (1)** The Board or the Appeals Tribunal may state a case in writing for the Nova Scotia Court of Appeal on any question of law.

**(2)** The Nova Scotia Court of Appeal shall

(a) hear and determine the question or questions referred pursuant to subsection (1); and

(b) provide its opinion on the question to the Board or the Appeals Tribunal, as the case may be.

**(3)** The Nova Scotia Court of Appeal shall not award costs in a case stated pursuant to this Section. 1994-95, c. 10, s. 206.

#### **PENALTIES AND RECOVERY OF OVERPAYMENTS**

#### **Violation of certain provisions**

**207** Every person who contravenes Section 86, 87, 107, 108, 109, 110, 132 or 133 is guilty of an offence and, in addition to any other penalty that may be levied pursuant to this or any other Act, liable to a penalty of not more than

(a) five hundred dollars for a first offence;

(b) two thousand dollars for a second offence; and

(c) ten thousand dollars for a third or subsequent offence. 1994-95, c. 10, s. 207.

#### **Violation of certain provisions**

**208** Every person who contravenes Section 17, 84, 85, 88, 127, 129, 130, 131, 135 or 180 is guilty of an offence and, in addition to any other penalty that may be levied pursuant to this or any other Act, liable to a penalty of not more than

(a) two thousand dollars for a first offence; and

(b) ten thousand dollars for a second or subsequent offence. 1994-95, c. 10, s. 208.

#### **Violation of Part**

**209** Every person who contravenes this Part or any regulations made pursuant to this Part for which a penalty has not been provided in this Part, is guilty of an offence and liable to a penalty of not more than

(a) two thousand dollars for a first offence; and

(b) ten thousand dollars for a second or subsequent offence. 1994-95, c. 10, s. 209.

#### **False statement or failure to inform**

**210 (1)** Every person who

(a) knowingly makes a false statement to the Board affecting any person's entitlement to compensation or liability for assessment; or

(b) deliberately fails to inform the Board of a material change in circumstances affecting the person's entitlement to compensation or liability for assessment, within ten days of the commencement of the change,

is guilty of an offence and liable on summary conviction to a fine of not more than ten thousand dollars or to imprisonment for a term of not more than three months, or to both fine and imprisonment.

**(2)** Where a person is guilty of an offence pursuant to subsection (1), the court may, in addition to any other penalty imposed by this or any other Act, order the person to repay to the Board any monies obtained by that person by reason of the commission of the offence.

**(3)** Where monies are ordered to be paid pursuant to subsection (2), the Board may file a certified copy of the order in the Supreme Court of Nova Scotia and, upon filing, the order is deemed to be a judgment of the court in favour of the Board, and may be enforced in the same manner as any other order of the court.

**(4)** Nothing in this Section limits the right of the Board to take proceedings to obtain a civil remedy, including proceedings pursuant to Section 220. 1994-95, c. 10,



s. 210.

#### **Interference or refusal to comply**

**211** Every person who, without reasonable cause,

- (a) impedes or attempts to impede any inquiry, any examination or any hearing pursuant to this Part; or
- (b) refuses to comply with an order or decision of the Board,

is guilty of an offence and liable to a penalty of not more than ten thousand dollars. 1994-95, c. 10, s. 211.

#### **Assisting in offence**

**212** Every person who knowingly, by an act or omission,

- (a) aids;
- (b) advises;
- (c) incites; or
- (d) attempts to aid, advise or incite,

another person to commit an offence pursuant to this Part, is party to the offence and liable to the same penalty as that provided for the person who committed the offence, whether or not that other person has been penalized, prosecuted or convicted. 1994-95, c. 10, s. 212.

#### **Liability of corporate directors**

**213** Where an offence is committed by a corporation, any officer, director, representative or agent of the corporation who ordered, authorized or consented to the performance of the act or omission that constitutes the offence is party to the offence and liable to the same penalty as that provided for the corporation, whether or not the corporation has been penalized, prosecuted or convicted. 1994-95, c. 10, s. 213.

#### **Collection of penalties**

**214 (1)** Any penalty imposed on a worker by the Board pursuant to this Part may be collected by deducting the amount of the penalty from any amount of compensation payable, or that becomes payable, to the worker.

**(2)** Where the employer of a worker is a corporation of which the worker or member of the family of the worker is an officer, director or principal shareholder, any penalty imposed on the employer pursuant to this Part may be collected by deducting the amount of the penalty from any amount of compensation payable, or that becomes payable, to the worker.

**(3)** Any penalty imposed on an employer pursuant to this Part may be collected in the same manner as the collection of an assessment. 1994-95, c. 10, s. 214.

#### **Procedure for collection of penalties**

**215** Any penalty imposed by this Part may be levied and collected by the Board or by an action brought by the Board in any court of competent jurisdiction. 1994-95, c. 10, s. 215.

#### **Additional penalties**

**216** The Board may, in addition to any other penalty that may be imposed by this Part,

- (a) in the case of a worker who is in default of the worker's duties pursuant to this Part or who refuses consent pursuant to subsection 109(2), suspend, reduce or terminate or withhold the worker's compensation during the period of default or refusal; and
- (b) in the case of an employer who is in default of the employer's duties pursuant to this Part, impose a penalty not exceeding the total of
  - (i) the full amount or capitalized value, as determined by the Board, of any compensation payable to a worker of the employer, and
  - (ii) any other expenditures made by the Board,

in respect of injuries that occurred to the employer's workers during the period of default. 1994-95, c. 10, s. 216.

#### **Interest and percentage penalties**

**217** The Board may, in addition to any other penalty that may be imposed by this Part, charge against any employer who neglects or refuses to pay any assessment any interest and percentage penalties as the Board prescribes by regulation. 1994-95, c. 10, s. 217.

#### **Penalties form part of Accident Fund**

**218** Any penalty imposed pursuant to this Part shall be paid over to the Board and forms part of the Accident Fund. 1994-95, c. 10, s. 218.

#### **No prosecution without leave of Board**

**219** No prosecution for any contravention of this Part or the regulations shall be taken without leave of the Board. 1994-95, c. 10, s. 219.

#### **Recovery of overpayment**

**220** Where any person receives any amount of compensation that the Board determines is in excess of that to which the person is entitled pursuant to this Part, the Board may recover the amount from the person, or from the executors or administrators of the person, as a debt due to the Board. 1994-95, c. 10, s. 220.

**Application of Sections 222 and 223**

**221** Sections 222 and 223 apply only to the industries to which this Part does not apply and to the workers employed in those industries. 1994-95, c. 10, s. 221.

**Worker has action against employer**

**222 (1)** Where personal injury is caused to a worker by reason of any 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 workers employer or by reason of the negligence of the workers employer or any person in the service of the workers employer, acting within the scope of their employment, the worker or, if the injury results in death, the personal representative of the worker, and any person entitled in case of death has an action against the employer and, if the action is brought by the worker, the worker may recover from the employer the damages sustained by the worker by or in consequence of the injury and, if the action is brought by the personal representative of the worker or by or on behalf of persons entitled to damages under the *Fatal Injuries Act*, they are entitled to recover the damages as they are entitled to pursuant to that Act.

**(2)** Where the execution of any work is being carried into effect under any contract, and the person for whom the work is done owns or supplies any ways, works, machinery, plant, building or premises, and by reason of any defect in the condition or arrangement of them, personal injury is caused to a worker employed by the contractor, or by any subcontractor, and the defect arose from the negligence of the person for whom the work or any part of it is done or of some person in their service and acting within the scope of their employment, the person for whom the work or that part of the work is done is liable to the action as if the worker had been employed by that person, and for that purpose is deemed to be the employer of the worker within the meaning of this Part, but the contractor or subcontractor is liable to the action as if this subsection had not been enacted, but not so that double damages are recoverable for the same injury.

**(3)** Nothing in subsection (2) affects any right or liability of the person for whom the work is done and the contractor or subcontractor, as between themselves.

**(4)** A worker is not by reason only of the worker continuing in the employment of the employer with knowledge of the defect or negligence that caused the workers injury deemed to have voluntarily incurred the risk of the injury. 1994-95, c. 10, s. 222.

**Worker not deemed to have undertaken risks**

**223 (1)** A worker shall, on or after July 1, 1968, be deemed not to have undertaken the risks due to the negligence of the workers fellow workers, and contributory negligence on the part of a worker is not, on or after that date, a bar to recovery by the worker or by any person entitled to damages under the *Fatal Injuries 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 the workers employer, for which the employer would otherwise have been liable.

**(2)** Contributory negligence on the part of the worker shall be taken into account in assessing the damages in any action referred to in subsection (1). 1994-95, c. 10, s. 223.

FORMER PART III

**Compensation payable under former Act**

**224 (1)** The amount of compensation payable to any person entitled to compensation pursuant to Part III of Chapter 343 of the Revised Statutes, 1967, shall be calculated and be payable as if the compensation was payable pursuant to Sections 33, 37, 38, 43 or 45 of the former Act, as the case may be, and this Part shall be interpreted and construed accordingly.

**(2)** Subsection (1) does not authorize the payment of compensation for any period before the date on which this Part comes into force. 1994-95, c. 10, s. 224.

TRANSITIONAL

**"former Act" defined**

**225** In Sections 226 to 274, "former Act" means Chapter 508 of the Revised Statutes, 1989, as it read from time to time prior to the date on which this Part comes into force. 1994-95, c. 10, s. 225.

**Compensation under former Act confirmed**

**226** Where, before the date this Part comes into force, the Board has awarded compensation for permanent partial disability or permanent total disability pursuant to the former Act with respect to an injury occurring before March 23, 1990,

(a) the compensation awarded is deemed to be and always to have been awarded in accordance with the former Act; and

(b) for greater certainty, the amount of compensation is deemed to be and always to have been seventy-five per cent of the gross average weekly earnings of the worker before the accident multiplied by the permanent-impairment rating determined by the Board. 1994-95, c. 10, s. 226.

**Compensation for permanent partial disability**

**227 (1)** Subject to subsection (3), where a worker

(a) was injured before March 23, 1990; and

(b) at the date this Part comes into force, is receiving or is entitled to receive compensation for permanent partial disability or permanent total disability as a result of the injury,

the Board shall pay the compensation for the lifetime of the worker.

**(2)** The amount of compensation payable to a worker referred to in subsection (1) is deemed always to have been seventy-five per cent of the gross average weekly earnings of the worker before the accident multiplied by the permanent-impairment rating determined by the Board.

**(3)** Section 71 applies to an award made or continued pursuant to subsection (1).

**(4)** Notwithstanding anything contained in this Section, where a worker

(a) was injured before March 23, 1990, and is receiving or is entitled to receive periodic compensation for either permanent partial disability or permanent total disability or is entitled to receive the amended interim earnings loss benefit pursuant to Section 10D as a result of the injury; or

(b) dies before the coming into force of this Part and the workers dependent spouse or invalid child is receiving or is entitled to receive periodic compensation in connection with the workers death,

and the worker or dependent spouse or invalid child

(c) has a personal income below one half the average industrial wage for Nova Scotia as prescribed by regulation; and

(d) meets the conditions the Board prescribes by regulation,

the Board shall pay to the worker or dependent spouse or invalid child the supplement the Board prescribes by regulation in an amount not to exceed one half of the average industrial wage for Nova Scotia as prescribed by regulation. 1994-95, c. 10, s. 227; 1999, c. 1, s. 27; 2002, c. 41, s. 1.

#### **Compensation for permanent partial disability**

**228 (1)** Subject to subsection (2), where a worker

(a) was injured on or after March 23, 1990, and before the date this Part comes into force;

(b) suffered a permanent impairment as a result of the injury; and

(c) at the date this Part comes into force, is receiving or is entitled to receive compensation for permanent partial disability or permanent total disability as a result of the injury,

the compensation awarded between March 23, 1990, and the date this Part comes into force is deemed to be and always to have been awarded in accordance with the former Act.

**(2)** The Board shall recalculate the amount of compensation payable to the worker in accordance with Sections 34 to 58.

**(3)** Where a recalculation made pursuant to subsection (2) entitles the worker to a greater award than the award the worker was receiving when this Part comes into force, the Board shall commence payment of the recalculated amount of compensation as of the latest of

(a) the date on which the Board determines the worker has a permanent impairment, whether pursuant to Section 34 or the former Act;

(b) the date on which the worker completes a rehabilitation program pursuant to Sections 112 and 113, where the worker is engaged in a rehabilitation program on or after the date the Board determines the worker has a permanent impairment pursuant to Section 34; or

(c) November 26, 1992.

**(4)** Where a recalculation made pursuant to subsection (2) entitles the worker to a smaller award than the award the worker was receiving when this Part comes into force, the Board

(a) shall commence payment of the recalculated amount of compensation as of the date of recalculation; and

(b) shall not collect any amount as an overpayment from the worker in respect of the difference between the two awards.

**(4A)** For the purpose of clause (4)(a), the date of recalculation is deemed to be and always to have been February 1, 1996, regardless of when the recalculation is made.

**(5)** For greater certainty, nothing in this Section entitles any person to compensation for a period prior to November 26, 1992. 1994-95, c. 10, s. 228; 1999, c. 1, s. 28.

#### **Compensation for temporary disability**

**229 (1)** Subject to subsections (2) and (3), where a worker

(a) suffered an injury before the date this Act comes into force; and

(b) at the date this Act comes into force, is receiving or is entitled to receive compensation for

(i) temporary total disability pursuant to Section 37 of the former Act, or

(ii) temporary partial disability pursuant to Section 38 of the former Act,

as a result of the injury, the amount of compensation payable to the worker shall continue to be calculated in accordance with Section 37 or 38 of the former Act, respectively, as amended by this Act.

**(2)** The Board shall recalculate the amount of compensation payable to a worker referred to in subsection (1) in accordance with Sections 37 to 49 of this Act.

**(3)** The Board shall commence payment of the amount recalculated pursuant to subsection (2)

(a) where subsections (2), (3) and (4) of Section 275 have been proclaimed in force and

(i) the worker was injured before the coming into force of subsections (2), (3) and (4) of Section 275, six months after the coming into force of those subsections,

(ii) the worker was injured on or after the coming into force of subsections (2), (3) and (4) of Section 275, twenty-six weeks after the date the worker became entitled to receive compensation for temporary disability; and

(b) where subsections (2), (3) and (4) of Section 275 have not been proclaimed in force, six months after the coming into force of this Part. 1994-95, c. 10, s. 229.

#### **Payments under Section 33 of former Act**

**230** Subject to Section 70, where, on the date this Part comes into force, a person is receiving or is entitled to receive compensation pursuant to Section 33 of the former Act, the amount of compensation payable to the person shall continue to be calculated in accordance with the former Act. 1994-95, c. 10, s. 230.

#### **Payments from Consolidated Fund to Accident Fund**

**231** In addition to the costs that may be payable out of the Consolidated Fund of the Province by the Province as a self-insurer of the Province's employees for the purpose of Part I, the Governor in Council may order, from time to time, that amounts be taken out of the Consolidated Fund and paid into the Accident Fund. 2002, c. 5, s. 58.

#### **Rules applicable to appeals**

**232** Where an appeal from a decision of the Board is filed after the date this Part comes into force, the appeal shall be heard and decided pursuant to this Part. 1994-95, c. 10, s. 232.

#### **Auditor**

**233 (1)** The Governor in Council may appoint an auditor for purposes of Sections 234 and 235.

**(2)** At least one auditor appointed pursuant to subsection (1) shall be legally trained.

**(3)** The remuneration of the auditor shall be fixed by the Governor in Council and paid out of the Accident Fund.

**(4)** The duties of the auditor shall be prescribed by the Governor in Council by regulation. 1994-95, c. 10, s. 233.

#### **Remitting of appeal under former Act**

**234 (1)** Where

(a) an appeal has been filed pursuant to Section 174 of the former Act;

(b) the Appeal Board file contains evidence not available to the Board at the time of the decision under appeal; and

(c) in the opinion of the auditor, the evidence referred to in clause (b) might reasonably be expected to cause the Board to reverse or vary the decision under appeal, the auditor shall remit the matter to the Board for reconsideration.

**(2)** Where the Board

(a) reconsiders a claim pursuant to subsection (1); and

(b) does not reverse or vary the decision under appeal,

the Board shall remit the matter to the Appeals Tribunal.

**(3)** A matter remitted to the Appeals Tribunal pursuant to subsection (2) does not require leave to appeal. 1994-95, c. 10, s. 234.

#### **Remitting of appeal under former Act**

**235 (1)** Where

(a) an appeal has been filed pursuant to Section 174 of the former Act; and

(b) the appellant had not, at the time the appeal was filed, exhausted the internal remedies of the Board available to the appellant,

the auditor shall remit the matter to the Board for reconsideration.

**(2)** Where the Board reconsiders a claim pursuant to subsection (1), any appeal from the reconsideration shall be made in accordance with this Part. 1994-95, c. 10, s. 235.

#### **Decision on appeal under former Act**

**236 (1)** Where an appeal has been filed pursuant to Section 174 of the former Act and, on the coming into force of this Part, a decision has not been rendered with respect to the appeal, the appeal shall be decided by the person and in the manner prescribed by the Governor in Council.

**(2)** Where the person referred to in subsection (1) is a person other than the former Appeal Board, the person may make a decision based on the evidence presented to the former Appeal Board without the necessity of a further hearing.

**(3)** Where the person referred to in subsection (1) is a member of the Appeals Tribunal, leave to appeal pursuant to Section 243 is not required. 1994-95, c. 10, s. 236.

#### **Application of former Act**

**237** Subject to Sections 225 to 230, the Board or the Appeals Tribunal shall, when making a decision, order or ruling pursuant to Sections 234 to 236

(a) on or after the date this Part comes into force; and

(b) in respect of compensation for any period before the date this Part comes into force,

calculate the amount of any compensation payable for the period before this Part comes into force in accordance with the former Act. 1994-95, c. 10, s. 237.

## **PART II**

### **WORKERS COMPENSATION APPEALS TRIBUNAL**

#### **Appeals Tribunal**

**238 (1)** There is hereby established an appeal board to be known as the Nova Scotia Workers Compensation Appeals Tribunal.

**(2)** The members of the Appeals Tribunal shall be appointed by the Governor in Council.

**(3)** In appointing members of the Appeals Tribunal, the Governor in Council shall appoint

- (a) one member to serve as Chief Appeal Commissioner;
- (b) at least two additional members to serve as appeal commissioners.

**(4)** The Chief Appeal Commissioner shall be appointed for a term of not more than five years and may be re-appointed.

**(5)** The Chief Appeal Commissioner appointed pursuant to this Section shall be a practising member of the Nova Scotia Barristers Society or, if not a practising member of the Society, shall become a practising member of the Society within one year of appointment.

**(6)** The appeal commissioners, other than the Chief Appeal Commissioner, shall be appointed for a term of not more than four years and may be re-appointed. 1994-95, c. 10, s. 238.

#### **Supervision of Part**

**238A** The Minister of Justice is responsible for the supervision and management of this Part. 1999, c. 1, s. 29.

#### **Remuneration and expenses**

**239 (1)** The remuneration of the appeal commissioners shall be fixed by the Governor in Council.

**(2)** Appeal commissioners shall be reimbursed for reasonable travelling and other expenses incurred by them in connection with their work as appeal commissioners. 1994-95, c. 10, s. 239.

#### **Procedure**

**240 (1)** The Appeals Tribunal shall determine its own procedures and may make rules governing the making and hearing of appeals.

**(2)** The Appeals Tribunal may, at any time, extend any time limit prescribed by this Part or the regulations where, in the opinion of the Appeals Tribunal, an injustice would otherwise result. 1994-95, c. 10, s. 240.

#### **Chief Appeal Commissioner and personnel**

**241 (1)** The Chief Appeal Commissioner is the Chief Executive Officer of the Appeals Tribunal.

**(2)** The Chief Appeal Commissioner may

- (a) appoint; and
- (b) fix the duties of,

the officers and employees the Chief Appeal Commissioner considers necessary to carry out the duties of the Appeals Tribunal.

**(3)** The officers and employees appointed pursuant to subsection (2) shall be appointed in accordance with the *Civil Service Act*.

**(4)** For all purposes of the *Public Service Superannuation Act*, every full-time member of the Appeals Tribunal and every full-time employee of the Appeals Tribunal is deemed to be a person employed in the public service of the Province and full-time service in the employment of the Appeals Tribunal is deemed to be public service. 1994-95, c. 10, s. 241.

#### **Temporary Chief Appeal Commissioner**

**242** Where the Chief Appeal Commissioner

- (a) is absent from the Province;
- (b) is unable to act as Chief Appeal Commissioner; or
- (c) leaves the position of Chief Appeal Commissioner vacant,

the Governor in Council may appoint a person to act temporarily for the Chief Appeal Commissioner. 1994-95, c. 10, s. 242.

#### **Appeal to Appeals Tribunal**

**243 (1)** Any person entitled to be a participant before a hearing officer may, within thirty days of the participant being notified of the decision of the hearing officer, appeal to the Appeals Tribunal.

**(2)** The Appeals Tribunal shall

- (a) notify the Board that an appeal has been filed; and
- (b) provide the Board with a list of the issues raised by the appeal. 1999, c. 1, s. 30.

#### **Composition of hearing panel**

**244** Subject to Section 247, an appeal before the Appeals Tribunal shall be heard

- (a) by an appeal commissioner sitting alone; or
- (b) in the discretion of the Chief Appeal Commissioner, by a panel of three appeal commissioners. 1994-95, c. 10, s. 244.

#### **Participants in appeal and procedure**

**245 (1)** The participants in an appeal made pursuant to this Section are

- (a) in the case of a decision respecting compensation, the worker and the workers employer;
- (b) in the case of a decision respecting an assessment, the employer;
- (c) the Board; and
- (d) any other person who, in the opinion of the presiding appeal commissioner, has a direct and immediate interest in the matter.

(2) The presiding appeal commissioner may hold an oral hearing where requested, in writing, by any participant in the appeal.

(3) The participants to an appeal pursuant to this Section may participate on their own behalf or with assistance.

(4) The presiding appeal commissioner shall adjourn the hearing of an appeal where the appeal commissioner makes a reference pursuant to Section 247 or 248. 1994-95, c. 10, s. 245.

#### **Decision on appeal**

**246 (1)** The Appeals Tribunal shall decide an appeal according to the provisions of this Act, the regulations and the policies of the Board, and

- (a) documentary evidence previously submitted to or collected by the Board;
- (b) subject to Section 251, any additional evidence the participants present;
- (c) the decision under appeal;
- (d) the submissions of the participants; and
- (e) any other evidence the Appeals Tribunal may request or obtain.

(2) A decision of the Appeals Tribunal shall be communicated to the participants in writing.

(3) Subject to Section 247 and 251, the Appeals Tribunal shall decide an appeal within sixty days of the completion of the oral hearing or, where no oral hearing is held, the date on which all submissions, in accordance with subsection 246(1), have been received by the Appeals Tribunal. 1994-95, c. 10, s. 246; 1999, c. 1, s. 31.

#### **Referral of appeal to Chair of Board**

**247 (1)** Where the Chief Appeal Commissioner or the presiding appeal commissioner is of the opinion that an appeal raises an issue of law and general policy that should be reviewed by the Board of Directors pursuant to Section 183, the Chief Appeal Commissioner or the presiding appeal commissioner shall postpone or adjourn the appeal and refer the appeal to the Chair.

(2) The Chair may direct that any appeal referred to the Chair pursuant to subsection (1) be

- (a) reviewed by the Board of Directors pursuant to Section 183; or
- (b) returned to the Appeals Tribunal.

(3) All appeals that, in the opinion of the Chief Appeal Commissioner, raise the same issue or issues as an appeal postponed or adjourned pursuant to this Section are deemed to be postponed or adjourned for the same period with respect to those issues.

(4) Notwithstanding subsection (1), the Chief Appeal Commissioner or the presiding appeal commissioner, as the case may be, may make an interim award in an amount and for a period of time as determined by the Chief Appeal Commissioner or the presiding appeal commissioner, as the case may be, while a matter is postponed or adjourned pursuant to this Section. 1994-95, c. 10, s. 247.

#### **Postponement of adjournment by Chair**

**248 (1)** Where an appeal is brought pursuant to Section 243, the Chair may postpone or adjourn the appeal at any time before a decision is rendered by the Appeals Tribunal, and direct that the appeal be reviewed by the Board of Directors, where the Chair is of the opinion that an appeal raises an issue of law and general policy that should be reviewed by the Board of Directors pursuant to Section 183.

(2) All appeals that, in the opinion of the Chair, raise the same issue or issues as an appeal postponed or adjourned pursuant to this Section are deemed to be postponed or adjourned for the same period with respect to those issues.

(3) Subject to Section 249, where the Chair postpones or adjourns a hearing pursuant to subsection (1), the Chief Appeal Commissioner shall ensure that the final disposition of the appeal is left solely to the independent judgement of the Appeals Tribunal.

(4) Notwithstanding subsection (1), the Chief Appeal Commissioner or the presiding appeal commissioner, as the case may be, may make an interim award in an amount and for a period of time as determined by the Chief Appeal Commissioner or the presiding appeal commissioner, as the case may be, while a matter is postponed or adjourned pursuant to this Section. 1994-95, c. 10, s. 248.

#### **Policies**

**249 (1)** The Board of Directors may adopt and issue a policy pursuant to Section 183 in consequence of any determination made pursuant to Sections 247 or 248.

(2) A policy adopted pursuant to subsection (1) is

- (a) effective immediately; and
- (b) applicable to appeals that have already been commenced, including any appeal adjourned pursuant to Section 247 or 248. 1994-95, c. 10, s. 249.

#### **Postponement or adjournment**

**250** Where an appeal has been postponed or adjourned pursuant to Sections 245, 247 or 248, the postponement or adjournment shall not last longer than the earliest of

- (a) three months or, where the Board determines that exceptional circumstances exist, not longer than twelve months;

(b) the day the Board issues a policy pursuant to Section 249; or

(c) the day the Board of Directors notifies the Appeals Tribunal that the Board will not be issuing a policy pursuant to Section 249. 1994-95, c. 10, s. 250.

#### **Referral to hearing officer**

**251 (1)** The Appeals Tribunal may, at any point in the hearing of an appeal, refer any matter connected with the appeal to

(a) the hearing officer who decided the matter on appeal to the Appeals Tribunal; or

(b) where the hearing officer who decided the matter on appeal to the Appeals Tribunal cannot for any reason hear the appeal, another hearing officer,

for reconsideration where, in the opinion of the presiding appeal commissioner, the quantity or nature of new or additional evidence or the disposition of the appeal merits the referral.

**(2)** Where a matter is referred to a hearing officer pursuant to subsection (1), any subsequent appeal made pursuant to this Section from the decision of the hearing officer shall be heard in priority to any appeal commenced after the date of the referral of the first appeal back to a hearing officer. 1994-95, c. 10, s. 251; 1999, c. 1, s. 32.

#### **Powers of Appeals Tribunal**

**252 (1)** The Appeals Tribunal may confirm, vary or reverse the decision of a hearing officer.

**(2)** The Appeals Tribunal shall not

(a) reconsider;

(b) rescind, alter or amend; or

(c) make any further or supplementary order in regard to,

any decision already made by the Appeals Tribunal.

**(3)** Notwithstanding subsection (2), the Appeals Tribunal may correct a typographical or clerical error in a decision made by the Appeals Tribunal. 1994-95, c. 10, s. 252; 1999, c. 1, s. 33.

#### **Contents of decision**

**252A** The Appeals Tribunal shall issue a decision clearly stating the determination of the Appeals Tribunal on the appeal and shall state the reasons for the decision as briefly as possible without undue elaboration. 1999, c. 1, s. 34.

#### **Recorded evidence**

**253 (1)** The oral evidence given before the Appeals Tribunal at a hearing shall be recorded.

**(2)** Recordings made pursuant to subsection (1) shall be kept by the Appeals Tribunal for a period of two years after the expiration of the relevant appeal period prescribed by this Act.

**(3)** Every participant to an appeal in which a recording is made pursuant to this Section is entitled, at their own expense, to a transcript of the record. 1994-95, c. 10, s. 253.

#### **Independent expert advice**

**254** The Appeals Tribunal may obtain independent expert advice on any matter coming before it. 1994-95, c. 10, s. 254.

#### **Appeals Tribunal may make regulations**

**255** The Appeals Tribunal may, with the approval of the Governor in Council, make any regulation required to properly carry out the duties prescribed by this Part. 1994-95, c. 10, s. 255.

#### **Further regulation-making power**

**255A (1)** Notwithstanding Section 87, the Appeals Tribunal may, with the approval of the Governor in Council, make any regulations required to establish and implement an alternative dispute-resolution procedure to deal with appeals.

**(2)** The exercise by the Appeals Tribunal of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1999, c. 1, s. 35.

#### **Appeal to Court of Appeal**

**256 (1)** Any participant in a final order, ruling or decision of the Appeals Tribunal may appeal to the Nova Scotia Court of Appeal on any question as to the jurisdiction of the Appeals Tribunal or on any question of law but on no question of fact.

**(2)** No appeal shall be made pursuant to subsection (1) without leave of the Nova Scotia Court of Appeal.

**(3)** The Nova Scotia Court of Appeal shall not grant leave to appeal pursuant to this Section unless

(a) leave is applied for in accordance with the *Civil Procedure Rules* within thirty days of the receipt of written communication of the decision of the Appeals Tribunal; and

(b) all other avenues of appeal provided for in this Act have been exhausted.

**(4)** Any participant applying for leave to appeal pursuant to subsection (1) shall ensure that notice of the hearing of the application is given to

(a) the Board;

- (b) the Appeals Tribunal; and
  - (c) all participants of record in the matter being appealed,
- at least four clear days before the application is heard.

**(5)** Where leave to appeal has been granted, the participant to whom the leave has been granted shall commence the appeal by serving a notice of appeal on

- (a) the Board;
- (b) the Appeals Tribunal; and
- (c) any other party to the appeal,

within ten days after the leave to appeal is granted.

**(6)** The notice of appeal served pursuant to subsection (5) shall contain

- (a) the names of the parties to the appeal;
- (b) the date of the decision appealed from; and
- (c) any other particular the judge granting leave to appeal may require. 1994-95, c. 10, s. 256; 1999, c. 1, s. 36.

#### **Annual report**

**257 (1)** The Chief Appeal Commissioner shall make an annual report to the Minister of Justice within ninety days of the fiscal year end of the Appeals Tribunal respecting the operations and transactions of the Appeals Tribunal during the year.

**(2)** The report made pursuant to subsection (1) may be included in the report made by the Board pursuant to Section 160.

**(3)** The report made pursuant to subsection (1) shall be laid before the House of Assembly

- (a) immediately, if the House is sitting; or
- (b) by tabling the report with the Clerk of the House if the House is not sitting. 1994-95, c. 10, s. 257; 1999, c. 1, s. 37.

#### **Payment of expenses of Appeal Tribunal**

**258 (1)** All expenses incurred in the administration of the Appeals Tribunal shall be paid out of the Consolidated Fund of the Province.

**(2)** The Governor in Council may direct that any amount paid out of the Consolidated Fund of the Province to meet the expenses of the Appeals Tribunal be reimbursed from the Accident Fund. 1994-95, c. 10, s. 258.

### PART IIA

#### **Interpretation and final decision**

**258A (1)** In this Section, "outstanding appeal" means an appeal before the Appeals Tribunal that was commenced on or before the coming into force of this Section under the former Act or this Act and for which a final decision has not been rendered by the Appeals Tribunal on the coming into force of this Section.

**(2)** The Appeals Tribunal shall render a final decision on all outstanding appeals within one year of the coming into force of this Section. 1999, c. 1, s. 38.

### PART III

#### WORKERS ADVISERS

#### **Interpretation of Part**

**259** In this Part,

- (a) "adviser" means a lawyer or a person who by formal education or professional experience is qualified to prepare and present claims for compensation pursuant to this Part and to advise on routine matters of evidence and law;
- (b) "Chief Worker Adviser" means the officer appointed pursuant to this Part to administer the Workers Advisers Program;
- (c) "lawyer" means a person who is authorized to practise law in the Province;
- (d) "Program" means the Workers Advisers Program established by this Part;
- (e) "worker" includes a dependant of a worker. 1994-95, c. 10, s. 259.

#### **Workers Advisers Program**

**260** There is hereby established the Workers Advisers Program. 1994-95, c. 10, s. 260.

#### **Purpose of Program**

**261** The purpose of the Program is to

- (a) provide assistance, advice and representation in accordance with prescribed eligibility criteria to workers seeking compensation pursuant to Part I; and
- (b) discharge any other function
  - (i) prescribed by the Governor in Council, or



(ii) authorized by the Minister. 1994-95, c. 10, s. 261.

#### **Chief Worker Adviser**

**262 (1)** The Governor in Council shall appoint a person recommended by the Minister to be the Chief Worker Adviser.

**(2)** The person appointed pursuant to subsection (1) shall be a practising member of the Nova Scotia Barristers Society or, if not a practising member of the Society, shall become a practising member of the Society within one year of appointment.

**(3)** The Chief Worker Adviser appointed pursuant to subsection (1) is responsible for

(a) administering the budget and work of the Program;

(b) recruiting and hiring advisers, in accordance with the *Civil Service Act*;

(c) subject to the regulations, fixing the respective duties of lawyers and advisers engaged pursuant to clause (b);

(d) in accordance with the *Civil Service Act*, recruiting and hiring staff, other than advisers, necessary for the operation of the Program and fixing their duties and remuneration;

(e) the development and implementation of policies for the administration of the work of the Program and the allocation of its resources. 1994-95, c. 10, s. 262.

#### **Head office**

**263** The Chief Worker Adviser

(a) shall establish a head office for the Program in the City of Halifax; and

(b) shall establish other offices in other parts of the Province where the number of appeals before the Board or the Appeals Tribunal by workers who reside in a part of the Province warrant the establishment of another office. 1994-95, c. 10, s. 263; 1999, c. 1, s. 39.

#### **Supervision of staff**

**264** The Chief Worker Adviser shall supervise and direct the advisers and other staff of the Program. 1994-95, c. 10, s. 264.

#### **Staff are members of public service**

**265** The persons hired by the Chief Worker Adviser pursuant to Section 262 are, with the exception of temporary employees, members of the public service and the *Public Service Superannuation Act* applies to those persons. 1994-95, c. 10, s. 265.

#### **Temporary advisers**

**266 (1)** The Chief Worker Adviser may engage any member of the Nova Scotia Barristers Society to act as a temporary adviser

(a) for a particular worker ; or

(b) for a defined category of workers or for workers in a particular geographic area.

**(2)** No person engaged pursuant to this Section is, by reason of this Section only, a member of the public service entitled to public service benefits pursuant to the *Public Service Superannuation Act*, or any other Act. 1994-95, c. 10, s. 266.

#### **Powers of advisers**

**267 (1)** Notwithstanding the *Barristers and Solicitors Act*, persons who are engaged as advisers pursuant to this Part or persons who are engaged as worker advisers by an organization designated by the Minister, may

(a) appear before the Board or the Appeals Tribunal on behalf of workers; and

(b) advise workers on their entitlement to compensation.

**(2)** Nothing in this Section authorizes advisers who are not lawyers to appear as counsel in any court. 1994-95, c. 10, s. 267.

#### **Annual report**

**268** The Chief Worker Adviser shall make an annual report on the finances and operation of the Program to the Minister. 1994-95, c. 10, s. 268.

#### **Budget**

**269 (1)** The budget of the Program, as approved by the Governor in Council, shall be paid out of the Accident Fund.

**(2)** The cost of medical opinions and consultations shall be paid from the budget of the Program according to the schedule of fees provided for in an agreement between the Board and the Medical Society of Nova Scotia. 1994-95, c. 10, s. 269; 2000, c. 4, s. 93.

#### **No right to representation**

**270 (1)** Nothing in this Part gives any person the right to legal advice or representation under the Program.

**(2)** No person shall be provided with advice or representation in connection with a claim for compensation pursuant to Part I at the expense of the Program

(a) until a claim has been denied; or

(b) *repealed 1999, c. 1, s. 40.*

1994-95, c. 10, s. 270; 1999, c. 1, s. 40.

#### **Counsel and advisers**

**271 (1)** Nothing in this Part

- (a) limits the right of any person to retain counsel of the person's choice and at the person's expense in respect of a matter arising under Part I or Part II; or
- (b) prohibits any person or organization not funded through the Program from advising or representing workers in respect of claims for compensation or appeals pursuant to Part I or Part II.

**(2)** For greater certainty,

- (a) the sole client of every adviser, and of the Program, in respect of each matter on which assistance, advice and representation is given, is the worker or workers concerned; and
- (b) assistance, advice and representation given to any worker or workers by advisers engaged pursuant to Section 262 is the sole responsibility of those advisers and of the Chief Worker Adviser. 1994-95, c. 10, s. 271.

#### **Designation and funding of worker association**

**272** The Minister may, on such terms and conditions as the Minister deems appropriate or the Governor in Council prescribes,

(a) designate any trade union, association of trade unions or other worker association as an organization authorized to provide advice, assistance and representation to workers as part of the Program under the general supervision and direction of the Chief Worker Adviser; and

(b) provide funding to any organization designated pursuant to clause (a) from the budget of the Program. 1994-95, c. 10, s. 272.

#### **Workers counsellors under former Act**

**273 (1)** Every worker counsellor appointed pursuant to the former *Workers Compensation Act* as of the date of its repeal is, subject to this Section, a temporary adviser for the purpose of this Part.

**(2)** The designation of a workers counsellor made pursuant to subsection (1) ceases to operate two years after the coming into force of this Part.

**(3)** Nothing in this Section requires a workers counsellor appointed pursuant to the former *Workers Compensation Act* to act as a temporary adviser pursuant to this Part. 1994-95, c. 10, s. 273.

#### **Regulations**

**274 (1)** The Governor in Council may make regulations

- (a) prescribing the matters that may be assigned to advisers who are not lawyers;
- (b) defining any term used but not defined in this Part;
- (c) prescribing the terms and conditions under which funding may be provided to worker organizations, including the form of any agreement;
- (d) defining the criteria to be applied in determining eligibility for assistance, advice and representation pursuant to the Program;
- (e) prescribing the procedure to be followed in applying for assistance under the Program, including the forms to be used and the information to be provided; and
- (f) providing or dealing with any other matter necessary for the effective operation of the Program and the achievement of the purposes of this Part.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 10, s. 274.

### PART IV

#### GENERAL

#### **Amendment of former Act**

**275 (1)** Chapter 508 of the Revised Statutes, 1989, the *Workers Compensation Act*, is amended by adding immediately after Section 9 the following Section:

9A (1) Notwithstanding anything contained in this Act, the Board shall not pay compensation pursuant to Section 9 until the worker who is injured has not received any remuneration from the employer or any income replacement or supplement benefit from the employer or from an employment-related source after the injury that is equivalent to two-fifths of the workers net average weekly compensation.

(2) The Board shall not pay compensation to a worker in respect of the period of time referred to in subsection (1) except as provided for in subsection (3).

(3) Where a loss of earnings results from an injury for more than five weeks, the Board shall pay to the worker the amount deducted pursuant to subsection (1).

(4) Nothing in subsection (1) prohibits a worker from receiving remuneration from an employer pursuant to a collective agreement or employment contract in force on the coming into force of this Section equivalent to two-fifths of the workers net average weekly compensation.

(5) Notwithstanding subsection (4),

(a) when a collective agreement referred to in subsection (4) expires, subsection (1) applies to any new collective agreement; and

(b) subsection (1) applies to an employment contract referred to in subsection (4), when the employment contract expires or three years after the coming into force of this Section, whichever is earlier.

**(2)** Section 37 of Chapter 508 is amended by adding "net" immediately after "workers" in the third line.

**(3)** Section 38 of Chapter 508 is amended by adding "net" immediately before "average" in the third and in the fifth lines.

**(4)** Chapter 508 is further amended by adding immediately after Section 38 the following Section:

38A (1) For the purpose of Sections 37 and 38, the net average weekly earnings of the worker are the workers gross average earnings, less the probable deductions for

(a) income tax payable by the worker;

(b) Canada Pension Plan premiums or Quebec Pension Plan premiums payable by the worker;

(c) unemployment-insurance premiums payable by the worker; and

(d) any other type of deduction the Board may establish by regulation.

(2) The income tax payable pursuant to clause (1)(a) may be calculated by using

(a) the workers income from employment and, where unemployment-insurance benefits have been included in average earnings, the workers income from unemployment-insurance benefits as income; and

(b) the workers basic personal tax credits or exemptions and tax credits or exemptions for a person who is a dependant of the worker pursuant to the *Income Tax Act* (Canada) as deductions.

(3) The Board may establish a schedule or procedure for determining the probable deductions required by subsection (1).

(4) In establishing a schedule or procedure pursuant to subsection (3) and in calculating probable deductions pursuant to subsection (1), it is not necessary that the Board consider a workers actual circumstances or deductions.

38B (1) Where the worker was injured before the coming into force of the amendments to Section 37 and 38 and the coming into force of Section 38A, as contained in the *Workers Compensation Act*, the Board shall recalculate the amount of compensation payable to the worker in accordance with the amended Sections 37 and 38 and Section 38A.

(2) The Board shall commence payment of the amount recalculated pursuant to subsection (1) six months after the coming into force of the amendments referred to in subsection (1).

**(5)** The amendments to Chapter 508 contained in subsections (1) to (4) apply where the worker was injured on or after the coming into force of subsections (1) to (4).

**(6)** Section 46 of Chapter 508 is repealed.

**(7)** Subsection 62(1) of Chapter 508 is amended by

(a) striking out "increase" in the third line and substituting "vary"; and

(b) striking out "in excess of" in the fifth line and substituting "from".

**(8)** Subsection 62(3) of Chapter 508 is amended by striking out "increase" in the second and in the third lines and substituting in each case "vary".

**(9)** Section 149 of Chapter 508 is repealed and the following Section substituted:

149 (1) The Board may

(a) invest any funds arising under any provisions of this Act or under the Boards control according to investment and lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments to avoid undue risk of loss and obtain a reasonable return; and

(b) borrow from any chartered bank, by way of overdraft or otherwise, any sums the Board considers necessary to properly carry out the provisions of this Act.

(2) The funds, investments and income of the Board are free from every form of taxation.

**(10)** Sections 169 to 186 of Chapter 508, including any amendment pursuant to subsection (11), are repealed and the following Section substituted:

169 (1) The Governor in Council may make regulations respecting appeals pursuant to this Act.

(2) Notwithstanding the repeal of Sections 169 to 186, a regulation made pursuant to subsection (1) may include a provision continuing the former Appeal Board for the purpose of deciding appeals which have been heard but not decided by the Appeal Board on the coming into force of this Section.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

**(11)** Chapter 508 is further amended by adding immediately after Section 185 the following Sections:

185A (1) The Governor in Council may appoint an auditor for the purpose of this Section.

(2) At least one auditor appointed pursuant to subsection (1) shall be legally trained.

(3) The remuneration of the auditor shall be fixed by the Governor in Council and paid out of the Accident Fund.

(4) Subject to the regulations, the auditor shall review all matters pending before the Appeal Board.

185B (1) Notwithstanding anything contained in this Part, the Chairman or a vice-chairman sitting alone constitutes a quorum of the Appeal Board.

(2) Notwithstanding anything contained in this Part, an oral hearing is required only where it is requested by the worker.

(3) Notwithstanding Section 169, the Governor in Council may

(a) appoint more than nine members to the Appeal Board; and

(b) designate any member of the Appeal Board to be a vice-chairman. 1994-95, c. 10, s. 275.

**Repeal of former Act**

**276** Chapter 508 of the Revised Statutes, 1989, the *Workers' Compensation Act*, is repealed. 1994-95, c. 10, s. 276.

**Proclamation**

**277** This Act, except subsections 275(6) and (9), comes into force on and not before such day as the Governor in Council orders and declares by proclamation. 1994-95, c. 10, s. 277.

Proclaimed (except Sections

232-237, Part III and  
Section 275) - November 21, 1995

In force - February 1, 1996

Subsection 236(1) proclaimed - April 23, 1996

In force - April 23, 1996

Part III proclaimed - February 6, 1996

In force - February 6, 1996

Subsections 275(1) [to the extent

it enacts subsections 9A(1)-(4)  
of Chapter 508 of the Revised  
Statutes, 1989, the *Workers  
Compensation Act*, (2), (3),  
(5), (7), (8) and (10)  
proclaimed - May 30, 1995

In force - June 1, 1995