

Workplace Safety and Insurance Act, 1997

S.O. 1997, CHAPTER 16 Schedule A

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PART I INTERPRETATION

Purpose

1. The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:
 1. To promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and occupational diseases.
 2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
 3. To facilitate the re-entry into the labour market of workers and spouses and same-sex partners of deceased workers.
 4. To provide compensation and other benefits to workers and to the survivors of deceased workers. 1997, c. 16, Sched. A, s. 1; 1999, c. 6, s. 67 (1).

Definitions

2. (1) In this Act,

“accident” includes,

- (a) a wilful and intentional act, not being the act of the worker,
- (b) a chance event occasioned by a physical or natural cause, and
- (c) disablement arising out of and in the course of employment; (“accident”)

“Appeals Tribunal” means the Workplace Safety and Insurance Appeals Tribunal; (“Tribunal d’appel”)

“attorney” means a person authorized under a power of attorney for property given under the *Substitute Decisions Act, 1992*; (“procureur”)

“Board” means the Workplace Safety and Insurance Board; (“Commission”)

“child” means a child within the meaning of subsection 1 (1) of the *Family Law Act*; (“enfant”)

“dependants” means such of the following persons as were wholly or partly dependent upon the worker’s earnings at the time of his or her death or who, but for the incapacity due to the accident, would have been so dependent:

1. Parent, stepparent or person who stood in the role of parent to the worker.
2. Sibling or half-sibling.
3. Grandparent.
4. Grandchild; (“personnes à charge”)

“earnings” or “wages” include any remuneration capable of being estimated in terms of money but does not include contributions made under section 25 for employment benefits; (“gains” ou “salaire”)

“emergency worker” means a person described in paragraph 6, 7 or 8 of the definition of worker who is injured while engaged in the activity described in that paragraph; (“travailleur dans une situation d’urgence”)

“employer” means every person having in his, her or its service under a contract of service or apprenticeship another person engaged in work in or about an industry and includes,

- (a) a trustee, receiver, liquidator, executor or administrator who carries on an industry,
- (b) a person who authorizes or permits a learner to be in or about an industry for the purpose of undergoing training or probationary work, or
- (c) a deemed employer; (“employeur”)

“guardian”, except in subsections 30 (7) and 60 (4), means a guardian of property appointed under the *Substitute Decisions Act, 1992* or a statutory guardian of property designated by or appointed under that Act; (“tuteur”)

“health care practitioner” means a health professional, a drugless practitioner regulated under the *Drugless Practitioners Act* or a social worker; (“praticien de la santé”)

“health professional” means a member of the College of a health profession as defined in the *Regulated Health Professions Act, 1991*; (“professionnel de la santé”)

“impairment” means a physical or functional abnormality or loss (including disfigurement) which results from an injury and any psychological damage arising from the abnormality or loss; (“déficience”)

“independent operator” means a person who carries on an industry included in Schedule 1 or Schedule 2 and who does not employ any workers for that purpose; (“exploitant indépendant”)

“industry” includes an establishment, undertaking, trade, business or service and, if domestics are employed, includes a household; (“secteur d’activité”)

“insurance fund” means the fund described in section 96; (“caisse d’assurance”)

“insurance plan” means the benefits and obligations set out in Parts III to IX; (“régime d’assurance”)

“learner” means a person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry for the purpose of undergoing training or probationary work; (“stagiaire”)

“Minister” means the Minister of Labour; (“ministre”)

“occupational disease” includes,

- (a) a disease resulting from exposure to a substance relating to a particular process, trade or occupation in an industry,
- (b) a disease peculiar to or characteristic of a particular industrial process, trade or occupation,
- (c) a medical condition that in the opinion of the Board requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition may be a precursor to an occupational disease, or
- (d) a disease mentioned in Schedule 3 or 4; (“maladie professionnelle”)

“permanent impairment” means impairment that continues to exist after the worker reaches maximum medical recovery; (“déficience permanente”)

“personal representative” means a personal representative as defined in subsection 1 (1) of the *Succession Law Reform Act*; (“représentant successoral”)

“prescribed” means prescribed by the regulations made under this Act; (“prescrit”)

“same-sex partner” means a person of the same sex with whom the person is living in a conjugal relationship outside marriage, if the two persons,

- (a) have cohabited for at least one year,
- (b) are together the parents of a child, or
- (c) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*; (“partenaire de même sexe”)

“Schedule 1 employer” means an employer in a class or group of industries included in Schedule 1 but does not include an employer who is a Schedule 2 employer (other than a Schedule 2 employer declared by the Board under section 74 to be deemed to be a Schedule 1 employer); (“employeur mentionné à l’annexe 1”)

“Schedule 2 employer” means an employer in a class of industries included in Schedule 2; (“employeur mentionné à l’annexe 2”)

“silicosis” means a fibrotic condition of the lungs caused by the inhalation of silica dust that is sufficient to produce a lessened capacity for work; (“silicose”)

“spouse” means a person of the opposite sex,

- (a) to whom the person is married, or
- (b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,
 - (i) have cohabited for at least one year,
 - (ii) are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*; (“conjoint”)

“student” means a person who is pursuing formal education as a full-time or part-time student and is employed by an employer for the purposes of the employer’s industry, although not as a learner or an apprentice; (“étudiant”)

“survivor” means a spouse, same-sex partner, child or dependant of a deceased worker; (“survivant”)

“worker” means a person who has entered into or is employed under a contract of service or apprenticeship and includes the following:

1. A learner.
2. A student.
3. An auxiliary member of a police force.
4. A member of a volunteer ambulance brigade.
5. A member of a municipal volunteer fire brigade whose membership has been approved by the chief of the fire department or by a person authorized to do so by the entity responsible for the brigade.
6. A person summoned to assist in controlling or extinguishing a fire by an authority empowered to do so.
7. A person who assists in a search and rescue operation at the request of and under the direction of a member of the Ontario Provincial Police.
8. A person who assists in connection with an emergency that has been declared to exist by the Premier of Ontario or the head of a municipal council.
9. A person deemed to be a worker of an employer by a direction or order of the Board.
10. A person deemed to be a worker under section 12.
11. A pupil deemed to be a worker under the *Education Act*. (“travailleur”) 1997, c. 16, Sched. A, s. 2 (1); 1999, c. 6, s. 67 (2-4); 2002, c. 18, Sched. J, s. 5 (1).

Schedules

(2) A reference in this Act to Schedule 1, 2, 3 or 4 means the schedules as established in the regulations made under this Act. 1997, c. 16, Sched. A, s. 2 (2).

PART II INJURY AND DISEASE PREVENTION

Application

3. This Part applies with respect to workplaces governed by the *Occupational Health and Safety Act* and the employers and workers to whom that Act applies and to employers engaged in any class of farm-related activity in Schedule 1 and their workers. 1997, c. 16, Sched. A, s. 3.

Functions of the Board

4. (1) In order to promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and occupational diseases, the Board’s functions include the following:

1. To promote public awareness of occupational health and safety.
2. To educate employers, workers and other persons about occupational health and safety.
3. To foster a commitment to occupational health and safety among employers, workers and others.
4. To develop standards for the certification of persons who are required to be certified for the purposes of the *Occupational Health and Safety Act* and to approve training programs for certification.
5. To certify persons who meet the standards.
6. To develop standards for the accreditation of employers who adopt health and safety policies and operate successful health and safety programs.
7. To accredit employers who meet the standards.
8. To designate safe workplace associations, to designate medical clinics and training centres specializing in occupational health and safety matters and to oversee their operation and make grants or provide funds to them.

9. To provide funding for occupational health and safety research.
10. To develop standards for training about first aid and to provide funding to those offering such training.
11. To advise the Minister on matters relating to occupational health and safety that are referred to the Board or brought to its attention.

Payments to construction workers

(2) The Board shall pay persons who are regularly employed in the construction industry for the time they spend fulfilling the requirements to become certified for the purposes of the *Occupational Health and Safety Act*. However, the Board shall not pay persons who may represent management as members of a joint health and safety committee. 1997, c. 16, Sched. A, s. 4.

Advisory council

5. (1) The Board may establish a workplace health and safety advisory council to advise the Board on such issues as it considers appropriate.

Composition

(2) The council shall be composed of such members as the Board may appoint. 1997, c. 16, Sched. A, s. 5.

Safe workplace associations, etc.

6. (1) The Board may designate an entity as a safe workplace association or as a medical clinic or training centre specializing in occupational health and safety matters if the entity meets the standards established by the Board.

Standards

(2) The Board shall establish standards respecting governance, objectives, functions and operations to be met by an entity before it is eligible to be designated. The Board may establish standards respecting other matters and may establish different standards for associations, clinics or centres serving different industries or groups.

Charges to employers

(3) Any funds paid to a safe workplace association under section 7 shall be charged against the class, subclass or group represented by the association and shall be charged as expenses of the Board to any Schedule 2 employer represented by the association.

Same

(4) Any funds paid to a medical clinic or training centre under section 7 shall be charged as expenses of the Board. 1997, c. 16, Sched. A, s. 6.

Designated entities

7. (1) This section applies with respect to an entity designated under section 6 as a safe workplace association, a medical clinic or a training centre.

Effect of designation

(2) An entity is eligible for financial assistance from the Board and shall operate in accordance with this section and the standards established by the Board.

Monitoring

(3) The Board shall monitor the operation of entities and may conduct such audits as it considers necessary.

Directions

(4) The Board may direct an entity to take such actions as the Board considers appropriate. The governing body of the entity shall comply with the direction.

Failure to comply

- (5) If an entity does not operate in accordance with this section and the standards established by the Board,
 - (a) the Board may reduce or suspend its financial assistance while the non-compliance continues;
 - (b) the Board may assume control of the entity and responsibility for its affairs and operations;

- (c) the Board may revoke the designation and cease to provide financial assistance to it; or
- (d) the Board may take such other steps as it considers appropriate. 1997, c. 16, Sched. A, s. 7.

Appointment of administrator

8. (1) For the purposes of assuming control of an entity and responsibility for its affairs and operations pursuant to clause 7 (5) (b), the Board may appoint an administrator.

Term of appointment

- (2) The appointment of the administrator remains valid until it is terminated by the Board.

Notice

(3) The Board shall provide 30 days written notice to the board of directors of the entity before appointing the administrator, but if there are not enough members of the board of directors to form a quorum, the Board may appoint an administrator without notice.

Powers and duties of administrator

(4) The administrator has the exclusive right to exercise all the powers and perform the duties of the board of directors and its officers and exercise the powers of its members.

Same

(5) The Board may specify the powers and duties of the administrator in the appointment and the terms and conditions governing those powers and duties.

Additional power of administrator

(6) The board of directors and officers may continue to act to the extent authorized by the Board in the notice, but any such act is valid only if approved, in writing, by the administrator.

Report, directions

- (7) The administrator shall report to the Board as required by it and shall carry out its directions.

Meeting of members

(8) Before the termination of an administrator's appointment, the administrator may call a meeting of the members to elect a board of directors in accordance with the *Corporations Act*.

Unincorporated entity

- (9) This section applies with necessary modification to an entity that is not incorporated. 1997, c. 16, Sched. A, s. 8.

Fees

- 9.** The Board may charge fees for programs or services provided by the Board under this Part. 1997, c. 16, Sched. A, s. 9.

First aid requirements

10. (1) The Board may require employers in such industries as it considers appropriate to have such first aid appliances and services as may be prescribed.

Repeal

(2) This section is repealed on a day to be named by proclamation of the Lieutenant Governor. 1997, c. 16, Sched. A, s. 10.

**PART III
INSURANCE PLAN**

INSURED EMPLOYMENT, INJURIES AND DISEASES

Insured workers

11. (1) The insurance plan applies to every worker who is employed by a Schedule 1 employer or a Schedule 2 employer. However, it does not apply to workers who are,

- (a) persons whose employment by an employer is of a casual nature and who are employed otherwise than for the purposes of the employer's industry; or
- (b) persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in the person's own home or on other premises not under the control or management of the person who gave out the articles or materials.

Exception

(2) Subject to section 12, the insurance plan does not apply to workers who are executive officers of a corporation. 1997, c. 16, Sched. A, s. 11.

Deemed workers (optional insurance)

12. (1) Upon application, the Board may declare that any of the following persons is deemed to be a worker to whom the insurance plan applies:

- 1. An independent operator carrying on business in an industry included in Schedule 1 or Schedule 2.
- 2. A sole proprietor carrying on business in an industry included in Schedule 1 or Schedule 2.
- 3. A partner in a partnership carrying on business in an industry in Schedule 1 or Schedule 2.

Same, executive officer

(2) Upon the application of a Schedule 1 or Schedule 2 employer who is a corporation, the Board may declare that an executive officer of the corporation is deemed to be a worker to whom the insurance plan applies. The Board may make the declaration only if the executive officer consents to the application.

Conditions

(3) The Board may make a declaration subject to such conditions as it considers appropriate. The declaration may provide that the person is deemed to be a worker for only such period as is specified.

Payment in advance

(4) The Board may require the employer to pay in advance all or part of any premiums payable in respect of the person.

Revocation of status

(5) The Board may revoke a declaration that a person is a deemed worker if the employer at any time defaults in paying the required premiums in respect of the person.

Set-off

(6) If the employer defaults in paying the required premiums in respect of the person and the person or his or her survivors are entitled to receive payments under the insurance plan, the Board may deduct from the payments to the person or survivors the amount owed by the employer.

Employer

(7) For the purposes of the insurance plan, while a declaration with respect to a person is in force the following person shall be deemed to be his or her employer:

- 1. In the case of an independent operator or a sole proprietor, the employer is the independent operator or the sole proprietor.
- 2. In the case of a partner, the employer is the partnership.
- 3. In the case of an executive officer of a corporation, the employer is the corporation. 1997, c. 16, Sched. A, s. 12.

Insured injuries

13. (1) A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.

Presumptions

(2) If the accident arises out of the worker's employment, it is presumed to have occurred in the course of the employment unless the contrary is shown. If it occurs in the course of the worker's employment, it is presumed to have arisen out of the employment unless the contrary is shown.

Exception, employment outside Ontario

(3) Except as provided in sections 18 to 20, the worker is not entitled to benefits under the insurance plan if the accident occurs while the worker is employed outside of Ontario.

Exception, mental stress

(4) Except as provided in subsection (5), a worker is not entitled to benefits under the insurance plan for mental stress.

Same

(5) A worker is entitled to benefits for mental stress that is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of his or her employment. However, the worker is not entitled to benefits for mental stress caused by his or her employer's decisions or actions relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the employment. 1997, c. 16, Sched. A, s. 13.

Note: Section 14 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Restriction re chronic pain

14. (1) A worker is entitled to benefits under the insurance plan for chronic pain as defined in the regulations but only in such circumstances as may be prescribed.

Extent of entitlement

(2) The benefits to which the worker is entitled for chronic pain are subject to such limits and exclusions as may be prescribed. 1997, c. 16, Sched. A, s. 14.

See: 1997, c. 16, Sched. A, s. 184 (2).

Occupational diseases

15. (1) This section applies if a worker suffers from and is impaired by an occupational disease that occurs due to the nature of one or more employments in which the worker was engaged.

Entitlement to benefits

(2) The worker is entitled to benefits under the insurance plan as if the disease were a personal injury by accident and as if the impairment were the happening of the accident.

Presumption re causation

(3) If, before the date of the impairment, the worker was employed in a process set out in Schedule 3 and if he or she contracts the disease specified in the Schedule, the disease is presumed to have occurred due to the nature of the worker's employment unless the contrary is shown.

Causation of disease

(4) If, before the date of the impairment, the worker was employed in a process set out in Schedule 4 and if he or she contracts the disease specified in the Schedule, the disease shall be deemed to have occurred due to the nature of the worker's employment.

Restriction, silicosis

(5) A worker and his or her survivors are not entitled to benefits under the insurance plan for impairment from silicosis unless the worker has been actually exposed to silica dust for at least two years in his or her employment in Ontario prior to becoming impaired.

Restriction, pneumoconiosis, etc.

(6) Subsection (5) applies, with necessary modifications, with respect to impairment from pneumoconiosis and stone worker's or grinder's phthisis.

Other occupational diseases

(7) This section does not affect the right of a worker to benefits under the insurance plan in respect of an occupational disease to which this section does not apply if the disease is the result of an injury for which the worker is entitled to benefits under the insurance plan. 1997, c. 16, Sched. A, s. 15.

No waiver of entitlement

16. An agreement between a worker and his or her employer to waive or to forego any benefit to which the worker or his or her survivors are or may become entitled under the insurance plan is void. 1997, c. 16, Sched. A, s. 16.

Serious and wilful misconduct

17. If an injury is attributable solely to the serious and wilful misconduct of the worker, no benefits shall be provided under the insurance plan unless the injury results in the worker's death or serious impairment. 1997, c. 16, Sched. A, s. 17.

Employment outside Ontario

18. (1) This section applies if the accident happens while the worker is employed outside of Ontario, if the worker resides and is usually employed in Ontario and if the employer's place of business is in Ontario.

Outside Ontario less than six months

(2) The worker is entitled to benefits under the insurance plan if the employment outside of Ontario has lasted less than six months.

Same, six months or more

(3) Upon the application of the employer, the Board may declare that the insurance plan applies to a worker whose employment outside of Ontario lasts or is likely to last six months or more. 1997, c. 16, Sched. A, s. 18.

Accident outside Ontario

19. (1) A worker who resides outside of Ontario is entitled to benefits under the insurance plan if his or her employer's place of business is in Ontario, the worker's usual place of employment is in Ontario and the accident happens while the worker is employed outside of Ontario for a temporary purpose connected with the worker's employment.

Same, non-Ontario employer

(2) If the accident happens outside of Ontario, the employer's place of business is outside of Ontario and the worker is entitled to compensation under the law of the place where the accident happens, the worker is entitled to benefits under the insurance plan only if the worker's place of employment is in Ontario and the accident happens while the worker is employed outside of Ontario for a casual or incidental purpose connected with the worker's employment.

Same, on a vessel

(3) If the accident happens outside of Ontario on a vessel, the worker is entitled to benefits under the insurance plan if the worker resides in Ontario and,

- (a) if the vessel is registered in Canada; or
- (b) if the chief place of business of its owner or of the person who offers it for charter is in Ontario.

Same, certain vehicles, etc.

(4) If the accident happens outside of Ontario on a train, an aircraft or a vessel or on a vehicle used to transport passengers or goods, the worker is entitled to benefits under the insurance plan if he or she resides in Ontario and is required to perform his or her employment both in and outside of Ontario. 1997, c. 16, Sched. A, s. 19.

Obligation to elect, concurrent entitlement outside Ontario

20. (1) This section applies if a worker is entitled to benefits under the insurance plan relating to an accident and is also entitled to compensation under the laws of another jurisdiction in respect of the accident regardless of where the accident occurs. This section also applies with necessary modifications if the worker's survivors are so entitled.

Same

(2) The worker shall elect whether to receive benefits under the insurance plan or to receive compensation under the laws of the other jurisdiction and shall notify the Board of the option elected. If the worker is employed by a Schedule 2 employer, the worker shall also notify the employer.

Deadline for electing

(3) The election must be made within three months after the accident occurs or, if the accident results in death, within three months after the date of death. However, the Board may permit the election to be made within a longer period.

Failure to elect

(4) If an election is not made or if notice of the election is not given, the worker is presumed to have elected not to receive benefits under the insurance plan unless the contrary is shown. 1997, c. 16, Sched. A, s. 20.

NOTICE OF ACCIDENT AND CLAIM FOR BENEFITS

Notice by employer of accident

21. (1) An employer shall notify the Board within three days after learning of an accident to a worker employed by him, her or it if the accident necessitates health care or results in the worker not being able to earn full wages.

Same

(2) The notice must be on a form approved by the Board and the employer shall give the Board such other information as the Board may require from time to time in connection with the accident.

Failure to comply

(3) An employer who fails to comply with this section shall pay the prescribed amount to the Board. This payment is in addition to any penalty imposed by a court for an offence under subsection 152 (3).

Copy to worker

(4) The employer shall give a copy of the notice to the worker at the time the notice is given to the Board. 1997, c. 16, Sched. A, s. 21.

Claim for benefits

Claim for benefits, worker

22. (1) A worker shall file a claim as soon as possible after the accident that gives rise to the claim, but in no case shall he or she file a claim more than six months after the accident or, in the case of an occupational disease, after the worker learns that he or she suffers from the disease.

Same, survivor

(2) A survivor who is entitled to benefits as a result of the death of a worker shall file a claim as soon as possible after the worker's death, but in no case shall he or she file a claim more than six months after the worker's death.

Extension of time

(3) The Board may permit a claim to be filed after the six-month period expires if, in the opinion of the Board, it is just to do so.

Form and contents

(4) A claim must be on a form approved by the Board and must be accompanied by such information and documents as the Board may require.

Consent re functional abilities

(5) When filing a claim, a worker must consent to the disclosure to his or her employer of information provided by a health professional under subsection 37 (3) concerning the worker's functional abilities. The disclosure is for the sole purpose of facilitating the worker's return to work.

Failure to file

(6) If the claimant does not file the claim with the Board in accordance with this section or does not give the consent required by subsection (5), no benefits shall be provided under the insurance plan unless the Board, in its opinion, decides that it is just to do so.

Notice to employer

(7) The claimant shall give a copy of his or her claim to the worker's employer at the time the claim is given to the Board.

Same, occupational disease

(8) A copy of the claim for an occupational disease must be given to the employer who has most recently employed the worker in the employment to the nature of which the disease is due. 1997, c. 16, Sched. A, s. 22.

Continuing obligation to provide information

23. (1) A person receiving benefits under the insurance plan or who may be entitled to do so shall give the Board such information as the Board may require from time to time in connection with the person's claim.

Effect of non-compliance

(2) If the person fails to comply with subsection (1), the Board may reduce or suspend payments to him or her while the non-compliance continues.

Notice of material change in circumstances

(3) A person receiving benefits under the insurance plan or who may be entitled to do so shall notify the Board of a material change in circumstances in connection with the entitlement within 10 days after the material change occurs. 1997, c. 16, Sched. A, s. 23.

WAGES AND EMPLOYMENT BENEFITS

Wages for day of accident

24. (1) The employer shall pay a worker who is entitled to benefits under the insurance plan his or her wages and employment benefits for the day of the injury as if the accident had not occurred.

Payment by Board

(2) If the employer fails to comply with subsection (1), the Board shall pay the wages and employment benefits to or on behalf of the worker.

Failure to comply

(3) If the employer fails to comply with subsection (1), the employer shall pay to the Board a sum equal to the wages and employment benefits owing under that subsection. This requirement is in addition to any other penalty imposed on the employer or liability of the employer for the failure to comply. 1997, c. 16, Sched. A, s. 24.

Employment benefits

25. (1) Throughout the first year after a worker is injured, the employer shall make contributions for employment benefits in respect of the worker when the worker is absent from work because of the injury. However, the contributions are required only if,

- (a) the employer was making contributions for employment benefits in respect of the worker when the injury occurred; and
- (b) the worker continues to pay his or her contributions, if any, for the employment benefits while the worker is absent from work. 1997, c. 16, Sched. A, s. 25 (1).

Failure to comply

- (2) If the employer fails to comply with subsection (1),
 - (a) the employer is liable to the worker for any loss the worker suffers as a result of the failure to comply; and
 - (b) the Board may levy a penalty on the employer not exceeding the amount of one year's contributions for employment benefits in respect of the worker. 1997, c. 16, Sched. A, s. 25 (2).

Contributions re emergency workers

(3) The actual employer of an emergency worker shall make the contributions required by subsection (1), instead of the worker's deemed employer. The deemed employer shall reimburse the actual employer for the contributions. 1997, c. 16, Sched. A, s. 25 (3).

Certain volunteers

(3.1) Subsection (3) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker. 2000, c. 26, Sched. I, s. 1 (1); 2002, c. 18, Sched. J, s. 5 (2).

Multi-employer benefit plans

(4) Subsection (1) does not apply to an employer who participates in a multi-employer benefit plan in respect of the worker if, when the worker is absent from work because of the injury during the first year after it occurs,

- (a) the plan continues to provide the worker with the benefits to which he or she would otherwise be entitled; and
- (b) the plan does not require the employer to make contributions during the worker's absence and does not require the worker to draw upon his or her benefit credits, if any, under the plan during the absence. 1997, c. 16, Sched. A, s. 25 (4).

Same

- (5) Every multi-employer benefit plan shall contain or be deemed to contain provisions that are,
 - (a) sufficient to enable all employers who participate in the plan to be exempted under subsection (4) from the requirement to make contributions; and
 - (b) sufficient to provide each worker with the benefits described in subsection (4) in the circumstances described in that subsection. 1997, c. 16, Sched. A, s. 25 (5).

Entitlement under benefit plans

(6) For the purpose of determining a worker's entitlement to benefits under a benefit plan, fund or arrangement, the worker shall be deemed to continue to be employed by the employer for one year after the date of the injury. 1997, c. 16, Sched. A, s. 25 (6).

Definition

(7) In this section,
 "contributions for employment benefits" means amounts paid in whole or in part by an employer on behalf of a worker or the worker's spouse, same-sex partner, child or dependant for health care, life insurance and pension benefits. 1997, c. 16, Sched. A, s. 25 (7); 1999, c. 6, s. 67 (5).

RIGHTS OF ACTION

No action for benefits

26. (1) No action lies to obtain benefits under the insurance plan, but all claims for benefits shall be heard and determined by the Board. 1997, c. 16, Sched. A, s. 26 (1).

Benefits in lieu of rights of action

(2) Entitlement to benefits under the insurance plan is in lieu of all rights of action (statutory or otherwise) that a worker, a worker's survivor or a worker's spouse, same-sex partner, child or dependant has or may have against the worker's employer or an executive officer of the employer for or by reason of an accident happening to the worker or an occupational disease contracted by the worker while in the employment of the employer. 1997, c. 16, Sched. A, s. 26 (2); 1999, c. 6, s. 67 (6).

Application of certain sections

27. (1) Sections 28 to 31 apply with respect to a worker who sustains an injury or a disease that entitles him or her to benefits under the insurance plan and to the survivors of a deceased worker who are entitled to benefits under the plan. 1997, c. 16, Sched. A, s. 27 (1).

Same

(2) If a worker's right of action is taken away under section 28 or 29, the worker's spouse, same-sex partner, child, dependant or survivors are, also, not entitled to commence an action under section 61 of the *Family Law Act*. 1997, c. 16, Sched. A, s. 27 (2); 1999, c. 6, s. 67 (7).

Certain rights of action extinguished

28. (1) A worker employed by a Schedule 1 employer, the worker's survivors and a Schedule 1 employer are not entitled to commence an action against the following persons in respect of the worker's injury or disease:

1. Any Schedule 1 employer.
2. A director, executive officer or worker employed by any Schedule 1 employer.

Same, Schedule 2 employer

(2) A worker employed by a Schedule 2 employer and the worker's survivors are not entitled to commence an action against the following persons in respect of the worker's injury or disease:

1. The worker's Schedule 2 employer.

2. A director, executive officer or worker employed by the worker's Schedule 2 employer.

Restriction

(3) If the workers of one or more employers were involved in the circumstances in which the worker sustained the injury, subsection (1) applies only if the workers were acting in the course of their employment.

Exception

(4) Subsections (1) and (2) do not apply if any employer other than the worker's employer supplied a motor vehicle, machinery or equipment on a purchase or rental basis without also supplying workers to operate the motor vehicle, machinery or equipment. 1997, c. 16, Sched. A, s. 28.

Liability where negligence, fault

29. (1) This section applies in the following circumstances:

1. In an action by or on behalf of a worker employed by a Schedule 1 employer or a survivor of such a worker, any Schedule 1 employer or a director, executive officer or another worker employed by a Schedule 1 employer is determined to be at fault or negligent in respect of the accident or the disease that gives rise to the worker's entitlement to benefits under the insurance plan.
2. In an action by or on behalf of a worker employed by a Schedule 2 employer or a survivor of such a worker, the worker's Schedule 2 employer or a director, executive officer or another worker employed by the employer is determined to be at fault or negligent in respect of the accident or the disease that gives rise to the worker's entitlement to benefits under the insurance plan.

Same

(2) The employer, director, executive officer or other worker is not liable to pay damages to the worker or his or her survivors or to contribute to or indemnify another person who is liable to pay such damages.

Determination of fault

(3) The court shall determine what portion of the loss or damage was caused by the fault or negligence of the employer, director, executive officer or other worker and shall do so whether or not he, she or it is a party to the action.

Same

(4) No damages, contribution or indemnity for the amount determined under subsection (3) to be caused by a person described in that subsection is recoverable in an action. 1997, c. 16, Sched. A, s. 29.

Election, concurrent entitlements

30. (1) This section applies when a worker or a survivor of a deceased worker is entitled to benefits under the insurance plan with respect to an injury or disease and is also entitled to commence an action against a person in respect of the injury or disease.

Election

(2) The worker or survivor shall elect whether to claim the benefits or to commence the action and shall notify the Board of the option elected.

Same

(3) If the worker is or was employed by a Schedule 2 employer, the worker or survivor shall also notify the employer.

Same

(4) The election must be made within three months after the accident occurs or, if the accident results in death, within three months after the date of death.

Same

(5) The Board may permit the election to be made within a longer period if, in the opinion of the Board, it is just to do so.

Same

(6) If an election is not made or if notice of election is not given, the worker or survivor shall be deemed, in the absence of evidence to the contrary, to have elected not to receive benefits under the insurance plan.

Same, minor

(7) If the worker or survivor is less than 18 years of age, his or her parent or guardian or the Children's Lawyer may make the election on his or her behalf. 1997, c. 16, Sched. A, s. 30 (1-7).

Same, incapable person

- (8) If a worker is mentally incapable of making the election or is unconscious as a result of the injury,
- (a) the worker's guardian or attorney may make the election on behalf of the worker;
 - (b) if there is no guardian or attorney, the worker's spouse or same-sex partner may make the election on behalf of the worker; or
 - (c) if there is no guardian or attorney and if no election is made within 60 days after the date of the injury, the Public Guardian and Trustee shall make the election on behalf of the worker. 1997, c. 16, Sched. A, s. 30 (8); 1999, c. 6, s. 67 (8).

Same

- (9) If a survivor is mentally incapable of making the election,
- (a) the survivor's guardian or attorney may make the election on behalf of the survivor; or
 - (b) if there is no guardian or attorney and if no election is made within 60 days after the death of the worker, the Public Guardian and Trustee shall make the election on behalf of the survivor.

Subrogation, Schedule 1 employer

(10) If the worker or survivor elects to claim benefits under the insurance plan and if the worker is employed by a Schedule 1 employer or the deceased worker was so employed, the Board is subrogated to the rights of the worker or survivor in respect of the action. The Board is solely entitled to determine whether or not to commence, continue or abandon the action and whether to settle it and on what terms.

Same, Schedule 2 employer

(11) If the worker or survivor elects to claim benefits under the insurance plan and if the worker is employed by a Schedule 2 employer or the deceased worker was so employed, the employer is subrogated to the rights of the worker or survivor in respect of the action. The employer is solely entitled to determine whether or not to commence, continue or abandon the action and whether to settle it and on what terms.

Surplus

(12) If the Board or the employer pursues the action and receives an amount of money greater than the amount expended in pursuing the action and providing the benefits under the insurance plan to the worker or the survivor, the Board or the employer (as the case may be) shall pay the surplus to the worker or survivor.

Effect of surplus

(13) Future payments to the worker or survivor under the insurance plan shall be reduced to the extent of the surplus paid to him or her.

If worker elects to commence action

(14) The following rules apply if the worker or survivor elects to commence the action instead of claiming benefits under the insurance plan:

1. The worker or survivor is entitled to receive benefits under the insurance plan to the extent that, in a judgment in the action, the worker or survivor is awarded less than the amount described in paragraph 3.
2. If the worker or survivor settles the action and the Board approves the settlement before it is made, the worker or survivor is entitled to receive benefits under the insurance plan to the extent that the amount of the settlement is less than the amount described in paragraph 3.
3. For the purposes of paragraphs 1 and 2, the amount is the cost to the Board of the benefits that would have been provided under the plan to the worker or survivor, if the worker or survivor had elected to claim benefits under the plan instead of commencing the action.

Determining amount

(15) For the purpose of determining the amount of benefits a worker or survivor is entitled to under subsection (14), the amount of a judgment in an action or the amount of a settlement shall be calculated as including the amount of any benefits that have been or will be received by the worker or survivor from any other source if those benefits,

- (a) have reduced the amount for which the defendant is liable to the worker or survivor in the action; or
- (b) would have been payable by the defendant but for an immunity granted to the defendant under any law. 1997, c. 16, Sched. A, s. 30 (9-15).

Decisions re rights of action and liability

31. (1) A party to an action or an insurer from whom statutory accident benefits are claimed under section 268 of the *Insurance Act* may apply to the Appeals Tribunal to determine,

- (a) whether, because of this Act, the right to commence an action is taken away;
- (b) whether the amount that a person may be liable to pay in an action is limited by this Act; or
- (c) whether the plaintiff is entitled to claim benefits under the insurance plan.

Same

- (2) The Appeals Tribunal has exclusive jurisdiction to determine a matter described in subsection (1).

Finality of decision

- (3) A decision of the Appeals Tribunal under this section is final and is not open to question or review in a court.

Claim for benefits

(4) Despite subsections 22 (1) and (2), a worker or survivor may file a claim for benefits within six months after the tribunal's determination under subsection (1).

Extension of time

(5) The Board may permit a claim to be filed after the six-month period expires if, in the opinion of the Board, it is just to do so. 1997, c. 16, Sched. A, s. 31.

PART IV HEALTH CARE

Definition

32. In this Part,

“health care” means,

- (a) professional services provided by a health care practitioner,
- (b) services provided by or at hospitals and health facilities,
- (c) drugs,
- (d) the services of an attendant,
- (e) modifications to a person's home and vehicle and other measures to facilitate independent living as in the Board's opinion are appropriate,
- (f) assistive devices and prostheses,
- (g) extraordinary transportation costs to obtain health care,
- (h) such measures to improve the quality of life of severely impaired workers as, in the Board's opinion, are appropriate. 1997, c. 16, Sched. A, s. 32.

Entitlement to health care

33. (1) A worker who sustains an injury is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury and is entitled to make the initial choice of health professional for the purposes of this section.

Arrangements for health care

(2) The Board may arrange for the worker's health care or may approve arrangements for his or her health care. The Board shall pay for the worker's health care.

Same

(3) The Board may establish such fee schedules for health care as it considers appropriate.

Penalty for late billing

(4) If the Board does not receive a bill for health care within such time as the Board may specify, the Board may reduce the amount payable for the health care by such percentage as the Board considers an appropriate penalty.

Prohibition

(5) No health care practitioner shall request a worker to pay for health care or any related service provided under the insurance plan.

No right of action

(6) No action lies against the Board to obtain payment of an amount greater than is established in the applicable fee schedule for health care provided to a worker. No action lies against a person other than the Board for payment for health care provided to a worker.

Questions re health care

(7) The Board shall determine all questions concerning,

(a) the necessity, appropriateness and sufficiency of health care provided to a worker or that may be provided to a worker; and

(b) payment for health care provided to a worker. 1997, c. 16, Sched. A, s. 33.

Duty to co-operate

34. (1) A worker who claims or is receiving benefits under the insurance plan shall co-operate in such health care measures as the Board considers appropriate.

Failure to comply

(2) If the worker fails to comply with subsection (1), the Board may reduce or suspend payments to the worker under the insurance plan while the non-compliance continues. 1997, c. 16, Sched. A, s. 34.

Board request for health examination

35. (1) Upon the request of the Board, a worker who claims or is receiving benefits under the insurance plan shall submit to a health examination by a health professional selected and paid for by the Board.

Failure to comply

(2) If the worker fails to comply with subsection (1) or obstructs the examination without reasonable cause or excuse, the Board may reduce or suspend payments to the worker under the insurance plan while the non-compliance or obstruction continues. 1997, c. 16, Sched. A, s. 35.

Employer request for health examination

36. (1) Upon the request of his or her employer, a worker who claims or is receiving benefits under the insurance plan shall submit to a health examination by a health professional selected and paid for by the employer.

Objection

(2) Despite subsection (1), the worker may object to undergoing the examination or to the nature and extent of the examination requested by the employer. The worker shall notify the employer of his or her objection.

Request to Board

(3) Within 14 days after receiving the worker's objection, the employer may request that the Board direct the worker to submit to the examination and, if necessary, that the Board determine the nature and extent of the examination.

Decision final

(4) A decision of the Board under this section is final and is not appealable to the Appeals Tribunal.

Failure to comply

(5) If the worker does not comply with a direction of the Board made under subsection (3), the Board may reduce or suspend payments to the worker under the insurance plan while the non-compliance continues. 1997, c. 16, Sched. A, s. 36.

Reports

Reports re health care

37. (1) Every health care practitioner who provides health care to a worker claiming benefits under the insurance plan or who is consulted with respect to his or her health care shall promptly give the Board such information relating to the worker as the Board may require.

Same

(2) Every hospital or health facility that provides health care to a worker claiming benefits under the insurance plan shall promptly give the Board such information relating to the worker as the Board may require.

Report re functional abilities

(3) When requested to do so by an injured worker or the employer, a health professional treating the worker shall give the Board, the worker and the employer such information as may be prescribed concerning the worker's functional abilities. The required information must be provided on the prescribed form.

Confidentiality of report

(4) Neither an employer nor an employer's representative shall disclose the information contained in the functional abilities form except to a person assisting the employer to return the worker to work under section 40 or 41.

Payment

(5) The Board shall pay the health care practitioner, hospital or health facility for providing the required information and shall fix the amount to be paid to him, her or it. 1997, c. 16, Sched. A, s. 37.

Transportation to hospital, etc.

38. (1) At the time an injury occurs, the injured worker's employer shall provide transportation for the worker (if the worker needs it) to a hospital or a physician located within a reasonable distance or to the worker's home. The employer shall pay for the transportation.

Failure to comply

(2) If the employer fails to comply with subsection (1), the Board may order the employer to pay for any transportation obtained by or on behalf of the worker or provided by the Board. 1997, c. 16, Sched. A, s. 38.

Repair to assistive devices

39. (1) The Board may pay to repair or replace a worker's assistive device or prosthesis if it is damaged as a result of an accident in the worker's employment.

Eligibility for benefits

(2) If the worker is unable to work because of the damage to his or her assistive device or prosthesis, the worker is entitled to benefits under the insurance plan as if the inability to work had been caused by a personal injury.

Allowance

(3) If the Board pays for an assistive device or prosthesis, the Board may upon request give the worker an annual allowance to repair or replace clothing that is worn or damaged because of it. 1997, c. 16, Sched. A, s. 39.

**PART V
RETURN TO WORK**

Duty to co-operate in return to work

40. (1) The employer of an injured worker shall co-operate in the early and safe return to work of the worker by,

- (a) contacting the worker as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment;
- (b) attempting to provide suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores the worker's pre-injury earnings;
- (c) giving the Board such information as the Board may request concerning the worker's return to work; and
- (d) doing such other things as may be prescribed. 1997, c. 16, Sched. A, s. 40 (1).

Same, worker

- (2) The worker shall co-operate in his or her early and safe return to work by,
 - (a) contacting his or her employer as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment;
 - (b) assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores his or her pre-injury earnings;
 - (c) giving the Board such information as the Board may request concerning the worker's return to work; and
 - (d) doing such other things as may be prescribed. 1997, c. 16, Sched. A, s. 40 (2).

Same, construction industry

(3) Employers engaged primarily in construction and workers who perform construction work shall co-operate in a worker's early and safe return to work and shall do so in accordance with such requirements as may be prescribed. Subsections (1) and (2) do not apply with respect to those employers and workers. 1997, c. 16, Sched. A, s. 40 (3).

Same, emergency workers

(4) If an emergency worker is injured, the worker's deemed employer is not required to comply with this section. The worker's actual employer, if any, is required to do so. However, the deemed employer is required to pay the costs of the actual employer's compliance with this section. 1997, c. 16, Sched. A, s. 40 (4).

Certain volunteers

(4.1) Subsection (4) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker. 2000, c. 26, Sched. I, s. 1 (2); 2002, c. 18, Sched. J, s. 5 (3).

Board assistance, etc.

(5) The Board may contact the employer and the worker to monitor their progress on returning the worker to work, to determine whether they are fulfilling their obligations to co-operate and to determine whether any assistance is required to facilitate the worker's return to work. 1997, c. 16, Sched. A, s. 40 (5).

Notice of dispute

(6) The employer or the worker shall notify the Board of any difficulty or dispute concerning their co-operation with each other in the worker's early and safe return to work. 1997, c. 16, Sched. A, s. 40 (6).

Resolution of dispute

(7) The Board shall attempt to resolve the dispute through mediation and, if mediation is not successful, shall decide the matter within 60 days after receiving the notice or within such longer period as the Board may determine. 1997, c. 16, Sched. A, s. 40 (7).

Transition, vocational rehabilitation

(8) Until this section applies to an employer and the workers employed by the employer, subsections 53 (1) to (3) of the *Workers' Compensation Act*, as deemed to be amended by this Act, continue to apply with necessary modifications despite their repeal. 1997, c. 16, Sched. A, s. 40 (8).

Obligation to re-employ

41. (1) The employer of a worker who has been unable to work as a result of an injury and who, on the date of the injury, had been employed continuously for at least one year by the employer shall offer to re-employ the worker in accordance with this section. 1997, c. 16, Sched. A, s. 41 (1).

Exception

(2) This section does not apply in respect of employers who regularly employ fewer than 20 workers or such classes of employers as may be prescribed. 1997, c. 16, Sched. A, s. 41 (2).

Determinations re return to work

(3) The Board may determine the following matters on its own initiative or shall determine them if the worker and the employer disagree about the fitness of the worker to return to work:

1. If the worker has not returned to work with the employer, the Board shall determine whether the worker is medically able to perform the essential duties of his or her pre-injury employment or to perform suitable work.
2. If the Board has previously determined that the worker is medically able to perform suitable work, the Board shall determine whether the worker is medically able to perform the essential duties of the worker's pre-injury employment. 1997, c. 16, Sched. A, s. 41 (3).

Obligation to re-employ

(4) When the worker is medically able to perform the essential duties of his or her pre-injury employment, the employer shall,

- (a) offer to re-employ the worker in the position that the worker held on the date of injury; or
- (b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the date of injury. 1997, c. 16, Sched. A, s. 41 (4).

Same

(5) When the worker is medically able to perform suitable work (although he or she is unable to perform the essential duties of his or her pre-injury employment), the employer shall offer the worker the first opportunity to accept suitable employment that may become available with the employer. 1997, c. 16, Sched. A, s. 41 (5).

Duty to accommodate

(6) The employer shall accommodate the work or the workplace for the worker to the extent that the accommodation does not cause the employer undue hardship. 1997, c. 16, Sched. A, s. 41 (6).

Duration of obligation

- (7) The employer is obligated under this section until the earliest of,
- (a) the second anniversary of the date of injury;
 - (b) one year after the worker is medically able to perform the essential duties of his or her pre-injury employment; and
 - (c) the date on which the worker reaches 65 years of age. 1997, c. 16, Sched. A, s. 41 (7); 2000, c. 26, Sched. I, s. 1 (3).

Construction industry requirements

(8) Employers engaged primarily in construction shall comply with such requirements as may be prescribed concerning the re-employment of workers who perform construction work. The application of this subsection is not contingent on the length of a worker's continuous employment as required under subsection (1). Subsections (2), (4) to (7) and (10) do not apply with respect to those workers and employers. 1997, c. 16, Sched. A, s. 41 (8).

Transition

(9) Until requirements referred to in subsection (8) are prescribed, subsection 54 (9) of the *Workers' Compensation Act* and Ontario Regulation 259/92 continue to apply with necessary modifications to employers and workers referred to in subsection (8) despite the repeal of subsection 54 (9). 1997, c. 16, Sched. A, s. 41 (9).

Effect of termination

(10) If an employer re-employs a worker in accordance with this section and then terminates the employment within six months, the employer is presumed not to have fulfilled the employer's obligations under this section. The employer may rebut the presumption by showing that the termination of the worker's employment was not related to the injury. 1997, c. 16, Sched. A, s. 41 (10).

Determination re compliance

(11) Upon the request of a worker or on its own initiative, the Board shall determine whether the employer has fulfilled the employer's obligations to the worker under this section. 1997, c. 16, Sched. A, s. 41 (11).

Restriction

(12) The Board is not required to consider a request under subsection (11) by a worker who has been re-employed and whose employment is terminated within six months if the request is made more than three months after the date of termination of employment. 1997, c. 16, Sched. A, s. 41 (12).

Failure to comply

- (13) If the Board decides that the employer has not fulfilled the employer's obligations to the worker, the Board may,
- (a) levy a penalty on the employer not exceeding the amount of the worker's net average earnings for the year preceding the injury; and
 - (b) make payments to the worker for a maximum of one year as if the worker were entitled to payments under section 43 (loss of earnings). 1997, c. 16, Sched. A, s. 41 (13).

Same

(14) A penalty payable under subsection (13) is an amount owing to the Board. 1997, c. 16, Sched. A, s. 41 (14).

Conflict with collective agreement

(15) If this section conflicts with a collective agreement that is binding upon the employer and if the employer's obligations under this section afford the worker greater re-employment terms than does the collective agreement, this section prevails over the collective agreement. However, this subsection does not operate to displace the seniority provisions of the collective agreement. 1997, c. 16, Sched. A, s. 41 (15).

Emergency workers

(16) If an emergency worker is injured, the worker's deemed employer is not required to comply with this section. The worker's actual employer, if any, is required to do so. However, the deemed employer is required to pay the costs of the actual employer's compliance with subsection (6). 1997, c. 16, Sched. A, s. 41 (16).

Certain volunteers

(17) Subsection (16) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker. 2000, c. 26, Sched. I, s. 1 (4); 2002, c. 18, Sched. J, s. 5 (4).

Labour market re-entry**Labour market re-entry assessment**

42. (1) The Board shall provide a worker with a labour market re-entry assessment if any of the following circumstances exist:

1. If it is unlikely that the worker will be re-employed by his or her employer because of the nature of the injury.
2. If the worker's employer has been unable to arrange work for the worker that is consistent with the worker's functional abilities and that restores the worker's pre-injury earnings.
3. If the worker's employer is not co-operating in the early and safe return to work of the worker.

Labour market re-entry plan

(2) Based on the results of the assessment, the Board shall decide if a worker requires a labour market re-entry plan in order to enable the worker to re-enter the labour market and reduce or eliminate the loss of earnings that may result from the injury.

Suitable employment or business

(3) In deciding whether a plan is required for a worker, the Board shall determine the employment or business that is suitable for the worker.

Preparation of plan

(4) The Board shall arrange for a plan to be prepared for a worker if the Board determines that the worker requires a labour market re-entry plan.

Consultation required

- (5) The labour market re-entry plan shall be prepared in consultation with,
- (a) the worker and, unless the Board considers it inappropriate to do so, the worker's employer; and
 - (b) the worker's health practitioners if the Board considers it necessary to do so.

Contents of plan

(6) The plan shall contain the steps necessary to enable the worker to re-enter the labour market in the employment or business that is suitable for the worker.

Duty to co-operate

- (7) The worker shall co-operate in all aspects of the labour market re-entry assessment or plan provided to the worker.

Expenses

(8) The Board shall pay such expenses related to the plan as the Board considers appropriate to enable the worker to re-enter the labour market. 1997, c. 16, Sched. A, s. 42.

PART VI INSURED PAYMENTS

COMPENSATION

Payments for loss of earnings

43. (1) A worker who has a loss of earnings as a result of the injury is entitled to payments under this section beginning when the loss of earnings begins. The payments continue until the earliest of,

- (a) the day on which the worker's loss of earnings ceases;
- (b) the day on which the worker reaches 65 years of age, if the worker was less than 63 years of age on the date of the injury;
- (c) two years after the date of the injury, if the worker was 63 years of age or older on the date of the injury;
- (d) the day on which the worker is no longer impaired as a result of the injury. 1997, c. 16, Sched. A, s. 43 (1).

Amount

- (2) Subject to subsections (3) and (4), the amount of the payments is 85 per cent of the difference between,
- (a) the worker's net average earnings before the injury; and
 - (b) the net average earnings that he or she earns or is able to earn in suitable employment or business after the injury.

However, the minimum amount of the payments for full loss of earnings is the lesser of \$15,312.51 or the worker's net average earnings before the injury. 1997, c. 16, Sched. A, s. 43 (2); 2000, c. 26, Sched. I, s. 1 (5).

Payments where co-operating

(3) The amount of the payment is 85 per cent of the difference between his or her net average earnings before the injury and any net average earnings the worker earns after the injury, if the worker is co-operating in health care measures and,

- (a) his or her early and safe return to work; or
- (b) all aspects of a labour market re-entry assessment or plan. 1997, c. 16, Sched. A, s. 43 (3); 2000, c. 26, Sched. I, s. 1 (6).

Earnings after injury

(4) The Board shall deem the worker's earnings after the injury to be the earnings that the worker is able to earn from the employment or business that is suitable for the worker under section 42 and,

- (a) if the worker is provided with a labour market re-entry plan, the earnings shall be deemed as of the date the worker completes the plan; or
- (b) if the Board determines that the worker does not require a labour market re-entry plan, the earnings shall be deemed as of the date this determination is made. 1997, c. 16, Sched. A, s. 43 (4).

Calculation of amount

- (5) The calculation of the amount of the payments is subject to the following rules:
 - 1. The amount of the net average earnings before the injury must be adjusted by the alternate indexing factor for each January 1 since the date of the injury.
 - 2. The amount described by clause (2) (b) must reflect any disability payments paid to the worker under the *Canada Pension Plan* or the *Quebec Pension Plan* in respect of the injury.
 - 3. If the amount described by clause (2) (b) is not zero and does not consist solely of disability payments in respect of the injury paid to the worker under the *Canada Pension Plan* or the *Quebec Pension Plan*, the amount of the payment must be adjusted,
 - i. by multiplying, for each January 1 since the date of the injury, the amount of the payment by the sum of one plus the general indexing factor expressed as a fraction, and
 - ii. by dividing, for each January 1 since the date of the injury, the amount of the payment by the sum of one plus the alternate indexing factor expressed as a fraction. 1997, c. 16, Sched. A, s. 43 (5).

Annual adjustment

- (6) Every year on January 1, the Board shall adjust the amount of the payments otherwise payable to a worker using,
 - (a) the alternate indexing factor, if the amount described by clause (2) (b) is zero or consists solely of disability payments in respect of the injury paid to the worker under the *Canada Pension Plan* or the *Quebec Pension Plan*; or
 - (b) the general indexing factor in any other case. 1997, c. 16, Sched. A, s. 43 (6).

Failure to co-operate

- (7) The Board may reduce or suspend payments to the worker during any period when the worker is not co-operating,
 - (a) in health care measures;
 - (b) in his or her early and safe return to work; or
 - (c) in all aspects of a labour market re-entry assessment or plan provided to the worker. 1997, c. 16, Sched. A, s. 43 (7).

Review re loss of earnings

44. (1) Every year or if a material change in circumstances occurs, the Board may review payments to a worker for loss of earnings and may confirm, vary or discontinue the payments. 1997, c. 16, Sched. A, s. 44 (1).

No review after 72-month period

(2) Subject to subsection (2.1), the Board shall not review the payments more than 72 months after the date of the worker's injury. 2002, c. 18, Sched. J, s. 5 (5).

Exception

- (2.1) The Board may review the payments more than 72 months after the date of the worker's injury if,
 - (a) before the 72-month period expires, the worker fails to notify the Board of a material change in circumstances or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan;
 - (b) the worker was provided with a labour market re-entry plan and the plan is not completed when the 72-month period expires; or
 - (c) the worker suffers a significant deterioration in his or her condition that results in a redetermination of the degree of the permanent impairment under section 47. 2002, c. 18, Sched. J, s. 5 (5).

Time for review when clause (2.1) (a) applies

(2.2) If clause (2.1) (a) applies, the Board may review the payments at any time. 2002, c. 18, Sched. J, s. 5 (5).

Time for review when clause (2.1) (b) applies

(2.3) If clause (2.1) (b) applies, the Board may review the payments,

- (a) within the 30 days after the date on which the plan is completed; and
- (b) at any time, if the worker, at any time on or before the day that is 30 days after the date on which the plan is completed, fails to notify the Board of a material change in circumstances, or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan. 2002, c. 18, Sched. J, s. 5 (5).

Time for review when clause (2.1) (c) applies

(2.4) If clause (2.1) (c) applies, the Board may review the payments,

- (a) within the 24 months after the date on which it redetermines the degree of permanent impairment; and
- (b) at any time, if the worker, at any time on or before the day on which the Board reviews the payments under clause (a), fails to notify the Board of a material change in circumstances, or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan. 2002, c. 18, Sched. J, s. 5 (5).

Transition

(2.5) Clause (2.1) (b) and subsection (2.3) apply with respect to,

- (a) a worker who has been provided with a labour market re-entry plan that is not completed before the day subsection 5 (5) of Schedule J to the *Government Efficiency Act, 2002* comes into force;
- (b) a worker who is provided with a labour market re-entry plan on or after the day subsection 5 (5) of Schedule J to the *Government Efficiency Act, 2002* comes into force. 2002, c. 18, Sched. J, s. 5 (5).

Same

(2.6) Clause (2.1) (c) and subsection (2.4) apply with respect to a worker whose degree of permanent impairment is redetermined by the Board on or after the day subsection 5 (5) of Schedule J to the *Government Efficiency Act, 2002* comes into force. 2002, c. 18, Sched. J, s. 5 (5).

Same, certain older workers

(3) A worker may direct the Board not to review the payments for loss of earnings,

- (a) if the worker is 55 years old or more when the Board determines that he or she is entitled to payments for loss of earnings;
- (b) if he or she has reached maximum medical recovery; and
- (c) if a labour market re-entry plan for the worker has been completed. 1997, c. 16, Sched. A, s. 44 (3); 2002, c. 18, Sched. J, s. 5 (6).

Same

(4) The direction must be given within 30 days after the later of,

- (a) the date on which the worker reaches maximum medical recovery; and
- (b) the date on which the worker's labour market re-entry plan is completed. 1997, c. 16, Sched. A, s. 44 (4); 2002, c. 18, Sched. J, s. 5 (7).

Effect of direction

(5) If the worker gives the direction to the Board, he or she is entitled to receive the payments until he or she reaches 65 years of age. The direction is irrevocable. 1997, c. 16, Sched. A, s. 44 (5).

Same

(6) If the worker gives the direction to the Board, the Board shall review payments to the worker only if, before the direction was given, the worker failed to notify the Board of a material change in circumstances or engaged in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan. 1997, c. 16, Sched. A, s. 44 (6).

Payments for loss of retirement income

45. (1) This section applies with respect to a worker who is receiving payments under the insurance plan for loss of earnings. However, it does not apply with respect to a worker who was 64 years of age or older on the date of the injury. 1997, c. 16, Sched. A, s. 45 (1).

Amount set aside

(2) If a worker has received payments for loss of earnings for 12 continuous months, the Board shall set aside for him or her an amount equal to 5 per cent of every subsequent payment to him or her for loss of earnings. (Payments made under section 65 to another person shall be deemed to have been made to the worker.) 1997, c. 16, Sched. A, s. 45 (2).

Contribution by worker

(3) If amounts are being set aside for a worker under subsection (2), he or she may elect to contribute an amount equal to 5 per cent of every payment to him or her for loss of earnings. The election is irrevocable and must be in writing in a form approved by the Board. 1997, c. 16, Sched. A, s. 45 (3).

Same

(4) If the worker makes the election under subsection (3), the Board shall deduct the worker's contribution from each payment to him or her for loss of earnings. 1997, c. 16, Sched. A, s. 45 (4).

Entitlement to benefit

(5) When the worker reaches 65 years of age, he or she is entitled to receive a retirement benefit under this section. The amount of the benefit is the sum of the amount set aside by the Board and the contribution by the worker, if any, plus the accumulated investment income on those amounts. 1997, c. 16, Sched. A, s. 45 (5).

Payment scheme

(6) The worker may select the payment scheme for the benefit from among such schemes and subject to such restrictions as may be prescribed. However, if the amount of the benefit is less than \$1,145.63 per year, the Board shall pay it as a lump sum. 1997, c. 16, Sched. A, s. 45 (6); 2000, c. 26, Sched. I, s. 1 (7).

Prescribed benefits – survivors

(7) When the worker dies, his or her survivors are entitled to the prescribed benefits in respect of amounts set aside for the worker under subsection (2). However, a survivor who receives benefits under section 48 is not entitled to benefits under this subsection. 2002, c. 18, Sched. J, s. 5 (8).

Prescribed benefits – beneficiary or estate

(7.1) If the worker has no survivors and has designated a beneficiary, the beneficiary is entitled to the prescribed benefits. If the worker has not designated a beneficiary, the worker's estate is entitled to the prescribed benefits. 2002, c. 18, Sched. J, s. 5 (8).

No entitlement to prescribed benefits

(7.2) If there is no entitlement to the prescribed benefits under subsection (7) or (7.1), the Board shall remove from the fund maintained under subsection (12) the amounts set aside for the worker and the accumulated investment income on the amounts, and shall transfer the total,

- (a) to the worker's employer, if it is a Schedule 2 employer that is individually liable to pay benefits with respect to the worker under the insurance plan; or
- (b) in any other case, to the insurance fund. 2002, c. 18, Sched. J, s. 5 (8).

Application

(7.3) Subsections (7) to (7.2) apply in respect of any worker who dies on or after January 1, 1998. 2002, c. 18, Sched. J, s. 5 (8).

Same

(8) The amount of the benefits under subsection (7) shall be based on the amounts set aside for the worker plus the accumulated investment income on the amounts. 1997, c. 16, Sched. A, s. 45 (8).

Same, worker's contributions

(9) When the worker dies, his or her survivors are entitled to the prescribed benefits in respect of amounts contributed by the worker under subsection (3). If there are no survivors, the beneficiary designated by the worker or (if no beneficiary is designated) the worker's estate is entitled to the benefits under this subsection. 1997, c. 16, Sched. A, s. 45 (9).

Same

(10) The amount of the benefits under subsection (9) shall be based on the amounts contributed by the worker plus the accumulated investment income on the amounts. 1997, c. 16, Sched. A, s. 45 (10).

Annual statements

(11) The Board shall provide the worker with an annual statement setting out,

- (a) the amounts set aside by the Board in the worker's name in the year;
- (b) the amounts contributed by the worker in the year, if any;
- (c) the accumulated investment income earned on the amounts referred to in clauses (a) and (b) in the year;
- (d) the date when the worker will become entitled to a benefit;
- (e) the name of any designated beneficiary; and
- (f) such other information as the Board considers appropriate. 1997, c. 16, Sched. A, s. 45 (11); 1999, c. 6, s. 67 (9); 2001, c. 9, Sched. I, s. 4 (1).

Benefit fund

(12) The Board shall maintain a fund into which the amounts set aside under subsection (2) or contributed under subsection (3) shall be deposited. 1997, c. 16, Sched. A, s. 45 (12).

Investment

(13) Subsections 97 (4) to (7) apply with respect to the investment of money in the fund. 1997, c. 16, Sched. A, s. 45 (13).

Compensation for non-economic loss

46. (1) If a worker's injury results in permanent impairment, the worker is entitled to compensation under this section for his or her non-economic loss. 1997, c. 16, Sched. A, s. 46 (1).

Amount

(2) The amount of the compensation is calculated by multiplying the percentage of the worker's permanent impairment from the injury (as determined by the Board) and,

- (a) \$51,535.37 plus \$1,145.63 for each year by which the worker's age at the time of the injury was less than 45; or
- (b) \$51,535.37 less \$1,145.63 for each year by which the worker's age at the time of the injury was greater than 45.

However, the maximum amount to be multiplied by the percentage of the worker's impairment is \$74,439.52 and the minimum amount is \$28,631.22. 1997, c. 16, Sched. A, s. 46 (2).

Payment

(3) If the amount of the compensation is greater than \$11,452.07, it is payable as a monthly payment for the life of the worker. If it is \$11,452.07 or less, it is payable as a lump sum. 1997, c. 16, Sched. A, s. 46 (3); 2000, c. 26, Sched. I, s. 1 (8).

Same

(4) Despite subsection (3), within 30 days of the worker being notified by the Board of the amount of compensation under this section the worker may elect to receive in a lump sum the amount otherwise payable monthly. The election is irrevocable. 1997, c. 16, Sched. A, s. 46 (4).

Degree of permanent impairment

47. (1) If a worker suffers permanent impairment as a result of the injury, the Board shall determine the degree of his or her permanent impairment expressed as a percentage of total permanent impairment.

Same

(2) The determination must be made in accordance with the prescribed rating schedule (or, if the schedule does not provide for the impairment, the prescribed criteria) and,

- (a) having regard to medical assessments, if any, conducted under this section; and
- (b) having regard to the health information about the worker on file with the Board.

Medical assessment

(3) The Board may require a worker to undergo a medical assessment after he or she reaches maximum medical recovery.

Selection of physician

(4) The worker shall select a physician from a roster maintained by the Board to perform the assessment. If the worker does not make the selection within 30 days after the Board gives the worker a copy of the roster, the Board shall select the physician.

Same

(5) The physician who is selected to perform the assessment shall examine the worker and assess the extent of his or her permanent impairment. When performing the assessment, the physician shall consider any reports by the worker's treating health professional.

Report

(6) The physician shall promptly give the Board a report on the assessment.

Same

(7) The Board shall give a copy of the report to the worker and to the employer who employed him or her on the date of the injury.

Request to reassess

(8) The Board may request a physician to perform a second assessment of the worker if the Board considers the initial assessment or the report on it to be incomplete or inaccurate.

Request for redetermination

(9) If the degree of the worker's permanent impairment is greater than zero and if the worker suffers a significant deterioration in his or her condition, the worker may request that the Board redetermine the degree of the permanent impairment.

Restriction

(10) The worker is not entitled to request a redetermination until 12 months have elapsed since the most recent determination by the Board concerning the degree of his or her impairment.

Redetermination

(11) Subsections (1) to (8) apply with respect to the redetermination.

Payment for medical assessments

(12) The Board shall pay the physician for performing the medical assessment and providing the report and shall fix the amount to be paid to him or her.

Permanent impairment

(13) For the purposes of this Act, a worker shall be deemed not to have a permanent impairment if the degree of his or her permanent impairment is determined to be zero. 1997, c. 16, Sched. A, s. 47.

Death benefits

48. (1) This section applies when a worker's death results from an injury for which the worker would otherwise have been entitled to benefits under the insurance plan. 1997, c. 16, Sched. A, s. 48 (1).

Spouse or same-sex partner, lump sum payment

(2) A surviving spouse or same-sex partner who was cohabiting with the worker at the time of the worker's death is entitled to payment of a lump sum of \$55,555.55,

- (a) plus \$1,388.88 for each year by which the spouse's or same-sex partner's age on the date of the worker's death is less than 40; or
- (b) minus \$1,388.88 for each year by which the spouse's or same-sex partner's age at the date of the worker's death is greater than 40.

However, the maximum amount payable under this subsection is \$83,333.30 and the minimum amount is \$27,777.76. 1997, c. 16, Sched. A, s. 48 (2); 1999, c. 6, s. 67 (10).

Periodic payment to spouse or same-sex partner, no children

(3) If the deceased worker is survived by a spouse or same-sex partner who was cohabiting with the worker at the time of the worker's death, but no children, the spouse or same-sex partner is entitled to be paid, by periodic payments, 40 per cent of the deceased worker's net average earnings,

- (a) plus 1 per cent of the net average earnings for each year by which the spouse's or same-sex partner's age on the date of the worker's death is greater than 40; or
- (b) minus 1 per cent of the net average earnings for each year by which the spouse's or same-sex partner's age on the date of the worker's death is less than 40.

However, the maximum percentage payable under this subsection is 60 per cent and the minimum percentage is 20 per cent. If the deceased worker's net average earnings are less than \$15,312.51, they shall be deemed to be \$15,312.51. 1997, c. 16, Sched. A, s. 48 (3); 1999, c. 6, s. 67 (11).

Periodic payment to spouse or same-sex partner with children

(4) If the deceased worker is survived by a spouse or same-sex partner and one or more children, the spouse or same-sex partner is entitled to be paid, by periodic payments, 85 per cent of the deceased worker's net average earnings until the youngest child reaches 19 years of age. However, the minimum amount payable under this subsection is \$15,312.51 per year. 1997, c. 16, Sched. A, s. 48 (4); 1999, c. 6, s. 67 (12).

Exception

(5) Subsection (4) does not apply if the Board determines that the spouse or same-sex partner and the children do not reside together or that the children are not in the custody or in the care and control of the spouse or same-sex partner. In those circumstances, the Board shall apportion the amount otherwise payable under subsection (4) in a manner that the Board considers appropriate among the children, the spouse or same-sex partner and any other person who has the care, control or custody of the children. 1997, c. 16, Sched. A, s. 48 (5); 1999, c. 6, s. 67 (13).

Same

(6) Subject to subsection (19), a spouse or same-sex partner who ceases to be entitled to payments under subsection (4) becomes entitled to payments under subsection (3) as if the worker had died immediately after the day on which the youngest child reached 19 years of age. 1997, c. 16, Sched. A, s. 48 (6); 1999, c. 6, s. 67 (14).

Separated spouse or same-sex partner

(7) If, immediately before his or her death, the deceased worker was required to make support or maintenance payments under a separation agreement or judicial order to a person who had been his or her spouse or same-sex partner, the person is entitled to benefits under this section as a spouse or same-sex partner. Despite the absence of a separation agreement or judicial order, the Board may pay benefits under this section to a person who had been a spouse or same-sex partner of the deceased worker as if he or she were a spouse or same-sex partner if the person was dependent on the worker at the time of the worker's death. 1997, c. 16, Sched. A, s. 48 (7); 1999, c. 6, s. 67 (15).

Apportionment among spouses or same-sex partners

(8) If there is more than one person entitled to payments under this section as a spouse or same-sex partner of the deceased worker, the following rules apply:

1. The total lump sum payments to the spouses or same-sex partners must not exceed \$83,333.30.
2. The total periodic payments to the spouses or same-sex partners must not exceed 85 per cent of the deceased worker's net average earnings.

3. The Board shall apportion the payments among the spouses or same-sex partners in accordance with,
 - i. the relative degree of financial and emotional dependance of each spouse or same-sex partner on the deceased worker at the time of death,
 - ii. the period of separation, if any, of each spouse or same-sex partner from the deceased worker at the time of death, and
 - iii. the size of the relative entitlements of those so entitled without reference to this subsection. 1997, c. 16, Sched. A, s. 48 (8); 1999, c. 6, s. 67 (16).

Labour market re-entry plan for spouse or same-sex partner

(9) Upon request, the Board shall provide a spouse or same-sex partner with a labour market re-entry assessment. The request must be made within one year after the death of the worker. 1997, c. 16, Sched. A, s. 48 (9); 1999, c. 6, s. 67 (17).

Same

(10) Subsections 42 (2) to (8) apply with necessary modifications with respect to the labour market re-entry plan. 1997, c. 16, Sched. A, s. 48 (10).

Same

(11) If the spouse or same-sex partner fails to comply with subsection 42 (7), the Board may discontinue the provision of a labour market re-entry assessment or plan. 1997, c. 16, Sched. A, s. 48 (11); 1999, c. 6, s. 67 (18); 2000, c. 26, Sched. I, s. 1 (9).

Bereavement counselling

(12) Upon request, the Board may pay for bereavement counselling for the spouse, same-sex partner or the children of the worker. The request must be received within one year after the worker's death. 1997, c. 16, Sched. A, s. 48 (12); 1999, c. 6, s. 67 (19).

Lump sum payment to dependent children, no spouse or same-sex partner

(13) If there is no spouse or same-sex partner when the worker dies and if the deceased worker is survived by one or more dependent children, the dependent children as a class are entitled to payment of a lump sum of \$55,555.55. 1997, c. 16, Sched. A, s. 48 (13); 1999, c. 6, s. 67 (20).

Periodic payment to dependent children, no spouse or same-sex partner

(14) If there is no spouse or same-sex partner or if the spouse or same-sex partner dies and the deceased worker is survived by only one dependent child, the dependent child is entitled to be paid, by periodic payments, 30 per cent of the deceased worker's net average earnings. However, if the deceased worker's net average earnings are less than \$15,312.51, they shall be deemed to be \$15,312.51. 1997, c. 16, Sched. A, s. 48 (14); 1999, c. 6, s. 67 (21).

Same

(15) If there is no spouse or same-sex partner or if the spouse or same-sex partner dies and the deceased worker is survived by more than one dependent child, the dependent children as a class are entitled to be paid, by periodic payments, 30 per cent of the deceased worker's net average earnings plus 10 per cent of the net average earnings for each dependent child, except one child. However, if the deceased worker's net average earnings are less than \$15,312.51 they shall be deemed to be \$15,312.51 and the total amount payable under this subsection shall not exceed 85 per cent of the net average earnings of the worker at the time of the accident. 1997, c. 16, Sched. A, s. 48 (15); 1999, c. 6, s. 67 (22).

Cessation of payments for children

(16) Periodic payments in respect of a child cease when the child reaches 19 years of age, except in the circumstances described in subsections (17) and (18). 1997, c. 16, Sched. A, s. 48 (16).

Periodic payments, education of children

(17) If the Board is satisfied that it is advisable for a child over 19 years of age to continue his or her education, the child is entitled to be paid, by periodic payments, 10 per cent of the deceased worker's net average earnings until such time as the Board considers appropriate. 1997, c. 16, Sched. A, s. 48 (17).

Periodic payments, incapable children

(18) Periodic payments in respect of a child who is physically or mentally incapable of earning wages continue until the child is able to earn wages or until his or her death. 1997, c. 16, Sched. A, s. 48 (18).

Maximum payable to spouse or same-sex partner and children

(19) The total periodic payments to the spouse or same-sex partner and the children of the deceased worker must not exceed 85 per cent of the deceased worker's net average earnings. 1997, c. 16, Sched. A, s. 48 (19); 1999, c. 6, s. 67 (23).

Parent (not spouse or same-sex partner)

(20) Despite subsections (14) and (15), the following rules apply if one or more children who are entitled to payments under this section are being maintained by a parent who is not the spouse or same-sex partner of the deceased worker or by another person who is acting in the role of parent:

1. The parent or other person is entitled to receive the periodic payments to which a spouse or same-sex partner of the deceased worker would be entitled under subsection (4).
2. In the circumstances described in paragraph 1, the payments to the parent or other person with respect to the children are in lieu of the periodic payments to which the children would otherwise be entitled under this section.
3. If there is more than one individual who is a parent or other person and if there is more than one child, the Board shall apportion the payments.
4. The total periodic payments under this subsection must not exceed 85 per cent of the deceased worker's net average earnings. 1997, c. 16, Sched. A, s. 48 (20); 1999, c. 6, s. 67 (24).

Dependants, no spouse, same-sex partner or children

(21) If the deceased worker has no spouse, same-sex partner or children but is survived by other dependants, the dependants are entitled to reasonable compensation proportionate to the loss occasioned to each of them. The following rules apply with respect to that compensation:

1. The Board shall determine the amount of the compensation.
2. The total periodic payments to the dependants must not exceed 50 per cent of the deceased worker's net average earnings.
3. The periodic payments to a dependant are payable only as long as the worker could have been reasonably expected to continue to support the dependant if the deceased worker had not suffered injury. 1997, c. 16, Sched. A, s. 48 (21); 1999, c. 6, s. 67 (25).

Burial expenses

(22) The Board shall determine and pay the necessary expenses of burial or cremation of the deceased worker, paying at least \$2,083.32. If, because of the circumstances of the case, the worker's body is transported a considerable distance for burial or cremation, the Board may also pay the necessary transportation costs. 1997, c. 16, Sched. A, s. 48 (22).

Deductions for CPP and QPP payments

(23) In calculating the compensation payable by way of periodic payments under this section, the Board shall have regard to any payments of survivor benefits for death caused by injury that are received under the *Canada Pension Plan* or the *Quebec Pension Plan* in respect of the deceased worker. 1997, c. 16, Sched. A, s. 48 (23).

Net average earnings

(24) For the purposes of this section, the deceased worker's net average earnings are to be determined as of the date of the injury to the worker. 1997, c. 16, Sched. A, s. 48 (24).

ANNUAL ADJUSTMENTS

General indexing factor

49. (1) On January 1 every year, a general indexing factor for the year shall be calculated using the formula,

$$(1/2 \times A) - 1$$

in which "A" is the amount of the percentage change in the Consumer Price Index for Canada for all items, for the 12-month period ending on October 31 of the previous year, as published by Statistics Canada. However, the indexing factor shall be not less than 0 per cent and not greater than 4 per cent.

Application

(2) The general indexing factor applies with respect to the calculation of all amounts payable under this Part other than,

- (a) payments to workers whose loss of earnings is 100 per cent;
- (b) payments under section 48 to survivors; and
- (c) payments to the other person referred to in subsection 48 (5) and to a parent or other person described in subsection 48 (20). 1997, c. 16, Sched. A, s. 49.

Alternate indexing factor

50. (1) On January 1 every year, an alternate indexing factor for the year shall be calculated. It is the amount of the percentage change in the Consumer Price Index for Canada for all items, for the 12-month period ending on October 31 of the previous year, as published by Statistics Canada. However, the indexing factor shall not be less than 0 per cent.

Application

- (2) The alternate indexing factor applies with respect to the calculation of payments,
 - (a) to workers whose loss of earnings is 100 per cent;
 - (b) under section 48 to survivors; and
 - (c) to the other person referred to in subsection 48 (5) and to a parent or other person described in subsection 48 (20). 1997, c. 16, Sched. A, s. 50.

Indexation of amounts in the Act

51. (1) On January 1 every year, the amounts set out in this Act (as adjusted on the preceding January 1) shall be adjusted by the amount of the general indexing factor described in subsection 49 (1). 1997, c. 16, Sched. A, s. 51 (1).

Exceptions

(2) Subsection (1) does not apply with respect to the amounts established in subsection 158 (1). 1997, c. 16, Sched. A, s. 51 (2); 2000, c. 26, Sched. I, s. 1 (10).

Annual adjustment of payments

52. (1) On January 1 every year, the Board shall adjust average earnings by applying the general or alternate indexing factor, as the case may be, to the average earnings (as adjusted on the preceding January 1) and shall make consequential changes to the amounts payable under this Part.

Increases prospective

(2) Nothing in this section entitles a person to claim additional compensation for any period before the effective date of an adjustment or with respect to an award commuted or paid as a lump sum before the effective date.

Maximum average earnings rounded

(3) The Board, when applying subsection (1) to the maximum amount of average earnings set out in section 54, shall round the adjusted amount to the nearest \$100. 1997, c. 16, Sched. A, s. 52.

ANCILLARY MATTERS

Average earnings

53. (1) The Board shall determine the amount of a worker's average earnings for the purposes of the insurance plan and in doing so shall take into account,

- (a) the rate per week at which the worker was remunerated by each of the employers for whom he or she worked at the time of the injury;
- (b) any pattern of employment that results in a variation in the worker's earnings; and
- (c) such other information as it considers appropriate.

Exception

(2) The average earnings do not include any sum paid to the worker for special expenses incurred because of the nature of the work.

Recalculation

(3) The Board shall recalculate the amount of a worker's average earnings if the Board determines that it would not be fair to continue to make payments under the insurance plan on the basis of the determination made under subsection (1). The Board shall take into account such information as it considers appropriate when recalculating the amount.

Apprentices, etc.

(4) The Board shall consider such criteria as may be prescribed in determining the average earnings of an apprentice, learner or student.

Emergency workers

(5) The earnings of an emergency worker are the worker's earnings in his or her actual employment. If the worker has no such earnings, the Board shall fix the amount of the worker's earnings for the purposes of the insurance plan.

Average earnings, recurrence of loss of earnings

(6) When a worker becomes entitled to payments for a loss of earnings arising out of an accident in respect of which he or she previously received benefits under the insurance plan, the worker's average earnings (for the purpose of calculating the amount payable for the loss of earnings) are the greater of,

- (a) his or her average earnings at the date of the accident; or
- (b) his or her average earnings when he or she was most recently employed. 1997, c. 16, Sched. A, s. 53.

Maximum amount of average earnings

54. (1) If a worker's average earnings exceed 175 per cent of the average industrial wage for Ontario for the year, his or her average earnings shall be deemed to be 175 per cent of the average industrial wage for Ontario for the year.

Average industrial wage

(2) The calculation of the average industrial wage for Ontario for a calendar year is based upon the most recent published material that is available on July 1 of the preceding year with respect to the estimated average weekly earnings industrial aggregate for Ontario as published by Statistics Canada. 1997, c. 16, Sched. A, s. 54.

Net average earnings

- 55.** (1) The Board shall determine the amount of a worker's net average earnings by deducting from his or her earnings,
- (a) the probable income tax payable by the worker on his or her earnings;
 - (b) the probable *Canada Pension Plan* or *Quebec Pension Plan* premiums payable by the worker; and
 - (c) the probable employment insurance premiums payable by the worker.

Annual redetermination

- (2) On January 1 every year, the Board shall redetermine the amount of a worker's net average earnings.

Schedule of net average earnings

(3) On January 1 every year, the Board shall establish a schedule setting out a table of net average earnings determined in accordance with this section. The schedule is conclusive and final. 1997, c. 16, Sched. A, s. 55.

ADMINISTRATION

Effect of payment, etc., from employer

56. (1) When determining the amount of any payments under the insurance plan to be made to a worker or his or her survivors, the Board shall have regard to any payment or benefit relating to the accident that is paid by the worker's employer or provided wholly at the employer's expense.

Payment to employer

(2) If the payments to the worker or survivors are made from the insurance fund, the Board may pay to the employer from the fund any amount deducted under subsection (1) from the payments. 1997, c. 16, Sched. A, s. 56.

Worker's access to records

57. (1) If there is an issue in dispute, the Board shall, upon request, give a worker access to the file kept by the Board about his or her claim and shall give the worker a copy of the documents in the file. If the worker is deceased, the Board shall give access and copies to the persons who may be entitled to payments under section 48.

Same

(2) If there is an issue in dispute and the worker is deceased, the Board, upon request, shall give access to and copies of such documents as the Board considers to be relevant to the issue in dispute to persons who may be entitled to payments under subsection 45 (9).

Same

(3) The Board shall give the same access to the file and copies of documents to a representative of a person entitled to the access and copies, if the representative has written authorization from the person.

Exception

(4) The Board shall not give a worker or his or her representative access to a document that contains health or other information that the Board believes would be harmful to the worker to see. Instead, the Board shall give a copy of the document to the worker's treating health professional and shall advise the worker or representative that it has done so. 1997, c. 16, Sched. A, s. 57.

Employer's access to records

58. (1) If there is an issue in dispute, the Board shall, upon request, give a worker's employer access to such documents in the Board's file about the claim as the Board considers to be relevant to the issue and shall give the employer a copy of those documents.

Same

(2) The Board shall give the same access and copies to a representative of the employer, if the representative has written authorization from the employer.

Notice to worker

(3) The Board shall notify the worker or his or her representative if the Board has given access and copies to the employer (or the employer's representative) and shall give a copy of the same documents to the worker. 1997, c. 16, Sched. A, s. 58.

Employer's access to health records

59. (1) Despite section 58, before giving the employer access to a report or opinion of a health care practitioner about a worker, the Board shall notify the worker or other claimant that the Board proposes to do so and shall give him or her an opportunity to object to the disclosure.

Objection

(2) If the worker or claimant notifies the Board within the time specified by the Board that he or she objects to the disclosure of the report or opinion, the Board shall consider the objection before deciding whether to disclose the report or opinion.

Notice of decision

(3) The Board shall notify the worker, claimant and employer of its decision in the matter but shall not, in any event, disclose the report or opinion until after the later of,

- (a) the expiry of 21 days after giving notice of its decision; or
- (b) if the decision is appealed, the day on which the Appeals Tribunal finally disposes of the matter.

Appeal

(4) The worker, claimant or employer may appeal the Board's decision to the Appeals Tribunal and shall do so within 21 days after the Board gives notice of its decision.

Same

(5) If the Board or the Appeals Tribunal decides to disclose all or part of a report or opinion, the Board or the tribunal may impose such conditions on the employer's access as it considers appropriate.

Duty of confidentiality

(6) The employer and the employer's representatives shall not disclose any health information obtained from the Board except in a form calculated to prevent the information from being identified with a particular worker or case. 1997, c. 16, Sched. A, s. 59.

Payments to incapable persons

60. (1) This section applies if a person entitled to payments under the insurance plan is a person that the Board considers to be incapable of managing his or her own affairs. 1997, c. 16, Sched. A, s. 60 (1).

Payments

(2) Any payments to which the person is entitled shall be made on his or her behalf to the person's guardian or attorney. If no guardian or attorney has been appointed, the payments may be made to the worker's spouse, same-sex partner or parent or to such other person for such purposes as the Board considers to be in the person's best interest. If there is no guardian or attorney or other suitable person, the payments shall be made to the Public Guardian and Trustee. 1997, c. 16, Sched. A, s. 60 (2); 1999, c. 6, s. 67 (26).

Public Guardian and Trustee

(3) If payments are made to the Public Guardian and Trustee on the person's behalf, the Public Guardian and Trustee has a duty to receive and administer the payments. 1997, c. 16, Sched. A, s. 60 (3).

Same, minor

(4) If a person entitled to payments under the insurance plan is a minor, the payments shall be made on his or her behalf to the person's spouse or same-sex partner, if not a minor, parent or guardian or to the Public Guardian and Trustee. 1997, c. 16, Sched. A, s. 60 (4); 1999, c. 6, s. 67 (27).

Payments owing to deceased workers

61. (1) If benefits owing under the insurance plan are payable to an estate and there is no personal representative of the estate to whom the Board may make the payment, the Board,

- (a) shall make reasonable inquiries to determine to whom the money owing to the estate shall be paid; or
- (b) may apply, without notice, to the court for an order for payment of money into court.

Court order

(2) Upon an application under clause (1) (b), the court may upon such notice, if any, as it considers necessary make such order as it consider appropriate.

Payments to persons entitled

(3) If the Board concludes that a person should be paid the benefits owing to the estate under clause (1) (a), the Board shall pay the benefits to the appropriate person.

Court costs

- (4) If the Board makes a payment into court under a court order, the court may,
- (a) fix, without assessment, the costs incurred upon or in conjunction with any application or order; and
 - (b) order any costs to be paid out of the benefits.

Discharge from liability

(5) A payment to a person under subsection (3) or a payment made pursuant to a court order discharges the Board from any liability to the extent of the payment.

Application

(6) The application of this section is not limited to amounts held by the Board for workers who die after this Act comes into force. 1997, c. 16, Sched. A, s. 61.

Frequency of payments

- 62.** (1) Periodic payments under the insurance plan shall be made at such times as the Board may determine.

Commutation of payments

(2) Subject to subsection (3), the Board may commute payments to a worker under section 43 (loss of earnings) and pay him or her a lump sum instead,

- (a) if the amount of the payments is 10 per cent or less of the worker's full loss of earnings; and
- (b) if the 72-month period for reviewing payments to the worker has expired or if the Board is not permitted to review the payments.

Election

(3) The worker referred to in subsection (2) may elect to receive periodic payments instead of the lump sum, and if he or she does so, the Board shall make the periodic payments. The election is irrevocable.

Advances on payments

(4) If a person is entitled to payments under the insurance plan, the Board may advance money to the person (or for his or her benefit) if the Board is of the opinion that the interest or pressing need of the person warrants it. 1997, c. 16, Sched. A, s. 62.

Agreements re payments

- 63.** (1) An agreement between a Schedule 2 employer and a worker or a worker's survivor,
- (a) that fixes the amount that the employer will pay to the worker or survivor under the insurance plan; or
 - (b) in which the worker or survivor agrees to accept a specified amount in lieu of or in satisfaction of the payments to which he or she is entitled under the insurance plan,

is not binding upon the worker or survivor unless it is approved by the Board.

Exception

(2) Subsection (1) does not apply with respect to payments to a worker for a loss of earnings that lasts for less than four weeks. However, the Board may set aside such an agreement upon such terms as it considers just, either on its own initiative or on the request of the worker.

Effect of provision

(3) Nothing in this section authorizes the making of an agreement except with respect to an accident that has already happened and the payments to which the worker or survivor has become entitled because of it. 1997, c. 16, Sched. A, s. 63.

Benefits not assignable, etc.

64. Subject to section 65, no benefits shall be assigned, garnished, charged or attached without the permission of the Board. They do not pass by operation of law except to a personal representative. No claim may be set off against them. 1997, c. 16, Sched. A, s. 64.

Deduction for support or maintenance

65. (1) This section applies if a person is entitled to payments under the insurance plan and his or her spouse (as defined in Part III of the *Family Law Act*), same-sex partner (as defined in Part III of the *Family Law Act*), children or dependants are entitled to support or maintenance under a court order. 1997, c. 16, Sched. A, s. 65 (1); 1999, c. 6, s. 67 (28).

Same

- (2) The Board shall pay all or part of the amount owing to the person under the insurance plan,
- (a) in accordance with a garnishment notice issued by a court in Ontario; or
 - (b) in accordance with a notice of a support deduction order served upon the Board by the Director of the Family Responsibility Office.

Limits and procedures

(3) Garnishment of payments is subject to the limits and procedures set out in subsections 7 (1) and (5) of the *Wages Act*. Amounts payable under the insurance plan (other than amounts set aside under section 45 (loss of retirement income)) shall be deemed to be wages for the purposes of the *Wages Act*.

Same

(4) The deduction of payments under a notice of a support deduction order is subject to the limits and procedures set out in the *Family Responsibility and Support Arrears Enforcement Act, 1996*. 1997, c. 16, Sched. A, s. 65 (2-4).

Suspension of payments

66. If payments are suspended under the insurance plan, no compensation is payable in respect of the period of suspension. 1997, c. 16, Sched. A, s. 66.

PART VII EMPLOYERS AND THEIR OBLIGATIONS

PARTICIPATING EMPLOYERS

Participating employers

67. The insurance plan applies to every Schedule 1 employer and Schedule 2 employer including the Crown and a permanent board or commission appointed by the Crown. 1997, c. 16, Sched. A, s. 67.

“Trade” of municipal corporations, etc.

68. The exercise by the following entities of their powers and the performance of their duties shall be deemed to be their trade or business for the purposes of the insurance plan:

1. A municipal corporation.
2. A public utilities commission or any other commission or any board (other than a hospital board) that manages a work or service owned by or operated for a municipal corporation.
3. A public library board.
4. The board of trustees of a police village.
5. A school board. 1997, c. 16, Sched. A, s. 68.

Training agencies and trainees

69. (1) In this section,

“placement host” means a person with whom a trainee is placed by a training agency to gain work skills and experience; (“agent d’accueil”)

“training agency” means,

- (a) a person who is registered under the *Private Career Colleges Act* to operate a private career college, or
- (b) a member of a prescribed class who provides vocational or other training. (“organisme de formation”) 1997, c. 16, Sched. A, s. 69 (1); 2002, c. 8, Sched. P, s. 8.

Election

(2) A training agency that places trainees with a placement host may elect to have the trainees considered to be workers of the training agency during their placement. However, only a training agency in an industry included in Schedule 1 or 2 may make such an election. 1997, c. 16, Sched. A, s. 69 (2).

Effect of election

(3) When the Board receives written notice of a training agency’s election, the following rules apply with respect to each trainee placed with a placement host, other than a trainee who receives wages from the placement host:

1. The placement host shall be deemed not to be an employer of the trainee for the purposes of this Act. However, the placement host remains the employer of the trainee for the purposes of section 28 (rights of action).
2. The training agency shall be deemed to be the employer of the trainee for the purposes of this Act.
3. The trainee shall be deemed to be a learner employed by the training agency. 1997, c. 16, Sched. A, s. 69 (3).

Injury to trainee

(4) If a trainee in relation to whom subsection (3) applies suffers a personal injury by accident or occupational disease while on a placement with a placement host,

- (a) the trainee's benefits under the insurance plan shall be determined as if the placement host were the trainee's employer; and
- (b) sections 40 and 41 (return to work) do not apply to the placement host or the training agency. 1997, c. 16, Sched. A, s. 69 (4).

Revocation of election

(5) The training agency may revoke an election by giving the Board written notice of the revocation. The revocation takes effect 120 days after the Board receives the notice. 1997, c. 16, Sched. A, s. 69 (5).

Effect of revocation

(6) An election that is revoked continues to apply with respect to an injury sustained before the revocation takes effect. 1997, c. 16, Sched. A, s. 69 (6).

Deemed employer, certain volunteer or auxiliary workers

70. One of the following entities, as may be appropriate, shall be deemed to be the employer of a member of a municipal volunteer fire brigade or volunteer ambulance brigade or an auxiliary member of a police force:

- 1. A municipal corporation.
- 2. A public utilities commission or any other commission or any board (other than a hospital board) that manages the brigade for a municipal corporation.
- 2.1 Any other person that manages the volunteer ambulance brigade for a municipal corporation.
- 3. The board of trustees of a police village.
- 4. A police force. 2000, c. 26, Sched. I, s. 1 (11); 2002, c. 18, Sched. J, s. 5 (9, 10).

Deemed employer, emergency workers

71. (1) An authority who summons a person to assist in controlling or extinguishing a fire shall be deemed to be the person's employer.

Same, search and rescue operation

(2) The Crown shall be deemed to be the employer of a person who assists in a search and rescue operation at the request of and under the direction of a member of the Ontario Provincial Police.

Same, declaration of emergency

(3) The Crown shall be deemed to be the employer of a person who assists in connection with an emergency declared by the Premier of Ontario to exist.

Same

(4) The municipality shall be deemed to be the employer of a person who assists in connection with an emergency declared by the head of the municipal council to exist. 1997, c. 16, Sched. A, s. 71.

Deemed employer, seconded worker

72. If an employer temporarily lends or hires out the services of a worker to another employer, the first employer shall be deemed to be the employer of the worker while he or she is working for the other employer. 1997, c. 16, Sched. A, s. 72.

Deemed status, illegal employment of minor

73. (1) This section applies if a claim for benefits is made in respect of a worker who is a minor and the Board determines that a Schedule 1 employer employed the minor in contravention of the law.

Declaration

(2) The Board may declare that the employer is liable as if the employer were a Schedule 2 employer with respect to the worker. However, the employer continues to be a Schedule 1 employer for the purposes of sections 28 to 30. 1997, c. 16, Sched. A, s. 73.

Declaration of deemed status

74. (1) Upon application, the Board may declare an employer to be deemed to be a Schedule 1 employer or a Schedule 2 employer for the purposes of the insurance plan.

Exception

(2) A Schedule 1 employer is not eligible to be deemed to be a Schedule 2 employer under this section.

Same

(3) The declaration may be restricted to an industry or part of an industry or a department of work or service engaged in by the employer.

Same

(4) The Board may impose such conditions upon the declaration as it considers appropriate. 1997, c. 16, Sched. A, s. 74.

REGISTRATION AND INFORMATION REQUIREMENTS**Registration**

75. (1) Every Schedule 1 and Schedule 2 employer shall register with the Board within 10 days after becoming such an employer.

Information re wages

(2) When registering, a Schedule 1 employer shall give the Board a statement setting out the total estimated wages that workers are expected to earn during the current year.

Other information

(3) When registering and at such other times as the Board may require, a Schedule 1 employer shall give the Board such information as it may require to assign the employer to a class, subclass or group and such other information as the Board may request.

Same

(4) When registering and at such other times as the Board may require, a Schedule 2 employer shall give the Board such information as it may require to determine the amount of any payment to the Board that may be required under the insurance plan and such other information as the Board may request. 1997, c. 16, Sched. A, s. 75.

Notice of change of status

76. (1) An employer who ceases to be a Schedule 1 employer or a Schedule 2 employer shall notify the Board of the change within 10 days after it occurs.

Information re wages

(2) The notice from a former Schedule 1 employer must be accompanied by a statement of the total wages earned during the year by all workers up to the date of the change.

Premiums

(3) A former Schedule 1 employer shall promptly pay the premiums for which the employer is liable up to the date of the change.

Payments

(4) A former Schedule 2 employer shall promptly pay the Board all the amounts determined by the Board to be owing up to the date of the change. 1997, c. 16, Sched. A, s. 76.

Material change in circumstances

77. A Schedule 1 or Schedule 2 employer shall notify the Board of a material change in circumstances in connection with the employer's obligations under this Act within 10 days after the material change occurs. 1997, c. 16, Sched. A, s. 77.

Annual statements

78. (1) Every year on or before the date specified by the Board, a Schedule 1 employer shall give the Board a statement setting out the total wages earned during the preceding year by all workers and such other information as the Board may request. 1997, c. 16, Sched. A, s. 78 (1).

Same

(2) Upon the request of the Board, the statement must also set out the total estimated wages that workers are expected to earn during the current year. 1997, c. 16, Sched. A, s. 78 (2).

Same, certain volunteer or auxiliary workers

(3) If the statement is made by a deemed employer of a municipal volunteer fire brigade, of a volunteer ambulance brigade or of auxiliary members of a police force, it shall set out,

- (a) the number of members of the brigade or auxiliary members of the police force; and
- (b) the amount of earnings, fixed by the deemed employer, to be attributed to each member for the purposes of the insurance plan. 2002, c. 18, Sched. J, s. 5 (11).

Additional statements

(4) The Board may require a Schedule 1 employer to submit a statement at any time setting out the information described in subsection (1), (2) or (3) with respect to such other periods of time as the Board may specify. 1997, c. 16, Sched. A, s. 78 (4).

Separate statements

(5) The Board may require an employer to submit separate statements with respect to different branches of the employer's business or, if the employer carries on business in more than one class of industry, with respect to the different classes. 1997, c. 16, Sched. A, s. 78 (5).

Board determination of premiums

(6) If an employer does not submit a statement to the Board, the Board may determine the amount of premiums that should have been paid by the employer, and if it is later ascertained that the amount of the premium determined by the Board is less than the actual amount of the premium that should have been paid based on the wages of the employer's workers, the employer is liable to pay to the Board the difference between the amount fixed by the Board and the actual amount owing by the employer. 1997, c. 16, Sched. A, s. 78 (6).

Effect of non-compliance

(7) The Board may require an employer who fails to submit a statement, or who fails to do so by the date specified by the Board, to pay,

- (a) interest at a rate determined by the Board on the employer's premiums for the period to which the statement relates; or
- (b) an additional percentage as determined by the Board of the employer's premiums for that period. 1997, c. 16, Sched. A, s. 78 (7).

Same

(8) If an employer underestimates the amount of the total wages required to be reported in a statement, the Board may require the employer to pay interest as described in clause (7) (a) or an additional percentage as described in clause (7) (b). 1997, c. 16, Sched. A, s. 78 (8).

Same

(9) A payment required under subsection (7) or (8) is in addition to any penalty imposed by a court for an offence under section 152. 1997, c. 16, Sched. A, s. 78 (9).

Certification requirement

79. The information in a statement given to the Board under section 75, 76 or 78 must be certified to be accurate by the employer or the manager of the employer's business or, if the employer is a corporation, by an officer of the corporation who has personal knowledge of the matters to which the statement relates. 1997, c. 16, Sched. A, s. 79.

Record-keeping

80. (1) A Schedule 1 employer shall keep accurate records of all wages paid to the employer's workers and shall keep the records in Ontario. 1997, c. 16, Sched. A, s. 80.

Produce records

(2) The employer shall produce the records referred to in subsection (1) when the Board or any of its officers requires the employer to do so. 2001, c. 9, Sched. I, s. 4 (2).

CALCULATING PAYMENTS BY EMPLOYERS

Premiums, all Schedule 1 employers

81. (1) The Board shall determine the total amount of the premiums to be paid by all Schedule 1 employers with respect to each year in order to maintain the insurance fund under this Act.

Apportionment among classes, etc.

(2) The Board shall apportion the total amount of the premiums among the classes, subclasses and groups of employers and shall take into account the extent to which each class, subclass or group is responsible for, or benefits from, the costs incurred under this Act.

Premium rates

(3) The Board shall establish rates to be used to calculate the premiums to be paid by employers in the classes, subclasses or groups for each year.

Same

(4) The Board may establish different premium rates for a class, subclass or group of employers in relation to the risk of the class, subclass or group. The rates may vary for each individual industry or plant.

Method of determining premiums

(5) The Board shall establish the method to be used by employers to calculate their premiums. The method may be based on the wages earned by an employer's worker.

Bases for calculation

(6) The Board may establish different payment schedules for different employers for premiums to be paid in a year based on such factors as the Board considers appropriate. 1997, c. 16, Sched. A, s. 81.

Adjustments in premiums for particular employers

82. The Board may increase or decrease the premiums otherwise payable by a particular employer in such circumstances as the Board considers appropriate including the following:

1. If, in the opinion of the Board, the employer has not taken sufficient precautions to prevent accidents to workers or the working conditions are not safe for workers.
2. If the employer's accident record has been consistently good and the employer's ways, works, machinery and appliances conform to modern standards so as to reduce the hazard of accidents to a minimum.
3. If the employer has complied with the regulations made under this Act or the *Occupational Health and Safety Act* respecting first aid.
4. If the frequency of work injuries among the employer's workers and the accident cost of those injuries is consistently higher than that of the average in the industry in which the employer is engaged. 1997, c. 16, Sched. A, s. 82.

Experience and merit rating programs

83. (1) The Board may establish experience and merit rating programs to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work.

Same

(2) The Board may establish the method for determining the frequency of work injuries and accident costs of an employer.

Same

(3) The Board shall increase or decrease the amount of an employer's premiums based upon the frequency of work injuries or the accident costs or both. 1997, c. 16, Sched. A, s. 83.

Transfer of costs

84. In a case where subsection 28 (1) applies and the Board is satisfied that the accident giving rise to the worker's injury was caused by the negligence of some other employer in Schedule 1 or that other employer's workers, the Board may direct that the benefits, or a proportion of them, in that case be charged against the class or group to which the other employer belongs and to the accident cost record of the other employer. 1997, c. 16, Sched. A, s. 84.

Payments by Schedule 2 employers

85. (1) The Board shall determine the total payments to be paid by all Schedule 2 employers with respect to each year to defray their fair share (as determined by the Board) of the expenses of the Board and the cost of administering this Act and such other costs as are directed under any Act to be paid by the Board.

Special funds

(2) The Board, where it considers proper, may add to the amount payable by an employer under subsection (1) a percentage or sum for the purpose of raising special funds and the Board may use such money to meet a loss or relieve any Schedule 2 employer from all or part of the costs arising from any disaster or other circumstance where, in the opinion of the Board, it is proper to do so. 1997, c. 16, Sched. A, s. 85.

Penalty, failure to co-operate

86. (1) If the Board decides that an employer has failed to comply with section 40 (return to work), the Board may levy a penalty on the employer that is such percentage as the Board may determine of the cost to the Board of providing benefits to the worker while the non-compliance continues.

Same

(2) The penalty is an amount owing to the Board. 1997, c. 16, Sched. A, s. 86.

Notice to employers

87. (1) Each year, the Board shall notify each Schedule 1 employer of the method to be used to calculate the employer's premiums, the premium rate and the payment schedule.

Same, Schedule 2 employers

(2) Each year, the Board shall notify each Schedule 2 employer of the amount of the employer's payments under section 85 and the payment schedule.

Liability if no notice

(3) If for any reason an employer does not receive a notice for a year, the employer is liable to pay the amount that the employer would have been required to pay had the notice been given or received. 1997, c. 16, Sched. A, s. 87.

PAYMENT OBLIGATIONS OF SCHEDULE 1 EMPLOYERS

Payment of premiums

88. (1) Every Schedule 1 employer shall calculate and pay premiums to the Board in accordance with the notice given under section 87.

No liability for benefits

(2) A Schedule 1 employer is not individually liable to pay benefits directly to workers or their survivors under the insurance plan.

Maximum earnings

(3) The premium payable by an employer applies only with respect to the maximum amount of average earnings determined under section 54 for each of the employer's workers.

Error in calculation

(4) If the Board considers that an employer has incorrectly calculated the amount of the premiums payable and, as a result, has paid an insufficient amount, the Board may require the employer to pay additional premiums in an amount sufficient to rectify the error. The Board may fix the amount of the additional premiums to be paid.

Penalty for error

(5) If an employer has incorrectly calculated the amount of premiums payable for a year and, as a result, has paid an insufficient amount, the employer shall pay additional premiums in an amount sufficient to rectify the error and, as a penalty, shall pay that amount again to the Board.

Relief

(6) The Board may relieve the employer from paying all or part of the penalty if the Board is satisfied that the incorrect calculation was not intentional and that the employer honestly desired to pay the correct amount. 1997, c. 16, Sched. A, s. 88.

Default in paying premiums

89. (1) An employer who does not pay premiums when they become due shall pay to the Board such additional percentage on the outstanding balance as the Board may require.

Cost of benefits

(2) An employer who does not pay premiums when they become due shall pay to the Board the amount or the capitalized value (as determined by the Board) of the benefits payable in respect of any accident to the employer's workers during the period of the default.

Exception

(3) The Board may relieve the employer of making all or part of the payment under subsection (2) in such circumstances as the Board considers appropriate. 1997, c. 16, Sched. A, s. 89.

PAYMENT OBLIGATIONS OF SCHEDULE 2 EMPLOYERS

Payment of benefits

90. (1) Every Schedule 2 employer is individually liable to pay the benefits under the insurance plan respecting workers employed by the employer on the date of the accident.

Reimbursement

(2) The employer shall reimburse the Board for any payments made by the Board on behalf of the employer under the insurance plan. The amount to be reimbursed is an amount owing to the Board.

Payment of commuted value

(3) The Board may require a Schedule 2 employer to pay to the Board an amount equal to the commuted value of the payments to be made under Part VI (payments for loss of earnings and other losses) with respect to a worker or survivor.

Same

(4) If the amount is insufficient to meet the whole of the payments, the employer is nevertheless liable to pay to the Board such other sum as may be required to meet the payments.

Same

(5) The Board shall return to the employer any amount remaining after the Board ceases to make payments with respect to the worker or survivor. 1997, c. 16, Sched. A, s. 90.

Payments re expenses of the Board

91. Every Schedule 2 employer shall make payments to the Board in accordance with the notice given under section 87. 1997, c. 16, Sched. A, s. 91.

Deposit by Schedule 2 employers

92. (1) If the Board considers it to be necessary for the prompt payment of benefits, the Board may require a Schedule 2 employer to pay a specified amount of money as a deposit.

Use of money

(2) The Board shall use the money on deposit to pay benefits on behalf of the employer.

Investment

(3) Subsections 97 (4) to (7) apply with respect to the investment of money on deposit and commuted value payments under subsection 90 (3). 1997, c. 16, Sched. A, s. 92.

Direction to insure workers

93. (1) The Board may direct a Schedule 2 employer to obtain insurance for injuries in respect of which the employer may become liable to make payments under the insurance plan. The insurance must be for an amount specified by the Board and with an insurer approved by the Board.

Failure to comply

(2) If the employer fails to comply with the direction of the Board, the Board may obtain the required insurance for the employer. The employer shall pay the Board for the cost of the insurance.

Notice to insurer

(3) If a claim for benefits is made in any case where a Schedule 2 employer is insured against the liability to pay benefits, notice of the claim shall be given to the insurer and to the employer.

Payment to Board

(4) The Board shall determine the worker's or survivor's right to compensation and may direct the insurer to pay to the Board instead of the employer any amount payable under the contract of insurance upon the injury or death of a worker. The insurer shall do so. 1997, c. 16, Sched. A, s. 93.

OBLIGATIONS IN SPECIAL CIRCUMSTANCES

Schedule 2 employers, occupational disease

94. (1) This section applies if a worker is entitled to benefits under the insurance plan because of an occupational disease that may have occurred as a result of more than one employment by Schedule 2 employers.

Employer

(2) Subject to subsections (5) and (6), the Schedule 2 employer who last employed the worker in the employment in which the disease occurs is the worker's employer for the purposes of the insurance plan.

Prior employers

(3) Upon request, the worker or his or her survivors shall give the employer the names and addresses of the previous employers in whose employment the worker could have contracted the disease.

Determination by Board

(4) The employer may request that the Board determine whether the worker contracted the disease while employed by one or more other employers. The employer making the request must provide the Board with the necessary evidence to determine the matter.

Effect of decision

(5) If the Board decides that another employer employed the worker when he or she contracted the disease, the other employer is the worker's employer for the purposes of the insurance plan.

Same

(6) If the Board decides that the disease is of such a nature as to be contracted by a gradual process and that the worker was employed by more than one employer in the employment to the nature of which the disease is due, the Board shall determine the obligations of each employer for the purposes of the insurance plan. The employers are liable to make such payments as the Board considers just to the employer who is liable to pay the benefits under the plan.

Exception, Schedule 2 employer

(7) Despite section 15, a worker is not entitled to benefits under the insurance plan and a Schedule 2 employer is not liable to make payments under the insurance plan to or for the worker or his survivors,

- (a) if there is insufficient information concerning the worker's prior employers to enable the Board to make the determination requested under subsection (4); and
- (b) if the employer proves that the worker did not contract the disease while employed by the employer. 1997, c. 16, Sched. A, s. 94.

Increases in benefits

95. The Board may require Schedule 1 and 2 employers carrying on or previously carrying on industries to which this Act applies to pay such additional amounts to the Board as are necessary to provide for increases in benefits related to prior accidents. 1997, c. 16, Sched. A, s. 95.

NO CONTRIBUTIONS FROM WORKERS

No contributions from workers

95.1 (1) No employer shall,

- (a) directly or indirectly deduct from a worker's wages an amount that the employer is, or may become, liable to pay to the worker under the insurance plan; or
- (b) require or permit a worker to contribute in any way toward indemnifying the employer against any liability that the employer has incurred or may incur under the insurance plan. 2000, c. 26, Sched. I, s. 1 (13).

Right of action

(2) Without limiting any other remedies the worker may have, a worker may bring an action in a court of competent jurisdiction to recover an amount that was deducted from the worker's wages or that the worker was required or permitted to contribute in contravention of subsection (1). 2000, c. 26, Sched. I, s. 1 (13).

Same, certain deductions, etc., before section in force

(3) Without limiting any other remedies the worker may have, a worker may bring an action in a court of competent jurisdiction to recover an amount that was deducted from the worker's wages or that the worker was required or permitted to contribute if the deduction, requirement or permission occurred on or after January 1, 1998 but before this section came into force and the deduction, requirement or permission contravened subsection 155 (1) or (2) as those subsections read before being repealed by subsection 1 (21) of Schedule I to the *Red Tape Reduction Act, 2000*. 2000, c. 26, Sched. I, s. 1 (13).

PART VIII INSURANCE FUND

Insurance fund

96. (1) The Board shall maintain a fund for the following purposes:

1. To pay for benefits under the insurance plan to workers employed by Schedule 1 employers and to the survivors of deceased workers.
2. To pay the expenses of the Board and the cost of administering this Act.
3. To pay such other costs as are directed under any Act to be paid by the Board or out of the insurance fund.

Sufficiency of fund

(2) The Board has a duty to maintain the insurance fund so that it is sufficient to make the required payments under the insurance plan as they become due.

Same

(3) The Board has a duty to maintain the insurance fund so as not to burden unduly or unfairly any class of Schedule 1 employers in future years with payments under the insurance plan in respect of accidents in previous years.

Direction re sufficiency of fund

(4) If the Lieutenant Governor in Council is of the opinion that the insurance fund is not sufficient to meet the standards described in subsections (2) and (3), the Lieutenant Governor in Council may direct the Board to increase employers' premiums to the extent that the Lieutenant Governor in Council considers necessary to ensure that the fund meets those standards.

Same

(5) The Board shall increase the rates used to calculate premiums in accordance with the direction of the Lieutenant Governor in Council.

Same

(6) The Board shall promptly notify employers of the increase in rates and shall require employers to pay the additional premiums within such time as the notice may specify.

Transition

(7) The accident fund maintained under the *Workers' Compensation Act* is continued as the insurance fund. 1997, c. 16, Sched. A, s. 96.

Reserve funds

97. (1) The Board shall establish and maintain one or more reserve funds to pay benefits in future years in respect of claims for accidents that happen in a year.

Same

(2) The Board is not required to maintain a reserve fund that at all times equals the capitalized value of the benefits that will become due in future years, unless the Board is of the opinion that it is necessary to do so in order to comply with subsections 96 (2) and (3).

Same

(3) The Board may provide for larger reserve funds for some classes of industry than for others.

Investment

(4) The money in the reserve funds shall be invested only in such investments as are authorized under the *Pension Benefits Act* for the investment of money from pension funds and shall be invested in the same manner as is authorized for those pension funds.

Responsibility for agent

(5) If the Board designates an agent to make the investments authorized under subsection (4), it shall select as an agent a person that it is satisfied is suitable to perform the act for which the agent is designated.

Same

(6) The Board is responsible for prudent and reasonable supervision of the agent.

Standards for agent

(7) The agent is subject to the standards that apply, with necessary modifications, to an administrator of a pension plan under subsections 22 (1), (2) and (4) of the *Pension Benefits Act*.

Insurance fund

(8) The reserve funds form part of the insurance fund. 1997, c. 16, Sched. A, s. 97.

Special reserve fund

98. (1) The Board may establish a special reserve fund to meet losses that may arise from a disaster or other circumstance that, in the opinion of the Board, would unfairly burden the employers in any class.

Same

(2) Subsections 97 (3) to (8) apply with necessary modifications with respect to the special reserve fund. 1997, c. 16, Sched. A, s. 98.

Deficiency in premiums

99. (1) If there is a deficiency in the amount of premiums in any class because of a failure of any of the employers in the class to pay an amount owing or by any other circumstance that, in the opinion of the Board, would unfairly burden the employers in that class, the deficiency shall be made up by a payment of additional premiums by the employers in all the classes.

Apportionment of payment

(2) If the employer responsible for the deficiency in subsection (1) pays to the Board any part of the amount owing, that amount shall be apportioned among the other employers in proportion to the amount they contributed to the deficiency.

Continued liability of defaulting employer

(3) If a deficiency is paid for by the other employers, the employer responsible for the deficiency continues to be liable for the amount of the deficiency. 1997, c. 16, Sched. A, s. 99.

Exceptional circumstances

100. The following rules apply if there is not sufficient money available in the insurance fund to make the required payments as they become due, without resorting to the reserve funds:

1. The Board may make the payments out of the reserve funds or, if it is not expedient to do so, the Lieutenant Governor in Council may direct that an amount be advanced to the Board from the Consolidated Revenue Fund to make the payments.
2. The Board shall require the appropriate employers to pay additional premiums in order to replace any money taken out of a reserve fund or advanced from the Consolidated Revenue Fund.
3. The Board shall remit to the Minister of Finance the amount advanced from the Consolidated Revenue Fund. 1997, c. 16, Sched. A, s. 100.

PART IX TRANSITIONAL RULES

INTERPRETATION

Definitions

101. In this Part,

“pre-1997 Act” means the *Workers’ Compensation Act* as it read on December 31, 1997; (“Loi d’avant 1997”)

“pre-1998 injury” means a personal injury by accident or an occupational disease that occurs before January 1, 1998. (“lésion d’avant 1998”) 1997, c. 16, Sched. A, s. 101.

PRE-1998 INJURIES

Continued application of pre-1997 Act

102. The pre-1997 Act, as it is deemed to have been amended by this Part, continues to apply with respect to pre-1998 injuries. 1997, c. 16, Sched. A, s. 102.

Maximum medical rehabilitation

103. The pre-1997 Act shall be deemed to be amended by striking out “maximum medical rehabilitation” wherever it appears and substituting in each case “maximum medical recovery”. 1997, c. 16, Sched. A, s. 103.

Definitions

103.1 (1) The definition of “contributions for employment benefits” in subsection 1 (1) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the fifth line and substituting “spouse, same-sex partner”.

Same

(2) The definition of “dependants” in subsection 1 (1) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

“dependants” means,

- (a) such of the members of the family of a worker as were wholly or partly dependent upon the worker’s earnings at the time of his or her death or who but for the incapacity due to the accident would have been so dependent, and
- (b) the same-sex partner of a worker, if the same-sex partner was wholly or partly dependent upon the worker’s earnings at the time of his or her death or who but for the incapacity due to the accident would have been so dependent. (“personnes à charge”)

Same

(3) Subsection 1 (1) of the pre-1997 Act shall be deemed to be amended by adding the following definition:

“same-sex partner” means either of two persons of the same sex who, at the time of death of the one who was the worker, were cohabiting, and,

- (a) had cohabited for at least one year,
- (b) were together the parents of a child, or
- (c) had together entered into a cohabitation agreement under section 53 of the *Family Law Act*. (“partenaire de même sexe”) 1999, c. 6, s. 67 (29).

Election

103.2 (1) Subsection 10 (8) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the fifth line and substituting “spouse or same-sex partner”.

Same

- (2) Subsection 10 (17) of the pre-1997 Act shall be deemed to be amended by,
 - (a) striking out “spouse” in the third line and in the fourth line and substituting in each case “spouse, same-sex partner”;
 - (b) striking out “spouse” in the first line of clause (a) and substituting “spouse, same-sex partner”; and
 - (c) striking out “spouse” in the second line of clause (b) and substituting “spouse, same-sex partner”.

Same

(3) Subsection 10 (18) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the first line and substituting “spouse, same-sex partner”. 1999, c. 6, s. 67 (29).

Provisions of Act in lieu of rights of action

103.3 Section 16 of the pre-1997 Act shall be deemed to be amended by striking out “a worker or the members of his or her family” in the third and fourth lines and substituting “a worker, the members of his or her family or the worker’s same-sex partner”. 1999, c. 6, s. 67 (29).

Death benefits

- 104.** (0.1) Subsection 35 (1) of the pre-1997 Act shall be deemed to be amended by,
- (a) striking out “spouse” in the second line and substituting “spouse or same-sex partner”; and
 - (b) striking out “spouse” in the fourth line, in the seventh line and in the ninth line of clause (a) and substituting in each case “spouse or same-sex partner”. 1999, c. 6, s. 67 (30).

Same

(1) Clause 35 (1) (c) of the pre-1997 Act shall be deemed to be repealed. 1997, c. 16, Sched. A, s. 104 (1).

Same

(2) Subsections 35 (2) and (3) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Labour market re-entry plan for spouse

(2) Upon request, the Board shall provide a spouse or same-sex partner with a labour market re-entry assessment. The request must be made within one year after the death of the worker.

Same, transition

(3) If, before January 1, 1998, the Board has provided the spouse or same-sex partner of a deceased worker with a vocational rehabilitation assessment but not a vocational rehabilitation program, the Board shall determine whether a labour market re-entry plan is to be prepared for the spouse or same-sex partner.

Same

(3.1) Subsections 42 (2) to (8) of the *Workplace Safety and Insurance Act, 1997* apply with necessary modifications with respect to the labour market re-entry plan, if any, for the spouse or same-sex partner.

Same

(3.2) If a spouse or same-sex partner was provided with a vocational rehabilitation program under this Act, it shall be deemed to be a labour market re-entry plan for the purpose of this section.

Failure to comply

(3.3) If the spouse or same-sex partner fails to comply with subsection 42 (7) of the *Workplace Safety and Insurance Act, 1997*, the Board may discontinue the provision of the labour market re-entry assessment or plan.

Bereavement counselling

(3.4) Upon the request of the spouse or same-sex partner, the Board may pay for bereavement counselling for the spouse, same-sex partner or children of the worker. The request must be received within one year after the worker's death. 1997, c. 16, Sched. A, s. 104 (2); 1999, c. 6, s. 67 (31-36); 2000, c. 26, Sched. I, s. 1 (14).

Death benefits

(3) Subsection 35 (4) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the second line and in the sixth line and substituting in each case "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Same

(4) Subsection 35 (5) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the second line, in the third line, in the seventh line, in the eleventh line and in the thirteenth line and substituting in each case "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Same

(5) Subsection 35 (6) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the first line and in the second line and substituting in each case "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Same

(6) Subsection 35 (7) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the second line and substituting "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Same

(7) Subsection 35 (8) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the second line and substituting "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Same

(8) Subsection 35 (10) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the fourth line and substituting "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Same

(9) Subsection 35 (11) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the seventh line and substituting "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Same

(10) Subsection 35 (13) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the ninth line and substituting "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Same

(11) Subsection 35 (16) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the first line and in the fifth line and substituting in each case "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Same

(12) Subsection 35 (17) of the pre-1997 Act shall be deemed to be amended by striking out "spouse" in the third line and substituting "spouse or same-sex partner". 1999, c. 6, s. 67 (37).

Temporary partial disability

105. Subclause 37 (2) (b) (i) of the pre-1997 Act shall be deemed to be amended by striking out "a medical or vocational rehabilitation program which" in the second, third and fourth lines and substituting "a medical rehabilitation program, an early and safe return to work program or a labour market re-entry plan, as the circumstances require, which". 1997, c. 16, Sched. A, s. 105.

Minimum compensation

105.1 (1) Subsection 39 (3) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the second line and substituting “spouse or same-sex partner”.

Same

(2) Subsection 39 (4) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the second line and substituting “spouse or same-sex partner”. 1999, c. 6, s. 67 (38).

Non-economic loss where permanent impairment

106. (1) Subsection 42 (3) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Payment

(3) If the compensation for non-economic loss is greater than \$10,000, it is payable as a monthly payment for the life of the worker.

Same

(3.1) Despite subsection (3), within 30 days of the worker being notified of the amount of the compensation for non-economic loss the worker may elect to receive in a lump sum the amount otherwise payable monthly. The election is irrevocable.

Same

(2) Subsections 42 (5) to (25) of the pre-1997 Act shall be deemed to be repealed. Subsections 47 (1) to (13) of this Act apply instead with respect to a determination by the Board of the degree of a worker’s permanent impairment for the purposes of the pre-1997 Act. 1997, c. 16, Sched. A, s. 106.

Compensation for future loss of earnings

107. (1) Subsection 43 (6) of the pre-1997 Act shall be deemed to be repealed. 1997, c. 16, Sched. A, s. 107 (1).

Same

(2) Subsection 43 (13) of the pre-1997 Act shall be deemed to be repealed. Instead, subsections 44 (1) to (2.6) of this Act apply, with necessary modifications, with respect to a review by the Board of the amount of compensation for future loss of earnings payable under section 43 of the pre-1997 Act. However, a reference to “more than 72 months after the date of the worker’s injury” in subsection 44 (2) of this Act shall be read as “more than 60 months after the date the compensation for future loss of earnings is determined by the Board under section 43 of the pre-1997 Act” and any reference to “72-month period” in subsection 44 (2.1) of this Act shall be read as “60-month period”. 1997, c. 16, Sched. A, s. 107 (2); 2002, c. 18, Sched. J, s. 5 (12).

Same

(3) Subsection 43 (15) of the pre-1997 Act shall be deemed to be repealed. Instead, subsections 62 (2) and (3) of this Act apply, with necessary modifications, with respect to the payment of compensation for future loss of earnings under section 43 of the pre-1997 Act. However, a reference to “72-month period” in the first line of clause 62 (2) (b) shall be read as “60-month period”. 1997, c. 16, Sched. A, s. 107 (3).

Same

(4) Clauses 43 (9) (a) and (b) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

- (a) that began within 24 months after the date the compensation for future loss of earnings is determined under this section; or
- (b) that began within 12 months after a determination is made under subsection 47 (9) of the *Workplace Safety and Insurance Act, 1997*. 1997, c. 16, Sched. A, s. 107 (4).

Benefits for loss of retirement income

107.1 (1) Subsection 44 (2) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the first line and substituting “spouse, same-sex partner”.

Same

(2) Subsection 44 (4) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the third line and substituting “spouse or same-sex partner”.

Same

(3) Subsection 44 (5) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the first line and substituting “spouse or same-sex partner”. 1999, c. 6, s. 67 (39).

Garnishment for support

107.2 Subsection 48 (1) of the pre-1997 Act shall be deemed to be amended by striking out “spouse (as defined in Part III of the *Family Law Act*)” in the third and fourth lines and substituting “spouse or same-sex partner (both as defined in Part III of the *Family Law Act*)”. 1999, c. 6, s. 67 (39).

Payments in case of minor, etc.

107.3 Section 49 of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the seventh line and substituting “spouse, same-sex partner”. 1999, c. 6, s. 67 (39).

Vocational rehabilitation

108. (1) Subsection 53 (2) of the pre-1997 Act shall be deemed to be amended by striking out “identifying the worker’s need for vocational rehabilitation services” in the fourth, fifth and sixth lines and substituting “deciding if assistance is required to facilitate the worker’s early and safe return to work or whether a labour market re-entry assessment is to be provided to the worker and section 42 of the *Workplace Safety and Insurance Act, 1997* applies”. 1997, c. 16, Sched. A, s. 108 (1).

Same

(2) Subsection 53 (2.1) of the pre-1997 Act shall be deemed to be amended by striking out “identifying the employer’s need for vocational rehabilitation services” in the third and fourth lines and substituting “deciding if assistance is required to facilitate the worker’s early and safe return to work or whether a labour market re-entry assessment is to be provided to the worker and section 42 of the *Workplace Safety and Insurance Act, 1997* applies”. 1997, c. 16, Sched. A, s. 108 (2).

Same

(3) Subsection 53 (3) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Assistance re: return to work

(3) The Board shall assist the worker and the employer with the worker’s early and safe return to work if the Board considers it appropriate to do so. 1997, c. 16, Sched. A, s. 108 (3).

Same

(4) Subsections 53 (4) to (10) of the pre-1997 Act shall be deemed to be repealed. Subsections 42 (3) to (8) of this Act apply instead with respect to the preparation of a labour market re-entry plan for the worker. 1997, c. 16, Sched. A, s. 108 (4); 2000, c. 26, Sched. I, s. 1 (15).

Same

(5) If, before January 1, 1998, the Board has provided the worker with a vocational rehabilitation assessment but not a vocational rehabilitation program under subsection 53 (9) of the pre-1997 Act, the Board shall determine whether a labour market re-entry plan is to be prepared for the worker. Subsections 42 (3) to (8) of the *Workplace Safety and Insurance Act, 1997* apply in the circumstances. 1997, c. 16, Sched. A, s. 108 (5).

Same

(6) If a worker was provided with a vocational rehabilitation program under the pre-1997 Act, it shall be deemed either as an early and safe return to work program or a labour market re-entry plan, as the circumstances require. 1997, c. 16, Sched. A, s. 108 (6).

Same

(7) Subsections 53 (10.1) to (13) of the pre-1997 Act shall be deemed to be repealed. 1997, c. 16, Sched. A, s. 108 (7).

Same

- (8) The pre-1997 Act shall be deemed to be amended by striking out,
- (a) “medical and vocational rehabilitation” in the first and second lines of clause 43 (7) (d) and substituting “medical rehabilitation and return to work or labour market re-entry”;
 - (b) “vocational rehabilitation program” in the second and third lines of clause 43 (8) (c) and substituting “labour market re-entry plan”;
 - (c) “vocational or medical rehabilitation program” in the third and fourth lines of subsection 43 (9) and substituting “medical rehabilitation program, early and safe return to work program or labour market re-entry plan”;
 - (d) “vocational rehabilitation services or programs provided” in the second and third lines of subsection 103 (4.1) and substituting “an early and safe return to work program or labour market re-entry plan that is provided to the worker”; and
 - (e) “vocational rehabilitation services and programs” in the last two lines of subsection 103 (4.2) and substituting “an early and safe return to work program or a labour market re-entry plan that is provided to the worker”. 1997, c. 16, Sched. A, s. 108 (8).

Regulations

108.1 Clause 63 (2) (g) of the pre-1997 Act shall be deemed to be amended by striking out “their spouses” in the second line and substituting “their spouses, their same-sex partners”. 1999, c. 6, s. 67 (40).

Jurisdiction of board

108.2 Clause 69 (2) (m) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” and substituting “spouse, same-sex partner”. 1999, c. 6, s. 67 (40).

Mediation

108.3 Paragraph 1 of subsection 72.1 (1) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the first line and substituting “spouse or same-sex partner”. 1999, c. 6, s. 67 (40).

Specific powers of board re hearings, etc.

108.4 Clause 74 (c) of the pre-1997 Act shall be deemed to be amended by striking out “spouse” in the first line and substituting “spouse, same-sex partner”. 1999, c. 6, s. 67 (40).

Medical practitioners

108.5 Clause 87 (3) (b) of the pre-1997 Act shall be deemed to be amended by striking out “the worker or a member of the family of the worker” in the first and second lines and substituting “the worker, a member of the family of the worker or the same-sex partner of the worker”. 1999, c. 6, s. 67 (40).

Restoring rights

109. Any person whose benefits were terminated for reason of marriage or remarriage under subsection 36 (2) or 37 (1) of the *Workers’ Compensation Act*, as it read on March 31, 1985, may apply to the Board for a reinstatement of benefits, and the Board shall reinstate the benefits, as of April 1, 1985. 1997, c. 16, Sched. A, s. 109.

Permanent partial disability supplements

110. (1) Subsection 147 (1) of the pre-1997 Act shall be deemed to be amended by adding the following definition:
“labour market re-entry plan” means a labour market re-entry plan prepared in accordance with section 42 of the *Workplace Safety and Insurance Act, 1997*. (“programme de réintégration sur le marché du travail”)

Same

- (2) Subsection 147 (2) of the pre-1997 Act shall be deemed to be amended by striking out,
- (a) “vocational rehabilitation program” in the fourth and fifth lines and substituting “labour market re-entry plan”; and
 - (b) “vocational rehabilitation” in the eighth line and substituting “completion of the plan”.

Same

(3) Subsection 147 (3) of the pre-1997 Act shall be deemed to be amended by striking out “vocational rehabilitation program” in the fourth line and substituting “labour market re-entry plan”.

Same

(4) Subsection 147 (4) of the pre-1997 Act shall be deemed to be amended by striking out,

(a) “vocational rehabilitation program” in clause (a) and substituting “labour market re-entry plan”; and

(b) “vocational rehabilitation program” in clause (b) and substituting “labour market re-entry plan”.

Same

(5) Clause 147 (6) (c) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

(c) the day the worker ceases to participate in a labour market re-entry plan. 1997, c. 16, Sched. A, s. 110.

Indexation of compensation

111. (1) Subsections 148 (1) and (1.1) of the pre-1997 Act shall be deemed to be repealed and the following substituted:

Indexation

(1) Subject to subsection (1.2), the general indexing factor determined under subsection 49 (1) of the *Workplace Safety and Insurance Act, 1997* applies with respect to the calculation of all compensation payable under this Act.

Same

(2) That portion of subsection 148 (1.2) of the pre-1997 Act that precedes paragraph 1 shall be deemed to be repealed and the following substituted:

Exception

(1.2) The alternate indexing factor determined under subsection 50 (1) of the *Workplace Safety and Insurance Act, 1997* applies with respect to the calculation of the following:

.

Same

(3) Paragraph 6 of subsection 148 (1.2) of the pre-1997 Act shall be deemed to be repealed.

Same

(4) Subsection 148 (1.3) of the pre-1997 Act shall be deemed to be repealed.

Same

(5) The pre-1997 Act shall be deemed to be amended by striking out “subsection 148 (1.3)” in paragraph 1 of subsection 43 (4), subparagraph ii of paragraph 2 of subsection 43 (4), paragraph 1 of subsection 43 (5) and clause 43 (6.1) (b) and substituting in each instance “subsection 148 (1.2)”.

Same

(6) Subsection 148 (2) of the pre-1997 Act shall be deemed to be amended by striking out “the indexing factor” in clause (a) and in clause (b) and substituting in clause (a) “the general indexing factor” and in clause (b) “the general or alternate indexing factor, as the case may be”. 1997, c. 16, Sched. A, s. 111.

Jurisdiction of Appeals Tribunal

112. (1) Subsection 81 (1) and sections 84 and 86 of the pre-1997 Act shall be deemed to be repealed.

Board of directors review

(2) Section 93 of the pre-1997 Act shall be deemed to be repealed.

Application

(3) Sections 120 and 123, subsection 125 (2), section 126 and subsections 174 (1) to (5) of this Act apply, with necessary modifications, to pre-1998 injuries and to decisions of the Board rendered before January 1, 1998, but the time limits in section 120 and subsection 125 (2) apply only from January 1, 1998.

Exception

- (4) Despite subsections (1) to (3), if,
 - (a) a panel of the Appeals Tribunal has commenced a hearing or consideration of an application or appeal pursuant to section 17, 23, 71 or 84 of the *Workers' Compensation Act*; or
 - (b) the board of directors of the Board has exercised its discretion to review a decision of the Appeals Tribunal pursuant to section 93 of the *Workers' Compensation Act*,

and a final decision has not been made before this section comes into force, the panel or board of directors, as the case may be, may carry out and perform any duties and exercise any powers in connection with the application, appeal or review as though this section had not come into force. 1997, c. 16, Sched. A, s. 112.

PART X UNINSURED EMPLOYMENT

Application

113. (1) This Part applies with respect to industries that are not included in Schedule 1 or Schedule 2 and with respect to workers employed in those industries.

Same

(2) This Part applies with respect to the following types of workers who are employed in industries that are included in Schedule 1 or Schedule 2:

1. Persons whose employment by an employer is of a casual nature and who are employed otherwise than for the purposes of the employer's industry.
2. Persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in the person's own home or on other premises not under the control or management of the person who gave out the articles or materials. 1997, c. 16, Sched. A, s. 113.

Employer's liability

114. (1) A worker may bring an action for damages against his or her employer for an injury that occurs in any of the following circumstances:

1. The worker is injured by reason of a defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises used in the employer's business or connected with or intended for that business.
2. The worker is injured by reason of the employer's negligence.
3. The worker is injured by reason of the negligence of a person in the employer's service who is acting within the scope of his or her employment.

Same, deceased worker

(2) If a worker dies as a result of an injury that occurs in a circumstance described in subsection (1), an action for damages may be brought against the employer by the worker's estate or by a person entitled to damages under Part V of the *Family Law Act*. 1997, c. 16, Sched. A, s. 114.

Liability of owner, etc.

115. (1) A worker may bring an action for damages against the person for whom work is being done under a contract and against the contractor and subcontractor, if any, for an injury that occurs in any of the following circumstances:

1. The injury occurs by reason of a defect in the condition or arrangement of any ways, works, machinery, plant, building or premises. The person for whom the work is being done owns or supplies the ways, works, machinery, plant, building or premises.
2. The injury occurs as a result of the negligence of the person for whom all or part of the work is being done.
3. The injury occurs as a result of the negligence of a person in the service of the person for whom all or part of the work is being done, and the person who was negligent was acting within the scope of his or her employment.

Same

(2) Nothing in subsection (1) affects any right or liability of the person for whom the work is being done and the contractor and subcontractor as among themselves.

Same

(3) The worker is not entitled to recover damages under this section as well as under section 114 for the same injury. 1997, c. 16, Sched. A, s. 115.

Voluntary assumption of risk

116. (1) An injured worker shall not be considered to have voluntarily incurred the risk of injury in his or her employment solely on the grounds that, before he or she was injured, he or she knew about the defect or negligence that caused the injury.

Certain common law rules abrogated

(2) An injured worker shall not be considered to have voluntarily incurred the risk of injury that results from the negligence of his or her fellow workers.

Contributory negligence

(3) In an action for damages for an injury that occurs when a worker is in the service of an employer, contributory negligence by the worker is not a bar to recovery,

- (a) by the injured worker; or
- (b) if the worker dies as a result of the injury, by a person entitled to damages under Part V of the *Family Law Act*.

Same

(4) The worker's contributory negligence, if any, shall be taken into account in assessing the damages in such an action. 1997, c. 16, Sched. A, s. 116.

Insurance proceeds

117. (1) If an employer is insured against the employer's liability to a worker for damages, the employer's insurance shall be deemed to be for the benefit of the worker.

Same

(2) If the worker suffers an injury for which he or she is entitled to recover damages from the employer, the insurer shall not, without the consent of the worker, pay to the employer the amount for which the insurer is liable in respect of the injury until the worker's claim has been satisfied. 1997, c. 16, Sched. A, s. 117.

**PART XI
DECISIONS AND APPEALS**

DECISIONS BY THE BOARD

Jurisdiction

118. (1) The Board has exclusive jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where this Act provides otherwise. 1997, c. 16, Sched. A, s. 118 (1).

Same

(2) Without limiting the generality of subsection (1), the Board has exclusive jurisdiction to determine the following matters:

1. Whether an industry or a part, branch or department of an industry falls within a class or group of industries in Schedule 1 or in Schedule 2 and, if so, which one.
2. Whether personal injury or death has been caused by an accident.
3. Whether an accident arose out of and in the course of an employment by a Schedule 1 or Schedule 2 employer.
4. Whether a person is co-operating in reaching his or her maximum medical recovery, in returning to work or in the preparation and implementation of a labour market re-entry plan.
5. Whether an employer has fulfilled his, her or its obligations under the insurance plan to return a worker to work or re-employ the worker.

6. Whether a labour market re-entry plan for a person is to be prepared and implemented.
7. Whether loss of earnings has resulted from an injury.
8. Whether permanent impairment has resulted from an injury, and the degree of the impairment.
9. The amount of a person's average earnings and net average earnings.
10. Whether a person is a spouse, same-sex partner, child or dependant of an injured worker for the purposes of the insurance plan. 1997, c. 16, Sched. A, s. 118 (2); 1999, c. 6, s. 67 (41).

Finality of decision

- (3) An action or decision of the Board under this Act is final and is not open to question or review in a court.

Same

(4) No proceeding by or before the Board shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court. 1997, c. 16, Sched. A, s. 118 (3, 4).

Board: miscellaneous rules

Principle of decisions

119. (1) The Board shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.

Same

(2) If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for or against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.

Hearing

- (3) The Board shall give an opportunity for a hearing.

Hearings

- (4) The Board may conduct hearings orally, electronically or in writing. 1997, c. 16, Sched. A, s. 119.

Objection to Board decision

120. (1) A worker, survivor employer, parent or other person acting in the role of a parent under subsection 48 (20) or beneficiary designated by the worker under subsection 45 (9) who objects to a decision of the Board shall file a notice of objection with the Board,

- (a) in the case of a decision concerning return to work or a labour market re-entry plan, within 30 days after the decision is made or within such longer period as the Board may permit; and
- (b) in any other case, within six months after the decision is made or within such longer period as the Board may permit.

Notice of objection

(2) The notice of objection must be in writing and must indicate why the decision is incorrect or why it should be changed. 1997, c. 16, Sched. A, s. 120.

Power to reconsider

121. The Board may reconsider any decision made by it and may confirm, amend or revoke it. The Board may do so at any time if it considers it advisable to do so. 1997, c. 16, Sched. A, s. 121.

Mediation

122. (1) The Board may provide mediation services in such circumstances as it considers appropriate.

Time limit, return to work, etc.

(2) If the mediation relates to an objection to a decision by the Board concerning return to work or a labour market re-entry plan and if the mediation is unsuccessful, the Board shall decide the matter within 60 days after receiving the notice of objection or within such longer period as the Board may permit.

Role of mediator

(3) The mediator shall not participate in any application or proceeding relating to the matter that is the subject of mediation unless the parties to the application or proceeding consent. 1997, c. 16, Sched. A, s. 122.

APPEALS TRIBUNAL

Jurisdiction

123. (1) The Appeals Tribunal has exclusive jurisdiction to hear and decide,

- (a) all appeals from final decisions of the Board with respect to entitlement to health care, return to work, labour market re-entry and entitlement to other benefits under the insurance plan;
- (b) all appeals from final decisions of the Board with respect to transfer of costs, an employer's classification under the insurance plan and the amount of the premiums and penalties payable by a Schedule 1 employer and the amounts and penalties payable by a Schedule 2 employer; and
- (c) such other matters as are assigned to the Appeals Tribunal under this Act.

Same

(2) For greater certainty, the jurisdiction of the Appeals Tribunal under subsection (1) does not include the jurisdiction to hear and decide an appeal from decisions made under the following Parts or provisions:

1. Part II (injury and disease prevention).
2. Sections 26 to 30 (rights of action) and 36 (health examination).
3. Section 60, subsections 62 (1) to (3) and sections 64 and 65 (payment of benefits).
4. Subsections 81 (1) to (6), 83 (1) and (2) and section 85 (allocation of payments).
5. Part VIII (insurance fund).
6. Part XII (enforcement), other than decisions concerning whether security must be given under section 137 or whether a person is liable under subsection 146 (2) to make payments.

Decisions on an appeal

(3) On an appeal, the Appeals Tribunal may confirm, vary or reverse the decision of the Board.

Finality of decision

(4) An action or decision of the Appeals Tribunal under this Act is final and is not open to question or review in a court.

Same

(5) No proceeding by or before the Appeals Tribunal shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court. 1997, c. 16, Sched. A, s. 123.

Appeals Tribunal: miscellaneous rules

Principle of decision

124. (1) The Appeals Tribunal shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.

Same

(2) If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for or against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.

Hearings

(3) The Appeals Tribunal may conduct hearings orally, electronically or in writing. 1997, c. 16, Sched. A, s. 124.

Appeal

125. (1) A worker, employer, survivor, parent or other person acting in the role of a parent under subsection 48 (20) or beneficiary designated by the worker under subsection 45 (9) may appeal a final decision of the Board to the Appeals Tribunal.

Notice of appeal

(2) The person shall file a notice of appeal with the Appeals Tribunal within six months after the decision or within such longer period as the tribunal may permit. The notice of appeal must be in writing and must indicate why the decision is incorrect or why it should be changed.

Notice by Appeals Tribunal

(3) The Appeals Tribunal shall promptly notify the Board and the parties of record of the appeal and the issues to be decided on the appeal and shall give them copies of any written submissions made in connection with the appeal.

Board records, etc.

(4) The Board shall give the Appeals Tribunal a copy of its records relating to the appeal promptly upon being notified of the appeal. 1997, c. 16, Sched. A, s. 125.

Board policies

126. (1) If there is an applicable Board policy with respect to the subject-matter of an appeal, the Appeals Tribunal shall apply it when making its decision.

Notice of Board policies

(2) The Board shall state in writing which policy, if any, applies to the subject-matter of an appeal after receiving notice of the appeal under subsection 125 (3).

Same

(3) If the Board does not state that a particular policy applies in respect of the subject-matter of an appeal, the tribunal may ask the Board to notify it if there is an applicable policy and the Board shall do so as soon as practicable.

Referral by Appeals tribunal

(4) If the tribunal, in a particular case, concludes that a Board policy of which it is notified is inconsistent with, or not authorized by, the Act or does not apply to the case, the tribunal shall not make a decision until it refers the policy to the Board for its review and the Board issues a direction under subsection (8).

Same

(5) The tribunal shall make the referral in writing and state the reasons for its conclusion.

Board review

(6) If there is a referral under subsection (4), the Board shall review the policy to determine whether it is consistent with, or authorized by, the Act or whether it applies to the case.

Submissions

(7) The Board shall provide the parties to the appeal in respect of which there is a referral an opportunity to make written submissions with respect to the policy.

Board direction

(8) Within 60 days after a referral to it, the Board shall issue a written direction, with reasons, to the tribunal that determines the issue raised in the tribunal's referral under subsection (4). 1997, c. 16, Sched. A, s. 126.

Time limit for decisions

127. (1) The Appeals Tribunal shall decide an appeal within 120 days after the hearing of the appeal ends or within such longer period as the tribunal may permit.

Transition

(2) If a notice of appeal is filed before January 1, 1998 and the Appeals Tribunal hears but does not decide the appeal before that date, the tribunal shall decide it not later than April 30, 1998 or such later date as the tribunal may permit.

Same

(3) If a notice of appeal is filed before January 1, 1998 and the Appeals Tribunal does not hear the appeal before that date, the tribunal shall decide it within 120 days after the hearing ends or within such longer period as the tribunal may permit. 1997, c. 16, Sched. A, s. 127.

Periodic payments pending decision

128. Periodic payments required by a decision that is under appeal must continue pending the outcome of the appeal. 1997, c. 16, Sched. A, s. 128.

Power to reconsider

129. The Appeals Tribunal may reconsider its decision and may confirm, amend or revoke it. The tribunal may do so at any time if it considers it advisable to do so. 1997, c. 16, Sched. A, s. 129.

Mediation

130. The Appeals Tribunal may provide mediation services in such circumstances as it considers appropriate. 1997, c. 16, Sched. A, s. 130.

PROCEDURAL AND OTHER POWERS

Practice and procedure

131. (1) The Board shall determine its own practice and procedure in relation to applications, proceedings and mediation. With the approval of the Lieutenant Governor in Council, the Board may make rules governing its practice and procedure.

Same, Appeals Tribunal

(2) Subsection (1) applies with necessary modifications with respect to the Appeals Tribunal.

Non-application

(3) The *Statutory Powers Procedure Act* does not apply with respect to decisions and proceedings of the Board or the Appeals Tribunal.

Notice of decisions

(4) The Board or the Appeals Tribunal, as the case may be, shall promptly notify the parties of record of its decision in writing and the reasons for the decision. The Appeals Tribunal shall also notify the Board of the decision. 1997, c. 16, Sched. A, s. 131.

Certain powers

Powers re proceedings

132. (1) The Board and the Appeals Tribunal may do the following things in connection with a proceeding:

1. Summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath or affirmation. These powers may be exercised in the same manner as a court of record in civil proceedings.
2. Require persons to produce such documents or things as the Board or tribunal considers necessary to make its decision. This power may be exercised in the same manner as a court of record in civil proceedings.
3. Accept such oral or written evidence as the Board or tribunal considers proper, whether or not it would be admissible in a court.

Powers of entry and inspection, etc.

(2) The Board and the Appeals Tribunal may do the following things in the exercise of their power to make decisions:

1. Enter premises where work is being done or has been done by a worker or in which an employer carries on business (whether or not the premises are those of the employer).
2. Inspect anything on the premises.
3. Make inquiries of any person on the premises.
4. Post notices on the premises.

Posting notices

(3) The Board or the Appeals Tribunal may require a person to post a notice in a conspicuous place on the person's premises and to keep the notice posted, if the Board or tribunal considers it necessary for the purposes of this Act.

Authorization

(4) The Board or the Appeals Tribunal may authorize a person to do anything that the Board or tribunal can do under this section and may require the person to report when he or she does so. 1997, c. 16, Sched. A, s. 132.

Payment of expenses of witnesses, etc.

133. (1) The Board or the Appeals Tribunal may pay the reasonable travel and living expenses of, and other allowances for,

- (a) a worker and his or her witnesses;
- (b) the survivors of a deceased worker and their witnesses;
- (c) the parent or other person referred to in subsection 48 (20); or
- (d) a designated beneficiary referred to in subsection 45 (9).

Same

(2) Amounts paid under subsection (1) are expenses of the Board or the Appeals Tribunal, as the case may be. 1997, c. 16, Sched. A, s. 133.

Health professionals

134. (1) The chair of the Appeals Tribunal may establish a list of health professionals upon whom the tribunal may call for assistance in determining matters of fact in a proceeding. The list must not include employees of the tribunal or the Board.

Remuneration

(2) The chair shall determine the remuneration to be paid to a health professional who assists the Appeals Tribunal and, in doing so, shall take into account any fee schedule established by the Board for services provided by health professionals.

Same

- (3) The Appeals Tribunal shall pay a health professional the amount determined by the chair.

Assistance by health professional

(4) The Appeals Tribunal may call upon a health professional on the list for assistance at any time before or during a proceeding.

Restriction

(5) The Appeals Tribunal shall not call upon a particular health professional for assistance in any of the following circumstances except with the written consent of the parties to the proceeding:

1. If the health professional has previously examined the worker whose claim is the subject of the proceeding.
2. If the health professional has previously treated the worker or a member of his or her family.
3. If the health professional has acted as a consultant in the treatment of the worker or as a consultant to the employer.
4. If the health professional is a partner to a health professional described in paragraph 1, 2 or 3.

Health examination

(6) If the chair or a vice chair of the Appeals Tribunal determines that an issue on an appeal concerns the Board's decision on a health report or opinion, the chair or vice chair may require the worker to submit to an examination by a health professional (selected by the chair or vice chair) and the worker shall do so.

Same

(7) The health professional shall give the Appeals Tribunal a written report on his or her examination of the worker and the tribunal shall give a copy of the report to the parties for the purpose of receiving their submissions on it.

Failure to comply

(8) If a worker fails to comply with subsection (6) or obstructs the examination without reasonable cause, the Appeals Tribunal may suspend payments to the worker under the insurance plan and may suspend the worker's right to a final decision by the tribunal while the non-compliance or obstruction continues. 1997, c. 16, Sched. A, s. 134.

**PART XII
ENFORCEMENT**

POWERS OF EXAMINATION AND INVESTIGATION

Examination and inspection

Examination, etc., of records

135. (1) The Board or a person authorized by it may examine the books and accounts of an employer and may investigate and make such inquiries as the Board considers necessary for the following purposes:

1. To ascertain whether a statement given to the Board by the employer is accurate.
2. To ascertain the amount of the employer's payroll.
3. To ascertain whether the employer is a Schedule 1 or a Schedule 2 employer. 1997, c. 16, Sched. A, s. 135 (1).

Inspection of premises

(2) The Board may enter into the establishment of an employer and the premises connected with the establishment for the following purposes:

1. To ascertain whether the ways, works, machinery or appliances in the establishment or on the premises are safe, adequate and sufficient.
2. To ascertain whether all proper precautions are being taken to prevent accidents to the workers employed in or about the establishment or premises.
3. To ascertain whether the safety appliances or safeguards required by law are used and employed in the establishment or on the premises.
4. For such other purpose as the Board considers necessary to determine the proportion in which the employer should make payments under this Act. 1997, c. 16, Sched. A, s. 135 (2).

Order for search and seizure

(3) The Board may apply without notice to a judge of the Superior Court of Justice for an order authorizing one or more persons designated by the Board (together with such police officers as they may call upon for assistance),

- (a) to enter and search a building, receptacle or place for books and accounts of an employer and to do so by force if necessary;
- (b) to remove the books and accounts for the purpose of examining them; and
- (c) to retain the books and accounts until the examination is completed. 1997, c. 16, Sched. A, s. 135 (3); 2000, c. 26, Sched. I, s. 1 (16).

Same

- (4) The court may issue such an order. 1997, c. 16, Sched. A, s. 135 (4).

Powers of examiners, etc.

136. (1) The Board and every person appointed by the Board to conduct examinations, investigations and inspections have the powers of a commission under Part II of the *Public Inquiries Act*. That Part applies with respect to an examination, investigation or inspection as if it were an inquiry under that Act.

Identification

(2) A person appointed by the Board to conduct an examination, investigation or inspection shall produce evidence of his or her appointment upon request when conducting an examination, investigation or inspection. 1997, c. 16, Sched. A, s. 136.

ENFORCEMENT OF PAYMENT OBLIGATIONS

Security for payment

137. (1) The Board may require an employer to give the Board security for the payment of amounts that are or may become due under the insurance plan.

Same

(2) The Board may specify the type and amount of security to be provided and may vary the type and amount if it considers it appropriate to do so.

Same

(3) The employer shall provide the security within 15 days after being directed to do so.

Enforcement

(4) The Board may enforce an obligation to provide security as if it were an obligation by the employer to make a payment under this Act. 1997, c. 16, Sched. A, s. 137.

Set-off and other remedies

Right of set-off

138. (1) The Board may deduct from money payable to a person by the Board all or part of an amount owing under this Act by the person.

Other remedies

(2) The Board may pursue such other remedies as it considers appropriate to recover an amount owing to it. 1997, c. 16, Sched. A, s. 138.

Enforcement by the courts

139. (1) If a person does not pay amounts owing under this Act when they become due, the Board may issue a certificate stating that the person is in default under this Act and setting out the amount owed and the person to whom it is owed. 1997, c. 16, Sched. A, s. 139 (1).

Same

(2) The Board may file the certificate with the Superior Court of Justice or with the Small Claims Court and it shall be entered in the same way as an order of that court and is enforceable as such. Despite any other rule of the court, the Board may file the certificate by mail and personal attendance at the court is not required. 1997, c. 16, Sched. A, s. 139 (2); 2000, c. 26, Sched. I, s. 1 (17).

Enforcement through municipal tax rolls

140. (1) If an employer does not pay amounts owing under this Act within 30 days after they become due, the Board may issue a certificate setting out the employer's status under this Act and the address of the employer's establishment, stating that the employer is more than 30 days in default under this Act and setting out the amount owed.

Same

(2) The Board may give the certificate to the clerk of a municipality in which the employer's establishment is located. The clerk shall enter the amount owed by the employer on the collector's roll as if it were taxes due from the employer in respect of the establishment.

Same

(3) The collector shall collect the amount as if it were taxes due from the employer and shall pay the amount collected to the Board. The collector may collect an additional 5 per cent in the same manner and shall keep it to pay for the collector's services.

Same

(4) The Board may issue certificates under this section and section 139 in respect of the same amount and may pursue both types of remedies. 1997, c. 16, Sched. A, s. 140.

Contractors and subcontractors

141. (1) This section applies when a person retains a contractor or subcontractor to execute work in an industry included in Schedule 1 or Schedule 2.

Deemed employer

(2) The person shall be deemed to be the employer of workers employed by the contractor or subcontractor to execute the work and is liable to pay the premiums payable by the contractor or subcontractor in respect of their workers as if the person were the contractor or subcontractor unless,

- (a) the contractor or subcontractor, as the case may be, is a Schedule 1 or Schedule 2 employer in respect of the work; and
- (b) the Board decides that the responsibility of the contractor or subcontractor is sufficient protection to the workers for the benefits provided under the insurance plan.

Right to reimbursement

(3) Subject to subsection (4), the person is entitled to be reimbursed by the contractor or subcontractor, as the case may be, for amounts paid under the insurance plan in respect of workers employed by the contractor or subcontractor.

Same

- (4) The Board shall determine the extent of the contractor's or subcontractor's liability under subsection (3).

Right of set-off

(5) The person may deduct from money payable to the contractor or subcontractor, as the case may be, the amount for which the contractor or subcontractor is liable under subsection (3).

Obligation to pay

(6) If the person is not deemed to be the employer, the person shall ensure that the contractor or subcontractor complies with his, her or its obligations to make payments under the insurance plan. The person is liable to the extent that the contractor or subcontractor does not meet those obligations.

Right of indemnity

(7) The person is entitled to be indemnified by the contractor or subcontractor, as the case may be, for payments the person makes under subsection (6).

Same

- (8) The Board shall determine all issues relating to subsections (6) and (7).

Liability to contribute

(9) Nothing in this section prevents the Board from requiring the contractor or subcontractor to pay premiums or reimburse the Board in respect of workers who have a deemed employer under this section. 1997, c. 16, Sched. A, s. 141.

Lienholder under *Construction Lien Act*

- 142.** (1) This section applies if a Schedule 1 employer is entitled to a lien under the *Construction Lien Act* at a premises.

Liability of owner

(2) The owner (as defined in the *Construction Lien Act*) of the premises has a duty to see that the employer pays the premiums to the Board relating to the work or service performed for the owner and, if the owner fails to do so, the owner is liable to make those payments to the Board.

Enforcement

(3) The Board may enforce the obligation on the owner as if it were an obligation by an employer to pay premiums under the insurance plan. 1997, c. 16, Sched. A, s. 142.

Licensee, *Crown Forest Sustainability Act, 1994*

143. (1) If a licence is granted under Part III of the *Crown Forest Sustainability Act, 1994* and forest resources are harvested or used for a designated purpose under that Act by a person other than the licensee, the licensee shall ensure that the premiums, if any, payable by the other person under the insurance plan are paid. The licensee is liable to the extent that the other person does not pay the premiums.

Indemnification, etc.

(2) The licensee is entitled to be indemnified by the other person for premiums paid by the licensee and may deduct from money payable to the other person the amount of the premiums paid by the licensee.

Same

(3) The Board shall determine all issues relating to the rights of the licensee under subsection (2) and the amount to which the licensee is entitled.

Enforcement

(4) The Board may enforce a licensee's obligation to pay premiums as if the licensee were an employer. 1997, c. 16, Sched. A, s. 143.

Preference upon certain distributions

- 144.** (1) This section applies when a person owes money under this Act to the Board or to another person and,
- (a) the person who owes the money is an individual who dies;
 - (b) the person who owes the money is a corporation that is being wound up; or
 - (c) there is an assignment of all or part of the assets of the person who owes the money.

Same

(2) For the purposes of the *Assignments and Preferences Act*, the *Corporations Act* and the *Trustee Act*, amounts due under this Act immediately before the effective date described in subsection (4) shall be deemed to be amounts to be paid in priority to all other debts.

Commuted value

(3) If the person who owes money under this Act is required to make periodic payments under this Act after the effective date, the Board shall calculate the commuted value of the periodic payments. The commuted value shall be deemed to be due immediately before the effective date.

Effective date

(4) For the purposes of this section, the effective date is the date of death of the individual, the date on which the winding up of the corporation begins or the date on which the assets are assigned. 1997, c. 16, Sched. A, s. 144.

Lien upon property

145. (1) Subject to subsection (2), the amount set out in a certificate filed with the court under subsection 139 (2) is, after municipal taxes, a first lien upon all of the property of the employer used in connection with the industry with respect to which the employer is required to make payments under the insurance plan.

Notice of lien

- (2) The lien is effective only if,
- (a) notice of the lien is filed by way of writ of seizure and sale in the office of the sheriff for the area in which the affected property is situated; and
 - (b) a copy of the writ is delivered by the sheriff or by registered mail to the proper land registrar, if affected land is registered under the *Land Titles Act*. 1997, c. 16, Sched. A, s. 145.

Obligations of successor employers

146. (1) This section applies when an employer sells, leases, transfers or otherwise disposes of all or part of the employer's business either directly or indirectly to another person other than a trustee in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada), a receiver, a liquidator under the *Winding-Up Act* (Canada) or a person who acquires any or all of the employer's business pursuant to an arrangement under the *Companies' Creditors Arrangement Act* (Canada).

Liability of person

(2) The person is liable to pay all amounts owing under this Act by the employer immediately before the disposition.

Enforcement

(3) The Board may enforce the obligation against the person as if the person had been the employer at all relevant times. 1997, c. 16, Sched. A, s. 146.

Overpayments

147. (1) An overpayment made by the Board to a person under this Act is an amount owing to the Board at the time the overpayment is made.

Amount

(2) The amount of the overpayment is as determined by the Board. 1997, c. 16, Sched. A, s. 147.

Enforcement policies

148. (1) The Board shall develop policies governing the circumstances in which the powers under subsections 12 (4) and (5) and sections 76, 137, 139 and 146 are to be exercised and setting out criteria governing the fair, reasonable and timely exercise of those powers.

Same

(2) The Board shall be bound by the policies in its administration of those sections. 1997, c. 16, Sched. A, s. 148.

OFFENCES AND PENALTIES

Offences

Offence, false or misleading statement

149. (1) A person who knowingly makes a false or misleading statement or representation to the Board in connection with any person's claim for benefits under the insurance plan is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (1).

Same, material change in circumstances

(2) A person who wilfully fails to inform the Board of a material change in circumstances in connection with his or her entitlement to benefits within 10 days after the change occurs is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (2).

Same

(3) An employer who wilfully fails to inform the Board of a material change in circumstances in connection with an obligation of the employer under this Act within 10 days after the change occurs is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (3).

Same, by supplier, etc.

(4) A person who knowingly makes a false or misleading statement or representation to the Board to obtain payment for goods or services provided to the Board, whether or not the Board received the goods or services, is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (4).

Restitution order

(5) If a person is convicted of an offence under this section, the court may also order the person to pay to the Board any money received by the person or obtained by the person on behalf of another person by reason of the commission of the offence. The money payable to the Board shall be deemed to be an amount owing under this Act. 1997, c. 16, Sched. A, s. 149 (5).

(6) REPEALED: 2001, c. 9, Sched. I, s. 4 (3).

Other remedies

(7) Subsection (5) does not limit the right of the Board to take such other steps as it considers appropriate to recover an amount owing to it. 1997, c. 16, Sched. A, s. 149 (7).

Offence, confidential information

150. (1) An employer or employer's representative who contravenes subsection 37 (4), 59 (6) or 181 (3) is guilty of an offence.

Same, Board employees, etc.

(2) A person who contravenes subsection 181 (1) is guilty of an offence. 1997, c. 16, Sched. A, s. 150.

Offences, ss. 75, 76

Offence, employer registration, etc.

151. (1) An employer who fails to register or to provide the information required under section 75 is guilty of an offence. 1997, c. 16, Sched. A, s. 151 (1).

Same, false information

(1.1) An employer who knowingly provides false or misleading information under section 75 is guilty of an offence. 2000, c. 26, Sched. I, s. 1 (18).

Same, change of status

(2) An employer who fails to comply with section 76 is guilty of an offence. 1997, c. 16, Sched. A, s. 151 (2).

Offences, ss. 21, 78, 80

Offence, statements and records

152. (1) An employer who fails to comply with subsection 78 (1), (2) or (3) or 80 (1) is guilty of an offence. 2001, c. 9, Sched. I, s. 4 (4).

Same

(1.1) An employer who fails to comply with a requirement of the Board under subsection 78 (4) or 80 (2) is guilty of an offence. 2001, c. 9, Sched. I, s. 4 (4).

Same

(2) An employer who provides a statement under subsection 78 (1), (2), (3) or (4) that is not an accurate statement of a matter required to be set out in it is guilty of an offence. 1997, c. 16, Sched. A, s. 152 (2); 2000, c. 26, Sched. I, s. 1 (20).

Same, notice of accident

(3) An employer who fails to comply with section 21 is guilty of an offence. 1997, c. 16, Sched. A, s. 152 (3).

Offence, obstruction

153. (1) A person who obstructs or hinders an examination, investigation or inquiry authorized by subsection 135 (1) is guilty of an offence.

Same

(2) A person who obstructs or hinders an inspection authorized by subsection 135 (2) is guilty of an offence. 1997, c. 16, Sched. A, s. 153.

Offence, security for payment

154. An employer who fails to comply with a requirement of the Board under section 137 is guilty of an offence. 1997, c. 16, Sched. A, s. 154.

Offence, deduction from wages

155. (1) An employer who contravenes subsection 95.1 (1) is guilty of an offence. 2000, c. 26, Sched. I, s. 1 (21).

Restitution order

(2) If a person is convicted of an offence under this section, the court shall also order the person to pay to the Board on behalf of an affected worker any sum deducted from the worker's wages or any sum that the worker was required or permitted to pay in contravention of subsection 95.1 (1). The amount payable to the Board shall be deemed to be an amount owing under this Act. 2000, c. 26, Sched. I, s. 1 (21).

Same

(3) When the court makes an order under subsection (2), the Board shall pay the sum determined under the order to the worker. 2000, c. 26, Sched. I, s. 1 (21).

Offence, regulations

156. (1) A person who contravenes or fails to comply with a regulation made under this Act is guilty of an offence.

Restriction on prosecution

(2) A prosecution shall not be instituted for an offence under this section except with the consent in writing of the Board. 1997, c. 16, Sched. A, s. 156.

Offence by director, officer

157. If a corporation commits an offence under this Act, every director or officer of the corporation who knowingly authorized, permitted or acquiesced in the commission of the offence is guilty of an offence, whether or not the corporation has been prosecuted or convicted. 1997, c. 16, Sched. A, s. 157.

Restriction on prosecution

157.1 (1) A prosecution for an offence under this Act shall not be commenced more than two years after the day on which the most recent act or omission upon which the prosecution is based comes to the knowledge of the Board. 2001, c. 9, Sched. I, s. 4 (5).

Exception

(2) Despite subsection (1), there is no limitation period for prosecuting an offence under section 149. 2001, c. 9, Sched. I, s. 4 (5).

Penalty

158. (1) A person who is convicted of an offence is liable to the following penalty:

1. If the person is an individual, he or she is liable to a fine not exceeding \$25,000 or to imprisonment not exceeding six months or to both.
2. If the person is not an individual, the person is liable to a fine not exceeding \$100,000.

Fines

(2) Any fine paid as a penalty for a conviction under this Act shall be paid to the Board and shall form part of the insurance fund. 1997, c. 16, Sched. A, s. 158.

**PART XIII
ADMINISTRATION OF THE ACT**

WORKPLACE SAFETY AND INSURANCE BOARD

Board: continued, powers, etc.

Board continued

159. (1) The body corporate known as the Workers' Compensation Board is continued under the name Workplace Safety and Insurance Board in English and Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail in French and is composed of the members of its board of directors. 1997, c. 16, Sched. A, s. 159 (1).

Powers of the Board

- (2) Subject to this Act, the Board has the powers of a natural person including the power,
- (a) to establish policies concerning the premiums payable by employers under the insurance plan;
 - (b) to review this Act and the regulations and recommend amendments or revisions to them;
 - (c) to consider and approve annual operating and capital budgets;
 - (d) to review and approve its investment policies;
 - (e) to review and approve major changes in its programs;
 - (f) to enact by-laws and pass resolutions for the adoption of a seal and the conduct of business and affairs;
 - (g) to establish, maintain and regulate advisory councils or committees, their composition and their functions;
 - (h) to provide, on such terms as it sees fit, financial assistance to an employer who will modify the work or workplace so that an injured worker or the spouse or same-sex partner of a deceased worker may re-enter the labour force;

- (i) to establish a program to designate return to work and labour market re-entry service providers, to monitor the service providers' performance and to charge them a fee for the cost of the program. 1997, c. 16, Sched. A, s. 159 (2); 1999, c. 6, s. 67 (42).

Employees

(3) The Board may employ upon such terms as it approves such persons as it considers necessary for its purposes. 1997, c. 16, Sched. A, s. 159 (3).

(4) SPENT: 1997, c. 16, Sched. A, s. 159 (4).

Investigations, research and training

(5) The Board may undertake and carry on investigations, research and training and, for those purposes, may make grants to individuals, institutions and organizations in such amounts and subject to such conditions as the Board considers acceptable and may publish the results of the investigations and research.

Acquisition of real property

(6) With the approval of the Lieutenant Governor in Council, the Board may acquire real property that the Board considers necessary for its purposes and may dispose of it.

Agreements to co-operate

(7) The Board may enter into agreements with the government of Canada or of a province or territory of Canada or with the appropriate authority of such a government providing for co-operation in matters relating to the prevention of injury and disease and workers' compensation and return to work and providing for the avoidance of any duplication in compensation.

Same

(8) With the approval of the Lieutenant Governor in Council, the Board may enter into agreements with any state, government or authority outside Canada providing for co-operation in matters relating to the prevention of injury and disease and workers' compensation and return to work and providing for the avoidance of any duplication in compensation.

Agreements to exchange information

(9) With the approval of the Lieutenant Governor in Council, for the purpose of administering this Act the Board may enter into agreements with the government of Canada or of a province or territory of Canada or with a ministry, board, commission or agency of such a government under which,

- (a) the government, ministry, board, commission or agency will be allowed access to information obtained by the Board under this Act; and
- (b) the government, ministry, board, commission or agency will allow the Board to have access to information obtained by the government, ministry, board, commission or agency under statutory authority.

Agreements for cost sharing

(10) Despite any provision in this Act, the Board may enter into an agreement with the appropriate authority in any other jurisdiction in Canada to provide for the apportionment of the costs of the claims for occupational diseases for workers who have had exposure employment in more than one Canadian jurisdiction.

Same, industrial noise claims

(11) Despite any provision in this Act, the Board may enter into an agreement with the appropriate authority in any other province or territory of Canada to provide for the sharing of costs of workers' claims for hearing loss induced by occupational noise. The Board's share must be in proportion to the actual or estimated amount of workers' exposure to occupational noise in Ontario which contributed to their hearing loss.

Corporations Act

(12) The *Corporations Act* does not apply to the Board. 1997, c. 16, Sched. A, s. 159 (5-12).

Agreement re duplication of premiums

160. (1) The Board may enter into an agreement with the workers' compensation authority of another province or territory of Canada for the purpose of avoiding duplication of the premiums for which an employer may be liable with respect to the earnings of workers who are employed in Ontario part of the time and in the other province or territory part of the time.

Same

(2) The agreement may provide for such adjustments in employers' premiums under the insurance plan as is equitable.

Relief from premiums

(3) The Board may relieve an employer from paying all or part of the employer's premiums with respect to those workers.

Reimbursement

(4) The Board may reimburse the workers' compensation authority for any payments made under the agreement by the authority for compensation, rehabilitation or health care. 1997, c. 16, Sched. A, s. 160.

Duties of the Board

161. (1) The Board shall perform the functions assigned to it under Part II in respect of workplace safety and the prevention of injury and disease, shall administer the insurance plan and shall perform such other duties as it is assigned under this Act and any other Act.

Duty to evaluate proposed changes

(2) The Board shall evaluate the consequences of any proposed change in benefits, services, programs and policies to ensure that the purposes of this Act are achieved.

Duty to monitor

(3) The Board shall monitor developments in the understanding of the relationship between work and the prevention of injury and occupational disease and the relationship between workplace insurance and injury and occupational disease,

(a) so that generally-accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies in a way that is consistent with the purposes of this Act; and

(b) in order to improve the efficiency and effectiveness of the insurance plan and the performance of the Board's functions under Part II in respect of workplace safety and the prevention of injury and occupational disease. 1997, c. 16, Sched. A, s. 161.

Board of directors

162. (1) A board of directors shall be constituted to govern the Board and to exercise the powers and perform the duties of the Board under this or any other Act. It shall be composed of,

(a) a chair appointed by the Lieutenant Governor in Council;

(b) the president of the Board appointed by the Lieutenant Governor in Council; and

(c) a minimum of three and a maximum of seven members who are representative of workers, employers and such others as the Lieutenant Governor in Council considers appropriate, appointed by the Lieutenant Governor in Council. 1997, c. 16, Sched. A, s. 162 (1).

Consultation re president

(2) The Lieutenant Governor in Council shall consult with the chair and the members described in clause (1) (c) before appointing the president of the Board. 1997, c. 16, Sched. A, s. 162 (2).

Remuneration and expenses

(3) The Board shall pay members of the board of directors such remuneration and benefits and reimburse them for such reasonable expenses as may be determined by the Lieutenant Governor in Council. The remuneration and expenses are administrative expenses of the Board. 1997, c. 16, Sched. A, s. 162 (3).

Meetings of the board

(4) The board of directors shall meet at the call of the chair and in no case shall more than two months elapse between meetings of the board of directors. 1997, c. 16, Sched. A, s. 162 (4).

Quorum

(5) A majority of members of the board of directors holding office constitutes a quorum and a decision of a majority of the members constituting the quorum is the decision of the board of directors. 1997, c. 16, Sched. A, s. 162 (5).

Vacancy

(6) The board of directors may act despite a vacancy in its membership. 1997, c. 16, Sched. A, s. 162 (6).

Absence of chair

(7) The chair shall decide which member of the board of directors is to act as chair in his or her absence. If the chair does not do so, the board of directors may decide which member is to act in the chair's absence. 1997, c. 16, Sched. A, s. 162 (7).

(8) REPEALED: 2000, c. 26, Sched. I, s. 1 (22).

(9) REPEALED: 2000, c. 26, Sched. I, s. 1 (22).

(10) REPEALED: 2000, c. 26, Sched. I, s. 1 (22).

(11) REPEALED: 2000, c. 26, Sched. I, s. 1 (22).

(12) REPEALED: 2000, c. 26, Sched. I, s. 1 (22).

Duties of the board of directors

163. (1) The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties.

Same, board members

(2) Members of the board of directors shall act in good faith with a view to the best interests of the Board and shall exercise the care, diligence and skill of a reasonably prudent person. 1997, c. 16, Sched. A, s. 163.

Delegation

164. The board of directors may delegate a power or duty of the Board to a member of the board of directors or to an officer or employee of the Board and may impose conditions and limitations on the delegation. The delegation must be made in writing. 1997, c. 16, Sched. A, s. 164.

Offices of the Board

165. (1) The main offices of the Board shall be situate in the City of Toronto. 1997, c. 16, Sched. A, s. 165 (1); 1997, c. 26, Sched.

Place of meeting

(2) The board of directors may hold meetings in any place in Ontario that the board considers convenient. 1997, c. 16, Sched. A, s. 165 (2).

Memorandum of understanding

166. (1) Every five years, the Board and the Minister shall enter into a memorandum of understanding containing only such terms as may be directed by the Minister.

Contents

(2) The memorandum of understanding must impose the following requirements:

1. Each year, the Board must give the Minister a strategic plan setting out its plans for the following five years.
2. The Board must give the Minister an annual statement setting out its proposed priorities for administering this Act and the regulations.
3. The Board must give the Minister an annual statement of its investment policies and goals.

Same

(3) The memorandum of understanding must address any matter that may be required by order of the Lieutenant Governor in Council or by a direction of Management Board of Cabinet.

Same

(4) The memorandum of understanding may address the following matters:

1. Any direction by the Minister about the programs to be reviewed under section 168.
2. Any matter proposed by the Board and agreed to by the Minister.

3. Any other matter the Minister considers appropriate.

Compliance

(5) The Board shall comply with the memorandum of understanding. 1997, c. 16, Sched. A, s. 166.

Policy directions

167. (1) The Minister may issue policy directions that have been approved by the Lieutenant Governor in Council on matters relating to the Board's exercise of its powers and performance of its duties under this Act.

Same

(2) In exercising a power or performing a duty under this Act, the Board shall respect any policy direction that relates to its exercise.

Report

(3) The Board shall report to the Minister whenever it exercises a power or performs a duty that relates to a policy direction. 1997, c. 16, Sched. A, s. 167.

Value for money audit

168. (1) The board of directors shall ensure that a review is performed each year of the cost, efficiency and effectiveness of at least one program that is provided under this Act.

Same

(2) The Minister may determine which program is to be reviewed and shall notify the board of directors if he or she selects a program for review.

Same

(3) The review must be performed under the direction of the Provincial Auditor by one or more public accountants who are licensed under the *Public Accountancy Act*. 1997, c. 16, Sched. A, s. 168.

Audit of accounts

169. (1) The accounts of the Board shall be audited by the Provincial Auditor or under his or her direction by an auditor appointed by the Lieutenant Governor in Council to audit them.

Remuneration, etc.

(2) The Board shall pay the remuneration and reasonable expenses of an auditor appointed by the Lieutenant Governor in Council. The remuneration and expenses are administrative expenses of the Board. 1997, c. 16, Sched. A, s. 169.

Annual report

170. (1) The Board shall give the Minister an annual report concerning its affairs.

Tabling

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall lay the report before the Assembly if it is in session or, if not, at the next session. 1997, c. 16, Sched. A, s. 170.

Employees' pension plan continued

171. (1) The Workers' Compensation Board Superannuation Fund is continued as the Workplace Safety and Insurance Board Employees' Pension Plan. Its purpose is to pay superannuation allowances and allowances upon the death or disability of full-time members of the board of directors and employees of the Board. 1997, c. 16, Sched. A, s. 171 (1).

Expenses

(2) The cost of maintaining and administering the pension plan is chargeable to the insurance fund. 1997, c. 16, Sched. A, s. 171 (2).

Terms of the plan

(3) The terms of the pension plan are as prescribed. 1997, c. 16, Sched. A, s. 171 (3).

Deemed employees

(4) The following persons shall be deemed to be employees of the Board for the purposes of the pension plan:

1. The employees of safe workplace associations designated under section 6.
 2. Persons who are deemed, on January 1, 1998, to be employees of the Workers' Compensation Board under paragraph 2 of subsection 68 (3) of the *Workers' Compensation Act*.
 3. Persons who are deemed, on January 1, 1998, to be employees of the Workers' Compensation Board under subsection 68 (5) of the *Workers' Compensation Act*.
 4. The employees of safety and accident prevention associations that, on January 1, 1998, are designated under subclause 16 (1) (n) (ii) of the *Occupational Health and Safety Act*. 1997, c. 16, Sched. A, s. 171 (4); 2000, c. 26, Sched. I, s. 1 (23).
- (5) REPEALED: 2000, c. 26, Sched. I, s. 1 (24).
- (6) REPEALED: 2000, c. 26, Sched. I, s. 1 (24).

Reciprocal agreements

(7) With the approval of the Lieutenant Governor in Council, the Board may enter into agreements with the government of Canada or of a province of Canada or with a municipality in Canada or a board, commission or public institution established under a statute of Canada or a province of Canada to provide reciprocal arrangements for the transfer of contributions and credits between pension plans. 1997, c. 16, Sched. A, s. 171 (7).

Same

(8) Despite subsection (1) and the terms of the pension plan, transfers of money and credit to or from the pension plan shall be made in accordance with the applicable agreement, if any, entered into under subsection (7). 1997, c. 16, Sched. A, s. 171 (8).

Mines

Mine rescue stations

172. (1) The Board shall pay the reasonable expenses of establishing, maintaining and operating mine rescue stations under the *Occupational Health and Safety Act*.

Medical examinations for mine workers

(2) The Board may pay the remuneration and expenses of medical officers to examine workers and applicants for employment in a mine or mining plant in accordance with the regulations made under the *Occupational Health and Safety Act*.

Same

(3) The Board may take into account amounts paid under subsection (2) when determining the premiums to be paid under the insurance plan by Schedule 1 employers or the payments to be made by Schedule 2 employers who have workers receiving benefits under the insurance plan for silicosis. 1997, c. 16, Sched. A, s. 172.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Appeals Tribunal

173. (1) The Workers' Compensation Appeals Tribunal is continued under the name Workplace Safety and Insurance Appeals Tribunal in English and Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail in French. 1997, c. 16, Sched. A, s. 173 (1).

Remuneration and expenses

(2) The Appeals Tribunal shall pay persons appointed to the tribunal such remuneration and benefits and reimburse them for such reasonable expenses as may be determined by the Lieutenant Governor in Council. 1997, c. 16, Sched. A, s. 173 (2).

Chair and chief executive officer

(3) A chair of the Appeals Tribunal appointed by the Lieutenant Governor in Council shall hear and decide appeals and such other matters as are conferred upon the tribunal under this Act and act as the tribunal's chief executive officer. 1997, c. 16, Sched. A, s. 173 (3); 2000, c. 26, Sched. I, s. 1 (25).

Absence of chair

(4) The chair shall decide which vice-chair is to act as chair in his or her absence. If the chair does not do so, the Minister may decide which vice-chair is to act in the chair's absence. 1997, c. 16, Sched. A, s. 173 (4).

Employees

(5) The chair may, on behalf of the Appeals Tribunal employ such persons as the chair considers necessary for its purposes. The terms and conditions of their employment must conform to such guidelines as may be established by Management Board of Cabinet. 1997, c. 16, Sched. A, s. 173 (5).

Operating costs

(6) The operating costs of the Appeals Tribunal are expenses of the Board. 1997, c. 16, Sched. A, s. 173 (6).

(7) REPEALED: 2000, c. 26, Sched. I, s. 1 (26).

Hearing of appeals

174. (1) In addition to the chair appointed under subsection 173 (3), the following persons appointed by the Lieutenant Governor in Council to the Appeals Tribunal shall hear and decide appeals and such other matters as are conferred upon the tribunal under this Act:

1. One or more vice-chairs.
2. The number of members who are representative of employers and of workers that the Lieutenant Governor in Council considers appropriate. 1997, c. 16, Sched. A, s. 174 (1); 2000, c. 26, Sched. I, s. 1 (27).

Same

(2) Subject to subsection (3), the chair, or vice-chair assigned by the chair, sitting alone shall hear and decide appeals and such other matters as are conferred upon the tribunal under this Act. 1997, c. 16, Sched. A, s. 174 (2).

Exception

(3) If the chair considers it appropriate in the circumstances, a panel of three members shall hear and decide an appeal or other matter conferred upon the tribunal under this Act. The panel shall consist of the chair or a vice-chair, one tribunal member who is representative of employers and one who is representative of workers and shall be appointed by the chair. 1997, c. 16, Sched. A, s. 174 (3); 2000, c. 26, Sched. I, s. 1 (28).

Decision

(4) The decision of a majority of a three-member panel is the decision of the Appeals Tribunal. 1997, c. 16, Sched. A, s. 174 (4).

Panels

(5) A person sitting alone or a three person panel has all the jurisdiction and powers of the Appeals Tribunal. 1997, c. 16, Sched. A, s. 174 (5).

Continuing authority

175. If a member of the Appeals Tribunal ceases to hold office before completing his or her duties in respect of a proceeding, the member may complete those duties. 1997, c. 16, Sched. A, s. 175.

OFFICES OF THE WORKER AND EMPLOYER ADVISERS

Offices of the Worker and Employer Advisers

Office continued

176. (1) The Office of the Worker Adviser is continued. Its functions are to educate, advise and represent workers who are not members of a trade union and their survivors.

Same, Employer Adviser

(2) The Office of the Employer Adviser is continued. Its functions are to educate, advise and represent primarily those employers that have fewer than 100 employees.

Costs

(3) The Minister shall determine the amount of the costs that may be incurred by each office in performing its functions and the Board shall pay them.

Review

(4) Before January 1, 1999, the Ministry of Labour shall review the functions and operations of each office and shall determine whether there is a continuing need for the office. 1997, c. 16, Sched. A, s. 176.

GENERAL

Committee of employers

177. (1) The Schedule 1 employers in a class may appoint a committee to watch over their interests in matters to which the insurance plan relates.

Composition

(2) The committee is composed of a maximum of five members, each of whom must be an employer in the class.

Function

(3) The committee may be the medium of communication between the Board and the employers in the class to which the committee relates.

Certificate re claim

(4) The committee may certify to the Board that a person claiming benefits under the insurance plan is entitled to receive them, if the benefits relate to a worker employed by a member of the class to which the committee relates.

Effect

(5) The Board may act upon the certificate if it is satisfied that the committee sufficiently represents the employers in the class to which the committee relates.

Certificate re amount

(6) The committee may also certify to the Board the amount of the payments to which the person is entitled under the insurance plan, and the Board may act upon the certificate if the person is satisfied with the amount certified by the committee. 1997, c. 16, Sched. A, s. 177.

French language services

178. Services under this Act shall be made available in the French language where appropriate. 1997, c. 16, Sched. A, s. 178.

Immunity

179. (1) No action or other proceeding for damages may be commenced against any of the following persons for an act or omission done or omitted by the person in good faith in the execution or intended execution of any power or duty under this Act:

1. Members of the board of directors, officers and employees of the Board.
2. The chair, vice-chairs, members and employees of the Appeals Tribunal.
3. Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser.
4. Persons employed by a safe workplace association, a medical clinic or a training centre designated under section 6.
5. Physicians who conduct an assessment under section 47 (degree of permanent impairment).
6. Persons who are engaged by the Board to conduct an examination, investigation, inquiry, inspection or test or who are authorized to perform any function.

Exception

(2) Subsection (1) does not relieve the Board of any liability to which the Board would otherwise be subject in respect of a person described in paragraph 1, 4, 5 or 6 of subsection (1).

Liability of the Crown

(3) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person described in paragraphs 2 and 3 of subsection (1) to which the Crown would otherwise be subject.

Immunity for health care practitioners, etc.

(4) No action or other proceeding may be commenced against a health care practitioner, hospital or health facility for providing information under section 37 or 47 unless he or she or it acts maliciously. 1997, c. 16, Sched. A, s. 179.

Rules re witnesses and documents

Compellability of witnesses

180. (1) The following persons are not compellable witnesses before a court or tribunal respecting any information or material furnished to or received by them while acting within the scope of their employment under this Act:

1. Members of the board of directors of the Board.
2. The chair, vice-chairs and members of the Appeals Tribunal.
3. Employees of the Board or of the Appeals Tribunal.
4. Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser.
5. Persons who are engaged by the Board or the Appeals Tribunal to conduct an examination, investigation, inquiry, inspection or test or who are authorized by the Board or the Appeals Tribunal to perform any function.
6. Health care practitioners providing information under section 37. 1997, c. 16, Sched. A, s. 180 (1).

Production of documents

(2) The Board, the members of the board of directors and the employees of, and persons engaged or authorized by the Board are not required to produce, in a proceeding in which the Board is not a party, any information or material furnished, obtained, made or received in the performance of the Board's, member's, employee's or person's duties under this Act. The same is true, with necessary modifications, if the Appeals Tribunal, the Office of the Worker Adviser or the Office of the Employer Adviser is not a party to a proceeding. 2000, c. 26, Sched. I, s. 1 (29).

Exception

(3) If the Board is a party to a proceeding, the members of the board of directors and employees of and persons engaged or authorized by the Board may be determined to be compellable witnesses. The same is true, with necessary modifications, if the Appeals Tribunal, the Office of the Worker Adviser or the Office of the Employer Adviser is a party to a proceeding. 1997, c. 16, Sched. A, s. 180 (3).

Privileged reports

(4) Information provided under section 37 or 47 is privileged and shall not be produced in any action or proceeding. 1997, c. 16, Sched. A, s. 180 (4).

Prohibition re disclosing information

181. (1) No member of the board of directors or employee of the Board and no person authorized to make an inquiry under this Act shall disclose information that has come to his or her knowledge in the course of an examination, investigation, inquiry or inspection under this Act. Nor shall he or she allow it to be disclosed.

Exception

(2) The board member, employee or person may disclose information or allow it to be disclosed in the performance of his or her duties or under the authority of the Board.

Same

(3) No employer or employer's representative shall disclose health information received from a health care practitioner, hospital, health facility or any other person or organization about a worker who has made a claim for benefits unless specifically permitted by the Act. 1997, c. 16, Sched. A, s. 181.

Evidence of decisions

182. A document or extract that purports to be certified on behalf of the Board as a true copy shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the document or extract without proof of the signature or the position of the person appearing to have signed the certificate. 1997, c. 16, Sched. A, s. 182.

Regulations

183. (1) Subject to the approval of the Lieutenant Governor in Council, the Board may make such regulations for carrying out this Act as may be considered expedient including regulations,

- (a) prescribing anything that must or may be prescribed under this Act;
- (b) prescribing the way in which payments received by a person under the *Canada Pension Plan* or the *Quebec Pension Plan* are to be taken into account when calculating the amount of the payments under the insurance plan to which the person is entitled.

Same, Schedules 1 and 2

(2) Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations establishing Schedules 1 and 2 and,

- (a) adding classes of industries to Schedule 1 or Schedule 2, deleting classes from a schedule, redefining classes within a schedule or transferring classes from one schedule to the other;
- (b) including an industry in, or excluding it from, a class in whole or in part;
- (c) excluding a trade, employment, occupation, calling, avocation or service from an industry for the purposes of the insurance plan;
- (d) subdividing a class of employers into subclasses or groups according to the risk of the industry.

Same, Schedules 3 and 4

(3) Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations establishing Schedules 3 and 4, setting out in the schedules descriptions of processes and specifying the occupational disease to which each process relates.

Declaration re disease

(4) Subject to the approval of the Lieutenant Governor in Council, the Board may declare a disease to be an occupational disease for the purposes of this Act and may amend Schedule 3 or 4 accordingly.

Classes, etc.

(5) A regulation may create different classes of persons, industries or things and may impose different requirements or create different entitlements with respect to each class.

Retroactivity

(6) A regulation is, if it so provides, effective with reference to a period before it is filed. However, no regulation may be made effective as of a date before January 1, 1998. 1997, c. 16, Sched. A, s. 183.

184. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1997, c. 16, Sched. A, s. 184.

185. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1997, c. 16, Sched. A, s. 185.