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

(2) The board of directors of the Workers' Compensation Board consists of

(a) 9 voting directors appointed by the Lieutenant Governor in Council in accordance with section 317, and

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

317 Voting directors

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

(a) one director, representative of the public interest, who is chair;

(b) 2 additional directors, representative of the public interest;

(c) one director, representative of workers;

(d) one director, representative of employers;

(e) one director who is or was a professional in the area of occupational health and safety;

(f) one director who is or was a professional in the area of law or law enforcement;

(g) one director who at the time of appointment is a professional providing health care or rehabilitation services to persons with disabilities;

(h) one director who at the time of appointment is an actuary.

(2) The Lieutenant Governor in Council must make selections for an appointment under this section in accordance with the following:

(a) for appointment under subsection (1)(c), selection of a person from a list of at least 3 persons, each of whom is nominated by one or more organizations that represent workers or classes of workers;

(b) for appointment under subsection (1)(d), selection of a person from a list of at least 3 persons, each of whom is nominated by one or more organizations that represent employers or classes of employers;

(c) for appointment under subsection (1)(e), selection of a person from a list of at least 3 persons, each of whom is nominated by one or more organizations that provide occupational health and safety services;

(d) for appointment under subsection (1)(f), selection of a person from a list of at least 3 persons, each of whom is nominated by one or more organizations for professionals in law or law enforcement;

(e) for appointment under subsection (1)(g), selection of a person from a list of at least 3 persons, each of whom is nominated by one or more organizations that provide health care or rehabilitation services to persons with disabilities;

(f) for appointment under subsection (1)(h), selection of a person from a list of at least 3 persons, each of whom is nominated by one or more professional organizations for actuaries.

(3) In relation to an appointment under subsection (1)(f), **"law enforcement"** means any of the following:

(a) policing, including criminal intelligence operations;

(b) investigations that lead or could lead to a penalty or sanction being imposed;

(c) proceedings that lead or could lead to a penalty or sanction being imposed.

318 Term of office and remuneration for voting directors

(1) Each voting director, other than the chair, holds office for a term of up to 3 years, as set by the Lieutenant Governor in Council.

(2) The chair holds office for a term of up to 5 years, as set by the Lieutenant Governor in Council.

(3) A voting director, other than the chair, must not be appointed for a continuous period of more than 6 years.

(4) The chair may not be appointed for a continuous period of more than 10 years.

(5) The Board must pay voting directors

(a) remuneration in an amount determined by the Lieutenant Governor in Council, and

(b) reasonable travel and out-of-pocket expenses necessarily incurred in discharging their duties.

319 Policies of the board of directors

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

320 General responsibilities of the board of directors

(1) The board of directors must set and supervise the direction of the Board.

(2) Without restricting subsection (1), the board of directors is responsible for the following:

(a) subject to this Act, selecting the president and determining the president's functions;

(b) approving the operating and capital budgets of the Board;

(c) establishing policies and accounting systems to ensure adequate funding of the accident fund;

(d) approving major programs and expenditures of the Board;

(e) approving the investment of funds of the Board in accordance with the requirements imposed under this Act;

(f) planning for the future of the Board;

(g) subject to this Act, enacting bylaws and passing resolutions

(i) for the conduct of the business of the Board, and

(ii) for the functions of the board of directors,

including enacting bylaws respecting the manner in which the policies of the board of directors are to be published.

(3) The board of directors may establish committees and give directions to those committees.

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

321 Meetings and other proceedings of the board of directors

(1) The chair must preside at meetings of the board of directors.

(2) Meetings of the board of directors must be held at the call of the chair at any place in British Columbia that the chair determines.

(3) A majority of the voting directors in office constitutes a quorum at a meeting of the board of directors.

(4) A vacancy on the board of directors does not impair the right of the other directors to act.

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

322 Standard of care obligations for directors

(1) A director, when exercising the powers and performing the duties and functions as a member of the board of directors, must

(a) act honestly and in good faith,

(b) act with a view to the best interests and objectives of the workers' compensation system,

(c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances, and

(d) act in a financially responsible and accountable manner.

(2) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of members of the board of directors.

323 Board president appointment and responsibilities

(1) The board of directors must appoint a person to be president of the Board.

(2) The president is responsible to the board of directors and

(a) must attend and participate as a non-voting director at meetings of the board of directors,

(b) must implement the policies of the board of directors with respect to the administration of the Board and this Act,

(c) is responsible for all functions related to staff, other than the staff appointed by and reporting directly to the board of directors, and

(d) must carry out other duties and functions assigned to the president by the board of directors.

(3) Subject to this Act, the board of directors may enter into a contract with the president providing for the remuneration of the president and setting out the terms and conditions of the president's appointment.

324 Delegation by board of directors or president

(1) The board of directors may delegate in writing a power or duty of the board of directors to the president of the Board or another officer of the Board, and may impose limitations or conditions on the delegate's exercise of a power or performance of a duty.

(2) The president may delegate in writing any of the president's powers and duties to another officer of the Board or another person, and may impose limitations or conditions on the delegate's exercise of a power or performance of a duty.

325 Annual service plan

(1) On or before April 30 of each year, the Board must provide the minister with a service plan that addresses the 3-year period starting on January 1 of that year and does the following:

(a) sets out the Board's priorities;

(b) identifies specific objectives and performance measures for the Board;

(c) provides a fiscal forecast for the Board, including a statement of all material assumptions and policy decisions underlying the forecast;

(d) compares actual results of the previous year with the expected results identified in the previous year's service plan;

(e) presents other information that the Board considers appropriate.

(2) After receiving the annual service plan, the minister must promptly

(a) lay the plan before the Legislative Assembly, if the Legislative Assembly is in session, or

(b) file the plan with the Clerk of the Legislative Assembly, if the Legislative Assembly is not in session.

326 Annual report to minister

(1) On or before April 30 of each year, the Board must make to the minister a report of the Board's transactions during the last preceding calendar year, and the report must include any other information the minister specifies.

(2) The annual report under this section must include

(a) a review of the Board's activities under Part 2 *[Occupational Health and Safety]* for the year, including financial, statistical and performance information, and

(b) an evaluation of the occupational health and safety record of workplaces in British Columbia.

(3) After receiving the annual report, the minister must promptly

(a) lay the report before the Legislative Assembly, if the Legislative Assembly is in session, or

(b) file the report with the Clerk of the Legislative Assembly, if the Legislative Assembly is not in session.

327 Financial management

(1) The Board must establish and maintain an accounting system satisfactory to the Minister of Finance, and that minister may, at any time, inspect the accounting records of the Board and advise the Board on all matters respecting its accounts and other financial matters.

(2) Subject to the supervision and direction of the Minister of Finance, the Board must cause all money in the accident fund in excess of current requirements to be invested and reinvested and, in doing this, must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

328 Audit requirement

(1) Unless the Auditor General is appointed in accordance with the *Auditor General Act* as the auditor of the Board, the Board must appoint an auditor to audit the accounts of the Board at least once each year.

(2) The remuneration of an auditor for auditing the accounts of the Board must be paid by the Board.

(3) For the purpose of an audit under this section, the Lieutenant Governor in Council may appoint a competent person to make and report on an actuarial valuation of the assets and liabilities of the accident fund, and the remuneration of that person to make and report on the valuation must be paid by the Board.

329 Board may appoint officers and other employees

(1) The Board may appoint the officers and other employees it considers necessary to carry out the business and operations of the Board and may establish their duties and determine their remuneration.

(2) A person appointed under this section holds office during the pleasure of the Board.

(3) The *Labour Relations Code* does not apply to the following:

(a) a person employed

(i) for the purposes of policy development or providing policy advice, and

(ii) in the policy and regulation development division of the Board;

(b) a person employed

(i) for the purpose of investigating the conduct of persons working for the Board, and

(ii) as an investigator in the special investigations branch of the Board.

330 Board must appoint review officers

(1) The Board must appoint a chief review officer and one or more review officers to conduct reviews under Part 6 *[Review of Board Decisions]*.

(2) The *Labour Relations Code* does not apply to a chief review officer or a review officer.

331 Superannuation fund

(1) The Board may

(a) establish and maintain a fund, to be known as the superannuation fund, for the payment of superannuation allowances to the Board's employees or of allowances on the disability or death of its employees, by contributions from the employees of the Board and from the accident fund, and

(b) determine the amounts of superannuation or other allowances and the conditions on which they may be paid and the persons to whom they may be paid.

(2) The Board may use the superannuation fund to purchase superannuation allowances for its employees from the Crown in right of Canada, from the Crown in right of British Columbia or from an insurer.

(3) The costs of administering the superannuation fund are part of the cost of the administration of this Act.

(4) Despite any other Act, the matters respecting the establishment and maintenance of the superannuation fund under this section or payment of superannuation allowances to employees or allowances on the disability or death of employees, including the following, must not be the subject of a collective agreement between the Board and its employees:

(a) contributions to the fund by the Board and its employees;

(b) amounts of superannuation or other allowances;

(c) conditions on which and the persons to whom superannuation or other allowances may be paid.

332 Protection for Board, directors, officers and employees

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

(a) that was within the jurisdiction of the Board, or

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

333 Annual adjustment of dollar amounts referred to in Act

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

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

(a) section 209(2) *[maximum wage rate for applicable year]*;

(b) section 227 *[compensation for workers injured before 1986]*.

(3) On the Board making an adjustment of a dollar amount under subsection (1), the dollar amount referred to in this Act is deemed to be amended.

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

334 Annual adjustment of periodic payment amounts

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

(a) determine the percentage change in the consumer price index for Canada, for all items, for the 12-month period ending on October 31 of the previous year, and

(b) if the percentage change under paragraph (a) is greater than 4%, determine a percentage in accordance with subsection (2).

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

(3) On January 1 of each year, the Board must adjust, in accordance with subsection (4), the periodic payments of compensation to be paid in the calendar year in respect of an injury or death occurring more than 12 months before the date of the adjustment.

(4) For the purposes of subsection (3), the periodic payments of compensation must be adjusted as follows:

(a) if the percentage change determined under subsection (1)(a) is negative, the adjustment is 0%;

(b) if the percentage change determined under subsection (1)(a) is greater than 4%, the adjustment is equal to the percentage determined under subsection (1)(b);

(c) in any other case, the adjustment is the percentage change determined under subsection (1)(a).

(5) If the Board starts or restarts periodic payments of compensation for an injury or a death that occurred more than 12 months before the payments are started or restarted, the Board must, under this section, adjust all periodic payments as if the payments were made continuously from the date of injury or death.

335 Interjurisdictional agreements and arrangements

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

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

(b) the provision of compensation, rehabilitation and health care to workers in accordance with the standards established under this Act or corresponding legislation in other jurisdictions;

(c) avoidance of duplication of assessments on workers' earnings.

(2) An agreement or arrangement under this section may

(a) waive or modify a residence or exposure requirement for eligibility for compensation, rehabilitation or health care, or

(b) provide for payment to an appropriate authority of Canada or an appropriate authority of a province or a territory for compensation, rehabilitation costs or health care costs paid by the authority.

336 Exercise of powers under federal Acts or agreements

The Board may exercise any power or duty conferred or imposed on it by or under a statute of Canada or an agreement between Canada and British Columbia.

337 Information respecting Board activities

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

338 Board practices and procedures

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

339 Board decision making

(1) The Board may consider all questions of fact and law arising in a case, but the Board is not bound by legal precedent.

(2) The Board must make its decision based on the merits and justice of the case, but in doing this the Board must apply the policies of the board of directors that are applicable in that case.

(3) If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

340 Protection of Board proceedings

Proceedings by or before the Board must not be

(a) restrained by injunction, prohibition or other process or proceeding in any court, or

(b) removed by certiorari or otherwise into any court.

341 Authority to act on advice of officers and persons conducting inquiries

The Board may act

(a) on the report of any of its officers, and

(b) in relation to an inquiry under this Part, on the report of the person making the inquiry as to the result of that inquiry.

342 Authority to compel witnesses and production of evidence

(1) The Board has the same powers as the Supreme Court

(a) to compel the attendance of witnesses and examine them under oath, and

(b) to compel the production and inspection of records and things.

(2) The Board may require depositions of witnesses residing in or out of British Columbia to be taken before a person appointed by the Board and in a manner similar to that established by the Rules of the Supreme Court for the taking of depositions in that court.

343 Authority to award costs in relation to contested matters

(1) This section applies in relation to a contested claim for compensation or any other contested matter.

(2) The Board may award to the successful party an amount the Board considers reasonable to meet the expenses to which the party has been put by reason of or incidental to contesting the matter.

(3) An order of the Board for payment by an employer or worker of an amount awarded under this section, when filed in the manner provided for the filing of certificates under section 264(2) *[collection of unpaid assessment]*, becomes a judgment of the court in which the order is filed and may be enforced accordingly.

344 Service of orders and other documents

(1) A document that must be served on or sent to a person under this Act may be

(a) personally served on the person,

(b) mailed to the person's last known address, or

(c) transmitted electronically, by fax or otherwise, to the address or number requested by the person.

(2) If a document is mailed, the document is deemed to have been received 8 days after it was mailed.

(3) If a document is transmitted electronically, the document is deemed to have been received when the person transmitting the document receives an electronic acknowledgement of the transmission.

(4) If, through absence, accident, illness or other cause beyond the party's control, a party who acts in good faith does not receive the copy until a later date than the date provided under subsection (2) or (3), that subsection does not apply.

(5) If a notice or document is not served in accordance with this section, the proceeding is not invalidated if

(a) the contents of the notice or document were known by the person to be served within the time allowed for service,

(b) the person to be served consents, or

(c) the failure to serve does not result in prejudice to the person or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.

(6) If, in relation to a proceeding under Part 7 *[Appeals to Appeal Tribunal]*, the appeal tribunal is of the opinion that, because there are so many parties to the proceeding or for any other reason, it is impracticable to give notice of a hearing to a party by a method referred to in subsection (1), the appeal tribunal may give notice of a hearing by public advertisement or otherwise as the appeal tribunal directs.

345 Alternative dispute resolution

In circumstances it considers appropriate, the Board may recommend the use of alternative dispute resolution processes to assist in the resolution of matters under this Act.

346 General inquiry authority

(1) If the Board considers that an inquiry is necessary, the inquiry may be made by an officer of the Board or by another person appointed by the Board to make the inquiry.

(2) For the purposes of an inquiry under this section, the person making the inquiry has the powers conferred on the Board under section 342 *[authority to compel witnesses and production of evidence]*.

347 Examinations and other inquiries respecting employer information

(1) The Board, an officer of the Board or a person authorized by the Board for this purpose may examine the books and accounts of an employer and make any other inquiry the Board considers necessary to determine any of the following:

(a) whether an industry or person is within the scope of the compensation provisions;

(b) the amount of the payroll of the employer;

(c) whether a statement provided to the Board under section 245 *[employer to provide estimate of payroll]* is an accurate statement of the matters that are required to be stated in it.

(2) For the purpose of an inquiry under this section, the Board or person authorized to make the inquiry may give notice in writing to an employer or agent of an employer requiring the employer to bring or produce before the Board or person, at a time and place specified in the notice, all records in the possession, custody or power of the employer touching or in any way relating to or concerning the subject matter of the inquiry referred to in the notice.

(3) The time specified in a notice under subsection (2) must be at least 10 days after the notice is given.

(4) An employer or agent named in and served with a notice under subsection (2) must, at the time and place specified in the notice, produce all records in accordance with the notice.

(5) A person who does any of the following commits an offence:

(a) obstructs or hinders the making of an inquiry under this section;

(b) refuses to permit such an inquiry to be made;

(c) neglects or refuses to produce the required records at the time and place specified in the notice under subsection (2).

348 Oaths, affidavits and other declarations in relation to inquiries

An officer of the Board or a person authorized by the Board to make an inquiry under section 346 or 347 may

(a) require and take affidavits, affirmations or declarations as to any matter of the inquiry,

(b) take affidavits for the purposes of this Act, and

(c) in relation to these, administer oaths, affirmations and declarations and certify that they were made.

349 Confidentiality obligations in relation to inquiries

(1) Officers of the Board and persons authorized to make an inquiry under this Division must not, except in the performance of their duties or under the authority of the Board, disclose or allow to be disclosed information obtained by them or which has come to their knowledge in making or in connection with an inquiry under this Division.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not greater than $6 834.35.

350 Workers' advisers and employers' advisers

(1) Workers' advisers, employers' advisers and other employees necessary to enable the workers' advisers and employers' advisers to perform their duties under this Division may be appointed under the *Public Service Act* as employees of the minister's ministry.

(2) The following apply to a ministry employee appointed under subsection (1) as a workers' adviser or employers' adviser:

(a) the employee need not be a member of the Law Society of British Columbia;

(b) section 15 *[restrictions on practice of law]* of the *Legal Profession Act* does not apply to the employee if that employee is not a member of the Law Society of British Columbia.

(3) The minister may request that the Board reimburse the government for all amounts paid by the government for the reasonable expenses properly incurred by the government in administering workers' and employers' advisers programs.

(4) On receiving a request under subsection (3), the Board must pay the amount requested to the Minister of Finance.

351 Role of workers' advisers

A workers' adviser must

(a) give assistance to a worker or dependant having a claim under this Act, unless the workers' adviser considers the claim has no merit,

(b) on claims matters, communicate with or appear before the Board and the appeal tribunal on behalf of a worker or dependant if the adviser considers assistance is required, and

(c) advise workers and dependants regarding the interpretation and administration of this Act or any regulations or decisions made under this Act.

352 Role of employers' advisers

An employers' adviser must

(a) give assistance to an employer respecting any claim under this Act of

(i) a worker of the employer, or

(ii) a dependant of such a worker

unless the employer's adviser considers the claim has no merit,

(b) on claims matters, communicate with or appear before the Board and the appeal tribunal on behalf of an employer if the adviser considers assistance is required, and

(c) advise employers regarding the interpretation and administration of this Act or any regulations or decisions made under this Act.

353 Information and confidentiality rules for advisers and staff

(1) The workers' advisers, the employers' advisers and the staff of those advisers must have access at any reasonable time to the complete claims files of the Board and any other material relating to the claim of an injured or disabled worker.

(2) The advisers and staff referred to in subsection (1) must treat the information contained in the claims files as confidential to the same extent as the information is treated by the Board.

(3) An employers' adviser must not report or disclose to an employer information obtained from or at the Board of a type that would not be disclosed to the employer by the Board.

354 Lay advocates

(1) A person may

(a) give advice respecting the interpretation or administration of this Act, the policies of the board of directors, the Board's practices and procedures or any regulations, orders or decisions under this Act, or

(b) act on behalf of a person by

(i) communicating with the Board, an officer or employee of the Board, the appeal tribunal or any other person acting under this Act, or

(ii) appearing before the Board, an officer or employee of the Board or the appeal tribunal.

(2) Section 15 *[restrictions on practice of law]* of the *Legal Profession Act* does not apply to a person while the person performs functions referred to in subsection (1).

355 Definitions

In this Division:

"fair practices commissioner" means an officer of the Board who is appointed as the fair practices commissioner under section 356(1);

"personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

356 Fair practices commissioner

(1) The board of directors must appoint an officer as the fair practices commissioner to advise the Board on matters of fairness.

(2) The fair practices commissioner is to be appointed for a term of 3 years and may be reappointed for additional 3-year terms.

(3) The *Labour Relations Code* does not apply to the fair practices commissioner.

(4) The fair practices commissioner may do the following:

(a) investigate complaints by employers, workers and dependants of workers regarding alleged unfairness in their dealings with the Board;

(b) make recommendations to the Board to

(i) resolve complaints referred to in paragraph (a), or

(ii) address systemic problems with the fairness of the Board's dealings as indicated by such complaints;

(c) make recommendations to the Board about systemic problems with the fairness of

(i) the application of policies of the board of directors, or

(ii) practices and procedures of the Board;

(d) undertake any other activity prescribed by regulation of the Lieutenant Governor in Council.

(5) Despite subsection (4), the fair practices commissioner may not comment on or make recommendations respecting the following:

(a) the merits of a Board decision under the OHS provisions or the compensation provisions, or the merits of a decision of a review officer or the appeal tribunal;

(b) a matter that is the subject of a proceeding or a decision of a court or tribunal, as defined in section 1 of the *Judicial Review Procedure Act*;

(c) the setting or revision of a policy of the board of directors under section 319 [*policies of the board of directors*];

(d) the carrying out of a matter for which the board of directors is responsible under section 320 [*general responsibilities of the board of directors*];

(e) any other matter prescribed by regulation of the Lieutenant Governor in Council.

(6) The Lieutenant Governor in Council may make regulations respecting any matter contemplated by this section.

357 Annual report of fair practices commissioner

(1) On or before April 30 of each year, the fair practices commissioner must

(a) prepare a report that includes the information required by the board of directors, other than personal information, in relation to the preceding calendar year, and

(b) provide a copy of the report to the board of directors.

(2) After receiving the report under subsection (1), the board of directors must promptly

(a) provide a copy of the report to the minister, and

(b) publish the report on a publicly accessible website.