

## **WORKERS' COMPENSATION ACT**

(Assented to May 14, 1992)

### **Preamble**

Whereas the workers' compensation system has benefitted disabled workers in the Yukon Territory since 1917 and continues to serve both workers and employers well;

And recognizing that the historic principles of workers' compensation, namely the collective liability of employers for workplace disabilities, guaranteed, no fault compensation for disabled workers, immunity of employers and workers from civil suits, should be maintained;

And also believing that improvements to the workers' compensation system are desired to ensure that the workers' compensation system continues to meet the changing needs of workers and more adequately reflects the true costs, in both human and economic terms, of disabilities arising out of the workplace and enable a wholistic approach to the rehabilitation of disabled workers;

And whereas it is appropriate at this time to amalgamate the workers' compensation system with the occupational health and safety program to advance efficient strategies for the prevention of workplace disabilities;

And whereas the government has confidence in continuing to delegate to the Workers' Compensation, Health and Safety Board the trusteeship of the compensation fund to manage it in the best interests of its main stakeholders, namely workers and employers;

And whereas the commitment exists to promote a greater understanding of this legislation, all efforts have been made to make this Act more readable and in doing so the definitions have been placed in Part 12 of this Act;

The Commissioner of the Yukon Territory by and with the advice and consent of the Legislative Assembly hereby enacts as follows:

### **Objects**

1.(1) The objects of this Act are

(a) to provide for an open and fair system of guaranteed, adequate compensation for all workers or their dependants for work-related disabilities,

(b) to provide disabled workers with rehabilitation to assist them to overcome the effects of work-related disabilities as much as possible,

(c) to maintain a solvent compensation fund managed in the interest of workers and employers,

(d) to provide for fair assessments on employers,

(e) to provide an appeal procedure that is simple, fair, and accessible, with minimal delays,

(f) to combine efforts and resources for the prevention of workplace disabilities, including the enforcement of health and safety standards, and

(g) to establish a board, independent of government, with equal representation from workers and industry and a neutral chair to administer workers' compensation, health and safety for all industries.

### **Application**

2. This Act applies to all employers and workers in all industries.

## **PART 1**

### **ELIGIBILITY FOR COMPENSATION**

#### **Eligibility for compensation**

3.(1) A worker who suffers a work-related disability is entitled to compensation unless the disability is attributable to conduct deliberately undertaken for the purpose of receiving compensation.

(2) Compensation for loss of earnings shall not be paid if a worker is 65 years of age or over.

(3) Despite subsection (2), where a worker is at least 63 years of age or over when a work-related disability arises, the board may pay compensation for loss of earnings to the worker for a period of up to 24 months.

### **Optional coverage**

4.(1) Despite any other provision of this Act, the board may, upon the application of an employer and subject to any conditions that it may establish, deem the following persons to be workers of that employer

(a) a person employed on a casual basis, otherwise than for the purposes of the employer's industry,

(b) an outworker,

(c) a person during any time the person is acting in a religious function as a duly ordained or appointed cleric, a member of a religious order or as a lay reader, or

(d) a volunteer.

(2) Despite any other provision in this Act, the board may, upon the application of a sole proprietor and subject to any conditions that it may establish, deem the applicant to be their own worker.

(3) Despite any other provision in this Act, the board may, upon the application of a municipality and subject to any conditions that it may establish, deem the elected officials of the municipal council to be workers of the municipality.

(4) Despite any other provision of this Act, the board may, upon the application of a First Nation and subject to any conditions that it may establish, deem the elected or appointed officials of the First Nation to be workers of the First Nation.

### **Presumption to be work-related**

5. Where a disability arises out of or in the course of a worker's employment, the disability is presumed to be work-related unless the contrary is shown.

## **Work-related disability caused outside of the Yukon**

**6.**(1) Where a work-related disability is caused while a worker is employed outside of the Yukon, compensation is payable only if

(a) the worker was outside of the Yukon in connection with that employment for less than 12 consecutive months immediately prior to the cause of the disability arising,

(b) the worker is either a resident of the Yukon or is usually employed in the Yukon, and

(c) the worker's employment outside of the Yukon is a continuation of the employment by the same employer in the Yukon.

(2) The board may extend the 12 month period in subsection (1) on the application of the employer.

(3) A worker or the worker's dependant must notify the board within 30 days of the date the worker's disability arose of their intention to claim compensation under this section.

(4) Where compensation is claimed in the jurisdiction where the disability was caused, compensation shall not be paid in respect of that disability.

(5) Compensation is deemed to have been claimed in the jurisdiction where the worker's disability was caused if notice under this section is not provided to the board within 30 days of the date the disability arose.

(6) The board may waive the time limits in subsections (3) and (5).

## **Suspension or reduction of compensation**

**7.** The board may suspend or reduce compensation payable to or in respect of a worker, if the worker

(a) refuses to submit to treatment or rehabilitation the board considers essential to the worker's recovery or rehabilitation,

(b) takes part in any activity that imperils or delays recovery from the disability, or

(c) changes medical practitioners without a referral from the previous medical practitioner or without the permission of the board.

## **PART 2**

### **THE CLAIM PROCEDURE**

#### **Worker's notice to employer**

8.(1) A worker who suffers, or may have suffered, a work-related disability, or a dependant of a deceased worker, shall give the employer of the worker written notice of the disability within a reasonable time, setting out

(a) the name and address of the worker,

(b) the name and address of the person giving the notice, if different, and

(c) a description of the cause of the disability.

(2) If notice is not provided as required under this section compensation shall not be paid for the disability unless the board permits otherwise.

#### **Worker's notice to the board**

9.(1) A claim for compensation must be made in a form acceptable to the board within 12 months of the date the disability arose.

(2) Despite subsection (1), the board may allow a late application.

#### **Employer's notice to the board**

10.(1) Employers shall give written notice to the board of any, or the possibility of any, work-related disability that comes to their attention within three days of receiving such information, and shall

(a) describe the circumstances giving rise to the disability, and

(b) send a copy of the notice to the worker.

(2) Employers shall provide the board, within a reasonable time, with any further information requested regarding the disability.

(3) If an employer fails to provide any notice or information within the time required by this section, the board may

(a) conduct an investigation and recover the costs of the investigation from the employer as a debt due from the employer, the enforcement of which shall be done in the same manner as the enforcement of the payment of an assessment,

(b) commence adjudication of the worker's claim, and

(c) levy a penalty of up to \$500 against the employer, the payment of which may be enforced in the same manner as an assessment.

(4) The employer of a worker who has suffered a work-related disability shall immediately notify the board in writing if the worker returns to work, or if the employer has knowledge that the worker is able to return to work and does not do so.

(5) The board may waive the time limits under this section.

### **Application for compensation**

**11.** A claim for compensation shall be dealt with and determined in the first instance on behalf of the board by a claims adjudicator employed by the board.

### **Medical reports**

**12.(1)** A medical practitioner who attends a worker who has or may have suffered a work-related disability shall

(a) provide reasonable information and advice free of charge to the worker about filing a claim for compensation,

(b) send a report to the board within two days after the first attendance on the worker,

(c) send progress reports to the board as the medical practitioner considers appropriate, or as the board requires from time to time, and

(d) report to the board when the worker, in the medical practitioner's opinion, is able to return to work.

(2) All reports submitted by medical practitioners to the board are the property of the board.

(3) Payment by the board to a medical practitioner is not in itself evidence that a claim has been accepted.

### **Autopsy**

**13.(1)** The board may request an autopsy on the body of a worker to determine the cause of death.

(2) If permission for the autopsy is refused, the board may, despite any other provision of this Act, deem that no compensation is payable in respect of the death.

### **Required medical examination or evaluation**

**14.(1)** The board may require a worker who may have suffered a work-related disability to submit to a medical examination or other evaluation.

(2) The board may suspend compensation payable to a worker who refuses to comply with the medical examination or other evaluation under subsection (1) until the requirements of the board are met.

### **Notice of decision and progress report**

**15.(1)** The board shall notify the worker or the dependants of a deceased worker and the worker's employer of any decision concerning an entitlement to compensation as soon as practicable.

(2) The board shall provide the employer with a written report concerning a worker's disability if requested in writing by the employer or the worker.

### **Independent medical examination**

**16.(1)** The board may require a worker to submit to an independent medical examination concerning any matter that may affect the worker's entitlement to compensation.

(2) Before requiring an independent medical examination, the board shall

(a) consult with the worker and the worker's attending medical practitioner,

(b) appoint an independent medical practitioner, and

(c) notify the worker and the employer of the medical practitioner appointed to conduct the medical examination.

(3) The board may require the worker to submit to an independent medical examination under subsection (1) if requested in writing by the worker's employer.

(4) Where an employer has requested an independent medical examination under subsection (3), the cost of the examination, including any reasonable expenses of the worker, shall be paid by the employer and if the employer fails to pay these expenses the board may enforce payment in the same manner as an assessment under this Act.

(5) A medical practitioner appointed by the board under subsection (2) shall examine the worker and certify to the board

(a) the condition of the worker,

(b) the worker's fitness for employment,

(c) if unfit for employment, the reason why,

(d) the extent of the worker's disability, and

(e) any other matters requested by the board.

(6) A certificate provided to the board by a medical practitioner under this section is conclusive of the matters certified therein, unless the board otherwise directs.

(7) The board may suspend compensation payable to a worker who refuses to comply with the medical examination under this section until the requirements of the board are met.

### **Internal review**

17.(1) Upon the written request of a worker, a dependant of a deceased worker, or the worker's employer, senior staff designated by the board, shall review any decision made concerning a claim for compensation.

(2) When reviewing a decision, the senior staff shall

(a) provide all parties with an opportunity to make representations,

(b) provide a hearing, if requested by any party,

(c) consider the entire record of the claim in the board's possession,

(d) consider further evidence deemed necessary to make a decision, and

(e) confirm, vary, or reverse any decision made in respect of the claim.

#### **Appeal of a claim**

18.(1) A worker, a dependant of a deceased worker, or the worker's employer may appeal a decision made under section 17 to the members of the board.

(2) When considering an appeal, the appeal panel shall

(a) give the worker, a dependant of a deceased worker, or the worker's employer the right to be heard and an opportunity to present new or additional evidence,

(b) consider the entire record of the claim in the board's possession, and

(c) consider further evidence as it deems necessary to make a decision.

#### **Access to claim file**

19.(1) A worker, or the dependant of a deceased worker, may, at the offices of the board, examine and copy all information in the possession of the board in respect of their claim but shall not use the information otherwise than for the purpose of procedures before the board unless permitted by the board.

(2) An employer who is a party to a review under section 17 or an appeal under section 18 may, on request to the board, examine and copy any information in the board's possession that the board considers relevant to an issue at the review or the appeal but shall not use the information for any purpose other than for a review under section 17 or an appeal under section 18.

(3) Where an employer has made a request under subsection (2) the board shall immediately notify the worker or the dependants of a deceased worker of the information the board considers relevant and permit written objections to be made within a period of time determined by the board and release the information that has not been objected to by the worker.

(4) Where an objection has been made under subsection (3), the information objected to shall be provided to the president of the board, or the acting president, for final determination of whether the information should be provided to the employer.

(5) No appeal lies against a decision made under subsection (4). The decision is final except where the appeal panel, during the hearing of the main appeal, determines the information to be relevant to an issue under appeal, in which case the employer shall be provided with the information.

(6) Where a worker, or a dependant of a deceased worker, or an employer is entitled to information under this section, their agent shall have the same access.

(7) The board may fix a fee for providing copies of documents under this section.

(8) Any person who contravenes subsections (1) or (2) commits an offence under this Act.

## **PART 3**

### **COMPENSATION FOR WORKERS**

#### **Compensation for permanent impairment**

**20.(1)** The compensation payable under this section is in addition to other compensation under this Act.

(2) Subject to subsection (3), a worker who suffers a work-related permanent impairment is entitled, for the year that the permanent impairment arose, to a payment, equal to the product of the percentage of the worker's permanent impairment, as determined by the board, that is work-related, and

(a) \$80,000 for 1993, or

(b) for each year after 1993, an amount equal to the product of

(i) \$80,000, and

(ii) the quotient obtained when the average wage for the year is divided by the average wage for 1993.

(3) The amount determined under subsection (2) shall be

(a) increased by two percent for each year of age of the worker under 45 years at the time the permanent impairment arose, to a maximum increase of 40 percent, or

(b) decreased by two percent for each year of age of the worker over 45 years at the time the permanent impairment arose, to a maximum decrease of 40 percent.

(4) The compensation payable under this section shall be paid, on the election of the worker, as

(a) a single lump sum, or

(b) an annuity offered by the board.

(5) This section shall not apply to a worker who dies as a result of a work-related disability before a determination has been made by the board of the worker's permanent impairment.

### **Compensation for loss of personal property**

**21.** If a worker has suffered a work-related disability and is entitled to compensation under section 22 and has also suffered a loss of or damage to personal property in the accident that caused

the disability, the board may pay to the worker, compensation for that loss or damage up to a maximum fixed by order of the board.

### **Compensation for loss of earnings**

**22.**(1) Where a worker is entitled to compensation, the board shall pay compensation to the worker in an amount equal to 75 percent of the worker's weekly loss of earnings from all employment.

(2) The method and manner of making a payment under subsection (1) will be determined by the board.

### **Worker's weekly loss of earnings**

**23.** A worker's weekly loss of earnings is equal to the difference, if any, between the

(a) worker's average weekly earnings, up to the maximum wage rate for a week, immediately before the work-related disability arose, and

(b) estimated average weekly earnings that the worker could, in the board's opinion, earn from time to time, in a suitable occupation after the disability arose.

### **Modified average weekly earnings**

**24.**(1) If a person is

(a) a volunteer deemed to be a worker,

(b) engaged in mine rescue work, or

(c) deemed by regulation to be a worker,

and suffers a work-related disability while acting in that capacity, the worker's average weekly earnings shall be deemed to be equal to the greater of their average weekly earnings and one-half of the maximum wage rate in the year the disability arose, unless otherwise prescribed by regulation.

(2) For the purpose of paragraph 23(a), the average weekly earnings of a worker who was previously entitled to compensation and has suffered a recurrence of the disability after returning to employment, shall be equal to the greater of the worker's average weekly earnings immediately before the

(a) disability first arose and indexed in accordance with section 34, and

(b) recurrence of the disability.

### **Payment to employer**

**25.** If a worker receives earnings in respect of a period of disability, the board may pay to the worker's employer an amount equal to the compensation to which the worker would have otherwise have been entitled.

### **Minimum compensation for total disability**

**26.** The board may prescribe, by order, a minimum amount of compensation, based on full-time employment, to be payable to a worker who suffers a total disability.

### **Annuity at age 65**

**27.(1)** If a worker has received compensation in respect of the same disability for at least 24 months, an amount equal to 10 percent of the total compensation for loss of earnings paid during the period of disability, together with accrued interest, shall be used by the board to provide an annuity for the worker payable at the later of age 65 and the date that compensation ceases to be payable to the worker.

(2) The amount under subsection (1) shall be set aside in the reserves of the board at the time the worker becomes entitled to the amount.

(3) If the amount under subsection (1) is less than a minimum amount fixed by order of the board, the board may pay the worker the accumulated capital and interest rather than an annuity.

(4) If, as a result of any work-related disability, a worker's retirement income, including the annuity payments under subsection (1) is less than the amount prescribed under section 26 the board may increase the annuity payments so that the worker's retirement income, including the annuity payments, will equal the amount prescribed under section 26.

## **Medical aid**

**28.**(1) The board may provide a worker with any medical aid, including services, devices, or equipment, necessary to grant relief from a work-related disability.

(2) All questions as to the necessity, character and sufficiency of any medical aid shall be determined solely by the board.

(3) The board may contract with medical practitioners, nurses, hospitals, and other professionals and institutions for the provision of medical aid to any worker who is entitled to compensation.

(4) When the board is required to provide, or agrees to provide, assistance to a worker under this section, no action lies against the worker, the worker's employer, or any other person for payment in respect of the assistance.

(5) The board may pay a worker a subsistence allowance, in an amount set by order of the board, where the worker is receiving medical aid away from their ordinary place of residence, if the worker's living expenses are not being paid by the employer.

(6) The board may pay for special expenses related to the disability, such as expenses incurred for replacing clothing damaged from wearing a prosthesis provided by the board.

## **Traditional aboriginal healing**

**29.** In the treatment of work-related disabilities, the board shall, where appropriate, promote mutual understanding, knowledge, and respect between the providers of health services under the health system and the providers of traditional aboriginal nutrition and healing.

## **Rehabilitation assistance**

**30.** If a worker, as a result of a work-related disability, requires assistance to reduce or remove the effect of a handicap, or experiences a long term disability or requires assistance in the activities of daily living, the board shall pay the cost of rehabilitation assistance, including vocational or academic training, deemed appropriate by the board in consultation with the worker.

## **Emergency transportation**

**31.(1)** Where a worker suffers a work-related disability, the worker's employer shall immediately provide and pay for emergency transportation for the worker to a hospital, medical practitioner, home, or other place that may be required by the worker's condition.

(2) Where an employer fails to provide emergency transportation in accordance with subsection (1), and another person or the board incurs expense in doing so, the board shall re-imburse the person and shall recover the amount from the employer as a debt due from the employer, the enforcement of which shall be done in the same manner as the enforcement of the payment of an assessment.

### **Diversion of compensation**

**32.(1)** Compensation ceases to be payable to a worker in respect of any period of incarceration in a penal facility, but the board may pay the compensation that would otherwise have been payable to the worker for the period to one or more of the worker's dependants.

(2) Compensation does not cease to be payable to a person detained involuntarily in a medical facility or declared incompetent, but the board may divert the compensation payable in such a case to any person the board deems appropriate.

### **Compensation payable to a worker under 19**

**33.** Where compensation is payable to a person under the age of 19, the board may pay the compensation to any person the board deems appropriate.

### **Indexing of benefits**

**34.(1)** On the anniversary of the date that a worker's loss of earnings began, the average weekly earnings of a worker, for the purposes of paragraph 23(a), shall be increased on the first day of the month immediately following by the sum, if any, of

(a) 2.0 percent, to allow for any increases due to promotion and advancement which the worker might reasonably be expected to have received but for the work-related disability, and

(b) the percentage change between the average wage for the year and for the immediately preceding year.

(2) Despite subsection (1), a worker's average weekly earnings shall never exceed the maximum wage rate for the year of review.

## **PART 4**

### **COMPENSATION FOR DEPENDANTS**

#### **Death and funeral expenses**

**35.** If a worker dies as a result of a work-related disability, the board shall pay

(a) an amount, determined by order of the board, for funeral expenses,

(b) an amount, determined by the board, for any additional expenses incurred as a result of the death, and

(c) the reasonable and actual costs of transporting the body to the deceased's residence, if in Canada.

#### **Compensation for spouse**

**36.(1)** If a worker dies as a result of a work-related disability, the board shall pay to the worker's spouse a monthly payment for life equal to 3.125 percent of the maximum wage rate for the year of payment.

(2) The board may pay the worker's spouse an amount in addition to that provided under subsection (1) where, in the board's opinion, the spouse is in need, but in no case may a spouse receive an amount under this section that is greater than the amount that the deceased worker would have received in respect of the loss of earnings had the worker survived and been totally disabled.

#### **Benefits for dependent children**

**37.(1)** If a worker dies as a result of a work-related disability, the board shall pay each dependent child of the worker a monthly amount equal to 1.25 percent of the maximum wage rate for the year of payment until

(a) the child reaches 19 years of age,

(b) the child reaches 21 years of age and is in full-time attendance and making progress satisfactory to the board at an education institution recognized by the board, or

(c) such time as the board believes that an invalid child of the worker would not have been dependent on the worker.

(2) The board may extend the period for the payment of benefits under paragraph (1)(b) where the board deems it appropriate and just in the circumstances.

### **Equivalent to spousal compensation**

**38.**(1) If a worker dies as a result of a work-related disability and leaves no spouse, or the spouse later dies, and a person, including a child of the worker, has or assumes responsibility for the care and custody of a dependent child of the worker who is entitled to compensation under section 37, the board shall pay all, or any portion, of compensation that would otherwise have been payable to a spouse under section 36 to the person who has assumed the responsibility for the dependent child for such period of time that the child is entitled to the compensation under section 37.

(2) Where more than one person is entitled to compensation under subsection (1), the compensation shall be divided between those eligible in shares proportionate to the number of children maintained by each of them.

### **Other dependants**

**39.** The board may pay compensation, to a maximum established by order of the board, to any other dependant of a worker whose death was work-related based upon that dependant's pecuniary loss.

### **Limit on compensation**

**40.** No person is entitled to compensation, other than compensation payable under section 35, in respect of the death of more than one worker, but the board shall pay the highest amount of compensation that person would otherwise be entitled to.

## **PART 5**

### **RIGHT OF ACTION AND ASSIGNMENT**

#### **Limitation on legal rights**

**41.(1)** No action lies for the recovery of compensation and all claims for compensation shall be determined pursuant to this Act.

(2) This Act is in lieu of all rights and causes of action, statutory or otherwise, to which a worker, a worker's legal personal representative or a dependant of the worker is or might become entitled to against the employer of that worker or against another worker of that employer by reason of a work-related disability arising out of the employment with that employer.

(3) Where a worker suffers a work-related disability and the conduct of an employer who is not the worker's employer, or of a worker of an employer who is not the worker's employer, causes or contributes to the disability, neither the worker who suffers the disability, nor their personal representative, dependant, or employer, has any cause of action against that other worker or other employer.

(4) Subsection (3) does not apply where the disability arose from the use or operation of a vehicle.

(5) Any party to an action may, upon notice to all other parties to the action, apply to the board for a determination of whether the right of action is removed by this Act.

#### **Assignment of a worker's cause of action**

**42.(1)** Where a worker suffers a work-related disability and the worker, the worker's legal personal representative or the dependants of a deceased worker have a cause of action in respect of the disability, the board is deemed to be an assignee of the cause of action and the board is vested with all the rights to any cause of action arising out of the work-related disability.

(2) Where the board becomes an assignee of a cause of action pursuant to subsection (1)

(a) an action may be taken against any person by the

(i) worker or the worker's legal personal representative or dependants, with the consent of the board, or

(ii) board in the name of the worker, the worker's legal personal representative or dependants without the consent of the person in whose name the action is taken,

(b) the persons named in subparagraph (a)(i) may be indemnified by the board for such costs approved by the board related to the action,

(c) no payment or settlement may be made in respect of the cause of action without the prior approval of the board, and any settlement agreed to without the prior approval of the board is void,

(d) the board may, at any time, agree to a settlement with any party regarding the cause of action of a worker or a worker's dependants for any amount or subject to any conditions the board deems appropriate.

(3) Money recovered in an action or settlement of an action pursuant to this section shall be paid to the board, and

(a) if the money is accepted in full settlement of the cause of action, the board shall release the person paying the money or on whose behalf the money is paid from all liability in the cause of action,

(b) if the judgment of the court under which the money is received clearly indicates that a portion of the award is for pain and suffering of the worker resulting from the cause of action, the board may pay to the worker after payment of all costs of the action, an amount that bears the same proportion to the money remaining in its hands as the portion of the award that is attributable to pain and suffering bears to the total award,

(c) any money received as a result of action taken or negotiations carried on by the board, the worker, the workers' legal personal representative or dependants, the board shall pay to that person, after deducting all costs of the action, an amount equal to

(i) 25 percent of the gross amount received by the board, or

(ii) where a payment has been made to the worker pursuant to paragraph (b), 25 percent of the money remaining after payment has been made under paragraph (b), and

(d) if any money remains after making the payments pursuant to paragraphs (b) and (c), and the remainder is in excess of the cost, as determined by the board, to the board of the worker's disability, the excess shall be paid to the worker, the worker's legal personal representative or dependants, as the case may be.

(4) In an action taken under subsection (2), a defendant may not bring third party or other proceedings against any employer or worker against whom the plaintiff may not bring an action because of this Act, but if the court is of the opinion that the employer or worker contributed to the damage or loss of the plaintiff, it shall hold the defendant liable only for that portion of the damage or loss occasioned by the defendant's own fault or negligence.

## **PART 6**

### **COMPENSATION FUND**

#### **Formation of the compensation fund**

**43.(1)** An account called the compensation fund shall be established within the Yukon Consolidated Revenue Fund into which all monies received by the board shall be deposited.

(2) The compensation fund is a trust fund within the meaning of the *Financial Administration Act* and all amounts received by the board under this Act and income of the fund is trust money within the meaning of the *Financial Administration Act*.

#### **Use of the fund**

**44.(1)** No amount may be paid out of the compensation fund except as provided by this Act.

(2) All expenses incurred or related to the administration of this Act shall be paid out of the compensation fund.

(3) Legal costs or expenses incurred in the administration of this Act by any person other than the board or a person under subsection 42(2) may not be paid out of the compensation fund.

(4) Obligations or debts deleted from the accounts of the board during any year shall be reported in the accounts for that year.

(5) The board may provide for and maintain a single contingency reserve to

(a) meet losses that are likely to arise from disasters or other fluctuations in costs,

(b) provide for facilities and expenses related to the rehabilitation of disabled workers,

(c) provide for increased costs resulting from the enhancement of a worker's disability due to a previous disability,

(d) provide for the cost of occupational diseases.

#### **Advance of compensation out of Y.C.R.F.**

**45.**(1) If, at any time, there is no money in the compensation fund for the payment of compensation that has become due, the Commissioner in Executive Council may direct that the compensation payable shall be advanced out of the Yukon Consolidated Revenue Fund.

(2) Where an amount has been advanced under subsection (1) interest shall be charged on the amount at a rate determined by the Commissioner in Executive Council.

(3) An amount advanced under subsection (1) and interest payable under subsection (2), shall be repaid in the manner and time determined by the Commissioner in Executive Council.

#### **Financial Administration Act**

**46.**(1) The receipt and payment of money by the board is subject to the *Financial Administration Act*.

(2) All money received or spent by the board shall be deemed to be received or spent by it on behalf of the Government of the Yukon.

(3) All money owing to the board shall be deemed to be owed to it in its capacity as a representative of the Government of the Yukon.

(4) All proceedings taken by the board for the collection of any money due to the board under this Act shall be deemed to be taken by the board for and on behalf of the Government of the Yukon.

(5) Despite the *Financial Administration Act*

(a) the investment of money by the board is subject to the *Financial Administration Act*, except section 39 of that Act, and

(b) a Management Board Directive shall not apply to the board unless the Commissioner in Executive Council prescribes that it shall apply.

(6) Before the Commissioner in Executive Council makes a regulation under paragraph 5(b), the Minister shall consult with representatives of employers and workers and the board concerning whether a Management Board Directive should be made applicable to the board.

### **Investments**

47.(1) Subject to section 46, the board may invest the compensation fund in any investment permitted by the *Trustee Act*.

(2) The compensation fund shall be invested pursuant to an investment policy approved by the members of the board.

(3) Investments acquired pursuant to the investment policy shall not create a high risk portfolio.

(4) Amendments to the compensation fund investment policy may only be made on the recommendation of the members of the board and with the approval of the Commissioner in Executive Council.

(5) Any amendments to the compensation fund investment policy shall be transmitted to all members of the Yukon Legislative Assembly within ten (10) days of approval.

### **Actuarial report**

**48.** The board shall cause an actuarial valuation of the compensation fund to be performed by a fellow of the Canadian Institute of Actuaries at least once every three years, a report of which shall be included in the next report of the board to the Minister under paragraph 93(c).

### **Audit**

**49.(1)** The accounts and financial transactions of the compensation fund are subject to audit of the Auditor General of Canada, or such other auditor as appointed by the Commissioner in Executive Council, and for that purpose the auditor is entitled to

(a) have access to all records, documents, books, accounts and vouchers of the board, and

(b) require from members and officers of the board such information as the auditor deems necessary.

(2) The auditor appointed under subsection (1) shall report and provide an opinion on whether,

(a) the financial statements represent fairly the financial position of the compensation fund at the end of the financial year and the results of its operations for that year in accordance with the accounting policies of the board applied on basis consistent with that of the immediately preceding year,

(b) proper books of account that have been kept and the financial statements are in agreement with the books of account, and

(c) the transactions of the board that have come under the auditor's notice are within the powers of the board under this Act or any other act that applies to the board.

(3) The auditor shall report the results of the examination of the accounts and financial statements of the compensation fund annually to the Minister.

(4) The auditor shall call attention to any matter within the scope of an examination that in the auditor's opinion should be brought to the attention of the Legislative Assembly.

(5) The auditor may make such other reports to the board or the Minister as considered necessary or required by the Minister.

(6) The annual report of the auditor shall be included in the report referred to in paragraph 93(c) next tabled in the Legislative Assembly.

## **PART 7**

### **ASSESSMENTS**

#### **Assessments**

**50.**(1) The board shall assess employers for such sums as the board may require for the administration of this Act.

(2) Assessments shall be made in the manner, form and procedure directed by the board.

(3) Assessments shall, in the first instance, be based upon estimates

(a) of the employer's payroll for the year furnished under section 62, or

(b) as determined by the board under section 63.

(4) The board shall, by order, establish a minimum assessment.

#### **Assessment payable**

**51.**(1) All assessments are due on January 1 in the year for which they are made.

(2) The board may provide for the payment of assessments by instalment, in which case the assessment for the year is payable on the dates determined by the board.

#### **Liability for assessment**

**52.**(1) The board has a cause of action for any unpaid assessment and is entitled to the costs of any action to recover the unpaid assessment.

(2) If, for any reason, an employer liable to assessment is not assessed by the board, the employer is liable for the amount for which the employer should have been assessed, or as much thereof

as the board considers reasonable, and payment of that amount may be enforced as if the employer had been assessed for that amount.

### **Assessment rates**

**53.**(1) The board may provide for different assessment rates applicable to each class and sub-class of industry created under section 54.

(2) Publication in the Yukon Gazette of a statement of percentages and rates fixed by the board applicable to specific industries constitutes an assessment upon, and notice to, each employer in those industries for the period named in the Yukon Gazette.

### **Employer classification**

**54.**(1) For the purpose of section 50, the board may establish classes and sub-classes of industries as it deems appropriate.

(2) The board shall assign every employer to an appropriate class or sub-class based upon the industry in which the employer operates.

### **Employer's experience accounts**

**55.**(1) The board shall maintain experience accounts for each employer, indicating the assessments levied and the cost of all claims chargeable in respect of the employer.

(2) Where, in the opinion of the board, a worker's disability results, in whole or in part, from the negligence of an employer who is not the employer of the disabled worker, or a worker of that employer,

(a) the cost of any claim, as determined by the board, may be charged to the experience account of that employer, and

(b) where the employer is in a separate class or sub-class from the disabled worker's employer, the board may charge the cost of the claim, as determined by the board, to the class or sub-class in which that employer is included

in proportion to the degree of negligence the board attributes to that employer or that employer's worker.

(3) Where a worker suffers a work-related disability, the disabled worker's employer may, within 24 months of the disability arising, request that subsection (2) be applied by the board.

### **Super-assessment**

**56.**(1) If in any year, or other period determined by the board, the claims cost charged to the experience account of an employer are in excess of 105 percent of the ordinary assessment of that employer for the same year, the board may, within four years, assess and levy upon the employer in that year a super-assessment in an amount directed by the board, but not in excess of 133 percent of the employer's ordinary assessment for the year, having regard to the amount of the excess and the extent of the amounts previously charged against that employer's experience account.

(2) Where the board has levied an assessment under subsection (1), the employer continues to be liable for the ordinary assessment for the year.

### **Merit rating**

**57.** The board may, by order, adopt a system of merit rating for employers.

### **Liability for assessment of contractors and sub-contractors**

**58.**(1) Where any work is performed by a contractor for any person or organization operating in an industry (the "principal"), both the principal and the contractor

(a) are jointly and severally liable for any assessment under this Act relating to that work, and

(b) that amount may, in the discretion of the board, be collected from either of them, or partly from one and partly from the other.

(2) Where any work is performed under a sub-contract, the principal, the contractor, and the subcontractor

(a) are each jointly and severally liable for any assessment relating to that work, and

(b) that amount may be collected from either of them or partly from one and partly from the other.

(3) A principal may withhold from money payable to a contractor any amount for which the principal is liable under this section and pay that amount to the board and, as between the principal, the contractor, and the sub-contractor, the payment is deemed to be a payment on the contract or sub-contract or both.

(4) A contractor may withhold from any money payable to a sub-contractor the amount that the contractor is liable to pay for under this section to the sub-contractor and pay that amount to the board and, as between the contractor and the sub-contractor, the payment shall be deemed to be a payment on the sub-contract.

(5) In the absence of any term in the contract to the contrary, where

(a) a principal does not withhold any money payable to a contractor under subsection (3) and pays its liability under subsection (1) to the board, the contractor shall then be indebted to the principal for that amount and the principal shall have a cause of action against the contractor in respect of that debt, or

(b) where the contractor does not withhold any money under subsection (4) and pays its liability under subsection (2), the sub-contractor shall then become indebted to the contractor for that amount and the contractor shall have a cause of action against the sub-contractor in respect of that debt.

(6) In this section, "the principal" includes the Crown in right of Canada if it submits to the application of this Act, and shall also include the Government of the Yukon.

### **Security for payment of assessment**

**59.(1)** The board may serve notice on an employer requiring the employer to provide security, in an amount and form deemed appropriate by the board, for the payment of assessments that are or might be levied against the employer.

(2) If at any time the board considers that the security provided is no longer sufficient, the board may require such further security as it deems appropriate.

(3) The employer shall, within 15 days after being served with a notice to do so, provide the security required by the board.

### **Penalty for non-payment of assessment or provision of security**

**60.** If an assessment is not paid when required by the board, or security is not provided when required, the board may assess a penalty in an amount equal to 10 percent of the unpaid assessment or the value of the security required, the payment of which may be enforced in the same manner as the payment of an assessment.

### **Order to cease work**

**61.(1)** If an employer defaults in furnishing the security required by the board or if an employer defaults in the payment of any amount due to the board, the board may order the employer to cease employing workers until the default is remedied to the board's satisfaction.

(2) An employer who contravenes an order under subsection (1) commits an offence under this Act.

### **Statement and estimate of earnings**

**62.(1)** Every employer shall, no later than the last day of February in each year or at such other time as required by the board, provide, in a manner determined by the board, the board with a statement

(a) of the total amount of all earnings paid to its workers employed in an industry during the immediately preceding year,

(b) estimating the earnings that will be paid to its workers employed in an industry in the current year or any part of it as directed by the board,

(c) of the nature of its industry, and

(d) of any additional information as the board may require.

(2) If the statement is found to be incorrect, the board shall re-assess the employer for each year that the statement was incorrectly made and may charge the employer interest, at a rate determined by order of the board, on any assessment that was not paid.

(3) Employers must declare the earnings of a worker who would be entitled to compensation and who is employed outside of the Yukon as if the worker were employed in the Yukon.

(4) Earnings paid to a worker in excess of the maximum assessable earnings shall not be included in the employer's statements under subsection (1).

(5) Unless satisfactory evidence of an employer's actual payroll for any period is provided to the board, the payroll estimated by the board under this section or under subsection 63(1) is deemed to be the actual payroll of the employer.

(6) Where any person is deemed under this Act to be a worker, the board may deem an amount to be the earnings for that worker.

(7) Where the business of the employer is carried on in more than one industry, the board may require separate statements for each industry.

#### **Provisional assessment**

##### **63.(1) Where**

(a) an employer does not comply with section 62 within the time required by the Act or by the board, or

(b) the information provided under section 62 does not, in the opinion of the board, reflect the probable amount of the payroll of the employer or correctly describe the nature of the work carried on, the board may assess upon such sum as is, in the opinion of the board, the probable payroll of the employer or nature of the employer's industry.

(2) If it is later determined that the assessment under subsection (1) is different from the required assessment, the employer or the board is liable to pay to the other the difference.

#### **Employer commencing or recommencing an industry**

**64.** When an employer commences or recommences in an industry, the employer shall provide, within 10 days of commencement or recommencement, to the board the statements required under subsection 62(1).

## **Employer ceasing its business**

**65.** A person or body who ceases to be an employer shall notify the board within 10 days of ceasing to be an employer and, at that time, shall provide a statement of the total payroll for the year.

## **Records of wages and operations**

**66.** Every employer shall keep within the Yukon, in a manner acceptable to the board, an account of all earnings paid to its workers and of any other particulars of its operations as may be required by the board.

## **Examination**

**67.(1)** Any person authorized by the board may examine the books and accounts of any employer and make such other inquiry as the board deems necessary for administering this Act.

(2) For any purpose related to the administration of this Act, any person authorized by the board may, at all reasonable hours, enter any part of the establishment of any employer or person who may be an employer.

(3) An employer shall produce, within 10 days of receiving notice from the board, and in the manner set out in the notice, all documents, deeds, papers and computer records which are in the possession, custody or power of the employer that may, in any way, relate to the subject-matter of an examination or inquiry under this section.

(4) For the purpose of an examination or inquiry under this section, the board or any person authorized by it, have all the powers of a board of inquiry appointed under the *Public Inquiries Act*.

(5) Every person authorized by the board to make an examination or inquiry under this section may require and take oaths, affidavits, affirmations, or declarations respecting the subject matter of an examination or inquiry under this section.

(6) Any employer or other person who obstructs or hinders the making of an examination or inquiry under this section or who refuses to permit it to be made or who neglects or refuses to produce such documents, writings, books, deeds and papers required in the notice under this section commits an offence.

(7) In this section, an employer includes a person who the board considers to be an employer or a principal.

### **Employer's right of appeal**

**68.**(1) Employers may appeal to the board any decision made by the board relating to assessments made by the board.

(2) An appeal under subsection (1) shall be made in writing to the board within 180 days of the date of the decision otherwise the employer shall lose their right to appeal the decision.

(3) The appeal shall be disposed of in the manner determined by the board.

## **PART 8**

### **ENFORCEMENT AND PRIORITIES**

#### **Power to enforce payment**

**69.** The board has the power and the remedies to enforce payment to the board of any sum that any employer, body, or person is required to pay to the board under the Act.

#### **Deemed trust for assessments**

**70.**(1) Whenever an employer pays earnings they are deemed to have set aside and kept separate and apart from their property an amount equal to their assessment under this Act.

(2) The amount held in trust under subsection (1) is deemed to be held in trust on and from the date that it has been deemed set aside.

(3) If an assessment has not yet been made for a particular year, the calculation under subsection (1) shall be based on the assessment for the immediately preceding year.

(4) In the event of any liquidation, receivership, winding-up, assignment or bankruptcy of an employer, an amount equal to the

amount deemed to be held in trust under this section shall be deemed to be separate from and to form no part of the estate in liquidation, receivership, winding-up, assignment or bankruptcy.

### **Priorities**

71.(1) In this section "security interest" includes a security interest as defined by the *Personal Property Security Act* and includes a mortgage, debenture, lien, pledge, charge, deemed or actual trust, assignment (including an assignment of book debts), encumbrance or claim of any kind however or whenever created or provided for.

(2) In this section "encumbrance" includes an encumbrance as defined in the *Land Titles Act*.

(3) Despite any other Act, any amount due to the board by an employer

(a) pursuant to an assessment made under this Act,

(b) for any amount that the employer is required to pay to the board under this Act, or

(c) on any judgment for an amount referred to in paragraph (a) and (b)

creates a fixed, specific and continuing security interest in favour of the board as of the date the amount becomes due

(d) on the property or proceeds of property, whether real or personal, of the employer, including money payable to, for or on account of the employer, whether the property, proceeds or money is acquired or is to be acquired by the employer before or after the amount becomes due, and

(e) on any other property or proceeds of property, whether real or personal in the Yukon that is used by the employer in or in connection with, or produced by them with respect to which they are assessed or the amount becomes due, whether the property is used or produced before or after the amount becomes due.

(4) Subject to subsection (5) the security interest created under subsection (3) is payable in priority over all writs, judgments, debts, security interests and mortgages as defined by the *Land Titles Act* and the *Personal Property Security Act*, rights of distress, assignments (including the assignment of book debts), and other claims or encumbrances of whatever kind of any body, person,

employer whether legal or equitable in nature, whether absolute or not, whether specific or floating, whether crystallized or otherwise perfected or not and whenever created or to be created.

(5) The security interest created by subsection (3) does not have priority over earnings due to workers by their employer in cases where the exercise of the priority would deprive the worker's of their earnings.

(6) When an employer defaults in a payment of all or part of a contribution owing pursuant to an assessment, or all or part of any other money due to the board under this Act, any assignment of their personal property made by the employer, including the granting of a security interest, is void as against the board to the extent of money that has not at the time of default been paid under the assignment to or on behalf of the assignor, regardless of

(a) whether the assignment is absolute or not, or  
(b) whether the assignment is made before or after the date the contribution or other money becomes due or the default occurs.

(7) When an employer in an industry defaults in the payment of all or part of

(a) an assessment, or  
(b) any other money due to the board under this Act,

any security interest that is contained in a security agreement as defined by the *Personal Property Security Act*, that is created by the employer

(c) on their personal property in the Yukon, or

(d) on any other personal property in the Yukon that is used by the employer in or in connection with, or produced by them in the industry with respect to which it is assessed or the money becomes due

is void as against the board to the extent of money that has not, at the time of default, been paid under the security agreement to the holder of it regardless of whether the security interest is created before or after the date the contribution or other money becomes due or the default occurs.

## **Enforcement of assessments**

72.(1) The board may issue a certificate stating what monies are owed to it pursuant to this Act and direct the payment of the amount by the employer, body or person that owes such monies under this Act.

(2) Such certificate or a copy of it certified by the designated signing officer of the board to be a true copy may be filed with the Clerk of the Supreme Court and when so filed it becomes an order of the Supreme Court and may be enforced as a judgment of the Court.

(3) The board shall send a copy of the certificate, immediately after it has been filed with the Court, by registered mail to the last address provided to the board by the employer, body or person.

(4) Such certificate or a copy of it certified by the designated signing officer to be a true copy may be filed in the Land Titles Office for the Yukon Land Registration District and any real property of the person, body or employer owing monies to the board is bound to the same extent by the registration of the certificate as a registered encumbrance from the date of filing of such certificate in the Land Titles Office and the person, body or employer affected by such certificate is deemed to have executed the encumbrance.

(5) Such certificate or a copy of it certified by the designated signing officer to be a true copy may be filed in the Mining Recorders Office established under the *Yukon Placer Mining Act* or the *Yukon Quartz Mining Act* against any mine or mining claim as defined by the *Miners Lien Act* and any mine or mining claim of the person, body or employer owing monies to the board are bound as of the date of the registration of the certificate in the Mining Recorders Office.

(6) The certificate shall set out the address for service to the board, the full name of the person, body or employer owing monies to the board, a legal description of the specific land, or mine or mining claim to be charged and a statement setting out the amount owed to the board with interest, if any, to be charged.

#### **Additional penalty for defaults by employer**

#### **73. If an employer**

(a) refuses or neglects to provide a payroll return or other statement required under the Act, or

(b) refuses or neglects to pay any assessment, or the provisional amount of any assessment or any instalment or part thereof,

in addition to any penalty or other liability to which the employer may be subject as a result of their refusal, the board may, in respect of each disability incurred by a worker in their employ that occurs during the period of default, require the employer to pay to the board an additional assessment of up to one-half of the cost, as determined by the board, of the compensation payable in respect of each claim to a maximum of \$10,000.

### **Charge upon the assets of employer**

**74.(1)** If there is a transfer or sale of any business or any industry to which this Act applies or of the stock or equipment in bulk used in connection with any such business or industry, it is the duty of the purchaser, before paying any part of the purchase price or giving the vendor any security therefor, to demand and secure from the vendor, and it is the duty of the vendor to furnish to the purchaser, a certificate from the board stating that it has no claim in respect of the business or industry or stock or equipment in bulk.

(2) If the vendor or transferor has not furnished such certificate, the purchaser or transferee of the business or industry or stock or equipment in bulk is liable to the board and indebted to it for a sum equal to the money due to it by the vendor or transferor.

## **PART 9**

### **OFFENCES AND PENALTIES**

#### **General offences**

**75.(1)** Any person who violates a provision of this Act commits an offence and, where no other penalty is provided, is liable on summary conviction to a fine of up to \$5,000.00 or up to six months imprisonment or both.

(2) Where a corporation commits an offence under this Act, any officer, director, manager or agent who knowingly directed, authorized, assented to, or acquiesced and participated in the commission of an offence is a party to the offence and is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

(3) Where an offence under this Act continues on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

(4) In any prosecution for a contravention of this Act in which proof is required respecting

(a) the transmittal to the board of a statement or report required under the Act,

(b) the payment to the board of an assessment or other amount,

(c) a notice, order or a document has been served by the board upon an employer, worker or other person

a certificate signed by an authorized person on behalf of the board is admissible in evidence as prima facie proof of the facts stated in the certificate, and of the authority of the person acting on behalf of the board without further proof of his or her appointment or signature.

(5) Proceedings under this part, relating to an offence under this Act shall not be commenced later than three years after the day on which the offence was committed.

(6) Despite any other Act, all fines imposed pursuant to this Act shall, when collected, be paid to the compensation fund.

### **Engagement in work not under the Act**

**76.(1)** Where an employer engaged in an industry to which this Act applies directs a worker who is working in that industry to do other work that is not in an industry to which this Act applies and the worker suffers a work-related disability as a result of that other work, that other work shall be deemed to be in the industry of the employer to which this Act applies and the employer shall pay to the board in

respect of that other work an additional assessment equal to the full cost of the claim to a maximum of \$5,000.

(2) Any person who has control and direction of a worker and who directs the worker to do other work as mentioned in subsection (1) shall be deemed to have given the direction on behalf of the employer.

### **Providing false information**

**77.**(1) A person required under the Act to provide information to the board who knowingly provides the board with any false or misleading information is guilty of an offence and is liable

(a) on the first conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or both, or

(b) on each subsequent conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or both.

### **Injunction**

**78.**(1) Where, on the application of an authorized representative of the Board, it appears to the Supreme Court of the Yukon Territory that a person has committed or is about to commit, an offence under this Act, the Court may grant an injunction ordering any person named in the application

(a) to refrain from any act that appears to the Supreme Court of the Yukon Territory may constitute or be directed towards the commission of an offence under this Act, and

(b) to do any act or thing that appears to the Supreme Court of the Yukon Territory may prevent the commission of an offence under this Act.

(2) Three days notice of an application under subsection (1) shall be given to the party named in the application, unless the urgency of the situation is such that the service of the notice with a full notice period would not be in the public interest, in which case no notice or notice of less than three days, may be given.

## **PART 10**

### **MISCELLANEOUS**

#### **Confidentiality**

**79.**(1) No member of the board, employee or agent of the board or person authorized to make an examination or inquiry under this Act shall divulge or allow to be divulged, except in the performance of their duties or under authority of the board, any information obtained in the administration of this Act.

(2) Despite subsection (1), a person authorized by the president may divulge information respecting the business of an employer or a claim of a worker to officials of other Governments or other Workers' Compensation Boards.

(3) Whenever information in respect of a specific claim, other than information that is statistical in nature, is provided to another Government under subsection (2), the board shall notify the worker or the employer of the information that has been provided.

(4) Every person who violates the provisions of this section commits an offence under this Act.

#### **Non-Compellability**

**80.** No member of the board and no employee or agent of the board, shall be required to give testimony in a civil suit to which the board is not a party with regard to information obtained in the discharge of a duty or obligation under the Act.

#### **Records and notices**

**81.**(1) Where the board sends a notice to an employer that the board requires to be posted in the employer's workplace, the employer shall post such notices in a prominent location in the workplace.

(2) Documents including books, returns, reports and notices the board requires employers to maintain or use shall be in the form required by the board.

(3) An order, notice or other document may be served by registered mail to the last known address of the person or entity it is

addressed to and when served by registered mail if the post office receipt is received by the board, such service shall be deemed to be good and sufficient service.

(4) Any order, notice or other document served under subsection (3) shall be deemed to be served on the date that the post office receipt was signed by or on behalf of the employer.

### **Illiteracy**

**82.** The board may waive any requirement under this Act for an illiterate person to provide written notice and may accept instead notice in any form the board deems appropriate.

### **Contribution, waiver or assignment by worker**

**83.(1)** It is an offence under this Act for an employer to

(a) either directly or indirectly deduct from the earnings of any workers any part of any sum that the employer is or may become liable to pay to the board, or

(b) require or permit any worker employed by them to indemnify the employer or to contribute in any manner towards indemnifying the employer against any liability that the employer has incurred or may incur under this Act.

(2) An agreement by a worker to waive or give up part or all of any benefit to which the worker or the worker's dependants are or may become entitled under this Act is void.

### **Coercion not to file a claim**

**84.** It is an offence under this Act for any person to discourage a worker from making a claim for compensation where the worker has or may have, suffered a work-related disability.

### **Garnishment**

**85.(1)** Compensation is not subject to the Garnishee Act.

(2) Where a worker is entitled to compensation and the worker's spouse, former spouse, dependent children or other dependants are entitled to support or maintenance under a court order, the board may pay such portion as determined by the board of the compensation otherwise payable to the worker, to the person entitled to receive such support or maintenance.

### **Prohibition against assignment, set off and attachment**

**86.** Except as otherwise provided in this Act, no amount payable as or on account of compensation

(a) is capable of being assigned, charged or attached, and

(b) no claim is capable of being set off against such amount without the prior approval of the board.

### **Interjurisdictional agreements**

**87.** Despite section 79, the board may enter into agreements with other Workers' Compensation Boards in other provinces or Territories

(a) for the exchange of information acquired by the board in the administration of this Act, or

(b) for any other purpose necessary for the administration of this Act.

### **Regulations and board orders**

**88.(1)** The Commissioner in Executive Council may make regulations prescribing anything that by this Act is to be prescribed by regulation.

(2) The members of the board may by order make rules consistent with this Act and the regulations relating to

(a) the conduct of proceedings before the board,

(b) the making of applications to the board, including the information and evidence to be furnished by applicants,

(c) the establishment of forms,

(d) the certification or publication of orders and decisions of the board,

(e) any other matter that reasonably is necessary or advisable for the effective and orderly performance of the duties of the board.

### **Recovery of overpaid compensation**

**89.** Where the board pays compensation to which a person is not entitled, such amount may be recovered from the person by the board in whole or in part by way of

(a) a debt due to it by that person,

(b) set-off against any compensation payable to that person.

### **Transitional**

**90.(1)** Where a worker is entitled to compensation as a result of a disability caused in

(a) 1982 or earlier, the worker's entitlement to compensation shall be determined pursuant to predecessor legislation as it was in force before January 1, 1983, and

(b) 1992 or earlier, the worker's entitlement to compensation shall be determined pursuant to predecessor legislation as it was in force before January 1, 1993.

(2) All orders in council appointing members to the board that were in force prior to the coming into force of this Act are revoked on the day that Part 11 of this Act comes into force.

### **Government of the Yukon**

**91.(1)** The Government of the Yukon shall pay

(a) the cost of compensation for all work-related disabilities of its workers that were caused prior to 1993, and

(b) annual assessments to the board after 1992.

(2) Annual assessments payable by the government of the Yukon shall be a charge on the Yukon Consolidated Revenue Fund.

(3) Section 67 and all of Part 8 of this Act shall not apply to the Government of the Yukon.

## **PART 11**

### **WORKERS' COMPENSATION, HEALTH AND SAFETY BOARD**

#### **The board**

**92.**(1) The corporation previously established as the Workers' Compensation Board is hereby continued as the Workers' Compensation, Health and Safety Board and has all the powers of a natural person.

(2) The board shall be appointed by the Commissioner in Executive Council and shall consist of

- (a) two members representing employers,
- (b) two members representing workers,
- (c) a member who will be the chair.

(3) The Commissioner in Executive Council shall appoint an alternate member to the board to act as chair during the absence of the chair.

(4) The president of the board shall sit as a non-voting member of the board.

(5) For the purpose of making appointments under subsection (2), the Minister shall consult with

- (a) employers and employer organizations, about the appointment of members to represent employers,
- (b) workers and organized labour, about the appointment of members to represent workers, and
- (c) employers and workers about the appointment of the chair and the alternate chair.

(6) At no time may a person who is a voting member of the board and appointed under paragraph 92(2)(a), be at the same time an employee of the Government of the Yukon.

(7) Members of the board will be appointed for a term not exceeding three years and are eligible for re-appointment.

(8) Members of the board hold office at the pleasure of the Commissioner in Executive Council.

(9) The terms and conditions of appointment to the board shall be as established by the Commissioner in Executive Council.

(10) Vacancy on the board does not impair the power of the remaining members to act.

(11) The Minister may, to fill a vacancy on the board, appoint a person to the board for a single term of up to 60 days.

(12) The members of the board shall meet at least once a month and may conduct its proceedings in such manner as it considers appropriate.

### **Powers of the members of the board**

**93.** The members of the board shall

(a) approve the policies of the board,

(b) create rules to

(i) define circumstances that will constitute conflict of interest for its members,

(ii) govern disclosure of conflicts of interest, and

(iii) provide guidelines regarding participation and voting at meetings of the board by a member who has a conflict of interest.

(c) report to the Minister no later than June 30th of each year, unless directed otherwise by the Minister on all matters regarding the administration of the Act, including reports on

(i) the assets of the compensation fund,

- (ii) actuarial reviews of assessment rates,
  - (iii) actuarial reviews of the liabilities of the compensation fund,
  - (iv) financial and management practices, plans and policies, and
  - (v) such other matters as the Minister requests,
- (d) report in a timely manner on such matters as the Minister may request,
- (e) consider and approve operating and capital budgets of the board,
- (f) plan for the future of the board,
- (g) examine, inquire into, hear and determine, decisions made pursuant to section 17, assessment matters, or determinations under subsection 41(5) and appeals under the Occupational Health and Safety Act,
- (h) make publicly available all policies of the board relating to claim procedures, assessment procedures and occupational health and safety, and
- (i) promote awareness of the basic rights and obligations of workers and employers under this Act.

### **Annual report**

**94.** The Minister shall table each report of the board under paragraph 93(c) in the Legislative Assembly within 15 days after it has been published if the Assembly is then sitting, or otherwise within 15 days after the commencement of the next session.

### **Annual meeting**

**95.** The members of the board shall report annually to workers and employers on the administration and policies under the Act.

### **Jurisdiction of the board**

**96.**(1) The board has the exclusive jurisdiction to examine, inquire into, hear, determine, and interpret all matters and questions under this Act.

(2) Without restricting the generality of subsection (1), the exclusive jurisdiction includes the power to determine

(a) whether a worker's disability was work-related,

(b) the duration and degree of a disability,

(c) the weekly loss of earnings of a worker resulting from a work-related disability,

(d) the average weekly earnings of a worker,

(e) whether a person is a member of the family of a worker,

(f) whether a person is a dependant,

(g) whether an industry is within the scope of this Act,

(h) whether any person or entity is an employer, and to deem a person or entity to be an employer,

(i) whether a person is a worker, and to deem a person to be a worker,

(j) whether a worker or a dependant is entitled to compensation, and

(k) employment safety.

(3) The acts or decisions of the board on any matter within its jurisdiction are final and conclusive and not open to question or review in any court.

(4) No proceedings by or before the board shall be restrained by injunction, declaration, prohibition, or other process or proceedings in any court or be removed by certiorari, judicial review, or otherwise into any court, in respect of any act or decision of the board within its jurisdiction nor shall any action be maintained or brought against the board, board members, employees or agents of the board in respect of any act or decision done or made in the honest belief that it was done within its jurisdiction.

(5) The board has the authority to examine, inquire into and hear any matter that it has dealt with previously and has the power to rescind or vary any decision or order previously made by it.

(6) The board is not bound by their previous rulings or decisions, and all rulings and decisions it makes shall be upon the merits and justice of the case before it.

(7) The board has the same powers as the Supreme Court of the Yukon Territory for compelling the attendance of witnesses, examining witnesses under oath and compelling the production and inspection of books, papers, documents and objects relevant to the hearing.

(8) The board may cause depositions of witnesses residing within or outside of the Yukon to be taken before any person appointed by it in the same way as the Supreme Court of the Yukon Territory can in civil actions.

(9) For the purposes of this Act, the board and each of its members has the protection, privileges and powers of a board appointed under the *Public Inquiries Act*.

### **Appeal panel**

**97.(1)** Matters required to be determined by the members of the board under paragraph 93(g) shall be heard by an appeal panel of the board which shall be established by the chair and shall consist of

(a) the chair or alternate chair, who shall be the presiding officer of the panel,

(b) one member representative of employers, and

(c) one member representative of workers.

(2) Where a matter is referred to an appeal panel under subsection (1), the panel has all the powers and authority of the board and may confirm, vary, or reverse the decision appealed from.

(3) The appeal panel is bound by this Act and all policies approved by the members of the board.

(4) A decision of the appeal panel requires two agreeing votes and where there is no decision, the chair shall direct a new hearing before a new panel.

(5) A decision of the appeal panel is deemed to be a decision of the board.

(6) Where the members of the board consider that an appeal panel has not properly applied the Act or a policy of the board it may stay the decision and direct a new hearing before a new panel.

### **Written reasons**

**98.**(1) Where a request is made by an employer or a worker, the board shall provide written reasons for any order ruling or decision that it has made.

(2) In any other case the board may provide written reasons for any order ruling or decision that it has made.

### **Ministerial investigation**

**99.**(1) The Minister may, by written order, require the board to investigate any matter under its jurisdiction in the manner requested by the Minister.

(2) The Minister shall cause the Act to be reviewed within 10 years of its proclamation and within 10 years thereafter after the completion of the last review.

### **The president and staff**

**100.**(1) On the recommendation of the members of the board and subject to certification by the Public Service Commission, the Commissioner in Executive Council shall appoint a president of the board who shall be responsible for

- (a) the administration of the board,
- (b) the development and implementation of board policies,
- (c) all functions related to personnel of the board,

(d) the preparation of capital and operating budgets of the board,

(e) the authorization of expenditures in accordance with approved capital and operating budgets, and

(f) any other functions and duties related to the administration of this Act assigned by the members of the board.

(2) By order of the board, the president shall conduct an investigation into any matter in connection with the administration of the Act and shall have in connection with the investigation the same powers as the Supreme Court of the Yukon Territory for compelling the attendance of witnesses, examining witnesses under oath and compelling the production and inspection of books, papers, documents and objects relevant to the investigation, and causing depositions to be taken.

(3) The president may delegate any powers and duties to an employee of the board.

(4) The president and the staff are members of the public service of the Yukon.

(5) The position of president has the status and responsibilities of a deputy head under the *Public Service Act*.

(6) Despite any other Act, the president may only be dismissed by the Commissioner in Executive Council on recommendation of the members of the board. The Commissioner in Executive Council shall dismiss the president if the members of the board have made a recommendation for dismissal.

## **PART 12**

### **DEFINITIONS**

**101.**(1) In this Act,

"average wage" for a year means the sum of the wage measure for each month in the 12 month period ending on June 30 of the immediately preceding calendar year;

"average weekly earnings" shall be calculated based upon such sources of earnings over such period of time as the board considers fair and just;

"board", means the Workers' Compensation Board continued as the Workers' Compensation, Health and Safety Board under this Act;

"child" of a worker includes

(a) a child by a former marriage of the spouse of the worker,  
and

(b) a person under the care and custody of the worker;

"compensation" means any amount payable or services provided under this Act in respect of a disabled worker;

"dependant" means a member of the family of the worker who is wholly or partially dependent on the worker's earnings for the ordinary necessities of life or who, but for the worker's work-related disability, would have been so dependent;

"disability" in respect of a worker means a work-related incapacity, as determined by the board, including post-traumatic stress, a permanent impairment, or a worker's death;

"earnings" includes salary, wages, commissions, tips, remuneration for overtime, piece work and contract work, bonuses and allowances, the cash equivalent of board and lodging, store certificates, credits, directors fees, indemnities and allowances paid to members of the Legislative Assembly, and any substitute for money but does not include any amount received for expenses incurred by the worker by reason of the worker's employment;

"employer" means every person, firm, association, organization or corporation having in their service one or more workers in an industry, and includes

(a) the Government of the Yukon,

(b) the Crown in right of Canada insofar as it submits to the operation of this Act,

(c) a sole proprietor deemed by the board to be an employer,

(d) a person who employs a person in their domestic service otherwise than on a casual basis,

(e) a trustee, receiver, liquidator, executor, or administrator who carries on in an industry, and

(f) any person deemed under this Act by the board to be an employer.

"employment" means employment in an industry;

"industry" includes every establishment, undertaking, trade, or business in or being carried on in the Yukon except industries excluded by regulation;

"learner" means any person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry in the course of undergoing testing, training, or probationary work as a preliminary to employment;

"maximum assessable earnings" means,

(a) for 1993, \$43,000, and

(b) for the years 1994 to 1997 inclusively, an amount equal to the aggregate of

(i) the product of

(A) \$43,000 times

(B) the quotient obtained when the average wage for the year is divided by the average wage for 1993, and

(ii) \$3,000 for each year after 1993,

rounded to the nearest multiple of one hundred dollars,

(c) for each year after 1997 it shall be equal to the maximum wage rate for the year

but at no time may it exceed the maximum wage rate for the year.

"maximum wage rate" for a year means

(a) for 1993, \$50,000,

(b) for 1994 to 1997 inclusively, the product of

(i) \$50,000, and

(ii) the quotient obtained when the average wage for the year is divided by the average wage for 1993,

rounded to the nearest multiple of one hundred dollars,

(c) for 1998 until 2003 inclusively, an amount determined by the board, such that the maximum wage rate will increase in equal amounts until 2003 at which time it will be equal to the yearly earnings of 90 percent of workers, and

(d) for each year after 2003, an amount equal to the product of

(i) the maximum wage rate for 2003, and

(ii) the quotient obtained when the average wage for the year is divided by the average wage for 2003,

rounded to the nearest multiple of one hundred dollars;

"maximum wage rate" in relation to a week means the maximum wage rate for the year divided by 52;

"medical practitioner" means a medical practitioner recognized under the *Medical Profession Act* or a member of an allied health profession recognized by the board;

"member of the family" in respect of a worker means the worker's spouse or former spouse, parent, grandparent, step-parent, child, grandchild, step-child, sibling, half-sibling, and a person who stands in loco parentis to the worker or to whom the worker stands in loco parentis;

"members of the board" shall mean those persons appointed under section 92;

"mine rescue work" includes the repair of the equipment necessary for, and the training necessary for, such work;

"Minister" means the member of the Executive Council to whom the responsibility for this Act has been assigned;

"outworker" means a person to whom articles or materials are given to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted at their own home or at other premises not under the control or management of the person who gave the person the articles or materials;

"payroll" in respect of an employer means the total earnings earned in a year by all workers employed by an employer engaged in an industry;

"permanent impairment" in respect of a worker means a work-related disability, not including death, that is not temporary and includes a disfigurement;

"sole proprietor" means a self-employed person, including a partner in a partnership, who carries on or engages in any industry and does not employ any workers in connection with that industry;

"spouse" means the person who, at the date of the workers' death, cohabited with the worker, and

(a) to whom the worker is legally married, or

(b) with whom the worker cohabited as a couple for at least 12 months immediately before the death of the worker;

"vehicle" means any mode of transportation the operation of which is protected by liability insurance;

"volunteer" means a person who does volunteer work for which the person receives no earnings or only nominal earnings;

"wage measure" for a month means the average weekly wages and salaries, for the month, of

(a) the Industrial Aggregate in the Yukon as published by Statistics Canada, or

(b) in the event that the Industrial Aggregate for the Yukon ceases to be published, such other measure for the month as is prescribed, or

(c) where, in the opinion of the board, there are extraordinary circumstances that cause an unusual fluctuation in the Industrial Aggregate in the Yukon, an amount deemed by the board;

"work-related" in reference to a disability of a worker means a disability arising out of and in the course of the employment of a worker;

"worker" means

(a) a person, who performs services for an employer under a contract of service or apprenticeship, unless the person

(i) is employed on a casual basis, for purposes other than the employer's industry, or

(ii) is an outworker,

(b) any person who, with the consent of the person charged with the management of a mine or of the person in charge of an authorized mine rescue crew, is doing mine rescue work after an accident, explosion or other catastrophe,

(c) a learner,

(d) a director of a corporation carrying on in an industry in the Yukon, unless the board, on application by the director deems the director to not be a worker,

(e) a member of the Legislative Assembly,

(f) any person deemed by the board or by regulation to be a worker,

but does not include

(g) a person during any time the person is acting in a religious function as a duly ordained or appointed cleric, a member of a religious order or as a lay reader and

(h) a person who entered into or works under a contract of service or apprenticeship outside the Yukon, who ordinarily resides

outside of the Yukon and is employed by an employer who is based outside of the Yukon and carries on business in the Yukon on a temporary basis.

(2) Subject to subsection (3), where a person does any work in an industry for an employer engaged in that industry, the person who does the work shall, for the purposes of this Act, be deemed to be a worker of that employer except when the person doing the work is

(a) an employer in an industry,

(b) a director of a corporation who is deemed by the board not to be a worker,

(c) worker of another employer, or

(d) a sole proprietor deemed by the board to be a worker.

(3) The board may designate classes of persons to whom subsection (2) does not apply.

### **Consequential amendments to the *Occupational Health and Safety Act***

**102.(1)** This section amends the *Occupational Health and Safety Act*.

**(2) Section 1 of the said Act is amended by repealing the definition "board" and substituting the following therefor:**

""board" means the Workers' Compensation, Health and Safety Board established under the *Workers Compensation Act*;"

**(3) Section 1 of the said Act is further amended by substituting the word "board" for the words "Executive Council Member" in the definitions "director" and "chief industrial safety officer".**

**(4) Section 1 of the said Act is further amended by repealing the definition "occupational illness" and substituting the following therefor:**

""occupational illness" means a condition that results from the exposure in a workplace to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired, and includes an industrial disease as defined by the board;"

**(5) Section 18 of the said Act is repealed and the following is substituted therefor:**

**"Director of occupational health and safety**

18.(1) The board shall designate a member of the public service as director of occupational health and safety to administer this Act.

(2) The director shall have all of the powers of a chief industrial safety officer and a chief mines safety officer and, subject to the direction and authority of the president of the Workers' Compensation, Health and Safety Board, the director shall have supervision of the administration and enforcement of this Act."

**(6) Section 19 of the said Act is repealed and the following substituted therefor:**

**"Safety officer**

19. The president of the Workers' Compensation, Health and Safety Board shall designate persons in the public service as chief industrial safety officer, chief mines safety officer and safety officers to administer and enforce this Act under the supervision of the president of the Workers' Compensation, Health and Safety Board and the director."

**(7) Section 21, 22, 23, 24 and 39 of the said Act is amended by striking out the expression "Executive Council Member" wherever it may appear and replacing it with "board".**

**(8) Sections 25 to 28 of the said Act are repealed.**

**(9) Subsection 29(6) of the said Act is repealed.**

**(10) Subsection 47.1(8) of the said Act is amended by striking out the expression "Workers Compensation Board" and replacing it with the expression "Workers' Compensation, Health and Safety Board".**

**Coming into force**

103.(1) The provisions of this Act, other than Part 11 and section 102, shall come into force on January 1, 1993.

(2) Part 11 and section 102 shall come into force on a day to be fixed by the Commissioner in Executive Council.

(3) The *Workers Compensation Act*, chapter 180 of the Revised Statutes of the Yukon, 1986, is repealed effective January 1, 1993.  
(Added by SY 1992, c. 19)

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