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First Session

Workers' Compensation Act

Loi sur les accidents du travail

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PREAMBLE

Whereas the workers' compensation system has benefited injured workers in Yukon since 1917 and continues to serve both workers and employers well;

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

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

And whereas it is important to advance efficient strategies for the prevention of workplace injuries;

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

And whereas the commitment exists to promote a greater understanding of this legislation, all efforts have been made to make this Act more readable.

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

PART 1

INTERPRETATION

Purposes

1 The purposes of this Act are

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

(b) to promote recovery from workplace injuries through early return to work, appropriate health care as well as vocational rehabilitation, where required;

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

(d) to provide for fair assessments on employers;

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

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

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

(h) to ensure that workers, dependents of deceased workers, and employers are treated with compassion, respect, and fairness.

Application

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

Definitions

3(1) In this Act,

(a) "average weekly earnings" shall be calculated based on any sources of earnings over any period of time that the board of directors considers fair and just, as established by policy; « *gains hebdomadaires*

moyens »

(b) "board" means the Workers' Compensation Health and Safety Board and includes its president, employees and agents;

(c) "board of directors" means the individuals appointed by the Commissioner in Executive Council to collectively provide governance to the board. « »

(d) "compensation" means any amount payable or services provided under this Act in respect of an injured worker; « *indemnité* »

(e) "consumer price index for Whitehorse" means the "all-items Consumer Price Index for Whitehorse, Yukon", as published monthly by Statistics Canada except where

(i) no such figure is published for a particular month, or

(ii) Statistics Canada uses a new method to determine the consumer price index for Whitehorse for a particular month and the new method results in a change of more than one percent when compared with the former method;

in which case the board of directors shall determine an amount that in its opinion represents the consumer price index for Whitehorse;

(f) "dependent" means a member of the family of the worker who is wholly or partially dependent on the worker's earnings for the ordinary necessities of life or who, but for the worker's work-related injury, would have been so dependent; « *personne à charge* »

(g) "earnings" includes salary, wages, commissions, tips, remuneration for overtime, piece work and contract work, bonuses and allowances, the cash equivalent of board and lodging, store certificates, credits, directors fees, indemnities and allowances paid to members of the Legislative Assembly, and any substitute for money but does not include any amount

received for expenses incurred by the worker because of the worker's employment; « *gains* »

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

(i) the Yukon Government,

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

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

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

(v) any person deemed under this Act by the board to be an employer. « *employeur* »

(i) "employment" means employment in an industry; « *emploi* »

(j) "industry" includes every establishment, undertaking, trade, or business in or being carried on in the Yukon except industries excluded by regulation; « *industrie* »

(k) "injury" means

(i) an injury as a result of an event, or series of events, occasioned by a physical or natural cause,

(ii) an injury as a result of a wilful and intentional act, not being the act of the worker,

(iii) a disablement, but does not include the disablement of mental stress or disablement caused by mental stress, other than post-traumatic stress,

(iv) an occupational disease, which includes a disease from causes and conditions peculiar to or characteristic of a particular trade or occupation or

peculiar to the particular employment;
but does not include an ordinary disease
of life, or

(v) death as a result of an injury.

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

(m) "maximum assessable earnings" shall be equivalent to the maximum wage rate;
« *gains cotisables maximaux* »

(n) "maximum wage rate" for a year means

(i) \$74,100 as of January 1, 2008, and

(ii) commencing January 1, 2009, and in each year thereafter, the amount resulting from adjusting the previous year's maximum wage rate by

(A) the percent change in the Consumer Price Index for Whitehorse, calculated by using the percent change between the average index for the twelve month period ending October 31st of the previous year and the same time period one year earlier; however,

(B) despite clause A, if the percent change is greater than four percent, the percent change to be used will be four percent; and, if the percent change is less than zero percent, the percent change to be used will be zero percent;
« *salaire maximal* »

(o) "medical practitioner" means a medical practitioner recognized under the *Medical Profession Act* or other health care provider recognized by the board; « *médecin* »

(p) "member of the family" in respect of a worker means the worker's spouse or former spouse, parent, grandparent, step-parent, child, grandchild, step-child, sibling, half-

sibling, and a person who stands in the role of parent to the worker or to whom the worker stands in the role of parent; « *membre de la famille* »

(q) "mine rescue work" includes the repair of the equipment necessary for, and the training necessary for, that work; « *travaux de sauvetage dans une mine* »

(r) "notice" means the provision of information by telephone, facsimile, e-mail or letter to the employer or the board;

(s) "partner" means a partner in a partnership;

(t) "payroll" in respect of an employer means the total earnings earned in a year by all workers employed by an employer engaged in an industry; « *frais de personnel* »

(u) "permanent impairment" in respect of a worker means a work-related injury, not including death, that is not temporary including a disfigurement; « *déficience permanente* »

(v) "policy" means

(i) a written document, publicly available, established by the board of directors to provide guidance to decision-makers interpreting this Act or authority for the expenditure of funds, and

(ii) is binding on the board of directors, the appeal tribunal, the board, employers, workers and dependents of deceased workers;

(w) "sole proprietor" means an unincorporated, self-employed person who carries on or engages in any industry; « *propriétaire unique* »

(x) "spouse" means the person who, at the date of the worker's death, cohabitated with the worker, and

(i) to whom the worker is legally married,

or

(ii) with whom the worker cohabitated as a couple for a least 12 months immediately before the death of the worker;

(y) "vehicle" means any mode of transportation the operation of which is protected by liability insurance; « *véhicule* »

(z) "volunteer" means a person who does volunteer work for which the person receives no earnings or only nominal earnings; « *bénévole* »

(aa) "work-related" in reference to an injury of a worker means an injury arising out of and in the course of the employment of a worker; « *liée au travail* »

(bb) "worker" means

(i) a person who performs services for an employer under a contract of service or apprenticeship, unless the person is employed on a casual basis for purposes other than the employer's industry,

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

(iii) a learner,

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

(v) a member of the Legislative Assembly,

(vi) any person, sole proprietor or partner deemed by the board or by regulation to be a worker,

but does not include

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

(viii) a person who entered into or works under a contract of service or apprenticeship outside the Yukon, who ordinarily resides outside of the Yukon and is employed by an employer who is based outside of the Yukon and carries on business in the Yukon on a temporary basis. « »

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

- (a) an employer in an industry;
- (b) a director of a limited company who is deemed by the board not to be a worker;
- (c) a worker of another employer; or
- (d) a sole proprietor deemed by the board to be a worker.

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

PART 2

COMPENSATION, ENTITLEMENT, REPORTS AND DECISIONS

Eligibility for compensation

4(1) A worker who suffers a work-related injury is entitled to compensation unless the work-related injury is attributable to conduct deliberately undertaken for the purpose of receiving compensation.

(2) Compensation for loss of earnings shall not be paid if a worker reaches the age that a

worker becomes entitled to apply for benefits under Part 1 of the *Old Age Security Act*, R.S.,1985,c.O-9.

(3) Despite subsection (2), when a worker is at least the age determined under subsection (2) less two years, at the time of a work-related injury, the board may pay compensation for loss of earnings to the worker for a period of up to 24 months.

Optional coverage

5(1) Despite any other provision of this Act, the board may, on the application of an employer and subject to any conditions that it may establish, deem the following persons to be workers of that employer

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

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

(c) a volunteer.

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

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

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

Designation of workers by government

6(1) The following persons or classes of persons are designated as workers employed by the Yukon Government

(a) members of a volunteer fire brigade or members of a volunteer ambulance brigade;

(b) persons summoned to assist in controlling or extinguishing a fire by an authority empowered to do so;

(c) persons who assist in any search and rescue operations at the request of and under the direction of a peace officer;

(d) persons who assist in connection with an emergency that has been declared to exist by a mayor of a municipality or by the Commissioner in Executive Council;

(e) auxiliary members of a police force;

(f) persons who are engaged in a work program or who are performing community service activities while serving a term of imprisonment in the Yukon, if the program or activity is conducted or designated by the Yukon Government;

(g) persons who are engaged in a work program or who are performing community service activities as a requirement of their probation for an offence, if the program or activity is conducted or designated by the Yukon Government;

(h) students who are attending Yukon College, who are receiving a training allowance from the Yukon Government to assist their attendance at Yukon College and who are engaged in a program of training in a Yukon work place;

(i) students at a school, other than a private school, in the Yukon who are engaged in a program of training in a Yukon workplace.

(j) persons who, with the consent of the Yukon Government, perform services on

behalf of the Government as volunteers; and

(k) persons who are receiving disability insurance benefits, benefits under the *Employment Insurance Act* (Canada) in respect of unemployment caused by illness, assistance under the *Social Assistance Act*, or services under the *Rehabilitation Services Act*, and who are engaged in a program of training in a work-place as directed by the Yukon Government.

(2) The Commissioner in Executive Council may prescribe that any other persons or classes of persons carrying on an undertaking the Yukon Government considers to be in the public interest, whether or not these persons or classes of persons receive payment for their services, be designated as workers employed by the Yukon Government.

(3) If a person who is designated as a worker employed by the Yukon Government under subsections (1) or (2) suffers a work-related injury while acting in that capacity, the worker's average weekly earnings shall be the greater of either their average weekly earnings or one-half of the maximum wage rate in effect in the year the work-related injury arose, unless otherwise prescribed by regulation.

Work-related injury caused outside of the Yukon

7(1) If a worker is working outside of Canada and is required by the laws of the foreign jurisdiction to have coverage, and the worker suffers a work-related injury, if the worker is covered by that foreign jurisdiction, the worker is not covered in the Yukon under this Act.

(2) If a work-related injury is caused while a worker is employed outside of the Yukon, compensation is payable only if

(a) the worker was outside of the Yukon in connection with that employment for less than 12 consecutive months immediately before the cause of the work-related injury arising;

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

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

(d) where a worker is working outside of Canada, the board has received written confirmation that the worker is in compliance with paragraphs 7(2)(a) to (c).

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

(4) A worker or the worker's dependent must notify the board within 30 days of the date the worker's work-related injury arose of their intention to claim compensation under this section.

(5) Subject to an interjurisdictional agreement, if compensation is claimed in the jurisdiction where the work-related injury was caused, compensation shall not be paid in respect of that work-related injury.

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

(7) The board may waive the time limits in subsections (4) and (6).

Worker's notice to employer

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

(a) the name and address of the worker;

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

(c) a description of the cause of the work-

related injury.

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

Worker's application for compensation

9(1) An application for compensation must be made in a form acceptable to the board within 12 months of the date the work-related injury arose.

(2) Despite subsection (1), the board may, in exceptional circumstances, allow a late application to be filed.

Employer's notice to board

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

(a) describe the circumstances giving rise to the work-related injury; and

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

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

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

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

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

(c) levy a penalty in an amount established by order of the board of directors, against the

employer, the payment of which may be enforced in the same manner as an assessment.

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

Medical reports

11(1) A medical practitioner who attends a worker who has or may have suffered a work-related injury shall

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

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

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

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

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

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

Autopsy

12(1) The board may request an autopsy on the body of a worker to determine the cause of death.

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

Required medical examination or other evaluation

13 The board may require a worker who may have suffered a work-related injury to submit to a medical examination, independent medical examination or other evaluation.

Duty to mitigate

14(1) Every worker must

(a) take all reasonable steps to reduce or eliminate any impairment and loss of earnings resulting from a work-related injury;

(b) seek out and co-operate in any health care assistance or treatment that, in the opinion of the board, promotes the worker's recovery or return to work;

(c) if required by the board, submit to a medical examination, independent medical examination or other evaluation;

(d) take all reasonable steps to provide to the board full and accurate information on any matter relevant to the worker's claim for compensation; and

(e) notify the board immediately of a change in circumstance that affects or may affect the worker's initial or continuing entitlement to compensation.

(2) The board may suspend, reduce or terminate compensation otherwise payable to a worker, where the worker fails to comply with paragraphs (1) (a),(b),(c), (d) or (e).

(3) Despite anything contained in this Act, a worker may appeal a decision made under subsection (2) to the appeal tribunal directly.

Adjudicating applications for compensation

15(1) A claim for compensation shall be dealt with and determined in the first instance on behalf of the board by a decision-maker employed by the board.

(2) The decision-maker is responsible for determining any matters arising under the Act, including

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

(b) whether a person is a dependent;

(c) whether a person is a member of the family of a worker;

(d) whether a worker or a dependent is entitled to compensation;

(e) whether a worker's injury is work-related;

(f) the duration and degree of the work-related injury;

(g) the average weekly earnings of a worker;

(h) the weekly loss of earnings of a worker resulting from a work-related injury;

(i) whether a worker is co-operating in the return to work provisions of Part 6;

(j) whether an employer is co-operating in the return to work provisions of Part 6; and

(k) any other matter pertaining to entitlement or compensation.

Notice of decision and progress report

16(1) The board shall notify the worker or the dependents of a deceased worker and the worker's employer of any decision concerning an entitlement to compensation as soon as practicable.

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

PART 3

PRESUMPTIONS AND BENEFIT OF DOUBT

Presumption to be work-related

17 Unless there is evidence to the contrary, an injury is presumed to be work-related if it arises out of and in the course of a worker's employment.

Decisions based on merit

18 The decisions, orders, and rulings of a decision-maker, hearing officer, or the appeal tribunal shall always be based on the merits and justice of the case and board of directors' policies and in accordance with the Act and the regulations.

Balance of probabilities

19 Despite anything contained in this Act, when the disputed possibilities are evenly balanced on an issue, the issue shall be resolved in favour of the worker or the dependent of a deceased worker.

PART 4

COMPENSATION FOR WORKERS

Compensation for permanent impairment

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

(2) A worker who suffers a work-related permanent impairment on January 1, 1993 or later, is entitled to a payment calculated by multiplying the percentage of the worker's permanent impairment by 125% of the maximum wage rate in effect for the year that the worker suffered the work-related injury.

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

(a) a single lump sum; or

(b) an annuity offered by the board, subject to a minimum amount as set by order of the board of directors.

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

Compensation for loss of personal property

21 The board may pay compensation to a worker to repair or replace personal property damaged as a result of a work-related accident, up to a maximum set by order of the board of directors.

Compensation for loss of earnings

22(1) If a worker is entitled to compensation, the board shall calculate, from all employment, and pay to the worker 75 per cent of their average weekly loss of earnings up to the maximum wage rate.

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

Worker's weekly loss of earnings

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

(a) worker's average weekly earnings, up to the maximum wage rate; and

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

Canada and Quebec pension plan benefits

24 Under subsection 23(a), the board shall subtract 50% of the gross disability benefit a worker receives or is entitled to receive under the Canada Pension Plan or the Quebec Pension Plan, from the worker's average weekly loss of earnings.

Modified average weekly earnings

25(1) If a person is

- (a) a volunteer deemed to be a worker;
- (b) engaged in mine rescue work; or
- (c) deemed by regulation to be a worker

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

Recurrence of work-related injury

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

- (a) work-related injury first arose and indexed in accordance with section 35; and
- (b) recurrence of the work-related injury.

Payment of earnings on day of work-related injury

27(1) Where a worker suffers a work-related injury and is unable to work during any part of the day of the injury, the employer shall pay to the worker the worker's earnings for that day.

(2) No employer shall deduct sick pay entitlement or reduce the usual benefits to which a worker is entitled because the employer has made a payment under subsection (1).

Payment to employer

28(1) If a worker receives earnings from the employer in respect of a period of eligibility for loss of earnings compensation, the board may pay to the worker's employer an amount equal to the compensation to which the worker would otherwise have been entitled.

(2) If an employer pays earnings to a worker under subsection (1), the employer shall pay to the worker at least the amount that the board has paid to the employer.

Compensation payable to a worker under 19

29 When compensation is payable to a person under the age of 19, the board may pay the compensation to any person the board considers appropriate.

Minimum compensation for total disability

30 The board of directors may prescribe, by order, a minimum amount of compensation to be payable to a worker who suffers a total disability.

Interest

31 If compensation is payable, the decision-maker, hearing officer or appeal tribunal shall order that interest be paid on that compensation in accordance with a board of directors' policy and the board shall pay that interest.

Annuity

32(1) If a worker has received compensation in respect of the same work-related injury for at least 24 months, an amount equal to 10 per cent of the total compensation for loss of earnings paid during the period of disability, together with accrued interest, shall be used by the board to provide an annuity for the worker payable at the later of the age that a worker becomes entitled to apply for benefits under Part 1 of the *Old Age Security Act*, R.S. 1985, c. O-9 and the date that compensation ceases to be payable to the worker.

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

(3) If the amount under subsection (1) is less than a minimum amount set by order of the board of directors, the board may pay the worker the accumulated capital and interest

rather than an annuity.

(4) If, as a result of any work-related injury, a worker's retirement income, including the annuity payments under subsection (1) is less than the amount prescribed under section 30, the board may increase the annuity payments so that the worker's retirement income, including the annuity payments, will equal the amount prescribed under section 30.

(5) In the event that the annuity is not paid out on behalf of the worker because of the worker's death, the board shall pay the annuity to a spouse or a worker's dependents in accordance with the worker's written direction.

Diversion of compensation

33(1) Compensation ceases to be payable to a worker in respect of any period of incarceration in a penal facility, but the board may pay the compensation that would otherwise have been payable to the worker for the period to one or more of the worker's dependents.

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

Prohibition against assignment, set-off, and attachment

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

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

(b) is capable of being set off against any amount without the prior approval of the board.

Indexing of benefits

35(1) On the anniversary of the date that a worker's loss of earnings began, the average

weekly earnings of a worker, for the purposes of paragraph 23(a), shall be adjusted on the first day of the month immediately following by the percentage change in the Consumer Price Index for Whitehorse, calculated by using the percent change between the average index for the twelve month period ending October 31st of the previous year and the same time period one year earlier, however, if the percent change is greater than four percent, the percent change to be used will be four percent and if the percent change is less than zero percent, the percent change to be used will be zero percent.

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

PART 5

HEALTH CARE ASSISTANCE

Health care assistance

36(1) The board may provide a worker with any health care assistance, including services, devices, or equipment, necessary to grant relief from a work-related injury.

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

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

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

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

employer.

(6) The board may pay for special expenses related to the work-related injury, as determined by the board.

Alternative and traditional healing methods

37(1) In the treatment of work-related injuries, the board of directors or the board shall, when appropriate, promote mutual understanding, knowledge, and respect between the providers of health services under the health system and the providers of traditional First Nations or Inuit nutrition and healing.

(2) The board may permit the use of alternative treatment options desired by workers in the treatment of work-related injuries.

Emergency transportation

38(1) If a worker suffers a work-related injury, the worker's employer shall immediately provide and pay for emergency transportation for the worker to a hospital, medical practitioner, home, or other place that may be required by the worker's condition.

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

PART 6

VOCATIONAL REHABILITATION AND RETURN TO WORK

Rehabilitation assistance

39 If a worker, as a result of a work-related injury, requires assistance to reduce or remove any impairment, or experiences a long term disability or requires assistance in the activities of daily living, the board shall pay the cost of

(a) rehabilitation assistance; and

(b) vocational or academic training,

considered appropriate by the board in consultation with the worker.

Return to work

40(1) An employer shall co-operate 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 work-related injury occurs and maintaining communication throughout the period of the worker's recovery;

(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) if the earnings for suitable employment offered by the employer and accepted by the worker are less than the worker's pre-injury earnings, either the employer or the board or a combination of the employer and the board shall pay the worker in accordance with a board of directors' policy;

(d) giving the board the information the board may request concerning the worker's return to work; and

(e) doing other things that may be prescribed by the board in order to facilitate the early and safe return to work of the worker.

(2) The worker shall co-operate in his or her early and safe return to work by

(a) contacting his or her employer as soon as possible after the work-related injury occurs and maintaining communication throughout 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 his or her pre-injury earnings;

(c) accepting suitable employment identified under paragraph (b);

(d) giving the board the information the board may request concerning the worker's return to work; and

(e) doing other things that may be prescribed by the board in order to facilitate the early and safe return to work of the worker.

(3) The board may contact the employer and the worker to monitor their progress on returning the worker to work to determine whether they are fulfilling their obligations to co-operate and to determine whether any assistance is required to facilitate the worker's return to work.

(4) Where the board determines that an employer has failed to comply with this section, the board may levy a monetary penalty on the employer as determined by order of the board of directors.

(5) A penalty payable under subsection (4) is an amount owing to the board and may be added to the employer's assessment.

(6) Where the board determines that a worker has failed to comply with this section, the board may suspend, reduce or terminate the worker's compensation.

Employer's obligation to re-employ

41(1) An employer of a worker who has been unable to work as a result of an injury and who, on the date of the work-related injury, had been employed in a continuous employment relationship for at least one year by the employer, shall offer to re-employ the worker in accordance with this section.

(2) This section does not apply to an employer who regularly employs fewer than 20 workers.

(3) When a worker is medically able to perform the essential duties of his or her pre-injury employment, an employer to whom this section applies shall,

(a) offer to re-employ the worker in the position that the worker held on the date of work-related injury; or

(b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the date of the work-related injury.

(4) When a worker is medically able to perform suitable work but is unable to perform the essential duties of his or her pre-injury employment, an employer to whom this section applies shall offer the worker the first opportunity to accept suitable employment that may become available with the employer.

(5) The board may determine the following matters on its own initiative or shall determine them if a worker and an employer disagree about the fitness of the worker to return to work

(a) where the worker has not returned to work with the employer, whether the worker is medically able to perform the essential duties of his or her pre-injury employment or to perform suitable work; and

(b) where the board has previously determined that the worker is medically able to perform suitable work, whether the worker is medically able to perform the essential duties of the worker's pre-injury employment.

(6) An employer to whom this section applies shall accommodate the work or the workplace for the worker to the extent determined by the board.

(7) An employer to whom this section applies shall be liable for the payment of up to a maximum of \$1,000 in expenses related to the accommodation of the work or the workplace for the worker as the board considers appropriate to enable the worker to return to

work. The board shall pay the expenses in excess of \$1,000 which are related to the accommodation of the work or workplace for the worker, as the board considers appropriate, to enable the worker to return to work.

(8) An employer is obligated under this section until the earliest of,

(a) two years after the date of work-related injury;

(b) one year after the worker is medically able to perform the essential duties of his or her pre-injury employment; or

(c) the date on which the worker reaches the age that a worker becomes entitled to apply for benefits under Part 1 of the *Old Age Security Act*.

(9) Where an employer has offered re-employment to a worker in accordance with this section and the worker has refused the employer's offer, the employer is no longer bound by the provisions of this section in relation to that worker.

(10) Where an employer re-employs a worker in accordance with this section and then terminates the employment within six months, subject to subsection (9), the employer is presumed not to have fulfilled the employer's obligations under this section.

(11) An employer may rebut the presumption in subsection (10) by showing that the termination of the worker's employment was not related to the work-related injury.

(12) Upon the request of a worker or on its own initiative, the board shall determine whether an employer has fulfilled the employer's obligations to the worker under this section.

(13) The board is not required to consider a request under subsection (12) by a worker who has been re-employed and whose employment is terminated within six months where the request is made more than 30 days after the date

of termination of employment.

(14) Where the board decides that an employer has not fulfilled the employer's obligations to a worker, 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 immediately preceding the beginning of the loss of earnings as a result of the work-related injury; and

(b) make payments to the worker for a maximum of one year as if the worker were entitled to payments under section 22.

(15) A penalty payable under subsection (14) is an amount owing to the board and may be added to the employer's assessment.

(16) Where this section conflicts with a collective agreement that is binding upon an employer, and the employer's obligations under this section give a worker greater re-employment terms than does the collective agreement, this section prevails over the collective agreement.

(17) Subsection (16) shall not operate to displace the seniority provisions of a collective agreement.

(18) This section shall only apply in respect of a work-related injury to a worker which occurs on or after a day to be fixed by the Commissioner in Executive Council

Provision of information

42(1) Where a worker or a worker's employer requests, a health care provider shall give the board, the worker and the employer information concerning the worker's functional abilities on the form that may be required by the board.

(2) The board shall pay a health care provider for providing information under this section and shall fix the fee to be paid.

(3) A person who receives the information in subsection (1) on behalf of an employer shall not disclose that information except to a person who is assisting the employer in returning the worker to work.

(4) If a worker has complained to the Human Rights Commission with respect to an employer's duty to re-employ and/or accommodate under section 41, the board is at liberty to provide all relevant records to the Human Rights Commission and the worker.

PART 7

COMPENSATION FOR DEPENDENTS

Death and funeral expenses

43 If a worker dies as a result of a work-related injury, the board shall pay

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

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

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

Compensation for spouse

44(1) If a worker dies as a result of a work-related injury, the board shall pay to the worker's spouse a monthly payment for life equal to 3.125 per cent of the maximum wage rate for the year of payment.

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

Benefits for dependent children

45(1) If a worker dies as a result of a work-related injury, the board shall pay each dependent child of the worker a monthly amount equal to 1.25 per cent of the maximum wage rate for the year of payment until

(a) the child reaches 19 years of age;

(b) the child reaches 21 years of age and is in full-time attendance at an educational institution recognized by the board; or

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

(2) In exceptional circumstances, the board may extend the period for the payment of benefits under paragraph (1)(b) when the board considers it appropriate and just in the circumstances, but in no case shall the board extend the period for the payment of benefits under paragraph (1)(b) beyond 25 years of age.

(3) Despite section 49, if both parent workers of a dependent child die as a result of a work-related injury, each dependent child is entitled to benefits under subsection (1) in respect of both parent workers.

Equivalent to spousal compensation

46(1) If a worker dies as a result of a work-related injury and leaves no spouse, or the spouse later dies, and a person, including a child of the worker, has or assumes responsibility for the care and custody of a dependent child of the worker who is entitled to compensation under section 45, the board shall pay all, or any portion, of compensation that would otherwise have been payable to a spouse under section 44 to the person who has assumed the responsibility for the dependent child for any period of time that the child is entitled to the compensation under section 45.

(2) If more than one person is entitled to compensation under subsection (1), the compensation shall be divided between those eligible in shares proportionate to the number

of children maintained by each of them.

Other dependents

47 The board may pay compensation, to a maximum established by order of the board of directors, to any other dependent of a worker whose death was work-related based on that dependent's pecuniary loss.

Other benefits for spouse and dependents

48(1) Where compensation is payable under this Part as the result of the death of a worker, the board may provide, where it considers advisable, counselling services, academic and vocational training or retraining to a surviving dependent spouse.

(2) The board may, where it considers advisable, provide counselling and placement services to the worker's dependents.

Limit on compensation

49 No person is entitled to compensation, other than compensation payable under section 43, in respect of the death of more than one worker, but the board shall pay the highest amount of compensation that person would otherwise be entitled to.

PART 8

RIGHT OF ACTION AND ASSIGNMENT

Limitation on legal rights

50(1) No action lies for the recovery of compensation and all claims for compensation shall be determined pursuant to this Act.

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

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

(4) Subsection (3) does not apply when the work-related injury arose from the use or operation of a vehicle.

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

Assignment of a worker's cause of action

51(1) If a worker suffers a work-related injury and the worker, the worker's legal personal representative or the dependents of a deceased worker have a cause of action in respect of the work-related injury, the board is deemed to be an assignee of the cause of action and the board is vested with all the rights to any cause of action arising out of the work-related injury.

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

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

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

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

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

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

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

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

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

(b) where money received, as a result of action taken or a settlement arrived at by the board, on behalf of the worker, the worker's legal personal representative or the worker's dependent, it shall be applied to pay legal costs, disbursements and past, present and future compensation costs of the board;

(c) all excess funds after payment of legal fees, disbursements, and present and future compensation costs of the board, shall be paid to the worker, the worker's legal personal representative or the worker's dependent.

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

PART 9

APPEALS

Limitation period for appeals

52(1) A notice of review or appeal respecting a decision referred to in sections 15, 53, 54 and 59 must be filed within, and not after, 24 months of the date that the decision was made.

(2) For all decisions referred to in sections 15, 53 and 54 made prior to July 1, 2008, the notice of review or appeal must be filed prior to July 1, 2010.

Review by hearing officer

53(1) On the written request of a worker, a dependent of a deceased worker, or an employer, a hearing officer or a panel of hearing officers shall review any decision made concerning a claim for compensation under section 15.

(2) No person involved in the determination of the claim under section 15 shall be appointed under subsection (1).

(3) When reviewing a decision, the hearing officer or panel of hearing officers shall

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

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

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

(d) subject to subsection (5) consider further evidence that the hearing officer or panel of hearing officers consider necessary to make a decision; and

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

(4) A determination of a review commenced under subsection (1) shall be made within the time prescribed by order of the board of

directors.

(5) Where new or additional evidence is presented by the worker, the employer, or their representatives, the hearing officer or panel of hearing officers shall refer the new or additional evidence to the decision-maker under section 15, responsible for the decision being reviewed, and request that the decision-maker reconsider the decision.

(6) If, after a reconsideration under subsection (5), the decision of the adjudicator does not change, the appeal originally commenced under section 53 shall continue.

Appeal to appeal tribunal

54(1) A worker, a dependent of a deceased worker, or the worker's employer may appeal a decision made under section 53 to the appeal tribunal established under Part 10.

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

(a) give the worker, a dependent of a deceased worker, or the worker's employer the right to be heard;

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

(c) subject to subsection (3) consider further evidence that it considers necessary to make a decision.

(3) Where new or additional evidence is presented, the appeal committee shall refer the new or additional evidence to the hearing officer or panel of hearing officers under section 53, responsible for the decision being reviewed, and request that the decision be reconsidered.

(4) If, after a reconsideration under subsection (3), the decision of the hearing officer or panel of hearing officers does not change, the appeal originally commenced under section 54 shall continue.

(5) A decision on an appeal commenced under subsection (1) must be made within the time prescribed by the regulations.

(6) Despite subsection (5), at the discretion of the chair, the appeal committee may extend the time for a decision when a worker, a dependent of a deceased worker, or the worker's employer requests a delay or if an extension is necessary in the circumstances.

(7) If an extension is made under subsection (6), the chair of the appeal committee shall notify the worker, the dependent of a deceased worker, the worker's employer, and the board of the extension and provide written reasons for it.

Standing of board

55 The board, in its discretion, has standing as a party at a hearing under section 54 on matters pertaining to jurisdiction or to clarify the record.

Access to claim file

56(1) A worker, or the dependent of a deceased worker, may examine and copy all information in the possession of the board in respect of their claim but shall not use the information otherwise than for the purpose of procedures before the board or the appeal tribunal unless permitted by the board.

(2) An employer who is a party to a review under section 53 or an appeal under section 54 may, on request to the board, examine and copy any information in the board's possession that the board considers relevant to an issue at the review or the appeal but shall not use the information for any purpose other than for a review under section 53 or an appeal under section 54.

(3) If an employer has made a request under subsection (2) the board shall immediately notify the worker or the dependents of a deceased worker of the information the board considers relevant and permit written objections to be made within a period of time determined by order of the board of directors and release

the information that has not been objected to by the worker or the dependents of a deceased worker.

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

(5) A worker, or a dependent of a deceased worker, or an employer may appeal a decision made under subsection (4) to the appeal tribunal. The information objected to shall not, in any event, be disclosed until the day the appeal tribunal finally disposes of the matter or the time period, as determined by order of the board of directors, for an appeal has elapsed.

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

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

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

Implementation of decision

57 Subject to an appeal under subsection 54(1) and subject to subsections 64(8), (10), and (12), the board shall

(a) implement any decision of a hearing officer or appeal tribunal; or

(b) provide the hearing officer or the appeal tribunal, the worker, the dependents of a deceased worker, and the worker's employer with an implementation plan for the decision of the hearing officer or appeal committee

within 30 days after the date of the decision of the hearing officer or appeal tribunal.

Written reasons

58(1) A decision-maker, a hearing officer, an appeal panel or the appeal tribunal shall provide written reasons for any order, ruling, or decision that it has made, with the exception of those orders, rulings, or decisions related to procedural matters.

(2) The written reasons under subsection (1) shall be written in plain language, to the fullest extent possible.

Application to Supreme Court

59(1) Either the appeal tribunal or the board may apply to the Supreme Court for a determination of whether a board of directors' policy or an appeal panel decision is consistent with the Act.

(2) In an application under subsection (1), both the appeal tribunal and the board shall have standing, regardless of which party makes the application.

(3) Despite subsections 65(3) and (4), a worker, a dependent of a deceased worker, or an employer may make an application to the Supreme Court for judicial review of a decision of the appeal tribunal on a question of law or jurisdiction.

Independent medical examination

60(1) An appeal committee may require a worker to submit to an independent medical examination or may request an independent medical opinion by a medical practitioner concerning any matter that may affect the entitlement to compensation of a worker or a dependent of a deceased worker when the appeal committee

(a) identifies a conflict or inconsistency in the health care information respecting a claim for compensation; or

(b) believes an independent medical examination or obtaining an independent medical opinion is warranted due to the complexity or uniqueness of the health care

matters involved in the claim.

(2) Before ordering an independent medical examination or opinion, an appeal committee shall

(a) appoint, in consultation with the worker and the worker's medical practitioner, an independent medical practitioner or a panel of independent medical practitioners;

(b) determine, in consultation with the worker and the worker's medical practitioner, the question to be addressed by the independent medical practitioner or panel of independent medical practitioners; and

(c) notify the worker and the worker's employer of the independent medical practitioner or panel of independent medical practitioners appointed to conduct the independent medical examination or to provide the independent medical opinion.

(3) In making an appointment or determination under paragraph (2)(a) or (b), the appeal committee shall make best efforts to reach a consensus with the worker.

(4) Subsections (2) and (3) apply in the case of a worker or a dependent of a deceased worker.

(5) The appeal committee may require a worker to submit to an independent medical examination or order an independent medical opinion in accordance with subsections (2) and (3) if a request is received from the worker's employer, which request shall be in writing and shall include reasons why the independent medical examination or opinion should be conducted or obtained.

(6) If an employer has requested an independent medical examination or opinion under subsection (5), the appeal committee may order the employer to pay the cost of the independent medical examination or opinion, including any reasonable expenses of the worker and if the employer fails to pay these expenses the board may enforce payment in the

same manner as an assessment under this Act.

(7) A worker who has made a claim for compensation or, in the case of a deceased worker, the dependent of a deceased worker who claims compensation, who has represented to the board that

(a) the worker suffers or suffered a greater functional impairment than that decided by a decision-maker or hearing officer;

(b) the worker suffers or suffered a greater limitation in working capacity than that decided by a decision-maker or hearing officer; or

(c) the decision of the decision-maker or hearing officer was based on a medical practitioner's report that was erroneous or incomplete,

may, in writing, request the appeal committee to order an independent medical examination be undertaken or independent medical opinion be provided in accordance with subsections (2) and (3).

(8) A request under subsection (7) shall be accompanied by a letter from a medical practitioner stating

(a) that, in the opinion of the medical practitioner, there is a genuine medical question to be determined; and

(b) sufficient particulars to define the question at issue.

(9) The determination by the appeal committee of a request under subsection (5) or (7) shall be made on the merits of the request.

(10) An independent medical practitioner or panel of independent medical practitioners appointed by an appeal committee under subsection (2) shall provide a written response to the question determined under paragraph (2)(b) to the appeal committee who shall distribute copies of the response to the board, the worker, and a dependent of a deceased

worker.

(11) The appeal committee shall notify the worker's employer of a response received under subsection (10) and make the response available to the worker's employer on request.

(12) A response provided to the appeal committee by an independent medical practitioner or panel of independent medical practitioners under subsection (10) is final and binding on all parties to the proceeding to the extent that the response addresses the question determined under paragraph(2)(b), unless otherwise directed by the appeal committee.

(13) The appeal committee may recommend to the board that it suspend compensation payable to a worker who refuses to undergo the independent medical examination under this section until the requirements of the appeal committee are met.

(14) This section applies only when an appeal has been commenced pursuant to subsection 54(1).

Protection of decision-makers, previous decisions and witnesses

61(1) Subject to an appeal to a hearing officer, panel of hearing officers, the appeal tribunal or an appeal panel of the board of directors, no proceedings by or before the board shall be restrained by injunction, declaration, prohibition, or other process or proceedings in any court or tribunal or be removed by certiorari, judicial review, or otherwise into any court or tribunal, in respect of any act or decision of the board within its jurisdiction nor shall any action be maintained or brought against the board, its employees, or agents of the board in respect of any act or decision done or made in good faith or in the honest belief that it was done within jurisdiction.

(2) The board is not bound by its previous rulings or decision, and all rulings and decisions it makes shall be on the merits and justice of the case before it.

(3) The board may compel the attendance of

witnesses, examine witnesses under oath, and compel the production and inspection of books, papers, documents, including electronic documents, and objects relevant to the hearing.

(4) The board may cause depositions of witnesses residing in or outside of the Yukon to be taken before any person appointed by it.

PART 10

APPEAL TRIBUNAL

Appeal tribunal

62(1) There is hereby established an appeal tribunal.

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

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

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

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

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

(5) No person who is a member of the appeal tribunal shall be at the same time a member of the board of directors or the board .

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

(7) Members of the appeal tribunal may be removed by the Commissioner in Executive Council only for cause.

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

(9) Vacancy on the appeal tribunal does not impair the power of the remaining members to act.

(10) The costs of the appeal tribunal shall be paid out of the compensation fund.

Powers of the members of the appeal tribunal

63 The members of the appeal tribunal shall

(a) examine, inquire into, hear, review and determine decisions made under subsections 14(2), 53(1) and 56(4);

(b) make rules and procedures consistent with the Act and the regulations relating to

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

(ii) disclosing conflict of interest, and

(iii) procedures for the conduct of its own affairs including hearings by appeal committees;

and

(c) report to the Minister, no later than 90 days after the end of each calendar year, with respect to

(i) the number of appeals heard, resolved, and pending before the appeal tribunal,

(ii) the activities of the appeal tribunal generally, and

(iii) any other matters that the Minister requests.

Appeal committee

64(1) Matters required to be determined by the appeal tribunal pursuant to paragraph 63(a) shall be heard by a committee of the appeal tribunal which shall be established by the chair and shall consist of

(a) the chair or alternate chair, who shall be the presiding officer of the appeal committee and who shall be a non-voting member of the committee;

(b) one member representative of employers; and

(c) one member representative of workers.

(2) When a proceeding is commenced before the appeal committee and the term of office of an appeal committee member sitting for the hearing has expired, the member shall be deemed to remain a member of the appeal committee until the proceeding is concluded.

(3) Subject to paragraph 63(b), the appeal committee is bound by board orders, policies of the board of directors and the Act and regulations.

(4) The board shall provide the appeal committee with the worker's record and all relevant policies and the committee shall consider that information and any other evidence or information it considers relevant in rendering its decision.

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

(6) A decision of the appeal committee is deemed to be a decision of the appeal tribunal.

(7) An appeal committee shall provide written reasons for a decision under subsection (5) to the worker, the dependent of a deceased worker, the worker's employer, the

board and the board of directors.

(8) If the board of directors considers that an appeal committee has not properly applied the policies established by the board of directors, or has failed to comply with the provisions of the Act or the regulations, the board of directors may, in writing and with reasons, direct the appeal committee to rehear the appeal and give fair and reasonable consideration to those policies and provisions.

(9) The board shall provide a copy of the written reasons under subsection (8) to the worker, the dependent of a deceased worker, and the worker's employer.

(10) The board of directors may stay a decision, ruling, or order of the appeal committee until a rehearing of the appeal.

(11) The decision of the appeal committee resulting from a rehearing of an appeal pursuant to a direction under subsection (8) is final, unless a court determines under subsection 59(1) that the policy in question is inconsistent with this Act.

(12) If a court determines, pursuant to an application under subsection 59(1), that the policy in question is inconsistent with this Act, the board of directors may direct the appeal committee to rehear the appeal in accordance with subsection (8).

Jurisdiction of the appeal tribunal

65(1) The appeal tribunal has exclusive jurisdiction to examine, inquire into, hear, and determine all matters arising in respect of an appeal from a decision of the board under subsection 14(2), from a decision of a hearing officer under subsection 53(1), or from a decision of the president of the board under subsection 56(4) and it may confirm, reverse, or vary the decision.

(2) Without restricting the generality of subsection (1), the exclusive jurisdiction includes the power to determine, on an appeal pursuant to subsection 15(2) or 54(1)

(a) whether a worker's injury was work-related;

(b) the duration and degree of a work-related injury;

(c) the weekly loss of earnings of a worker resulting from a work-related injury;

(d) the average weekly earnings of a worker;

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

(f) whether a person is a dependent;

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

(h) whether a worker or a dependent is entitled to compensation.

(3) Subject to subsections 64(8) and (12), the acts or decisions of the appeal tribunal on any matter within its jurisdiction are final and conclusive and not open to question or review in any court.

(4) No proceedings by or before the appeal tribunal shall be restrained by injunction, declaration, prohibition, or other process or proceedings in any court or be removed by *certiorari*, judicial review, or otherwise in any court, in respect of any act or decision of the appeal tribunal within its jurisdiction.

(5) No action shall be maintained or brought against the appeal tribunal, or any member, employee, or agent thereof in respect of any act or decision done or made in good faith or in the honest belief that it was done within the appeal tribunal's jurisdiction.

(6) The appeal tribunal may at any time examine, inquire into, reopen, and re-hear any matter that it has dealt with previously and may rescind or vary any decision or order previously made by it.

(7) The appeal tribunal is not bound by its previous rulings or decisions.

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

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

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

(11) The appeal committee may adjourn an appeal commenced under section 54 in order to refer a question on jurisdiction, procedure or policy to the board of directors and the board of directors shall respond within thirty working days.

PART 11

ASSESSMENTS

Assessments

66(1) The board shall assess employers for any sums that the board may require for the administration of this Act.

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

(3) Assessments may, in the first instance, be based on

(a) estimates of the employer's payroll for the year furnished under section 78

(b) actual payroll; or

(c) as determined by the board under section 79.

(4) The board of directors shall, by order,

establish a minimum assessment.

Assessment payable

67(1) All assessments are due on January 1 in the year for which they are made.

(2) The board may provide for the payment of assessments by instalment, in which case the assessment for the year is payable on the dates determined by the board and where late payments are permitted, the board may charge interest, as determined by order of the board of directors.

Liability for assessment

68(1) The board has a cause of action for any unpaid assessment and is entitled to the costs of any action to recover the unpaid assessment.

(2) If, for any reason, an employer liable to assessment is not assessed by the board, the employer is liable for the amount for which the employer should have been assessed, or as much thereof as the board considers reasonable, and payment of that amount may be enforced as if the employer had been assessed for that amount and the board may charge interest against that assessment at a rate as determined by order of the board of directors.

Assessment rates

69(1) The board of directors may provide for different assessment rates applicable to each class and sub-class of industry created under section 70.

(2) Publication in the *Yukon Gazette* of a statement of percentages and rates set by the board of directors applicable to specific industries constitutes an assessment on, and notice to, each employer in those industries for the period set out in the *Yukon Gazette*.

Employer classification

70(1) For the purpose of section 66, the board of directors may establish classes and sub-

classes of industries as it considers appropriate.

(2) The board shall assign every employer, or parts of an employer's undertaking, to an appropriate class or sub-class based on the industry or industries in which the employer operates.

Employer's experience accounts

71(1) The board shall maintain experience accounts for each employer, indicating the assessments levied and the cost of all claims chargeable in respect of the employer.

(2) If, in the opinion of the board, a worker's work-related injury results, in whole or in part, from the negligence of an employer who is not the employer of the injured worker, or a worker of that employer

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

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

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

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

Super-assessment

72(1) If the board determines that the employer has failed to have adequate practices and procedures for prevention, and they present higher than normal claim costs, the board may establish an assessment that covers the employer's higher claim costs, which is in addition to the employer's assessment costs.

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

Experience and merit rating programs

73 The board of directors may, by order, establish experience programs, merit rating programs or other incentive programs to encourage employers to prevent injuries and occupational diseases and to encourage workers' return to work.

Liability for assessment of contractors and sub-contractors

74(1) If any work is performed by a contractor for any person or organization operating in an industry (the "principal"), both the principal and the contractor are jointly and severally liable for any assessment under this Act relating to that work, that amount may, in the discretion of the board, be collected from either of them, or partly from one and partly from the other.

(2) When any work is performed under a sub-contract, the principal, the contractor, and the subcontractor are each jointly and severally liable for any assessment relating to that work; and that amount may be collected from either of them or partly from one and partly from the other.

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

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

contract.

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

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

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

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

Security for payment of assessment

75(1) The board may serve notice on an employer requiring the employer to provide security, in an amount and form considered appropriate by the board, for the payment of assessments that are or might be levied against the employer.

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

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

Penalty for non-payment of assessment or provision of security

76 If an assessment is not paid when required by the board, or security is not provided when required, the board will charge

interest in an amount as determined by order of the board of directors, the payment of which may be enforced in the same manner as the payment of an assessment.

Order to cease work

77(1) If an employer defaults in furnishing the security required by the board or if an employer defaults in the payment of any amount due to the board, the board may order the employer to cease employing workers until the default is remedied to the board's satisfaction.

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

Statement and estimate of earnings

78(1) Every employer shall, no later than the last day of February in each year or at any other time required by the board, provide, in a manner determined by the board, the board with a statement

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

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

(c) of the nature of its industry;

(d) listing all sub-contractors and the amounts paid to them; and

(e) of any additional information that the board may require.

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

(3) Subject to section 7, employers must declare the earnings of a worker who would be entitled to compensation and who is employed outside of the Yukon as if the worker were employed in the Yukon.

(4) All earnings paid to a worker shall be reported to the board but the employer is not responsible for payment of a worker's assessment in excess of the maximum wage rate established by the board of directors.

(5) Unless satisfactory evidence of an employer's actual payroll for any period is provided to the board, the payroll estimated by the board under this section or under subsection 79(1) is deemed to be the actual payroll of the employer.

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

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

Provisional assessment

79(1) If

(a) an employer does not comply with section 78 within the time required by the Act or by the board; or

(b) the information provided under section 78 does not, in the opinion of the board, reflect the probable amount of the payroll of the employer or correctly describe the nature of the work carried on,

the board may assess on any sum that is, in the opinion of the board, the probable payroll of the employer or nature of the employer's industry.

(2) If it is later determined that the assessment under subsection (1) is different from the required assessment, the employer or the board is liable to pay to the other the difference and the board may charge interest in an amount established by the board of directors

for the outstanding assessment or pay interest in an amount established by the board of directors where the board has overcharged assessments to an employer.

Employer commencing or recommencing an industry

80 When an employer employing workers commences or recommences in an industry in the Yukon, the employer employing workers shall, within ten days of commencement or recommencement, provide to the board the statements required under subsection 78(1) and the board may charge interest on the outstanding assessment in an amount as determined by the board of directors.

Engagement in work not under the Act

81(1) When an employer engaged in an industry to which this Act applies directs a worker who is working in that industry to do other work that is not in an industry to which this Act applies and the worker suffers a work-related injury as a result of that other work, that other work shall be deemed to be in the industry of the employer to which this Act applies and the employer shall pay to the board in respect of that other work an additional assessment up to the full cost of the claim.

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

Employer ceasing its business

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

Records of earnings and operations

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

required by the board.

Examination

84(1) Any person authorized by the board may examine the books and accounts of any employer and make any other inquiry the board considers necessary for administering this Act.

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

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

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

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

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

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

Employer's right of appeal of an assessment

85(1) Employers may appeal to the board of directors any decision made by the board relating to assessments made by the board.

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

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

PART 12

ENFORCEMENT AND PRIORITIES

Power to enforce payment

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

Priorities

87(1) In this section "security interest" includes a security interest as defined by the *Personal Property Security Act* and includes a mortgage, debenture, lien, pledge, charge, deemed or actual trust, assignment (including an assignment of book debts), encumbrance, or claim of any kind however or whenever created or provided for.

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

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

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

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

(c) on any judgment for an amount referred

to in paragraphs (a) and (b)

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

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

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

(4) Subject to subsection (5) the security interest created under subsection (3) is payable in priority over all writs, judgments, debts, security interests, and mortgages as defined by the *Land Titles Act* and the *Personal Property Security Act*, rights of distress, assignments (including the assignment of book debts), and other claims or encumbrances of whatever kind of any body, person, employer whether legal or equitable in nature, whether absolute or not, whether specific or floating, whether crystallized or otherwise perfected or not and whenever created or to be created.

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

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

behalf of the assignor, regardless of

(a) whether the assignment is absolute or not; or

(b) whether the assignment is made before or after the date the contribution or other money becomes due or the default occurs.

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

(a) an assessment; or

(b) any other money due to the board under this Act, any security interest that is contained in a security agreement as defined by the *Personal Property Security Act*, that is created by the employer

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

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

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

Enforcement of assessments

88(1) The board may issue a certificate stating what monies are owed to it pursuant to this Act and direct the payment of the amount by the employer, body, or person that owes those monies under this Act.

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

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

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

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

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

Additional penalty for defaults by employer

89 If an employer

(a) refuses or neglects to provide a payroll return or other statement required under this Act; or

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

in addition to any penalty or other liability to which the employer may be subject as a result of their refusal, the board may, in respect of each work-related injury incurred by a worker in their employ that occurs during the period of default, require the employer to pay to the board an additional assessment of up to the costs of the claim.

Charge on the assets of employer

90(1) If there is a transfer or sale of any business or any industry to which this Act applies or of the stock or equipment in bulk used in connection with any such business or industry, it is the duty of the purchaser, before paying any part of the purchase price or giving the seller any security therefor, to demand and secure from the seller, and it is the duty of the seller to furnish to the purchaser, a certificate from the board stating that it has no claim in respect of the business or industry or stock or equipment in bulk.

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

PART 13

COMPENSATION FUND

Formation of the compensation fund

91(1) An account called the compensation fund shall be established within the Yukon Consolidated Revenue Fund into which all monies received by the board shall be deposited.

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

Use of the fund

92(1) No amount may be paid out of the compensation fund except as provided by this Act.

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

(3) Legal costs or expenses incurred in the administration of this Act by any person other than the board or a person under subsection 51(2) may not be paid out of the compensation fund.

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

(5) The board, pursuant to a board of directors policy, may provide for and maintain contingency reserves to

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

(b) provide for facilities and expenses related to the rehabilitation of injured workers;

(c) provide for increased costs resulting from the enhancement of a worker's work-related injury due to a previous work-related injury;

(d) provide for the cost of occupational diseases.

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

93(1) If, at any time, there is no money in the compensation fund for the payment of compensation that has become due, the Commissioner in Executive Council may direct that the compensation payable shall be advanced out of the Yukon Consolidated Revenue Fund.

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

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

Financial Administration Act

94(1) The receipt and payment of money by the board is subject to the *Financial Administration Act*.

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

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

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

(5) Despite the *Financial Administration Act*,

(a) the investment of money by the board, in accordance with the board of directors policy, is subject to the *Financial Administration Act*, except section 39 of that Act;

(b) Part VI of the *Financial Administration Act* shall not apply to the collection of any money due to the board under this Act; and

(c) a Management board directive shall not apply to the board unless the Commissioner in Executive Council prescribes that it shall apply.

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

Investments

95(1) Subject to section 94, the board may invest the compensation fund in any investment permitted by the *Trustee Act*.

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

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

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

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

Actuarial report

96 The board of directors shall cause an actuarial valuation of the compensation fund to be performed by a fellow of the Canadian Institute of Actuaries at least once every three years, a report of which shall be included in the next report of the board of directors to the Minister under paragraph 100(1)(c).

Audit

97(1) The accounts and financial transactions of the compensation fund are subject to audit of the Auditor General of Canada, or any other auditor appointed by the Commissioner in Executive Council, and for that purpose the auditor is entitled to

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

(b) require from the board of directors or the board, any information that the auditor considers necessary.

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

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

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

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

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

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

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

(6) The annual report of the auditor shall be included in the report referred to in paragraph 100(1)(c) next tabled in the Legislative Assembly.

PART 13

THE BOARD OF DIRECTORS

The board of directors

98(1) The board of directors shall be composed of

(a) the chair, as appointed under subsection (2);

(b) no fewer than four and no more than six voting members of the board of directors appointed by the Commissioner in Executive Council consisting of an equal number of members representative of employers and workers; and

(c) the president.

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

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

(4) A person shall be appointed to the board of directors based on their education, training or experience.

(5) For the purpose of making appointments under subsection (4), the Minister shall

(a) appoint employer representatives to the board of directors from at least three names of qualified persons provided by employers and employer organizations;

(b) appoint worker representatives to the board of directors from at least three names of qualified persons provided by workers and worker organizations; and

(c) consult with employer and worker organizations about the appointment of the chair and alternate chair.

(6) Where at least three names of qualified persons are not provided as required by paragraphs (5)(a) or (b), the Minister may appoint a qualified worker or employer representative other than those provided under paragraphs (5)(a) or (b).

(7) At no time may a person who is a voting member of the board of directors and appointed under subsection (1) to be representative of workers or employers, be at the same time an

employee of the Yukon Government.

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

(9) Members of the board of directors, other than the president, may be removed by the Commissioner in Executive Council only for cause.

(10) The terms and conditions of appointment to the board of directors shall be as established by the Commissioner in Executive Council and shall include the requirement that members of the board of directors be familiar with the purposes and objectives of the compensation system under this Act.

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

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

(13) The members of the board of directors shall meet at least once a month and may conduct proceedings in any manner it considers appropriate.

Duties of the board of directors

99 The duties of the board of directors are to

(a) ensure that workers, dependents of deceased workers, and employers are treated with compassion, respect, and fairness;

(b) act in good faith when conducting the business of the board of directors and in administering the compensation system under this Act; and

(c) subject to subsection 117(1), maintain confidentiality in matters respecting claims for compensation, individual employer assessments and workplace safety incidents when discussing or conducting the affairs of

the compensation system.

Powers of the members of the board of directors

100(1) The members of the board of directors shall

(a) establish the policies of the board of directors;

(b) create rules to

(i) define circumstances that will constitute conflict of interest for the board of directors,

(ii) govern disclosure of conflicts of interest, and

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

(c) provide to the Minister an annual report no later than April 30th of each year, which will include

(i) the audited financial statements,

(ii) actuarial reviews of the liabilities of the compensation fund,

(iii) financial and management practices, policies and plans including a service plan that sets out the board of directors' priorities, objectives and performance measures, and

(iv) all matters regarding the activities of the board of directors.

(d) report in a timely manner on any matters that the Minister may request;

(e) consider and approve operating and capital budgets of the board;

(f) plan for the future of the board;

(g) examine, inquire into, hear and determine assessment matters,

determinations under subsection 50(5) and appeals under the *Occupational Health and Safety Act*;

(h) make publicly available all policies of the board of directors relating to claims for compensation, assessment procedures, and prevention of work-related injuries;

(i) before the adoption of any policy affecting claims for compensation or assessment matters, consult with employers, employer organizations, workers and worker organizations;

(j) promote awareness of the basic rights and obligations of workers and employers under this Act; and

(k) establish the functions and duties of the president;

(2) Despite the authority of the Commissioner in Executive Council, or the Public Service Commission to assign powers and duties to the President, the President is solely responsible and accountable to the board of directors; and annually or such other time as requested by the Minister responsible for the board, the board of directors shall provide a report on accountability of the president for the administration of the board to the Minister.

Orders of the board of directors

101 The members of the board of directors may by order make rules consistent with this Act and the regulations relating to

(a) the conduct of proceedings before the board of directors;

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

(c) the certification or publication of orders and decisions of the board of directors;

(d) the establishment of procedures and time limits governing reviews and appeals; and

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

Appearance at Legislative Assembly

102 The chair of the board of directors and the president of the board shall appear annually before the Legislative Assembly.

Release of annual reports

103(1) The Minister shall table the report of the board of directors under paragraph 100(1)(c) in the Legislative Assembly within 15 days after it has been published if the Assembly is then sitting, or otherwise within 15 days after the start of the next sitting.

(2) The Minister shall make the report of the board of directors under paragraph 100(1)(c) publicly available within 30 days after its receipt by the Minister.

Annual meeting

104(1) Once the annual report is filed under subsection 103(2), the board of directors shall establish a date, convenient to worker and employer organizations, for an annual meeting.

(2) At the annual meeting, the board of directors shall provide copies of the annual report provided to the Minister under paragraph 100(1)(c) and discuss the contents of the annual report, including the administration of the compensation system and policies of the board of directors.

Jurisdiction of the board of directors or the board

105(1) Subject to subsection 65(1), the board of directors has the exclusive jurisdiction to examine, inquire into, hear, determine, and interpret all matters and questions under this Act.

(2) Without restricting the generality of subsection (1), the exclusive jurisdiction

includes the power to determine

(a) whether an industry is within the scope of this Act;

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

(c) employment safety.

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

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

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

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

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

(8) The board of directors may cause depositions of witnesses residing in or outside of the Yukon to be taken before any person appointed by it in the same way as the Supreme

Court can in civil actions.

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

Appeal panel of the board of directors

106(1) Matters required to be determined by the members of the board of directors under paragraph 100(1)(g) shall be heard by an appeal panel of the board of directors which shall be established by the chair and shall consist of

- (a) the chair or alternate chair, who shall be the presiding officer of the panel;
- (b) one member representative of employers; and
- (c) one member representative of workers.

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

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

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

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

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

Public register

107 The board shall establish and maintain a public register, accessible during business

hours, containing

- (a) all policies, rules, and procedures of the board of directors and the board and the appeal tribunal related to the determination of claims for compensation;
- (b) all decisions of the appeal tribunal;
- (c) the reports of the board of directors required under paragraphs 100(1) (c) and (d), and subsection 104(2);
- (d) the report of the workers' advocate required under subsection 109(7);
- (e) the report of the appeal tribunal required under paragraph 63(c); and
- (f) any other information as determined by the board.

PART 15

MEDICAL CONSULTANT

Medical consultant

108 In accordance with paragraph 116(1)(e), the president shall appoint one or more medical consultants to

- (a) provide ongoing educational and advisory assistance to the board on health care matters generally;
- (b) advise the board with respect to health care issues involved in claims for compensation; and
- (c) perform any other duties related to health care issues as determined by the president.

PART 16

WORKERS' ADVOCATE

Workers' advocate

109(1) The Minister of Justice shall appoint a workers' advocate who, from the date of appointment, shall be a person appointed to a

position in the public service.

(2) The workers' advocate shall

(a) advise workers and the dependents of deceased workers on the intent, process, and procedures of the compensation system, including the administration of the Act, the regulations, and the policies of the board of directors;

(b) advise workers and the dependents of deceased workers on the effect and meaning of decisions made under the Act with respect to their claims for compensation; and

(c) assist, or at their request, represent a worker or a dependent of a deceased worker in respect of any claim for compensation, including communicating with or appearing before a decision-maker, hearing officer, or appeal committee.

(3) The workers' advocate may refuse to perform any or all of the duties under subsection (2) if, in the opinion of the workers' advocate

(a) no legitimate claim for compensation can be advanced by or on behalf of the worker or the dependents of a deceased worker; or

(b) the expectations of the worker or the dependents of a deceased worker are unreasonable in the circumstances of the claim.

(4) The workers' advocate shall provide written reasons for any refusal under subsection (3) to the worker or the dependents of a deceased worker.

(5) The Minister of Justice shall prepare an annual budget for the joint approval by the board of directors and the Minister of Justice, which shall be paid out of the compensation fund.

(6) The budget for the workers' advocate must be approved before December 31st of the year preceding the year of the budget.

(7) Within 90 days after the end of each calendar year, the workers' advocate shall submit a report summarizing the workers' advocate's activities in the preceding year and accounting for expenditures in that year to the Minister of Justice who shall make the report available to the board of directors, organizations representing employers and workers, and the public.

(8) Subject to the budget approved by subsection (5), and the *Public Service Act*, the workers' advocate may employ a deputy and any other employees or contract for the provision of any services that the workers' advocate considers necessary for the efficient operation of the office of the workers' advocate.

PART 17

OFFENCES, PENALTIES AND ASSIGNMENT

General offences

110(1) Any person who violates a provision of this Act commits an offence and, if no other penalty is provided, is liable on summary conviction to a fine of up to \$5,000.00 or up to six months imprisonment or both.

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

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

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

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

(b) the payment to the board of an

assessment or other amount;

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

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

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

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

Providing false information

111 A person required under this Act to provide information to the board who knowingly provides the board with any false or misleading information is guilty of an offence and is liable

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

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

Coercion not to file a claim

112 It is an offence under this Act for any person to discourage a worker from making a claim for compensation when the worker has or may have suffered a work-related injury.

Contribution, waiver, or assignment by worker

113(1) It is an offence under this Act for an employer to

(a) either directly or indirectly deduct from

the earnings of any workers any part of any sum that the employer is or may become liable to pay to the board; or

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

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

Injunction

114(1) If, on the application of an authorized representative of the board, it appears to the Supreme Court that a person has committed or is about to commit, an offence under this Act, the Court may grant an injunction ordering any person named in the application

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

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

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

PART 18

GENERAL

Powers of the board

115 The board has the capacity and the rights, powers and privileges of a natural person.

The president and staff

116(1) On the recommendation of the board of directors and subject to certification by the Public Service Commission, the Commissioner in Executive Council shall appoint a president of the board who shall be responsible for

- (a) the administration of the board;
- (b) the development and implementation of the board of directors' policies;
- (c) all functions related to personnel of the board;
- (d) the appointment of one or more hearing officers to review any decision made under section 14 concerning a claim for compensation;
- (e) the appointment of one or more medical consultants to provide assistance to the board of directors or the board, in accordance with section 107;
- (f) the preparation of capital and operating budgets of the board;
- (g) the authorization of expenditures in accordance with approved capital and operating budgets; and
- (h) any other functions and duties related to the administration of this Act assigned by the board of directors.

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

- (3) The president may delegate any powers

and duties to an employee of the board.

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

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

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

Confidentiality

117(1) No member of the board of directors, the appeal tribunal, the board, or any employee or agent of the board of directors, the appeal tribunal or the board authorized to make an examination or inquiry under this Act, shall divulge or allow to be divulged, except in the performance of their duties or under authority of the board of directors or the board, any information obtained in the administration of this Act.

(2) Despite subsection (1), a person authorized by the president may divulge information respecting the business of an employer or a claim of a worker to officials of other governments or other workers' compensation boards.

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

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

Non-compellability

118 No member of the board of directors, the appeal tribunal or the board, and no workers' advocate, or any employee or agent of the board of directors, the appeal tribunal, the board or workers' advocate, shall be required to give testimony in a civil suit to which the board of directors, the appeal tribunal or the board is not a party with regard to information obtained in the discharge of a duty or obligation under this Act.

Records and notices

119(1) If the board sends a notice to an employer that the board requires to be posted in the employer's workplace, the employer shall post the notices in a prominent location in the workplace.

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

(3) An order, notice, or other document may be served by registered mail to the last known address of the person or entity it is addressed to and when served by registered mail if the post office receipt is received by the board, that service shall be deemed to be good and sufficient service.

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

Illiteracy

120 The board of directors, the board and the appeal tribunal may waive any requirement under this Act for an illiterate person to provide written notice and may accept instead notice in any form the board of directors, the board or the appeal tribunal consider appropriate.

Garnishment

121(1) Compensation is not subject to the

Garnishee Act.

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

Prohibition

122 The Minister shall not be directly or indirectly involved in a determination of a claim for compensation or employer assessment.

Recovery of overpaid compensation

123 If the board pays compensation to which a person is not entitled, that amount may be recovered from the person by the board in whole or in part by way of

- (a) a debt due to it by that person;
- (b) set-off against any compensation payable to that person.

Interjurisdictional agreements

124(1) Despite section 117, the board may enter into agreements with other workers' compensation boards in other provinces or territories, agencies of the Government of Canada or provinces, territories or First Nations

- (a) for the exchange of information acquired by the board in the administration of this Act; or
- (b) for any other purpose necessary for the administration of this Act.

(2) The board may enter into an agreement with the workers' compensation board or similar body in another province or territory 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 Yukon and part of the work is performed in that other province or territory, in order to ensure that those workers or their dependents receive compensation either in conformity with this Act or in conformity with the Act in force in the other province or territory relating to workers' compensation and to avoid duplication of assessments.

(3) Payment out of the compensation fund, of money required to be paid under an agreement under subsection (2) 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 under the agreement shall be paid into the compensation fund.

(4) The board may enter into an agreement with the Government of Canada or with the appropriate authority in any province or territory providing for the sharing of the costs of claims in proportion to the exposure or estimated amount of exposure to probable causes of the work-related injury giving rise to the claims encountered by the claimants within their respective jurisdictions.

Ministerial investigation

125 The Minister may, by written order, require the board of directors to investigate any matter under its jurisdiction in the manner requested by the Minister.

Yukon Government

126(1) The Yukon Government shall pay to the board

(a) the cost of compensation for all work-related injuries of its workers that were caused before 1993 together with an administrative fee as determined by the board of directors through negotiation with the Yukon Government.;

(b) annual assessments after 1992 for all workers other than workers designated as workers under subsection 6(1) or 6(2) of this

Act;

(c) the cost of compensation for all work-related injuries of those persons designated as workers under subsection 6(1) or 6(2) of this Act, together with an administrative fee as determined by the board of directors through negotiation with the Yukon Government.

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

(3) Subsection 70(2), section 84 and all of Part 12 of this Act shall not apply to the Yukon Government.

Transitional

127(1) If a worker is entitled to compensation as a result of a work-related injury caused

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

(b) subject to subsection 20(2) and paragraphs (c) to (e), in 1992 or earlier, the worker's entitlement to compensation shall until January 1, 2002 be determined pursuant to predecessor legislation as it was in force before January 1, 1992;

(c) after January 1, 2002, if a worker is in receipt of compensation, the worker's wage rate shall be the maximum wage rate determined pursuant to section 124 of this Act;

(d) section 19 of this Act shall apply to the indexing of the worker's wage rate determined after January 1, 2002;

(e) for the purpose of section 19 of this Act, the worker's anniversary date shall be considered to be January 1, 2002;

(f) in March 31, 2000 or earlier, the worker's

entitlement to compensation shall be determined pursuant to predecessor legislation as it was in force before April 1, 2000;

(g) for workers who suffered a work-related injury between July 31, 1973 and December 31, 1982

(i) the maximum wage rate is set at \$56,000, effective January 1, 2009,

(ii) the maximum wage rate increase will be set, effective January 1st of each subsequent year, by the board of directors adjusting this amount by the percentage change in the average index in the Consumer Price Index for Whitehorse, calculated using the percent change between the average index for the preceding twelve month period ending October 31st and the same time period one year earlier, so long as the percentage change is not more than four percent or less than zero percent.

(2) When a worker, a dependent of a deceased worker, or the worker's employer has commenced a review pursuant to section 53 on March 31, 2000 or earlier, the review shall be determined pursuant to predecessor legislation as it was in force before April 1, 2000.

(3) When a worker, a dependent of a deceased worker, or the worker's employer has commenced an appeal pursuant to section 54 on March 31, 2000 or earlier, the appeal shall be determined pursuant to predecessor legislation as it was in force before April 1, 2000.

Regulations

128 The Commissioner in Executive Council may make regulations prescribing anything that by this Act is to be prescribed by regulation.

Review

129 The Minister may conduct a comprehensive review of this Act in 2013 including a review of the effect of retirement on

entitlement.

Coming into force

130 Subject to subsection 41(18), this Act or any provision of it comes into force on a day or days to be fixed by the Commissioner in Executive Council.

Repeal

131 The *Workers' Compensation Act* is repealed.