

# COMPENSATION AND THE DEATH OF A WORKER

## A BRIEFING PAPER

### ISSUE

This briefing paper concerns Section 17 of the *Workers Compensation Act* and associated provisions in Sections 18, 19, and 20. These provisions set up a system for paying compensation to the surviving dependants of a worker dying as a result of an occupational injury or disease.

### BACKGROUND

Section 17 applies whether the death results immediately from an accident or exposure at work or as the long term result of an injury or disease. It provides allowances to cover funeral and other death expenses. In addition, lifetime pensions are normally payable to surviving spouses, and to children until they reach 18 or 21 while continuing at school. The amount of the pension depends on

- the earnings of the deceased,
- the age of the spouse,
- the number of children,
- whether there was a legal marriage,
- and whether the dependants were living with or separate from the deceased.

Canada Pension Plan benefits are deducted from pensions. In some situations, a lump sum is payable, either in addition to or in place of the pension. Section 17 also provides benefits for foster parents looking after orphans, dependent parents, other types of dependants and persons who, though not dependent, had a reasonable expectation of pecuniary benefit from the deceased.

### History

The system has changed significantly since the Workers Compensation Board was created in 1917. The present system arose from legislative change in 1974.

*Pre-1974*

Section 15 of the first *Workmen's Compensation Act* in 1916 provided a system of compensation benefits for dependants of deceased workers. It paid an amount for burial expenses as well as monthly pensions to widows or invalid widowers.<sup>1</sup> An amount was paid for each child who was under 16 or an invalid up to an overall maximum. All these payments were fixed amounts contained in the *Act*, having no relationship to the deceased's earnings. Under section 16, the widow's benefits terminated if she married but a lump sum was paid. There were provisions to cover dependent parents or other types of dependant.

The system remained essentially the same until 1974. There were, however, considerable changes to its detailed provisions. In particular, provision was made for:

- Children up to age 18 attending school;
- Widows, widowers, parents or children who, though not dependent, had a reasonable expectation of pecuniary benefit from the worker;
- Foster mothers looking after orphan dependants;
- Lump sum payments to widows or foster mothers in addition to the monthly pension; and
- Common law wives maintained by the deceased for 7 years where there was no widow.

Some of these changes resulted from the Sloan Royal Commission Reports in 1942 and 1952. The main changes resulting from the Tysoe Royal Commission Report in 1966 were:

- Increases to funeral benefits and the monthly pensions for widows, invalid widowers and children;
- Raising to 20 the age to which children could continue to be paid while at school and allowing higher benefit levels for older children at school; and
- Initiating consumer price index adjustment of benefit amounts.

In 1972, the *Act* was amended to allow

- counselling and placement services for dependants, and
- benefits to common law wives who had lived with the deceased worker for 6 years, or two years where there were children.

*Reorganization of system in 1974*

The system was changed substantially in 1974 as follows:

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<sup>1</sup> Non-invalid widowers had no entitlement

- Funeral benefits were increased;
- Instead of flat rate amounts, pensions for widows, invalid widowers, children, foster mothers and common law wives were based on a percentage of what the deceased would have received if he or she had become permanently totally disabled instead of dying.<sup>2</sup> The percentage varied with the type of dependent and the age of the widow or widower.
- Canada pension plan benefits were deducted from pensions.<sup>3</sup>
- Childless widows under 40 received a fixed lump sum instead of a pension, and this amount was also paid to non-invalid widowers;<sup>4</sup>
- Special provision was made for separated spouses, taking account of the payments being made under separation orders or agreements or the amounts they would have received from the worker;<sup>5</sup>
- The period of living together required for common law wives was reduced to 3 years (1 year with children) and provision was made for a partial payment to a common law wife even where there was a widow.<sup>6</sup>
- The Board was given a broad discretionary power to modify the rules to fit the special circumstances of particular cases.<sup>7</sup>
- The Board was given authority to provide training or retraining for surviving dependent spouses.<sup>8</sup>

Section 17 has not changed substantially since 1974. It was amended in 1985 to bring it into line with the *Canadian Charter of Rights and Freedoms*. The rights of widowers and common law husbands were made the same as widows and common law wives.

In June, 1993, the requirement that a spouse's pension be terminated on remarriage was removed by Bill 63. Where the death occurred after July 1974, Bill 63 reinstated pensions to spouses who remarried on or after April 17, 1985. A further amendment in 1994 reinstated pensions of spouses who remarried on or after April 17, 1985 and whose spouses died before July 1974.

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<sup>2</sup> Section 17(3)(a) to (c), (e) to (f) and (j); section 17(11) and (12). The amount of a permanent total disability award is set out in Section 22. It equals 75% of the deceased's "average earnings" up to the statutory maximum. The maximum changes each year under a formula set out in section 33 of the *Act*. In 1996, the maximum is \$54,200 and in 1997, it will be \$55,800. Section 17(3)(g) contains a special minimum earnings rate that applies in certain situations and is adjusted in accordance with the consumer price index. As of January 1, 1997, the amount is \$25,863.85.

<sup>3</sup> Section 17(3)(a) to (c) and (f)

<sup>4</sup> Section 17(3)(d). The amount is adjusted in accordance with the consumer price index. It is \$36,948.28 as of January 1, 1997.

<sup>5</sup> Section 17(9) and (10)

<sup>6</sup> Section 17(11) and (12)

<sup>7</sup> Section 17(17)

<sup>8</sup> Section 16(2)

## Recent reviews of the system

Notwithstanding the amendments to the *Act* in 1985, the Board began to receive challenges under the *Canadian Charter of Rights and Freedoms* to the provisions of Section 17 which base entitlement on a spouse's age.<sup>9</sup>

In 1992, the then Governors of the Board arranged for the W. E. Upjohn Institute for Employment Research to carry out an administrative inventory of the Compensation Services Division. The report stated:<sup>10</sup>

"The province stands out as having a very complicated scheme of benefits. The alternative benefits depending on a surviving spouse's age and the number of dependent children are examples in this regard.....Fairness in compensation may sometimes require complicated benefit schemes to ensure the social objective is accomplished. However, there is also virtue in being able to explain to a worker or dependent what the basis is for a given level of compensation...."

In response to these and other concerns regarding Section 17, the Board commenced a review of the section in the fall of 1992. In March, 1993, the Governors declared the review to be a priority.

When introducing Bill 63 in June, 1993, the Minister of Labour announced a public review of the structure of benefits for surviving spouses and dependants. Particular reference was made to the provisions using a spouse's age as a basis for benefits and the increased cost of funerals for deceased workers.

On August 27, 1993, the Appeal Division decided a claim from a widow under 40 who had been paid a lump sum benefit, as required by Section 17(3)(d).<sup>11</sup> The Appeal Division found that this provision was contrary to the equality provisions of S. 15(1) of the *Charter of Rights* as it resulted in a reduced benefit level solely on the basis of age. The widow was entitled to the same monthly pension as was payable to a widow over 50 years of age under Section 17(3)(c).

In October, 1993, the Board set up an ad hoc group of Board staff, worker and employer representatives to consider changes to Section 17. The ad hoc group was able to reach substantial agreement on a number of proposals to revise the section. The proposed system would include the following elements:

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<sup>9</sup> A November 30, 1989, Workers Compensation Review Board finding rejecting such a challenge (7 WCR 67)

<sup>10</sup> *Workers' Compensation in British Columbia: An Administrative Inventory at Time of Transition*, October, 1992, page 154

<sup>11</sup> 10 WCR 53; The decision was confirmed in 2 other decisions published at 10 WCR 617 and 11 WCR 533

- Spouses without children would receive 60% of what a worker would have been awarded had he or she been rendered permanently totally disabled by the injury or disease.
- Spouses with children would receive 90% of what a worker would have been awarded had he or she been rendered permanently totally disabled, regardless of the number of children.
- A child with no surviving spouse would be awarded 60% of what the worker would have received had he or she been rendered permanently totally disabled, the payment to be increased to 90% (to be split equally amongst the children) where there are two or more children.

The amount of compensation would never exceed 90% of what a worker would have been paid had he or she been rendered permanently totally disabled.

The ad hoc group were unable to reach agreement on two key areas:

- whether Canada Pension Plan benefits should still be deducted, and
- whether the time a common law spouse should be required to live with a deceased worker should be reduced.

Out of the report resulting from the meetings of the ad hoc group, a proposal was made to raise funeral and incidental expenses and incorporate them into a flat rate "death benefit" with a value of \$6,000.00 paid in advance. (\$5,000.00 for the funeral and \$1,000.00 for incidentals). This was accepted by the Governors on November 16, 1994, and forwarded to the Minister.

The ad hoc group again met to discuss the issues in April, 1995, but without substantial change in the outcome.

The 1993 amendments to the *Act* by Bill 63 did not alter the position of spouses whose pensions had been terminated because they remarried prior to April 17, 1985. The Disenfranchised Widows Action Group was created, which argued that denying reinstatement of pensions to these spouses was contrary to the *Charter of Rights*. A court action was started and an initial decision received on August 23, 1996, upholding the petition on certain issues.<sup>12</sup> Before the court could complete the matter, the provincial government settled the action on the basis that the widows would have their pensions reinstated back to 1985.

## Costs

The following table shows the numbers and total costs of survivors' claims first paid in each year.<sup>13</sup>

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<sup>12</sup> *Grigg v Province of British Columbia*. The court found there was discrimination contrary to section 15 of the *Charter* but left for further argument the question whether the discrimination was justified under section 1 of the *Charter*.

<sup>13</sup> The sources for the table are the Board's annual reports.

Year	Number claims first paid	Total cost
1995	134	29,082,255
1994	152	52,088,831
1993	124	115,971,993
1992	146	29,676,473
1991	141	25,312,463

The costs for 1993 and 1994 included additional reserves required by Bill 63, which reinstated pensions previously terminated upon the surviving spouse's remarriage. Employers have expressed concern at having to pay for these increases relating to old claims. They have suggested that they should have been covered by the province's general revenue as resulting from a political decision by the government.

## DISCUSSION

The system for compensating surviving dependents raises a whole series of different issues concerning different categories of dependant. Some of these specific issues are discussed below. However, it is first desirable to consider whether there are some general principles.

### General principles

The following questions may assist in considering general principles:

1. *What consequences of deaths resulting from occupational injuries or diseases are to be compensated for?*

Where death results from an injury or disease, the consequences may be divided into three main categories:

- non-monetary affects such as the distress and suffering over the loss of a spouse, parent, etc.,
- changes in expenses arising out of the death, <sup>14</sup> and
- loss of present or future financial support from the deceased.

The Act does not specifically provide compensation for non-monetary losses. The lump sum that is paid to all dependent spouses under section 17(13) is likely

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<sup>14</sup> The change may be down because, for example, money is not required to pay for the deceased's maintenance or up, for example, because of funeral costs or because the deceased did jobs around the home for which a contractor must now be hired.

too small to be seen in this light.<sup>15</sup> Other provinces have much larger lump sums<sup>16</sup> but it appears that these are not explicitly made for the purpose of covering non-monetary losses. Section 16(3) of the B.C. Act allows the Board to provide counselling to dependants.

Some increased expenses are covered through section 17(2) which provides for the payment of expenses relating to transporting the body, funeral and incidental expenses up to fixed amounts set out in the section. In addition, the lump sum under section 17(13) is likely intended to cover immediate expenses arising after the death. On the other hand, the fact that survivors mostly receive only a percentage of the permanent total disability award that would have been paid to the deceased may in part be to recognize that expenses previously incurred for the deceased's personal needs will no longer be required.<sup>17</sup>

The Act now compensates for loss of financial support by, for the most part, providing periodical payments that are related to the deceased's earnings. A lump sum payment is made for this in one case.

## 2. Which persons should be compensated for their losses?

Not all persons who suffer financial losses as the result of the death of a worker are presently covered under section 17. Benefits are limited to persons closely related to the deceased, notably dependent spouses and children, foster parents of orphaned dependent children, and non-dependent spouses or children who had a reasonable expectation of pecuniary benefit from the deceased.

Most other provinces limit coverage in a similar way, though there are variations. For example, other provinces do not appear to cover non-dependants at all.

The dependents who are entitled under the *Workers Compensation Act* differ in some respects from those entitled to support from the deceased, while living, under the *Family Relations Act* or entitled to sue for a non occupational death under the *Family Compensation Act*. The clearest example is former spouse of the deceased who might have a right to support but no right to compensation.

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<sup>15</sup> The amount is adjusted in accordance with the consumer price index. As of January 1, 1997, it is \$1,847.49.

<sup>16</sup> For example, \$144,500 in Quebec, as of January, 1966.

<sup>17</sup> In "Reshaping Workers' Compensation for Ontario", 1980, at pages 47 and 48, this was Paul Weiler's interpretation of the B.C. system. He indicated that this approach was reasonable but did not give sufficient weight to the fact that the family also lose the benefits of the deceased's services.

### 3. *What is adequate compensation for the covered losses?*

The history of the *British Columbia Act* suggests 2 alternative ways of considering the adequacy of compensation:

- What do the dependants need to live above the poverty level or at some other standard of living?
- What has the dependant lost from the death of the worker?

The first approach was taken under the flat rate benefit system that existed in B.C. from 1917 to 1974.<sup>18</sup> The post-1974 system in B.C. mainly follows the second approach but is really a hybrid. Though pensions are based on the deceased's earnings, there are minimum benefit levels.<sup>19</sup> In addition, the extra payments for children may reflect more of a concern over the survivors' need than their actual loss.

In determining what a survivor has lost, the following matters may need to be considered:

- the amount of change in expenses and of lost support resulting immediately from the death;
- how long the support from the deceased would have continued, or whether any change in the level of support would have occurred in future, if the worker had continued to live; and
- to what extent the dependent should be expected to mitigate the loss by, for example, entering or continuing in the workforce.

In practice, these matters are very difficult, if not impracticable, to reliably determine, particularly in individual cases. Traditionally, therefore, *Workers Compensation Acts* enact general rules that make arbitrary assumptions. The assumptions behind the *B.C. Act* and the data (if any) on which they are based have never been formally stated and can, therefore, only be inferred.<sup>20</sup>

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<sup>18</sup> Flat rate benefits are still paid in the North West Territories and the Yukon

<sup>19</sup> Letter from Chairman of W.C.B., T.G. Ison, to the Minister of Labour, March 18, 1974. Section 17(3)(c) contains a minimum pension level that applies in certain situations and 17(3)(g) a minimum earnings level that applies in others. They are adjusted in accordance with the consumer price index.

<sup>20</sup> The explanatory notes accompanying the 1974 amendments and debates of the legislative assembly provide no material information. The Board's files contain "speech notes for minister" that evidently relate to the 1974 amendments. These discuss the shift from flat rate to earnings based benefits, deduction of Canada Pension Plan benefits, guarding against overcompensation (in the context of which reference is made to the lump sum payment to non-invalid, childless widows under 40) and reduction of discrimination between male and female workers. The files also contain an undated, unsigned, lengthy report entitled "Widow's and Dependents' Study", which appears to be a precursor of the 1974 amendments and discusses the issues in some depth.

A major assumption in the present *Act* seems to be that spouses with children, disabled and older spouses are less adaptable, and lose more from a death than younger, non-disabled spouses without children, and should therefore have greater entitlement to compensation.<sup>21</sup> This assumption may now need to be reconsidered following the Appeal Division decisions that age as the sole determinant of spouses' benefit amounts is contrary to the *Charter of Rights*.

### Specific Issues

Though there may be general principles that underlie the whole system of paying survivors, it is necessary to consider certain particular types of benefit, situation or dependant. The main ones are discussed below.

#### *Funeral expenses*

Section 17(2) provides for the payment of funeral expenses in the amount of \$600, \$200 for expenses relating to the death and up to \$200 for transporting the body. Effective January 1, 1997, these amounts are \$2,216.85, \$738.96 and \$738.96 because of consumer price index adjustments.

The funeral allowances in other provinces, as of January 1996, range from \$1,900 to \$6,000.

There has been a concern that the adjustment of the amounts in section 17(2) has been insufficient to keep up with the current costs of funerals. In November, 1994, the Board forwarded to the Minister a proposal to change section 17(2) so that a flat rate death benefit of \$6,000 is paid in stead of the present funeral and incidental expense allowances. This proposal was in accordance with the conclusions of the ad hoc group referred to above.

#### *Spouses and children*

Section 17(3)(a) to (f) provide for the benefits payable to a surviving spouse and/or children. The basic benefit is a percentage of what would have been paid to the worker as a permanent total disability,<sup>22</sup> less Canada Pension Plan benefits. The percentages are as follows:

100%	Spouse and two children <sup>23</sup>
85%	Spouse and one child <sup>24</sup>

<sup>21</sup> See material cited in preceding footnote. In "Reshaping Workers' Compensation for Ontario", 1980, at pages 48 to 51, Paul Weiler indicates that these are the assumptions behind the B.C. system.

<sup>22</sup> See footnote 2

<sup>23</sup> Section 17(3)(a); A fixed amount is added for each child above 2, which is \$240.09 as of January 1, 1997

60%	Invalid spouse or spouse over 49, subject to a minimum <sup>25</sup>
60%	3 children without a spouse <sup>26</sup>
50%	2 children without a spouse <sup>27</sup>
40%	1 child without a spouse <sup>28</sup>

Childless spouses under age 40 receive a lump sum <sup>29</sup> instead of a pension. Spouses between 40 and 49 without children receive a pension equal to the minimum for the spouse over 49 plus a proportion of the difference between that amount and the pension that would be payable if the spouse were over 49. The proportion is  $\frac{1}{11}$  for each year by which the spouse's age exceeds 39. <sup>30</sup>

The pensions payable to a spouse are for life but the portions attributable to non-invalid children are terminated when they reach age 18, or 21 if they continue at school.

In 1992, the Administrative Inventory pointed to the complexity of this benefit system.

A more pressing issue is the Appeal Division decisions that the age distinctions governing payments to spouses are contrary to the *Charter of Rights*. Because of uncertainty whether the Board could adopt a policy contrary to the express terms of section 17, the Board continues to adjudicate claims in accordance with the section as written. These decisions are often appealed but are usually confirmed by the first level, the Review Board. The Review Board has issued several decisions disagreeing with the conclusion of the Appeal Division. These decisions are often appealed to the Appeal Division which, to date, has always allowed the appeal. The result is inconsistent treatment of surviving spouses, depending on whether and how far they appeal. If the Appeal Division findings are correct, surviving spouses should benefit without having to spend time and incur expense taking the adjudication of their claim through the appeal system.

Although the Appeal Division has in every case found that the spouses should receive monthly pensions under section 17(3)(c) in place of the lump sum under section 17(3)(d), it has also stated that this is not the only possible remedy. <sup>31</sup> There are alternative ways of amending the section consistent with the *Charter*.

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<sup>24</sup> Section 17(3)(b)

<sup>25</sup> Section 17(3)(c); The minimum is \$775.79 as of January 1, 1997.

<sup>26</sup> Section 17(3)(f)(iii); A fixed amount is added for each child above 3, which is \$240.09 as of January 1, 1997

<sup>27</sup> Section 17(3)(f)(ii)

<sup>28</sup> Section 17(3)(f)(i)

<sup>29</sup> Section 17(3)(d); \$36,948.28 as of January 1, 1997

<sup>30</sup> Section 17(3)(e); Schedule C

<sup>31</sup> 10 WCR 53, 84

A comparison of the systems in other Canadian jurisdictions indicates that there are a large number of different ways of compensating spouses and children that might be considered to resolve the *Charter* issue and other concerns with the system. These include options as to:

- whether the benefit should be a single lump payment,<sup>32</sup> a periodic payment<sup>33</sup>, or a combination of both,<sup>34</sup>
- whether the benefit should be flat rate amount, or earnings related such as is now the case in B.C. (except for spouses under 40) and in most other provinces,<sup>35</sup>
- with respect to a periodic payment, whether the payment should be for a limited period to allow a child to finish school,<sup>36</sup> or in the case of a spouse, to rehabilitate<sup>37</sup> or until the retirement age of 65,<sup>38</sup> or for life as is now the case in B.C. (except for spouses under 40) and several other provinces, and
- the exact percentage<sup>39</sup> or other formula to be used in calculating the amount of the payment.

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<sup>32</sup> Current section 17(3)(d). A similar provision is made in Newfoundland for spouses without children under age 35.

<sup>33</sup> Current situation in B.C. except for spouses under 40 and in most other provinces.

<sup>34</sup> In B.C. all spouses receive a lump sum (\$1,847.49, effective January 1, 1997) under section 17(13) in addition to their entitlement under section 17(3)(c) to (e). Most other provinces provide a lump sum in addition to other benefits. The amount ranges (as of January, 1996) from \$1300 in Alberta to \$144,500 in Quebec. These sums vary according to age in Manitoba, Ontario and Quebec

<sup>35</sup> A flat rate pension was paid in B.C. between 1917 and 1974. A flat rate tied to average wage levels is still paid in the North West Territories and the Yukon. Several provinces have flat rate amounts for children, for example, Alberta, New Brunswick and Saskatchewan, sometimes even where the spouse receives an earnings related pension, for example, Manitoba, Newfoundland, Nova Scotia and Quebec. Ontario and Prince Edward Island base children's benefits on a percentage of the deceased's earnings.

<sup>36</sup> Most provinces have age limits for non-invalid dependent children, but usually allow extension for attending school, some up to age 25 (Newfoundland, Nova Scotia and Saskatchewan) or with no fixed upper limit (Ontario and North West Territories).

<sup>37</sup> See Alberta, Manitoba and Saskatchewan systems. Some provinces still provide for termination of benefits on remarriage (New Brunswick, North West Territories, Nova Scotia and Prince Edward Island).

<sup>38</sup> See New Brunswick and Nova Scotia (benefit changes to a retirement annuity), Newfoundland and Prince Edward Island.

<sup>39</sup> The formulas vary widely throughout Canada. For example, with regard to pensions, Section 17(3)(c) of the B.C. *Act* uses 60% of what would have been payable to the deceased worker as a permanent total disability award for invalid spouses or spouses over 50; Newfoundland uses the equivalent of a permanent total disability pension for these same spouses; New Brunswick and Nova Scotia use 80% and 85% of net earnings respectively; and Ontario uses 40% of net earnings as a base but varies the amount according to age.

The ad hoc group involved in the Board's review of section 17 considered proposals that would result in a childless spouse or an orphan child receiving a basic pension of 60% of a permanent total disability award. This would be increased to 90% for children or additional children, regardless of the number.

### *Separation and divorce*

Section 17 does not now cover divorced spouses even though they may have been entitled to maintenance from, or been otherwise dependent on, the deceased. With regard to dependent spouses living separate from the deceased, section 17(9) provides that the Board will pay what it concludes the deceased would likely have provided for the spouse and any children, except:

- it will pay the amounts due under a separation order or agreement where the worker was substantially meeting the payments, or
- if there is no separation order or agreement, and the separation has lasted less than 3 months, the normal benefits due to a spouse and children will be paid.

The major issues are whether dependent divorced spouses should be covered and whether the Board should honour the full amount of court orders or separation agreements, regardless of whether the deceased was complying. The traditional view has been that the Board only compensates for the spouse's loss and the loss is what the worker would have actually paid. On the other hand, the death prevents the spouse from enforcing the agreement or court order.

The creation of the *Family Maintenance Enforcement Program* to track down parents who have not honoured their obligations means it is harder to use past enforcement activity as a guide. This program may make it more reasonable to assume that agreements and orders will be complied with in the future even though they have not been fully enforced to date. Its existence indicates a greater priority being placed on enforcement in today's society.

Only two other Canadian acts<sup>40</sup> address the question of compensating spouses who live separate and apart from the worker, or former spouses. Both limit compensation to what the worker was required to pay or would have been required to pay under a court order or separation agreement.

The ad hoc group reached consensus on a proposal that would cover former spouses and require the Board to pay what was in the separation agreement or court order, whether or not it had been complied with.

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<sup>40</sup> Ontario and Manitoba

### *Common-law relationships*

If there is no widow or widower, section 17(11) grants a common law wife or husband the same rights as a spouse where the deceased lived with and contributed to their support and maintenance for a period of 3 years or, where there is a child, 1 year. Where there is also a spouse, but the spouse receives less than the full amount because of living separate, the common law wife or husband can be paid the difference.<sup>41</sup>

One major issue is whether the required cohabitation periods are too long. There is a variety of requirements in other provinces. Some have the same requirements as in B.C.;<sup>42</sup> some have longer periods;<sup>43</sup> some have no time requirement where there is a child<sup>44</sup> or a formal cohabitation agreement;<sup>45</sup> and some have the same time requirement, whether or not there are children.<sup>46</sup> Some other B.C. statutes have different periods, for example, 2 years under the *Family Relations Act*. The ad hoc group was unable to agree on this issue.

Another issue is whether same sex spouses should be covered. The B.C. Board has accepted at least one claim but there is no specific authority in the *Act* or published policy for this. The position in other provinces is not clear but the wording of some of the acts appears sufficiently broad to provide coverage.<sup>47</sup>

### *Dependants other than spouses and children*

Sections 17(3)(h) and (i) cover dependent parents and other dependants and a spouse, child or parent who, though not dependent, had a reasonable expectation of pecuniary benefit from the deceased continuing to live. The right to compensation depends on conditions as to the non-existence of other dependants and there is a maximum amount.<sup>48</sup>

The main issues are whether the right of dependants should be subject to the these limits and whether non-dependants should have any entitlement at all. Several other provinces provide a right to compensation for other dependants that depends on the non-existence of other dependants<sup>49</sup> but some do not impose this limitation.<sup>50</sup>

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<sup>41</sup> Section 17(12)

<sup>42</sup> Quebec, New Brunswick and North West Territories

<sup>43</sup> Alberta (2 years and 5 years) and Manitoba (1 year and 5 years)

<sup>44</sup> Ontario and Prince Edward Island

<sup>45</sup> Ontario and Newfoundland

<sup>46</sup> Saskatchewan (2 years), Yukon (1 year) and Nova Scotia (1 year)

<sup>47</sup> For example, the Yukon act specifically covers persons "cohabiting as a couple"

<sup>48</sup> \$424.89 as of January 1, 1997

<sup>49</sup> See Alberta, North West Territories, Nova Scotia, Ontario and Prince Edward Island

<sup>50</sup> See Manitoba, New Brunswick, Newfoundland, Quebec, Saskatchewan and the Yukon.

The ad hoc group reached consensus on a proposal that would remove any right to compensation for non dependants. No other province appears to cover non-dependants. It should be noted, however, that this provision was reluctantly recommended in the 1942 Sloan Report <sup>51</sup> to avoid an unfairness that would otherwise arise from those persons being barred from suing. The same issue may arise today in connection with the right granted by the *Family Compensation Act* to certain relatives of a deceased to sue a person causing the death.

Section 17(3)(j) allows a foster parent to receive the benefits payable to a spouse where he or she looks after orphan children. The only issue arising out of this provision is that, by Board policy, it is not applicable to the natural parent of the child. Therefore, the parent of a child who does not meet the requirements for benefitting as a common law spouse cannot be a foster parent. <sup>52</sup>

#### *Benefits from other sources*

All pensions under section 17 are reduced by Canada Pension Plan benefits paid to dependents. There is a major issue as to whether this should continue as the same is not done for benefits paid to disabled workers. On the other hand, it has been suggested that Canada Pension Plan benefits be deducted from workers' benefits. The ad hoc group were unable to agree on this issue.

Four other acts <sup>53</sup> currently provide for deduction of Canada Pension Plan benefits from pensions payable to spouses. One appears to give the Board a discretion <sup>54</sup> and another only requires half to be considered. <sup>55</sup> It is understood that the latter is in recognition that the deceased worker will have made contributions to the plan.

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<sup>51</sup> Page 54 to 60

<sup>52</sup> Decision No. 146, Volume 2, *Workers Compensation Reporter*, Page 175; 58.00 of the *Rehabilitation Services and Claims Manual*

<sup>53</sup> New Brunswick, Ontario, Prince Edward Island and Saskatchewan

<sup>54</sup> Ontario

<sup>55</sup> Saskatchewan

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