

BOARD OF DIRECTORS
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March 2003

Update 2003 – 1

TO: HOLDERS OF THE *ASSESSMENT MANUAL*

This update of the *Assessment Manual* contains amendments to the *Manual* approved by the Board of Directors since January 2003.

The update consists of policy amendments arising from the *Workers Compensation Amendment Act (No. 2), 2002* (“Bill 63”), which amended the *Workers Compensation Act* effective March 3, 2003. The policy amendments include the following:

- amendments relating to the Board’s authority to change its previous decisions;
- amendments relating to the Board’s obligation in decision-making to apply a policy of the Board of Directors that is applicable to the case before it;
- amendments relating to the introduction of the term “further subclasses” in section 37(2); and
- various consequential amendments to further implement Bill 63 and the policy amendments noted above.

A list of amendments has been included as part of the package.

If you have any questions regarding this update or the *Assessment Manual*, please call the Publications and Video Distribution at 1-866-271-4879.

DOUGLAS ENNS
Chair, Board of Directors

Attachments

SUMMARY OF AMENDMENTS – Update 2003 – 1

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Amendments relating to the Board's authority to change its previous decisions and orders, as follows:

- Item AP1-37-3, Classification – Changes;
- Item AP1-96-1, Reconsiderations, Reviews and Appeals Reconsideration of Decisions; and
- Item AP1-96-2, Reconsiderations, Reviews and Appeals Fraud and Misrepresentation.

Amendments relating to the obligation of the Board in decision-making to apply a policy of the Board of Directors that is applicable to the case before it, as follows:

- new Item AP1-1-0, Application of the *Act* and Policies.

Amendments relating to the introduction of the term “further subclasses” in section 37(2):

- Item AP1-37-1, The Classification System.

Various consequential amendments, as follows:

- Item AP1-1-3, Distinguishing Between Employment Relationships and Relationship Between Independent Firms;
- Item AP1-37-2, Classification – Multiple;
- Item AP1-38-1, Registration of Employers;
- Item AP1-39-1, Assessment Rates;
- Item AP1-39-2, Assessment Payments;
- Item AP1-47-1, Penalties;
- Item AP1-47-2, Charging Claim Costs to Employers;
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RE: Application of the Act and Policies

ITEM: AP1-1-0

BACKGROUND

1. Explanatory Notes

Decision-making at the Workers' Compensation Board is governed by the *Workers Compensation Act*.

Section 82(1)(a) of the *Act* authorizes the Board of Directors to set and revise the Board's policies. These policies are of broad general application and provide further direction to Board officers in dealing with individual matters.

Section 99(2) of the *Act* requires the Board to make decisions based upon the merits and justice of the case, but in so doing to apply a policy of the Board of Directors that is applicable in the case.

The purpose of the POLICY in this Item is to provide direction regarding the interaction between the application of the *Act* and the policies made under the *Act* and the consideration of the individual circumstances of the case.

The POLICY does not comment on documents issued under the authority of the President/Chief Executive Officer of the Board. That is a matter for the President/CEO to address.

2. The Act

Section 82(1)(a):

The board of directors must ... set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety

Section 99(2):

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

POLICY

In making decisions, Board officers must take into consideration:

1. the relevant provision or provisions of the *Act*;
2. the relevant policy or policies in this *Manual*; and
3. all facts and circumstances relevant to the case.

By applying the relevant provisions of the *Act* and the relevant policies, Board officers ensure that:

1. similar cases are adjudicated in a similar manner;
2. each participant in the system is treated fairly; and
3. the decision-making process is consistent and reliable.

Section 99(2) of the *Act* provides that:

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

In making decisions, Board officers must take into account all relevant facts and circumstances relating to the case before them. This is required, among other reasons, in order to comply with section 99(2) of the *Act*. In doing so, Board officers must consider the relevant provisions of the *Act*. If there are specific directions in the *Act* that are relevant to those facts and circumstances, Board officers are legally bound to follow them.

Board officers also must apply a policy of the Board of Directors that is applicable to the case before them. Each policy creates a framework that assists and directs Board officers in their decision-making role when certain facts and circumstances come before them. If such facts and circumstances arise and there is an applicable policy, the policy must be followed.

All substantive and associated practice components in the policies in this *Manual* are applicable under section 99(2) of the *Act* and must be followed in decision-making. The term “associated practice components” for this purpose refers to the steps outlined in the policies that must be taken to determine the substance of decisions. Without these

steps being taken, the substantive decision required by the *Act* and policies could not be made.

References to business processes that appear in policies are only applicable under section 99(2) of the *Act* in decision-making to the extent that they are necessary to comply with the rules of natural justice and procedural fairness. The term “business processes” for this purpose refers to the manner in which the Board conducts its operations. These business processes are not intrinsic to the substantive decisions required by the *Act* and the policies.

If a policy requires the Board to notify an employer, worker, or other workplace party before making a decision or taking an action, the Board is required to notify the party if practicable. “If practicable” for this purpose means that the Board will take all reasonable steps to notify, or communicate with, the party.

This policy item is not intended to comment on the application of practice directives, guidelines and other documents issued under the authority of the President/Chief Executive Officer of the Board. The application of those documents is a matter for the President/CEO to address.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 82(1)(a) and 99(2), <i>Workers Compensation Act</i>
CROSS REFERENCES:	
HISTORY:	Item developed to implement the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002 effective March 3, 2003.
APPLICATION:	This policy applies to decisions on or after March 3, 2003.

**RE: Coverage under Act –
Distinguishing Between Employment
Relationships and Relationships Between
Independent Firms**

ITEM: AP1-1-3

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out the general principles for determining whether a contract to perform work creates an employment relationship or a relationship between independent firms.

2. The Act

See Item AP1-1-1.

Section 96(1):

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

(Clauses (a) to (g) omitted)

- (h) whether an industry or a part, branch or department of an industry is within the scope of this Part, and the class to which an industry or a part, branch or department of an industry within the scope of this Part should be assigned;
- (i) whether a worker in an industry within the scope of this Part is within the scope of this Part and entitled to compensation under it; and

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

POLICY

(a) General principles

In distinguishing an employment relationship from one between independent firms, there is no single test that can be consistently applied. The factors considered include:

- whether the services to be performed are essentially services of labour;
- the degree of control exercised over the individual doing the work by the person or entity for whom the work is done;
- whether the individual doing the work might make a profit or loss;
- whether the individual doing the work or the person or entity for whom the work is done provides the major equipment;
- if the business enterprise is subject to regulatory licensing, who is the licensee;
- whether the terms of the contract are normal or expected for a contract between independent contractors;
- who is best able to fulfill the prevention and other obligations of an employer under the *Act*;
- whether the individual doing the work engages continually and indefinitely for one person or works intermittently and for different persons; and
- whether the individual doing the work is able or required to hire other persons.

The major test, which largely encompasses these factors, is whether the individual doing the work exists as a business enterprise independently of the person or entity for whom the work is done.

No business organization is completely independent of all others. It is a question of degree whether a party to a contract has a sufficient amount of independence to warrant registration as an employer. Many small parties may only contract with one or two large firms over a period of time. Yet they are often independent of the person with whom they are contracting in significant respects. For example, they must seek out and bid for their own contracts, keep their own books and records, make income tax,

unemployment insurance and Canada Pension Plan deductions. They also retain the right to hire and fire their own workers and exercise control over the work performed by their workers. These factors must be considered.

Some regard must also be paid to the structure and customs of the particular industry involved. Where an industry makes much use of the contracting out of work, this should be recognized as a factor in considering applications for registration as employers by parties to contracts in those industries.

(b) Specific guidelines

Parties who would be considered independent firms include:

- (1) Any firm supplying labour and materials on which a profit or loss may result. Items such as nails and drywall tape are not considered materials for this purpose.
- (2) Any firm which has two or more pieces of revenue producing equipment. Hand tools and personal transportation vehicles or vehicles used to move equipment are not considered to be revenue producing equipment.
- (3) Service industry firms that enter into two or more contracts simultaneously.
- (4) Incorporated companies unless there are circumstances indicating that the principals of the corporation are workers rather than independent firms. If such circumstances exist, a full investigation will be made and the applicant's position determined in accordance with the policies in this *Manual*. Two common situations where corporations will not be considered independent firms are where:
 - (i) the corporation is a personal service corporation, (A personal service corporation for this purpose is one where no worker other than a principal active shareholder is employed, and if the firm was not incorporated, the principal active shareholder would clearly be a worker. If, without incorporation, the firm would be a labour contractor, it would not be considered a personal service corporation.); or
 - (ii) the corporation's sole function is to provide an inescapable phase of a firm's operations, it is providing essentially labour only for one firm at a time, and there is a degree of common ownership between the two firms. In such cases, the corporation will be assessed through the operating company at the assessment rate of the operating company. If the corporation is working for more than one firm, or there is not common ownership, the company will be considered a separate employer.
- (5) Society, cooperative, trade union or similar entity.

(6) Manpower supply firms.

These guidelines will resolve the question whether a particular person or entity is an “independent firm” in most cases.

The Board, for the purposes of the *Act*, has the exclusive power under section 96(1) to determine status. The Board’s jurisdiction cannot be excluded by private agreement between two parties, whether the agreement does this expressly, or indirectly by labelling the parties as independent operators (who would therefore be independent firms). The Board makes its own judgment of their status, having regard to the terms of the contract and the operational routines of the relationship. However, decisions made by the Board are for workers’ compensation purposes only and have no binding authority under other statutes.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1, 2 and 96(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6) and Coverage under <i>Act</i> – Labour Contractors (AP1-1-7) in the <i>Assessment Manual</i> and Introduction – Workers and Employers Covered by the <i>Act</i> (policy item #3.00), Coverage of Workers (policy item #5.00), Definitions of “Worker” and “Employer” (policy item #6.00), Nature of Employment Relationship (policy item #6.10), Federal Government Employees (policy item #8.10) and Actions by Employers (policy item #47.10) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces in part Policies No. 20:10:30, 20:30:20 and 20:30:30 of the <i>Assessment Policy Manual</i> and Decisions No. 32, 138, 183, 229, 255 and 335 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . Consequential changes were subsequently made to the restatement of the <i>Act</i> in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: The Classification System

ITEM: AP1-37-1

BACKGROUND

1. Explanatory Notes

The costs of compensable injuries and diseases, along with the costs of administering claims and carrying out other statutory requirements, are collected from employers in the form of assessments. For this purpose, employers are classified into classification units, industry groups and rate groups. The costs incurred in relation to these classifications determine the assessment rate paid by their members.

Every year the Board publishes the *Classification and Rate List*, which forms part of Board policy. This publication lists every classification unit and the assessment rate assigned to it for the year.

2. The Act

Section 37(1):

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

- | | | |
|-------|----|---|
| Class | 1: | Primary resource |
| Class | 2: | Manufacturing |
| Class | 3: | Construction |
| Class | 4: | Transportation and warehousing |
| Class | 5: | Trade |
| Class | 6: | Public services |
| Class | 7: | General services |
| Class | 8: | Canadian Airlines International Ltd., Canadian Pacific Hotels Corporation, Canadian Pacific Railway Company, Cominco Ltd. |
| Class | 9: | The Burlington Northern and Santa Fe Railway Company |

- Class 10: Air Canada, Canadian National Railway Company, Via Rail Canada Inc.
- Class 11: British Columbia Assessment Authority, British Columbia Buildings Corporation, British Columbia Ferry Corporation, British Columbia Railway Company, Emergency Health Services Commission, Government of British Columbia, Workers' Compensation Board of British Columbia.

POLICY

(a) General

The Board has adopted a modified collective liability system, under which self-sufficient groups of employers are created on the basis of the industries in which they operate. These groups must be large enough to provide for an adequate spread of the risk and stability in the assessment rate. Some firms are large enough to form groups by themselves.

The classification system is based on the principle that the cost of producing a product or providing a service includes the cost of injuries or diseases incurred by the workers doing the work. The system is based on industrial undertaking rather than on occupation or hazard. If a specific product is being manufactured, the classification is the same, regardless of whether the manufacturing is done by the employer's workers or subcontracted out to another firm. A classification therefore includes all occupations within the industry, including office or clerical staff.

The terms classes, subclasses and further subclasses are used in section 37 of the *Act*. For the purposes of describing the Board's classification system, a sector is equivalent to a class, a rate group is equivalent to a subclass, and an industry group and a classification unit are equivalent to further subclasses.

(b) Classification units

The Board classifies all employers and independent operators into classification units. Not all classification units are large enough to have the financial credibility to stand alone for assessment rate making purposes; they must be grouped together to provide an adequate insurance base.

Employers and independent operators are assigned to classification units on the basis of the industry in which the firm is operating. In assigning the classification, some of the factors considered are the type of product or service being provided, the processes and equipment that are used, and the type of industry with which the firm is in competition. Occupations of individual workers may be reviewed when assigning the classification,

but only as an indicator of the type of industry being carried on. The fact that an employer contracts out parts of an industry to other employers does not mean that the employer cannot be classified in that industry. The assessment classification system should not unfairly discriminate between firms competing for the same business.

Where a firm's operations are an inescapable part of another firm's operations, the firm's classification will be the same as that of the other firm regardless of ownership.

If the firm's operations do not fall within this category, but are ancillary, or an extension or add-on phase, to another firm's operations, the classification will be the same as the other firm's if there is a degree of common ownership. Even if the firm is separately registered, the two firms will be regarded as one firm for the purpose of classification. The multiple classification criteria will then be applied.

Where a firm's operations are divided so that part is within BC and part is outside of BC, the firm will be classified according to the business of the operations conducted within BC.

(c) Industry groups

Classification units that are large enough will form their own industry group. Otherwise, the Board will combine classification units into industry groups on the basis of similarity of industrial activity and a reasonable expectation of similar cost rates. Industry groups must be of sufficient size to be fairly regarded as having some predictability for future claims experience. The Board determines the minimum size for industry groups.

(d) Rate groups

Assessment rates are calculated at the rate group level. Industry groups that are large enough will form their own rate group. Otherwise, the Board will combine industry groups into rate groups on the basis of similarity of historical injury cost rates. Rate groups must meet a minimum size requirement as determined by the Board, in order to be viable for statistical and insurance purposes.

Where the injury cost rate of the industry group differs from the average injury cost rate of its rate group by more than 20% for three consecutive years, the industry group will be moved to a rate group that better reflects its actual injury cost rate.

PRACTICE

For more information on the classification system, readers should consult the WCB website at http://www.worksafebc.com/for_employers/premiums/classification/default.asp.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 37(1) and 37(2), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Classifications – Multiple (AP1-37-2) and Classification – Changes (AP1-37-3) in the <i>Assessment Manual</i> .
HISTORY:	Replaces in part Policies No. 30:10:00 and 30:20:10 of the <i>Assessment Policy Manual</i> and Decision No. 58 in volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Classification – Multiple

ITEM: AP1-37-2

BACKGROUND

1. Explanatory Notes

Usually, when an employer registers with the Board, the employer is assigned to a single classification unit based on the industrial activity of the employer's business. On occasion the employer's business may involve more than one industrial activity, or the employer may, after the initial registration, establish a new business involving another industrial activity. In either of these situations, the Board must determine whether the additional industrial activity is assigned to the original classification unit, or whether a separate classification unit is justified. The multiple classification policy assists in determining the circumstances in which the employer must be assigned to more than one classification unit.

2. The Act

Section 37:

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

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

- (f) withdraw from a subclass
 - (i) an employer, independent operator or industry,
 - (ii) a part of the subclass, or
 - (iii) another subclass or part of another subclass,and transfer it to another class or subclass or form it into a separate class or subclass, and
- (3) If the Board exercises authority under subsection (2), it may make the adjustment and disposition of the funds, reserves and accounts of the classes and subclasses affected that the Board considers just and expedient.

Section 42:

The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just

POLICY

An employer is assigned to a single classification unit based on the industry in which the employer is operating unless this policy applies.

(a) Policy intent

The intent of the multiple classification policy is to support the purpose of the employer classification system, which is to classify employers into groups that can be used to set fair and equitable assessment rates. Towards this purpose, the multiple classification policy is designed to ensure that employers who operate several lines of business in different industries:

- are of sufficient size to be a significant competitor with other employers carrying on those lines of business;
- are assigned to the classification units representing those industries; and
- pay the same base assessment rates as their competitors.

(b) Responsibility for obtaining multiple classification

It is the responsibility of each employer to apply to the Board for a multiple classification, or to remove a multiple classification designation, when the employer's business operation changes. The Board may, however, based on available information, assign more than one classification unit to an employer.

(c) Multiple classification criteria

In order for an employer to qualify for more than one classification unit, the industrial activities identified for separate classification must be distinct and independent operations. To demonstrate this requirement, the following criteria must be satisfied:

- (1) Each industrial activity must be separate so that it does not contribute to the risk of injury or occupational disease in another industrial activity of the employer. The Board may consider this requirement to be met for the purpose of this policy if the industrial activity under consideration for a separate classification is:
 - (i) performed by specific personnel as their sole employment function at any one time, and no personnel are engaged in more than one industrial activity simultaneously; or
 - (ii) conducted at a separate location from other industrial activities of the employer; or
 - (iii) conducted at the same location as other industrial activities of the employer, but at a different time.
- (2) The industrial activity in question must not simply be to assist, support or service the employer's main industry. This means that multiple classification will not normally be granted for such activities as clerical, accounting or marketing. (However, there may be circumstances when such activities do not simply exist to assist, support or service the main industry.)
- (3) At least 50 percent of the product or service from the industrial activity, measured by the volume of the annual output or the revenue from the annual output, must be sold to unaffiliated customers or clients who operate at arm's length.
- (4) Each industrial activity must meet at least one of the following conditions:
 - (i) generate an annual assessable payroll of at least four times the maximum wage rate; or

- (ii) generate an annual assessable payroll that is at least 25 percent of the gross annual assessable payroll of all the employer's industrial activities; or
- (iii) generate an annual revenue that is at least 25 percent of the gross annual revenue of all the employer's industrial activities.

(d) Special hazard operations

The following activities are designated as special hazard operations, and may attract higher assessment rates:

- Bridge, Overpass, or Viaduct Construction or Repair
- House Raising or Structural Moving of Buildings or Heavy Equipment
- Pier, Wharf, or Dry Dock Construction or Repair
- Piledriving
- Steel Frame Erection or Structural Repair of Steel Frames
- Steel Frame Painting, Bridge Painting, or Bridge Cleaning
- Structural Concrete Reservoir, Flume, Dam, Dyke, Causeway or Jetty Construction or Repair
- Tunneling

The preceding multiple classification criteria do not apply to special hazard operations. Instead, the following policies apply:

- the Board classifies and treats special hazard operations as separate industrial activities, although they may be ancillary to an employer's other industrial activities; and
- the Board assesses the payroll of special hazard operations, and activities that support them, at the rates specified for the classification units in the *Classification and Rate List*.

(e) Personal optional protection

The multiple classification criteria outlined above apply to individuals with Personal Optional Protection.

(f) Effective dates

When adding a classification, the effective date is the date when the criteria for addition are first met, but not before January 1st of the year previous to the current year. The effective date may be prior to this date if the Board feels that the delay in submitting information was deliberate on the part of the employer. However, where the classification exists for Personal Optional Protection coverage only, the effective date is the date the coverage is accepted by the Board.

The effective date for the deletion of a classification is the date the assessment liability for that classification ceased (i.e. last day when the criteria for having the classification were met and/or last day Personal Optional Protection was in effect).

An employer must be advised when a classification has been added to or deleted from the employer's account.

PRACTICE

Practice Directive "Multiple Classifications" - AP1-37-2 provides more information regarding the criteria by which an employer may be assigned to more than one classification. For this Practice Directive and any other relevant PRACTICE information, readers should consult the WCB website at http://www.worksafebc.com/law_and_policy/practice_directives/assessment_and_revenue_services/default.asp.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 37(2) and (3) and 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Personal Optional Protection (AP1-2-3), The Classification System (AP1-37-1) and with respect to management/administrative payroll, Payroll – Principles for Determining (AP1-38-3) in the <i>Assessment Manual</i> .
HISTORY:	Replaces in part Policies No. 30:20:20, 30:20:21 and 30:20:30 of the <i>Assessment Policy Manual</i> . Consequential changes were subsequently made to the restatement of the <i>Act</i> in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Classification – Changes

ITEM: AP1-37-3

BACKGROUND

1. Explanatory Notes

A change in classification may result from such things as a change in an employer's operations, a review or investigation by the Board on its own initiative or at the request of an employer, or a change in Board practice towards an industry or type of employment.

2. The Act

See Items AP1-37-1, AP1-37-2 and AP1-42-1.

POLICY

The effective date of a change in a firm's classification depends on the reason for the change. There are five main reasons why a firm's classification would change:

- (1) *Board error.* This occurs if the information is available and complete to allow the proper classification to be applied but a clear error is made in classifying a firm; it includes an improper classification continuing after a Board officer has audited a firm. It does not include borderline classification questions requiring a judgment decision. Nor does it include situations where the information supplied by the firm is incomplete or inaccurate, regardless of whether this was deliberate or inadvertent.
- (2) *Change in the Firm's Operations - Distinct.* This occurs where a firm undertakes a new, unrelated business activity that is not ancillary to or supportive of the firm's current operations. It does not include an expansion or contraction of the firm's current operations. If that results in a different classification, it is covered by (c).
- (3) *Change in Firm's Operations - Evolution.* This refers to an enhancement, expansion, contraction or a change in method of producing the same product/service, which results in a change of classification. If there is a fundamental change in a firm's operations, it is covered by (b) even though the new operation may be a related industry utilizing the same equipment.

- (4) *Change in Board Classification Practice.* This can result from the Board moving an industry or segment of an industry from one classification to another, recognizing and defining a new industry classification or changing the definitions of the industry classifications.
- (5) *Misrepresentation.* A firm may misrepresent its operations deliberately or inadvertently. Misrepresentation can be by omission of information, submission of false information, or by words which, though reasonably interpreted, do not accurately reflect the firm's operations.

The following table shows how each of these situations affects the date when a base rate increase or decrease is effective and whether the previous experience rating position will continue under the new classification.

Reason for change	Effective date of base rate increase	Effective date of base rate decrease	Impact on experience rating
Board error	January 1 st of the year following the year in which the error was discovered and the firm notified.	The Board may use the date when the error was made.	Experience rating will apply to the new classification from the date when the classification change takes effect.
Change in operations – Distinct	The date when the new activity began or January 1 st of the year prior to the year in which the Board became aware of the change, whichever is later. The firm should have advised the Board of the change when it occurred.	The date when the new activity began or January 1 st of the year prior to the year in which the Board became aware of the change, whichever is later. The firm should have advised the Board of the change when it occurred.	There will be no carry over of experience rating.
Change in operations – Evolutionary	January 1 st of the year following the year the Board is aware of the change. The firm may not have been aware that a gradual change in operations should have been reported to	The date when it is reasonably verified the change took place or January 1 st of the year prior to the year the Board became aware of the change, whichever is later.	The Board will generally transfer the experience rating data from the old classification to the new.

	the Board as it could lead to a different classification.	The firm may not have been aware that a gradual change in operations should have been reported to the Board as it could lead to a different classification.	
Change in classification practice	January 1 st of the year following the year the Board was aware of the need to change the firm.	January 1 st of the year the definitions/parameters were clarified/changed or when the firm fell within the new definition/parameters, whichever is later.	Experience rating will continue into the new classification.
Misrepresentation	January 1 st of the year prior to the year the WCB became aware. If the misrepresentation was blatant, the effective date can be prior to that.	January 1 st of the year the WCB became aware.	There will generally be no transfer. Experience rating data will be collected from the date of the rate change. However, the Board may transfer where the misrepresentation is blatant and the employer would gain from a failure to transfer.

The employer will be advised of any change in its classification.

A decision to change an employer's classification does not constitute a reconsideration of a decision under section 96(4) of the Act. Rather, the change constitutes the exercise of the Board's normal classification authority under section 37(2). The restrictions, including the 75-day time limit, placed upon the Board's reconsideration authority under section 96(5) does not apply.

PRACTICE

If a classification is being added to a firm's existing classification, the criteria of the multiple classification policy must be met before the classification change policy is applied. If application of the two policies results in different effective dates for the change, the date most favourable to the employer will be used in the absence of fraud or misrepresentation. This might happen, for example, if there is a rate increase resulting from the addition of a new classification due to an evolutionary change in business operations.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 37(2) and (3) and 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also The Classification System (AP1-37-1), Classification – Multiple (AP1-37-2) and Transfer of Experience Rating (AP1-42-1) in the <i>Assessment Manual</i> .
HISTORY:	Replaces Policy No. 30:20:40 of the <i>Assessment Policy Manual</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> .
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Registration of Employers

ITEM: AP1-38-1

BACKGROUND

1. Explanatory Notes

All employers must register with the Board unless exempt from the scope of Part 1 of the *Act*. The exemptions include certain home owners employing persons in or about the home, individuals employing their spouses in their unincorporated business, certain non-resident employers in the province for short periods and certain personal financial holding companies. More information about exemptions is set out in Item AP1-2-1.

2. The Act

Section 38:

- (1) Every employer must
 - (a) keep at all times at some place in the Province, the location of which the employer has given notice to the Board, complete and accurate particulars of the employer's payrolls;
 - (b) cause to be furnished to the Board
 - (i) when the employer becomes an employer within the scope of this Part; and,
 - (ii) at other times as required by a regulation of the Board of general application or an order of the Board limited to a specific employer,

an estimate of the probable amount of the payroll of each of the employer's industries within the scope of this Part, together with any further information required by the Board; and
 - (c) furnish certified copies of reports of the employer's payrolls, at or after the close of each calendar year and at the other times and in the manner required by the Board.

POLICY

(a) General

Every employer must contact the Board to determine if it is required to register, and if so required, must register with the Board. An employer is not registered until sufficient information to effect registration is received by the Board. The Board may register a firm on its own initiative if it becomes aware of a firm that is required to be registered.

The determination whether an applicant for registration is an independent firm, labour contractor, or worker is based on the facts available at the time the determination is made. The responsibility to provide full and accurate initial information and to update this information, by advising the Board of any material changes to the applicant's operations, rests with the applicant.

Shortly after a new registration has been established, the Board advises the employer of the new account number, the industry classification unit in which the employer has been registered, the assessment rate and remittance requirements, and the monthly cost of any Personal Optional Protection the employer has requested. Information is also sent to the employer, giving details about the rights and responsibilities of an employer under the *Act*.

If the employer is exempt from coverage under the *Act*, the employer is advised that registration is not required and, in most cases, the employer is offered voluntary coverage.

The effective date of registration is the date from which the employer will be assessed by the Board. Except where stated otherwise in this manual, this is the date the employer first employed workers. If the firm was employing workers, so that the registration with the Board would have been required in a previous year, the effective date will only go back as far as January 1st of the preceding year. However, if there is evidence that the employer deliberately avoided registration by such means as misrepresentation, false statements or ignoring registration requests, a prior date may be used.

The Board does not provide rulings or information on ways to structure a business to avoid or minimize employer obligations under the *Act*.

(b) Labour contractors

The Board does not conduct a full investigation of each application for registration from a labour contractor. The fact that a contractor applies for registration is in itself indication of sufficient status. Most applications for registration are bona fide in respect of a properly registrable business. Therefore, applications for registration which are, on the face of it, proper, are accepted without further investigation. Where there are

grounds for suspecting that an attempt is being made to avoid the provisions of the *Act*, the status of the applicant will be fully investigated and determined according to the policies in this manual.

Where an application for registration from a labour contractor is accepted, the contractor will be informed that he or she is not personally covered for compensation benefits unless he or she applies for Personal Optional Protection. Since registration is elective, the effective date is when registration is received, unless a subsequent date is considered appropriate. Prior to that date the prime contractor is responsible for assessments.

(c) Corporations

Occasionally, a firm is registered which is inadvertently or deliberately misrepresented as an incorporated company. Alternatively, a properly incorporated and registered company may be struck from the register by the Registrar of Companies but may continue to operate as if it still has the status of a corporation. The status of such firms' accounts with the Board is changed to that of a proprietorship or partnership. The effective date of the change will be when the correct legal status of the firm is discovered. For the period up to that date, the proprietor or partners will be treated as if they were workers of the limited company, and will be provided compensation coverage and their earnings assessed. Collection of assessments owed will proceed under the proprietorship or partnership name(s) regardless of when the liability was incurred.

(d) Divisions

The term "employer" refers to the legal entity conducting the business such as a proprietorship, partnership or limited company. An employer may have one or more trade names, but the legal entity behind the name has the obligations and receives the benefits under the *Act*. The employer is generally considered one and indivisible for purposes of registration, classification, experience rating, assessment payment and all other employer obligations.

Registration of separate divisions of an employer will be considered:

- if the division is of sufficient size to warrant the administrative burden for a separation; and
- it is in the Board's best interest to allow the separation for the purpose of reporting of accurate payroll, auditing of physical payroll records and the payment of assessment.

For the purpose of this policy, "division" means an operation of a limited company that:

- operates as a profit centre (responsible for revenue and expenses - not a cost centre);

- has separate staff assigned solely to that division;
- is physically separate from any other operations of the company;
- maintains its own payroll records for all personnel (excluding senior management and/or executive payroll which is usually reported by the company head office) and payment records for contractors employed by the division);
- maintains the records physically separate from the records of any other part of the limited company; and
- carries on business in its division or trade name.

Even though divisions may be registered separately, they will be viewed as one for the purpose of classification and experience rating. Additionally, the debt of a division is the debt of the limited company and any collections action will be taken against the legal entity without regard to divisional registrations.

(e) Cancellation of registration

Registration with the Board is cancelled when the firm ceases to be an employer under the *Act*. The effective date of cancellation is when the employer ceased operating the business or ceased to employ workers. It is the employer's responsibility to notify the Board of this.

The date used for cancellation may be different if the firm is a labour contractor supplying labour and equipment. Where the contractor has no Personal Optional Protection and no reported assessable earnings, registration is cancelled when the Board becomes aware of the situation. Cancellation is effective December 31st of the year for which the report is made if the year-end report is received prior to March 31st of the next year. Apart from this situation, cancellations will not normally be made retroactively.

If a receiver-manager is appointed subsequent to the cancellation of a firm placed into receivership, a new registration must be established for the receiver-manager.

PRACTICE

For detailed information on how to register with the Board, see the Board's Internet site at http://www.worksafebc.com/for_employers/registering_with_the_wcb/registration_information/emp_10_20_40.asp.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	s. 38(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3) with respect to corporations, Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Exemptions from Coverage (AP1-2-1), Requesting a Variance from a General Exemption (AP1-2-2), Personal Optional Protection (AP1-2-3), Extending the Application of the <i>Act</i> (AP1-3-1), Fishing (AP1-4-1), Transfer of Experience Rating (AP1-42-3) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> .
HISTORY:	Replaces in part Policies No. 20:20:00, 20:30:10, 20:30:20, 20:30:30, 20:30:31, 40:40:00, 40:60:00 and 70:30:00 of the <i>Assessment Policy Manual</i> and Decision No. 255 of volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Assessment Rates

ITEM: AP1-39-1

BACKGROUND

1. Explanatory Notes

Assessment rates are set for each rate group. The intent is for each rate group to be self-sufficient with regard to costs. The cost of injuries and diseases that occur to the workers of employers in each group is paid by all the employers in that group.

2. The Act

Section 39 (in part):

- (1) For the purpose of creating and maintaining an adequate accident fund, the Board must every year assess and levy on and collect from independent operators and employers in each class, by assessment rated on the payroll, or by assessment rated on a unit of production, or in a manner the Board considers proper, sufficient funds, according to an estimate to be made by the Board to
 - (a) meet all amounts payable from the accident fund during the year;
 - (b) provide a reserve in aid of industries or classes which may become depleted or extinguished;
 - (c) provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all injuries which occur during the year;
 - (d) provide a reserve to be used to meet the loss arising from a disaster or other circumstance which the Board considers would unfairly burden the employers in a class;
 - (e) provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability; and
 - (f) provide and maintain a reserve for payment of retirement benefits.

POLICY

Each year, the total cost for a particular rate group is estimated. The total is divided by the estimated total assessable payroll for the group to produce the base assessment rate for the group for that year. Every employer in the rate group pays the same or a similar base assessment rate, modified by the employer's own experience rating adjustment if applicable. The rate is expressed as a dollar amount per one hundred dollars of payroll.

As a result of section 39(1), the estimated total annual cost for each rate group is made up of different costs. This cost includes:

- the estimated current costs of all injuries which occur during the year;
- capitalized reserves sufficient to meet the future payments of compensation on those injuries;
- the rate group's contribution to other reserves described in section 39(1);
- the rate group's share of the Board's administrative costs; and
- an amount to amortize the rate group's account balance if appropriate.

The assessment rate for each rate group is reviewed annually. The assessment rates may be adjusted more frequently, but this will be avoided where possible.

PRACTICE

For detailed information on how assessment rates are set and the rates payable by each classification, readers should consult the WCB website at http://www.worksafebc.com/for_employers/premiums/default.asp.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s. 39(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also section 96.2(2)(f) of the <i>Workers Compensation Act</i> and The Classification System (AP1-37-1) with regard to rate groups and Experience Rating (AP1-42-1) in the <i>Assessment Manual</i> and Introduction – Charging of Claim Costs (policy item #113.00), Occupational Diseases (policy item #113.20), Silicosis and Pneumoconiosis (policy item #113.21) and Hearing-Loss Claims (policy item #113.22) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.

HISTORY:

Replaces Policy No. 30:30:00 of the *Assessment Policy Manual*. Consequential changes were subsequently made to the cross references in accordance with the *Workers Compensation Amendment Act (No. 2)*, 2002, on March 3, 2003.

APPLICATION:

This Item results from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Assessment Payments

ITEM: AP1-39-2

BACKGROUND

1. Explanatory Notes

Sections 38 to 40 of the *Act* set out the basic requirements for when employers must pay assessments and the manner of payment. Section 38 requires an employer to provide payroll information to the Board when it first becomes an employer, and at other times as required. The relevant parts of sections 39 and 40 are set out below.

2. The Act

Section 39 (in part):

- (2) Assessments may be made in the manner and form and by the procedure the Board considers adequate and expedient, and may be general as applicable to a class or subclass, or special as applicable to an industry or part or department of it.
- (3) Assessments may, wherever it is considered expedient, be collected in half yearly, quarterly or monthly installments, or otherwise; and where it appears that the funds in a class are sufficient for the time being, an installment may be abated or its collection deferred.

Section 40(1):

Where the Board

- (a) notifies an employer of assessment rates or percentages determined by the Board in respect of the industries in which the employer is engaged; and
- (b) informs the employer of the manner in which the assessment is calculated, and the date it is payable,

the notice constitutes an assessment under section 39, and the employer must, within the time limited in the notice,
- (c) make a return on the form provided or prescribed by the Board; and
- (d) remit the amount of the assessment.

Section 259:

- (1) The commencement of a review under section 96.2 or of an appeal under this Part respecting a matter described in section 96.2(1)(b) does not relieve an employer from paying an amount in respect of a matter that is the subject of the review or appeal.
- (2) If the decision on a review or an appeal referred to in subsection (1) requires the refund of an amount to an employer, interest calculated in accordance with the policies of the board of directors must be paid to the employer on that refunded amount.

POLICY

(a) Remittance schedules

An employer will usually pay assessments annually or quarterly, depending on the size of the annual assessment or the industry in which the employer operates. Firms having an annual assessment of less than \$1,500 are usually assessed annually. Firms having an annual assessment of \$1,500 or more and all firms registered in the Oil, Gas or Mineral Resources, Forestry, or Transportation and Related Services subsectors are usually assessed quarterly.

The Board may change the usual remittance schedule for an employer if:

- the employer and the Board agree on a different schedule;
- an employer's annual assessment regularly fluctuates above and below \$1,500 and the Board determines that the employer should remit either annually or quarterly regardless of the amount of the annual assessment; or
- an employer's account is not in good standing or the employer has a history of failing to remit on time, and the Board determines that the employer is required to remit more frequently until the employer establishes an acceptable remittance record.

The decision whether or not to change the remittance frequency is based on such factors as the nature of the employer's operations, and the payment history and status of the account.

(b) Manner of reporting and payment

The Board may use any means of communication to advise an employer of the requirements for reporting and payment and accept payment and reports through any recognized payment medium.

Employers may be required to make a report with each quarterly or annual remittance. Firms remitting quarterly also submit a report at the end of the year covering the whole year. The information required to be provided by these reports may include:

- the amount of payroll, or estimated payroll;
- if the employer was in a previous report only required to provide an estimate of the payroll, the actual amount of payroll covered by the earlier report;
- excess earnings;
- principals' earnings; and
- contractors' earnings.

A report may require the employer to calculate the amount of the assessment and pay any outstanding amount due as a result of the report.

(c) Pre-payment of assessments

If an employer is required to register with the Board for a project that is non-recurring and less than one year in duration, and if an estimate of assessable payroll can be reasonably made, the Board may require pre-payment of an assessment based on the estimate.

The Board may permit other employers to pre-pay assessments for any year on the basis of an estimate of payroll. The Board may agree to provide a percentage discount or similar incentive for such employers.

In any situation where pre-payment takes place, the employer must report actual payroll at the end of the year or other times required by the Board. Based on these reports, additional assessments may be required or credits allowed, as the situation may warrant.

(d) Overpayments

If an employer overpays an assessment, the overpayment will be credited to its account. Refunds will be made on closed accounts and may be considered in other unusual circumstances if specifically requested. A refund will not be granted unless

- the employer's account is current;

- there are sufficient credits in the account;
- all required reports and remittances have been received; and
- there is no outstanding balance for which legal action has been commenced or that has been written off.

If the Board makes any changes to an employer's account as the result of an overpayment of assessments, it will inform the employer in writing.

Interest may be paid on an overpaid assessment in the following situations:

- The overpayment resulted from a blatant Board error. For an error to be blatant, it must be an obvious and overriding error. This means that, had the Board officer known that he or she was making the error at the time, it would have caused the officer to change the course of reasoning and the outcome. A "blatant" error cannot be characterized as an understandable error based on misjudgment. Rather, it describes a glaring error that no reasonable person should make. A blatant error would include where an employer is registered in an obviously incorrect classification when the employer identified the correct industry at the outset.
- An employer prepays an administrative penalty under Part 3 of the *Act* or a penalty assessment (including an experience rating demerit) pending a review under section 96.2 or an appeal under Part 4 and is then successful in the review or appeal.
- An amount other than a prepayment covered by paragraph 2 is returned to an employer as a result of a successful review under section 96.2 or a successful appeal under Part 4 respecting a matter described in section 96.2(1)(b) of the *Act*. In these cases, interest is payable from the date the employer requests the review or files the notice of appeal.

Where interest is payable, it will apply to penalty assessments and accrued interest on outstanding assessments that were paid during the period in question.

The Board pays simple interest at a rate equal to the prime lending rate of the banker to the government. During the first 6 months of a year interest is calculated at the interest rate as at January 1st. During the last 6 months of a year interest is calculated at the interest rate as at July 1st. Where an overpayment of assessment has resulted from a blatant Board error, interest will not accrue for a period greater than twenty years. For practical reasons, certain mathematical approximations may be used in the calculations.

(e) Transfers between accounts

Any request to transfer funds from one employer's account to another must be made in writing by the employer from whose account the funds will be transferred, unless the funds are being transferred as the result of a Board error.

PRACTICE

With regard to part (a) of the POLICY in this Item, the actual dates when employers must make quarterly and annual reports and remittances and details of the forms that must be completed are set out on the WCB website at http://www.worksafebc.com/for_employers/managing_your_account/payroll_reports/default.asp.

With regard to part (d) of the POLICY in this Item, readers should consult Practice Directive "Payment of Interest" - AP1-39-2 - on the WCB website at http://www.worksafebc.com/law_and_policy/practice_directives/assessment_and_revenue_services/default.asp. The banker to the government is the Canadian Imperial Bank of Commerce.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 39(2) and (3), 40(1) and 96(7) <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Payroll Categories (AP1-38-2), Payroll – Principles for Determining (AP1-39-4), Maximum Wage (AP1-38-6), Collection of Assessments (AP1-45-1), Penalties (AP1-47-1) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> and with regard to penalties under Part 3 of the <i>Act</i> , D12-196-1 in the <i>Prevention Manual</i> .
HISTORY:	Replaces in part Policies No. 20:30:40, 40:30:10 to 40:30:30, 40:30:50, 40:30:60 and 40:70:10 to 40:70:40 of the <i>Assessment Policy Manual</i> and Decision No. 351 in volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Penalties

ITEM: AP1-47-1

BACKGROUND

1. Explanatory Notes

The *Act* authorizes the Board to charge penalties, interest and claims costs against employers who fail to provide payroll information and/or pay their assessments on time. The Board collects these penalties and other charges as assessments.

The main purpose of these penalties and other charges is to help ensure that employers comply with their remittance requirements, by imposing a monetary sanction on employers who are in default. Non-compliance involves a cost to the accident fund which, in fairness to the employers who meet their obligations, should be borne by the delinquent employers.

Sections 38, 40 and 47 of the *Act* provide for the following types of penalties and other charges used by the Board:

- Penalties may be charged under sections 38(2), 40(2) or 47(1) of the *Act* to employers who fail to submit their payroll or other information and/or their assessment payments on time.
- A penalty may be charged under section 47(1) of the *Act* to employers who pay less than they actually owe.
- A continuing penalty may be charged under section 47(1) to an employer when an amount remains overdue after the original default.
- Claims costs are charged under section 47(2) when an employer defaults and an injury or occupational disease occurs to one of its workers during the period of default. This is dealt with in Item AP1-47-2.

2. The Act

Section 38(2):

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

Section 40(2):

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

Section 47(1):

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

POLICY

(a) Penalties for failure to remit or report under sections 38(2), 40(2) and 47(1)

The Board may apply a penalty against a delinquent employer at any time after an assessment payment or payroll report is not received by the due date. The penalty will be as follows:

- under section 38(2) when an employer fails to meet the requirements in section 38(1) to keep, in the province, particulars of the employer's payroll and/or to furnish payroll or other information to the Board as required;
- under section 40(2) when an employer fails to meet the requirements in section 40(1) to make a return and remit an assessment on time; and
- under section 47(1) when an employer fails to pay an assessment on time, in circumstances where the employer is not required to make a return at the same time.

The penalty under the above provisions is 8% or less of the amount due or estimated to be due. In order to estimate the amount due, the Board may use the amount that the employer paid in the previous remittance period, or any other amount the Board considers appropriate. These penalties are subject to a minimum charge of \$25. There is no maximum amount.

Penalties for failure to remit or report will be reduced or cancelled only in limited circumstances. The Board may on its own initiative, and subject to the limits on

reconsideration set out under section 96(5), reconsider a penalty charge and reduce or cancel it for the following reasons:

- (1) error on the part of the Board;
- (2) the correct payment was received but improperly coded (This normally applies to a remittance being coded as unidentified cash, but it could also include a subcontractor's remittance paid on a prime contractor's account where the Board is satisfied the payment should properly have been put on the subcontractor's account.);
- (3) the penalty is charged after the cancellation date for an employer's account, except if it applies to a period before the cancellation date;
- (4) death of a family member, partner, proprietor, principal or accountant within the last period for which a remittance would normally be due;
- (5) loss, destruction or theft of payroll records within the last three months prior to the penalty imposition;
- (6) non-return of a remittance form where there was a "nil" amount owing, either because of a nil payroll for the period or because there was a sufficient credit in the account to cover the assessment payable for the period (This reason will only be accepted upon written declaration from the firm, its representative or a Board officer of the payroll figures from the beginning to the end of the period for which the penalty is imposed.);
- (7) issued cheques have failed to arrive (The supporting information should include the cheque ledger or a copy showing the cheque stubs immediately before and after so that it can be reasonably ascertained the WCB cheque was issued within two weeks of the due date.); or
- (8) any other reason that the Board determines is consistent with the *Act* and the purpose of these penalties.

(b) Penalties for paying less than owed under section 47(1)

A penalty under section 47(1) may be applied when an employer under-remits, or pays less than the employer actually owes to the Board. The penalty is 8% or less of the amount unpaid, or estimated to be unpaid. The Board may use the amount the employer paid in the previous remittance period to estimate the amount of the deficiency, or any other amount the Board considers appropriate. The penalty is added to the amount of the deficiency and forms part of it. There is no minimum or maximum amount.

Subject to the reconsideration provisions of the *Act*, the Board may, on its own initiative, reduce or cancel the penalty where it is determined that the penalty was imposed as the result of a material error of fact, law or policy by the Board.

(c) Continuing penalty on overdue amounts under section 47(1)

A penalty under section 47(1) is charged when an employer has an overdue account of any type for 28 days or more. It applies to the outstanding balance until the overdue amount is paid in full. It is in addition to any penalty, interest or other charge that is imposed under this or other policies. The penalty may be imposed where an account has been overdue for less than 28 days if no initial penalty has been charged for the default under parts (a) or (b) of this policy.

The penalty is a percentage rate per month, calculated on a per diem basis on a 28 or 35 day cycle, depending on the number of weeks in the calculation period. The penalty is calculated on the amount outstanding, or estimated to be outstanding, at the end of the cycle, and is added to the outstanding amount and becomes part of it. The Board may estimate the amount due from the amount the employer paid in the previous remittance period, or by any other method the Board considers appropriate.

The Board may adjust the rate for this penalty, effective January 1st and July 1st of each year, to a monthly rate which reflects an annualized rate of at least six percentage points above the Bank of Canada prime rate.

There is no minimum or maximum amount for this penalty.

In order to ensure that penalties are applied in a fair and consistent manner, a penalty will be reduced or cancelled only in exceptional circumstances, including:

- where the balance owing consists of penalties only (all other outstanding amounts have been paid), and the balance is less than \$15.00 or a higher minimum that has been set by the Board since this policy was published;
- where an amended payroll figure has been submitted reducing the assessment for the period in question;
- where the penalties have been imposed for non-payment of a prior penalty and the initial penalty is cancelled;
- when penalties are applied after bankruptcy or receivership dates;
- when a penalty is applied as the result of a Board error; and
- any other reason which the Board determines is consistent with the *Act* and the purpose of this penalty.

A decision may not be reconsidered where one of the limitations set out under section 96(5) of the *Act* exists.

PRACTICE

The percentage rate of penalty in effect under part (c) of this policy is set out in Appendix “A” to this *Manual*.

For any other relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 38(2), 40(2) and 47(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Charging Costs of Claim to Unregistered Employers (AP1-47-2) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> .
HISTORY:	Replaces Policies No. 40:50:05 to 40:50:30 of the <i>Assessment Policy Manual</i> and Decision No. 351 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003.
APPLICATION:	This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Charging Claim Costs to Employers

ITEM: AP1-47-2

BACKGROUND

1. Explanatory Notes

The costs of an injured worker's claim are normally allocated to the classification to which the worker's employer belongs. However, section 47(2) of the *Act* states that the employer must pay the full costs of a worker's claim if, at the time of the injury or occupational disease, the employer had failed to register or provide payroll information to the Board under section 38(1) or has failed to pay an assessment or part of an assessment. Section 47(3) gives the Board some discretion to reduce or cancel this liability.

2. The Act

Section 47 (in part):

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

Section 96(2) (in part):

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

- (5) Despite subsection (4), the Board may not reconsider a decision or order if
- (a) more than 75 days have elapsed since that decision or order was made,
 - (b) a review has been requested in respect of that decision or order under section 96.2, or
 - (c) an appeal has been filed in respect of that decision or order under section 240.

Section 96.2(1) (in part):

Subject to subsection (2), a person referred to in section 96.3 may request a review officer to review the following in a specific case:

...

- (b) a Board decision under Part 1 respecting an assessment or classification matter, a monetary penalty or payment under section 47(2), 54(8) or 73(1) by an employer to the Board of compensation paid to a worker;

POLICY

Charges imposed under section 47(2) may be reduced or cancelled under section 47(3) of the *Act*. Claim costs will not be charged in the following circumstances:

- there has been a Board error;
- the employer contacted the Board prior to the injury with a view to registration, and the employer supplied the information required to proceed with registration within 30 days of the original contact;
- the employer is already registered as a different legal entity;
- the employer is a labour contractor who would be considered a worker if not registered;
- the claim is for health care benefits only and the health care benefit costs are equal to or less than \$100 or a higher minimum that has been set by the Board since this policy was published;

- there is sufficient evidence that the employer mailed a registration form prior to the date of injury; or
- any other circumstances which the Board considers are consistent with the *Act* and the purpose of this charge.

Pursuant to section 96(4) of the *Act*, the Board may, on its own initiative, and subject to the provisions set out under section 96(5), reconsider any matter it has previously considered where there is significant new evidence, or where critical evidence was obviously overlooked (as contrasted with being considered and rejected), or where there was a clear error of law or policy in the previous decision.

Where an employer disagrees with a decision of the Board regarding section 47(2) or a decision not to relieve that employer either in whole or in part from the liability, under section 47(3), the provisions set out in sections 96.2 to 96.5 of the *Act* establish a right to request a review of a decision by a review officer.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 47(2) and 96(2), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Registration of Employers (AP1-38-1), Coverage under <i>Act</i> – Labour Contractors (AP1-1-4)) and Reconsiderations, Reviews and Appeals – Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> and Failure to Register as an Employer at the Time of Injury (policy item #115.10) and Procedure for Applying Section 47(2) (policy item #115.11) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces Policy No. 40:50:50 of the <i>Assessment Policy Manual</i> and Decision No. 111 of volumes 1 - 6 of the <i>Workers' Compensation Reporter</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Assignment of Board Authority

ITEM: AP1-84-1

BACKGROUND

1. Explanatory Notes

The assessment provisions of Part 1 of the *Act* give powers and responsibilities to the Board. The “Board” for this purpose is the corporation known as the Workers’ Compensation Board. It is necessary to determine which persons should exercise the Board’s authority in various areas or provide a mechanism for making that determination. The Board of Directors does this through policy under section 82 of the *Act*. Section 96 sets out the Board’s privative clause with respect to the exercise of authority under Part 1.

2. The Act

Section 82(1):

The board of directors must

- (a) set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety, and
- (b) set and supervise the direction of the Board.

Section 84.1(4):

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

- (a) must attend and participate as a non-voting director at meetings of the board of directors,
- (b) must implement the policies of the board of directors with respect to administration of the Board and the *Act*,
- (c) is responsible for all functions related to staff, other than the appeal commissioners and the staff appointed by and reporting directly to the board of directors, and
- (d) must carry out other functions and duties assigned to the president by the board of directors.

Section 96(1) (in part):

Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court, and proceedings by or before the Board must not be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court, and an action may not be maintained or brought against the Board or a director, an officer, or an employee of the Board in respect of any act, omission or decision that was within the jurisdiction of the Board or that the Board, director, officer or employee believed was within the jurisdiction of the Board; ...

POLICY

The Board of Directors will exercise the following powers and responsibilities as set out in Part 1 relating to the payment of assessments:

- setting assessment rates;
- creating and rearranging employer classes and subclasses;
- approving changes to the *Classification and Rate List*;
- adopting the experience rating system;
- making and amending regulations;
- granting exemptions from the application of Part 1 under section 2(1);
- entering into formal agreements and arrangements with other agencies and governments covered by section 8.1; and
- setting and revising policies under Part 1. (s. 82(1)).

The President/Chief Executive Officer (CEO) has the authority to exercise the remaining powers and responsibilities in Part 1 in relation to the payment of assessments. The President/CEO also has the authority to assign these powers and responsibilities to divisions, departments, categories of officers or individual officers of the Board. President/CEO assignments will state whether the assignee has the authority to further assign the power or responsibility or whether it must be exercised personally.

“Payment of assessments” for the purpose of this policy includes the registration and classification of employers or other persons, determining payroll, assessment rates and

assessments owed by employers, auditing records, collecting amounts owing to the Board and all activities incidental to these functions.

The powers and responsibilities relating to the payment of assessments in Part 1 will be carried out primarily by the Board's Finance/Information Services Division and must be exercised in accordance with the policies of the Board of Directors.

PRACTICE

The assignments of the President/CEO are in writing and publicly available.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 82, 84 and 96, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Exemptions from Coverage (AP1-2-1), The Classification System (AP1-37-1), Assessment Rates (AP1-39-1) and Experience Rating (AP1-42-1) of the <i>Assessment Manual</i> .
HISTORY:	Replaces Policies No. 10:20:00, 50:10:00 and 70:20:00 of the <i>Assessment Policy Manual</i> . Consequential changes were subsequently made to the restatement of the <i>Act</i> in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

RE: Audits

ITEM: AP1-88-1

BACKGROUND

1. Explanatory Notes

Section 88 of the *Act* gives the Board the authority to examine the books and accounts of every employer and make any other enquiry that is considered necessary to ascertain whether an employer is classified correctly and has made an accurate payroll report. Payroll examinations (audits) are a means of ensuring that employers are meeting their assessment obligations under the *Act*.

2. The Act

Section 88:

- (1) The Board may act on the report of any of its officers, and any inquiry which it is considered necessary to make may be made by an officer of the Board or some other person appointed to make the inquiry, and the Board may act on his or her report as to the result of the inquiry.
- (2) The officer and every other person appointed to make an inquiry has for the purposes of an inquiry under subsection (1), all the powers conferred on the Board by section 87.
- (3) The Board, an officer of the Board or a person authorized by it for that purpose, may examine the books and accounts of every employer and make any other inquiry the Board considers necessary to ascertain whether a statement furnished to the Board under section 38 is an accurate statement of the matters which are required to be stated in it, or to ascertain the amount of the payroll of an employer, or to ascertain whether an industry or person is within the scope of this Part. For the purpose of the examination or inquiry, the Board or person authorized to make the examination or inquiry may give to the employer or the employer's agent notice in writing requiring the employer to bring or produce before the Board or person, at a place and time to be mentioned in the notice, which time must be at least 10 days after the giving of the notice, all documents, writings, books, deeds and papers in the possession, custody or power of the employer touching or in any way relating to or concerning the subject matter of the examination or inquiry referred to in the notice, and every employer and every agent of the employer named in and served with the notice must produce at the time

and place required all documents, writings, books, deeds and papers according to the tenor of the notice.

POLICY

The frequency, scope and periods audited will vary from employer to employer and to some degree are dependent on the type of operation and categories of labour or contractors engaged by the employer.

The records subject to audit are not limited to payroll journals, but encompass all books, documents, records, papers or things which relate to assessable earnings.

The audit may take place at the place of business of the employer or its agent, or at a location designated by the Board. Where the audit is to take place at a location designated by the Board, the employer must be given 10 days written notice under section 88(3) of the *Act*.

If an audit results in a change in the firm's assessment, the size and reason for the change is communicated to the employer or its representative and noted in the record of the audit.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	s. 88(1)-(3), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also the policies on determining payroll (AP1-38-2 to AP1-38-6) of the <i>Assessment Manual</i> .
HISTORY:	Replaces Policy No. 50:40:00 of the <i>Assessment Policy Manual</i> . Consequential changes were subsequently made to the restatement of the <i>Act</i> in accordance with the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002, on March 3, 2003.
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

**RE: Reconsiderations, Reviews and Appeals
Reconsiderations of Decisions**

ITEM: AP1-96-1

BACKGROUND

1. Explanatory Notes

The *Act* provides the Board with a limited time period to reconsider previous decisions or orders. Subject to certain restrictions, the Board may only reconsider a decision or order under Part 1 of the *Act* during the period of 75 days subsequent to the decision or order being made.

2. The Act

Section 1, in part:

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

Section 39(6):

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

Section 96, in part:

- (4) Despite subsection (1), the Board may, on its own initiative, reconsider a decision or order that the Board or an officer or employee of the Board has made under this Part.
- (5) Despite subsection (4), the Board may not reconsider a decision or order if
 - (a) more than 75 days have elapsed since that decision or order was made,
 - (b) a review has been requested in respect of that decision or order under section 96.2, or
 - (c) an appeal has been filed in respect of that decision or order under section 240.

Section 221:

- (1) A document that must be served on or sent to a person under this *Act* may be
 - (a) personally served on the person,
 - (b) sent by mail to the person's last known address, or
 - (c) transmitted electronically, by facsimile transmission or otherwise, to the address or number requested by the person.
- (2) If a document is sent by mail, the document is deemed to have been received on the 8th day after it was mailed.
- (3) If a document is transmitted electronically, the document is deemed to have been received when the person transmitting the document receives an electronic acknowledgement of the transmission.

POLICY

(a) Definition of reconsideration

A reconsideration occurs when the Board considers the matters addressed in a previous decision anew to determine whether the conclusions reached were valid. Where the reconsideration results in the previous decision being varied or cancelled, it constitutes a redetermination of those matters.

Decisions that are reconsidered under section 96(4), and are therefore subject to the time limitations in section 96(5), are decisions on individual matters. Examples of such decisions include:

- the modification of an employer's assessment rate through experience rating;
- determinations regarding whether an individual is a worker, employer, independent operator or labour contractor;
- the application of a penalty for failure to remit or report as required under the *Act*; and
- the charging of claims costs when an employer is in default and an injury or occupational disease occurs to one of its workers during the period of default.

Matters of general application, on the other hand, are not intended to be covered by section 96(4) and (5). Examples of such matters include:

- the allocation of income, compensation payments, outlays, expenses, assets, liabilities, surpluses or deficits to or from an account of a class or subclass, or to or from a reserve of the accident fund, with the exception of section 10(8) and section 39(1)(b), (d) and (e) decisions as they relate to a specific employer or independent operator; and
- the determination of an assessment rate for a class or subclass.

Section 37 of the *Act* establishes the Board's authority to make any changes to classes and subclasses that are considered necessary and appropriate as part of the management of the classification system. The exercise of this authority, including withdrawing an employer or independent operator from a subclass and transferring the employer or independent operator to another class or subclass, does not constitute a reconsideration of a Board decision.

(b) The purpose of sections 96(4) and (5)

The Board's authority to reconsider previous decisions and orders is found in section 96(4) and (5) of the *Act*. The purpose of these amendments is to promote finality and certainty within the workers' compensation system.

Sections 96.2 to 96.5 establish a right to request a review by a review officer, where a party disagrees with a decision or order made at the initial decision-making level. It is this review, rather than the application of the Board's reconsideration authority, which is intended to be the dispute resolution mechanism for initial decisions and orders of Board officers.

The use of the words "on its own initiative" in section 96(4), and the availability of a review mechanism under sections 96.2 to 96.5, indicate that the Board is not intended to set up a formal application for reconsideration process to resolve disputes that parties may have with decisions or orders.

Rather, the Board's reconsideration authority is intended to provide a quality assurance mechanism by the Board. The Board is given a time-limited opportunity to correct, on its own initiative, any errors it may have made.

However, this does not preclude the Board from basing a reconsideration on information that may be brought forward by a worker, employer or other party to a decision or order, provided the grounds for reconsideration have been met.

(c) Advice to parties

Parties to a decision or order will be advised at the time the decision or order is made of the right to request a review of the decision or order under section 96.2. The Board will take all reasonable steps to communicate a decision or order to a party. A party who

requests the reconsideration of the decision or order will be reminded by the Board of the party's right to request a review under section 96.2.

If the Board reconsiders a decision or order before the request for review is made, the Board will provide the parties to the decision or order with a reconsidered decision. The reconsidered decision gives rise to a new right to request a review under section 96.2.

(d) Restrictions on reconsideration

The *Act* places a number of express restrictions on reconsidering previous decisions and orders. It is noted, in this respect, that "reconsider" means the making of a new decision and not merely the starting of the reconsideration process leading to the new decision.

- The Board may not reconsider a decision or order more than 75 days after the decision or order was made. In accordance with section 221, where a decision or order has been sent by either registered or regular mail, the document is deemed to have been received on the 8th day after it was mailed. If the decision is sent electronically, the document is deemed to have been received on the date the Board receives electronic acknowledgement of receipt. One exception to section 221 applies to decisions mailed to employers in accordance with section 39(6) regarding the amount of assessment due in respect of the employer's industry and the time when it is payable. This notice is deemed to be given to the employer on the day the notice is mailed.
- The Board may not reconsider a decision or order if a review has been requested by an employer or an independent operator in respect of that decision or order under section 96.2. A request for review under section 96.2 immediately terminates the authority of the Board to reconsider a previous decision or order, even if 75 days has not passed since the decision or order was made.
- The Board may not reconsider a decision or order if an appeal has been filed in respect of that decision or order to the Workers' Compensation Appeal Tribunal under section 240. The filing of an appeal under section 240 immediately terminates the authority of the Board to reconsider the decision or order, even if 75 days has not passed since the decision or order was made.

There are, in addition, a number of implicit restrictions on reconsidering previous decisions and orders. The Board is not authorized to reconsider appellate decisions or findings of the following bodies:

- the former Appeal Division;

- the former Commissioners, who existed prior to June 3, 1991;
- the boards of review and the Workers' Compensation Review Board; and
- the Board of Review, which existed prior to January 1, 1974.

Section 256 of the *Act* provides for the Workers' Compensation Appeal Tribunal to reconsider its own decisions and decisions of the former Appeal Division under certain limited conditions.

(e) Grounds for reconsideration

Subject to the limitations set out above, the Board may reconsider a decision on its own initiative where:

- there is new evidence indicating that a prior decision or order was made in error;
- there has been a mistake of evidence, such as:
 - material evidence was initially overlooked, or
 - facts were mistakenly taken as established which were not supported by any evidence or by any reasonable inference from the evidence;
- there has been a policy error such as:
 - applying an applicable policy incorrectly, or
 - not applying an applicable policy;
- there has been a clear error of law, such as a failure by the Board to follow the express terms of the *Act*; or
- one or more of the reasons for reducing or cancelling a penalty under the policy in Item AP1-47-1 are met.

(f) Authority of Board officers, Managers and Directors to reconsider

A Board officer may only reconsider a decision made by another Board officer where there is new evidence, a mistake of evidence, a policy error or a clear error of law or where one or more of the reasons for reducing or cancelling a penalty are met.

A Manager or Director may reconsider a decision or order made by a Board officer in any of these circumstances, and may also reweigh the evidence and substitute his or her own judgment for that of the Board officer.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 1, 39(6), 96(2) and 221 of the <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Penalties (AP1-47-1); Fraud and Misrepresentation (AP1-96-2) in the <i>Assessment Manual</i> .
HISTORY:	Replaces Policy No. 10:40:00 of the <i>Assessment Policy Manual</i> . Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> .
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. To all reconsiderations on or after March 3, 2003.

**RE: Reconsiderations, Reviews and Appeals
Fraud and Misrepresentation**

ITEM: AP1-96-2

BACKGROUND

1. Explanatory Notes

Section 96(7) allows the Board to set aside any decision or order under Part 1 that has resulted from fraud or misrepresentation.

2. The Act

Section 96, in part:

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

POLICY

In order for a decision or order to be set aside as a result of misrepresentation, there must be more than innocent misrepresentation.

The misrepresentation must have been made, or acquiesced in, by the employer, independent operator or other person with evidence to provide, knowing it to be wrong or with reckless disregard as to its accuracy, and the decision or order must have been made in reliance on the misrepresentation. Misrepresentation would include concealing information, as well as making a false statement.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	s. 96(7) of the <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Reconsiderations of Decisions (AP1-96-1) in the <i>Assessment Manual</i> .
HISTORY:	Changes made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> .
APPLICATION:	To all decisions on or after March 3, 2003.