

#### 19 Exclusive jurisdiction of Board in relation to OHS provisions

(1) Subject to sections 288 and 289 [*matters that may be appealed to appeal tribunal*], the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under the OHS provisions, and the action or decision of the Board on those matters and questions is final and conclusive and is not open to question or review in any court.

(2) Subsection (1) does not restrict the Board's authority under section 20.

#### 20 Board authority to change previous decisions

(1) Subject to subsection (2) of this section and sections 87(1) [*notice required if Board order varied or cancelled*] and 89(4) [*restriction on cancellation of order to stop use or supply of unsafe equipment*], the Board may at any time, on its own initiative, make a new decision or order varying or cancelling a previous decision or order of the Board or of an officer or employee of the Board respecting any matter that is within the jurisdiction of the Board under the OHS provisions.

(2) The Board may not make a decision or an order under subsection (1) if

(a) a review has been requested under section 270 [*request for review of Board decision*] in respect of the previous decision or order, or

(b) an appeal has been filed under section 289 [*other Board decisions that may be appealed*] in respect of the previous decision or order.

(3) The Board may review a decision or order made under the OHS provisions by the Board or an officer or employee of the Board, but only as specifically provided in Part 6 [*Review of Board Decisions*].

(4) The Board may at any time set aside a decision or order made under the OHS provisions by the Board or an officer or employee of the Board if that decision or order resulted from fraud or misrepresentation of the facts or circumstances on which the decision or order was based.

#### 31 General requirement for employer to establish joint committee

An employer must establish and maintain a joint health and safety committee

(a) in each workplace where 20 or more workers of the employer are regularly employed, and

(b) in any other workplace for which a joint committee is required by order.

#### 32 Variations in committee requirements

(1) Despite section 31, the Board may, by order, require or permit an employer to establish and maintain

(a) more than one joint committee for a single workplace of the employer,

(b) one joint committee for more than one workplace or parts of more than one workplace of the employer, or

(c) one joint committee for the workplace or parts of the workplaces of a number of employers, if the workplaces are the same, overlapping or adjoining.

(2) An order under subsection (1) may

(a) specify the workplace, workplaces or parts for which a joint committee is required or permitted, and

(b) provide for variations regarding the practice and procedure of a joint committee from the provisions otherwise applicable under the OHS provisions or the regulations.

#### 33 Membership of joint committee

A joint committee for a workplace must be established in accordance with the following:

(a) it must have at least 4 members or, if a greater number of members is required by regulation, that greater number;

(b) it must consist of worker representatives and employer representatives;

(c) at least half the members must be worker representatives;

(d) it must have 2 co-chairs, one selected by the worker representatives and the other selected by the employer representatives.

#### 34 Selection of worker representatives

(1) The worker representatives on a joint committee must be selected from workers at the workplace who do not exercise managerial functions at

that workplace, as follows:

- (a) if the workers are represented by one or more unions, the worker representatives are to be selected according to the procedures established or agreed on by the union or unions;
  - (b) if none of the workers are represented by a union, the worker representatives are to be elected by secret ballot;
  - (c) if some of the workers are represented by one or more unions and some are not represented by a union, the worker representatives are to be selected in accordance with paragraphs (a) and (b) in equitable proportion to their relative numbers and relative risks to health and safety;
  - (d) if the workers do not make their own selection after being given the opportunity under paragraphs (a) to (c), the employer must seek out and assign persons to act as worker representatives.
- (2) The employer or a worker may request the Board to provide direction as to how an election under subsection (1)(b) is to be conducted.
- (3) The employer, or a union or a worker at a workplace referred to in subsection (1)(c), may request the Board to provide direction as to how the requirements of that provision are to be applied in the workplace.

#### **35 Selection of employer representatives**

- (1) The employer representatives on a joint committee must be selected by the employer from among persons who exercise managerial functions for the employer and, to the extent possible, who do so at the workplace for which the joint committee is established.
- (2) For certainty, an individual employer may act as an employer representative.

#### **36 Duties and functions of joint committee**

A joint committee has the following duties and functions in relation to its workplace:

- (a) to identify situations that may be unhealthy or unsafe for workers and advise on effective systems for responding to those situations;
- (b) to consider and expeditiously deal with complaints relating to the health and safety of workers;
- (c) to consult with workers and the employer on issues related to occupational health and safety and occupational environment;
- (d) to make recommendations to the employer and the workers for the improvement of the occupational health and safety and occupational environment of workers;
- (e) to make recommendations to the employer on educational programs promoting the health and safety of workers and compliance with the OHS provisions and the regulations and to monitor their effectiveness;
- (f) to advise the employer on programs and policies required under the regulations for the workplace and to monitor their effectiveness;
- (g) to advise the employer on proposed changes to the workplace, including significant proposed changes to equipment and machinery, or the work processes that may affect the health or safety of workers;
- (h) to ensure that accident investigations and regular inspections are carried out as required by the OHS provisions and the regulations;
- (i) to participate in inspections, investigations and inquiries as provided in the OHS provisions and the regulations;
- (j) to carry out any other duties and functions prescribed by regulation.

#### **37 Joint committee procedure**

- (1) Subject to the OHS provisions and the regulations, a joint committee must establish its own rules of procedure, including rules respecting how it is to perform its duties and functions.
- (2) A joint committee must meet regularly at least once each month, unless another schedule is permitted or required by regulation or order.

#### **38 Board assistance in resolving disagreements within committee**

- (1) If a joint committee is unable to reach agreement on a matter relating to the health or safety of workers at the workplace, a co-chair of the committee may report this to the Board, which may investigate the matter and attempt to resolve the matter.
- (2) If the Board considers that a joint committee is unable to reach agreement on a matter relating to the health or safety of workers at the workplace, the Board, on its own initiative, may investigate the matter and attempt to resolve the matter.

#### **39 Employer must respond to committee recommendations**

- (1) This section applies if a joint committee sends a written recommendation to an employer with a written request for a response from the employer.
- (2) Subject to subsections (4) and (5), the employer must respond in writing to the committee within 21 days of receiving the request, either
  - (a) indicating acceptance of the recommendation, or
  - (b) giving the employer's reasons for not accepting the recommendation.
- (3) If the employer does not accept the committee's recommendations, a co-chair of the committee may report the matter to the Board, which may investigate and attempt to resolve the matter.
- (4) If it is not reasonably possible to provide a response before the end of the 21-day period, the employer must provide within that time a written explanation for the delay, together with an indication of when the response will be provided.
- (5) If the joint committee is not satisfied that the explanation provided under subsection (4) is reasonable in the circumstances, a co-chair of the committee may report this to the Board.
- (6) On receiving a report under subsection (5), the Board may investigate the matter and may, by order, establish a deadline by which the employer must respond.
- (7) Nothing in this section relieves an employer of the obligation to comply with the OHS provisions and the regulations.

#### **40 Time from work for meetings and other committee functions**

- (1) A member of a joint committee is entitled to time off from work for
  - (a) the time required to attend meetings of the committee, and
  - (b) other time that is reasonably necessary to prepare for meetings of the committee and to fulfill the other duties and functions of the committee.
- (2) Time off under subsection (1) is deemed to be time worked for the employer, and the employer must pay the member for that time.

#### **41 Educational leave for committee members**

- (1) Each member of a joint committee is entitled to an annual educational leave totalling 8 hours, or a longer period if prescribed by regulation, for the purposes of attending occupational health and safety training courses conducted by or with the approval of the Board.
- (2) A member of the joint committee may designate another member as being entitled to take all or part of the member's educational leave.
- (3) The employer must provide the educational leave under this section without loss of pay or other benefits and must pay for, or reimburse the worker for, the costs of the training course and the reasonable costs of attending the course.

#### **42 Other employer obligations to support committee**

- (1) The employer must provide the joint committee with the equipment, premises and clerical personnel necessary for the carrying out of its duties and functions.
- (2) On request of the joint committee, the employer must provide the committee with information respecting
  - (a) the identification of known or reasonably foreseeable health or safety hazards to which workers at the workplace are likely to be exposed,
  - (b) health and safety experience and work practices and standards in similar or other industries of which the employer has knowledge,
  - (c) orders, penalties and prosecutions under the OHS provisions or the regulations relating to health and safety at the workplace, and
  - (d) any other matter prescribed by regulation.

#### **43 Committee reports**

- (1) After each joint committee meeting, the committee must prepare a report of the meeting and provide a copy to the employer.
- (2) The employer must
  - (a) if so requested by a union representing workers at the workplace, send a copy of the reports under subsection (1) to the union,
  - (b) retain a copy of the reports for at least 2 years from the date of the joint committee meeting to which they relate, and
  - (c) ensure that the retained reports are readily accessible to the joint committee members, workers of the employer, officers and other persons

authorized by the Board or the minister.

#### **44 Employer must post committee information**

At each workplace where workers of an employer are regularly employed, the employer must post and keep posted

- (a) the names and work locations of the joint committee members,
- (b) the reports of the 3 most recent joint committee meetings, and
- (c) copies of any applicable orders under this Division for the preceding 12 months.

#### **45 Worker health and safety representative**

(1) A worker health and safety representative is required

- (a) in each workplace where there are more than 9 but fewer than 20 workers of the employer regularly employed, and
- (b) in any other workplace for which a worker health and safety representative is required by order of the Board.

(2) The worker health and safety representative must be selected in accordance with section 34 [*selection of worker representatives on joint committee*] from among the workers at the workplace who do not exercise managerial functions at that workplace.

(3) To the extent practicable, a worker health and safety representative has the same duties and functions as a joint committee.

(4) Sections 39 to 42 [*rules respecting joint committees*] apply in relation to a worker health and safety representative as if the representative were a joint committee or member of a joint committee.

#### **46 Participation of alternate for worker representative**

(1) This section applies if

- (a) the OHS provisions or the regulations give a worker representative the right to be present for an inspection, investigation or inquiry at a workplace, and
- (b) no worker representative is reasonably available.

(2) The right to be present may be exercised by another worker who has previously been designated as an alternate by the worker representative.

#### **21 General duties of employers**

(1) Every employer must

- (a) ensure the health and safety of
  - (i) all workers working for that employer, and
  - (ii) any other workers present at a workplace at which that employer's work is being carried out, and
- (b) comply with the OHS provisions, the regulations and any applicable orders.

(2) Without limiting subsection (1), an employer must

- (a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers,
- (b) ensure that the employer's workers
  - (i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,
  - (ii) comply with the OHS provisions, the regulations and any applicable orders, and
  - (iii) are made aware of their rights and duties under the OHS provisions and the regulations,
- (c) establish occupational health and safety policies and programs in accordance with the regulations,
- (d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer's workers,
- (e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,

(f) make a copy of this Act and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,

(g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and

(h) cooperate with the Board, officers of the Board and any other person carrying out a duty under the OHS provisions or the regulations.

#### **22 General duties of workers**

(1) Every worker must

(a) take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work, and

(b) comply with the OHS provisions, the regulations and any applicable orders.

(2) Without limiting subsection (1), a worker must

(a) carry out the worker's work in accordance with established safe work procedures as required by the OHS provisions and the regulations,

(b) use or wear protective equipment, devices and clothing as required by the regulations,

(c) not engage in horseplay or similar conduct that may endanger the worker or any other person,

(d) ensure that the worker's ability to work without risk to that worker's health or safety, or to the health or safety of any other person, is not impaired by alcohol, drugs or other causes,

(e) report to the supervisor or employer

(i) any contravention of the OHS provisions, the regulations or an applicable order of which the worker is aware, and

(ii) the absence of or defect in any protective equipment, device or clothing, or the existence of any other hazard, that the worker considers is likely to endanger the worker or any other person,

(f) cooperate with the joint committee or worker health and safety representative for the workplace, and

(g) cooperate with the Board, officers of the Board and any other person carrying out a duty under the OHS provisions or the regulations.

#### **23 General duties of supervisors**

(1) Every supervisor must

(a) ensure the health and safety of all workers under the direct supervision of the supervisor,

(b) be knowledgeable about the OHS provisions and those regulations applicable to the work being supervised, and

(c) comply with the OHS provisions, the regulations and any applicable orders.

(2) Without limiting subsection (1), a supervisor must

(a) ensure that the workers under the supervisor's direct supervision

(i) are made aware of all known or reasonably foreseeable health or safety hazards in the area where they work, and

(ii) comply with the OHS provisions, the regulations and any applicable orders,

(b) consult and cooperate with the joint committee or worker health and safety representative for the workplace, and

(c) cooperate with the Board, officers of the Board and any other person carrying out a duty under the OHS provisions or the regulations.

#### **24 Coordination at multiple-employer workplaces**

(1) The prime contractor of a multiple-employer workplace must

(a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and

(b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the OHS provisions and the regulations in respect of the workplace.

(2) Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace.

#### 25 General duties of owners

Every owner of a workplace must

- (a) provide and maintain the owner's land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace,
- (b) give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace, and
- (c) comply with the OHS provisions, the regulations and any applicable orders.

#### 26 General duties of suppliers

Every supplier must

- (a) ensure that any tool, equipment, machine or device, or any biological, chemical or physical agent, supplied by the supplier is safe when used in accordance with the directions provided by the supplier and complies with the OHS provisions and the regulations,
- (b) provide directions respecting the safe use of any tool, equipment, machine or device, or any biological, chemical or physical agent, that is obtained from the supplier to be used at a workplace by workers,
- (c) ensure that any biological, chemical or physical agent supplied by the supplier is labelled in accordance with the applicable federal and provincial enactments,
- (d) if the supplier has responsibility under a leasing agreement to maintain any tool, equipment, machine, device or other thing, maintain it in safe condition and in compliance with the OHS provisions, the regulations and any applicable orders, and
- (e) comply with the OHS provisions, the regulations and any applicable orders.

#### 27 Duties of directors and officers of a corporation

Every director and every officer of a corporation must ensure that the corporation complies with the OHS provisions, the regulations and any applicable orders.

#### 28 General obligations are not limited by specific obligations

A specific obligation imposed by the OHS provisions or the regulations does not limit the generality of any other obligation imposed by those provisions or the regulations.

#### 29 Person may be subject to obligations in relation to more than one role

- (1) In this section, "**function**" means the function of employer, supplier, supervisor, owner, prime contractor or worker.
- (2) If a person has 2 or more functions under the OHS provisions in respect of one workplace, the person must meet the obligations of each function.

#### 30 Responsibility when obligations apply to more than one person

- (1) This section applies if one or more OHS provisions or provisions of the regulations impose the same obligation on more than one person.
- (2) If one of the persons subject to the obligation complies with the applicable provision, the other persons subject to the obligation are relieved of that obligation only during the time when
  - (a) simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
  - (b) the health and safety of persons at the workplace is not put at risk by compliance by only one person.

#### 13 Definitions in relation to OHS provisions

In the OHS provisions and the regulations under those provisions:

**"collective agreement"** has the same meaning as in the *Fishing Collective Bargaining Act*, the *Labour Relations Code* or the *Public Service Labour Relations Act*;

**"employer"** means

- (a) an employer as defined in section 1,
  - (b) a person who is deemed to be an employer under the compensation provisions or the regulations under those provisions, and
  - (c) the owner and the master of a fishing vessel for which there is crew to whom the compensation provisions apply as if the crew were workers,
- but does not include a person exempted from the application of the OHS provisions by order of the Board;

**"hazardous substance"** includes

- (a) a hazardous product within the meaning of the *Hazardous Products Act* (Canada),
- (b) a substance designated as a hazardous substance by regulation, and
- (c) a biological, chemical or physical agent that, by reason of its properties, is hazardous to the health or safety of persons exposed to it;

**"joint committee"** means a joint health and safety committee under Division 5 [*Joint Committees and Worker Representatives*] of this Part;

**"multiple-employer workplace"** means a workplace where workers of 2 or more employers are working at the same time;

**"officer"** means a person appointed as an officer under section 329(1) [*Board may appoint officers and other employees*] or a person authorized to act as an officer under section 18 [*cooperation agreements and arrangements*];

**"order"** means an order under the OHS provisions or the regulations;

**"owner"** includes

- (a) a trustee, receiver, mortgagee in possession, tenant, lessee, licensee or occupier of any lands or premises used or to be used as a workplace, and
- (b) a person who acts for or on behalf of an owner as an agent or delegate;

**"prime contractor"**, in relation to a multiple-employer workplace, means

- (a) the directing contractor, employer or other person who enters into a written agreement with the owner of the workplace to be the prime contractor for the purposes of the OHS provisions, or
- (b) if there is no written agreement referred to in paragraph (a), the owner of the workplace;

**"regulation"** means a regulation under the OHS provisions made by the Board or by the Lieutenant Governor in Council;

**"supplier"** means a person who manufactures, supplies, sells, leases, distributes, erects or installs

- (a) any tool, equipment, machine or device, or
- (b) any biological, chemical or physical agent

to be used by a worker;

**"union"** means

- (a) a trade union recognized under the *Labour Relations Code*, or
- (b) another organization of workers formed for purposes that include the regulation of relations between workers and employers, if the organization has given notice to the employer and the Board that it is to be considered a union for the purposes of the OHS provisions;

**"variance order"** means an order under section 60 [*Board may authorize variances from regulations*];

**"wages"** has the same meaning as in the *Employment Standards Act*;

**"worker"** means

- (a) a worker as defined in section 1, and
- (b) a person who is deemed to be a worker under the compensation provisions or the regulations under those provisions, or to whom those provisions apply as if the person were a worker,

but does not include a person exempted from the application of the OHS provisions by order of the Board;

**"worker health and safety representative"** means a worker health and safety representative under section 45;

**"worker representative"** means,

- (a) in relation to a workplace for which there is a joint committee, a worker representative on the committee, and
- (b) in relation to a workplace for which there is a worker health and safety representative, that representative;

**"workplace"** means any place where a worker is or is likely to be engaged in any work and includes any vessel, vehicle or mobile equipment used by a worker in work;

**"work-related"** means arising from or in connection with work activities.

#### 14 Purposes of OHS provisions

- (1) The purpose of the OHS provisions is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work-related risks to their health and safety.
- (2) Without limiting subsection (1), the following are the specific purposes of the OHS provisions:
  - (a) to promote a culture of commitment on the part of employers and workers to a high standard of occupational health and safety;
  - (b) to prevent work-related accidents, injuries and illnesses;
  - (c) to encourage the education of employers, workers and others regarding occupational health and safety;
  - (d) to ensure an occupational environment that provides for the health and safety of workers and others;
  - (e) to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party's authority and ability to do so;
  - (f) to foster cooperative and consultative relationships between employers, workers and others regarding occupational health and safety, and to promote worker participation in occupational health and safety programs and occupational health and safety processes;
  - (g) to minimize the social and economic costs of work-related accidents, injuries and illnesses, in order to enhance the quality of life for British Columbians and the competitiveness of British Columbia in the Canadian and world economies.

#### 15 Review of OHS provisions and regulations

- (1) The minister may appoint a committee to conduct a review of all or part of the OHS provisions and the regulations and to report to the minister concerning its recommendations.
- (2) A review under this section must include a process of consultations with representatives of employers, workers and other persons affected by the OHS provisions and the regulations.
- (3) For certainty, the costs of a review under this section are part of the costs of administering this Act.

#### 16 Relationship with compensation provisions

- (1) The failure to comply with an OHS provision or the regulations does not affect the right of a worker to compensation, if otherwise entitled, under the compensation provisions.
- (2) The liabilities and obligations of a person under the compensation provisions are not decreased or removed by reason only of the person's compliance with the OHS provisions or the regulations.

#### 74 Application of Division

This Division, as it applies in relation to inspections, also applies to investigations and inquiries.

#### 75 Authority to conduct inspections

- (1) An officer of the Board may enter a place, including a vehicle, vessel or mobile equipment, and conduct an inspection for one or more of the following purposes:
  - (a) preventing work-related accidents, injuries or illnesses;
  - (b) ascertaining the cause and particulars of a work-related accident, injury or illness or of an incident that had the potential to cause a work-related accident, injury or illness;
  - (c) investigating a complaint concerning health, safety or occupational environment matters at a workplace;



(d) determining whether there is compliance with the OHS provisions, the regulations or an order.

(2) An inspection may be conducted

(a) at a reasonable hour of the day or night, or

(b) at any other time if the officer has reasonable grounds for believing that a situation exists that is or may be hazardous to workers.

(3) An officer may do one or more of the following for the purposes of an inspection under this Division:

(a) bring along any equipment or materials required for the inspection and be accompanied and assisted by a person who has special, expert or professional knowledge of a matter relevant to the inspection;

(b) inspect works, materials, products, tools, equipment, machines, devices or other things at the place;

(c) take samples and conduct tests of materials, products, tools, equipment, machines, devices or other things being produced, used or found at the place, including tests in which a sample is destroyed;

(d) require that a workplace or part of a workplace not be disturbed for a reasonable period;

(e) require that a tool, equipment, machine, device or other thing or process be operated or set in motion or that a system or procedure be carried out;

(f) inspect records that may be relevant and, on giving a receipt for a record, temporarily remove the record to make copies or extracts;

(g) require a person to produce within a reasonable time records in the person's possession or control that may be relevant;

(h) question persons with respect to matters that may be relevant, require persons to attend to answer questions and require questions to be answered on oath or affirmation;

(i) take photographs or recordings of the workplace and activities taking place in the workplace;

(j) attend a relevant training program of an employer;

(k) exercise other powers that may be necessary or incidental to the carrying out of the officer's duties and functions under the OHS provisions or the regulations.

(4) The authority to conduct an inspection under this Division is not limited by any other OHS provision or by any regulations giving specific authority in relation to the inspection.

(5) If an officer of the Board requests this, a peace officer may assist the Board officer in carrying out that officer's duties and functions under the OHS provisions or the regulations.

#### **76 Restrictions on access to private residences**

(1) If a workplace, in addition to being a workplace, is occupied as a private residence, the authority under section 75 may be used to enter the place only if

(a) the occupier consents,

(b) the Board has given the occupier at least 24 hours' written notice of the inspection,

(c) the entry is made under the authority of a warrant under this Act or the *Offence Act*, or

(d) the Board has reasonable grounds for believing that the work activities or the workplace conditions are such that there is a significant risk that a worker might be killed or seriously injured or suffer a serious illness.

(2) The authority under section 75 must not be used to enter a place that is occupied as a private residence, but is not a workplace, except with the consent of the occupier or under the authority of a warrant under this Act or the *Offence Act*.

#### **77 Officer must produce credentials on request**

(1) The Board must provide officers with written credentials of their appointment.

(2) On request, an officer must produce the credentials provided under this section when exercising or seeking to exercise any of the powers conferred on the officer under the OHS provisions.

#### **78 Representation on inspection**

(1) Subject to this section, if an officer makes a physical inspection of a workplace under section 75, the following are entitled to accompany the officer on the inspection:

(a) the employer or a representative of the employer;

(b) a worker representative or, if there is no worker representative or the worker representative is not reasonably available, a reasonably available worker selected by the officer as a representative.

(2) A worker is to be considered not reasonably available for the purposes of subsection (1) if the employer objects to that person's participation in the inspection on the basis that it would unduly impede production, but the employer may only object to one person on this ground.

(3) Despite subsection (1), an officer may conduct a physical inspection of a workplace in the absence of a person referred to in that subsection if the circumstances are such that it is necessary to proceed with the inspection without the person.

(4) The time spent by a worker accompanying an officer under this section is deemed to be time worked for the employer, and the employer must pay the worker for that time.

(5) Nothing in this section requires the Board or an officer to give advance notice of an inspection.

(6) If an inspection involves the attendance of an officer at a workplace for a period longer than one day, the rights under this section may be abridged by direction of the officer.

#### **79 Assistance on inspection**

(1) A person must provide all reasonable means in that person's power to facilitate an inspection under the OHS provisions.

(2) A person must not do any of the following:

(a) hinder, obstruct, molest or interfere with, or attempt to hinder, obstruct, molest or interfere with, an officer in the exercise of a power or the performance of a duty or function under the OHS provisions or the regulations;

(b) knowingly provide an officer with false information, or neglect or refuse to provide information required by an officer in the exercise of the officer's powers or performance of the officer's duties or functions under the OHS provisions or the regulations;

(c) interfere with any monitoring equipment or device in a workplace placed or ordered to be placed there by the Board.

#### **80 Person being questioned is entitled to have another person present**

(1) A person who is questioned by an officer on an inspection is entitled to be accompanied during the questioning by one other person of the first person's choice who is reasonably available.

(2) As a limit on the person's choice under subsection (1), the officer may exclude a person who the officer has questioned or intends to question in relation to the matter.

(3) Subject to subsections (1) and (2), a person may be questioned by the officer either separate and apart from anyone else or in the presence of any other person permitted to be present by the officer.

#### **81 Limited authority to seize evidence without warrant**

(1) An officer may seize a thing without a warrant if

(a) the thing has been produced to the officer or is in plain view, and

(b) the officer has reasonable grounds for believing that the OHS provisions, the regulations or an order has been contravened and that the thing would afford evidence of the contravention.

(2) The officer must inform the person from whom a thing is seized under subsection (1) as to the reason for the seizure and must give the person a receipt for the thing.

(3) The officer may remove a thing seized under subsection (1) or may detain it in the place in which it was seized.

(4) As soon as reasonably practicable after a thing is seized under subsection (1), the officer must bring the thing, or a report of it, before a justice to be dealt with in accordance with the *Offence Act* as if it were seized under a warrant under that Act.

#### **81.1 Warrants – investigations**

(1) In this section, "**place**" and "**workplace**" include any vessel, vehicle or mobile equipment.

(2) On an application without notice and subject to this section, if a justice is satisfied by information provided under oath that there are reasonable

grounds to believe that an offence against this Act or the regulations has been or is being committed, and that evidence respecting the commission of the offence will be obtained through the execution of a warrant, the justice may issue a warrant authorizing an officer, subject to this section, to

(a) enter the place in respect of which the warrant is issued, and

(b) do a thing described in the warrant.

(3) Without limiting subsection (2), a warrant issued under this section may authorize an officer to do any of the following:

(a) bring along any equipment or materials required to execute the warrant and be accompanied and assisted by a person who has special, expert or professional knowledge of a matter relevant to the execution of the warrant;

(b) search the place and seize works, materials, products, tools, equipment, machines, devices or other things at the place;

(c) take samples and conduct tests of works, materials, products, tools, equipment, machines, devices or other things produced, used or found at the place, including tests in which a sample is destroyed;

(d) require that a workplace or part of a workplace not be disturbed for a reasonable period;

(e) require that any tool, equipment, machine, device or other thing or process be operated or set in motion or that any system or procedure be carried out;

(f) search records that may be relevant and seize the records or, on giving a receipt for the records, temporarily remove the records to make copies or extracts;

(g) require a person to produce within a reasonable time records in the person's possession or control that may be relevant;

(h) question persons and require the persons to answer those questions;

(i) take photographs or recordings of a workplace and activities taking place in the workplace;

(j) attend a relevant training program of an employer;

(k) exercise other powers that may be necessary or incidental to executing the warrant.

(4) A warrant issued under this section may contain terms and conditions that the justice considers advisable in the circumstances.

(5) An officer must inform a person from whom a thing is seized under this section as to the reason for the seizure and must give the person a receipt for the thing.

(6) An officer may remove a thing seized under this section or detain it in the place in which it was seized.

(7) As soon as reasonably practicable after a thing is seized under this section, the officer must bring the thing, or a report of it, before a justice to be dealt with in accordance with the *Offence Act* as if it were seized under a warrant under that Act.

(8) If an officer is of the opinion that it is impracticable for the officer to appear personally before a justice to apply for a warrant in accordance with this section, the officer may submit an information on oath by telephone or other means of telecommunication and, for this purpose, section 22 of the *Offence Act* applies.

#### **82 Employer must post inspection reports**

If an officer makes a written report to an employer relating to an inspection, whether or not the report includes an order, the employer must promptly

(a) post the report at the workplace to which it relates, and

(b) give a copy of the report to the joint committee or worker health and safety representative, as applicable.

#### **83 Compliance agreements with employers**

(1) The Board may enter into an agreement with an employer if the Board considers that

(a) the employer has contravened, or failed to comply with, an OHS provision or a provision of the regulations,

(b) the employer has not contravened, or not failed to comply with, the same provision described in paragraph (a) within the 12-month period immediately preceding the contravention or failure referred to in that paragraph,

(c) the health or safety of workers, for which the employer has responsibilities under this Act, is not at immediate risk, and

(d) entering into the agreement is appropriate in the circumstances.

(2) An agreement under subsection (1) must be in writing and must do the following:

- (a) describe one or more actions the employer agrees to take, which may include one or more expenditures the employer agrees to make, to remedy the employer's contravention or failure referred to in subsection (1)(a) or the adverse effects that resulted from that contravention or failure;
- (b) set out the time frame within which the employer, with respect to each action described under paragraph (a) of this subsection, agrees to
  - (i) take the action, and
  - (ii) report to the Board on the action taken;
- (c) specify the date the agreement ends;
- (d) set out the required manner, form and content of the report referred to in paragraph (b)(ii) of this subsection.

(3) As soon as practicable after entering into an agreement under subsection (1), the employer must

- (a) provide a copy of the agreement to the joint committee or worker health and safety representative, as applicable, or
- (b) if there is no joint committee or worker health and safety representative, post a copy of the agreement at the workplace.

(4) As soon as practicable after reporting to the Board under subsection (2)(b)(ii), the employer must

- (a) provide a copy of the report to the joint committee or worker health and safety representative, as applicable, or
- (b) if there is no joint committee or worker health and safety representative, post a copy of the report at the workplace.

(5) Subject to subsection (6), an agreement under subsection (1) may be amended if agreed to by the Board and the employer.

(6) The Board must rescind an agreement under subsection (1) if the Board considers that any of the following apply:

- (a) the employer has failed to
  - (i) take any of the actions described under subsection (2)(a) within the time frame set out for the action under subsection (2)(b)(i), or
  - (ii) report to the Board within the time frame set out under subsection (2)(b)(ii);
- (b) the employer intentionally provided false or misleading information in relation to the agreement;
- (c) the health or safety of workers is at immediate risk, based on information received by the Board after the agreement was entered into.

(7) The Board may rescind an agreement under subsection (1) if the Board considers that the agreement no longer adequately protects the health or safety of workers.

(8) A rescission under subsection (6) or (7) takes effect immediately despite the employer not having received notice.

(9) As soon as practicable after rescinding an agreement under subsection (6) or (7), the Board must

- (a) make reasonable efforts to provide verbal notice of the rescission to the employer, and
- (b) send written notice of the rescission to the employer.

(10) Section 344(4) to (6) [*issues related to sending or receipt of orders and other documents*] does not apply to the sending of written notice under subsection (9)(b) of this section.

(11) The employer must, as soon as practicable after receiving written notice under subsection (9),

- (a) provide a copy of the written notice to the joint committee or worker health and safety representative, as applicable, or
- (b) if there is no joint committee or worker health and safety representative, post a copy of the written notice at the workplace.

#### 84 General authority to make orders

(1) The Board may make orders for the carrying out of any matter or thing regulated, controlled or required by the OHS provisions or the regulations, and may require that the order be carried out immediately or within the time specified in the order.

(2) Without limiting subsection (1), the authority under that subsection includes authority to make orders as follows:

- (a) establishing standards that must be met and means and requirements that must be adopted in any work or workplace for the prevention of work-related accidents, injuries and illnesses;

- (b) requiring a person to take measures to ensure compliance with this Act and the regulations or specifying measures that a person must take in order to ensure compliance with this Act and the regulations;
  - (c) requiring an employer to provide in accordance with the order a medical monitoring program as referred to in section 57;
  - (d) requiring an employer, at the employer's expense, to obtain test or evaluation results respecting any thing or procedure in or about a workplace, in accordance with any requirements specified by the Board, and to provide that information to the Board;
  - (e) requiring an employer to install and maintain first aid equipment and service in accordance with the order;
  - (f) requiring a person to post or attach a copy of the order, or other information, as directed by the order or by an officer;
  - (g) establishing requirements respecting the form and use of reports, certificates, declarations and other records that may be authorized or required under the OHS provisions;
  - (h) doing anything that is contemplated by the OHS provisions to be done by order;
  - (i) doing any other thing that the Board considers necessary for the prevention of work-related accidents, injuries and illnesses.
- (3) An order may be made applicable to any person or category of persons and may include terms and conditions the Board considers appropriate.
- (4) The authority to make orders under this section does not limit and is not limited by the authority to make orders under another OHS provision.

**85 Other general matters relating to orders**

- (1) An officer of the Board may exercise the authority of the Board to make orders under the OHS provisions, subject to any restrictions or conditions established by the Board.
- (2) An order may be made orally or in writing but, if made orally, it must be confirmed in writing as soon as is reasonably practicable.
- (3) If an order relates to a complaint made by a person to the Board or an officer, a copy of the order must be given to that person.

**86 Posting of orders by officer**

- (1) An officer may
- (a) post at a workplace, or
  - (b) attach to any product, tool, equipment, machine, device or other thing,
- a copy of an order or a notice related to that order.
- (2) An order posted or attached under subsection (1) must not be removed except
- (a) in accordance with the order, or
  - (b) by an officer or a person authorized by an officer.

**87 Notice of variation or cancellation of order**

- (1) If the Board varies or cancels an order, it must give notice to the employer or other person in relation to whom the order was made.
- (2) If the person given notice under subsection (1) was required under the OHS provisions to post a copy of the original order or to provide copies of it to a joint committee, worker representative or union, that person must post and provide copies of the notice in accordance with the same requirements.

**88 Order may require compliance reports**

- (1) An order may include a requirement for compliance reports in accordance with this section.
- (2) The employer or other person directed by an order under subsection (1) must prepare a compliance report that specifies
- (a) what has been done to comply with the order, and
  - (b) if compliance has not been achieved at the time of the report, a plan of what will be done to comply and when compliance will be achieved.
- (3) If a compliance report includes a plan under subsection (2)(b), the employer or other person must also prepare a follow-up compliance report when compliance is achieved.

(4) In the case of compliance reports prepared by an employer, the employer must

- (a) post a copy of the original report and any follow-up compliance reports at the workplace in the places where the order to which it relates are posted,
- (b) provide a copy of the reports to the joint committee or worker health and safety representative, as applicable,
- (c) if the reports relate to a workplace where workers of the employer are represented by a union, send a copy to the union, and
- (d) if required by the Board, send a copy of the reports to the Board.

**89 Order to stop using or supplying unsafe equipment**

(1) If the Board has reasonable grounds for believing that a thing that is being used or that may be used by a worker

- (a) is not in safe operating condition, or
- (b) does not comply with the OHS provisions or the regulations,

the Board may order that the thing is not to be used until the order is cancelled by the Board.

(2) If the Board has reasonable grounds for believing that a supplier is supplying a thing that

- (a) is not in safe operating condition, or
- (b) does not comply with the OHS provisions or the regulations,

the Board may order that supplier to stop supplying the thing until the order is cancelled by the Board.

(3) Despite section 85(2) [*orders may be made orally or in writing*], an order under this section may only be made in writing.

(4) The Board may cancel an order under this section only if it is satisfied that the thing in respect of which the order was made is safe and complies with the OHS provisions and the regulations.

**90 Stop-work orders**

(1) If subsection (2) or (3) applies, the Board may order that

- (a) work at a workplace or any part of a workplace stop until the order to stop work is cancelled by the Board, and
- (b) if the Board considers this is necessary, the workplace or any part of the workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access to the area until the danger is removed.

(2) The Board may make an order under subsection (1) if the Board has reasonable grounds for believing there is a high risk of serious injury, serious illness or death to a worker at the workplace.

(3) The Board may make an order under subsection (1) if

- (a) an employer
  - (i) has failed to comply with an OHS provision or a provision of the regulations, and
  - (ii) within the 12-month period immediately preceding the failure to comply as referred to in subparagraph (i),
    - (A) has failed to comply with the same provision, and
    - (B) has failed to comply with an order respecting the failure to comply with that provision, and

(b) the Board has reasonable grounds for believing there is a risk of serious injury, serious illness or death to a worker at the workplace.

(4) If an order is made under subsection (1)(b), an employer, supervisor or other person must not require or permit a worker to enter the workplace or part of the workplace that is the subject of the order, except for the purpose of doing work that is necessary or required to remove the danger or the hazard and only if the worker

- (a) is protected from the danger or the hazard, or
- (b) is qualified and properly instructed in how to remedy the unsafe condition with minimum risk to the worker's own health or safety.

**91 Related stop-operation orders**

(1) If the Board makes an order under section 90, the Board may, in accordance with this section, make an order with respect to another workplace or any part of another workplace whose employer is the same as the employer at the workplace or any part of the workplace in respect of which the order under section 90 was made.

(2) If the Board has reasonable grounds for believing that, at the other workplace or any part of the other workplace, the same or similar unsafe working or workplace conditions exist as at the workplace or any part of the workplace in respect of which the order under section 90 was made, the Board may order that

(a) work at the other workplace or any part of the other workplace stop until the order to stop work is cancelled by the Board, and

(b) if the Board considers this is necessary, the other workplace or any part of the other workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access to the area until the danger is removed.

(3) If the Board has reasonable grounds for believing that, at the other workplace or any part of the other workplace, the same or similar unsafe working or workplace conditions would exist as at the workplace or any part of the workplace in respect of which the order under section 90 was made, the Board may make an order prohibiting the employer from starting work at the other workplace or any part of the other workplace.

(4) In making an order under this section, the Board is not required to specify the address of the other workplace or any part of the other workplace in respect of which the order is made.

(5) Section 90(4) applies in relation to an order under subsection (2)(b) of this section.

#### **92 Restrictions on stop-work orders and stop-operation orders**

(1) Despite section 85(2) [*orders may be made orally or in writing*], an order under section 90 or 91

(a) may only be made in writing, and

(b) must be served on the employer, supervisor or other person having apparent supervision of the work or the workplace.

(2) An order referred to in subsection (1) expires 72 hours after it is made, unless the order has been confirmed in writing by the Board.

#### **93 Effect of stop-work orders and stop-operation orders on workers**

(1) If, as a result of an order made under section 89, 90 or 91, a worker is temporarily laid off, the employer must pay the worker the amount the worker would have earned or, if this cannot be readily determined, the amount the worker would have been likely to earn

(a) for the day on which the order came into effect and for the next 3 working days during which the order is in effect, or

(b) for a longer period, if this is provided under a collective agreement.

(2) Nothing in this section prevents workers affected by an order referred to in subsection (1) from being assigned to reasonable alternative work during the time that the order is in effect.

#### **94 Administrative penalties – OHS citations**

(1) The Board may, by order, impose on an employer an administrative penalty prescribed under section 112 [*Board regulations in relation to OHS citations*] if the Board is satisfied on a balance of probabilities that the employer has failed to comply with an OHS provision or regulation provision prescribed under that section.

(2) An administrative penalty under this section must not be greater than \$1 085.00.

(3) If an employer files a request under section 270 [*request for review of Board decision*] for review of a decision under this section, the employer must

(a) post a copy of the request for review at the workplace to which the administrative penalty relates,

(b) provide a copy of the request for review to the joint committee or worker health and safety representative, as applicable, and

(c) if the workers at the workplace to which the administrative penalty relates are represented by a union, provide a copy of the request for review to the union.

(4) An employer who has been ordered to pay an administrative penalty 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 or on a review under Part 6 [*Review of Board Decisions*], the Board must refund the required amount to the employer.

#### **95 Administrative penalties – higher maximum amount**

(1) The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that any of the following circumstances apply:

- (a) the employer has failed to take sufficient precautions for the prevention of work-related injuries or illnesses;
- (b) the employer has not complied with an OHS provision, the regulations or an applicable order;
- (c) the employer's workplace or working conditions are unsafe.

(2) An administrative penalty under this section must not be greater than \$674 445.93.

(3) An administrative penalty under this section must not be imposed on an employer if the employer establishes that the employer exercised due diligence to prevent the circumstances described in subsection (1).

(4) If an employer files a request under section 270 for review of a decision under subsection (1) of this section, the employer must

- (a) post a copy of the request for review at the workplace to which the administrative penalty relates,
- (b) provide a copy of the request for review to the joint committee or worker health and safety representative, as applicable, and
- (c) if the workers at the workplace to which the administrative penalty relates are represented by a union, provide a copy of the request for review to the union.

(5) An employer who has been ordered to pay an administrative penalty under this section must pay the amount of the penalty to the Board for deposit into the accident fund.

(6) If an administrative penalty under this section is reduced or cancelled by a Board decision, on a review requested under section 270 or on an appeal to the appeal tribunal under Part 7, 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.

(7) If an administrative penalty under this section is imposed on an employer, the employer must not be prosecuted under this Act in respect of the same facts and circumstances on which the Board based the administrative penalty.

#### **96 Suspension or cancellation of certificates**

(1) If the Board has reasonable grounds for believing that a person who holds a certificate issued under the OHS provisions or the regulations has breached a term or condition of the certificate or has otherwise contravened an OHS provision or a provision of the regulations, the Board may, by order,

- (a) cancel or suspend the certificate, or
- (b) place a condition on the use of that certificate that the Board considers necessary in the circumstances.

(2) An order under this section suspending a certificate must specify the length of time that the suspension is in effect or the condition that must be met before the suspension is no longer in effect.

#### **97 Court injunction on application of Board**

(1) On application of the Board and on being satisfied that there are reasonable grounds to believe that a person

- (a) has contravened or is likely to contravene the OHS provisions, the regulations or an order, or
  - (b) has failed to comply with, or is likely to fail to comply with, the OHS provisions, the regulations or an order,
- the Supreme Court may grant an injunction,
- (c) in the case of paragraph (a), restraining the person from continuing or committing the contravention,
  - (d) in the case of paragraph (b), requiring the person to comply, and

(e) in the case of paragraph (a) or (b), restraining the person from carrying on an industry, or an activity in an industry, within the scope of the compensation provisions for an indefinite or limited period or until the occurrence of a specified event.

(2) If subsection (1)(e) applies and the person referred to in that provision is a company or corporation, an injunction under that provision may be made restraining the following persons:

- (a) an individual who is a member of the board of directors of a company as a result of having been elected or appointed to that position;



- (b) a person who is a member of the board of directors or other governing body of a corporation other than a company, regardless of the title by which that person is designated;
  - (c) the chair or any vice chair of the board of directors or other governing body of a corporation, if that chair or vice chair performs the functions of the office on a full-time basis, regardless of the title by which that person is designated;
  - (d) the president of a corporation, regardless of the title by which that person is designated;
  - (e) any vice president in charge of a principal business unit of a corporation, including sales, finance or production, regardless of the title by which that person is designated;
  - (f) any officer of a corporation, whether or not the officer is also a director of the corporation, who performs a policy-making function in respect of the corporation and who has the capacity to influence the direction of the corporation, regardless of the title by which that person is designated;
  - (g) a person who is not described in any of paragraphs (a) to (f) of this subsection but who performs the functions described in any of those paragraphs, and who participates in the management of a company or corporation, other than a person who
    - (i) participates in the management of the company or corporation under the direction or control of a shareholder or a person described in any of paragraphs (a) to (f),
    - (ii) is a lawyer, accountant or other professional whose primary participation in the management of the company or corporation is the provision of professional services to the corporation,
    - (iii) is, if the company or corporation is bankrupt, a trustee in bankruptcy who participates in the management of the company or corporation or exercises control over its property, rights and interests primarily for the purposes of the administration of the bankrupt's estate, or
    - (iv) is a receiver, receiver manager or creditor who participates in the management of the company or corporation or exercises control over any of its property, rights and interests primarily for the purposes of enforcing a debt obligation of the company or corporation.
- (3) For the purposes of subsection (2), "**company**" and "**corporation**" have the same meaning as in the *Business Corporations Act*.
- (4) An injunction under subsection (1) may be granted without notice to others if it is necessary to do so in order to protect the health or safety of workers.
- (5) A contravention of the OHS provisions, the regulations or an order may be restrained under subsection (1) whether or not a penalty or other remedy has been provided by the OHS provisions.

#### 47 Prohibited action

- (1) For the purposes of this Division, "**prohibited action**" includes any act or omission by an employer or union, or by a person acting on behalf of an employer or union, that adversely affects a worker with respect to
- (a) any term or condition of employment, or
  - (b) any term or condition of membership in a union.
- (2) Without restricting subsection (1), prohibited action includes any of the following:
- (a) suspension, layoff or dismissal;
  - (b) demotion or loss of opportunity for promotion;
  - (c) transfer of duties, change of location of workplace, reduction in wages or change in working hours;
  - (d) coercion or intimidation;
  - (e) imposition of any discipline, reprimand or other penalty;
  - (f) the discontinuation or elimination of the job of the worker.

#### 48 Worker protection from prohibited action

An employer or union, or a person acting on behalf of an employer or union, must not take or threaten a prohibited action against a worker

- (a) for exercising any right or carrying out any duty in accordance with the OHS provisions, the regulations or an applicable order,
- (b) for the reason that the worker has testified or is about to testify in any matter, inquiry or proceeding under this Act or the *Coroners Act* on an issue related to occupational health and safety or occupational environment, or
- (c) for the reason that the worker has given any information regarding conditions affecting the occupational health or safety or occupational

environment of that worker or any other worker to

- (i) an employer or person acting on behalf of an employer,
- (ii) another worker or a union representing a worker, or
- (iii) an officer or any other person concerned with the administration of the OHS provisions.

#### **49 Complaint by worker respecting prohibited action or failure to pay wages**

(1) This section applies to a worker who considers that

(a) an employer or union, or a person acting on behalf of an employer or union, has taken or threatened to take prohibited action against the worker contrary to section 48, or

(b) an employer has failed to pay wages to the worker as required by the OHS provisions or the regulations.

(2) The worker may have a matter referred to in subsection (1) dealt with through the grievance procedure under a collective agreement, if any, or by complaint in accordance with this Division.

(3) A complaint under subsection (2) must be made in writing to the Board,

(a) in the case of a complaint respecting a matter referred to in subsection (1)(a), within one year of the action considered to be prohibited, and

(b) in the case of a complaint respecting a matter referred to in subsection (1)(b), within 60 days after the wages became payable.

(4) In relation to a matter referred to in subsection (1), whether dealt with under a collective agreement or by complaint to the Board, the burden of proving that there has been no such contravention is on the employer or the union, as applicable.

#### **50 Response to complaint**

(1) If the Board receives a complaint under section 49(3), it must immediately inquire into the matter and, if the complaint is not settled or withdrawn, must

(a) determine whether the alleged contravention occurred, and

(b) deliver a written statement of the Board's determination to the worker and to the employer or union, as applicable.

(2) If the Board determines that the contravention occurred, the Board may make an order requiring one or more of the following:

(a) that the employer or union cease the prohibited action;

(b) that the employer reinstate the worker to that worker's former employment under the same terms and conditions under which that worker was formerly employed;

(c) that the employer pay, by a specified date, the wages required to be paid by the OHS provisions or the regulations;

(d) that the union reinstate the membership of the worker in the union;

(e) that any reprimand or other references to the matter in the employer's or union's records on the worker be removed;

(f) that the employer or the union pay the reasonable out-of-pocket expenses incurred by the worker by reason of the prohibited action;

(g) that the employer or the union do any other thing that the Board considers necessary to secure compliance with the OHS provisions and the regulations.

#### **106 Court orders for access**

Without limiting the authority under the *Offence Act*, a justice may issue warrants for the purposes of this Act as follows:

(a) on being satisfied on evidence on oath or affirmation that a place is used as a workplace, the justice may issue a warrant authorizing an officer or other person named in the warrant to enter the place and conduct an inspection, investigation or inquiry;

(b) on being satisfied on evidence on oath or affirmation that there are in any place records or other things for which there are reasonable grounds to believe that they are relevant to a matter under the OHS provisions or the regulations, the justice may issue a warrant authorizing an officer or other person named in the warrant to enter the place and search for and seize any records or other things relevant to the matter in accordance with the warrant;

(c) on being satisfied on evidence on oath or affirmation that access or review of a worker's medical records is reasonably required for the

purposes of the OHS provisions or the regulations, the justice may issue a warrant authorizing an officer or other person named in the warrant to access and inspect the record in accordance with the warrant.

#### **107 Costs of investigations, inspections and other services**

(1) The Board may charge a class or subclass with the cost of investigations, inspections and other services provided to the class or subclass for the prevention of injuries and illnesses.

(2) A charge under subsection (1) may be levied on the class or subclass by way of an assessment.

#### **108 Collection by assessment or judgment**

(1) If a person fails to pay an amount owed to the Board under the OHS provisions, the Board may,

(a) if the person is an employer, direct that the amount be levied on the employer by way of an assessment, and

(b) in any case, issue a certificate for the amount owed and file that certificate in the Supreme Court.

(2) An assessment under subsection (1)(a) is deemed to be an assessment under Part 5 [*Accident Fund and Employer Assessment*] and may be levied and collected under and in accordance with that Part.

(3) A certificate filed under subsection (1)(b) has the same effect, and all proceedings may be taken on it by the Board, as if it were a judgment of the court for the recovery of a debt of the amount stated in the certificate against the person named in it.

#### **98 Offence to contravene OHS provision, regulation or order**

(1) A person who contravenes an OHS provision, a provision of the regulations or an order commits an offence.

(2) If a corporation commits an offence referred to in subsection (1), an officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence also commits an offence.

(3) Subsection (2) applies whether or not the corporation is prosecuted for the offence.

#### **99 Limits on prosecutions**

The time limit for laying an information in respect of an offence is 2 years after the last occurrence of the act or omission on which the prosecution is based.

#### **100 Defence of due diligence**

A person is not guilty of an offence if the person proves that the person exercised due diligence to prevent the commission of the offence.

#### **101 Additional defence for workers**

A worker is not guilty of an offence if the worker proves that the offence was committed

(a) as a result of instructions given by the worker's employer or supervisor, and

(b) despite the worker's objection.

#### **102 General penalties**

On conviction for an offence, a person is liable to the following penalties:

(a) in the case of a first conviction,

(i) a fine not greater than \$738 153.81 and, in the case of a continuing offence, to a further fine not greater than \$36 907.72 for each day during which the offence continues after the first day,

(ii) imprisonment for a term not longer than 6 months, or

(iii) both fine and imprisonment;

(b) in the case of a subsequent conviction,

(i) a fine not greater than \$1 476 307.60 and, in the case of a continuing offence, to a further fine not greater than \$73 815.38 for each day during which the offence continues after the first day,

- (ii) imprisonment for a term not longer than 12 months, or
- (iii) both fine and imprisonment.

#### **103 Additional penalty to reclaim monetary benefit**

- (1) On conviction for an offence, if the court is satisfied that monetary benefits accrued to the offender as a result of the commission of the offence, the court may order the offender to pay a fine in an amount equal to the estimation by the court of the amount of the monetary benefits.
- (2) A fine under subsection (1) is additional to any fine imposed under section 102.

#### **104 Additional powers on sentencing**

- (1) If a person is convicted of an offence, in addition to any other punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order doing one or more of the following:
  - (a) directing the person to perform community service in accordance with the requirements established by the court;
  - (b) directing the person to pay to the Board an amount for the purpose of research or public education related to occupational health and safety;
  - (c) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with a prohibition, direction or requirement under this section;
  - (d) directing the person to submit to the Board, on application by the Board within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;
  - (e) directing that the facts relating to the commission of the offence be published in any manner the court considers appropriate, subject to any maximum amount for publication expenses or other restrictions established by the court, by
    - (i) the convicted person at that person's expense, or
    - (ii) the Board at the expense of the convicted person;
  - (f) prohibiting the person from working in a supervisory capacity at any workplace for a period not longer than 6 months from the date of conviction;
  - (g) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under the OHS provisions.
- (2) An order under subsection (1) comes into force on the day on which it is made or on another day specified by the court, but must not continue in force for more than 3 years after the day it comes into force.
- (3) If the court makes an order under subsection (1)(b) or the Board incurs publication expenses under subsection (1)(e), the amount or expenses constitute a debt due to the Board.
- (4) If a convicted person fails to comply with an order referred to in subsection (1)(e)(i), the Board may publish the facts and recover the publication expenses from the person.

#### **104.1 Court may consider victim impact statements**

- (1) In this section, "victim impact statement" means a written statement describing the physical or emotional harm, property damage or economic loss suffered by an individual as a result of an offence committed against this Act or the regulations.
- (2) For the purpose of determining a penalty or punishment, as applicable, under sections 102 to 104, the court may consider victim impact statements.

#### **105 Penalties to be paid into accident fund**

On receipt of payment of a fine ordered under this Division, the amount must be transferred for deposit into the accident fund.

#### **55 Certification and training of first aid attendants and instructors**

The Board may do the following:

- (a) supervise the training of and train occupational first aid attendants and instructors;
- (b) appoint examiners and conduct examinations for the purposes of this section;

- (c) issue, renew and amend certificates to occupational first aid attendants and instructors;
- (d) enter into arrangements by which other persons provide training, give examinations and issue certificates for the purposes of this section;
- (e) establish fees for the purposes of this section.

#### **56 Installation and maintenance of required first aid equipment**

If an employer fails, neglects or refuses to install or maintain first aid equipment or service required by regulation or order, the Board may do one or more of the following:

- (a) have the first aid equipment and service installed, in which case the cost of this is a debt owed by the employer to the Board;
- (b) impose a special rate of assessment under Part 5 [*Accident Fund and Employer Assessment*];
- (c) order the employer to immediately close down all or part of the workplace or work being done there until the employer complies with the applicable regulation or order.

#### **57 Medical monitoring programs**

(1) If the Board considers this is advisable given the nature or conditions of a work activity, the Board may, by regulation, require employers of workers who carry out that activity or who are exposed to those conditions to establish a medical monitoring program in accordance with this section and the regulations.

(2) The following apply to a medical monitoring program under this section:

- (a) the program must be provided at the expense of the employer;
- (b) a worker may not be compelled to participate in the program;
- (c) a worker who participates in the program must be advised of the results of each examination.

(3) A regulation under subsection (1) may prescribe the following:

- (a) the medical examinations, including tests and X-rays, that are required;
- (b) the type of health professional who is authorized to conduct the examinations;
- (c) when examinations are required;
- (d) the information that must be obtained and recorded;
- (e) the information that must be provided to the worker;
- (f) responsibilities for keeping the records related to the program.

(4) The Board may require the health professional who conducted an examination for the purposes of this section, or the person keeping the records for the purposes of the program, to provide to the Board the information referred to in subsection (3)(d).

#### **58 Medical certification requirements**

(1) If the Board considers this is advisable given the physical requirements of a specific type of work, the Board may, by regulation, require employers to ensure that workers performing that work are medically certified as to their physical fitness for the work.

(2) A regulation under subsection (1) may prescribe the following:

- (a) the medical examinations, including tests and X-rays, that are required for certification;
- (b) the type of health professional who is authorized to make the certification;
- (c) when re-evaluations and renewals of certificates are required;
- (d) the information that must be obtained and recorded;
- (e) who is to pay for the cost of the certification.

(3) The Board may require the health professional who conducted an examination for the purposes of this section to provide to the Board the information referred to in subsection (2)(d).

#### **59 Certification and training of blasters**

The Board may do the following:

- (a) supervise the training of and train blasters and instructors;
- (b) appoint examiners and conduct examinations for the purposes of this section;
- (c) issue, renew and amend certificates to blasters and instructors;
- (d) enter into arrangements by which other persons provide training, give examinations and issue certificates for the purposes of this section;
- (e) establish fees for the purposes of this section.

**109 Lieutenant Governor in Council regulations**

(1) The Lieutenant Governor in Council may make regulations referred to in section 41 [*general powers to make regulations*] of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) defining words or expressions used but not defined in the OHS provisions;
- (b) establishing criteria that must be applied and procedures that must be followed in making decisions under the OHS provisions or the regulations;
- (c) requiring a greater number for minimum membership of a joint committee as referred to in section 33(a) and the circumstances in which that greater number is required;
- (d) establishing additional duties and functions for joint committees as referred to in section 36(j);
- (e) establishing a longer period of educational leave as referred to in section 41(1);
- (f) establishing assistance that must be provided to a joint committee by the employer in addition to the requirements of section 42;
- (g) prescribing information that must be included in an occupational health and safety information summary under section 52;
- (h) prescribing classes of health professionals for the purposes of section 54 [*information that must be provided in a medical emergency*];
- (i) specifying provisions of the regulations of the Lieutenant Governor in Council under the OHS provisions for which a variance under Division 9 of this Part may be ordered.

(3) Without limiting subsections (1) and (2), the Lieutenant Governor in Council may make regulations as follows:

- (a) amending the Act to reflect the deemed amendments under section 333 [*annual adjustment of dollar amounts referred to in Act*];
- (b) respecting any other matter for which regulations of the Lieutenant Governor in Council are contemplated by this Act.

**110 Board regulations generally**

(1) In accordance with its mandate under the OHS provisions, the Board may make regulations the Board considers necessary or advisable in relation to occupational health and safety and occupational environment.

(2) Without limiting subsection (1), the Board may make regulations as follows:

- (a) respecting standards and requirements for the protection of the health and safety of workers and other persons present at a workplace and for the well-being of workers in their occupational environment;
- (b) respecting specific components of the general duties of employers, workers, suppliers, supervisors, prime contractors and owners under the OHS provisions;
- (c) requiring employers to prepare written policies or programs respecting occupational health and safety and occupational environment in accordance with the regulations;
- (d) regulating or prohibiting the manufacture, supply, storage, handling or use of any tool, equipment, machine or device or the use of any workplace;
- (e) respecting standards and requirements for the monitoring of atmospheric or other workplace conditions or to demonstrate compliance with the OHS provisions, the regulations or an applicable order;
- (f) restricting the performance of specified functions to persons possessing specified qualifications or experience, including establishing certification requirements and establishing or arranging certification and instructor training programs;

(g) requiring the preparation, maintenance and submission of records respecting statistical data related to occupational health and safety or occupational environment;

(h) respecting the form and manner of reporting on any matter required to be reported under the OHS provisions or the regulations.

(3) Without limiting subsections (1) and (2), the Board may make regulations respecting any other matter for which regulations, other than regulations of the Lieutenant Governor in Council, are contemplated by this Act.

#### **111 Board regulations in relation to hazardous and other substances**

(1) The Board may, for the purpose of protecting the health or safety of workers, make regulations in relation to hazardous substances and other substances that are potentially harmful to workers.

(2) Without limiting subsection (1), the Board may make regulations as follows:

(a) prohibiting or regulating the transportation, storage, handling, use or disposal of any biological, chemical or physical agent;

(b) prohibiting persons other than those meeting prescribed qualifications from transporting, storing, handling, using or disposing of any biological, chemical or physical agent;

(c) prohibiting or regulating the manufacture, import, supply or sale or other disposition of any biological, chemical or physical agent;

(d) establishing requirements with respect to the testing, labelling or examination of any substance or material;

(e) establishing requirements with respect to the labelling of biological, chemical or physical agents supplied by a supplier;

(f) establishing requirements for records that must be kept in relation to hazardous substances and other substances that are potentially harmful to workers;

(g) designating a biological, chemical or physical agent as a hazardous substance;

(h) classifying hazardous substances;

(i) establishing requirements with respect to the labelling or identification of a hazardous substance;

(j) establishing requirements with respect to safety data sheets to be provided for a hazardous substance;

(k) establishing requirements with respect to worker training and instruction in relation to hazardous substances;

(l) establishing requirements with respect to the disclosure of information in respect of a hazardous substance, including disclosure of confidential business information;

(m) providing for exemptions from disclosure of confidential business information in respect of a hazardous substance;

(n) establishing or designating an agency, board or commission to determine whether information in respect of a hazardous substance is confidential business information;

(o) respecting the procedures, powers and functions of an agency, board or commission referred to in paragraph (n);

(p) respecting the reporting by physicians and others of cases in which workers are affected by hazardous substances.

#### **112 Board regulations in relation to OHS citations**

(1) The Board may make regulations for the purposes of section 94 [*administrative penalties – OHS citations*] as follows:

(a) specifying OHS provisions or provisions of the regulations that may be subject to administrative penalties under that section;

(b) subject to subsection (2) of this section, prescribing administrative penalties or schedules of administrative penalties that may

(i) vary according to the nature or frequency of the failure to comply or the number of workers affected by any failure to comply, and

(ii) provide for greater penalties for a second penalty and for third or subsequent penalties in a 3-year period or any other period that may be prescribed.

(2) A penalty prescribed under subsection (1) must not be greater than the amount specified in section 94(2).

#### **113 Notice and consultation before Board makes regulation**

(1) Before making a regulation under the OHS provisions, the Board

(a) must give notice of the proposed regulation in the Gazette and in at least 3 newspapers, of which one must be published in the City of Victoria and one in the City of Vancouver,

(b) must hold at least one public hearing on the proposed regulation, and

(c) may conduct additional consultations with representatives of employers, workers and other persons the Board considers may be affected by the proposed regulation.

(2) A defect or inaccuracy in the notice under subsection (1)(a) or in its publication does not invalidate a regulation made by the Board.

#### **114 When Board regulation comes into force**

A regulation of the Board must specify the date on which it is to come into force, which date must be at least 90 days after its deposit under the *Regulations Act*.

#### **115 Ongoing review of Board regulations**

The Board must undertake a process of ongoing review of and consultation on its regulations to ensure that they are consistent with current workplace practices, technological advances and other changes affecting occupational health and safety and occupational environment.

#### **116 Minister may direct Board to consider changes to its regulations**

(1) The minister may direct the Board to consider whether the Board should make, repeal or amend its regulations in accordance with the recommendations of the minister.

(2) If a direction under subsection (1) is made, the Board must consider the recommendations and report its response to the minister.

(3) If the Board does not make, repeal or amend its regulations as recommended, the Lieutenant Governor in Council may, by regulation, make, repeal or amend the regulations of the Board in accordance with the recommendations of the minister.

(4) On coming into force, a regulation under subsection (3) is deemed to be a regulation of the Board.

#### **117 Authority and application of regulations generally**

(1) The authority to make regulations under this Division does not limit and is not limited by the authority to make regulations under another OHS provision.

(2) The following apply to regulations under the OHS provisions:

(a) the regulations may be made applicable to employers, workers, suppliers and any other persons working in or contributing to the production of an industry;

(b) the regulations may be different for different workplaces, industries, activities, persons, things or categories of any of these;

(c) the regulations may delegate a matter to, or confer a discretion on, the Board, an officer of the Board or another person.

(3) A regulation under the OHS provisions establishing a standard, code or rule may do so by adopting a standard, code or rule

(a) published by a provincial, national or international body or standards association, or

(b) enacted as or under a law of this or another jurisdiction, including a foreign jurisdiction.

(4) A standard, code or rule referred to in subsection (3)

(a) may be adopted in whole, in part or with any changes considered appropriate, and

(b) may be adopted as it stands at a specific date, as it stands at the time of adoption or as amended from time to time.

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### **51 Requirement to post information**

(1) If the OHS provisions, the regulations or an order requires an employer or other person to post information at a workplace, the person must

(a) post the information at or near the workplace in one or more conspicuous places where it is most likely to come to the attention of the workers, or

(b) otherwise bring it to the notice of and make it available to the workers at the workplace in accordance with the regulations.

(2) If reasonably practicable, at least one place of posting under subsection (1)(a) must be at or near the equipment, works or area to which the information relates.

(3) As an exception, if posting or notice referred to in subsection (1) is not reasonably practicable, the employer or other person must instead adopt other measures to ensure that the information is effectively brought to the attention of the workers.

### **52 Occupational health and safety information summary**

(1) An occupational health and safety information summary for a workplace or workplaces of an employer may be requested by any of the following:

(a) the employer;

(b) a joint committee or worker representative of the employer;

(c) a union representing workers of the employer;

(d) if there is no joint committee or worker representative for a workplace, any worker of the employer working at the workplace.

(2) On receiving a request under subsection (1), the Board must prepare a summary in relation to the workplace or workplaces for which the request is made of

(a) the prescribed information relating to the previous calendar year, and

(b) any other data the Board considers necessary or advisable to provide.

(3) A summary requested under this section must be sent to the person who made the request and, if the request was made by a person other than the employer, to the employer.

(4) As soon as reasonably practicable after an employer receives a summary under this section, the employer must

(a) post a copy at the workplaces to which it relates,

(b) provide a copy to the joint committees or worker representatives, as applicable, and

(c) if workers at a workplace to which it relates are represented by a union, send a copy to the union.

### **53 Information that must be kept confidential**

(1) A person must not disclose or publish the following information, except for the purpose of administering this Act and the regulations or as otherwise required by law:

(a) information obtained in a medical examination, test or X-ray of a worker made or taken under the OHS provisions, Part 7 [*Appeals to Appeal Tribunal*] or the regulations, unless the worker consents or the information is disclosed in a form calculated to prevent the information from being identified with a particular person or case;

(b) information with respect to a claim under the compensation provisions obtained by the person by reason of the performance of a duty or the exercise of a power under the OHS provisions, Part 7 or the regulations;

(c) information with respect to a trade secret, or with respect to a work process whether or not it is a trade secret, obtained by the person by reason of the performance of a duty or the exercise of a power under the OHS provisions, Part 7 or the regulations;

(d) information obtained under the OHS provisions, Part 7 or the regulations that is exempted or subject to a claim for exemption as confidential business information in respect of a hazardous substance, as referred to in section 111(2)(m) [*Board regulations in relation to hazardous and other substances*];

(e) in the case of information received by the person in confidence by reason of the performance of a duty or the exercise of a power under the OHS provisions, Part 7 or the regulations, the name of the informant.

(2) Except in the performance of the person's duties,

(a) an officer,

(b) a person who accompanies an officer under section 78 [*representation on inspection*], or

(c) a person who conducts a test or other examination under the OHS provisions or Part 7 [*Appeals to Appeal Tribunal*] at the request of an officer

must not publish or disclose information obtained or made by the person in connection with that person's duties or powers under the OHS provisions or Part 7.

(3) Despite subsection (2), the Board may disclose or publish information referred to in that subsection, or authorize it to be disclosed or published, if the Board considers this advisable in the public interest.

(4) Except for the purposes of an inquest under the *Coroners Act*, an officer or other person referred to in subsection (2) is not a compellable witness in a civil suit or other proceeding respecting any information provided to the person in confidence.

(5) For the purposes of section 21(1)(b) [*disclosure harmful to business interests of third party*] of the *Freedom of Information and Protection of Privacy Act*, information referred to in subsection (1)(c) or (d) or (2) of this section that is in the custody or under the control of the Board or the appeal tribunal, whether or not supplied to the Board or the appeal tribunal, is deemed to be supplied to the Board or the appeal tribunal in confidence if it is

(a) information with respect to a trade secret, or with respect to a work process whether or not it is a trade secret,

(b) exempted or subject to a claim for exemption as confidential business information in respect of a hazardous substance, as referred to in section 111(2)(m), or

(c) commercial, financial, labour relations, scientific or technical information of an employer or supplier.

(6) This section does not apply to prevent a person from providing information, including confidential business information, in a medical emergency for the purpose of diagnosis, medical treatment or first aid.

#### **54 Information that must be provided in a medical emergency**

(1) This section applies in relation to a person who is a medical practitioner, nurse or prescribed health professional.

(2) On the request of a person referred to in subsection (1) who determines that

(a) a medical emergency exists, and

(b) information regarding a hazardous substance is needed for the purpose of diagnosis or providing medical treatment or first aid,

an employer, supplier or chemical manufacturer must immediately disclose to the requesting health professional all applicable information, including confidential business information, that is in the possession of the employer, supplier or manufacturer.

(3) A person to whom information is provided under subsection (2) must keep confidential any information specified by the person providing the information as being confidential, except for the purpose for which it is provided.

#### **17 Board mandate under OHS provisions**

(1) In accordance with the purposes of the OHS provisions, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

(2) In carrying out its mandate, the Board has the following duties, functions and powers:

- (a) to exercise the Board's authority to make regulations to establish standards and requirements for the protection of the health and safety of workers and the occupational environment in which they work;
- (b) to undertake inspections, investigations and inquiries on matters of occupational health and safety and occupational environment;
- (c) to provide services to assist joint committees, worker health and safety representatives, employers and workers in maintaining reasonable standards for occupational health and safety and occupational environment;
- (d) to ensure that persons concerned with the purposes of the OHS provisions are provided with information and advice relating to the Board's administration and to occupational health and safety and occupational environment generally;
- (e) to encourage, develop and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;
- (f) to promote public awareness of matters related to occupational health and safety and occupational environment;
- (g) to prepare and maintain statistics relating to occupational health and safety and occupational environment, either by the Board acting alone or acting in conjunction with any other agency;
- (h) to undertake or support research and the publication of research on matters relating to the Board's responsibilities under this Act;
- (i) to establish programs of grants and awards in relation to the Board's responsibilities under this Act;
- (j) to provide assistance to persons concerned with occupational health and safety and occupational environment;
- (k) to cooperate and enter into arrangements and agreements with governments and other agencies and persons on matters relating to the Board's responsibilities under the OHS provisions;
- (l) to make recommendations to the minister respecting amendments to this Act, the regulations under the OHS provisions or the compensation provisions or to other legislation that affects occupational health and safety or occupational environment;
- (m) to inquire into and report to the minister on any matter referred to it by the minister, within the time specified by the minister;
- (n) to fulfill the Board's mandate under the OHS provisions in a financially responsible manner;
- (o) to do other things in relation to occupational health and safety or occupational environment that the minister or Lieutenant Governor in Council may direct.

#### **18 Cooperation agreements and arrangements**

(1) Without limiting section 335 [*interjurisdictional agreements and arrangements*], the Board may enter into agreements or make arrangements respecting cooperation, coordination and assistance related to occupational health and safety and occupational environment matters with the following:

- (a) the government of British Columbia, the government of Canada or the government of another province or territory;
- (b) an agency of a government referred to in paragraph (a);
- (c) another appropriate authority.

(2) In relation to an agreement or arrangement under subsection (1), the Board may

- (a) authorize Board officers to act on behalf of the other party to the agreement or arrangement, and
- (b) authorize persons appointed by the other party to the agreement or arrangement to act as an officer under this Act, subject to any conditions or restrictions established by the Board.

#### **68 Immediate notice of certain accidents**

(1) An employer must immediately notify the Board of the occurrence of any accident that

- (a) resulted in serious injury to or the death of a worker,
- (b) involved a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system or excavation,
- (c) involved the major release of a hazardous substance,
- (d) involved a fire or explosion that had a potential for causing serious injury to a worker, or
- (e) was an incident required by regulation to be reported.

(2) Except as otherwise directed by an officer of the Board or a peace officer, a person must not disturb the scene of an accident that is reportable under subsection (1) except so far as is necessary to

- (a) attend to persons injured or killed,
- (b) prevent further injuries or death, or
- (c) protect property that is endangered as a result of the accident.

#### **69 Incidents that must be investigated**

(1) An employer must conduct a preliminary investigation under section 71 and a full investigation under section 72 respecting any accident or other incident that

- (a) is required to be reported under section 68,
- (b) resulted in injury to a worker requiring medical treatment,
- (c) did not involve injury to a worker, or involved only minor injury not requiring medical treatment, but had a potential for causing serious injury to a worker, or
- (d) was an incident required by regulation to be investigated.

(2) Subsection (1) does not apply in the case of a vehicle accident occurring on a public street or highway.

#### **70 Investigation process**

(1) An investigation required under this Division must be carried out by persons knowledgeable about the type of work involved and, if they are reasonably available, with the participation of the employer or a representative of the employer and a worker representative.

(2) For the purposes of subsection (1), the participation of the employer or a representative of the employer and a worker representative includes, but is not limited to, the following activities:

- (a) viewing the scene of the incident with the persons carrying out the investigation;
- (b) providing advice to the persons carrying out the investigation respecting the methods used to carry out the investigation, the scope of the investigation or any other aspect of the investigation;
- (c) other activities, as prescribed by the Board.

(3) The employer must make every reasonable effort to have available for interview by a person conducting the investigation, or by an officer, all witnesses to the incident and any other persons whose presence might be necessary for a proper investigation of the incident.

(4) The employer must record the names, addresses and telephone numbers of persons referred to in subsection (3).

#### **71 Preliminary investigation, report and follow-up action**

(1) An employer must, immediately after the occurrence of an incident described in section 69, undertake a preliminary investigation to, as far as possible,

- (a) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and
- (b) if unsafe conditions, acts or procedures are identified under paragraph (a) of this subsection, determine the corrective action necessary to prevent, during a full investigation under section 72, the recurrence of similar incidents.

(2) The employer must ensure that a report of the preliminary investigation is

- (a) prepared in accordance with the policies of the board of directors,
- (b) completed within 48 hours of the occurrence of the incident,
- (c) provided to the Board on request of the Board, and
- (d) as soon as practicable after the report is completed, either
  - (i) provided to the joint committee or worker health and safety representative, as applicable, or
  - (ii) if there is no joint committee or worker health and safety representative, posted at the workplace.

(3) Following the preliminary investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary

under subsection (1)(b).

(4) If the employer takes corrective action under subsection (3), the employer, as soon as practicable, must

(a) prepare a report of the action taken, and

(b) either

(i) provide the report to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

#### **72 Full investigation, report and follow-up action**

(1) An employer must, immediately after completing a preliminary investigation under section 71, undertake a full investigation to, as far as possible,

(a) determine the cause or causes of the incident investigated under section 71,

(b) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and

(c) if unsafe conditions, acts or procedures are identified under paragraph (b) of this subsection, determine the corrective action necessary to prevent the recurrence of similar incidents.

(2) The employer must ensure that a report of the full investigation is

(a) prepared in accordance with the policies of the board of directors,

(b) submitted to the Board within 30 days of the occurrence of the incident, and

(c) within 30 days of the occurrence of the incident, either

(i) provided to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, posted at the workplace.

(3) The Board may extend the time period, as the Board considers appropriate, for submitting a report under subsection (2)(b) or (c).

(4) Following the full investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1)(c).

(5) If the employer takes corrective action under subsection (4), the employer, as soon as practicable, must

(a) prepare a report of the action taken, and

(b) either

(i) provide the report to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

#### **73 Employer or supervisor must not attempt to prevent reporting**

An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting any of the following to the Board:

(a) an injury or allegation of injury, whether or not the injury occurred or is compensable under the compensation provisions;

(b) an illness, whether or not the illness exists or is an occupational disease compensable under the compensation provisions;

(c) a death, whether or not the death is compensable under the compensation provisions;

(d) a hazardous condition or allegation of a hazardous condition in any work to which the OHS provisions apply.

#### **60 Board may authorize variances from regulations**

(1) On application, the Board may, by order, authorize a variance from a provision of the regulations.

(2) A variance order may be made only if the Board is satisfied that the variance

- (a) affords protection for workers equal to or greater than the protection established by the provision being varied, or
- (b) has substantially the same purpose and effect as the provision being varied.

(3) A variance order may be made applicable to

- (a) a specified workplace, or
- (b) a specified work process at all or specified workplaces of a specified employer.

(4) As a limit on the authority under subsection (1), a provision in a regulation of the Lieutenant Governor in Council under the OHS provisions may be varied only if this is permitted by regulation of the Lieutenant Governor in Council.

#### **61 Effective period for variance order**

- (1) Unless another time is established in the order, a variance order ceases to have effect 3 years from the date on which it first comes into effect.
- (2) The Board may only establish an effective period longer than 3 years if the application for the variance expressly requested the longer period.

#### **62 Application for variance**

(1) Subject to the regulations and subsection (2), an application for a variance must be made in writing to the Board and must include

- (a) a description of the requested variance,
- (b) a statement of why the variance is requested, and
- (c) information with respect to the benefits and drawbacks in relation to the matters addressed by the applicable regulation that might reasonably be anticipated if the variation is allowed.

(2) In the case of an application by a single worker for a variance order that would apply only to that worker, an application may be made as permitted by the Board.

(3) The applicant must also provide the Board with the technical and any other information required by the Board to deal with the application.

#### **63 Notice of application**

(1) If the variance would apply to an existing workplace, the applicant must

- (a) post a copy of the application at the workplace and keep it posted there until the decision on the requested variance is received by the applicant,
- (b) provide a copy to the joint committee or worker representative, as applicable, and
- (c) if workers at the workplace are represented by a union, send a copy to the union.

(2) If the variance would apply to a workplace that is not yet in existence, immediately after submitting the application for variance,

(a) the applicant must publish a notice of the application where it would reasonably be expected to come to the attention of persons who may be affected by the decision on the requested variance, and

(b) the notice must include

- (i) a description of the requested variance, and
- (ii) a statement of why the variance is requested.

#### **64 Consultation on application**

(1) After receiving an application for variance, the Board may give notice of the application and conduct consultations respecting that application as the Board considers advisable.

(2) Before making a decision on an application, the Board must provide an opportunity for persons who may be affected by the requested variance to submit to the Board information respecting their position on the requested variance.

(3) A union representing workers who may be affected by the requested variance is considered a person who may be affected for the purposes of subsection (2).

#### **65 Decision on application**



- (1) The Board must give written reasons for a decision on an application for a variance order.
- (2) The Board must give notice of its decision, including the written reasons and any variance order made, to the applicant and to any persons who submitted information under section 64(2).
- (3) The applicant must post a copy of the decision at each workplace to which it relates as follows:
  - (a) if the application for a variance order was refused, the applicant must keep the decision posted for 7 days or the period required by the order, whichever is longer;
  - (b) if a variance order was made, the applicant must keep the order and written reasons posted throughout the time the variance is in effect.

**66 Legal effect of variance**

- (1) A variance order authorizes variance from the applicable provision of the regulations
  - (a) only in accordance with the terms and conditions of the variance order, and
  - (b) only during the time that there is compliance with its terms and conditions.
- (2) For certainty, if the terms and conditions of a variance order are not met, the applicable provision of the regulations applies and the variance order is without effect.

**67 Board regulations review must consider variance history**

The Board must consider the history of variance applications and variance orders as part of its process of regulations review under section 115 [*ongoing review of Board regulations*].