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### **134 Compensation for personal injury or death**

- (1) If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.
- (2) As an exception to subsection (1), if the injury is attributable solely to the serious and wilful misconduct of the worker, compensation is not payable unless the injury results in the worker's death or serious or permanent disablement.
- (3) The following apply in relation to an injury caused by accident:
  - (a) if the accident arose out of the worker's employment, unless the contrary is shown, it must be presumed that the injury occurred in the course of that employment;
  - (b) if the accident occurred in the course of the worker's employment, unless the contrary is shown, it must be presumed that the injury arose out of that employment.
- (4) If an injury disables a worker from earning full wages at the work at which the worker was employed, compensation other than a health care benefit is payable under this Part from the first working day following the day of the injury.
- (5) A health care benefit may be provided for an injured worker in respect of the day of the injury.

### **135 Mental disorder**

- (1) Subject to subsection (3), a worker is entitled to compensation for a mental disorder, payable as if the mental disorder were a personal injury arising out of and in the course of a worker's employment, if that mental disorder does not result from an injury for which the worker is otherwise entitled to compensation under this Part, and only if all of the following apply:
  - (a) the mental disorder is either
    - (i) a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
    - (ii) predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment;
  - (b) the mental disorder is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described, at the time of diagnosis, in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association;
  - (c) the mental disorder is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.
- (2) If a worker who is or has been employed in an eligible occupation
  - (a) is exposed to one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, and
  - (b) has a mental disorder that, at the time of the diagnosis under subsection (1)(b), is recognized in the manual referred to in that subsection as a mental or physical condition that may arise from exposure to a traumatic event,the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, unless the contrary is proved.
- (3) The Board may require that a psychiatrist or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1)(b) and may consider that review in determining whether a worker is entitled to compensation for a mental disorder.

(4) Section 163 [*duties of physicians and qualified practitioners*] applies to a psychiatrist or psychologist who makes a diagnosis referred to in this section.

(5) In this section:

**"correctional officer"** means a correctional officer as defined by regulation of the Lieutenant Governor in Council;

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

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

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

**"psychiatrist"** means a physician who is recognized by the College of Physicians and Surgeons of British Columbia, or another accredited body recognized by the Board, as being a specialist in psychiatry;

**"psychologist"** means a person who is

(a) a registrant of the college responsible for carrying out the objects of the *Health Professions Act* in respect of the health profession of psychology, or

(b) entitled to practise as a psychologist under the laws of another province;

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

#### 136 Occupational disease: general compensation rules

(1) Compensation is payable under this Part in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker's employment, if

(a) as applicable,

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

(ii) the death of the worker is caused by an occupational disease, and

(b) the occupational disease is due to the nature of any employment in which the worker was employed, whether under one or more employments.

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

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

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

(1) This section applies to a worker who is disabled as referred to in section 136(1)(a)(i) as a result of an occupational disease described in column 1 of Schedule 1 of this Act.

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

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

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

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

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

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

(2) The Board may, by regulation of general application, designate or recognize a disease as an occupational disease.

(3) The Board may, by order, designate or recognize a disease as an occupational disease in a specific case.

(4) The Board may designate or recognize a disease as being a disease that is peculiar to or characteristic of a particular process, trade or

occupation, on the terms and conditions and with the limitations set by the Board.

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

(1) In this section:

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

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

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

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

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

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

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

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

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

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

(4) The presumptions in subsections (2) and (3) apply only to a worker who

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

(b) is first disabled as a result of the heart disease or heart injury, as applicable, on or after May 29, 2014.

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

(1) In this section, **"firefighter"** means a member of a fire brigade who is

(a) described in paragraph (c) [*worker serving a municipality, regional district or other local authority*] of the definition of "worker" in section 1 or employed by the government of Canada, and

(b) assigned primarily to fire suppression duties, whether or not those duties include the performance of ambulance or rescue services.

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

(a) primary site lung cancer, or

(b) a disease prescribed by regulation under subsection (5),

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

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

(a) has worked as a firefighter for the minimum cumulative period prescribed by regulation under subsection (5) for the applicable disease,

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

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

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

(ii) in the case of a disease that was prescribed on or before March 18, 2009 for the purposes of subsection (2)(b), April 11, 2005;

(iii) in the case of a disease prescribed after March 18, 2009 for the purposes of subsection (2)(b), the date on which the regulation took or takes effect, as applicable.

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

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

(b) has been a non-smoker of tobacco products immediately before the date on which the worker is first disabled from that disease for the minimum period prescribed by regulation under subsection (5).

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

- (a) establish minimum cumulative periods for the purposes of subsection (3), which may be defined differently, and be different, for different categories of firefighters, and
- (b) establish minimum periods for the purposes of subsection (4), which may be different for different types or amounts of previous tobacco product usage.

#### **141 Mining industry silicosis**

(1) Subject to subsection (2),

- (a) a worker in the metalliferous mining industry or coal mining industry who becomes disabled from uncomplicated silicosis or from silicosis complicated with tuberculosis is entitled to compensation for total or partial disability as provided under this Part, and
- (b) if death results from the worker's disability, the worker's dependants are entitled to compensation as provided under this Part.

(2) The worker or a dependant of the worker is not entitled to compensation for the disability or death referred to in subsection (1) unless the following apply:

(a) either

- (i) the worker has been a resident of British Columbia for a period of at least 3 years immediately before the disablement, or
- (ii) at least 2/3 of the worker's exposure to silica dust occurred in British Columbia;

(b) the worker did not have silicosis or tuberculosis before being first exposed to silica dust in the metalliferous mining or coal mining industry in British Columbia;

(c) the worker was exposed to silica dust in the metalliferous mining or coal mining industry in British Columbia

- (i) for a period or periods totalling 3 years preceding the worker's disablement, or
- (ii) for a shorter period if the worker was not exposed to silica dust anywhere except in British Columbia.

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

(1) This section applies to compensation in relation to a worker who has sustained a pulmonary injury caused by a disabling form of pneumoconiosis as a result of exposure to dust conditions that the Board considers have contributed to the development of the disease in employment in British Columbia in an industry in which that disease is an occupational disease under this Part.

(2) The worker or a dependant of the worker is entitled to compensation if

- (a) the worker did not have either pneumoconiosis or tuberculosis before being first exposed in British Columbia to the dust conditions referred to in subsection (1), and
- (b) the worker's residence in British Columbia and exposure to the dust conditions have been of the duration required to entitle a worker to compensation for silicosis under section 141 [*occupational disease - mining industry silicosis*].

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

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

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

(2) If the death was caused by an ailment or impairment of the lungs or heart of non-traumatic origin, it must be conclusively presumed that the death resulted from the occupational disease.

#### **144 Communicable disease: presumption in relation to testing order**

(1) This section applies to a worker if

- (a) the worker is an applicant, as defined in the *Emergency Intervention Disclosure Act*, who has obtained a testing order under that Act respecting a source individual, as defined in that Act,
- (b) the worker has contracted a communicable disease prescribed for the purposes of the *Emergency Intervention Disclosure Act*,

- (c) the worker came into contact with the bodily substance of the source individual in the course of the worker's employment, and
  - (d) test results obtained under the testing order indicate that the source individual is infected with a pathogen that causes the communicable disease contracted by the worker.
- (2) It must be presumed, unless there is evidence to the contrary, that the communicable disease of the worker is due to the nature of the worker's employment.

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

- (1) A worker is entitled to compensation under this Part if
- (a) the worker has a hearing loss of non-traumatic origin that arose out of and in the course of employment to which the compensation provisions apply, and
  - (b) the hearing loss
    - (i) was sustained by exposure to causes of hearing loss in British Columbia, and
    - (ii) is a greater loss than the minimum set out in Schedule 2 [*Non-Traumatic Hearing Loss*] of this Act.
- (2) An application for compensation under this section must be accompanied or supported by a specialist's report and audiogram or by other evidence of hearing loss that the Board prescribes.
- (3) The Board may, by regulation, amend Schedule 2 in respect of the following:
- (a) the ranges of hearing loss;
  - (b) the percentages of disability, including the maximum percentages of total disability;
  - (c) the methods or frequencies to be used to measure hearing loss.

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

The following apply to compensation under this Part in relation to personal injury or disease that is superimposed on an already existing disability:

- (a) the compensation is limited to the proportion of the disability following the injury or disease that may reasonably be attributed to that injury or disease;
- (b) the measure of the disability attributable to the injury or disease must, unless it is otherwise shown, be the difference between the extent of the worker's disability before and disability after the occurrence of the injury or disease.

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

- (1) This section applies if
- (a) a worker is injured while working outside British Columbia, and
  - (b) the injury would entitle the worker or the worker's dependants to compensation under this Part if the injury occurred in British Columbia.
- (2) The Board must pay compensation under this Part only if all of the following apply:
- (a) a place of business of the worker's employer is located in British Columbia;
  - (b) the worker's residence and usual place of employment are located in British Columbia;
  - (c) the employment is such that the worker is required to work both in and outside British Columbia;
  - (d) the worker's employment outside British Columbia
    - (i) has immediately followed the worker's employment in British Columbia by the same employer, and
    - (ii) has lasted less than 6 months.

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

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

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

(a) elect whether they will claim compensation

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

(ii) under this Part, and

(b) give notice of the election.

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

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

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

(i) within 3 months after the death, or

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

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

(5) If an agreement or arrangement under section 335 [*interjurisdictional agreements and arrangements*] applies, any right of election is subject to the terms of that agreement or arrangement.

#### **149 Worker obligation to give notice of injury or disease to employer**

(1) This section applies in relation to every occurrence of an injury or disabling occupational disease to a worker in an industry that is within the scope of the compensation provisions.

(2) As soon as practicable after the occurrence, the worker or, in the case of death, the worker's dependant must inform the employer of the occurrence as follows:

(a) the information provided must include

(i) the name of the worker,

(ii) the time and place of the occurrence, and

(iii) in ordinary language, the nature and cause of the injury or disease;

(b) the information must be provided to the superintendent, first aid attendant, supervisor or agent in charge of the work where the injury occurred or to another appropriate representative of the employer.

(3) In the case of an occupational disease the employer who is to be informed under subsection (2) is the employer who last employed the worker in the employment in relation to which the occupational disease was due.

(4) On request of the employer, the worker must, if fit to do so, provide to the employer particulars of the injury or occupational disease on a form directed by the Board and supplied to the worker by the employer.

(5) Failure to provide the information required by this section is a bar to a claim for compensation under this Part, unless the Board is satisfied that

(a) the information, although imperfect in some respects, is sufficient to describe the worker's injury or disease and the circumstances in which it occurred,

(b) the employer or the employer's representative had knowledge of the injury or disease, or

(c) the employer has not been prejudiced, and the Board considers that the interests of justice require that the claim be allowed.

#### **150 Employer obligation to report injury or disease to Board**

(1) Subject to subsection (7), an employer must report to the Board, within 3 days after its occurrence, every injury to a worker that is or is claimed to be an injury arising out of and in the course of the worker's employment.

(2) Subject to subsection (7), an employer must report to the Board, within 3 days after receiving information under section 149, every disabling occupational disease or claim for or allegation of an occupational disease in relation to a worker.

(3) An employer must report immediately to the Board the death of a worker if the death is or is claimed to be a death arising out of and in the course of the worker's employment.



(4) A report under this section must be on the form directed by the Board and must provide the following information:

- (a) the name and address of the worker;
- (b) the time and place of the injury, disease or death;
- (c) the nature of the injury or alleged injury;
- (d) the name and address of any physician or qualified practitioner who attended the worker;
- (e) any other particulars required by the Board or by the regulations.

(5) A report under this section may be made by mailing copies of the form addressed to the Board at the address specified by the Board.

(6) An employer who fails to make a report required under this section commits an offence unless excused by the Board on the ground that the report, for some sufficient reason, could not have been made.

(7) Without limiting the authority of the Board under section 237 [*additional authority for orders, directives, rules and regulations*], the Board may make regulations as follows:

- (a) establishing a category of minor injuries not required to be reported under this section;
- (b) establishing or varying the time at which the obligation to report under this section begins.

(8) If a report required under this section is not received by the Board within 7 days after an injury or death, or any other time prescribed by regulation under subsection (7), the Board

- (a) may make an interim adjudication of the claim, and
- (b) if the Board allows the claim on an interim basis, may begin the payment of compensation in whole or in part.

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

(1) An application for compensation must

- (a) be made on the form directed by the Board or prescribed by regulation, and
- (b) be signed by the worker or the worker's dependant making the application.

(2) If the Board is satisfied that compensation is payable, it may be paid without an application.

(3) Except as provided in this section and section 152, no compensation is payable unless an application for compensation is filed, or a determination under subsection (2) of this section is made, within one year after the date of the worker's injury, mental disorder, death or disablement from occupational disease.

(4) The Board may pay the compensation provided under this Part if

- (a) an application is not filed within the period referred to in subsection (3),
- (b) the Board is satisfied that special circumstances existed that precluded filing within that period, and
- (c) the application is filed within 3 years after the date referred to in subsection (3).

(5) The Board may pay the compensation provided under this Part for the period beginning on the date the Board receives an application for compensation if

- (a) an application is not filed within the period referred to in subsection (3),
- (b) the Board is satisfied that special circumstances existed that precluded filing within that period, and
- (c) the application is filed more than 3 years after the date referred to in subsection (3).

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

(1) The Board may pay the compensation provided under this Part if

- (a) the application for compensation arises from a worker's death or disablement due to an occupational disease,
- (b) sufficient medical or scientific evidence was not available on the date referred to in section 151(3) for the Board to recognize the disease as an occupational disease and this evidence became available on a later date, and

(c) the application is filed within 3 years after the date that sufficient medical or scientific evidence, as determined by the Board, became available to the Board.

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

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

(1) A worker who applies for or is receiving compensation under this Part must provide the Board with the information that the Board considers necessary to administer the worker's claim.

(2) If a worker fails to comply with subsection (1), the Board may reduce or suspend payments to the worker until the worker complies.

#### **154 Worker obligation to comply with examination and treatment requirements**

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

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

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

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

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

(a) persists in unsanitary or injurious practices that tend to imperil or delay the worker's recovery, or

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

#### **154.1 Definition and application**

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

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

#### **154.2 Duty to cooperate**

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

(a) subject to subsection (3), contacting the worker as soon as practicable after the worker is injured and maintaining communication with the worker;

(b) identifying suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work;

(c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;

(d) any other thing required by the Board.

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

(a) subject to subsection (3), contacting the employer as soon as practicable after the worker is injured and maintaining communication with the employer;

(b) on request of the employer, assisting the employer to identify suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work;

(c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;

(d) any other thing required by the Board.

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

(4) The Board must determine whether an employer or worker has failed to comply with this section if

(a) the employer or worker notifies the Board of a dispute regarding compliance, and

(b) the dispute cannot otherwise be resolved.

(5) A determination under subsection (4) must be made within 60 days after the Board is notified of the dispute or within a longer period that the Board may determine.

(6) If a worker fails to comply with subsection (2), the Board may reduce or suspend payments of compensation to the worker until the worker complies.

#### **154.3 Duty to maintain employment**

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

(2) This section does not apply in relation to the following:

(a) a person who is a worker only because the person is deemed under the Act to be a worker;

(b) an employer who regularly employs fewer than 20 workers;

(c) a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council.

(3) If a worker is fit to work but not fit to carry out the essential duties of the worker's pre-injury work, an employer must offer to the worker the first suitable work that becomes available.

(4) If a worker is fit to carry out the essential duties of the worker's pre-injury work, an employer must

(a) offer that pre-injury work to the worker, or

(b) offer to the worker alternative work of a kind and at wages that are comparable to the worker's pre-injury work and wages from that work.

(5) An employer must, to the point of undue hardship, make any change to the work or the workplace that is necessary to accommodate a worker.

(6) An employer's obligations under this section end as follows:

(a) all of the employer's obligations under this section end on the second anniversary of the date a worker is injured if the worker has not returned to work by that date;

(b) the employer's obligation under subsection (4) ends on the second anniversary of the date a worker is injured if, by that date, the worker is carrying out suitable work.

(7) The Board must, if an employer and a worker disagree with each other, determine

(a) whether the worker is fit to carry out suitable work or fit to carry out the essential duties of the worker's pre-injury work, and

(b) whether suitable work is available.

(8) If an employer terminates a worker's employment within 6 months after the worker begins to carry out suitable work or begins to carry out the essential duties of the worker's pre-injury work or alternative work, the employer is deemed to have failed to comply with subsection (3) or (4), as applicable.

(9) Subsection (8) does not apply if the employer can establish, to the Board's satisfaction, that the termination was unrelated to the worker's injury.

(10) The Board must, on the request of a worker, determine whether an employer has failed to comply with this section.

(11) The Board is not required to consider a request under subsection (10) if

(a) the Board considers the request has no merit, or

(b) both of the following apply:

(i) the worker's employment is terminated within 6 months after the worker begins to carry out suitable work or begins to carry out the essential duties of the worker's pre-injury work or alternative work;

(ii) the request is made more than 3 months after the worker's employment is terminated.

(12) The Board may pay to a worker, for a period of up to one year, an amount equal to the compensation to which the worker was entitled under section 191 [*temporary total disability*] or 192 [*temporary partial disability*], as applicable, if

- (a) an employer has failed to comply with this section, and
- (b) the worker is no longer entitled to the compensation under section 191 or 192.

#### **154.4 Conflict with collective agreement**

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

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

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

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

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

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

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

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

- (1) In addition to other compensation under this Part, the Board may provide for an injured worker any services or supplies, including related transportation, that the Board considers reasonably necessary at the time of the injury and afterwards during the worker's disability to cure the injury or alleviate the effects of the injury.
  - (1.1) The services and supplies referred to in subsection (1) may be provided before the Board determines a worker's entitlement to compensation under this Part if the Board is satisfied that medical evidence indicates that without such services or supplies the worker is at risk of a significant deterioration in health.
  - (1.2) If a service or supply is provided under subsection (1.1) and the Board later determines that the worker is not eligible for compensation under this Part, the worker is not required to reimburse the Board for that service or supply.
- (2) The Board may adopt rules and regulations with respect to the provision of health care to injured workers and for the payment of such health care.
- (3) The Board may make a daily allowance to an injured worker for the worker's subsistence if, under the Board's direction, the worker is undergoing treatment at a place other than the place where that worker resides.

(4) The power of the Board under subsection (3) extends to an injured worker who receives compensation, regardless of the date the worker first became entitled to compensation.

#### **157 Board powers in relation to provision of health care**

(1) Health care provided under any of the following provisions must at all times be subject to the direction, supervision and control of the Board:

- (a) section 156 [*Board may provide health care for injured worker*];
- (b) section 158 [*emergency care by physician or qualified professional*];
- (c) section 159 [*employer authority and obligations in relation to health care*].

(2) All questions as to the necessity, character and sufficiency of health care to be provided are to be determined by the Board.

(3) The Board may, for any health care required,

- (a) contract with physicians, nurses or other persons authorized to treat human ailments and with hospitals and other institutions, and
- (b) agree on a scale of fees or remuneration for that health care.

(4) The fees or remuneration for health care provided under this Act must be set by the Board and must not be greater than the worker would be properly and reasonably charged if the worker were paying.

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

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

The Board must pay the costs of services provided by a physician or qualified practitioner, other than one provided by the Board, if

- (a) the physician or qualified practitioner is called in to treat an injured worker in a case of emergency or for other justifiable cause, and
- (b) the Board considers there was a justifiable cause and that the charge for the services is reasonable.

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

(1) The Board may, at the Board's discretion, authorize an employer to provide health care at the expense of the Board and on the terms set by the Board.

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

#### **160 Health care by physician or qualified practitioner selected by worker**

(1) The Board must permit health care to be administered, so far as the selection of a physician or qualified practitioner is concerned, by a physician or qualified practitioner who may be selected or employed by the injured worker.

(2) Subsection (1) does not limit the powers of the Board under this Division respecting the supervision and provision of health care in every case where the Board considers the exercise of those powers is expedient.

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

(1) The Board may assume the responsibility of replacement and repair of the following for a worker:

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

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

#### **162 Retirement services and supports for workers with total disability**

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

(2) After the evaluation under subsection (1) is completed, the Board must take all actions necessary to provide to the worker, for the worker's life, the services and personal supports under this Division that the Board considers necessary.

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

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

(1) A physician or qualified practitioner attending or consulted on a case of injury to a worker in an industry within the scope of the compensation provisions, or of an alleged case of such an injury, has the following duties:

(a) to provide the reports in respect of the injury in the form required by regulation or directed by the Board, with the first report containing all requested information being provided to the Board within 3 days after the date of the physician's or qualified practitioner's first attendance on the worker;

(b) to provide a report to the Board within 3 days after the worker is, in the opinion of the physician or qualified practitioner, able to resume work and, if treatment is being continued after resumption of work, to provide further adequate reports to the Board;

(c) if the physician

(i) is a specialist whose opinion is requested by the attending physician, the worker or the Board, or

(ii) continues to treat the worker after the physician is consulted as a specialist,

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

(d) without charge to the worker, to give to the worker and the worker's dependants all reasonable and necessary information, advice and assistance they need to

(i) make an application for compensation, and

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

(2) Every physician or qualified practitioner authorized under this Act to treat an injured worker is subject to the duties and responsibilities established by subsection (1), and any health care provided by the physician or qualified practitioner is subject to the direction, supervision and control of the Board.

#### **164 Obligations of health care service providers**

(1) Physicians, qualified practitioners or other persons authorized to provide health care under the compensation provisions must confine their treatment to injuries that are injuries to the parts of the body that they are authorized to treat under the Act under which they are permitted to practise.

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

(3) A person referred to in subsection (1) who fails to submit prompt, adequate and accurate reports and accounts as required by this Act or by the Board commits an offence.

(4) If a person fails to submit reports and accounts as referred to in subsection (3), the Board may

(a) cancel the right of the person to be selected by a worker to provide health care, or

(b) suspend the person for a period determined by the Board.

(5) If the right of a person to provide health care is cancelled or suspended under subsection (4),

(a) the Board must

(i) notify the person of the cancellation or suspension, and

(ii) inform the applicable governing body under the *Health Professions Act*, and

(b) the person must notify injured workers who seek treatment from that person of the cancellation or suspension.

(6) Unless the Board otherwise directs, an account for medical services or other health care must not be paid if it is submitted later than 90 days after the date of whichever of the following occurs first:

- (a) the last treatment was given;
- (b) the person providing the health care was first aware that the Board may be liable for that person's services.

#### 165 Definitions and other interpretation rules

(1) In this Division:

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

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

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

**"federal benefits"** means the benefits paid for a dependant under the *Canada Pension Plan* as a result of a worker's death, other than the death benefit payable to the estate of a worker under section 57 [*death benefit*] of that Act.

- (2) If 2 workers are spouses and both are contributing to the support of a common household, each is deemed to be a dependant of the other.
- (3) If parents contribute to the support of a common household at which their children also reside, the children are deemed to be dependants of the parent whose death is compensable under this Part.

#### 166 Payment towards funeral and related expenses

- (1) The following apply if compensation is payable under this Part as the result of the death of a worker or of injury resulting in such death:
  - (a) in addition to any other compensation payable under this Division, the Board must pay an amount in respect of funeral and related expenses, as determined in accordance with the policies of the board of directors;
  - (b) the employer of the worker must bear the cost of transporting the body to the nearest business premises where funeral services are provided;
  - (c) if burial does not take place at the premises referred to in paragraph (b), the Board may pay the costs of any additional transportation, up to a maximum determined in accordance with the policies of the board of directors.
- (2) No action for an amount greater than that established under subsection (1) lies in respect of the funeral, burial or cremation of the worker or related cemetery charges.

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

In addition to any other compensation provided, a dependent spouse or foster parent in Canada to whom compensation is payable is entitled to a lump sum of \$3 456.92.

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

- (1) Subject to subsection (3), if compensation is payable as the result of the death of a worker or of injury resulting in such death, the Board must pay compensation to the dependants of the deceased worker in accordance with this Division.
- (2) Unless a shorter period applies under this Division, the Board must make periodic payments under this Division for the life of the person to whom the payment is to be made.

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

- (1) This section applies if
  - (a) a deceased worker leaves a dependent spouse but does not leave any child dependants, and
  - (b) at the date of the worker's death, the dependent spouse

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

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

(2) Subject to subsection (3), the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for the dependent spouse, would equal 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of the worker's death, sustained a permanent total disability.

(3) A monthly payment under this section must not be less than \$1 451.63.

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

(1) This section applies if

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

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

(i) was under 50 years of age, and

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

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

(a) the percentage determined by subtracting 1% from 60% for each year that the age of the dependent spouse, at the date of the worker's death, is under 50 years of age, and

(b) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.

(3) The percentage determined under subsection (2)(a) must not be less than 30%, and a monthly payment under this section must not be less than \$1 451.63.

**171 Dependent spouse and one or more dependent children**

(1) This section applies if a deceased worker leaves a dependent spouse and one or more child dependants.

(2) Subject to subsection (4), if the dependants are a dependent spouse and one child dependant, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for the dependants referred to in subsection (1), would equal 85% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.

(3) Subject to subsection (4), if the dependants are a dependent spouse and 2 or more child dependants, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for those dependants, would equal the total of

(a) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, and

(b) if there are more than 2 child dependants, \$449.20 per month for each child dependant beyond that number.

(4) The minimum compensation payable under this section must be the compensation that would be payable if the compensation were calculated under this section in respect of a deceased worker with average earnings of \$48 395.62 per year.

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

(1) This section applies if a deceased worker leaves no dependent spouse eligible for monthly payments under this Division but does leave one or more child dependants.

(2) Subject to subsection (5), if there is one child dependant, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits to or for that child, would equal 40% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.

(3) Subject to subsection (5), if there are 2 child dependants, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for those children, would equal 50% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.

(4) Subject to subsection (5), if there are more than 2 child dependants, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for those children, would equal the total of



(a) 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, and

(b) if there are more than 3 child dependants, \$449.20 per month for each child beyond that number.

(5) The minimum compensation payable under this section must be the compensation that would be payable if the compensation were calculated under this section in respect of a deceased worker with average earnings of \$48 395.62 per year.

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

(1) This section applies if a deceased worker

(a) leaves either a dependent spouse or one or more child dependants entitled to compensation under this Division, but not both a dependent spouse and one or more child dependants, and

(b) leaves a dependent parent or dependent parents.

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

(3) As a restriction on subsection (2), an amount paid under this section must not be greater than \$795.05 per month for life or for a lesser period as determined by the Board.

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

(1) This section applies if a deceased worker does not leave a dependent spouse or a child dependant entitled to compensation under this Division, but does leave other dependants.

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

(3) As a restriction on subsection (2), the total of the amounts paid under this section must not be greater than \$795.05 per month for life or for a lesser period as determined by the Board.

#### **175 Compensation to persons other than dependants**

(1) This section applies if

(a) either

(i) no compensation is payable under sections 169 to 174 in relation to a deceased worker, or

(ii) compensation is payable under those sections only to a spouse, a child or children or a parent or parents of the worker, and

(b) the worker leaves a spouse, a child or children or a parent or parents who, although not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker.

(2) At the discretion of the Board, payments may be made to persons referred to in subsection (1)(b), but not to more than one of the categories of persons referred to in that provision.

(3) As a restriction on subsection (2), the total of the amounts paid under this section must not be greater than \$795.05 per month for life or for a lesser period determined by the Board.

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

(1) This section applies if

(a) a deceased worker

(i) leaves a child or children entitled to compensation under this Division, and

(ii) either leaves no dependent spouse or the dependent spouse subsequently dies,

(b) the Board considers it desirable to continue the existing household, and

(c) a suitable person acts as a foster parent in keeping up the household and taking care of and maintaining the child or children, in a manner satisfactory to the Board.

(2) The same compensation is payable to the foster parent and children as would have been payable to a dependent spouse and child dependants, and the compensation must continue as long as the conditions described in subsection (1) continue.

#### 177 Apportionment between dependants

(1) Subject to subsection (2), if it is necessary to apportion compensation payable to dependants among those dependants, the formula for apportionment is at the discretion of the Board.

(2) Unless the Board has grounds for a different apportionment, apportionment of the following must be in accordance with this subsection:

- (a) if there is a dependent spouse and one child dependant, 2/3 of the compensation is payable to the spouse and 1/3 to the child;
- (b) if there is a dependent spouse and more than one child dependant, 1/2 of the compensation is payable to the spouse and 1/2 among the children in equal shares;
- (c) if there is more than one child dependant but no dependent spouse, the compensation is payable to the children in equal shares.

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

(1) This section applies if

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

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

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

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

(3) Subject to subsection (5), if

- (a) there was no court order or separation agreement described in subsection (2) in force at the date of the worker's death, and
- (b) the worker and dependent spouse were separated, with the intention of living separate and apart, for a period of 3 months or longer preceding that date,

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

(4) Subject to subsection (5), if

- (a) there was no court order or separation agreement described in subsection (2) in force at the date of the worker's death, and
- (b) the worker and dependent spouse were living separate and apart for a period of less than 3 months preceding that date,

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

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

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

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

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

#### 180 Worker leaves more than one dependent spouse

(1) This section applies if a deceased worker has left both

- (a) a dependent spouse who is a spouse described in paragraph (a) [*spouse by marriage*] of the definition of "spouse" in section 1 from whom, at

the date of death, the worker was living separate and apart, and

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

(2) If there is a difference between

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

(b) the amount of compensation that would have been payable to that spouse if the spouse and the worker had not been living separate and apart, the Board may pay compensation, up to the amount of the difference, to the spouse referred to in subsection (1)(b) [*marriage-like relationship*].

**181 Change in circumstances: dependent spouse and dependent children - reduction in number of dependent children**

(1) This section applies if

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

(b) subsequently there is a reduction in the number of child dependants.

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

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

(1) This section applies if

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

(b) the dependent spouse subsequently ceases to have dependent children.

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

**183 Change in circumstances: spouse and dependent children - spouse dies**

(1) This section applies if

(a) a deceased worker leaves a dependent spouse and one or more dependent children, and

(b) the dependent spouse subsequently dies.

(2) Compensation to the dependent children must continue and be calculated in the same manner as if the worker had died leaving no dependent spouse.

**184 Change in circumstances: only dependent children - reduction in number of dependent children**

(1) This section applies if

(a) a deceased worker leaves dependent children and no dependent spouse, and

(b) subsequently there is a reduction in the number of dependent children.

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

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

(1) This section applies if

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

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

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

#### 186 Compensation in relation to the death of more than one worker

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

(a) as a result of the worker's death, and

(b) as a result of the subsequent death of another worker,

the total compensation payable for the dependant as a result of those deaths is an amount that the Board considers appropriate.

(2) The compensation payable for a dependant under subsection (1)

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

(b) must not be greater than 90% of the average net earnings of a worker whose wage rate is the maximum wage rate established under section 209 [*maximum wage rate for average earnings*] for the year in which the last death referred to in subsection (1)(b) occurred.

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

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

(1) This section applies if, at the date of a worker's death, a dependent spouse of the worker does not have a physical or mental disability that results in the spouse being incapable of earning but does have a disability that results in a substantial impairment of earning capacity.

(2) The Board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had the incapacity referred to in subsection (1).

#### 188 Proof of dependant status

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

(2) If the Board requires proof under this section, the Board may withhold further compensation payments until that proof is received.

#### 189 Board authority in relation to matters not otherwise dealt with

If

(a) a situation arises that is not expressly covered by this Division, or

(b) some special additional facts are present that the Board considers would make the strict application of this Division inappropriate,

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

#### 190 Compensation subject to general rules

Compensation under this Division is subject to the following provisions:

(a) section 230 [*manner of compensation payment: periodic or lump sum*];

(b) section 231 [*payment of compensation in specific circumstances*];

(c) section 232 [*Board authority to discontinue or suspend payments*];

(d) section 233 [*deduction in relation to payments from employer*].

#### 191 Temporary total disability

(1) Subject to subsection (2), if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

(2) Compensation to be paid under this section

(a) must not be less than an amount that equals \$512.52 per week if the worker's average earnings per week are greater than or equal to that amount, and

(b) must be an amount that equals the worker's average earnings if the worker's average earnings per week are less than the amount referred to in paragraph (a).

#### 192 Temporary partial disability

(1) Subject to subsection (2), if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the worker's average net earnings before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

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

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

(1) This section applies if there is a recurrence of temporary total disability or temporary partial disability of a worker after a lapse of 3 years following the occurrence of the injury to the worker.

(2) For the purpose of determining the amount of compensation payable to the worker, the Board may calculate the compensation as if the date of the recurrence was the date of the injury if the Board considers that, by doing so, the compensation payable would more closely represent the percentage of actual loss of earnings of the worker by reason of the recurrence of the injury.

(3) Subject to subsection (4), if

(a) a worker receives compensation for permanent partial disability for the original injury, and

(b) compensation for recurrence of temporary total disability under subsection (2) is calculated by reference to the average earnings of the worker at the date of the recurrence,

the compensation under this section must be calculated without deduction of the compensation payable for the permanent partial disability.

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

#### 194 Permanent total disability

(1) Subject to subsection (2), if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

(2) Compensation to be paid under this section must not be less than \$2 221.30 per month.

#### 195 Permanent partial disability: general rules

(1) Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must

(a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and

(b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.

(2) The minimum compensation to be paid under this section must be calculated in accordance with section 191(2) [*compensation for temporary total disability*] but to the extent only of the permanent partial disability.

(3) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

#### 196 Permanent partial disability: exception to general rules

(1) This section applies in relation to a permanent partial disability if an amount required under section 195 is less than an amount required under this section.

(2) [repealed]

(3) The Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the average net earnings of the worker before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

- (i) the average net earnings that the worker is earning after the injury;
- (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

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

(1) This section applies if, more than 3 years after a worker's injury,

- (a) a permanent disability resulting from the injury occurs, or
- (b) an increased degree of permanent disability resulting from the injury occurs.

(2) Despite section 208(1) [*determination of average earnings as at time of injury*], the Board may calculate the compensation by reference to the average earnings of the worker at the date of the occurrence of the permanent disability or increased degree of permanent disability, as applicable.

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

(1) This section applies in relation to compensation payable to a worker under section 145 [*non-traumatic hearing loss*].

(1.1) If there is no loss of earnings resulting from the worker's hearing loss, the compensation payable to the worker is the amount determined under subsection (2) or (3).

(2) If the worker's hearing loss amounts to a complete loss of hearing, measured in the manner described in Schedule 2 [*Non-Traumatic Hearing Loss*] of this Act, the compensation is the amount calculated as if for a disability equivalent to the maximum percentage of total disability specified in that Schedule.

(3) If the worker's hearing loss does not amount to a complete loss of hearing, measured in the manner described in Schedule 2 of this Act, the compensation

(a) must be less than the amount of compensation determined under subsection (2) of this section, and

(b) unless otherwise ordered by the Board, is the amount calculated as if for a disability equivalent to the percentage of total disability determined in accordance with Schedule 2.

(4) If a loss of earnings results from the hearing loss, the worker is entitled to compensation for a total or partial disability as otherwise provided under this Division.

(5) Compensation paid for a worker's hearing loss under subsection (4) must not be less than the amount determined under subsection (2) or (3).

**199 Permanent disfigurement**

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

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

(1) If a worker is receiving compensation for a permanent or temporary disability, the worker must not receive compensation for a further or other disability in an amount that would result in the worker receiving compensation that, in total, is in excess of the maximum payable for total disability.

(2) If a worker has received a lump sum in place of the periodic payments that otherwise would have been payable for a permanent disability, the worker is deemed, for the purposes of subsection (1), to still receive the periodic payments.

**201 Payment period for worker disability compensation**

(1) Subject to subsection (2), periodic payment of compensation under this Division may be paid to an injured worker only as follows:

(a) if the worker is under 63 years of age on the date of the injury, until the later of the following:

- (i) the date the worker reaches 65 years of age;
- (ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board;

(b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:

- (i) 2 years after the date of the injury;

(ii) if the Board is satisfied that the worker would retire after the date of the injury, the date the worker would retire, as determined by the Board.

(2) As a restriction on subsection (1), the Board may not make a periodic payment to a worker under this Division if the worker ceases to have the disability for which the periodic payment is to be made.

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

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

(1) This section applies to a worker who receives

(a) a periodic payment of compensation under section 194(1), 195(1) or 196(1) [*compensation for permanent disability*] in respect of an injury, and

(b) a disability benefit under the *Canada Pension Plan* in respect of the injury.

(2) Subject to sections 194(2), 195(2) and 198(5) [*minimum compensation payments*], the Board must deduct from a periodic payment referred to in subsection (1)(a), an amount that equals 50% of any disability benefit paid as referred to in subsection (1)(b).

#### 203 Reconsideration of prescribed compensation claims

(1) This section applies to claims for compensation that the Board may, by regulation, determine.

(2) A worker may apply for reconsideration of compensation payable to the worker if

(a) the worker's claim is of a type prescribed under subsection (1),

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

(c) either

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

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

(3) A worker may apply under this section even though the worker has received

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

(b) compensation for a fixed term,

but, for the purposes of this section, the worker is deemed to be still receiving the periodic payments that have been commuted or the life equivalent of the periodic payments made for a fixed term.

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

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

(b) if, having regard to the projected loss of income resulting from the worker's disability, the Board considers that the worker is not receiving adequate compensation, the Board must increase or establish periodic payments accordingly.

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

(a) in the case of a worker who is under 65 years of age, the amount of compensation provided to the worker is at least 75% of the projected loss of earnings resulting from the worker's disability, and

(b) in the case of a worker who is 65 years of age or older, the amount of compensation provided to the worker is at least 75% of the projected loss of retirement income resulting from the worker's disability.

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

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

(8) Section 200 [*maximum compensation in the case of further disability*] applies to the calculation of compensation under this section, but the calculation must not be limited by reference to average earnings at the time of injury.

(9) Periodic payments to an applicant worker that are increased or established under this section must not exceed the maximum the Board would establish, at the time of the reconsideration decision, for a worker in an occupational category similar to that of the applicant worker before the injury if that other worker had a compensable disability similar to the compensable disability of the applicant worker.

(10) A reconsideration decision under this section must not result in periodic payments to a worker being less than they would have been if no application had ever been made under this section.

(11) The effective date for the commencement of an increase or establishment of compensation under this section is the date the application for reconsideration is received by the Board.

(12) A worker may reapply under this section for reconsideration of the worker's compensation 10 years after the worker's most recent application under this section.

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

(1) This section applies to a worker who is receiving periodic payments under section 194(1), 195(1) or 196(3) [*compensation for permanent disability*].

(2) The Board must set aside, at the time a periodic payment is made to a worker, an amount that

(a) equals 5% of the periodic payment, and

(b) is in addition to the periodic payment.

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

#### **205 Worker contributions to retirement benefit**

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

(2) Subject to subsection (3), if a worker makes an application under this section, the Board must, as soon as practicable, deduct the amount of the worker's contribution from each subsequent periodic payment made to the worker and add this contribution to the amount set aside under section 204.

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

(4) A worker may

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

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

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

#### **206 Payment of retirement benefit**

(1) Subject to subsection (3), on the date determined under subsection (2), a worker is entitled to receive a lump sum that equals the total of

(a) the amounts set aside for payment to the worker under section 204,

(b) the contributions, if any, made by the worker under section 205, and

(c) the accumulated investment income earned on those amounts and contributions.

(2) A worker's entitlement under subsection (1) is effective,

(a) subject to paragraph (b) of this subsection, on the date the worker reaches 65 years of age, or

(b) if the date of the last periodic payment to the worker is after the date the worker reaches 65 years of age, on the date of that last periodic payment.

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



entitled under that subsection to

- (a) a beneficiary designated by the worker, or
- (b) the worker's estate, if a beneficiary is not designated.

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

- (1) The Board must establish a reserve in the accident fund into which the amounts and contributions referred to in sections 204 and 205 must be deposited.
- (2) The funds deposited in the reserve under subsection (1) must be held and invested in the name of the reserve, and those investments must clearly indicate that they are held in that reserve for payment of retirement benefits under section 206.
- (3) If approved by the board of directors and on terms set by the Board, the Board may authorize a financial institution, as defined in the *Financial Institutions Act*, or a bank to administer the reserve referred to in subsection (1), and a financial institution or bank that is so authorized must comply with the relevant compensation provisions as if the financial institution or bank were the Board.

#### **208 Determination of worker's average earnings and earning capacity**

- (1) The Board must determine the amount of a worker's average earnings and the worker's earning capacity with reference to the worker's average earnings and earning capacity at the time of the worker's injury.
- (2) The Board must determine the amount of a worker's average earnings in accordance with this Division, subject to the restriction that the amount may not exceed the maximum wage rate as determined under section 209.
- (3) The Board must not include the following in determining the amount of a worker's average earnings:
  - (a) the employer's payments on behalf of the worker for
    - (i) contributions payable under the *Canada Pension Plan*,
    - (ii) premiums payable under the *Employment Insurance Act* (Canada), and
    - (iii) contributions to a retirement, pension, health and welfare, life insurance or other benefit plan for the worker or the worker's dependants;
  - (b) special expenses or allowances paid to the worker because of the nature of the worker's employment.
- (4) If income from employment benefits was payable to a worker under the *Employment Insurance Act* (Canada) during the period for which average earnings are to be determined, the Board may include that income in the determination only if the Board considers that the worker's employment during that period was in an occupation or industry that results in recurring seasonal or recurring temporary interruptions of employment.
- (5) The compensation payable to workers who, on July 1, 1974, receive compensation for permanent total disability must not be less than \$2 221.30 per month.

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

- (1) Before the end of each calendar year, the Board must determine the maximum wage rate applicable for the following calendar year.
  - (1.1) As an exception to subsection (1), the maximum wage rate for 2021 is \$100 000.
- (2) The maximum wage rate to be determined under this section must be an amount, which may be rounded to the nearest \$100, that the Board considers represents the same relationship to the amount of \$100 000 as
  - (a) the annual average of wages and salaries in British Columbia for the year preceding the year in which the determination is being made bears to
  - (b) the annual average of wages and salaries in British Columbia for the year 2019.
- (3) For the purpose of determining annual average of wages and salaries under this section, the Board may use data published or supplied by Statistics Canada.

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

Subject to this Division, the Board must determine, for the shorter of the following periods, the amount of a worker's average earnings based on the rate at which the worker was remunerated by each of the employers for whom that worker was employed at the time of the injury:

(a) the initial payment period, being the period

(i) starting on the date of the injury, and

(ii) ending on the last day of the tenth week for which compensation is payable under this Part to the worker for a temporary disability resulting from that injury;

(b) the period starting on the date of the worker's injury and ending on the date the worker's injury results in a permanent disability, as determined by the Board.

#### **211 Average earnings: long-term compensation**

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

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

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

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

(1) This section applies to a person who is

(a) deemed to be a worker under section 5 [*extending application: public interest undertakings*], and

(b) not regularly employed.

(2) The Board may, on the terms and conditions the Board directs, fix the amount of a person's average earnings having regard to all the circumstances, including the person's income.

(3) As a restriction, an amount fixed under subsection (2) must not be less than \$170.86 per week.

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

If a worker's pattern of employment at the time of the injury is casual in nature, the Board's determination of the amount of the worker's average earnings from the date of injury must be based on the worker's gross earnings, as determined by the Board, for the 12-month period immediately preceding the date of injury.

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

If an employer or independent operator to whom the Board directs that the compensation provisions apply under section 4(2) [*coverage for independent operators and employers*] has purchased coverage under this Act, the Board must determine the amount of the employer's or independent operator's average earnings from the date of injury based on the gross earnings for which coverage is purchased.

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

(1) This section applies to a worker who, at the time of injury, was

(a) an apprentice in a trade, occupation or profession, or

(b) a person referred to in paragraph (b) [*training preliminary to employment*] of the definition of "worker" in section 1.

(2) If a worker's injury results in a temporary disability that continues after the initial payment period, the Board must, for the period starting after the end of the initial payment period, determine the amount of the worker's average earnings based on the greater of the following:

(a) the rate at which the worker was remunerated by each of the employers for whom the worker was employed at the time of the injury;

(b) the worker's gross earnings, as determined by the Board, for the 12-month period immediately preceding the date of injury.

(3) If a worker's injury results in a permanent disability, the Board must, for the period starting on the date, as determined by the Board, that the injury resulted in a permanent disability, determine the amount of the worker's average earnings based on the gross earnings, as determined by the Board, for the 12-month period immediately preceding the date of injury, of a qualified person employed at the starting rate in the same trade, occupation or profession

(a) by the same employer, or

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

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

(1) This section applies to a worker who was employed, on other than a casual or temporary basis, by the worker's employer for less than 12 months immediately preceding the date of the injury.

(2) The Board's determination of the amount of the worker's average earnings under section 211 [*long-term compensation*] must be based on the gross earnings, as determined by the Board, for the 12-month period immediately preceding the date of injury, of a person of similar status employed in the same type and classification of employment

(a) by the same employer, or

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

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

(1) If exceptional circumstances exist such that the Board considers that the application of section 211 would be inequitable, the Board's determination of the amount of a worker's average earnings may be based on an amount that the Board considers best reflects the worker's loss of earnings.

(2) Subsection (1) does not apply in the circumstances described in section 214, 215, 216 or 217.

**219 Determination if multiple rules apply**

If 2 or more of sections 212 to 218 apply to the same worker for the same injury, the Board must determine the section that best reflects the worker's circumstances and apply that section.

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

(1) This section applies to the determination of the amount of a worker's average net earnings for the period under section 210 [*average earnings: short-term compensation*] that applies to the worker.

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

(a) premiums payable by a worker under the *Employment Insurance Act* (Canada);

(b) contributions payable by a worker under the *Canada Pension Plan*;

(c) probable income taxes payable by a worker under the *Income Tax Act* and the *Income Tax Act* (Canada).

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

(4) For the purposes of this section, premiums and contributions referred to in subsection (2)(a) and (b) are deemed to be payable by all workers.

(5) To estimate probable income taxes for the purposes of this section, the Board must assume that the following are the only deductions that may be made for a worker under the *Income Tax Act* and the *Income Tax Act* (Canada):

(a) the amounts that may be deducted under

(i) section 4.3(1)(c) [*BC basic personal credit - single status*] of the *Income Tax Act*, and

(ii) section 118(1)(c) [*equivalent*] of the *Income Tax Act* (Canada),

each multiplied by 1.5;

(b) the amounts that may be deducted under

(i) section 4.64 [*BC credit for EI premium and CPP contribution*] of the *Income Tax Act*, and

(ii) section 118.7 [*equivalent*] of the *Income Tax Act* (Canada).

**221 Average net earnings: long-term compensation**

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

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

- (a) if premiums are payable by the worker under the *Employment Insurance Act* (Canada), those premiums;
  - (b) if contributions are payable by the worker under the *Canada Pension Plan*, those contributions;
  - (c) unless a worker is exempt from, or not subject to, the taxes imposed by the *Income Tax Act* and the *Income Tax Act* (Canada), probable income taxes payable by the worker under those Acts.
- (3) In order to determine a worker's average net earnings under this section, the Board must deduct the amounts estimated under subsection (2) from the worker's average earnings as determined under Division 7 of this Part.
- (4) To estimate probable income taxes for the purposes of this section, the Board must assume that the following are the only deductions that may be made for a worker under the *Income Tax Act* and the *Income Tax Act* (Canada):
- (a) the amounts that may be deducted under
    - (i) section 4.3(1)(c) [*BC basic personal credit* *à l'égard de la situation de célibataire*] of the *Income Tax Act*, and
    - (ii) section 118(1)(c) [*equivalent*] of the *Income Tax Act* (Canada);
  - (b) the amounts that may be deducted under
    - (i) section 4.64 [*B.C. credit for EI premium and CPP contribution*] of the *Income Tax Act*, and
    - (ii) section 118.7 [*equivalent*] of the *Income Tax Act* (Canada);
  - (c) the amounts that may be deducted under
    - (i) section 4.3(1)(a), (b) or (d.1) [*other personal credits*] of the *Income Tax Act*, and
    - (ii) section 118(1)(a), (b) or (d) [*equivalent*] of the *Income Tax Act* (Canada).

#### 222 Schedule or procedure for determining average net earnings

- (1) The Board may establish for each calendar year one or more schedules of deductions under section 220 or 221, or procedures for determining those deductions, that may be used as a guide to determining the deductions under those sections.
- (2) The Board is not required to consider a worker's actual circumstances
- (a) in establishing a schedule or procedure under subsection (1), or
  - (b) in calculating the average net earnings of the worker under this Division.

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

- (1) This section applies in relation to periodic payments for permanent disability that were awarded to a worker by the Board before January 1, 1966 if
- (a) a portion of the periodic payments equivalent to 12% of total disability or greater was commuted before January 1, 1966,
  - (b) the award was for a percentage of total disability of 12% or greater and the whole of the periodic payments was commuted before January 1, 1966, or
  - (c) the award was for a percentage of total disability of 12% or greater and was of periodic payments for a fixed term.
- (2) If a worker to whom an award referred to in subsection (1) was made still has the disability, the Board may, on the application of the worker, establish new periodic payments that are to begin for the month in which the application is received by the Board.
- (3) For the purpose of calculating the rate of new periodic payments to be established under this section, the Board must determine the following:
- (a) as applicable,
    - (i) if the commutation was partial, the additional rate of monthly payments that would have been payable on January 1, 1966 if there had been no commutation, and
    - (ii) if the commutation was complete, the monthly payments that would have been payable on January 1, 1966 if the award had been of periodic payments for life and there had been no commutation;
  - (b) the additional amount of monthly payments that would have been payable for the month during which the application is received by way of increases on the amounts calculated under paragraph (a) if those amounts had continued to be due, which additional amount is to be the total of all

increases that would have been made from January 1, 1966 to and including the last day of the month before the month in which the application was received.

(4) The rate of the new periodic payments to be established under this section must be the amount calculated under subsection (3)(b), but future adjustments under section 334 [*annual adjustment of periodic payment amounts*] must be based on the total of the amounts calculated under subsection (3)(a) and (b) of this section.

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

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

(1) If, before April 1, 1972, a worker received health care under

(a) the *Canada Shipping Act*, R.S.C. 1970, c. S-9, or

(b) a health care plan approved by the Board,

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

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

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

(1) If, on July 1, 1974,

(a) compensation was being paid to one or more dependants in respect of deaths occurring before that date,

(b) those dependants were not receiving or were not entitled to receive benefits under the *Canada Pension Plan*, and

(c) as applicable,

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

(ii) the dependants were children, or

(iii) the dependants were a widow and children,

there must be added to the monthly payments under the compensation provisions the amount of \$601.49 for each such dependent widow and \$186.69 for each dependent child.

(2) If

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

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

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

(3) The Board must make periodic payments under this section for the life of the person to whom the payment is to be made.

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

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

(a) in respect of a period before September 1, 1975, or

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

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

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

(a) the reference to \$100 000 were a reference to \$11 200, and

(b) the reference to 2019 were a reference to 1972.

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

(1) In this section:

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

**"transition date"** means December 31, 2003, being the date on which this section came into force.

(2) This section applies to a worker's death that occurred before June 30, 2002.

(3) Subject to subsections (5) and (6), the former Act, as it read immediately before June 30, 2002, applies to a death referred to in subsection (2).

(4) Subject to subsections (5) and (6), in recalculating compensation under sections 181 to 185 [*compensation adjustment when there are changes in circumstances*] of this Act, the Board must, if the actual date of the worker's death was before June 30, 2002, base the recalculation on the former Act as it read immediately before June 30, 2002.

(5) Section 334 [*annual adjustment of periodic payment amounts*] applies to compensation paid on or after the transition date in respect of a worker's death, irrespective of the date the worker died.

(6) For the purposes of applying subsections (3) and (4), the Board must adjust the dollar amounts referred to in sections 17 [*compensation in fatal cases*] and 18 [*addition to payments in relation to worker death before July 1, 1974*] and Schedule C [*Payments to Widows*] of the former Act, as it read immediately before June 30, 2002, in accordance with section 333(1) [*annual adjustment of dollar amounts referred to in Act*] of this Act.

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

(1) In this section:

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

**"transition date"** means June 30, 2002, being the date on which this section came into force.

(2) This section applies to an injury that occurred before the transition date.

(3) Subject to subsections (4) to (8), the former Act, as it read immediately before the transition date, applies to an injury that occurred before the transition date.

(4) Subject to subsections (5) to (8), if a worker's permanent disability first occurs on or after the transition date as a result of an injury that occurred before the transition date, this Act applies to the permanent disability.

(5) For the purposes of subsection (4), sections 194 to 196 [*compensation for permanent disability*] of this Act apply as if

(a) all references, other than references in section 196(3)(b)(i) [*permanent partial disability: exception to general rules*], to "90%" were read as "75%",

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

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

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

(6) Section 202 [*deductions in relation to Canada Pension Plan disability benefit*] does not apply in the circumstances described in subsection (4) of this section.

(7) Section 334 [*annual adjustment of periodic payment amounts*] applies to compensation paid to a worker on or after December 31, 2003, being the date on which section 228(5) came into force, irrespective of the date the worker was injured.

(8) If a worker has, on or after the transition date, a recurrence of a disability that results from an injury that occurred before the transition date, the Board must determine compensation for the recurrence based on this Act.

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

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

(2) The Board may, at the Board's discretion, do the following:

(a) commute all or part of

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

(ii) the future amounts that are to be set aside for payment of a retirement benefit,

to one or more lump sum payments, to be applied as directed by the Board;

(b) divide into periodic payments compensation that is otherwise payable as a lump sum.

(3) In the case of a worker's

(a) death,

(b) permanent total disability, or

(c) permanent partial disability where the impairment of the earning capacity of the worker is greater than 10% of the worker's earning capacity at the time of the injury,

commutation of periodic payments must not be made under subsection (2) except on the application of and at an amount agreed to by the worker or dependant entitled to the payments.

#### 231 Payment of compensation in specific circumstances

(1) In the case of payments of compensation to

(a) a minor, or

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

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

(2) If an injured worker is receiving custodial care in a hospital or elsewhere, periodic payments of compensation due to the worker may be dealt with as follows, regardless of the date of the injury:

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

(i) applied to the maintenance of a home to which the worker is likely to return on the worker's recovery, or

(ii) accumulated by the Board for payment to the worker on the worker's recovery;

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

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

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

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

(3) As a restriction on subsection (2)(b), if the worker is conscious, the Board must pay to the worker, or for the use of the worker, a comfort allowance of at least \$306.25 out of each periodic payment.

(4) Any compensation owing or accrued to a worker for a period not longer than 3 months before the worker's death may, at the discretion of the Board, be paid to a surviving spouse or a person who takes charge of the funeral arrangements, free from debts of the deceased.

#### 231.1 Payment of interest

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

(2) Interest must be paid on any amount of compensation that

(a) is determined to be payable following a review under Part 6 [*Review of Board Decisions*] or an appeal under section 288 [*review decisions that may be appealed*], and

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) This section applies if

(a) a worker's personal injury, disablement or death occurs in the course of the worker's employment as a direct result of enemy warlike action or counteraction taken against such enemy action, and

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

(2) The worker or the worker's dependants are entitled to compensation under this Part only if the compensation provided by the government of Canada is less than that provided by this Act, and then only to the extent of the difference.

#### **235 Confidentiality obligations in relation to compensation claims information**

(1) If information in a claim file, or in any other material relating to the claim of an injured or disabled worker, is disclosed for the purposes of this Act by an officer or employee of the Board to a person other than the worker, that other person must not disclose the information except as follows:

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

(b) in compliance with a subpoena, warrant or order issued or made by a court, tribunal, person or body with jurisdiction to compel the production of information;

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

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

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

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

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

(1) A person who commits an offence under a compensation provision for which no other punishment has been provided is liable on conviction to a fine not greater than \$6 834.35.



(2) Every person who contravenes or fails to comply with a regulation made under a compensation provision commits an offence and is liable on conviction to the fine prescribed by the regulations, but that fine must not be greater than \$6 834.35.

(3) Penalties imposed by or under the authority of the compensation provisions

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

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

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

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

(a) issue the orders and directives the Board considers necessary for the administration and carrying out of those provisions, and

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

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

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

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

(2) The Board may specify a date that is less than 90 days after the date of deposit as the effective date of a regulation made under section 138(1) in relation to an occupational disease that is an infection caused by a communicable viral pathogen.