



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **WORKERS COMPENSATION ACT**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to June 2, 2018. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## WORKERS COMPENSATION ACT

### Table of Contents

Section	Page
1. Definitions.....	7
<b>PART I — SCOPE OF THIS PART</b>	<b>10</b>
2. Application.....	10
3. Admission of employer.....	10
4. Admission of independent operator.....	11
5. Unlawful employment of young person.....	11
<b>COMPENSATION</b>	<b>11</b>
6. Compensation.....	11
7. Accidents outside province.....	13
8. Where compensation payable under law of another jurisdiction.....	14
9. Compensation in respect of private employment.....	15
10. Agreements with other provinces.....	15
11. Right of action against person other than employer.....	16
12. No action against employer etc.....	17
<b>EFFECT OF ACT IN LAW</b>	<b>18</b>
13. Compensation in lieu of other rights.....	18
14. Worker may not waive rights.....	18
15. No deduction from wages or other contribution by workers.....	18
16. No assignment or attachment of compensation.....	19
17. Benefit of doubt accorded to applicant.....	19
<b>MEDICAL AID AND REHABILITATION</b>	<b>19</b>
18. Provision of medical aid.....	19
<b>WORKERS COMPENSATION BOARD</b>	<b>21</b>
19. Board.....	21
20. Vice-chairperson.....	21
21. Temporary appointments.....	21
22. <i>Idem</i> .....	21
23. Salaries.....	22
24. Quorum.....	22
25. Majority.....	22
26. Powers.....	22
27. Head office.....	22
28. Chief Executive Officer.....	22
29. Delegation by Board.....	23
30. Policies.....	23
31. Staff.....	24

<b>JURISDICTION</b>	<b>25</b>
32. Jurisdiction, general.....	25
33. Audit of accounts.....	26
34. Annual report.....	26
35. Administration expenses .....	26
36. Superannuation.....	26
<b>SCALE OF COMPENSATION</b>	<b>27</b>
37. Compensation for death of worker .....	27
38. Spousal benefits.....	28
39. Termination of payments for child .....	29
<b>WAGE LOSS BENEFITS</b>	<b>29</b>
40. Wage loss benefits payable.....	29
40.1 Wage loss benefits payable <i>re</i> accident on or after January 1, 2014 .....	30
40.11 Wage loss benefits payable <i>re</i> accident on or after January 1, 2016 .....	31
40.2 Duration of wage loss benefits .....	31
41. Calculation of loss of earning capacity.....	31
42. Collateral benefits deducted from award .....	33
43. Benefits after age 65 .....	33
44. Calculation of average earnings .....	34
45. Adjustment of earning capacity .....	34
46. Limitation <i>re</i> maximum annual earnings.....	35
47. Calculation of maximum annual earnings after 1993 .....	35
48. Computation, casual employment etc.....	35
48.1 Review of extended benefits.....	35
48.2 Other benefits .....	36
48.3 Adjustment of benefits where accident prior to Jan.1 1995.....	37
48.4 Other benefits .....	38
48.5 Review of temporary wage loss benefits .....	38
48.6 Wage loss supplement .....	39
49. Board may determine impairment .....	39
49.1 Annual adjustment of extended wage loss benefits .....	40
50. Permanent partial or total disability pension awarded before January 1, 1994 .....	40
51. Manner of payment.....	41
52. Payment for special surgery etc.....	42
53. Payment to spouse and children .....	42
54. Withholding payment, unlawful employment .....	42
55. Proof of existence etc. of dependants .....	42
<b>RECONSIDERATION AND APPEALS</b>	<b>43</b>
56. Reconsideration by Board .....	43
56.1 Application of previous Acts.....	45
56.2 Appeal on question of law .....	46
<b>ADMINISTRATIVE MATTERS</b>	<b>47</b>
57. Actions against the Board, directors etc. ....	47
58. Compellability .....	47
59. Application for compensation .....	48
<b>ACCIDENT FUND AND ASSESSMENTS</b>	<b>48</b>
60. Accident Fund .....	48
61. Classification .....	48
62. Estimate of assessment .....	49
63. Assessment and levy against all employers.....	49
63.1 Funding for association .....	50



64.	Collection of assessment .....	50
65.	Notice of assessment .....	51
66.	Payment by employer required without demand .....	51
67.	Additional assessments .....	51
68.	Installments .....	51
69.	Adjustments .....	51
70.	Bulk sale of inventory .....	51
71.	Computation of payroll .....	52
72.	Estimate of probable amount of payroll .....	52
73.	Penalty for default in payment .....	54
74.	Safety etc. of premises .....	55
<b>LIABILITY FOR ASSESSMENTS</b> .....		<b>55</b>
75.	Assessments may be paid by municipality, etc. ....	55
76.	Both principal and contractor liable for assessment .....	56
77.	Owner liable for assessment of employer .....	56
78.	Lien .....	57
79.	Liability of directors for assessment .....	57
<b>GENERAL</b> .....		<b>58</b>
80.	Regulations .....	58
81.	Penalties .....	58
82.	Recovery of penalties .....	58
<b>ACCESS TO BOARD FILES</b> .....		<b>58</b>
83.	Access to file .....	58
<b>OCCUPATIONAL DISEASES</b> .....		<b>59</b>
84.	Occupational disease .....	59
<b>WORKER AND EMPLOYER ADVISORS</b> .....		<b>60</b>
85.	Advisors .....	60
85.1	Advisory committee .....	60
<b>RIGHT TO RETURN TO WORK</b> .....		<b>61</b>
86.	Employer to co-operate in return to work .....	61
86.1	Obligation to <i>re-employ</i> .....	62
86.2	Fitness to return to work .....	62
86.3	Reinstatement of worker .....	63
86.4	Medically able to perform work .....	63
86.5	Accommodation of work or workplace .....	63
86.6	Termination of obligation .....	63
86.7	Presumption .....	63
86.8	Fulfilment of employer's obligations .....	63
86.9	Penalty .....	64
86.10	Conflict with collective agreement .....	64
86.11	Application .....	64
86.12	Application .....	64
<b>PART II</b> .....		<b>65</b>
87.	Application of Part II .....	65
88.	Personal injury action .....	65
89.	Negligence of fellow worker .....	65
90.	Contributory negligence, damages .....	66
91.	Repeal .....	66





## WORKERS COMPENSATION ACT

### CHAPTER W-7.1

#### 1. Definitions

##### (1) In this Act

- (a) “**accident**” means, subject to subsection (1.1) a chance event occasioned by a physical or natural cause, and includes
- (i) a wilful and intentional act that is not the act of the worker,
  - (ii) any
    - (A) event arising out of, and in the course of, employment, or
    - (B) thing that is done and the doing of which arises out of, and in the course of, employment, and
  - (iii) an occupational disease,  
and as a result of which a worker is injured;
- (b) “**Accident Fund**” means the fund provided for the payment of compensation, medical aid, outlays and expenses under Part I;
- (b.1) “**alternative employment**” means employment that is comparable, as determined by the Board, to the worker’s pre-injury work in nature, earnings, qualifications, opportunities and other respects;
- (c) “**Appeal Tribunal**” means the Appeal Tribunal appointed under section 56;
- (d) “**Board**” means the Workers Compensation Board of Prince Edward Island;
- (e) “**child**” includes a child to whom a worker stands in the place of a parent;
- (e.1) repealed by 2004, c.24, s.1;
- (f) “**collateral benefits**” means
- (i) any periodic benefit the worker is entitled to receive under the Canada Pension Plan, the Quebec Pension Plan, the *Unemployment Insurance Act* (Canada) R.S.C. 1985, Chap U-1, and
  - (ii) any benefit the worker is entitled to receive as a result of the accident that is provided wholly or partially at the expense of the employer;
- (g) “**construction**” includes reconstruction, repair, alteration and demolition;
- (h) “**dependant or dependants**” means those members of a family of a worker who were wholly or partly dependent upon that worker’s earnings at the time of death, or who but for the incapacity due to the accident of the worker would have been so dependent; but a person shall be deemed not to be partly dependent upon the earnings of another person unless he or she was dependent partly on contributions from that other person for the provision of the ordinary necessities of life;
- (i) “**directors**” means the chairperson and members of the Board appointed under section 19;

- (j) “**earnings**” includes salary, wages, commissions, gratuities, earnings for overtime, piecework, contract work, bonuses, allowances, board and lodging capable of being estimated in terms of money, credits and any substitutes for money that are provided wholly at the expense of the employer;
- (k) “**employer**” includes
  - (i) every person who has in service under a contract of hiring or apprenticeship, any person engaged in any work in or about an industry within the scope of this Act, and
  - (ii) the principal, contractor, and sub-contractor respectively, referred to in section 76,  
and in respect of any such industry includes a receiver, liquidator, executor, administrator, and any person appointed by a court or a judge who has the authority to carry on an industry and also includes a municipality, and may include the Crown in right of Prince Edward Island and Canada insofar as it may in its capacity of employer submit to the operation of this Act;
- (l) repealed by 2013, c.25, s.1;
- (m) “**employment**” means the whole or any part of any establishment, undertaking, work, operation, trade or business within the scope of this Act, and in the case of any industry not as a whole within the scope of this Act includes any department or part of such industry as would, if carried on separately, be within the scope of this Act;
- (m.1) “**extended wage loss benefits**” means wage loss benefits payable to a worker from the later of
  - (i) the date which the Board determines that the worker has an impairment pursuant to section 49, and
  - (ii) the date on which the worker completes vocational or occupational rehabilitation pursuant to section 18, where the worker is engaged in such rehabilitation on or after the date the Board determines that the worker has an impairment;
- (n) “**impairment**” means a medically measurable permanent anatomical loss or disfigurement and includes, amputation, loss of vision, loss of hearing, impaired nerve function, scarring causing disfigurement, joint ankylosis, or joint fusion from surgery;
- (o) “**industry**” includes an establishment, undertaking, work, operation, trade or business;
- (p) “**learner**” means a person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry within the scope of this Act for the purpose of undergoing training or probationary work as a preliminary to employment;
- (q) “**maximum annual earnings**” means the amount determined under section 46 or 47;
- (r) “**medical aid**” includes medical, surgical and dental aid, hospital and nursing services, chiropractic services provided by a registered chiropractor, occupation therapy and physiotherapy services provided by a licensed practitioner, x-ray and other treatment, drugs, dressings, appliances, apparatuses, transportation and other goods, services and things the Board may authorize in promoting the medical rehabilitation of an injured worker;
- (s) “**member of the family**” means a spouse, parent, grandparent, step-parent, child, step-child, grandchild, brother, sister, half-brother, half-sister, or a person who stands in the place of a parent to the worker or to whom the worker stands in the place of a parent;





- (t) “**Minister**” means the Minister of Justice and Public Safety and Attorney General;
- (t.1) “**prior Act**” means the *Workers’ Compensation Act* R.S.P.E.I. 1988, Cap. W-7 (repealed);
- (u) “**occupational disease**” means a disease arising out of and in the course of employment and resulting from causes and conditions
  - (i) peculiar to or characteristic of a particular trade or occupation, or
  - (ii) peculiar to the particular employment,but does not include
  - (iii) an ordinary disease of life;
  - (iv) repealed by *2001, c.20, s.1*.
- (v) “**regulations**” means regulations made under this Act;
- (w) “**spouse**” means an individual who, at the time of the worker’s death,
  - (i) is married to the worker,
  - (ii) has entered into a marriage with the worker that is voidable or void,
  - (iii) is not married to the worker but is cohabiting with the worker in a conjugal relationship and has done so continuously for a period of at least one year immediately preceding the worker’s death, or
  - (iv) is not married to the worker but is cohabiting with the worker in a conjugal relationship and together they are the natural or adoptive parents of a child;
- (x) “**student**” means a person who is pursuing formal education as a full-time or part-time student and is employed by an employer for the purposes of the employer’s industry, although not as a learner or an apprentice;
- (y) “**sub-contractor**” means a person or an industry contracting to perform part or all of another person’s or industry’s contract or contracting to provide all or a specified part of the work or materials required by another;
- (y.1) “**rate group**” means a group to which an industry is assigned for assessment purposes;
- (y.2) “**suitable work**” means work that a worker has the necessary skills to perform and is medically able to perform, and that does not pose health or safety hazards to the worker or co-workers, as determined by the Board;
- (y.3) “**temporary wage loss benefits**” means wage loss benefits payable to a worker prior to the date on which extended wage loss benefits, if any, become payable;
- (z) “**worker**” includes
  - (i) a person who enters into or works under a contract of service or apprenticeship,
  - (ii) a learner or student,
  - (iii) a member of a municipal volunteer fire brigade,
  - (iv) in respect of any industry, a person while he or she is actually engaged in rescuing or protecting or attempting to rescue or protect life or property,
  - (v) an employer who is admitted by the Board as being within the scope of Part I under section 3,
  - (vi) an independent contractor who is admitted by the Board as being within the scope of Part I under section 4,
  - (vii) a director or officer of a corporation who is admitted by the Board as being within the scope of Part I under section 3;
- (aa) repealed by *2013, c.25, s.1*.

**“accident” does not include stress**

- (1.1) The definition “**accident**” in clause (1)(a) does not include stress other than an acute reaction to a traumatic event.

**Restrictions on application**

- (1.2) Repealed by *2004, c.24, s.1*.

**No compensation for chronic pain**

- (1.3) Repealed by *2004, c.24, s.1*.

**Emergency rescue etc.**

- (2) An accident that occurs while a person is actually engaged in rescuing or attempting to rescue or protect life or property in or about the industry in which the person is employed, shall be deemed to arise out of and in the course of the person’s employment. *1994, c.67, s.1; 1997, c.20, s.3; 2000, c.5, s.3; 2001, c.20, s.1; 2004, c.24, s.1; 2009, c.73, s.2; 2008, c.8, s.29; 2010, c.31, s.3; 2012, c.17, s.2; 2013, c.25, s.1; 2015, c.28, s.3.*

**PART I — SCOPE OF THIS PART**

**2. Application**

- (1) This Act applies to all workers and employers engaged in, about or in connection with, any industry in the province except those workers, employers or industries excluded under subsection (2) or by the regulations.

**Exclusion**

- (2) The Board may, by order made with the approval of the Lieutenant Governor in Council, exclude any particular employer or worker from the application of this Act.

**Inclusion**

- (3) The Board may, on application, by order direct that this Act shall apply to an employer or worker otherwise excluded.

**Other Acts**

- (4) Nothing in the Act affects any obligation imposed upon an employer under any other Act. *1994, c.67, s.2.*

**3. Admission of employer**

- (1) An employer or director or officer of a corporation in an industry may be admitted by the Board as being entitled for himself or herself and his or her dependants to the same compensation as if the employer or director or officer were a worker within the scope of this Part.

**Idem**

- (2) The admission may be made in such manner and form as the Board considers appropriate. *1994, c.67, s.3.*



**4. Admission of independent operator**

An independent operator, not being an employer or worker, but performing work of a nature within the scope of this Part, may be admitted by the Board as being entitled for himself or herself and his or her dependants to the same compensation as if he or she were a worker within the scope of this Part. *1994,c.67,s.4.*

**5. Unlawful employment of young person**

- (1) Where an employer has employed a young person within the meaning of the *Youth Employment Act R.S.P.E.I. 1988, Cap. Y-2* in violation of that Act or any other enactment that prohibits the employment of underage workers, and a claim for injury to the young person is made, the unlawful employment does not affect or prejudice the right of the claimant.

**Unlawful employment of worker**

- (2) Where an employer employs a worker in circumstances that are in violation of any enactment and that worker suffers an injury that is compensable under this Act, the Board may recover from the employer any and all costs that have been paid by the Board from the Accident Fund on behalf of the injured worker. *1994,c.67,s.5.*

## COMPENSATION

**6. Compensation**

- (1) Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation as provided by this Part out of the Accident Fund.

**Wage loss benefits**

- (2) Where a worker is injured in an accident, wage loss benefits are payable for his or her loss of earning capacity resulting from the accident in respect of any working day after the day of the accident.

**Misconduct of worker**

- (3) Notwithstanding subsection (2), where the accident is attributable solely to the serious and wilful misconduct of the worker, as determined by the Board
- (a) wage loss benefits are not payable in respect of the three weeks following his or her loss of earning capacity; and
  - (b) medical aid is not payable in respect of the three weeks from the day the worker requires medical aid.

**Presumptions**

- (4) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

**Presumption, trauma- and stressor-related disorders**

- (4.1) Subject to subsection (4.2), it shall be presumed that personal injury by accident arising out of and in the course of employment has been caused to a worker, unless the contrary is shown, where the worker is
- (a) exposed in the course of employment to a traumatic event or events of a type specified in the DSM as a trigger for trauma- and stressor-related disorders, including post-traumatic stress disorder; and
  - (b) diagnosed with trauma- and stressor-related disorders, including post-traumatic stress disorder, in accordance with the DSM by a psychiatrist or psychologist.

**Application**

- (4.2) Subsection (4.1) applies to a worker who is diagnosed with trauma- and stressor-related disorders, including post-traumatic stress disorder, on or after the date that subsection comes into force.

**Acute reaction to a traumatic event**

- (4.3) For greater certainty, trauma- and stressor-related disorders, including post-traumatic stress disorder, are considered an acute reaction to a traumatic event for the purpose of subsection 1(1.1).

**Definitions**

- (4.4) In this section,
- (a) “**DSM**” means the edition specified in the regulations of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association;
  - (b) “**post-traumatic stress disorder**” means post-traumatic stress disorder as that condition is described in the DSM;
  - (c) “**psychiatrist**” means a person authorized by law to practise psychiatry in the province or in another jurisdiction in Canada;
  - (d) “**psychologist**” means a person authorized by law to practise as a psychologist in the province or in another jurisdiction in Canada.

**Compensation, loss of earning capacity**

- (5) Where compensation for loss of earning capacity resulting from the accident is payable it shall be computed and shall be payable from the next working day after the date of the accident.

**Compensation, impairment**

- (6) The Board may, in accordance with section 49, award compensation in respect of an impairment that does not result in a loss of earning capacity.

**Objection**

- (7) Repealed by 2001, c.20, s.2.

**Inquiry**

- (8) Repealed by 2001, c.20, s.2.

**Pre-existing physical condition**

- (9) Where an accident caused personal injury to a worker and that injury is aggravated by some pre-existing physical condition inherent in the worker at the time of the accident, the worker



shall be compensated for the full injurious result until such time as the worker, in the opinion of the Board, has reached a plateau in medical recovery.

**Determination of cause of occupational disease**

- (10) Repealed by 2013,c.25,s.2.

**Part accident, part other cause**

- (11) Where a worker's impairment or loss of earning capacity is, in the opinion of the Board, due in part to an accident and in part to a cause other than an accident, the Board shall
- (a) determine what portion of the worker's impairment or loss of earning capacity is a result of a cause other than an accident; and
  - (b) charge the portion determined under clause (a) against the rate group to which the worker's employer belonged at the time of the accident.

**Failure to provide necessary information, withholding compensation**

- (12) Every worker applying for or receiving compensation payments of any kind shall provide to the Board such information as may be considered necessary by the Board for the carrying out of this Part; and if, in the opinion of the Board, the worker fails to provide the information or otherwise fails to co-operate in obtaining the information, the Board may withhold all or part of the compensation payments. *1994,c.67,s.6; 2001,c.20,s.2; 2013,c.25,s.2; 2017,c.18,s.1.*

**7. Accidents outside province**

- (1) Where
- (a) the place of business or chief place of business of the employer is situated within the province;
  - (b) both the residence of the worker and the place where the worker usually works for the employer are within the province;
  - (c) an accident happens while the worker is employed outside the province; and
  - (d) his or her employment outside the province has lasted less than six months,

the worker is, or his or her dependants are, entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened within the province.

**Where worker employed more than six months outside province**

- (2) Where
- (a) the place of business or chief place of business of the employer is situated within the province;
  - (b) both the residence and the place where the worker usually works for the employer are within the province; and
  - (c) the employment of the worker outside the province lasts or is likely to last for six or more months,

the employer may apply to the Board to be assessed on the earnings of the worker and, if the application is approved by the Board and if the worker is injured by accident happening outside the province, the worker is, or his or her dependants are, entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened within the province.

**Accident while outside province temporarily**

- (3) Where the place of business or the chief place of business of the employer is situated within the province and the residence of the worker is outside the province but the place where the worker usually works for the employer is within the province, and an accident happens while the worker is outside the province merely for some temporary purpose connected with his or her employment, the worker is, or his or her dependants are, entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened within the province.

**Where employer's place of business outside province**

- (4) Where
- (a) an accident happens outside the province;
  - (b) the employer's place of business or chief place of business is situated outside the province; and
  - (c) the worker is entitled to compensation under the law of the place where the accident happened,

compensation is not payable to the worker or his or her dependants whether his or her residence is in or outside the province unless his or her usual place of employment is within the province and he or she is at the time of the accident outside the province merely for some casual or incidental purpose connected with his or her employment.

**Accidents on ships**

- (5) Where
- (a) an accident happens outside the province in connection with the operation of a steamboat, ship or vessel, or of a railway, or of an aircraft, or of a truck, bus or other vehicle used in the transportation of passengers or of any goods or substance;
  - (b) the residence of the worker is within the province; and
  - (c) the work or service performed by him or her is required to be performed both within and outside the province,

the worker is, or his or her dependants are, entitled to compensation under this Part as if the accident had happened within the province.

**Assessment of employer of worker outside province**

- (6) Where a worker is employed outside the province and the circumstances of
- (a) the place of business or chief place of business of the employer of the worker;
  - (b) the residence of the worker; and
  - (c) the usual place of work of the worker,

are such that if an accident happened while the worker was employed outside the province, he or she is, or his or her dependants are, entitled to compensation as if the accident had happened within the province, the employer shall, unless he or she is relieved from assessment under an agreement made under section 10, declare and be assessed on the earnings of the worker in the same way and in the same amounts as though the worker were employed within the province. *1994,c.67,s.7.*

**8. Where compensation payable under law of another jurisdiction**

- (1) Where by the law of a country or place in which an accident happens, a worker or a dependant of the worker is entitled to compensation in respect of the accident, the worker or



the dependant, within three months after the happening of the accident or, where the accident results in death, within three months after the death, or within such longer period as either before or after the expiration of the three months the Board may allow, shall elect whether to claim compensation under the law of the country or the place in which the accident happened or under this Part and shall give notice in writing of the election to the Board.

**Where election not made**

- (2) Where an election is not made or notice is not given under subsection (1) it shall be presumed that the worker or the dependant, as the case may be, has elected not to claim compensation under this Part.

**Effect of claims under law of another jurisdiction**

- (3) Where a person who would, except for this section, be entitled to claim compensation under this Part in respect of an injury or a death arising out of an accident, makes an application for, or claims, or elects to claim, compensation in respect of the injury or death under the law of another country or province, or is presumed under subsection (2) to have elected not to claim compensation under this Part in respect of the injury or death, he or she is no longer entitled to claim or receive compensation under this Part in respect of the injury or death. *1994,c.67,s.8.*

**9. Compensation in respect of private employment**

- (1) Where a worker engaged in an industry to which this Part applies is required by his or her employer, or by an officer of the employer having direction and control of the worker in the industry, to do work or perform services outside the scope of his or her employment and for the personal benefit of the employer or the officer, if personal injury by accident arising out of and in the course of the doing of the work or performance of the services is caused to the worker, the personal injury shall be deemed to be personal injury to which subsection 6(1) applies, and the worker is entitled to receive compensation from the Accident Fund accordingly.

**Apprentices**

- (2) Where an apprentice in an industry to which this Part applies is attending a course of instruction which he or she is required to take under the *Apprenticeship and Trades Qualification Act* R.S.P.E.I. 1988, Cap. A-15 or the regulations made thereunder, if personal injury by accident arising out of and in the course of instruction is caused to the apprentice,
- (a) the personal injury shall be deemed to be personal injury to which subsection 6(1) applies;
  - (b) the apprentice shall be deemed to be a worker while attending the course of instruction and is entitled to receive compensation from the Accident Fund accordingly;
  - (c) the person to whom he or she is apprenticed under an agreement of apprenticeship shall be deemed to be his or her employer at the time that the accident occurred; and
  - (d) the rate of wages that would have been payable to the apprentice under the agreement of apprenticeship if he or she had been working for his or her employer at the time that the accident occurred shall be deemed to be the rate of wages of the apprentice at the time the accident occurred. *1994,c.67,s.9.*

**10. Agreements with other provinces**

- (1) The Board may enter into an agreement with the Workers Compensation Board or similar body in another province to provide for the payment of compensation for injuries to workers who are employed under conditions such that part of the work incidental to the employment

is performed in Prince Edward Island and part of the work is performed in that other province, in order to ensure that those workers or their dependants receive compensation either in conformity with this Act or in conformity with the Act in force in the other province relating to workers compensation and to avoid a duplication of assessments.

**Payments**

- (2) Payment out of the Accident Fund of money required to be paid pursuant to an agreement under subsection (1) may be made to the Workers Compensation Board or other body with which the agreement has been made, and all money received by the Board pursuant to the agreement shall be paid by it into the Accident Fund.

**Agreements with Canada or other parties**

- (3) The Board may, and has been always able to, enter into agreements with the Government of Canada, the government of a province or territory or with an agency thereof, or with a workers compensation board or similar body in any other jurisdiction
- (a) for the exchange of information acquired by the Board in the administration of this Act;
  - (b) for the assignment, charge or attachment of compensation under section 16; or
  - (c) for any other purpose which is, in the opinion of the Board, necessary for the administration of this Act. *1994,c.67,s.10; 2013,c.25,s.3.*

**11. Right of action against person other than employer**

- (1) Where an accident happens to a worker in the course of employment in such circumstances as entitle the worker or the worker's dependants to an action against some person other than the employer or another worker acting in the course of employment for the same employer, the worker or dependants, if entitled to compensation under this Part, may elect to claim the compensation or to bring the action.

**Deemed election**

- (1.1) The worker or the worker's dependants shall be deemed to have elected to bring an action, where
- (a) the worker or the worker's dependants makes a claim against or receive any amount in settlement from any person against whom the action may be brought prior to making an election; or
  - (b) the worker or the worker's dependants have not made an election in accordance with subsection (1.2).

**Written election**

- (1.2) The election referred to in subsection (1) shall be made and notice of it given to the Board within six months of the accident or such longer period of time as the Board may allow.

**Low settlement**

- (2) If the worker or the worker's dependants elects to bring an action and the amount of settlement or recovery in the action is less than the amount of compensation that would have been awarded under this Part, the Board may authorize payment in accordance with subsection (2.1).

**Amount additional to actual recovery**

- (2.1) Subject to subsection (2.2), the Board may approve compensation to a worker or a worker's dependants under this section in an amount not exceeding the difference between the amount



of compensation that would have been awarded under this Part and an amount that is, in the opinion of the Board, a reasonable amount of settlement or recovery for the right of action.

**Prior written approval required**

- (2.2) Subsection (2.1) does not apply if the Board did not give prior written approval to any settlement of the right of action by the worker or the worker's dependants.

**Subrogation**

- (3) If the worker or dependants have claimed compensation under this Part, the Board shall be subrogated to the position of the worker or dependant as against such other person for the whole or any outstanding part of the claim of the worker or dependant against the other person.

**Idem**

- (3.1) Where the Board is subrogated to a claim pursuant to subsection (3), an action may be taken by the Board
- (a) in the name of the worker or a dependant of the worker, without the consent of the person in whose name the action was taken; or
  - (b) in its own name.

**Duty to cooperate**

- (3.2) A worker and a worker's dependants shall cooperate with the Board in respect of a claim, referred to in subsection (3.1) and if, in the opinion of the Board, they or any of them have failed to cooperate with the Board, the Board may suspend, reduce or terminate compensation being paid to the worker or the worker's dependants pursuant to this Part.

**Powers of Board to compromise action**

- (4) It is not obligatory upon the Board to sue for or require payment of damages caused by the accident and the Board has full power to compromise the cause of action or release its claim therefor if, in its discretion, it thinks it inadvisable to bring action for the damages.

**Exception, accidents arising from use of motor vehicle**

- (5) For the purposes of this section and subsection 12(3), where an accident referred to in subsection (1) happens to the worker as a result of the use by the worker or any other person of a motor vehicle, as defined in the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5, that is required to be registered under that Act, the worker, for the purposes of the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4 or for the purposes of any contract of insurance in place on the date of the accident, shall be deemed not to be entitled to the benefits as provided by this Part.

**Damages includes medical and legal costs**

- (6) Where an action is brought by a worker, his dependants or the board, an award for damages shall include the cost of medical aid and any other benefit provided under this Part and legal costs incurred by the board on a solicitor and client basis. *1994,c.67,s.11; 2001,c.20,s.3.*

**12. No action against employer etc.**

- (1) In any case under subsection 11(1), neither the worker nor the worker's dependants nor the employer of such worker has any right of action in respect of the accident against any other employer in an industry within the scope of this Part or a worker of that employer where the worker of the employer was at the time of the accident in the course of his or her employment with the employer.

**Compensation chargeable to employer's class**

- (2) In any case where it appears to the Board that a worker is injured or killed owing to the negligence of an employer or of the worker of an employer in another class within the scope of this Part, the Board may direct that the compensation awarded in that case be charged against that class.

**Exception, motor vehicle accident**

- (3) Subsection (1) does not apply if the accident referred to in subsection 11(1) happens to the worker as a result of the use, by the worker or any other person, of a motor vehicle as defined in the *Highway Traffic Act*, that is required to be registered under that Act. *1994, c.67, s.12; 2001, c.20, s.4.*

**EFFECT OF ACT IN LAW**

**13. Compensation in lieu of other rights**

- (1) The right to compensation provided by this Part is in lieu of all rights and rights of action, statutory or otherwise, to which a worker or dependants are or may be entitled against the employer of such worker or against any worker of that employer where the worker of the employer was at the time of the accident in the course of his or her employment with the employer for or by reason of any accident in respect of which compensation is payable hereunder or which arises in the course of the worker's employment in an industry under this Part at the time of the accident, and no action lies in respect of that accident or any injury arising therefrom.

**Exception**

- (2) This section does not apply where the worker and the work he or she was engaged in at the time of the accident were not within the scope of this Part. *1994, c.67, s.13.*

**14. Worker may not waive rights**

A worker cannot agree with the employer to waive or to forego any of the benefits to which he or she or dependants are or may become entitled under this Part and every agreement to that end is absolutely void. *1994, c.67, s.14.*

**15. No deduction from wages or other contribution by workers**

- (1) No employer, either directly or indirectly, shall deduct from the wages of any of his or her workers any part of any sum which the employer is liable to pay into the Accident Fund or otherwise under this Part or require or permit any of his or her workers to contribute in any manner towards indemnifying the employer against any liability the employer may incur under this Part.

**Offence and penalty**

- (2) Every person who contravenes any provision of subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000 and is also liable to repay to the worker any sum that has been deducted from the worker's wages or that the worker has been required or permitted to pay in contravention of subsection (1). *1994, c.67, s.15.*



**16. No assignment or attachment of compensation**

No sum payable as compensation or by way of commutation or any periodical payment in respect of it may be assigned, charged or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it, unless

- (a) an agreement entered into by the Board under section 10 provides otherwise; or
- (b) the Board approves of
  - (i) the assignment, charge or attachment,
  - (ii) the passage of the sum by operation of law, or
  - (iii) the set off of any claim against the sum,as the case may be. *1994, c.67, s.16; 2013, c.25, s.4.*

**17. Benefit of doubt accorded to applicant**

Notwithstanding anything in this Act, on any application for compensation the decision shall be made in accordance with the real merits and justice of the case and where it is not practicable to determine an issue because the evidence for or against the issue is approximately equal in weight, the issue shall be resolved in favour of the claimant. *1994, c.67, s.17.*

## MEDICAL AID AND REHABILITATION

**18. Provision of medical aid**

- (1) The Board may provide any worker entitled to compensation under this Part with medical aid, and every such worker is entitled to such prosthetic appliances and to such dental appliances and apparatus as may be necessary as a result of any accident, and to have the same kept in repair or replaced in the discretion of the Board, and to such corrective lenses as may be necessary as a result of the injury, which corrective lenses may, in the discretion of the Board, be renewed from time to time.

**Principles**

- (2) The medical aid is at all times subject to the supervision and control of the Board and shall be paid for by the Board out of the Accident Fund, and such amount as the Board may consider necessary therefor shall be included in the assessment levied upon the employers.

**Questions**

- (3) All questions as to the necessity, character, and sufficiency of any medical aid furnished or any vocational or occupational rehabilitation shall be determined by the Board.

**Fees**

- (4) The fees and charges for such medical aid shall not be more than the Board considers reasonable and proper; the fees and charges shall be fixed by the Board and no action lies for any amount larger than that so fixed.

**Limitation**

- (5) Notwithstanding the *Statute of Limitations Act* R.S.P.E.I. 1988, Cap. S-7, the Board shall not pay any account rendered against it for medical aid in respect of any injury unless application for payment therefor is made within six months after such medical aid has been rendered.

**Transportation to hospital**

- (6) When a worker has been injured in an accident so seriously that he or she cannot continue at his or her regular work, the employer shall, at his or her own expense, as soon as reasonably possible thereafter, obtain necessary medical aid or convey the worker to a place where he or she may receive such medical aid.

**Failure to provide transportation etc.**

- (7) In the event of the employer's failure to comply with subsection (6), any person may obtain such aid or convey the injured worker to such place and if the employer fails to pay the reasonable charges for obtaining the aid, or for the conveyance, the Board may pay it and the employer is liable to repay the Board double the amount so paid and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

**Other services, contribution by worker**

- (8) Where in conjunction with or apart from the medical aid to which workers are to be entitled free of charge, further or other service or benefit is, or is proposed to be given or arranged for, any question arising as to whether or to what extent any contribution from workers is or would be one prohibited by this Act shall be determined by the Board.

**Reports**

- (9) Every physician, surgeon and hospital official or other person attending, consulted respecting, or having the care of, any worker, shall furnish to the Board such reports as may be required by the Board in respect of the worker.

**Charges to be made to Board**

- (10) No physician, surgeon, or other person, entitled to be paid by the Board under this Part for any services performed or for any medicines or materials supplied shall make any charge against the injured worker, the employer, or any person other than the Board, for such services, medicines or materials.

**Rehabilitation**

- (11) To aid in getting injured workers back to work, the Board may take such measures and make such expenditures as it may consider necessary or expedient, and the expense thereof shall be borne out of the Accident Fund.

**Cooperation in exams, etc.**

- (12) The Board may direct that a worker applying for or receiving compensation under this Part submit to and cooperate in vocational, occupational and medical examinations, assessments and rehabilitation.

**No submission to exams, etc.**

- (13) Where, in the opinion of the Board, a worker has failed or refused to submit to or cooperate in an examination, assessment or rehabilitation directed by the Board pursuant to subsection (12), the worker is not entitled to compensation until the Board is satisfied that the worker has complied with that direction of the Board.

**Non-compliance**

- (14) Where a worker who has failed or refused to comply with a direction of the Board pursuant to subsection (12) subsequently complies with that direction, the worker is not entitled to claim or receive compensation for the period during which the worker failed or refused to comply with that direction. *1994, c.67, s.18; 2001, c.20, s.5.*



## WORKERS COMPENSATION BOARD

### 19. Board

- (1) Subject to this Act, the Workers Compensation Board of Prince Edward Island is continued as a body corporate and shall administer this Act.

#### Composition and term of office

- (2) The Board shall be composed of a chairperson and as many members, equal in number, representative of employers and workers respectively, as the Lieutenant Governor in Council may determine, all of whom shall be appointed by the Lieutenant Governor in Council, and the members of the Board shall hold office for a term not exceeding three years, subject to removal from office by the Lieutenant Governor in Council for cause, and are eligible for reappointment.

#### Submissions regarding membership

- (3) The Lieutenant Governor in Council shall, prior to appointing members under subsection (2), consider submissions respecting membership made by workers and employers. *1994,c.67,s.19; 2001,c.20,s.6.*

### 20. Vice-chairperson

- (1) The Lieutenant Governor in Council shall appoint one of the members of the Board to be the vice-chairperson.

#### Powers

- (2) In the absence of the chairperson or in the case of his or her inability to act or if there is a vacancy in the office, the vice-chairperson may act as and shall have all the powers of the chairperson.

#### Vacancy

- (3) Whenever a member of the Board ceases to hold that office, the Lieutenant Governor in Council shall appoint a person to fill the vacancy. *1994,c.67,s.20.*

### 21. Temporary appointments

- (1) In the case of the death, illness or absence from Prince Edward Island of a member of the Board, or of his or her inability to act from any cause, the Lieutenant Governor in Council may appoint some person to act for the time being in his or her stead, and the person so appointed shall have all the powers and perform all the duties of such member.

#### Idem

- (2) Subsection (1) applies to the chairperson of the Board as well as to any other member. *1994,c.67,s.21.*

### 22. Idem

Where the vice-chairperson appears to have acted for or instead of the chairperson, it shall be conclusively presumed that he or she so acted for one of the reasons mentioned in subsection 20(2). *1994,c.67,s.22.*

**23. Salaries**

The salaries of the chairperson, vice-chairperson and the other members shall be determined by the Lieutenant Governor in Council and such salaries are payable out of the Accident Fund. *1994, c.67, s.23.*

**24. Quorum**

The presence of a majority of the members is necessary to constitute a quorum of the Board. *1994, c.67, s.24.*

**25. Majority**

A vacancy on the Board shall not, if there remains a majority, impair the authority of that majority to act. *1994, c.67, s.25.*

**26. Powers**

- (1) The Board has the like powers as a judge of the Supreme Court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents and things.

**Powers of member**

- (2) A member of the Board sitting alone has all such powers, rights and privileges as are vested in a justice of the peace by the *Provincial Court Act R.S.P.E.I. 1988, Cap. P-25*, in respect of the following matters:
- (a) enforcing the attendance of witnesses and examining them on oath or otherwise;
  - (b) compelling the production of the books required to be kept by an employer by this Act or the regulations;
  - (c) punishing persons guilty of contempt, and

a summons signed by one member of the Board may be substituted for and is equivalent to any formal process capable of being issued in an action for enforcing the attendance of the witnesses and compelling the production of documents. *1994, c.67, s.26.*

**27. Head office**

The head office of the Board shall be in the Charlottetown area and its sittings may be held in any part of Prince Edward Island. *1994, c.67, s.27.*

**28. Chief Executive Officer**

- (1) The Lieutenant Governor in Council, after consultation with the directors, shall appoint a Chief Executive Officer who shall be responsible for the administration of the affairs of the Board and report thereon to the directors.

**Remuneration**

- (2) The Chief Executive Officer shall be paid such remuneration as the Lieutenant Governor in Council may determine on the recommendation of the directors. *1994, c.67, s.28.*



**29. Delegation by Board**

- (1) The Board may delegate any of its powers, duties, authority or discretion under this Act and the regulations to one or more persons in such a manner and subject to such terms and conditions as it considers appropriate.

**Sub-delegation**

- (2) A person may sub-delegate any power, authority, duty or discretion which has been delegated to the person under subsection (1), if permitted to do so by the terms and conditions of the delegation.

**Decision etc. of delegate**

- (3) A decision, order or ruling of a person to whom the Board has made a delegation under subsection (1) or of a person to whom a sub-delegation has been made under subsection (2) shall be deemed to be a decision, order or ruling of the Board. *1994,c.67,s.29; 2001,c.20,s.7.*

**30. Policies**

- (1) The directors shall establish policies and programs consistent with this Act in relation to the following:
- (a) the administration of this Act;
  - (b) compensation benefits to injured workers and dependants;
  - (c) rehabilitation of injured workers; and
  - (d) assessments and investments.

**Duties of directors**

- (2) The directors shall
- (a) consider and approve annual administrative and operating budgets and appoint auditors to audit the books and accounts of the Board;
  - (b) enact bylaws, policies and practices for the good conduct of the business and affairs of the Board; and
  - (c) periodically review this Act and the regulations and recommend to the Minister such changes as are considered advisable.

**Appointment of person to review the Act**

- (2.1) For the purpose of meeting its obligation under clause (2)(c), the directors may appoint a person or persons to review the provisions of this Act and regulations and to provide advice to the directors with respect to possible changes to the legislation.

**Payment out of Accident Fund**

- (2.2) Where the directors appoint a person or persons under subsection (2.1), any costs associated with the provision of services by that person or those persons shall be paid from the Accident Fund.

**Powers of directors**

- (3) The directors may
- (a) invest any funds arising under any provision of this Act or under their control according to investment and lending policies, standards and procedures that a reasonably prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return and may use such funds for any purposes authorized in this Act; and

- (b) borrow, by way of overdraft or otherwise, from any chartered bank, trust company or credit union such sums as, in the opinion of the directors, are considered expedient for the proper carrying out of this Act.

**Investment advice**

- (4) The Board may appoint such investment advisory committees or engage such investment advisory services as it considers appropriate.

**Taxation**

- (5) The funds, investments and income of the Board and any purchases made therefrom are free from every form of taxation.

**Powers with respect to land**

- (6) The Board may
  - (a) purchase or otherwise acquire such real property as it considers necessary for its purposes;
  - (b) erect thereon such buildings as it considers necessary for its purposes; and
  - (c) sell or otherwise dispose of any such real estate or the buildings thereon.

**Title**

- (7) The title to real property acquired under subsection (6) shall be held in the name of the Board.

**Reserve fund**

- (8) All expenditures incurred under subsection (6) in connection with the purchase of real property or the erection of buildings shall be paid out of any reserve fund or other special fund, and the amount thereof shall be repaid on an amortized basis which shall include principal and interest thereon; and the monies so repaid shall be placed to the credit of the reserve fund or special fund out of which the expenditures were paid.

**Repayments**

- (9) Repayments of principal and interest made under subsection (8) shall be deemed to be part of the general administration expenses incidental to the administration of this Act.

**Investments**

- (10) Real property acquired or buildings erected under subsection (6) shall, until repayment of the amount expended for the acquisition or erection thereof has been made, be deemed to be an investment made on behalf of the reserve fund or special fund out of which that amount was paid. *1994,c.67,s.30; 2013,c.25,s.5.*

**31. Staff**

- (1) The directors shall ensure that staff are appointed to administer to the day-to-day operations of the Board.

**Application of the *Civil Service Act***

- (2) The *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8 does not apply to any person employed by the Board. *1994,c.67,s.31.*





## JURISDICTION

### 32. Jurisdiction, general

- (1) Subject to sections 56 and 56.1, the Board has exclusive jurisdiction to examine into, hear, and determine, all matters and questions arising under this Act and as to any matter or thing in respect of which any power, authority, or discretion, is conferred upon the Board; and the action or decision of the Board thereon is final and conclusive and is not open to question or review in any court, and no proceedings by or before the Board shall be restrained by injunction.

#### Questions of fact

- (2) Without limiting the generality of subsection (1) the decisions and findings of the Board upon all questions of law and fact are final and conclusive, and in particular, the following shall be deemed to be questions of fact:
- (a) whether any injury or death in respect of which compensation is claimed was caused by an accident within the meaning of this Part;
  - (b) the question whether any injury has arisen out of or in the course of an employment within the scope of this Part;
  - (c) the existence and degree of disability by reason of any injury;
  - (d) the permanence of disability by reason of any injury;
  - (e) the existence and degree of an impairment and whether it is the result of an accident;
  - (f) the amount of loss of earning capacity by reason of any injury;
  - (g) the amount of average earnings;
  - (h) the existence of the relationship of a member of the family;
  - (i) the existence of dependency;
  - (j) whether or not an employer's undertaking or any part, branch or department of an employer's undertaking is in an industry within the scope of this Part, and the class, sub-class, group or sub-group to which an employer's undertaking or any part, branch or department thereof should be assigned;
  - (k) whether or not any worker in any industry within the scope of this Part is himself or herself within the scope of this Part and entitled to compensation thereunder;
  - (l) whether any particular disease is peculiar to or characteristic of any particular industrial process, trade or occupation, to which this Part applies;
  - (m) the costs for the year for a class, sub-class, group, sub-group or undertaking.

#### Power to determine whether Act is applicable

- (3) Where an action in respect of an injury is brought against an employer or a worker of an employer by a worker or the legal personal representative or a dependant of the worker, the Board has jurisdiction, on the application of a party to the action, to adjudicate and determine whether the right of action is removed by this Act; and the adjudication and determination is final and conclusive, and if the Board so determines, the right of action is removed by this Act.

#### Stated case

- (4) The Board may of its own motion state a case in writing for the opinion of the Court of Appeal upon any question which in the opinion of the Board is a question of law.

**Idem**

- (5) The Court of Appeal shall hear and determine the questions of law arising thereon and remit the matter to the Board, with the opinion of the court thereon. *1994,c.67,s.32; 2001,c.20,s.8; 2008,c.20,s.72(95).*

**33. Audit of accounts**

The accounts of the Board shall be audited by an auditor appointed by the Board for that purpose, and the costs of such auditor shall be paid by the Board. *1994,c.67,s.33.*

**34. Annual report**

The Board shall, on or before May 1 in each year, make a comprehensive report to the Minister which shall include the financial transactions during the preceding calendar year, and outline of new programs and policies introduced in the preceding year, a statistical breakdown of claims, reports from the chairperson of the Board and the Chief Executive Officer, and any other information and particulars that the Minister may request. *1994,c.67,s.34.*

**35. Administration expenses**

All expenses incurred in the administration of this Part shall be paid out of the Accident Fund. *1994,c.67,s.35.*

**36. Superannuation**

- (1) For all purposes of the *Civil Service Superannuation Act* R.S.P.E.I. 1988, Cap. C-9 every permanent employee of the Board shall be deemed to be a person employed in the civil service of the province.

**Deductions**

- (2) The Board shall deduct monthly from the salary of every permanent employee such amount as is directed by the Lieutenant Governor in Council to be deducted from the salary of every employee in the civil service of the province and shall pay over the same to the Minister of Finance, to be paid into and form part of the Superannuation Fund under the *Civil Service Superannuation Act*.

**Payments from Accident Fund**

- (3) Where, by the *Civil Service Superannuation Act*, any payment is directed to be made into the Superannuation Fund by the government or by the Minister of Finance or where, by such Act, any superannuation allowance or other sum is directed to be paid out of the Operating Fund of the province, then in respect of any member or employee of the Board such payment, superannuation allowance or other sum shall be paid by the Board out of the Accident Fund.

**Purchase of previous service**

- (4) Permanent employees of the Board, who, prior to the coming into force of this Act, have not been contributing members to the Civil Service Superannuation Fund, will have the option of purchasing previous service in accordance with procedures established under the *Civil Service Superannuation Act*.

**Participation in group medical etc. plans**

- (5) Employees of the Board shall be entitled to participate in group medical, dental, life, and disability insurance plans established for persons employed in the civil service of the



province or such other similar plans of insurance as the Board determines to make available to its employees, and the Board shall pay the employer's share of the cost of any such plans. 1994, c.67, s.36; 1997, c.20, s.3; 2010, c.31, s.3; 2012, c.17, s.2; 2015, c.28, s.3.

## SCALE OF COMPENSATION

### 37. Compensation for death of worker

- (1) Where death results from injury, the amount of compensation shall be
  - (a) the necessary expenses of the burial of the worker, not exceeding an amount prescribed in the regulations, and the necessary expenses for transportation of the body of the worker from the scene of the accident, either within or outside the province, to the site of burial;
  - (b) where the surviving spouse is a sole dependant, a lump sum payment of \$10,000 and thereafter a monthly payment of an amount prescribed in the regulations;
  - (c) where the dependants are a surviving spouse and one or more children, a lump sum payment of \$10,000 and thereafter a monthly payment of an amount prescribed in the regulations with additional monthly payment of an amount prescribed in the regulations for each child under the age of eighteen years;
  - (d) a surviving spouse entitled to compensation by reason of the death of his or her spouse, is not entitled to any further compensation as a dependant of any other worker whose death results from an accident.
  - (e) where the dependants are children, without a mother and father and are under the age of eighteen years, a lump sum payment of \$10,000 for each child shall be paid into a fund under the management of the Board and established for the purposes of post-secondary education of all such children under a benefit program administered by the Board and, in addition, a monthly payment of an amount prescribed by the regulations to the legal guardian of each child under the age of eighteen shall be made;
  - (f) where persons other than those mentioned in clauses (b), (c) or (d) are dependants, a sum reasonable and proportionate to the pecuniary loss to such dependants occasioned by the death, to be determined by the Board, but not exceeding a monthly amount prescribed in the regulations;
  - (g) where compensation is payable to or for a child under clause (c) or under subsection 39(2), no additional compensation shall be payable with respect to such child by reason of the subsequent death from an injury of any person upon whom such child was wholly or partly dependent.

#### Duration of payments

- (2) In the case provided for in clause (1)(f), the payments shall continue only as long as in the opinion of the Board it might reasonably have been expected had the worker lived he or she would have continued to contribute to the support of the dependants.

#### Allotment

- (3) Where there are both total and partial dependants, the compensation may be allotted partly to the total and partly to the partial dependants.

#### Compensation for period between injury and death

- (4) Where death results from an injury or after an injury from any cause, any compensation payable with respect to any portion of the period between the date of the injury and the date

of the death may be paid by the Board to the surviving spouse or to such of the dependants of the deceased as the Board may consider advisable, and in case of minors or mentally incompetent persons payment may be made as provided in section 51.

**Compensation where death occurs before payment**

- (5) Any compensation payable to a worker or dependant who dies before the compensation is paid may be paid to such members of the family of the deceased worker or dependant, or to such persons caring or providing for the deceased worker or dependant prior to his or her decease as the Board may consider advisable.

**Continuation of compensation to maintain existing household**

- (6) Where the worker dies and leaves no dependent spouse or the dependent spouse subsequently dies and any suitable person acts as foster parent in keeping up the household and maintaining and taking care of the children entitled to compensation in a manner that the Board considers satisfactory, the foster parent, while so doing, is entitled to receive the same monthly payments in respect of herself or himself and the children as if she or he were the spouse of the deceased and in such case the payments in respect of the children are in lieu of the monthly payments they would otherwise have been entitled to receive. *1994,c.67,s.37; 2013,c.25,s.6.*

**38. Spousal benefits**

- (1) Where spousal benefits payable to a survivor under the prior Act
- (a) lapsed on the survivor's remarriage prior to April 17, 1985; and
  - (b) were reinstated without interest by the Board,

spousal benefits shall continue to be payable to the survivor until the survivor's death, in accordance with the regulations.

**Spousal benefits**

- (2) Where spousal benefits payable to a survivor under the prior Act
- (a) lapsed on the survivor's remarriage after April 17, 1985; and
  - (b) were reinstated by the Board,

spousal benefits shall continue to be payable to the survivor until the survivor's death, in accordance with the regulations.

**Effective date**

- (3) Spousal benefits payable after the coming into force of this section shall continue to be payable until
- (a) the worker would have reached the age of 65 years; or
  - (b) the survivor reaches the age of 65 years,

whichever is later.

**Application**

- (4) Spousal benefits payable after December 31, 1994 and before the date this section comes into force are subject to subsection (3). *1994,c.67,s.38; 2001,c.20,s.9.*



**39. Termination of payments for child**

- (1) Subject to subsection (2), payments in respect of a child shall cease when a child attains the age of eighteen years.

**Invalid child**

- (2) Payments in respect of a child who is physically or mentally incapable of earning shall continue to be payable so long as the child remains so incapable.

**Continuation of payments for full-time students until 22**

- (3) Where, under subsection (1), payments in respect of a child cease on the child attaining the age of eighteen years, the child shall be entitled to continue to receive an education supplement at the rate provided in clause 37(1)(c) for payment to a child if he or she is a registered, full-time student at an educational institution, recognized by the Board, whether such institution is located within or outside the province, until attainment of the age of twenty-two years. *1994, c.67, s.39.*

**WAGE LOSS BENEFITS****40. Wage loss benefits payable**

- (1) Subject to subsection (1.1), where an injury to a worker from an accident that occurred prior to January 1, 2014, results in a loss of earning capacity after the date of the accident, the Board shall pay to the worker wage loss benefits
- (a) in an amount equal to 80% of the worker's loss of earning capacity, for the first 38 weeks for which benefits are payable to the worker after the date of the accident; and
  - (b) in an amount equal to 85% of the worker's loss of earning capacity after the end of the period described in clause (a).

**Maximum wage loss benefits**

- (1.1) Wage loss benefits payable to a worker under subsection (1) shall not exceed
- (a) 80% of net maximum annual earnings for the first 38 weeks for which benefits are payable after the date of the injury; and
  - (b) 85% of net maximum annual earnings after the end of the period described in clause (a).

**Transitional provision**

- (1.11) Where, immediately before January 1, 2014,
- (a) wage loss benefits are payable to a worker under clause (1)(a) in an amount equal to 80% of the worker's loss of earning capacity; and
  - (b) such wage loss benefits have been paid to the worker for a period of less than 38 weeks,

the Board shall, on and after January 1, 2014, pay wage loss benefits to the worker under this section in an amount equal to 85% of the worker's loss of earning capacity, notwithstanding that the 38-week period referred to in clause (1)(a) has not expired.

**Transitional provision**

- (1.12) Where, on or after January 1, 2014,

- (a) a worker has a recurrence of an accident that occurred prior to January 1, 2014, for which wage loss benefits are payable; and
- (b) wage loss benefits have been paid to the worker for a period of less than 38 weeks

the Board shall, on or after January 1, 2014, pay wage loss benefits to the worker under this section in an amount equal to 85% of the worker's loss of earning capacity, notwithstanding that the 38-week period referred to in clause (1)(a) has not expired.

**Idem**

- (1.13) Wage loss benefits payable under subsections (1.11) and (1.12) shall not exceed 85% of the net maximum annual earnings.

**Conditions of payment of benefits**

- (1.2) Notwithstanding any other provision of this Act, the Board shall not pay compensation pursuant to this section until after the date of the accident a time period has passed in which the worker would have received remuneration from employment equivalent to three-fifths of the weekly wage loss benefits payable to the worker in accordance with clause (1)(a).

**Amount paid for waiting period**

- (1.3) Where a loss of earning capacity continues for more than four consecutive weeks after the date of the accident, the Board shall pay, in addition to the benefits awarded, an amount equal to the amount calculated pursuant to subsection (1.2).

**Idem**

- (2) Subsections (2) to (5) Repealed by 2013,c.25,s.7(5). 1994,c.67,s.40; 2001,c.20,s.10; 2013,c.25,s.7.

**40.1 Wage loss benefits payable re accident on or after January 1, 2014**

- (1) Subject to subsection (2), where an injury to a worker from an accident that occurs on or after January 1, 2014, and prior to January 1, 2016, results in a loss of earning capacity for the worker after the date of the accident, the Board shall pay to the worker wage loss benefits in an amount equal to 85% of the worker's loss of earning capacity.

**Maximum wage loss benefits**

- (2) Wage loss benefits payable to a worker under subsection (1) shall not exceed 85% of the net maximum annual earnings.

**Waiting period**

- (3) Notwithstanding any other provision of this Act, the Board shall not pay compensation pursuant to this section until after a time period has passed following the date of the accident during which the worker would have received, but for the accident, remuneration from employment equivalent to two-fifths of the weekly wage loss benefits payable to the worker in accordance with subsection (1).

**Amount for waiting period**

- (4) Where a loss of earning capacity continues for more than four consecutive weeks after the date of the accident, the Board shall pay, in addition to the benefits awarded, an amount equal to the amount calculated pursuant to subsection (3). 2013,c.25,s.8; 2015,c.45,s.1.



**40.11 Wage loss benefits payable re accident on or after January 1, 2016**

- (1) Subject to subsection (2), where an injury to a worker from an accident that occurs on or after January 1, 2016, results in a loss of earning capacity for the worker after the date of the accident, the Board shall pay the worker wage loss benefits in an amount equal to 85% of the worker's loss of earning capacity.

**Maximum wage loss benefits**

- (2) Wage loss benefits payable to a worker under subsection (1) shall not exceed 85% of the net maximum annual earnings. *2015,c.45,s.2.*

**40.2 Duration of wage loss benefits**

- (1) Subject to subsection (2), wage loss benefits are payable until the earlier of
- the date the Board determines that the loss of earning capacity has ended or no longer results from the injury; and
  - the date the worker reaches the age of 65 years.

**Exception, workers 63 or older**

- (2) Where a worker is 63 years of age or older at the commencement of his or her loss of earning capacity, the Board may pay the wage loss benefits for a period of time not more than 24 months following the date of the accident.

**Periodic payment**

- (3) Payment of wage loss benefits shall be made periodically, at such times and in such manner and form as the Board considers advisable.

**Limit to wage loss benefits**

- (4) For the purpose of ensuring that the wage loss benefits payable to a worker do not exceed the maximum benefits payable under this Act, the Board may
- consider the length of time a worker is in receipt of wage loss benefits during any year and the resulting effect on probable income tax, Canada Pension Plan premiums, Quebec Pension plan premiums, or employment insurance premiums payable by the worker, and recalculate the loss of earning capacity based on those considerations;
  - consider any entitlement to a refund or reduction of the probable income tax, Canada Pension Plan premiums, Quebec Pension Plan premiums or employment insurance premiums payable by the worker to be earnings that the worker is capable of earning after the injury;
  - reduce any future entitlement to compensation to prevent any payment of wage loss benefits in excess of the amounts payable; and
  - consider any wage loss benefits paid in excess of the wage loss benefits payable to be overpayments of compensation. *2013,c.25,s.8.*

**41. Calculation of loss of earning capacity**

- (1) The loss of earning capacity of a worker is the difference between
- the worker's net average earnings before the accident; and
  - the net average amount the Board determines the worker is capable of earning after the accident,

which amount shall not be less than zero.

**Adjustment of payments**

- (2) Repealed by 2001,c.20,s.11.

**Calculation of net average earnings**

- (3) For the purpose of this Act, the net average earnings of a worker are his or her average earnings calculated in accordance with section 44, less the probable deductions for the following:
- (a) income tax payable by the worker, calculated by using the worker's income from employment and employment insurance benefits as income, and the worker's basic personal tax credits or exemptions, and tax credits or exemptions for a person who is a dependant of the worker, under the *Income Tax Act* (Canada) as deductions;
  - (b) Canada Pension Plan premiums or Quebec Pension Plan premiums payable by the worker;
  - (c) employment insurance premiums payable by the worker;
  - (d) such other deductions as the Board may establish by regulation.

**Probable deductions**

- (4) The Board shall as of January 1 in each year establish a schedule or a procedure for determining the probable deductions referred to in subsection (3) for various income levels which, for the purposes of that subsection, is final and conclusive.

**Recurrence of loss of earning capacity**

- (5) Repealed by 2001,c.20,s.11.

**Earnings at date of accident**

- (5.1) Subject to subsections (6) and (6.1), a worker's net average earnings and maximum annual earnings are the worker's net average earnings and maximum annual earnings as of the date of the accident.

**Later loss of earning capacity**

- (6) Where a worker's loss of earning capacity has ended, and the worker suffers a loss of earning capacity resulting from the same accident more than 12 months after the initial loss of earning capacity has ended, the worker's net average earnings and maximum annual earnings shall be determined
- (a) as of the date of the accident; or
  - (b) as of the date of the subsequent loss of earning capacity,

whichever appears to the Board to best represent the loss of earning capacity suffered by the worker.

**Loss of earning capacity more than 12 months after accident**

- (6.1) Where a worker's loss of earning capacity commences more than 12 months after the accident, the worker's net average earnings and maximum annual earnings shall be determined
- (a) as of the date of the accident; or
  - (b) as of the date the loss of earning capacity commences,

whichever appears to the Board to best represent the loss of earning capacity suffered by the worker.





**Different employer class**

- (7) Where at the time of a subsequent loss of earning capacity, the worker's employer is in a rate group different from the rate group at the time of the accident, the Board may allocate the increased costs of the claim under subsection (6) or (6.1) to such rate group or to any other available fund, as the Board may determine. *1994,c.67,s.41; 2001,c.20,s.11.*

**42. Collateral benefits deducted from award**

- (1) Wage loss benefits awarded to a worker shall be reduced by collateral benefits that the worker receives or is entitled to receive as a result of the injury.

**50% of periodic benefits**

- (1.1) Notwithstanding any other provision of this Act but subject to subsection (2), where collateral benefits that a worker is receiving or entitled to receive are payable pursuant to the Canada Pension Plan or the Quebec Pension Plan, the Board shall,
- (a) for the period of time before the coming into force of this section, reduce the award under subsection (1) by 100% of such collateral benefits;
  - (b) for the period of time after the coming into force of this section, reduce the award under subsection (1) by 50% of such collateral benefits;
  - (c) recalculate the wage loss benefits of the worker in accordance with clauses (a) and (b); and
  - (d) pay to the worker the difference, if any, in the previous calculation of wage loss benefits and the amount calculated under clause (c), retroactively to the date this section comes into force.

**Failure or refusal to apply**

- (1.2) Where a worker fails or refuses to apply for benefits under the Canada Pension Plan or the Quebec Pension Plan, the Board may at any time determine the amount to which the worker may be entitled under such Plan for the purposes of subsection (1.1).

**Collateral benefits above maximum**

- (2) Notwithstanding subsections (1) and (1.1), the Board shall consider collateral benefits which the worker is receiving or is entitled to receive only to the extent that such benefits, together with the wage loss benefits otherwise payable under this Part, have the effect of compensating the worker in excess of 85% of the worker's actual net loss of earning capacity.

**Top-up benefits under collective agreement**

- (3) Where a worker of an employer is entitled to receive benefits as top-up payments pursuant to a collective agreement with the employer, the Board shall treat those benefits as collateral benefits.

**Calculation**

- (4) For the purpose of subsection (2), the calculation of a worker's actual net loss of earning capacity does not include consideration of maximum annual earnings. *1994,c.67,s.42; 2001,c.20,s.12; 2015,c.45,s.3.*

**43. Benefits after age 65**

Where a worker who is eligible for wage loss benefits as a result of an injury that occurs after the coming into force of this Act attains the age of 65, an amount equal to the amount of benefit that the worker can demonstrate to the satisfaction of the Board he or she has lost as

the result of the injury for which he or she is receiving compensation under this Act, under the Canada Pension Plan or from a registered employer sponsored pension plan which is registered with and certified by the regulatory agency having jurisdiction in this province, shall be paid to him or her by the Board periodically for such time and at such times and in such manner and form as the Board considers advisable. *1994,c.67,s.43.*

**44. Calculation of average earnings**

- (1) The Board shall calculate a worker's average earnings on such income from employment and employment insurance benefits, and over such period of time, as the Board considers fair and just, but the amount of average earnings shall not exceed the maximum annual earnings.

**All income from employment considered**

- (2) The Board may, in its calculations pursuant to subsection (1), consider income from employment from which the worker sustains a loss of earnings, whether or not the employment is in an industry to which this Part applies.

**Age of apprentices**

- (3) Where the Board is satisfied that a worker's average earnings before the accident do not fairly represent the worker's earning capacity because
- (a) the worker was an apprentice in a trade or occupation, the Board may adjust the worker's wage loss benefits by considering the worker's average earnings to be an amount that, in the opinion of the Board, is the probable earning capacity of the worker had the worker become qualified in the worker's trade or occupation; or
  - (b) of the worker's age, the Board may adjust the worker's wage loss benefits by considering the worker's average earnings to be an amount that, in the opinion of the Board, is a better reflection of the probable earning capacity of the worker.

**Best manner of calculation**

- (4) Where, in the opinion of the Board, it is impracticable to calculate the average earnings of a worker because of the length of time the worker has been employed or the casual nature of the employment, the Board may determine the worker's average earnings in the way that, in the opinion of the Board, best represents the loss of earnings suffered by the worker by reason of the accident.

**Allocation to a fund**

- (5) The Board may allocate to such fund as it considers appropriate additional costs resulting from
- (a) the inclusion of income from employment in an industry to which this Part does not apply pursuant to subsection (2); and
  - (b) the adjustment of wage loss benefits pursuant to subsection (3).

**Special expenses excluded**

- (6) Notwithstanding clause 1(1)(j), where an employer was accustomed to paying special expenses incurred by the worker because of the nature of the employment, calculations of the worker's earnings shall not include those special expenses. *1994,c.67,s.44; 2001,c.20,s.13.*

**45. Adjustment of earning capacity**

Repealed by *2001,c.20,s.14.*



**46. Limitation re maximum annual earnings**

- (1) In calculating earnings for the purposes of this Part, no regard shall be taken of the earnings of the worker in excess of the maximum annual earnings.

**Regulations**

- (2) Until January 1, 1995, the maximum annual earnings shall be the amount established annually by regulation.

**Limitation re maximum annual earnings, person admitted under section 3 or 4**

- (3) In calculating earnings for the purposes of the Part for a person admitted under section 3 or 4, no regard shall be taken of the earnings of the person in excess of the annual earning amount for which the Board has admitted the person under section 3 or 4. *1994, c.67, s.46.*

**47. Calculation of maximum annual earnings after 1993**

- (1) Effective January 1, 1995 the maximum annual earnings shall be equal to the Average Weekly Earnings Industrial Aggregate for all employees in Prince Edward Island at June 30, 1994, multiplied by 52, as published by Statistics Canada, multiplied by 1.5 and rounded to the nearest \$1,000.

**Annual adjustment**

- (2) The maximum annual earnings established under subsection (1) shall be adjusted on January 1, 1996 and on January 1 of each year thereafter by the percentage increase in the Consumer Price Index for Charlottetown and Summerside for all items for the twelve-month period ending on the June 30 previous as determined by the Board in August of each year on the basis of monthly reports published in that respect by Statistics Canada for that period. *1994, c.67, s.47.*

**48. Computation, casual employment etc.**

Repealed by *2001, c.20, s.14.*

**48.1 Review of extended benefits**

- (1) The Board shall adjust the loss of earning capacity amount as of the anniversary of the accident through a review of the net wages for the work performed prior to the accident and the net wages that the Board determines the worker is capable of earning as of the anniversary date for a worker who was
  - (a) advised in writing by the Board of entitlement to wage loss benefits payable as extended earnings loss as a result of an accident that occurred between January 1, 1995 and the date this section comes into force; and
  - (b) on the date this section comes into force receiving such benefits.

**Subsequent reviews**

- (2) Subject to subsection (4), following the completion of the review pursuant to subsection (1), wage loss benefits payable to a worker referred to in subsection (1) shall be reviewed in accordance with subsection 48.5(2).

**Adjustment of benefits**

- (3) Wage loss benefits referred to in subsection (1) shall be adjusted in the manner described in subsection 50(2) as of the first day of July following the review pursuant to subsection (1) until and including July 1, 2013.

**Adjustment**

- (3.1) The wage loss benefits as referred to in subsection (1) shall be adjusted on July 1, 2014, and on the first day of July in each year thereafter, by an amount equal to the lesser of
- (a) 80% of the percentage change in the Consumer Price Index for Charlottetown and Summerside for all items for December of the previous year and December one year earlier as determined by the Board on the basis of reports published by Statistics Canada; and
  - (b) 4%.

**Deeming of the date of the initial award**

- (4) For the purpose of subsection 48.5(2), the date the review is completed pursuant to subsection (1) shall be deemed to be the date of the initial award of the benefits.

**Temporary wage loss benefits**

- (5) Where a worker referred to in subsection (1) is receiving benefits and suffers a loss of earning capacity that
- (a) is temporary;
  - (b) results from the injury for which benefits are being paid; and
  - (c) was not taken into account in the most recent determination or review of wage loss benefits,

the Board may pay to the worker a temporary wage loss supplement.

**Calculation**

- (6) A wage loss supplement shall be calculated in accordance with this Part.

**Rights determined by this section**

- (7) For greater certainty, all rights of review and entitlement to compensation referred to in this section as they may have existed before this section comes into force are replaced by the provisions of this section. *2001, c.20, s.15; 2013, c.25, s.9.*

**48.2 Other benefits**

- (1) Where, on the date this section comes into force, a worker is receiving wage loss benefits as a result of an accident that occurred between January 1, 1995 and the date this section comes into force,
- (a) other than wage loss benefits referred to in section 48.1; or
  - (b) payable as the result of a new accident in addition to the wage loss benefits referred to in section 48.1,

the amount of compensation payable to a worker as wage loss benefits may be reviewed by the Board at any time.

**Impairment**

- (2) A worker described in subsection (1) who
- (a) suffers a loss of earning capacity; and
  - (b) is determined by the Board to have an impairment,
- is entitled to receive extended wage loss benefits in accordance with this Act.



**Application**

- (3) This Act applies to a worker who
- (a) received wage loss benefits in respect of an accident referred to in subsection (1); and
  - (b) after this section comes into force suffers a loss of earning capacity resulting from a previous injury.

**No decision made**

- (4) Where the Board has not made a decision respecting a worker who suffered an accident that occurred between January 1, 1995 and the date this section comes into force, this Act applies.

**Rights determined by this section**

- (5) For greater certainty, all rights of review and entitlement to compensation referred to in this section as they may have existed before this section comes into force are replaced by the provisions of this section. *2001, c.20, s.15.*

**48.3 Adjustment of benefits where accident prior to Jan.1 1995**

- (1) Where, on April 1, 2002, as a result of an accident that occurred before January 1, 1995,
- (a) a worker had been advised in writing by the Board of entitlement to compensation on a long term wage loss benefit basis; and
  - (b) was receiving such benefit,
- the Board shall adjust the benefit,
- (c) as of July 1, 2006, in the manner described in subsection 50(2) retroactive to July 1, 2002 and without interest;
  - (d) as of the first day of July of each year thereafter, in the manner described in subsection 50(2) until and including July 1, 2013; and
  - (e) on July 1, 2014, and on the first day of July in each year thereafter, by an amount equal to the lesser of
    - (i) 80% of the percentage change in the Consumer Price Index for Charlottetown and Summerside for all items for December of the previous year and December one year earlier as determined by the Board on the basis of reports published by Statistics Canada, and
    - (ii) 4%.

**Further adjustment of benefits**

- (1.1) The Board shall adjust the benefit referred to in subsection (1) as of the anniversary of the accident through a review of the net wages of the worker for the work performed prior to the accident and the net wages that the Board determines the worker is capable of earning as of the anniversary date.

**Review of benefit**

- (1.2) Subject to subsection (1.3), following the completion of the review pursuant to subsection (1.1), the Board shall review the benefit payable to a worker referred to in subsection (1.1) in accordance with subsections 48.5(2) and (3).

**Deemed date of review**

- (1.3) For the purpose of subsection 48.5(2), the date the review is completed pursuant to subsection (1.1) shall be deemed to be the date of the initial award of benefit.

**Application**

- (2) Where, after the date this section comes into force, a worker described in subsection (1) has returned to work and suffers a subsequent loss of earning capacity resulting from a previous injury, this Act applies.

**Rights determined by this section**

- (3) For greater certainty, all rights of review and entitlement to compensation referred to in this section as they may have existed before this section comes into force under this Act or the prior Act are replaced by the provisions of this section. *2001,c.20,s.15; 2006,c.42,s.1; 2013,c.25,s.10.*

**48.4 Other benefits**

- (1) Where, on the date this section comes into force, a worker is receiving compensation on a wage loss benefit basis as a result of an accident that occurred before January 1, 1995, other than the benefits referred to in section 48.3, the compensation may be reviewed by the Board at any time.

**Impairment**

- (2) Subject to subsection (6), a worker described in subsection (1) who
- (a) suffers a loss of earning capacity; and
  - (b) is determined by the Board to have an impairment,
- is entitled to receive extended wage loss benefits in accordance with this Act.

**Application of other sections**

- (3) Repealed by *2006,c.42,s.2.*

**Application**

- (4) Where, after the date this section comes into force, a worker described in subsection (1) has returned to work and suffers a subsequent loss of earning capacity resulting from a previous injury, this Act applies.

**Rights determined by this section**

- (5) For greater certainty, all rights of review, in any manner, and entitlement to compensation referred to in this section under the prior Act are replaced by the provisions of this section.

**Calculation under prior Act**

- (6) For greater certainty, the amount of compensation payable to a worker under subsection (2) shall be calculated in accordance with the provisions of the prior Act. *2001,c.20,s.15; 2006,c.42,s.2.*

**48.5 Review of temporary wage loss benefits**

- (1) The Board may review and adjust its determination of the amount of compensation payable to a worker as temporary wage loss benefits at any time.

**Review of extended wage loss benefits**

- (2) The Board may review its determination and adjust the amount of compensation payable to a worker as extended wage loss benefits
- (a) once, commencing in the thirty-sixth month after the date of the initial award of the benefits;



- (b) once, commencing in the twenty-fourth month after a determination resulting from a review pursuant to clause (a), if the Board is of the opinion that a further review is necessary;
- (c) where a review of the degree of impairment of the worker pursuant to subsection 49(3) results in an adjustment by the Board of the degree of the impairment; and
- (d) at any time, where the extended wage loss benefits were based on a misrepresentation of fact.

**Extended wage loss benefits award final**

- (3) Except as provided in subsection (2), an award of extended wage loss benefits is final and shall not be further reviewed or adjusted. *2001, c.20, s.15.*

**48.6 Wage loss supplement**

- (1) Notwithstanding subsection 48.5(2), where a worker who is receiving extended wage loss benefits suffers a loss of earning capacity that
  - (a) is temporary;
  - (b) results from the injury for which extended wage loss benefits are being paid; and
  - (c) was not taken into account in the most recent determination or review of the extended wage loss benefits,

the Board may pay to the worker a temporary wage loss supplement.

***Idem***

- (2) A wage loss supplement shall be calculated in accordance with this Part. *2001, c.20, s.15.*

**49. Board may determine impairment**

- (1) The Board may determine that a worker has suffered an impairment as the result of an accident.

**Impairment award, change in condition**

- (2) Where the Board determines that a worker referred to in subsection (1) has suffered an impairment,
  - (a) the Board shall pay to the worker a lump sum impairment award calculated in accordance with the regulations; and
  - (b) where the worker suffers a change in his or her medical condition, the worker may apply to the Board to review the degree of impairment.

**16 months between reviews**

- (3) A worker may not apply under clause (2)(b) until the expiry of 16 months from the time of the Board's most recent determination respecting the degree of impairment of the worker.

**Application**

- (4) Clause (2)(b) and subsection (3) apply to a worker who was awarded a lump sum impairment award between January 1, 1995 and the date this section comes into force.

**Idem**

- (5) This section applies to a worker who suffered an accident between January 1, 1995 and the date this section comes into force, where the degree of the worker's impairment was not assessed by the Board before the effective date of this section.

**Exception**

- (6) The following exceptions apply:
- (a) this section does not apply in respect of a worker who died as a result of an accident before a determination of an impairment award was made;
  - (b) clause 2(a) does not apply to a worker who suffered an impairment as a result of an accident that occurred prior to January 1, 1995. *2001,c.20,s.16.*

**49.1 Annual adjustment of extended wage loss benefits**

- (1) Notwithstanding any other provision of this Act, but subject to subsection (2), as of the first day of July in each year, the Board shall adjust the amount of compensation payable to a worker as extended wage loss benefits in the manner described in subsection 50(2) until and including July 1, 2013.

**Adjustment**

- (1.1) The wage loss benefits as referred to in subsection (1) shall be adjusted on July 1, 2014, and on the first day of July in each year thereafter, by an amount equal to the lesser of
- (a) 80% of the percentage change in the Consumer Price Index for Charlottetown and Summerside for all items for December of the previous year and December one year earlier as determined by the Board on the basis of reports published by Statistics Canada; and
  - (b) 4%.

**Further adjustment**

- (2) Where, on the date this section comes into force, a worker is receiving extended wage loss benefits under section 48.4, the Board shall adjust the worker's extended wage loss benefits as of July 1, 2006, in accordance with subsection (1) retroactive to the 1st day of July following the award of extended wage loss benefits and without interest. *2001,c.20,s.17; 2006,c.42,s.3; 2013,c.25,s.11.*

**50. Permanent partial or total disability pension awarded before January 1, 1994**

- (1) A worker who, on the coming into force of this section, is in receipt of a permanent partial or total disability pension based on a medically assessed disability awarded by the Board prior to January 1, 1994, shall continue to receive such pension for the lifetime of the worker and the worker shall not be eligible for a wage loss benefit provided under this Part except as provided in subsection (3).

**Adjustment**

- (2) The permanent partial or total disability pension as referred to in subsection (1) shall be adjusted on July 1, 1995, and on the first day of July in each year thereafter until and including July 1, 2013, by an amount equal to the lesser of
- (a) 75% of the percentage change in the Consumer Price Index for Charlottetown and Summerside for all items for the 12 month period ending on December 31 previous as determined by the Board on the basis of monthly reports published in that respect by Statistics Canada for that period; or





- (b) 4%.

**Adjustment**

- (2.1) The permanent partial or total disability pension as referred to in subsection (1) shall be adjusted on July 1, 2014, and on the first day of July in each year thereafter, by an amount equal to the lesser of
- (a) 80% of the percentage change in the Consumer Price Index for Charlottetown and Summerside for all items for December of the previous year and December one year earlier as determined by the Board on the basis of reports published by Statistics Canada; and
- (b) 4%.

**Wage loss benefit in respect of second or recurring injury**

- (3) Where a worker who is in receipt of a permanent partial or total disability pension as referred to in subsection (1) returns to work and suffers an accident or suffers a recurrence of a previous injury, the worker shall be assessed for a wage loss benefit as provided in this Part less an amount equal to the permanent partial or total disability pension.

**Wage loss benefit awarded before Act in force**

- (4) Where a worker is not in receipt of a permanent partial or total disability pension based on a medically assessed disability and was assessed on a wage loss benefit basis after January 1, 1992, but before the date this section comes into force, the wage loss benefits will be payable until
- (a) the loss of earnings capacity ends, as determined by the Board; or
- (b) the worker attains the age of 65 years, provided that where the worker was 63 year of age or older at the commencement of his or her loss of earning capacity, the Board may pay the wage loss benefits for a period of time not to exceed 24 months from the date of the accident.

**Idem**

- (5) A worker under subsection (4) is eligible to receive payments under section 43. *1994,c.67,s.50; 2013,c.25,s.12.*

**51. Manner of payment**

- (1) Payments of compensation shall be made in such manner and in such form as may appear to the Board to be the most convenient, and in the case of minors or mentally incompetent persons, payments may be made to such persons as, in the opinion of the Board, are best qualified in all the circumstances to administer such payment, whether or not the person to whom the payment is made is the legal guardian of such minor or committee of that person.

**Payment where worker incapacitated or in jail**

- (2) If an injured worker who is entitled to compensation is committed to a mental institution or incarcerated in any jail or prison, compensation is not payable for the period of confinement therein but the Board may pay any part of the compensation to any dependant of the injured worker or to such persons as in the opinion of the Board are best qualified in all the circumstances to administer the payments on behalf of the dependants.

**Payments to the use of worker**

- (3) Notwithstanding subsections (1) and (2), 20% of the benefits, to a maximum of \$100 may be paid out of each periodic payment for the use of the injured worker where the benefit is being administered by another.

**Temporary wage loss benefits**

- (4) Subject to subsection (5), where temporary wage loss benefits are payable, they shall be calculated in accordance with this Part.

**Idem**

- (5) Where temporary wage loss benefits are payable as the result of a subsequent loss of earning capacity resulting from the same accident, compensation shall be payable from the date on which the loss of earning capacity commences.

**Calculation of extended wage loss benefits**

- (6) Where extended wage loss benefits are payable, compensation shall be calculated and payable from the later of
- (a) the date on which the Board determines that the worker has an impairment under section 49; or
  - (b) the date on which the worker completes vocational or occupational rehabilitation, where the worker is engaged in such rehabilitation on or after the date on which the Board determines that the worker has an impairment under section 49.

**Impairment**

- (7) Where compensation is payable for an impairment, the compensation shall be calculated and payable from the date on which the Board determines that the worker has an impairment pursuant to section 49. *1994,c.67,s.51; 2001,c.20,s.18.*

**52. Payment for special surgery etc.**

Repealed by *2013,c.25,s.13. 1994,c.67,s.52; 2013,c.25,s.13.*

**53. Payment to spouse and children**

Where a worker is entitled to compensation and it appears to the Board, after due investigation, that a spouse or child dependent upon the worker is not being supported by him or her, the Board may direct that the compensation payable to the worker be paid in whole or in part to or for the benefit of the spouse or child. *1994,c.67,s.53.*

**54. Withholding payment, unlawful employment**

The Board may withhold compensation payable to a parent with respect to the death of any young person as defined in the *Youth Employment Act*, where the employment of the young person was unlawful by virtue of any statute. *1994,c.67,s.54.*

**55. Proof of existence etc. of dependants**

The Board may require such proof of the existence and condition of any dependants in receipt of compensation payments as may be considered necessary by the Board. *1994,c.67,s.55.*



## RECONSIDERATION AND APPEALS

### 56. Reconsideration by Board

- (1) The Board shall not reconsider a decision under this Act or the prior Act made after this section comes into force, except on the written request of a person with a direct interest in the decision made not later than 90 days from the date of notification of the decision.

#### Reconsideration

- (1.1) Where, before the date this section comes into force, a decision of the Board was made under this Act, a person with a direct interest in the decision may apply in writing to have the decision reconsidered under this Act.

#### Rights determined by this section

- (1.2) For greater certainty, a decision of the Board referred to in subsections (1) and (1.1) shall be reconsidered and appealed in accordance with the provisions of this Act and all rights of reconsideration and appeal in any manner as they may have existed before this section comes into force are replaced by the provisions of this section.

#### Basis for decision

- (2) The decisions of the Board shall always be given upon the real merits and justice of the case, and it is not bound to follow strict legal precedent.

#### Reconsideration

- (3) Repealed by 2001, c.20, s.20.

#### Procedure

- (4) The procedure for reconsidering a decision shall be determined by the Board.

#### Reconsideration decision and provision of copy

- (5) Following its reconsideration of a decision, the Board
- (a) may confirm, vary or reverse the decision; and
  - (b) shall provide to any person with a direct interest in the matter a written copy of its decision under clause (a).

#### Appeal

- (6) Subject to subsection (6.1), within 30 days after the date that the Board makes a decision under subsection (5), any person who has a direct interest in that decision may, in accordance with the regulations, appeal the decision to the Appeal Tribunal.

#### Extension of time to appeal

- (6.1) On application by a person who has a direct interest in a decision made by the Board under subsection (5), the Appeal Tribunal may, by order, extend the time for appealing that decision under subsection (6) on such terms as the Appeal Tribunal considers appropriate.

#### Appeal Tribunal, composition

- (7) There is hereby established an Appeal Tribunal consisting of a chairperson, one or more vice-chairpersons and as many members, equal in number, representative of employers and workers respectively as the Lieutenant Governor in Council may determine, all of whom shall be appointed by and shall hold office at the pleasure of the Lieutenant Governor in Council.

**Submissions regarding membership**

- (7.1) The Lieutenant Governor in Council shall, prior to appointing members, consider submissions respecting membership, made by workers and employers.

**Eligibility**

- (8) No director or employee of the Board is eligible to be a member of the Appeal Tribunal.

**Remuneration**

- (9) The Lieutenant Governor in Council shall fix the remuneration of the members of the Appeal Tribunal and the remuneration shall be paid from the Accident Fund.

**Panels**

- (10) The chairperson shall establish one or more panels of the Appeal Tribunal and each panel shall consist of the chairperson, or in the absence of the chairperson, a vice-chairperson, and one representative of the employers and one representative of workers.

**Reference to panels**

- (11) The chairperson shall refer a matter that is before the Appeal Tribunal to a panel, or may at any time refer a matter that is before one panel to another panel.

**Powers of panel**

- (12) Where a reference is made to a panel, the panel has the power and authority of the Appeal Tribunal.

**Sittings**

- (13) Sittings of the panel may be held at such times and places in Prince Edward Island as the chairperson decides.

**Decision**

- (14) A decision of a panel is constituted by at least two votes concurring in the result.

**Effect**

- (15) Repealed by 2001, c.20, s.20.

**Conflict of interest**

- (16) A member of the Appeal Tribunal shall not participate in the hearing of a matter in which he or she has a direct personal interest, or in which the chairperson of the Board determines the member has an actual or apparent conflict of interest.

**Policies etc. of Board to be applied**

- (17) The Appeal Tribunal shall be bound by and shall fully implement the policies of the Board and the Appeal Tribunal, its chairperson and members are prohibited from enacting or attempting to enact or implement policies with respect to anything within the scope of this Part.

**Costs**

- (18) The operating costs of the Appeal Tribunal shall be paid by the Board from the Accident Fund.

**Practice and procedure**

- (19) Subject to any policies, bylaws or resolutions of the Board, the Appeal Tribunal may determine, only, the practice and procedure for the conduct of matters before it.



**Jurisdiction**

- (20) The Appeal Tribunal has exclusive jurisdiction to hear and determine all matters and questions arising under this Part in respect of
- (a) appeals under subsection (6);
  - (b) any matter referred to it by the Board.

**Powers**

- (21) The Appeal Tribunal has all the powers conferred on the Board by section 26.

**Referral to Board**

- (22) The chairperson or vice-chairperson of the Appeal Tribunal shall refer a matter to the Board where new or additional evidence is presented to the Appeal Tribunal.

**Representations**

- (23) In hearing a matter under subsection (20), the Appeal Tribunal shall give the Board and all other parties who have a direct interest in the matter an opportunity to make representations, but shall not allow the presentation of new or additional evidence and it shall, pursuant to subsection (22), immediately refer a matter to the Board where there is new or additional evidence.

**Decision on appeal and written copy**

- (24) Within 90 days after the completion of the hearing of an appeal, the Appeal Tribunal
- (a) may decide to confirm, vary or reverse the decision made by the Board under subsection (5) that is the subject of the appeal; and
  - (b) shall provide a written copy of its decision in respect of the appeal to any person with a direct interest in the matter.

**Frivolous appeal penalized in costs**

- (25) Where, in the opinion of the Appeal Tribunal, an appeal is frivolous, the Appeal Tribunal may order the person who makes the appeal to pay costs to the Board in such amount as prescribed in the regulations, and the Board may enforce payment of the costs in the same manner as the payment of an assessment.

**Rehearing by the Board**

- (26) Repealed by 2001,c.20,s.20.

**Reconsideration**

- (27) Repealed by 2001,c.20,s.20. 1994,c.67,s.56; 2001,c.20,s.20; 2013,c.25,s.14.

**56.1 Application of previous Acts**

- (1) Subject to subsection (4), where, before the date this section comes into force, a decision of the Board, other than a final decision, was made under the prior Act, a person with a direct interest in the decision may apply in writing to have the decision reconsidered under this Act.

**Pending decision**

- (2) Subject to subsection (4), where, on the date this section comes into force, a final decision of the Board made under the prior Act is pending, a person with a direct interest in the decision may appeal the decision under this Act when it is rendered.

**Idem**

- (3) Subject to subsection (4), where, on the date this section comes into force, a person with a direct interest in a decision has under section 32 of the prior Act a right to appeal a final decision of the Board, the person may appeal a final decision under this Act not later than 30 days from the date this section comes into force.

**Rights determined by this section**

- (4) For greater certainty, all rights of review and appeal, in any manner, that may have been available under the prior Act for persons described in this section are replaced by the provisions of this section. *2001, c.20, s.21.*

**56.2 Appeal on question of law**

- (1) Subject to subsection (2), a person directly affected by a final decision of the Appeal Tribunal may appeal the decision to the Court of Appeal on a question of law or jurisdiction.

**Leave to appeal required**

- (2) Subject to subsection (6.1), no appeal may be made pursuant to subsection (1) without leave to appeal granted by the Court of Appeal.

**Requirements for leave to appeal**

- (3) Leave to appeal shall not be granted by the Court of Appeal unless
- (a) application for leave to appeal is made by the appellant within 30 days of the date of the decision of the Appeal Tribunal; and
  - (b) all avenues of reconsideration or appeal under this Part have been exhausted.

**Service**

- (4) An application for leave to appeal shall be served in accordance with the rules of court on
- (a) the Board;
  - (b) the Appeal Tribunal; and
  - (c) the parties to the decision.

**Notice of appeal**

- (5) Where leave to appeal has been granted or where the Court of Appeal has ordered pursuant to subsection (6.1) that the application for leave to appeal and the appeal be heard together, the appellant shall serve the Notice of Appeal on the persons referred to in subsection (4) not later than 30 days from the date on which leave to appeal was granted or the Court of Appeal ordered that the application for leave and the appeal be heard together.

**Contents of Notice of Appeal**

- (6) A Notice of Appeal shall contain
- (a) the names of the parties;
  - (b) the date of the decision under appeal;
  - (c) the grounds of appeal; and
  - (d) other particulars as required by the judge granting leave to appeal.

**Hearing of application and appeal**

- (6.1) Upon the consent of the parties or upon its own direction, at any time before an application for leave to appeal is heard, the Court of Appeal may order that the application for leave to appeal and the appeal be heard together.



**Application**

- (7) This section applies where, pursuant to section 56 and prior to the date this section comes into force,
- (a) a written request for reconsideration has been made to the Board; or
  - (b) an appeal has been made to the Appeal Tribunal.

**Previous decision**

- (8) This section does not apply to a decision of the Appeal Tribunal rendered prior to the date this section comes into force. *2001,c.20,s.21; 2008,c.20,s.72(95); 2013,c.25,s.15.*

**ADMINISTRATIVE MATTERS****57. Actions against the Board, directors etc.**

- (1) No damages may be awarded and no action for damages shall be brought in any court of law against the Board, a member of the board of directors, a person employed by the Board or the chairperson, vice-chairperson or any member of the Appeal Tribunal in respect of anything done by it or them within or beyond their jurisdiction, as conferred by this Act or under any other Act if it was done by the Board or that person in the belief in good faith that it was within their jurisdiction.

**Indemnification**

- (2) A member, officer, or employee of the Board or of the Appeal Tribunal, and the person's heirs and legal representatives, shall be indemnified by the Board against any liability and all costs, charges and expenses, including any amount required to settle an action or to satisfy a judgment that the member, officer, or employee may reasonably incur in respect of a proceeding that is proposed or commenced against the member, officer or employee in respect of the execution or intended execution of any power, duty or function under this Act, the prior Act and the regulations where the member, officer or employee
- (a) acted in good faith in the exercise or intended exercise of any power, duty or function given by this Act, the prior Act or the regulations; and
  - (b) believed that the conduct was lawful and that the power, duty or function was one that was granted by the Act, the prior Act or the regulations.

**Insurance**

- (3) The Board may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by that person in the person's capacity as a member, officer or employee of the Board or of the Appeal Tribunal. *1994,c.67,s.57; 2001,c.20,s.22.*

**58. Compellability**

No member of the board of directors, employee of the Board, or the chairperson, vice-chairperson or any member of the Appeal Tribunal shall be compelled to give testimony in a civil suit or in any proceeding to which the Board is not a party with regard to information obtained by him or her in the discharge of official duties in connection with the Board. *1994,c.67,s.58; 2001,c.20,s.23.*

**59. Application for compensation**

- (1) Where any worker or dependant is entitled to compensation under this Act, he or she shall forthwith notify his or her employer and shall file with the Board an application for compensation, together with the certificate of the attending physician, if any, and such further proofs of his or her claim as may be required by the Board.

**Medical evidence, reports and information**

- (2) Every physician, hospital, nurse, dentist, chiropractor, chiropodist, optometrist, physiotherapist, psychologist, occupational therapist or osteopath attending or consulted upon any case of injury to any worker shall furnish or cause to be furnished such reports, in such form, as may be required by the Board, in respect of injury; every physician in attendance upon any injured worker shall give all reasonable and necessary information, advice and assistance to enable the worker or his dependants to make application for compensation, and to furnish such proofs as may be required by the Board.

**Report of accident by employer**

- (3) Every employer who has knowledge or notice of the happening of an accident or of the allegation of the happening of an accident to a worker in his or her employment by which the worker is disabled from earning full wages or by reason of which the worker is entitled to medical aid, shall, within three days after the accident or allegation comes to his or her knowledge or notice, notify the Board of the accident or the allegation, as the case may be, and provide such information in such form concerning the accident or allegation as may be required by the Board.

**Limitation period**

- (4) Compensation is not payable unless the claim for compensation is made within six months from the happening of the accident or, in case of death, within six months from the time of death.

**Penalty imposed on employer**

- (5) Every employer who fails to give any notice, make any report or to furnish particulars of any accident or claim required by this section, unless excused by the Board on the ground that the report for some sufficient reason could not have been made, is liable to a penalty to be imposed by the Board of \$100 per day for each day the failure continues up to a maximum of \$1,000. *1994,c.67,s.59; 2013,c.25,s.16.*

## ACCIDENT FUND AND ASSESSMENTS

**60. Accident Fund**

The compensation provided for in this Act shall be paid out of a fund to be called the "Accident Fund". *1994,c.67,s.60.*

**61. Classification**

- (1) For the purpose of creating and maintaining the Accident Fund, all employers within the scope of this Part shall be divided, in the discretion of the Board, into classes.

**Rearrangement of classes**

- (2) The Board may by its policy or bylaw rearrange such classes and transfer any employer or industry to any other class.





**Assignment of employer to appropriate class**

- (3) The Board shall assign every employer within the scope of this Part to a class, and where any employer engages in more than one industry, the Board may assign the employer to more than one class. *1994,c.67,s.61; 2013,c.25,s.17.*

**62. Estimate of assessment**

The Board shall on or before December 31 in each year make an estimate of the assessment necessary to provide funds sufficient to fully fund the cost of all claims for compensation payable during the succeeding year. *1994,c.67,s.62; 2013,c.25,s.18.*

**63. Assessment and levy against all employers**

- (1) The Board shall every year assess and levy upon and collect from the employers in each class by an assessment rated upon payroll, or otherwise as the Board may consider proper, sufficient funds to meet the cost of all claims payable during the year out of the Accident Fund; the assessment need not necessarily be sufficient to meet the cost of all claims payable during the year from any particular class, but is subject to such revision by the Board as may be necessary to fully fund the cost of all claims.

**Board to prepare plan**

- (1.1) The Board shall prepare a plan to ensure the Accident Fund is fully funded within such period of time as the Board considers reasonable.

**Board to implement plan**

- (1.2) Where the Accident Fund is not fully funded, the Board shall implement the plan prepared pursuant to subsection (1.1) according to its terms.

**Reserves**

- (2) The Board may, in addition to the amount actually required for the year, or the amount actually produced by the rates fixed in subsection (1), when it is considered expedient, assess, levy and collect in each year a sufficient amount to provide capitalized reserves which shall be considered sufficient to meet the periodical payments accruing in future years in respect of all accidents during the year.

**Accident experience, reduced assessment**

- (3) Where, in the opinion of the Board, the record and experience of accidents among the workers of an employer is better than the average record and experience of accidents among the workers of other employers in the same class, the Board may reduce the amount of any assessment made upon that employer, or refund a portion of any assessment paid by that employer.

***Idem*, increased assessment**

- (4) Where, in the opinion of the Board, the record and experience of accidents among the workers of an employer is worse than the average record and experience of accidents among the workers of other employers in the same class, the Board may increase the amount of any assessment made upon that employer, or make a special additional assessment upon that employer.

**Determination of experience**

- (5) In determining the record and experience of an employer, the Board may

- (a) exclude the cost of compensation awarded to the workers of the employer resulting from the negligence of another employer or the workers of another employer;
- (b) include the cost of compensation awarded to the workers of another employer resulting from the negligence of the employer or the workers of the employer;
- (c) deem the cost of any claim in which a worker dies in an accident to be the average cost of fatal accident claims in the previous year;
- (d) take into account the costs incurred with respect to any accident.

**Transfer of cost to other class where negligence**

- (6) Where the Board determines that a worker's injury is the result of the negligence of an employer, or the worker of an employer, who is in a class other than that of the injured worker, the Board may direct that the compensation, or any part of the compensation, awarded to the injured worker be charged against the class of the negligent employer or worker. *1994,c.67,s.63; 2013,c.25,s.19.*

**63.1 Funding for association**

- (1) Where the employers in any industry to which this Act applies have formed themselves into an association for the purpose of the promotion of education and training in accident prevention, the Board may provide funding toward the expenses of the association.

**Terms and conditions of funding**

- (2) The Board may provide funding subject to any terms and conditions it considers appropriate.

**Funding levied as assessment**

- (3) Any funding provided by the Board under subsection (1) shall be charged against the industry represented by the association and levied as part of the assessment against that industry, and where the association represents more than one industry, the Board may apportion the charge among the industries in the manner it considers appropriate. *2013,c.25,s.20.*

**64. Collection of assessment**

- (1) Every employer shall pay into the Accident Fund such assessments as may be levied by the Board, and if any assessment or any part thereof is not fully paid in accordance with terms of the levy, the Board has a right of action against the employer in respect of any amount unpaid together with all costs and expenses incurred.

**Manner and form**

- (2) Assessments may be made in such manner and form, and at such times, and by such procedure as the Board may consider adequate and expedient.

**Temporary business**

- (3) Where an employer engages in any industry within the scope of this Part, the Board if of the opinion that the industry is to be carried on only temporarily, may require the employer to pay, or to give security for the payment to the Board of a sum which in the opinion of the Board will be sufficient to pay all assessments that the Board may make with respect to such industry, and the payment of the amount may be enforced as provided in section 78.

**Default in payment of assessment enforcement**

- (4) In any case where an employer makes default in the payment of an assessment, and an execution issued upon a judgment entered with respect to the assessment is returned with a certificate from a sheriff that the sheriff was unable to wholly satisfy it, and the judgment



debtor continues to carry on an industry within the scope of this Part in which workers are employed, a judge of the Supreme Court, upon ex parte application made on behalf of the Board, without the issue of any writ or the commencement of any action, may restrain such judgment debtor from carrying on an industry within the scope of this Part until the amount due on the execution and all assessments made by the Board and the costs of the application be paid. *1994,c.67,s.64.*

**65. Notice of assessment**

The Board shall give notice to each employer, in such manner as may be considered by the Board proper and sufficient, of the amount of the assessments due and the time when such assessments are due and payable. *1994,c.67,s.65.*

**66. Payment by employer required without demand**

Notwithstanding any provision of this Part respecting estimates or payrolls, and notice to employers, every employer, without demand from the Board, shall cause to be paid to the Board the full amount of every assessment assessed or levied under this Part. *1994,c.67,s.66.*

**67. Additional assessments**

If the estimated assessments prove insufficient, the Board may make such further assessments and levies as may be necessary, or may temporarily advance the amount of any deficiency out of any reserve, and may add such amount to any subsequent assessment. *1994,c.67,s.67.*

**68. Installments**

Assessments may be collected in half-yearly, quarterly or monthly installments, or otherwise; and where it appears that the funds are sufficient for the time being, any installment may be abated or its collection deferred. *1994,c.67,s.68.*

**69. Adjustments**

- (1) In each year, as soon as the necessary information is obtained, the amount of the assessment for the preceding calendar year shall be adjusted upon the actual requirements and upon the correctly ascertained payroll of each employer and the employer shall upon demand of the Board forthwith make up and pay to the Board any deficiency or the Board shall refund to the employer any surplus, or credit the same upon the succeeding assessment.

**Employer, claim on Accident Fund**

- (2) Subject to subsection (1) and to section 71, no employer who has ceased to be an employer has any right or title to, or interest in, the Accident Fund, and by ceasing to be an employer he shall be deemed to have released and discharged the Board from all actions, proceedings, claims, accounts and demands in respect of the Accident Fund. *1994,c.67,s.69.*

**70. Bulk sale of inventory**

- (1) No person shall dispose of the inventory of an employer through a sale in bulk without first obtaining a certificate from the Board that all assessments payable by such person have been paid.

**Bulk sales, purchaser liable for unpaid assessments**

- (2) Every person purchasing inventory through a sale in bulk shall obtain from the person selling the inventory the duplicate copy of the certificate furnished under subsection (1) and, if the person fails to do so, the person is responsible for the payment to the Board of an amount equal to all unpaid assessments payable by the person thus disposing of the inventory through a sale in bulk.

**Extent of liability**

- (3) The liability of a person purchasing inventory through a sale in bulk is limited to the lesser of
- (a) an amount equal to the unpaid assessments payable by the person disposing of the inventory; and
  - (b) the value of the assets purchased. *1994,c.67,s.70; 2001,c.20,s.24.*

**71. Computation of payroll**

In computing and adjusting the amount of the payroll of any industry, regard shall be had only to such portion of the payroll as represents workers and work within the scope of this Part, and where the salary or wages of any worker or officer exceeds such sum as may be fixed under section 46 or 47, the excess shall be deducted from the payroll and the assessment based on the payroll so adjusted. *1994,c.67,s.71.*

**72. Estimate of probable amount of payroll**

- (1) Every employer shall cause to be furnished to the Board an estimate of the probable amount of the payroll together with such further and other information as may be required by the Board for the purpose of making assessments under this Act, and shall at or after the close of each calendar year, or at such other times as may be required by the Board, furnish certified copies or reports of his or her payroll, verified by statutory declaration, for the purpose of enabling the Board to adjust and compute the amount of the assessment as provided in section 69.

**Returns by government and municipalities**

- (2) Repealed by *2013,c.25,s.21.*

**Notice of contract with contractor**

- (3) Where any work within the scope of this Part is undertaken by a contractor, the person for whom the work is undertaken shall, within seven days after the making of any such contract, notify the Board in writing of the making of the contract and in the notice shall state
- (a) the name and address of the contractor;
  - (b) the nature of the work to be performed by the contractor;
  - (c) the amount payable under the contract, whether a lump sum or in proportion to the amount of work done, and in the latter case give the full particulars;
  - (d) the probable length of time for completion of the work to be performed by the contractor.

**Records to be kept by employer**

- (4) Every employer carrying on any industry within the scope of this Part shall keep
- (a) a timebook in which shall be entered
    - (i) the name of every worker employed,



- (ii) the date that each worker was first employed, and every day thereafter that he or she was employed,
  - (iii) the rate of wages per hour, per day, per week, per month or per year that the worker is to be paid or is entitled to receive,
  - (iv) the amount or value of any bonus or other remuneration given or made by the employer, or to which the worker is entitled;
- (b) a suitable book in which shall be entered
- (i) the total number of days that each worker was employed or for which he or she is entitled to receive wages, bonuses or other remuneration,
  - (ii) the total amount of wages that each worker is entitled to receive for each period that he or she was employed, where the pay period was less than a month,
  - (iii) the total amount of bonuses or other remuneration the worker is entitled to,
  - (iv) the allowance made per day to every worker;
- (c) such books, records, or accounts as may reasonably be required to show a true record of the wages earned in the industry carried on by the employer;
- (d) such other books and records as the Board may require.

**Records kept in province**

- (5) All such books or records shall be kept within the province and shall be produced to the Board or any of its officers when required.

**Estimate by Board where records inadequate**

- (6) Every employer who
- (a) in the opinion of the Board fails to make and keep adequate records of the particulars mentioned in this section; or
  - (b) fails or refuses to produce such records or any other book or record pertaining wholly or in part to an industry carried on by the employer for inspection by the Board,

may be assessed by the Board upon the Board's estimate of the amount of wages that the workers of the employer are to be paid or entitled to receive, and the amount or value of any bonus or other remuneration given or made by the employer or worker or to which the worker may be entitled, and such estimate of the Board shall, except in so far as the Board may revise or change the same, be final and conclusive for the purpose of making any assessment or of adjusting the amount that such employer should pay.

**Estimate, where refusal or failure to furnish records**

- (7) Upon the refusal or failure of an employer to furnish verified copies or reports of his payroll as required by this section or such statements as the Board may require, of the actual amount of wages paid and other allowance made to workers, verified by statutory declaration, or if the employer refuses, neglects or fails to keep or to produce for inspection or for the purpose of being audited, proper and sufficient accounts of all wages paid and other allowances made to workers, the Board in addition to any penalty for which the employer may be liable, may of its own motion make an estimate of the amount of such wages and other allowance, and such estimate of the Board, shall except in so far as the Board may revise or change the same, be final and conclusive for the purpose of making any assessment or of adjusting the amount that such employer should pay.

**Estimate, where employer's estimate too low**

- (8) If an employer refuses or neglects to furnish to the Board, an estimate of the probable amount of the payroll, or if he or she furnishes to the Board an estimate of the probable amount of the payroll which is considered by the Board to be too low, the Board may make an estimate of the probable amount of the payroll, and such estimate of the Board shall, except in so far as the Board may revise or change the same, be final and conclusive for the purpose of making any assessment or of adjusting the amount that the employer should pay.

**Additional assessments where payroll underestimated**

- (9) If an employer provides to the Board an estimate of the probable amount of payroll which is less than the actual amount of payroll, the employer shall pay such additional assessments and levies as may be determined by the Board.

**Statement of employment**

- (10) Every person, though not an employer, or not an employer carrying on an industry within the scope of this Part, shall whenever required, make a return to the Board stating whether he or she had or has not employed workers during any period that the Board may designate and if he or she has employed workers, he or she shall state in the return the nature of the industry in which they were employed and furnish such other information as the Board may require.

**Examination of books and accounts of employers**

- (11) The Board may examine the books and accounts of the employers and make such other inquiry as the Board may consider necessary for the purpose of ascertaining whether any statement furnished to the Board under this section is an accurate statement of the matters which are required to be stated therein, or of ascertaining the amount of the payroll of any employer, or of ascertaining whether any industry or person is under the operation of this Part.

**Power to take affidavits etc.**

- (12) Every member of the Board and every officer or person authorized by it to make examination or inquiry may require and take affidavits, affirmations or declarations as to any matter of such examination or inquiry, and may take statutory declarations required under this section, and in all such cases may administer oaths, affirmations and take declarations and certify to the same having been made. *1994,c.67,s.72; 2013,c.25,s.21.*

**73. Penalty for default in payment**

- (1) If an assessment or special assessment is not paid at the time when it becomes payable, the defaulting employer is liable to pay and shall pay as a penalty for his or her default such a percentage upon the amount unpaid as may be prescribed by the Board and the payment may be enforced as provided by section 78.

**Penalty for non-compliance, general**

- (2) Any employer who refuses or neglects to make or transmit any payroll return or other statement required to be furnished by him or her under section 72 or who refuses or neglects to pay any assessment, special or supplementary assessment, or the provisional amount of any assessment, or any installment or part thereof, or who refuses or neglects to report to the Board his or her estimate of payroll shall, in addition to any penalty as prescribed in the regulations or other liability to which he or she may be subject, pay to the Board a penalty, for each week that the return payment or report is not made, of such amount as the Board considers just and reasonable under all the circumstances and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.



**Excuse**

- (3) The Board, if satisfied that the default was excusable, may in any case relieve such employer in whole or in part from liability under this section.

**Liability of employer where wages not fully reported**

- (4) Except insofar as relieved from liability by the Board, the full amount or capitalized value of compensation payable in respect of an accident to a worker whose wages have not been fully reported to the Board, as required by this Part, shall be paid by the employer and payment of the amount may be enforced in the same manner as an assessment may be enforced.  
*1994, c.67, s.73.*

**74. Safety etc. of premises**

- (1) The Board and any member of it and any officer or person authorized by it for that purpose may at all reasonable hours enter into the establishment of any employer who is liable to contribute to the Accident Fund, and the business premises connected with it, and every part of them for any purpose which the Board may consider necessary for the purpose of determining the proportion in which such employer should contribute to the Accident Fund.

**Obstruction of inspector**

- (2) Every person who obstructs or hinders the making of any inspection mentioned in subsection (1) or who refuses to permit any such inspection to be made is liable on summary conviction to a fine of not less than \$1,000.

**Safety devices**

- (3) Where, in any employment or place of employment, safety devices are in the opinion of the Board necessary for the prevention of accidents or of disease, the Board may order the installation or adoption of the appliances or devices and may fix a reasonable time within which they shall be installed or adopted, and the Board shall give notice thereof to the employer.

**Contribution where accident due to non-compliance with regulations**

- (4) Where an accident causing injury to a worker in respect of which compensation is payable has occurred and where, in the opinion of the Board the accident was due entirely or mainly to the failure of the employer to comply with the directions of an officer under the *Occupational Health and Safety Act* R.S.P.E.I. 1988, Cap. O-1, or of the Board or with the regulations of this Act, or of the *Occupational Health and Safety Act*, the Board may levy and collect from the employer as a contribution to the Accident Fund, a sum not exceeding one-half the amount of the compensation payable in respect of the injury, and the payment of such sum may be enforced in the same manner as the payment of an assessment. *1994, c.67, s.74.*

**LIABILITY FOR ASSESSMENTS****75. Assessments may be paid by municipality, etc.**

Where any work within the scope of this Part is performed under contract for any municipality, any assessment in respect of the work may, at the discretion of the Board, be paid by the municipality and the amount of the assessment deducted from any moneys due the contractor in respect of the work. *1994, c.67, s.75.*

**76. Both principal and contractor liable for assessment**

- (1) Where any work within the scope of this Part is undertaken for any person (hereinafter called the principal) by a contractor, both the principal and the contractor are liable for the amount of any assessment in respect thereof, and the assessment may be levied upon and collected from either of them, or partly from one and partly from the other, but in the absence of any term in the contract to the contrary the contractor is, as between himself or herself and the principal, primarily liable for the amount of such assessment.

**Liability of sub-contractor**

- (2) Where any work within the scope of this Part is performed under a sub-contract, the principal, the contractor and the sub-contractor are liable for the amount of any assessment in respect of work, and the assessments may be levied upon and collected from any of them, or partly from one and partly from the others of them, but in the absence of any term in the sub-contract to the contrary, the sub-contractor is primarily liable for the amount of such assessment.

**Sub-contractor and contractor deemed worker of principal**

- (3) Any contractor or sub-contractor who has not been assessed with respect to the work carried on by him or her as such contractor or sub-contractor, may be considered by the Board to be a worker of the principal, or at the option of the Board the workers of a sub-contractor may be considered by the Board to be workers of the contractor, with respect to any industry within the scope of this Part, but in the absence of any term in the contract or sub-contract to the contrary, the principal is entitled to recover from the contractor, and the contractor is entitled to recover from the sub-contractor the amount or proportionate part of any assessment paid by the principal with respect to the contractor or his or her workers, or paid by the contractor in respect to a sub-contractor or his or her workers.

**Principal entitled to withhold payments to contractor to cover assessment**

- (4) In any case where a principal is or may become liable for an assessment with respect to work carried on by a contractor the principal is entitled to withhold from any moneys payable to the contractor such amount as the Board may estimate as the probable amount for which the principal is or may become liable; and in any action by the contractor against the principal, the principal has the right to set off the amount against the contract, and the contractor is not entitled to recover from the principal any portion of the same, but after final adjustment by the Board of the amount due with respect to the work carried on by the contractor the contractor shall be entitled to any amount still remaining in the hands of the principal after payment of the amount due the Board.

**Contractor deemed principal**

- (5) As between the contractor and sub-contractor, the contractor shall for the purposes of this section be deemed a principal, and the sub-contractor a contractor. *1994,c.67,s.76.*

**77. Owner liable for assessment of employer**

In the case of a work or service performed by an employer in any of the industries within the scope of this Part, for which the employer would be entitled to a lien under the *Mechanics' Lien Act R.S.P.E.I. 1988, Cap. M-4*, the owner as defined by that Act shall see that any sum which the employer is liable to contribute to the Accident Fund is paid, and if the owner fails to do so he or she is personally liable to pay it to the Board, and the Board has the like powers and is entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment. *1994,c.67,s.77.*





**78. Lien**

- (1) Every person who is liable for the amount of any assessment under this Act is deemed to hold the same in trust for the Board and for the payment over of the same in the manner and at the time provided under this Act, and the amount, until paid, forms a first lien and charge on all property used or in connection with or produced in or by the person, or the proceeds thereof with respect to which the person is assessed, though not owned by the person, and on the person's estate in the hands of any trustee, and such lien or charge has priority, notwithstanding the provisions of any other enactment, over all other claims of the government or any person subject only to any enactment respecting liens to secure wages of a worker.

**Assessment, separation of assets**

- (2) The amount of the assessment shall be deemed to be held separate from and form no part of the estate or assets of the person, whether or not the amount of assessment has in fact been kept separate and apart from the estate or assets of the person.

**Certificate**

- (3) When default has been made in the payment of any assessment the Board may so certify and may issue a certificate stating the amount so due and payable including interest, if any, costs, if any, and penalty, if any, and the name of the person by whom the same is due and payable.

**Effect of certificate**

- (4) Upon its production to and filing with the Registrar of the Supreme Court, the certificate shall be entered and recorded in the court, and when so entered and recorded, it has the same force and effect, and all proceedings may be taken thereunder as if it were a judgment obtained in the court by the Board against the person named in the said certificate.

**Costs**

- (5) All reasonable costs and charges attendant upon the production and registration of the certificate shall be recovered in like manner as if the amount thereof had been included in the said certificate.

**Definition**

- (6) In subsections (1) and (2) the words "amount of any assessment" include any percentage payable under the authority of subsection 73(1) and the amount due upon any judgment entered in the manner provided by subsection (4). *1994,c.67,s.78.*

**79. Liability of directors for assessment**

- (1) Where an employer who defaults in the payment of any assessment to the Board under this Act is a corporation, a director of the corporation at the time the amount is due is jointly and severally liable with the corporation to pay to the Board any assessment owing.

**Contribution**

- (2) A director who satisfies a claim under subsection (1) is entitled to contribution from other directors liable for the claim. *1994,c.67,s.79.*

## GENERAL

### 80. Regulations

The Board may make regulations, subject to the approval of the Lieutenant Governor in Council,

- (a) respecting payment of compensation under this Act;
- (a.1) specifying the edition of the Diagnostic and Statistical Manual of Mental Disorders to be used for the purposes of section 6;
- (b) respecting the exclusion of workers, employers or industries from the application of this Act;
- (c) respecting books required to be kept by an employer;
- (d) respecting deductions from a worker's average earnings, in addition to deductions required by section 41;
- (e) respecting costs that may be awarded by the Appeal Tribunal pursuant to subsection 56(25);
- (f) respecting an employer's duty to cooperate in the early and safe return to work of a worker injured in his or her employment;
- (g) respecting a worker's duty to cooperate in his or her early and safe return to work;
- (h) respecting the application of section 86 to the construction industry;
- (i) respecting the application of sections 86.1 to 86.11 to the construction industry;
- (j) defining any word or expression used in this Act, but not defined in this Act, for the purposes of this Act; and
- (k) such other regulations as the Lieutenant Governor in Council considers necessary for the proper administration of this Act. *2001, c.20, s.25; 2018, c.19, s.2(2).*

### 81. Penalties

The Board may make regulations prescribing penalties for the violation of any provision of this Act, or for the breach of any rules, regulations or orders made under this Act. *1994, c.67, s.81; 2001, c.20, s.26.*

### 82. Recovery of penalties

The penalties imposed by or under the authority of this Part shall be recoverable by an action brought by the Board in any court of competent jurisdiction or payment of the penalties may be enforced in the same manner as the payment of an assessment may be enforced, and the penalties when collected shall be paid over to the Board and form part of the Accident Fund. *1994, c.67, s.82.*

## ACCESS TO BOARD FILES

### 83. Access to file

- (1) Subject to the provisions of this section, where there is a *bona fides* issue in dispute with respect to compensation of a worker, the Board shall upon written request of the worker, or in the case of a deceased worker upon written request of the persons who may be entitled to benefits under this Act, provide full access to the Board's file on the worker including the right to make a copy thereof.



**Employer access to relevant information**

- (2) Subject to the provisions of this section, where there is a *bona fides* issue in dispute with respect to compensation of a worker, the Board shall upon written request of the worker's employer, in a form prescribed by the Board, provide the employer with such access to the worker's file to such extent as the Board may consider the information relevant to the issue in dispute including the right to make a copy thereof.

**Disclosure by employer**

- (3) Every employer who receives information pursuant to a request under subsection (2) shall not disclose the information, save and except for disclosure which is necessary for the pursuit of the *bona fides* issue in dispute, and every such employer and person who is provided with such information shall not use the information for any other purpose other than the pursuit of the issue in dispute.

**Offence**

- (4) Any person who uses the information for any other purpose than stated in the original request for information and for any other purpose than for an appeal under this Act is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000. *1994, c.67, s.83.*

## OCCUPATIONAL DISEASES

**84. Occupational disease**

- (1) Where a worker suffers from an occupational disease and the disease is due to the nature of any employment in which the worker was engaged at any time previous to the date the worker contracted the disease, whether under one or more employments,
- (a) the worker; or
  - (b) the dependants of the worker, if his or her death is caused by the occupational disease,

shall be entitled to compensation under this Act as if

- (c) the occupational disease was a personal injury the worker suffered from an accident; and
- (d) the contracting of the occupational disease was the happening of an accident arising out of and in the course of the worker's employment.

**Accident date**

- (1.1) If a worker suffers from an occupational disease referred to in subsection (1), the worker is deemed, for the purposes of this Act and the regulations, to have contracted the disease, and to have had an accident in respect of that disease, on the earlier of
- (a) the date the worker suffers a loss of earning capacity as a result of the occupational disease; and
  - (b) the date the worker is diagnosed with the occupational disease.

**Determination of cause of occupational disease**

- (1.2) Where an occupational disease is, in the opinion of the Board, due in part to the employment of the worker and in part to a cause other than the employment, the Board may determine that the occupational disease is the result of an accident arising out of and in the course of employment only where, in its opinion, the employment is the dominant cause of the occupational disease.

**Exception to limitation period**

- (1.3) Notwithstanding subsection 59(4), where the accident results from an occupational disease, the Board may extend the time limit for claiming compensation beyond the six month time limit where, in the opinion of the Board, it is just to do so.

**Disease due to employment elsewhere**

- (2) Where the Board is satisfied that the occupational disease is due to employment outside of the province of Prince Edward Island, the Board may deny the claim and no compensation is payable under this section.

**Application to other diseases**

- (3) Nothing in this section affects the right of a worker to compensation in respect of a disease that is not an occupational disease, if the disease is the result of an injury in respect of which he or she is entitled to compensation under this Part.

**Medical examination**

- (4) The Board may by order in writing require any worker in any employment to undergo medical examination to determine whether such worker is affected with an occupational disease, or, if so affected, the progress of the disease.

**Cost of examination**

- (5) The Board may by action recover from the employer of a worker all or part of the costs incurred in connection with a medical examination of the worker under authority of this section. *1994,c.67,s.84; 2013,c.25,s.22.*

## WORKER AND EMPLOYER ADVISORS

### 85. Advisors

- (1) The Lieutenant Governor in Council may appoint persons who shall be employees of the Department of Justice and Public Safety
- (a) as worker advisors to assist workers or dependants of workers in respect of claims for compensation under this Part; and
  - (b) as employer advisors to assist employers in respect of classifications, assessments and claims for compensation under this Part.

**Grants by the Board to the Department**

- (2) The Board shall make annual grants to the Department of Justice and Public Safety in such amounts as the Board considers appropriate to cover the costs of providing services under this section. *2001,c.20,s.28; 2009,c.73,s.2; 2010,c.31,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

### 85.1 Advisory committee

Repealed by *2013,c.25,s.23. 2001,c.20,s.29; 2013,c.25,s.23.*



**RIGHT TO RETURN TO WORK****86. Employer to co-operate in return to work**

- (1) An employer shall cooperate in the early and safe return to work of a worker injured in his or her employment by
- (a) contacting the worker as soon as possible after the injury occurs and maintaining communication;
  - (b) providing suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings;
  - (c) providing the Board the information it may request concerning the worker's return to work; and
  - (d) doing such other things as prescribed by the regulations
- during the period of the worker's recovery.

**Worker to co-operate in return to work**

- (2) The worker shall cooperate in an early and safe return to work by
- (a) contacting the employer as soon as possible after the injury occurs and maintaining communication during the period of the worker's recovery;
  - (b) assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings;
  - (c) accepting suitable employment identified under clause (b);
  - (d) providing the Board the information it may request concerning the worker's return to work; and
  - (e) doing such other things as prescribed by the regulations
- during the period of the worker's recovery.

**Monitoring of progress**

- (3) The Board may contact the employer and the worker to monitor the progress of returning the worker to work to determine whether
- (a) the worker and the employer are fulfilling their obligations to cooperate; and
  - (b) assistance is required to facilitate the worker's return to work.

**Duty to notify Board**

- (4) The employer or the worker shall notify the Board of difficulties or disputes concerning the worker's early and safe return to work.

**Resolution of dispute**

- (5) The Board shall
- (a) through consultation, attempt to resolve the dispute between the parties; and
  - (b) where the parties are unable to come to an agreement through consultation, decide the matter in dispute.

**Non-cooperation**

- (6) Where, in the opinion of the Board, a worker fails or refuses to comply with this section, the worker shall not be entitled to compensation until, in the opinion of the Board, the worker has complied.

**No compensation**

- (7) Where a worker who has failed or refused to comply with this section subsequently complies, the worker is not entitled to receive or claim compensation for the period during which the worker failed or refused to comply.

**Failure by employer to comply**

- (8) Where, in the opinion of the Board, an employer fails or refuses to comply with this section, the Board may levy a penalty on the employer not exceeding the full amount of any compensation payable to the worker plus expenditures made by the Board in respect of the worker during the period of non-compliance.

**Penalty**

- (9) A penalty payable pursuant to subsection (8) is an amount owing to the Board and may be added to the employer's assessment and payment enforced as provided by section 78.

**Application**

- (10) This section
- (a) applies only to accidents that occurred on or after the date this section comes into force; and
  - (b) does not apply to the construction industry unless it is included by the Board by regulation. *2001, c.20, s.30.*

**86.1 Obligation to re-employ**

Where a worker

- (a) has been unable to work as a result of an accident; and
- (b) has been employed by the employer, at the date of the injury, for at least 12 continuous months,

the employer shall offer to *re-employ* a worker in accordance with sections 86.2 to 86.11. *2001, c.20, s.31.*

**86.2 Fitness to return to work**

- (1) The Board may determine whether an injured worker who has not returned to work with the employer, is medically able to perform
- (a) the essential duties of the worker's pre-injury employment; or
  - (b) suitable work.

**Revision of determination**

- (2) The Board may, from time to time, revise a determination made pursuant to subsection (1). *2001, c.20, s.31.*



**86.3 Reinstatement of worker**

- (1) When a worker is medically able to perform the essential duties of the worker's pre-injury employment, the employer shall offer to reinstate the worker in the position that the worker held on the date of the accident.

**Alternative employment**

- (2) Where the Board is satisfied that the employer is unable to reinstate the worker pursuant to subsection (1), the employer shall offer alternative employment to the worker. *2001,c.20,s.31.*

**86.4 Medically able to perform work**

When a worker is medically able to perform suitable work but is unable to perform the essential duties of the worker's pre-injury employment, the employer shall offer to the worker the first available suitable work with the employer. *2001,c.20,s.31.*

**86.5 Accommodation of work or workplace**

An employer shall, to the satisfaction of the Board and in order to fulfil the employer's obligations pursuant to sections 86.1 to 86.11, accommodate the work or the workplace to the needs of a worker who requires accommodation as a result of the injury to the extent that the accommodation does not cause the employer undue hardship. *2001,c.20,s.31.*

**86.6 Termination of obligation**

Where

- (a) an employer has offered *re*-employment to a worker in accordance with sections 86.1 to 86.11; and
- (b) the worker has refused the employer's offer,

the employer is no longer bound by the provisions of sections 86.1 to 86.11 in relation to that worker. *2001,c.20,s.31.*

**86.7 Presumption**

- (1) Where an employer *re*-employs a worker and terminates the worker's employment within six months of the date the *re*-employment commenced, the employer is deemed not to have fulfilled the employer's obligations pursuant to sections 86.1 to 86.11.

**Rebuttal**

- (2) Subsection (1) does not apply where the Board is satisfied that the termination of the worker's employment was not related to the injury. *2001,c.20,s.31.*

**86.8 Fulfilment of employer's obligations**

- (1) The Board

- (a) shall, at the request of the worker; or
- (b) may, at its own initiative,

determine whether an employer has fulfilled its obligations under sections 86.1 to 86.11.

**Where Board not obligated to consider request**

- (2) A request by a worker under subsection (1) respecting termination of employment under section 86.7 shall be made not later than three months after the termination of employment. *2001,c.20,s.31.*

**86.9 Penalty**

- (1) Where the Board determines that an employer has not fulfilled its obligations under sections 86.1 to 86.11, the Board may,
- (a) levy a penalty on the employer not exceeding the amount of the worker's net average earnings for the 12 months preceding the beginning of the loss of earning capacity as a result of the accident; and
  - (b) make payments to the worker for a maximum of one year as if the worker were entitled to payments under section 40.

**Idem**

- (2) A penalty payable pursuant to subsection (1) is an amount owing to the Board and may be added to the employer's assessment and payment enforced under section 78. *2001,c.20,s.31.*

**86.10 Conflict with collective agreement**

- (1) Where sections 86.1 to 86.11 conflict with a collective agreement that is binding upon an employer, and the employer's obligations pursuant to sections 86.1 to 86.11 give a worker better *re-employment* terms than does the collective agreement, sections 86.1 to 86.11 shall prevail over the collective agreement.

**Seniority provisions**

- (2) Subsection (1) shall not be interpreted as displacing the seniority provisions of a collective agreement. *2001,c.20,s.31.*

**86.11 Application**

- (1) Notwithstanding any other provision of this Act, sections 86.1 to 86.10 do not apply to
- (a) an employer that, in the opinion of the Board, regularly employs fewer than 20 workers; and
  - (b) the construction industry, unless it is included by the Board by regulation.

**Duration of obligation**

- (2) An employer is obligated pursuant to sections 86.1 to 86.11 until the earlier of
- (a) two years after the date of the accident; and
  - (b) the date on which the worker attains 65 years of age. *2001,c.20,s.31.*

**86.12 Application**

Sections 86.1 to 86.11 apply only to accidents that occurred on or after the date this section comes into force. *2001,c.20,s.31.*





**PART II****87. Application of Part II**

Subject to section 91, sections 88, 89 and 90 apply only to the industries to which Part I does not apply and to the workers employed in such industries. *1994,c.67,s.87.*

**88. Personal injury action**

- (1) Where personal injury is caused to a worker by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings, or premises connected with, intended for or used in the business of his or her employer or by reason of the negligence of his or her employer or any person in the service of his or her employer, acting within the scope of his or her employment, the worker, or if the injury results in death, the legal personal representative of the worker, and any person entitled in case of death have an action against the employer, and if the action is brought by the worker he or she shall be entitled to recover from the employer the damages sustained by the worker by or in consequence of the injury, and if the action is brought by the legal personal representatives of the worker or by or on behalf of persons entitled to damages under the *Fatal Accidents Act* R.S.P.E.I. 1988, Cap. F-5, they are entitled to recover such damages as they are entitled to under that Act.

**Personal injury action against contractor and sub-contractor**

- (2) Where the execution of any work is being carried into effect under any contract, and the person for whom the work is done owns or supplies any ways, works, machinery, plant, building or premises, and by reason of any defect in the condition or arrangement of them, personal injury is caused to a worker employed by the contractor, or by any sub-contractor, and the defect arose from the negligence of the person for whom the work or any part of it is done or of some person in his or her service and acting within the scope of his or her employment, the person for whom the work or that part of the work is done is liable to the action as if the worker had been employed by him or her, and for that purpose shall be deemed to be the employer of the worker within the meaning of this Act, but any such contractor or sub-contractor, is liable to the action as if this subsection had not been enacted, but not so that double damages are recoverable for the same injury.

**Application of subsection (2)**

- (3) Nothing in subsection (2) affects any right or liability of the person for whom the work is done and the contractor or sub-contractor as between themselves.

**Knowledge of defect etc.**

- (4) A worker shall not by reason only of his or her continuing in the employment of the employer with knowledge of the defect or negligence which caused his or her injury be deemed to have voluntarily incurred the risk of the injury. *1994,c.67,s.88.*

**89. Negligence of fellow worker**

A worker shall be deemed not to have undertaken the risks due to the negligence of his or her fellow worker, and contributory negligence on the part of a worker is not a bar to recovery by him or her or by any person entitled to damages under the *Fatal Accidents Act* in any action for the recovery of damages for an injury sustained by, or causing the death of, the worker while in the service of his or her employer, for which the employer would otherwise have been liable. *1994,c.67,s.89.*

**90. Contributory negligence, damages**

Contributory negligence on the part of the worker shall nevertheless be taken into account in assessing the damages in any action. *1994,c.67,s.90.*

**91. Repeal**

Repealed by *1994,c.67,s.91.*

