

CONSOLIDATION OF WORKERS' COMPENSATION ACT

S.Nu. 2007,c.15

In force April 1, 2008: SI-003-2008

(Current to: August 11, 2010)

The following provisions have been deleted for the purposes of this consolidation:
s.177, Schedule (Consequential Amendments)

AS AMENDED BY :

S.Nu. 2007,c.10,s.39(3)

s.39(3) in force November 8, 2007

S.Nu. 2010,c.20

In force June 10, 2010

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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WORKERS' COMPENSATION ACT

PART 1

INTERPRETATION, PURPOSE AND APPLICATION

Interpretation

Definitions

1. (1) In this Act,

"Appeals Tribunal" means the Appeals Tribunal continued under the *Workers' Compensation Act* (Northwest Territories); (*Tribunal d'appel*)

"assessment" means a charge calculated by the Commission and levied on an employer under section 76; (*cotisation*)

"child" means , in respect of a worker, a natural or adopted child of the worker or a person for whom the worker stands or stood in the place of a parent; (*enfant*)

"claimant" means a person claiming compensation; (*demandeur*)

"Commission" means the Workers' Safety and Compensation Commission established under the *Workers' Compensation Act* (Northwest Territories); (*Commission*)

"compensation" means any medical aid, payment, money, pension, vocational rehabilitation, counselling or other benefit payable or provided under this Act as a result of a worker's personal injury, disease or death; (*indemnité* or *indemnisation*)

"contract of service" means a contract of service or apprenticeship, written or oral, expressed or implied; (*contrat de louage de services*)

"Corporate Secretary" means the Corporate Secretary of the Commission appointed under subsection 101(6); (*secrétaire général*)

"dentist" means a person who is authorized by law to practice dentistry in the place where the person is so practising; (*dentiste*)

"disability" means the condition of having reduced physical or mental abilities caused by the worker's personal injury or disease; (*incapacité*)

"disease" means an unhealthy condition of the body or mind; (*maladie*)

"eligible claimant" means a person who has claimed compensation or who is entitled to claim and receive compensation; (*demandeur admissible*)

"employer" means a person or entity considered to be an employer under section 8; (*employeur*)

"family member" means, in respect of a person,

- (a) a brother, sister, half-brother or half-sister of the person,
- (b) a parent, step-parent or grandparent of the person, and
- (c) a person who stands or stood in the place of a parent for the person; (*membre de la famille*)

"Governance Council" means the Governance Council continued by subsection 83(1); (*conseil de gestion*)

"harvesting wildlife" means to hunt, capture, harvest or gather flora or fauna, including fish; (*récolte de ressources fauniques*)

"health care facility" means a "health facility" as defined in the *Hospital Insurance and Health and Social Services Administration Act*, and any other facility recognized by the Commission as providing a health program or service; (*établissement de soins de santé*)

"health care provider" means a chiropractor, dentist, nurse, occupational therapist, optometrist, physical therapist, physician, psychologist or another class of persons whose qualifications to practice any of the healing professions are accepted by the Commission; (*pourvoyeur de soins de santé*)

"inspector" means an inspector designated under section 104; (*inspecteur*)

"learner" means a person referred to in subparagraph 4(1)(b)(i); (*stagiaire*)

"medical aid" includes

- (a) drugs, medical devices, medical care, dental care, surgery, psychiatric or psychological care, physical rehabilitation and any other health service provided by a health care provider or health care facility,
- (b) the transportation of an injured or diseased worker for the purpose of receiving medical aid, and
- (c) any other treatment to facilitate the recovery of an injured or diseased worker or to mitigate his or her disability; (*aide médicale*)

"net monthly remuneration" means an amount equal to 1/12 of the net annual remuneration of the worker, determined under section 59, for the year in which the personal injury, disease or death occurred; (*rémunération mensuelle nette*)

"officer" means, in respect of the Commission, the President, Corporate Secretary and any other member of the staff of the Commission who holds a position designated by the President as being that of an officer; (*dirigeant*)

"payroll" means, in respect of an employer, the total of the remuneration paid by an employer in any year to all its workers; (*masse salariale*)

"pension" means a periodic payment of money paid as compensation in respect of a worker's permanent disability or death; (*pension*)

"physician" means a person who is authorized by law to practice medicine in the place where the person is so practising; (*médecin*)

"policy of the Governance Council" means a policy established by the Governance Council under paragraph 89(b); (*politique du conseil de gestion*)

"President" means the President of the Commission appointed under subsection 101(1); (*président de la Commission*)

"remuneration" means the income considered to be remuneration for the purposes of this Act under section 57; (*rémunération*)

"Review Committee" means the Review Committee of the Commission continued by subsection 112(1); (*comité d'examen*)

"school" includes a university, public or private college, institute of technology, agricultural and vocational college or vocational training centre; (*école*)

"spouse" means a person considered to be a spouse for the purposes of this Act under section 7; (*conjoint*)

"worker" means a person deemed to be or designated as a worker for the purposes of this Act under section 4, 5 or 6; (*travailleur*)

"Workers' Advisor" means the Workers' Advisor appointed under subsection 107(3); (*conseiller des travailleurs*)

"Workers' Protection Fund" means the fund continued by subsection 67(1) for the payment of compensation and other outlays and expenses authorized under this Act; (*Fonds de protection des travailleurs*)

"Year's Maximum Insurable Remuneration" means a prescribed maximum remuneration for any year for the purposes of determining

- (a) the compensation payable to workers or to a harvester of wildlife deemed to be a worker under subsection 5(1), and

- (b) the assessable payroll of employers for the year. (*maximum annuel de rémunération assurable*)

Dependent

(2) For the purposes of this Act, a person is considered to be dependent on a deceased worker if, on the day immediately preceding the day the worker's death occurred,

- (a) the worker had a legal obligation to support the person; or
- (b) the worker was paying for all or a significant part of the person's ordinary necessities of life.

Staff of the Commission

(3) For the purposes of this Act, the "staff of the Commission"

- (a) means those persons who are employed in the administration of this Act, and any other enactment for which the Commission is responsible; and
- (b) does not include a member of the staff of the Appeals Tribunal or the Office of the Workers' Advisor.

Corporate rights and powers

(4) Section 17 of the Interpretation Act applies to the Commission as if it were a corporation established by an enactment of Nunavut.

Purpose

Purpose of Act

1.1. The purpose of this Act is to establish an open, fair and comprehensive system of compulsory no-fault mutual insurance for workers and employers that

- (a) provides for the sustainable payment of compensation to injured or diseased workers, the mitigation of the effects of workplace injuries and disease, and the eventual return of these workers to the workplace to perform work of which they are capable;
- (b) ensures the quick and secure payment of compensation, without regard to fault and without court proceedings, to injured or diseased workers or, in the case of a fatality, to the dependents of the worker;
- (c) provides for the independent administration of this compensation system and the adjudication of claims in a manner that treats employers, workers and claimants fairly, compassionately and respectfully;
- (d) ensures the compensation system is accountable, through the Minister and the Legislative Assembly, to the public for its decisions and for the administration of this Act; and
- (e) is dedicated to the continued improvement of this compensation system and the ultimate goal of eliminating workplace injuries and diseases.

Government of Nunavut

Government bound by Act

2. This Act binds the Government of Nunavut.

Application

Scope of Act

3. (1) This Act applies to all employers and workers in Nunavut.

Injuries and diseases

(2) Except as otherwise provided, this Act applies to personal injuries, diseases and deaths that occur after this Act comes into force.

Federal employees

(3) This Act does not apply to an employee, as defined in the *Government Employees Compensation Act* (Canada).

Workers

4. (1) The following persons are considered to be workers for the purposes of this Act:

- (a) a person who enters into or works under a contract of service;
- (b) a person who, although not under a contract of service, is
 - (i) undergoing training or probationary work as a preliminary to employment with an employer,
 - (ii) engaged in, or training for, rescue or recovery services, ambulance services or firefighting services,
 - (iii) temporarily engaged in carrying out measures relating to emergencies under the *Emergency Measures Act*;
- (c) a student who is participating in a work training or similar program provided by a school;
- (d) a patient who is participating in a work training or similar program provided by a health care facility;
- (e) a person who is committed to a correctional centre under the *Corrections Act* and working in a work release program outside the centre;
- (f) a person designated as a worker by the Commission under section 6;
- (g) a person deemed to be a worker by the regulations.

Determination of worker status

(2) The Commission may determine that a person is a worker if the Commission considers that, in substance, the person has entered into or is working under a contract of service with another person, despite the appearance of a different arrangement between the two persons. S.Nu. 2007,c.10,s.39(3).

Harvesters of wildlife

- 5.** (1) A person whose remuneration comes primarily from harvesting wildlife is deemed to be a worker, if he or she
- (a) is a resident of Nunavut;
 - (b) is lawfully harvesting wildlife under a land claims agreement, a treaty or other Aboriginal right or the *Wildlife Act*; and
 - (c) is not harvesting the wildlife under a contract of service.

Costs of compensation

(2) Despite any other provision of this Act, the costs of providing compensation to any person referred to in subsection (1) are to be paid in accordance with an agreement entered into between the Commission and the Government of Nunavut.

Designation of persons as workers

- 6.** (1) The Commission may, on application, designate as a worker any person who would not otherwise be considered a worker.

Related matters

- (2) The Commission shall, when designating a person as a worker,
- (a) determine the work and the period for which the person is designated as a worker;
 - (b) determine the person's remuneration for the purposes of this Act;
 - (c) determine the assessments payable in respect of that person and who shall pay the assessments; and
 - (d) determine who shall perform the obligations of the employer for the purposes of this Act.

Spouse

- 7.** (1) For the purposes of this Act, a person is to be considered a spouse of a worker if
- (a) the person is married to the worker;
 - (b) the person has, in good faith, entered into a marriage with the worker that is void or voidable; or
 - (c) the person is living in a conjugal relationship outside marriage with the worker and
 - (i) they have so lived for at least one year, or
 - (ii) the relationship is one of some permanence and they are together the natural or adoptive parents of a child.

Surviving spouse

(2) To determine whether a person is a surviving spouse of a worker, the provisions of subsection (1) are to be applied as of the day immediately preceding the day the worker's death occurred.

Employers

- 8.** (1) The following are considered to be employers for the purposes of this Act:
- (a) any person or entity that employs one or more other persons under a contract of service;
 - (b) any person or entity whom the Commission determines is responsible for performing the obligations of an employer under paragraph 6(2)(d).

Determination of employer status

(2) The Commission may determine that a person or entity is the employer of a person considered to be a worker under subsection 4(2).

Government

(3) For greater certainty, the Government of Nunavut and the Commission are employers.

Employer for other workers

(4) Subject to subsection (5), the Government of Nunavut is considered to be the employer of a worker referred to in

- (a) subparagraphs 4(1)(b)(ii) and (iii) and paragraphs 4(1)(c) to (e); and
- (b) subsection 5(1).

Municipal ambulance or firefighter worker

(5) A municipal corporation is considered to be the employer of a person referred to in subparagraph 4(1)(b)(ii) who is engaged in, or training for, an ambulance service or firefighting service for that municipal corporation, if the municipal corporation pays the cost of that ambulance or firefighting service.

Not in public service

(6) A person is not to be considered to be an employee in the public service by reason only that the Government of Nunavut is considered to be the employer of that person under subsection (4).

Nature of employment for learners and other workers

(7) The activity referred to in paragraphs 4(1)(b) to (e) and subsection 5(1) is considered to be the worker's employment for the purposes of this Act.

Successor employer

9. (1) The Commission may determine that an employer is the successor to a former employer and may treat the successor employer as the former employer for all purposes under this Act.

Multiple employers considered as one

(2) The Commission may determine that two or more employers are related and may treat them as if they were one employer for some or all purposes under this Act.

Common control or direction

(3) The Commission may determine that two or more corporations, individuals, firms, syndicates or associations, or any combination of them, to be one employer for the purposes of this Act, if it considers that there is common control or direction among them.

Effect of determination

(4) If the Commission has made a determination under subsection (3), the corporations, individuals, firms, syndicates or associations treated as one employer shall be jointly and severally liable for any contravention of this Act or the regulations.

PART 2

COMPENSATION

Right to Compensation

Entitlement to compensation

10. A worker is entitled to compensation for a personal injury or disease suffered by the worker arising out of and during the course of employment.

Compensation on death of worker

11. (1) The following persons are entitled to compensation on the death of a worker arising out of and during the course of the worker's employment:

- (a) a surviving dependant spouse of the worker;
- (b) a child of the worker who is less than 19 years of age;
- (c) a dependent child of the worker who is 19 years of age or over and attending school;
- (d) a dependent child of the worker who is of any age and who is physically or mentally incapable of earning his or her living.

Compensation to other dependant family members

(2) If no spouse or child is entitled to compensation on the death of a worker, dependent family members of the worker are entitled to compensation.

Exceptions to compensation

12. Despite any other provision of this Act, no person is entitled to compensation under this Act for

- (a) a personal injury, disease or death not arising out of and during the course of employment;
- (b) mental stress arising out of labour relations between the worker and the employer, including mental stress caused by wrongful dismissal, unless the act or omission that caused the mental stress was made with intent to harm the worker;

- (c) a personal injury or disease caused only by the serious and wilful misconduct of the worker, if neither death nor serious disability results from it; or
- (d) a personal injury or disease caused only by combat with an enemy force, including an attack or an attempt to repel a real or perceived attack.

Causation

13. (1) A personal injury, disease or death arising out of and during the course of employment is compensable whether it

- (a) was caused by a natural, physical or human cause;
- (b) was foreseeable or not;
- (c) was preventable or not; or
- (d) was caused by one event or a series of cumulative events, including the repetitive performance of the worker's employment.

Multiple causes

(2) A personal injury, disease or death that appears to be the result of more than one cause is compensable if one of the causes that contributed in a material way to the injury, disease or death arose out of and during the course of employment.

Day disease occurred

(3) In the case of a worker disabled by a disease, the Commission shall consider the day the disease occurs to be whichever of the following days is most beneficial to the worker:

- (a) the day the worker is disabled by the disease;
- (b) the day the disease is diagnosed.

Presumptions

14. (1) The presumptions in this section apply to entitlement to compensation, unless the contrary is proven on a balance of probabilities.

Presumption of occurrence

(2) A personal injury, disease or death that arises out of a worker's employment is presumed to have occurred during the course of his or her employment.

Presumption of causation

(3) A personal injury, disease or death that occurs during the course of a worker's employment is presumed to arise out of his or her employment.

Presumption respecting death

(4) The death of a worker is presumed to have arisen out of his or her employment if the worker is found dead at the place where the worker would be during the course of the employment.

Presumption respecting disease

(5) A disease is presumed to have arisen out of a worker's employment and to have occurred during the course of that employment if

- (a) the worker is disabled by the disease;
- (b) the worker has been exposed to conditions during the employment that might reasonably have caused the disease; and
- (c) the exposure to the conditions referred to in paragraph (b) occurred at any time during the 12 months preceding the disability.

S.Nu. 2010,c.20,s.2.

Definitions

14.1. (1) In this section,

"firefighter" means a worker who

- (a) is engaged in fighting fires as a full-time, part-time or volunteer member of a fire department, and
- (b) does not exclusively fight forest fires; (*pompier*)

"listed disease" means any of the following diseases:

- (a) cardiac arrest within 24 hours after attendance at an emergency response,
- (b) multiple myeloma,
- (c) primary leukemia,
- (d) primary non-Hodgkin's lymphoma,
- (e) primary site brain cancer,
- (f) primary site colo-rectal cancer,
- (g) primary site lung cancer,
- (h) primary site prostate cancer,
- (i) primary site skin cancer,
- (j) primary site testicular cancer. (*maladie inscrite*)

Presumption for firefighters

(2) Despite section 14 and subject to subsection (3), a listed disease is presumed to have arisen out of a worker's employment and to have occurred during the course of that employment if

- (a) the worker is disabled by the listed disease; and
- (b) the worker is or has been a firefighter for the minimum period prescribed in the regulations.

Smokers

(3) Where the listed disease is primary site lung cancer, the presumption referred to in subsection (2) does not apply unless the worker has been a non-smoker before the date of the disability for the minimum period prescribed in the regulations.

S.Nu 2010,c.20,s.3.

No assignment

15. (1) Subject to subsection (2), no compensation may be assigned, charged or attached.

Exceptions

(2) Compensation, other than compensation for expenses, may be assigned, charged or attached in the following cases:

- (a) the Commission gives its approval in writing;
- (b) a court, by order, makes the compensation subject to execution to the extent that wages and salary are subject to execution under the *Exemptions Act*.

No waiver

16. Any agreement to waive or forego any compensation to which a person might become entitled under this Act is void.

Reporting by Workers and Employers

Report by worker

17. A worker who suffers a personal injury or disease arising out of and during the course of his or her employment shall, as soon as is practicable, report the injury or disease to his or her employer and to the Commission.

Report by employer

18. (1) An employer who has reason to believe that a worker in its employ has suffered a personal injury, disease or death arising out of and during the course of the worker's employment, shall send to the Commission a written report describing the injury, disease or death.

Time of report

(2) The report must be sent within three days after the employer first has reason to believe the personal injury, disease or death has occurred.

Copy to worker

(3) The employer shall send a copy of the report to the worker, unless the worker has died.

Notice to other persons

(4) If the worker has died, the Commission shall make its best efforts to notify any persons who may be entitled to compensation under this Act of the death and of their entitlement to compensation.

Making a Claim for Compensation

Written notice

19. A claim for compensation is considered to be made by all eligible claimants when the Commission receives written notice that

- (a) a worker has suffered a personal injury, disease or death; or
- (b) a person is making a claim for compensation under this Act.

Limitation Periods

Limitation period for worker's claim

20. (1) No person is entitled to compensation unless his or her claim is made to the Commission within one year after the day the personal injury, disease or death occurs.

Exception

(2) The Commission shall grant an exception to the limit in subsection (1), if it considers that there is a justifiable reason for the delay.

Non-resident Claimants

Worker leaves Canada

21. A worker who makes a claim for compensation after leaving Canada is not entitled to compensation, unless he or she returns at his or her own expense to Canada for such medical examination as the Commission may require.

Injury, disease or death outside Nunavut

22. (1) Compensation is payable in respect of a worker who suffers a personal injury, disease or death arising out of and during the course of employment while working outside Nunavut, if

- (a) the worker's usual place of employment is in Nunavut;
- (b) the worker's employment involves performing activities both inside and outside Nunavut for the same employer; and
- (c) the period of work performed outside Nunavut does not exceed six months.

Extension of time

(2) The Commission may, on application by the employer, extend the six-month limit referred to in paragraph (1)(c), before or after it expires, for such longer period as the Commission considers reasonable.

Election if dual compensation

23. (1) If a person is entitled to compensation or some other remedy under both this Act and the law of another place where the personal injury, disease or death occurred, the person must elect whether

- (a) to claim compensation under this Act; or

- (b) to claim compensation or the other remedy under the law of that other place.

Notice to Commission

(2) A person making an election under subsection (1) must send written notice of the election to the Commission within 60 days after the day the personal injury or disease occurred or, if the worker died, the day the worker died.

Extension by Commission

(3) The Commission may extend the 60 day notice period, before or after it expires, for such longer period as the Commission considers reasonable.

Presumption if no election

(4) If no notice of election is given within the time allowed by this section, the person is presumed to have elected not to claim compensation under this Act.

No double compensation

(5) No person may receive compensation or some other remedy under both this Act and the law of another place in respect of the same personal injury, disease or death.

Exceptions

- (6) Subsection (5) does not apply to a person who
- (a) claims or receives immediate medical aid in another place;
 - (b) participates in legal proceedings in another place with the consent of the Commission under subsection 65(4); or
 - (c) makes a claim for compensation in another place, if that claim is rejected.

Forfeit rights and repay compensation

- (7) A person who contravenes subsection (5)
- (a) is deemed to have forfeited all rights to compensation under this Act; and
 - (b) shall repay any compensation paid to or on behalf of that person by the Commission.

Investigation of Claims

Medical examination of worker

24. (1) The Commission may require a worker claiming compensation to present himself or herself for one or more medical examinations in the manner and at the times and places that the Commission may require.

Costs of examination

(2) The Commission shall pay the costs of the medical examination and the worker's costs of undergoing the medical examination.

Report by health care provider

25. (1) A health care provider who examines or treats a worker under this Act shall submit a report to the Commission.

Timing and contents of report

(2) The report must be submitted within three days after the examination or treatment, and must contain the information required by the Commission.

Duty of health care facility

(3) If a health care facility employs the health care provider referred to in subsection (1), the health care facility is responsible for ensuring that the report is submitted in accordance with this section.

Ownership of report

(4) The Commission is deemed to be an owner of any report submitted by a health care provider or a health care facility under this Act.

Progress report

(5) The Commission may, on request, provide the worker's employer with a report on the progress being made by the worker.

Request by employer

26. (1) The employer of a worker who claims compensation may request the Commission to require the worker to undergo a medical examination by a health care provider selected by the Commission.

Costs

(2) The employer shall pay the costs of any medical examination required at its request, and the reasonable expenses of the worker resulting from it.

Payment by Commission

(3) The Commission may pay the costs and expenses referred to in subsection (2), if the employer fails to do so, and may collect those costs from the employer in accordance with section 142.

Conflicting medical opinions

27. (1) If the Commission receives conflicting opinions respecting a worker's personal injury, disease or death from a worker's health care provider and a medical advisor selected by the Commission, the Commission's medical advisor shall contact the worker's health care provider and attempt to resolve the conflict.

No resolution

(2) If the medical advisor and the health care provider are unable to resolve the conflict respecting their conflicting opinions, they shall seek the opinion of another medical professional who specializes in the area of the conflict.

Resolution binding

(3) Subject to new medical evidence being available, any resolution of the conflicting opinions reached by the medical advisor and the health care provider under subsection (1), or provided by the opinion under subsection (2), is final and binding on the Commission and the claimant.

Policy for procedure

(4) The Governance Council shall establish a policy that sets out the procedure for seeking the opinion of another medical professional under this section, and provides that

- (a) the selection of the medical professional and the questions to be determined by the medical professional are based, to the extent possible, on any written submissions received from the medical advisor, the worker's health care provider and the worker;
- (b) the medical advisor and the worker's health care provider may make written submissions in support of their own opinions to the medical professional; and
- (c) the worker shall be examined by the medical professional when requested by the worker.

Death in health care facility

28. If a worker receiving medical aid under this Act dies in a health care facility, the administrator of the facility shall, without delay, report the death to the Commission.

Autopsy

29. (1) The Commission may arrange for an autopsy of the body of a deceased worker, if the Commission considers it to be necessary to assist in determining the cause of the worker's death.

Coroner in possession

(2) If the coroner is in possession of the body of a deceased worker, the Commission may request the coroner to arrange for an autopsy to be made as part of the post-mortem examination.

Refusal of autopsy

(3) The Commission may reject any claim for compensation in respect of a deceased worker, if the executor or administrator of the worker's estate refuses to permit an autopsy considered necessary by the Commission.

Provision of information

30. The Commission may require a claimant, an employer or a health care provider to provide any information that it considers necessary for it to determine a claim for compensation.

Determination of Compensation

Responsibility of Commission

31. (1) The Commission shall make all decisions respecting entitlement to compensation.

Grounds of determination

- (2) Decisions of the Commission must be based on
- (a) the evidence before the Commission;
 - (b) the application of this Act and the regulations;
 - (c) the application of any policy of the Governance Council that relates to the issue in question; and
 - (d) any medical, legal or other relevant professional opinion that the Commission considers should be accepted.

Notice of decision

(3) The Commission shall give written notice of its decision regarding a claim for compensation to the claimant, or his or her legal or personal representative, and to the worker's employer.

Contents of notice

- (4) The notice of decision must contain the reasons for the decision.

Medical Aid to Workers

Immediate transportation

32. (1) If a worker is injured during the course of employment and requires transportation to receive medical aid, the employer shall, at its own expense, provide the worker with immediate transportation to a health care provider, a health care facility or such other place as the Commission considers appropriate.

Failure to provide transportation

(2) The Commission may pay the costs of the transportation of an injured worker that the employer fails to provide, and may collect those costs from the employer in accordance with section 142.

Treatment plan

33. (1) The Commission, the worker and the worker's health care providers shall

- (a) cooperate in the early assessment and diagnosis of the personal injury or disease; and

- (b) cooperate in the development of a treatment plan based on the available evidence and the best medical practice.

Primary health care provider

(2) The worker must have a physician or a dentist, whichever is appropriate for the worker's treatment, to be his or her primary health care provider and to take responsibility for diagnosing the worker's condition and developing his or her treatment plan.

Nearest health care provider

(3) The primary health care provider must be the nearest appropriate provider, and if more than one such provider is available, the worker may choose among them.

Changing primary health care provider

(4) The Commission may require the worker to use a different primary health care provider, if it considers that the health care provider used by the worker may not assist, or may impede, the process of the worker's recovery.

Medical aid

34. (1) The Commission shall, in addition to other compensation, provide the worker with or pay the costs of such medical aid as it considers reasonably necessary to diagnose and treat the effects of the personal injury or disease.

Duration of medical aid

(2) The medical aid must be provided to a worker from the time he or she suffers the personal injury or disease and during the period of disability.

Determination of related issues

(3) The Commission shall determine all issues related to the necessity, character, amount, timing, manner and sufficiency of the medical aid provided or paid for by the Commission.

Effect of payment for medical aid

(4) A payment made by the Commission for medical aid does not of itself constitute acceptance by the Commission of a claim for compensation.

Duty to mitigate

35. (1) A worker who is receiving, or is entitled to receive, compensation for a disability other than a permanent total disability, shall

- (a) take reasonable measures to mitigate the disability; and
- (b) cooperate with such vocational rehabilitation for suitable and meaningful employment as the Commission may reasonably require.

Notice of failure to mitigate

(2) The Commission shall give a worker it considers is not complying with subsection (1) written notice specifying

- (a) what actions the Commission requires the worker to take to comply with subsection (1);
- (b) what period of time the Commission considers reasonable for the worker to take the actions specified, having regard to the circumstances of the case; and
- (c) what action the Commission may take, if the worker does not take the specified actions within the time required.

Contracts respecting medical aid

36. The Commission may contract with health care providers, health care facilities and other persons and entities respecting the provision of medical aid to workers under this Act.

Disability Compensation

Single day disability

37. A worker who is disabled by an injury only for the day of the personal injury is entitled to no compensation other than medical aid.

Compensation for temporary total disability

38. (1) The compensation for a worker who is temporarily and totally disabled is a monthly payment equal to 90% of the worker's net monthly remuneration, payable for the period of the temporary total disability.

Adjustment

(2) If the worker's monthly payment under subsection (1) is less than 2.75% of the Year's Maximum Insurable Remuneration for the year in which the personal injury or disease occurs, the payment must be increased to the lesser of

- (a) 100% of the worker's net monthly remuneration; and
- (b) 2.75% of the Year's Maximum Insurable Remuneration.

Compensation for temporary partial disability

39. (1) The compensation for a worker who is temporarily and partially disabled is a monthly payment equal to the amount payable under section 38 for a temporary total disability multiplied by the Commission's estimate of the percentage loss of the worker's earning capacity, payable for the period of the disability.

Basis of loss of earning capacity

(2) The Commission shall estimate the loss of earning capacity under subsection (1) on the basis of the difference between the earnings of the worker before the temporary partial disability and the earning capacity of the worker after that disability.

Disability for days of work

40. (1) Despite sections 38 and 39, a worker suffering a temporary total disability or temporary partial disability is only entitled to be paid compensation for those days for which the worker would, in the usual course of his or her employment, have received remuneration.

Extended compensation

(2) The Commission may extend the compensation payable to a worker suffering a temporary total disability or temporary partial disability beyond the period for which the worker would, in the usual course of his or her employment have received remuneration, but not exceeding the period of the disability.

Compensation for permanent total disability

41. (1) The compensation for a worker who is permanently and totally disabled is a monthly pension equal to 90% of the worker's net monthly remuneration, payable for as long as the worker lives.

Adjustment

(2) If the worker's monthly pension under subsection (1) is less than 2.75% of the Year's Maximum Insurable Remuneration for the year in which the personal injury or disease occurs, the pension must be increased to the lesser of

- (a) 100% of the worker's net monthly remuneration; and
- (b) 2.75% of the Year's Maximum Insurable Remuneration.

Other treatment or services

(3) The Commission shall, in addition to the pension, provide a worker who is permanently and totally disabled with such other treatment or services as it considers necessary as a result of the personal injury or disease.

Deemed permanent total disability

(4) A worker is deemed to be permanently and totally disabled if the worker suffers

- (a) total and permanent loss of sight of both eyes;
- (b) the loss of both feet at or above the ankle;
- (c) the loss of both hands at or above the wrist;
- (d) the loss of one hand at or above the wrist and one foot at or above the ankle;
- (e) the permanent and complete paralysis of both legs or both arms or one leg and one arm; or
- (f) any injury to the head resulting in an incurable and incapacitating reduction of mental abilities.

Amount for permanent partial disability

42. (1) The compensation for a worker who is permanently and partially disabled is a monthly pension, payable for as long as the worker lives, equal to 90% of the worker's net monthly remuneration multiplied by the percentage of the worker's reduction in

physical and mental abilities, determined in accordance with an impairment rating schedule established by the Commission.

Disfigurement

(2) The Commission may consider a worker who is seriously and permanently disfigured as being permanently and partially disabled.

Additional compensation

43. The Commission may, by such amount and for such time as it considers just, increase the amount of a pension to which a worker is entitled, if it considers the amount of the pension to be significantly inadequate because

- (a) the percentage loss of the worker's earning capacity caused by the permanent disability is greater than the percentage of the worker's reduction in physical and mental abilities; or
- (b) the worker's annual net remuneration before the personal injury or disease did not fairly represent the worker's probable earning capacity.

Recurrence while receiving pension

44. (1) If a worker receiving a pension for a permanent partial disability suffers a recurrence of a temporary partial disability or temporary total disability from the same personal injury or disease, the worker is entitled to receive additional compensation equal to the compensation payable for that temporary disability reduced by the amount of the pension already being paid for the permanent partial disability.

Recurrence after apparent recovery

(2) If a worker appears to recover from a personal injury or disease and is no longer entitled to compensation, the worker is entitled to receive compensation for the recurrence of a temporary partial disability or temporary total disability from the same injury or disease.

Year of remuneration

(3) For the purposes of this section, the compensation for the temporary disability of the worker must be based on the greater of

- (a) the net monthly remuneration in the year in which the original personal injury or disease occurred; and
- (b) the net monthly remuneration in the year in which the worker suffered the temporary disability.

Multiple injuries or diseases

45. If a worker receiving a pension for a permanent partial disability later becomes entitled to compensation for a subsequent disability because of a different personal injury or disease, the worker is entitled to receive the compensation payable for the subsequent disability in addition to the amount of the pension already being paid for the permanent partial disability.

Other Compensation to Workers

Vocational rehabilitation

46. The Commission may provide the following to a worker who is entitled to other compensation:

- (a) consultation, advice, counselling and vocational rehabilitation;
- (b) payment of the costs of vocational rehabilitation provided to the worker by some other person or entity;
- (c) payment of expenses it considers appropriate to help the worker return to work and to lessen or remove the consequences of his or her injury or disease;
- (d) an allowance, not exceeding the compensation payable under section 38 for a temporary total disability, while the worker is undergoing vocational rehabilitation.

Prescribed allowances

47. (1) The Commission may, in accordance with the regulations, provide the following to a worker who is entitled to other compensation:

- (a) a daily subsistence allowance for the worker while undergoing a medical examination or receiving medical aid at a place other than his or her place of residence;
- (b) an allowance for medical aid, social services, vocational rehabilitation, homemaking services, personal care and other services provided to the worker in his or her home;
- (c) an allowance for replacing or repairing clothing damaged because the worker wears a medical device provided or paid for by the Commission.

Repair and replacement of items

(2) The Commission may pay the actual costs of replacing or repairing any clothing or medical device of the worker that was destroyed or damaged when the personal injury or disease occurred.

Compensation to Spouses, Children and Family Members

Compensation to spouse

48. (1) The compensation payable on the death of a worker to a surviving dependant spouse is

- (a) a lump sum payment equal to 30% of the Year's Maximum Insurable Remuneration for the year in which the death occurs;
- (b) a monthly pension equal to 3.08% of the Year's Maximum Insurable Remuneration for the year in which the death occurs; and
- (c) if the spouse is physically or mentally incapable of earning his or her living, such additional amount as the Commission considers appropriate.

Duration of spouse's pension

(2) The pension under paragraph (1)(b) is payable for as long as the surviving spouse lives.

Funeral expenses

(3) The following extra compensation is payable on the death of a worker:

- (a) the funeral expenses, not exceeding the prescribed limit;
- (b) the expense of transporting the worker's body to his or her last usual place of residence within Canada, if the death occurred away from that place.

Multiple spouses

(4) If the application of section 7 results in more than one person being considered to be a surviving dependent spouse for the purposes of this Act,

- (a) the surviving dependent spouse whom the Commission determines should be treated as the primary spouse is entitled to all the compensation to which a surviving dependent spouse is entitled under this Act; and
- (b) any other surviving dependent spouse is only entitled to the pension payable under paragraph (1)(b), for a period of five years after the date of the worker's death or until that surviving spouse dies, whichever is earlier.

Payments to person responsible for child

49. (1) The Commission shall pay the compensation, otherwise payable to a surviving dependent spouse under subsection 48(1)(b), to a person who assumes full or shared responsibility for a child of the deceased worker if

- (a) there is no surviving dependent spouse; or
- (b) the surviving dependent spouse is not properly caring for the child.

Conditions

(2) Compensation is only payable under subsection (1) while

- (a) the person remains responsible for the child; and
- (b) the child is under 19 years of age.

Proportional responsibility

(3) The Commission may divide the compensation payable under subsection (1) proportionately among two or more persons who each assume shared responsibility for a child.

Compensation to child

50. (1) The compensation payable on the death of a worker in respect of a child of the worker is a monthly pension equal to 0.625% of the Year's Maximum Insurable Remuneration for the year in which the death occurs.

Additional amount for child incapable of earning living

(2) The Commission shall increase the compensation payable in respect of a child who is physically or mentally incapable of earning his or her living, by such additional amount as the Commission considers appropriate.

Ending school

(3) The Commission may end the compensation payable in respect of a child referred to in paragraph 11(1)(c), if the Commission considers that the child

- (a) has failed to make satisfactory progress at the school;
- (b) no longer attends school; or
- (c) is granted a university degree or college diploma for the first time or completes a course of technical or vocational training.

Compensation to other dependant family members

51. (1) The compensation payable to a dependent family member under subsection 11(2) is a pension in such amount as the Commission considers appropriate, taking into account the pecuniary loss to the person caused by the worker's death, but not exceeding the amount payable under paragraph 48(1)(b).

Duration of pension

(2) The pension payable under subsection (1) continues for as long as the Commission considers the worker would reasonably have been expected to support the person, had the worker lived.

Payment of Compensation

Payment periods

52. (1) The Commission shall determine the frequency of pensions or other periodic payments of compensation.

Computation

(2) A payment of compensation that is payable for periods of less than one month must be computed on a daily basis.

Cost of living increase

53. (1) On January 1 of each year, the Governance Council shall establish the percentage that it considers reflects the increase in the cost of living for the previous year.

Increases

(2) After January 1 of each year, the amount of any pension that commenced in a previous year must be increased for the current year by the cost of living increase established by the Governance Council under subsection (1).

Persons under legal or other disability

54. (1) If a person entitled to compensation is under a legal disability or other disability that renders him or her unable to receive the compensation directly, the

Commission may provide for payment of the compensation to such other person and in such manner as the Commission considers to be in the person's best interests.

Redirecting worker's compensation payments

(2) Instead of paying the worker directly, the Commission may pay the compensation to, or for the benefit of, a spouse or child of the worker, if the spouse or child

- (a) is dependent on the worker;
- (b) resides in Nunavut; and
- (c) is without adequate means of support or is not being supported by the worker.

Advances

55. The Commission may advance to or for a claimant such amounts as it considers appropriate, and any sum so advanced is chargeable against the compensation otherwise payable.

Lump sum

56. (1) The Commission may convert all or a portion of a pension into a lump sum payment if

- (a) the person entitled to the compensation requests the conversion;
- (b) the Commission provides the person with the discount rate and other actuarial factors to be used in the conversion; and
- (c) the person agrees on the amount of the lump sum.

Independent financial advice

(2) The Commission shall, in accordance with a policy of the Governance Council, offer to provide a person who makes a request under paragraph (1)(a) with independent financial advice to assist the person to make an informed decision on the conversion.

Mandatory conversion

(3) A pension payable to a worker must be converted to a lump sum payment if

- (a) the worker requests the conversion;
- (b) the worker's personal injury or disease results in a disability that reduces the worker's physical and mental abilities by no more than 10%; and
- (c) the worker is not receiving additional compensation under section 43.

Conversion

(4) When converting a pension into a lump sum payment, the Commission shall apply such discount rate and other actuarial factors as the Commission considers appropriate.

Calculation of Worker Remuneration

Worker's remuneration

57. (1) For the purposes of this Act, a worker's remuneration is the amount of all income earned through the performance of work, including all salaries, wages, fees, commissions, bonuses and tips.

Included amounts

(2) For greater certainty, a worker's remuneration includes

- (a) earnings received by the worker for overtime or piece work; and
- (b) the value of board and lodging, store certificates, credits or any remuneration in kind or other substitute for money provided to the worker.

Excluded amounts

(3) For greater certainty, a worker's remuneration does not include

- (a) unemployment benefits or employment benefits received by the worker under the *Employment Insurance Act* (Canada); or
- (b) the value of clothing, materials, transportation, board or lodging provided to the worker, either in kind or as an expense payment, because of the remote nature or location of the employment.

Learners

(4) The remuneration for a learner is the remuneration for a worker beginning the employment in which he or she is a learner.

Volunteers and other workers

(5) The Commission shall establish the amount of remuneration for a worker referred to in subparagraphs 4(1)(b)(ii) and (iii) and paragraphs 4(1)(c) to (g).

Annual remuneration

58. (1) A worker's annual remuneration is the amount of remuneration that the worker would otherwise have earned during the year in which the personal injury, disease or death occurred, not exceeding the Year's Maximum Insurable Remuneration for that year.

Factors

(2) The Commission shall consider any factors it considers appropriate when determining the amount of a worker's annual remuneration, including the remuneration for a representative annual period of employment by that worker or a worker in similar employment.

Multiple employers

(3) The annual remuneration for a worker who has more than one employer is the total of the annual remuneration from all the worker's employers.

Seasonal workers

(4) Despite subsection (1), if a worker's employment is seasonal, or is for only part of a year, and the worker suffers the personal injury or disease during that period, the Commission shall, for the period that the seasonal or partial employment would have continued but for the injury or disease, consider the worker's annual remuneration to be the higher of

- (a) the amount the worker would receive as annual remuneration if the worker were receiving remuneration during the entire year at the same rate as during the period of that employment; and
- (b) the amount calculated under subsection (1).

Determining period of employment

(5) For the purposes of determining the period that the worker's seasonal or partial employment would have continued but for the injury or disease referred to in subsection (4), the Commission shall consider the period of time that the worker was engaged in the same or similar employment in the previous three years and select the period of employment that is most favourable to the worker.

Net annual remuneration

59. A worker's net annual remuneration is the amount of the worker's annual remuneration minus the amount of the worker's annual deductions, determined in accordance with the regulations.

Examples of payments

60. The Commission shall, each year, establish and publish a table listing examples of typical monthly compensation payments that would be payable to claimants that year.

Deductions from compensation

61. (1) In fixing the amount of compensation, the Commission may deduct any payment, allowance or benefit that the worker will receive from his or her employer in respect of the period of his or her disability, including any pension, gratuity or other allowance provided wholly at the expense of the employer.

Credits to employer

(2) The Commission shall

- (a) credit the employer with any payment, allowance or benefit referred to in subsection (1) paid to the worker by his or her employer; or
- (b) pay the employer any sum deducted from the compensation under subsection (1).

Restrictions on Rights of Action

No action against others

62. (1) No action may be brought, by or on behalf of an eligible claimant, against a worker or an employer in respect of a personal injury, disease or death suffered by another worker arising out of and during the course of his or her employment.

Further restriction

(2) No person may bring an action for contribution or indemnity against a worker or an employer, who is otherwise immune from a cause of action under this section, in respect of a personal injury, disease or death suffered by another worker arising out of and during the course of his or her employment.

Exceptions

- (3) Subsection (1) does not apply to an action against
- (a) a worker who was not acting in the course of his or her employment;
 - (b) an employer who was not acting in the course of its business; or
 - (c) an employer who is not the employer of the worker who suffered the personal injury, disease or death, or another worker in the employ of such other employer, if the injury, disease or death is attributable to a vehicle or other mode of transportation and is insured by a policy of liability insurance.

Maximum liability

(4) The maximum liability for any employer or worker referred to paragraph (3)(c) is the amount payable, under the policy of liability insurance, in respect of the personal injury, disease or death.

Application for determination

63. (1) Any party to an action may, on notice to the other parties to the action, apply to the Appeals Tribunal for a determination of whether a person is immune from action pursuant to this Act.

Investigation

(2) The Appeals Tribunal shall, on receipt of an application under subsection (1), consider whether it should request the Commission to authorize, under subsection 104(2), an inspector to investigate, inquire into and report on the matter.

Commission's Rights of Action

Action vests in Commission

64. (1) Any cause of action that an eligible claimant may have against any other person in respect of a personal injury, disease or death suffered by a worker, arising out of and during the course of his or her employment, vests in the Commission.

Benefit of claimants

(2) The Commission shall conduct a cause of action vested in the Commission under subsection (1) in good faith for the benefit of all eligible claimants.

Effect of vesting

65. (1) The rules of this section apply to a cause of action vested in the Commission under section 64.

No payment or settlement without consent

(2) No person may, without the written consent of the Commission, make a payment to or agree to a settlement with the eligible claimant, or his or her legal or personal representative, for or in respect of the cause of action or a claim or judgment arising from the action.

Payment or settlement void

(3) Any payment or settlement made in contravention of this section is void.

Action with consent

(4) An eligible claimant or his or her legal or personal representative may conduct the action with the written consent of the Commission.

Action by worker

(5) The Commission is not liable for any costs in respect of an action taken by an eligible claimant or his or her legal or personal representative.

Action by Commission

(6) The Commission may take the action in the name of the eligible claimant or his or her legal or personal representative, as the case may be, without the consent of the person in whose name the action is taken.

Rights of party

(7) The Commission may conduct the action as if it were a party, whether or not it is specifically named as a party.

Indemnity

(8) If the Commission takes the action or if the action is taken at the request of the Commission, it shall indemnify and save harmless the eligible claimant, or his or her legal or personal representative, from and against all costs or damages incurred in respect of the action, including costs or damages awarded by the court to the defendant, but excluding any costs incurred by the eligible claimant, or his or her legal or personal representative, without the consent of the Commission.

Settlement

(9) The Commission may at any time settle the action for such amount as it considers appropriate.

Payments into court

(10) If payment into court is made pursuant to the Rules of the Nunavut Court of Justice and the Commission files notice of its rights under this Act, payment may only be made out of the court with the consent of the Commission.

Receipt of money

(11) The Commission may

- (a) receive and accept any money paid in respect of the action;
- (b) give a receipt for the money; and
- (c) if the money is accepted in full settlement, release the person paying the money, or on whose behalf the money is paid, from liability in respect of the worker's personal injury, disease or death.

Damages for pain and suffering

(12) If the judgment clearly awards the worker damages for pain and suffering, the Commission shall, before deducting its legal costs incurred in recovering the money, pay to the worker from the money received that amount of the award attributable to pain and suffering.

Payment for efforts

(13) The Commission may, after deducting its legal costs incurred in recovering money in the action, pay an amount up to 25% of the amount remaining after making a payment under subsection (12) to the eligible claimant whose efforts resulted in the Commission receiving the money.

Payment of excess

(14) The Commission may pay to the eligible claimant or his or her legal or personal representative, as the case may be, the balance of the money remaining after deducting

- (a) the legal costs incurred in recovering the money;
- (b) any payments made under subsections (12) and (13); and
- (c) the costs of the compensation, including the present value of any pension.

Assignment of rights

66. (1) An eligible claimant shall assign to the Commission any right of action, including the right to recover damages, that he or she may have in a place outside Nunavut in respect of the personal injury, disease or death suffered by a worker.

Withholding compensation

(2) The Commission may withhold payment of compensation from a person who does not make the assignment referred to in subsection (1) in a form satisfactory to it.

PART 3

FINANCING WORKERS' COMPENSATION

Workers' Protection Fund

Workers' Protection Fund

67. (1) The "Accident Fund" is continued as the "Workers' Protection Fund".

Indivisible

(2) The Workers' Protection Fund is one indivisible fund for the purposes of paying compensation and determining assets and liabilities.

Payments into Workers' Protection Fund

(3) The following must be paid into the Workers' Protection Fund:

- (a) assessments paid by employers;
- (b) fines and penalties collected by the Commission under this Act or any other enactment;
- (c) interest, dividends, rents or other income received from investments under the control of the Commission;
- (d) all money received by the Commission pursuant to agreements made under sections 94 and 95.

Compensation and costs paid out of Workers' Protection Fund

(4) The following may be paid out of the Workers' Protection Fund:

- (a) compensation paid in respect of workers' injuries, diseases and deaths;
- (b) the costs of the Commission, the Appeals Tribunal and the Office of the Workers' Advisor;
- (c) any other costs of administering this Act and the other enactments for which the Commission is responsible;
- (d) costs, payments or grants incurred or made pursuant to agreements made under sections 94 and 95.

Audit and Actuarial Evaluation of Workers' Protection Fund

Audit

68. The Workers' Protection Fund and the accounts of the Commission must be audited annually in accordance with Part IX of the *Financial Administration Act*.

Actuarial evaluation

69. (1) The Commission shall have an actuarial evaluation of the liabilities and income of the Workers' Protection Fund made every three years, and at such other times as the Minister may direct, by an independent, duly qualified actuary.

Report

(2) The actuary shall submit a written report on the evaluation to the Governance Council.

Tabling of report

(3) The report must be sent to the Minister, who shall lay it before the Legislative Assembly in the same manner as the Commission's annual report.

Costs

(4) The cost of the actuarial evaluation and report is to be paid out of the Workers' Protection Fund.

Establishing the Rate or Basis for Assessments

Establishing rate or basis

70. (1) The Governance Council shall each year establish and publish the rate or basis for calculating the assessments to be paid by employers.

Rate or basis

(2) For greater certainty, the rate or basis for calculating the assessments to be paid by employers may include

- (a) a rate based on an employer's payroll;
- (b) a rate based on a system of classification of employers or hazards of employment established by the Governance Council;
- (c) a rate based on any other factor considered appropriate by the Governance Council;
- (d) a specific sum; and
- (e) any other basis considered appropriate by the Governance Council.

Variation formula

(3) The Governance Council may establish and publish formulas, based on employer experience accounts established under subsection 71(3) and other factors the Governance Council considers appropriate, to be applied by the Commission to vary the assessments for which employers would otherwise be liable.

Self-sufficiency

(4) The annual rate or basis for calculating assessments and any formulas for varying assessments must be sufficient to finance the Workers' Protection Fund to enable it to meet its liabilities.

Classification of Employers

Classification

71. (1) The Commission shall classify each employer in accordance with any classification system established by the Governance Council.

Multiple classification

(2) An employer may be assigned to more than one class or subclass, if the employer's business is assignable to different classes or subclasses.

Experience accounts

(3) The Commission may establish and maintain experience accounts to record the costs of compensation claimed in respect of employers.

Negligence

(4) If the Commission finds that a worker suffered the personal injury, disease or death because of the act or omission of another employer or his or her worker, the Commission may

- (a) direct that the costs of the claim be included in the experience account of that employer; or
- (b) apportion the costs of the claim to the experience accounts of more than one employer who, or whose workers, were responsible in proportion to the degree of responsibility of each person involved, or in equal proportions if the Commission cannot establish different degrees of responsibility.

Employer's Payroll Statements

Payroll statement

72. (1) An employer shall prepare and send an annual payroll statement to the Commission.

Deadline

(2) The payroll statement must be sent no later than February 28 in each year, or at such other time or times as the Commission may require.

Contents of statement

- (3) The payroll statement must include
- (a) a description of the nature of the work carried on by the employer;
 - (b) the total of the remuneration paid by the employer to all its workers in the past year;
 - (c) an estimate of the total remuneration payable by the employer to all its workers in the current year; and
 - (d) such other information concerning its operations as the Commission may require.

All remuneration

(4) The remuneration included in the payroll statement must include the remuneration of all persons who render service to the employer or are deemed to be workers under this Act, whether or not they are directors, corporate officers or executives of the employer, and whether or not the employer is under a legal obligation to pay them any remuneration.

Nominally paid workers

(5) The Commission may adjust the payroll statement to include an amount that the Commission considers as reasonable remuneration for any person who is not paid any remuneration or is paid only a nominal or token remuneration.

Initial payroll statement

73. An employer who establishes, commences or recommences business shall, within 10 days,

- (a) notify the Commission of the status of its business;
- (b) send the Commission a payroll statement; and
- (c) provide the Commission such other information as the Commission may require.

Ceasing to be an employer

74. (1) A person or entity that ceases to be an employer shall give written notice to the Commission, within 10 days after ceasing to be an employer.

Statement of remuneration

(2) The notice required under subsection (1) must include a statement of the amount of the remuneration paid by it to all its workers in the year in which the person or entity ceases to be an employer.

Missing or inaccurate payroll statement

75. If an employer does not provide a payroll statement or if the Commission is not satisfied that an employer's payroll statement is accurate, the Commission may determine and use its own estimate of the amount of the remuneration paid or payable to the employer's workers.

Levying Assessments on Employers

Levy assessments

76. (1) The Commission shall, from time to time, calculate and levy assessments on employers.

Procedure

(2) The Commission shall establish the procedure for levying and paying assessments, which may vary from employer to employer.

Limit on payroll

(3) An assessment calculated on the basis of an employer's payroll must not include any portion of the remuneration of a worker that exceeds the Year's Maximum Insurable Remuneration for that year.

No assessment if no remuneration paid

(4) If a worker referred to in subparagraphs 4(1)(b)(ii) and (iii) and paragraphs 4(1)(c) to (e) is not paid remuneration for their employment, the employer is not required to pay assessments in respect of the worker.

Safety Discounts and Hazard Premiums

Safety discount

77. The Commission may grant a discount to reduce the amount of the assessment payable by an employer, if the Commission considers that the employer has

- (a) taken steps to reduce the hazard of injury, disease and death to its workers; or
- (b) established a program that reduces the cost of claims for compensation.

Hazard premium

78. The Commission may charge a premium to be added to the assessment payable by an employer, if the Commission considers that the employer has not

- (a) taken sufficient steps to reduce the hazard of injury, disease and death to its workers; or
- (b) established a program that reduces the cost of claims for compensation.

Payment and Collection of Assessments

Liability date

79. (1) The liability of an employer for its assessment begins on January 1 in the year for which the assessment is levied.

Payment

(2) An employer shall pay its assessment at such time as the Commission may establish, and the employer is liable to pay its assessment whether or not the employer receives a demand for payment or a notice of the levy of the assessment.

Liability for assessments

(3) An employer shall pay the assessments levied by the Commission whether or not any of its workers suffer personal injury, disease or death.

Over payment

(4) The Commission shall return to an employer the amount of any payment that exceeds the amount of the employer's liability.

Work under contract

80. (1) This section applies to any work performed under a contract for service.

Liability of principal

(2) The principal on the contract is jointly and severally liable to pay the Commission the amount of any assessment relating to the contract for which its contractor and any subcontractor are liable.

Withholding money by principal

(3) The principal on the contract may withhold, from any money payable to its contractor, the amount of any assessment relating to the contract for which the contractor and its subcontractors would be liable, and may pay that amount to the Commission.

Recovery by principal

(4) Subject to the terms of the contract, the principal on the contract may recover from

- (a) the contractor, the amount of the assessments relating to the contract paid by the principal but for which the contractor or subcontractor would be liable; and
- (b) the subcontractor, the amount of the assessments relating to the contract paid by the principal but for which the subcontractor would be liable.

Liability of contractor

(5) The contractor on the contract is jointly and severally liable to pay the Commission the amount of any assessment relating to the contract for which its subcontractor would be liable.

Withholding money by contractor

(6) The contractor on the contract may withhold, from any money payable to its subcontractor, the amount of any assessment relating to the contract for which the subcontractor would be liable, and may pay that amount to the Commission.

Recovery by contractor

(7) Subject to the terms of the contract, the contractor on the contract may recover from its subcontractor the amount of the assessment relating to the contract paid by the contractor but for which the subcontractor would be liable.

Treatment of money withheld

(8) A payment collected by the Commission under subsection (2) or (5) or paid to the Commission under subsection (3) or (6) is deemed, as between the principal, the contractor and any subcontractor, to be a payment to the contractor or subcontractor, as the nature of the payment requires.

Home owner exemption

(9) This section does not apply to the owner of a single family dwelling in respect of work performed on the dwelling, if the dwelling is occupied or intended to be occupied by the owner or his or her family.

Employer Information

Records

- 81.** (1) An employer shall maintain and make available to the Commission
- (a) an accurate account of its payroll; and
 - (b) such other information respecting its operations as the Commission may require.

Request for information

- (2) The Commission may require any person whom the Commission considers may be an employer to send to the Commission a statement signed by the person containing
- (a) an accurate account of the person's payroll and the nature of the work carried on by that person; and
 - (b) such other information respecting its operations as the Commission may require.

Different statements

- (3) The Commission may require an employer to send separate statements for each class or subclass of work carried on by the employer.

PART 4

ADMINISTRATION

Workers' Safety and Compensation Commission

Continuation of Board

- 82.** (1) The "Workers' Compensation Board" is continued as a corporation with the name "Workers' Safety and Compensation Commission".

Natural person

- (2) Subject to this Act, the Commission has the capacity and the rights, powers and privileges of a natural person.

Governance Council

Continuation of Governance Council

- 83.** (1) The Governance Council of the Workers' Compensation Board is continued as the Governance Council of the Commission.

Duties of Governance Council

- (2) The Governance Council shall
- (a) govern the Commission and give general directions to the President on the operation of the Commission;

- (b) ensure the proper administration of this Act, the *Explosives Use Act*, the *Mine Health and Safety Act*, the *Safety Act* and the regulations made under these Acts;
- (c) review and approve the programs and operating procedures of the Commission;
- (d) establish the annual operating and capital budgets of the Commission;
- (e) ensure the proper stewardship of the Workers' Protection Fund; and
- (f) recommend to the Minister any changes it considers necessary respecting the Year's Maximum Insurable Remuneration.

Composition

84. (1) The Governance Council is composed of seven directors.

Appointment

(2) The Minister shall appoint the directors of the Governance Council as follows:

- (a) one director to serve as the chairperson;
- (b) two directors whom the Minister considers as representing the interests of the general public;
- (c) two directors whom the Minister considers as representing the interests of workers;
- (d) two directors whom the Minister considers as representing the interests of employers.

Factors for appointment

(3) When selecting persons for appointment to the Governance Council, the Minister must use his or her best efforts to

- (a) ensure that the directors of the Governance Council collectively hold the prescribed qualifications; and
- (b) consider any recommendations for appointment received from the persons being represented under paragraphs (2)(b), (c) and (d).

Agreement with the Northwest Territories

(4) If an agreement with the Northwest Territories under section 168 is in effect, the directors of the Governance Council are the persons appointed under the *Workers' Compensation Act* (Northwest Territories), if the Minister of the Government of the Northwest Territories responsible for that Act

- (a) consults with the Minister of the Government of Nunavut responsible for this Act prior to appointing the director who is to serve as the chairperson; and
- (b) appoints two of the directors of the Governance Council on the recommendation of Minister of the Government of Nunavut responsible for this Act.

Recommendations by Minister

(5) For greater certainty, subsection (3) applies to the Minister making a recommendation under paragraph (4)(b).

Non-voting member

(6) The President is, by virtue of his or her office, a non-voting member of the Governance Council.

Audit committee

(7) The Governance Council shall establish an audit committee to ensure the critical and objective oversight of the Commission's

- (a) standards of integrity and behaviour;
- (b) reporting of financial information; and
- (c) practices of management and financial control.

Other committees

(8) The Governance Council may establish such other committees as it considers appropriate.

Role of chairperson

85. (1) The chairperson is, by virtue of his or her office, a member of any committee of the Governance Council, other than the audit committee.

Vice-chairperson

(2) The Governance Council may designate one of its directors to serve as the vice-chairperson.

Role of vice-chair

(3) If the chairperson is absent or unable to act or if the position is vacant, the vice-chairperson shall act in his or her place.

Term of office

86. (1) A director of the Governance Council holds office for a term, not exceeding three years, specified in the appointment.

Remuneration

(2) The directors of the Governance Council shall receive remuneration in accordance with the regulations.

Reappointment of director

87. (1) The Minister may reappoint a person as a director of the Governance Council if the period of continuous service on the Governance Council does not exceed nine consecutive years.

Appointment after break in service

(2) A person who is appointed as a director of the Governance Council is deemed not to have any period of consecutive service at the time of appointment if at least one year has elapsed since he or she last served as a director. S.Nu. 2010,c.20.s.4.

Meetings

88. (1) The meetings of the Governance Council must be held in the place where the office of the Commission is located or at any other place that the Governance Council may direct.

Quorum

(2) A majority of the directors of the Governance Council then holding office constitute a quorum.

Bylaws, resolutions and policies

89. The Governance Council

- (a) may enact bylaws respecting the business and affairs of the Commission;
- (b) may establish such policies as it considers appropriate for the administration of this Act and the other enactments for which it is responsible;
- (c) shall establish a process for consulting with persons who are likely to be affected by its policies; and
- (d) may pass resolutions reflecting its decisions.

Jurisdiction of the Commission

No action against Commission

90. (1) No action lies for the recovery of compensation from the Commission, and no action may be maintained or brought against the Commission, in respect of any act done or decision made by it in the honest belief that it was within its jurisdiction.

Exclusivity

(2) All claims for compensation shall be determined pursuant to this Act.

Jurisdiction of Commission

91. (1) Subject to the jurisdiction of the Appeals Tribunal, the Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act.

Exclusive jurisdiction

(2) For greater certainty, the exclusive jurisdiction of the Commission extends to examining, inquiring into, hearing and determining the following matters:

- (a) whether a person is a worker or the spouse, child or family member of a worker, and whether he or she is dependent on a worker;

- (b) whether something is a personal injury, disease or death arising out of and during the course of employment;
- (c) whether a disability exists because of a personal injury or disease, and the degree and duration of the disability;
- (d) whether earning capacity has been impaired because of a personal injury or disease, and the degree of impairment;
- (e) the amount of annual remuneration, deductions or net annual remuneration;
- (f) whether a person is entitled to compensation and the nature and amount of compensation to which the person is entitled, including the impairment rating schedule for workers;
- (g) any matter arising in a cause of action vested in the Commission, other than an application under section 63 on whether a person is immune from action;
- (h) whether a person or entity is an employer or the successor to a former employer;
- (i) whether there is common control or direction among two or more corporations, individuals, firms, syndicates or associations, or any combination of them;
- (j) the rate or basis for calculating assessments, and any formula for varying the rate or basis;
- (k) all matters related to the levy and collection of assessments, including the classification of an employer, the employer's claims experience, the accuracy of an employer's payroll statement and any estimate of the payroll.

Finality

- (3) Every decision of the Commission is final and conclusive, subject to
 - (a) the Commission's power to reconsider any matter previously dealt with by it;
 - (b) a person's right under section 113 or 114 to have a decision of the Commission reviewed by its Review Committee; and
 - (c) a person's right under section 128 to appeal a decision of the Review Committee to the Appeals Tribunal.

Decisions by Commission

92. (1) A decision to be made by the Commission under this Act must be made by a member of the staff of the Commission whose position is assigned or delegated that function by the President.

Standard for decisions

- (2) The Commission shall
 - (a) decide each matter according to the justice and merits of the case, without being bound by its previous decisions; and
 - (b) draw all reasonable inferences and presumptions in favour of the claimant when determining any matter related to compensation.

Evidence

(3) The Commission may, in making a determination under this Act, accept evidence in any form, if satisfied of its relevance and probative value.

Reconsideration by Commission

(4) The Commission may reconsider any matter previously dealt with by it and may rescind, vary or amend any act or decision it had previously made, either on its own initiative or at the request of a claimant, employer or other person.

Investigative powers

- 93.** (1) The Commission has the same powers as a court of superior jurisdiction to
- (a) compel the attendance of witnesses;
 - (b) examine witnesses;
 - (c) examine witnesses under oath; and
 - (d) compel the production and inspection of books, papers, documents and things.

Depositions

(2) The Commission may cause depositions of witnesses, residing in or outside Nunavut, to be taken before any person specified by the Commission, in a manner similar to that of a court of superior jurisdiction.

Worker safety agreements

94. (1) The Commission may make agreements with governments, institutions and other persons and entities respecting worker safety.

Grants

(2) The Commission may make grants to organizations that provide first aid or public safety programs.

Agreements with similar public bodies

95. The Commission may make agreements with a public body in another jurisdiction responsible for workers' safety or compensation, to ensure that

- (a) the workers' safety or compensation regimes in both places are efficiently administered; and
- (b) eligible claimants receive compensation either in conformity with this Act or in conformity with the laws of that jurisdiction.

Other workers' safety or compensation functions

96. (1) The Minister may, by order, refer or assign to the Commission the performance of

- (a) any task or duty of a public authority in Canada in connection with the administration of a statute relating to workers' compensation, at the request of that public authority;
- (b) any duty or function in connection with workers' safety or compensation; and
- (c) any other duty or task.

Commission's authority

(2) Despite any other provision of this Act, the Commission has all the powers, authorities and functions expressed or provided in the statute referred to it for administration or necessary to the proper carrying out of a duty, function or task assigned to it under subsection (1).

Direction to Governance Council

(3) The Minister may, in writing, direct the Governance Council to consider any issue that is, or could be, the subject of a policy of the Governance Council.

Financial Powers of the Commission

Investments

97. The Commission may, from time to time, invest any funds arising under any provision of this Act or under the control of the Commission, in any securities and other investment instruments authorized by the *Financial Administration Act*, and may sell and dispose of any such securities and investment instruments.

Overdrafts

98. Subject to section 80 of the *Financial Administration Act*, the Commission may borrow by way of overdraft from a chartered bank.

Real property

99. (1) Subject to subsection (2), the Commission may

- (a) lease and purchase real property and construct or alter buildings for the use of the Commission; and
- (b) sell, lease or otherwise dispose of its real property.

Approval needed

(2) The Commission may not, without the approval of the Commissioner in Executive Council,

- (a) purchase real property, if its value exceeds \$100,000;
- (b) construct a building, if its estimated cost exceeds \$100,000; or
- (c) sell, lease or otherwise dispose of real property, if its value exceeds \$100,000.

Write-off of assets, debts, etc.

100. The Governance Council may direct the write-off of an asset of, or a debt or obligation owed to, the Workers' Protection Fund or the Commission, in whole or in part, if it considers the asset, debt or obligation is unrealizable or uncollectible.

Commission Staff

President

101. (1) The Governance Council shall appoint the President of the Commission.

Chief executive officer

(2) The President is the chief executive officer of the Commission.

Duties of President

(3) The President shall

- (a) manage the day to day operations of the Commission under the general direction of the Governance Council;
- (b) advise and inform the Governance Council on the operating, planning and development functions of the Commission;
- (c) ensure the implementation of the policies of the Governance Council;
- (d) establish such positions in the Commission and hire such staff as the President considers appropriate to carry out the Commission's responsibilities; and
- (e) carry out any duties or functions assigned by the Governance Council.

Status of deputy head

(4) The President has the status and responsibility of a deputy head under the *Public Service Act*, subject to subsection (8).

Powers of delegation

(5) The President may

- (a) delegate any or all of his or her powers and duties to the staff of the Commission; and
- (b) assign or delegate any or all of the Commission's powers or duties to such staff of the Commission or positions in the Commission as the President may designate.

Corporate Secretary

(6) The Governance Council shall appoint the Corporate Secretary of the Commission to carry out any duties or functions assigned by the Governance Council.

Status of staff

(7) The President, the Corporate Secretary and the other staff of the Commission are employees in the public service, subject to subsection (8).

Agreement with the Northwest Territories

(8) If an agreement with the Government of the Northwest Territories under section 168 is in effect, the President and Corporate Secretary and the other staff of the Commission are the persons appointed under the *Workers' Compensation Act* (Northwest Territories).

Duty of care

102. Each director of the Governance Council and officer of the Commission shall, in exercising his or her powers and performing his or her duties,

- (a) act honestly and in good faith with a view to the best interests of the Commission; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Immunity

103. No action or proceeding may be brought against any person for anything that is, in good faith, done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by that person, pursuant to or in the exercise, or intended exercise, of a duty or power under this Act.

Other Authorized Persons

Inspectors

104. (1) The Commission may designate a member of its staff or another person to be an inspector to carry out inspections and searches under this Act.

Investigations

(2) The Commission may authorize an inspector to investigate, inquire into and report on any matter that the Commission has authority to examine or inquire into.

Powers

(3) An inspector authorized under subsection (2) has the same powers as the Commission in investigating, inquiring into and reporting on that matter, and the Commission may act on the report of the inspector.

Contract professionals

105. The Commission may contract for the services of health care providers, lawyers, accountants, actuaries and other professionals to assist and advise it in performing its responsibilities.

Annual Report of Commission

Annual report

106. (1) The Commission shall prepare an annual report regarding its administration of this Act and the other enactments for which it is responsible.

Contents of annual report

- (2) The Commission's annual report must contain
- (a) a report, prepared in accordance with the regulations, on the sufficiency of the Workers' Protection Fund to meet its liabilities;
 - (b) any information required to be included under Part IX of the *Financial Administration Act*; and
 - (c) any other information the Governance Council considers necessary or advisable.

Submission and tabling of report

(3) The annual report must be sent to the Minister, who shall lay it before the Legislative Assembly in accordance with Part IX of the *Financial Administration Act*.

Report to Minister

Response by Governance Council

106.1. The Governance Council shall report on any matter requested by the Minister within the time specified.

PART 5

ASSISTANCE, REVIEWS AND APPEALS

Office of the Workers' Advisor

Office established

107. (1) The Office of the Workers' Advisor is established to assist workers and others to understand this Act and to make claims for compensation.

Status of the Office

(2) The Office of the Workers' Advisor is independent from and does not form a part of the Commission.

Appointment

(3) The Minister shall appoint a Workers' Advisor and such deputy workers' advisors and staff of the Office of the Workers' Advisor as the Minister considers advisable, subject to subsection (6).

Eligibility

(4) The following persons are not eligible to be appointed to the Office of the Workers' Advisor:

- (a) directors of the Governance Council and staff of the Commission;
- (b) members and staff of the Appeals Tribunal.

Status of staff

(5) An employee in the public service may be appointed to the Office of the Workers' Advisor, but no person appointed to that Office is to be considered an employee in the public service by virtue of that appointment.

Agreement with the Northwest Territories

(6) If an agreement with the Government of the Northwest Territories under section 168 is in effect, the Workers' Advisor, deputy workers' advisors and staff of the Office of the Workers' Advisor are the persons appointed under the *Workers' Compensation Act* (Northwest Territories).

Term of office

108. (1) The Workers' Advisor and a deputy workers' advisor hold office for the term specified in his or her appointment.

Budget

(2) Subject to subsection (3), the budget of the Office of the Workers' Advisor must be paid out of the Workers' Protection Fund.

Agreement

(3) The Governance Council, on behalf of the Commission, may enter into an agreement with the Government of Nunavut respecting the budget and administration of the Office of the Workers' Advisor.

Budget increases

(4) The budget of the Office of the Workers' Advisor may not be increased in any year by an amount greater than the cost of living increase established in that year under section 53, unless otherwise provided in the agreement referred to in subsection (3).

Duties of Workers' Advisor

109. (1) The Workers' Advisor shall, on request,

- (a) assist any claimant, unless the Workers' Advisor considers that the claim is without merit; and
- (b) advise workers and their spouses, children and dependants about this Act, the regulations and any decisions made under this Act.

Representations

(2) The Workers' Advisor may make representations on behalf of a claimant in support of his or her claim to the Commission and the Appeals Tribunal.

Delegation

(3) The Workers' Advisor may delegate any or all of his or her powers and duties to a deputy workers' advisor.

Provision of information

110. (1) The Commission shall, on the request of a claimant, provide the Office of the Workers' Advisor with any information the claimant is entitled to access.

Confidentiality of information

(2) The Office of the Workers' Advisor shall keep confidential any information provided to it by the Commission or a claimant and shall not, without the consent of the claimant, divulge that information to any other person.

Annual report

111. (1) The Workers' Advisor shall, in accordance with the regulations and the agreement referred to in subsection 108(3), prepare an annual report on the functions and activities of the Office of the Workers' Advisor for the Minister and the Governance Council.

Tabling of report

(2) The Minister shall table a copy of the annual report in the Legislative Assembly during the first sitting after the Minister receives it.

Review of Commission Decisions

Review committee continued

112. (1) The "review committee" of the former Workers' Compensation Board is continued as the "Review Committee".

Composition

(2) The Review Committee is composed of members of the staff of the Commission designated by the President.

Duty of Review Committee

(3) The Review Committee shall, on request under sections 113 and 114 and in accordance with this Act, review decisions of the Commission.

Powers

(4) For greater certainty, the Review Committee may exercise any of the powers available to the Commission when making the decision under review.

Exclusion

(5) For greater certainty, no decision or policy of the Governance Council is subject to review.

Request for review of compensation

113. A claimant or employer who is dissatisfied with a decision of the Commission respecting a claim for compensation may, in writing, request that the decision be reviewed by the Review Committee.

Request for review of amount levied

114. (1) An employer who is dissatisfied with a decision of the Commission respecting any of the following matters may, in writing, request that the decision be reviewed by the Review Committee:

- (a) the classification of the employer and the determination of its claims experience;
- (b) the liability for, or the amount of, an assessment;
- (c) the entitlement to, or the amount of, a safety discount;
- (d) the liability for, or the amount of, a penalty or hazard premium;
- (e) whether the person is an employer, the successor to a former employer or subject to common control or direction;
- (f) whether a person is a worker of the employer.

Assessment payable

(2) Despite a request for a review made to the Review Committee or an appeal to the Appeals Tribunal, the employer remains liable to pay its assessment pending the final decision on the review or appeal.

Limitation period

115. A request for a review of a decision of the Commission must be made within three years after the day of the decision, unless the Review Committee considers that there is a justifiable reason for the delay and allows an extension.

Review of decision

116. (1) On receiving a request for a review, the Review Committee shall conduct a review of the decision.

Conduct of review

(2) The Review Committee shall give the person requesting the review and any other interested person an opportunity to be heard and to present evidence.

Oral hearing

(3) The Review Committee shall allow the presentation of oral arguments, if requested by the claimant or employer involved in the review.

New evidence

(4) If new evidence becomes available after the decision being reviewed has been made, the Review Committee may

- (a) consider the new evidence when making its decision; or
- (b) refer the new evidence to the staff member responsible for the decision being reviewed, and request that person to reconsider the original decision.

Applicable policy

(5) The Review Committee shall, when making its decision, apply any policy of the Governance Council that applies to the subject matter of the review.

Decision

(6) The Review Committee may confirm, vary or reverse the decision of the Commission under review.

Finality

(7) Subject to the right of appeal under section 128, a decision of the Review Committee is to be considered a final and conclusive decision of the Commission.

Appeals Tribunal

Continuation of appeals tribunal

117. (1) The "appeals tribunal" is continued as the "Appeals Tribunal".

Status of Appeals Tribunal

(2) The Appeals Tribunal is independent and is not a part of the Commission.

Composition

118. (1) The Appeals Tribunal is composed of at least four members appointed by the Minister in accordance with this section.

Factors for appointment

(2) When selecting persons for appointment to the Appeals Tribunal, the Minister shall ensure that

- (a) each member of the Appeals Tribunal has experience and an interest in workers' compensation issues, and
 - (i) has been a member, of at least five years good standing, of a law society of a territory or province,
 - (ii) has at least five years experience as a member of an administrative tribunal or a court, or
 - (iii) has other qualifications that can reasonably be considered to be equivalent to those described in subparagraph (i) or (ii); and
- (b) a sufficient number of members are appointed for the Appeals Tribunal to effectively perform its functions.

Agreement with the Northwest Territories

(3) If an agreement with the Government of the Northwest Territories under section 168 is in effect, the members of the Appeals Tribunal are the persons appointed under the *Workers' Compensation Act* (Northwest Territories), if the Minister of the Government of the Northwest Territories responsible for that Act

- (a) consults with the Minister of the Government of Nunavut responsible for this Act prior to appointing the members of the Appeals Tribunal; and
- (b) appoints two of the members of the Appeals Tribunal referred to in subsection (2) on the recommendation of the Minister of the Government of Nunavut responsible for this Act.

Recommendations by Minister

(4) For greater certainty, subsection (2) applies to the Minister making a recommendation under paragraph (3)(b).

Restrictions

(5) The following persons are not eligible to be members of the Appeals Tribunal:

- (a) directors of the Governance Council and staff of the Commission;
- (b) the Workers' Advisor, a deputy workers' advisor and staff of the Office of the Workers' Advisor.

Appeals Tribunal functions

119. (1) The Appeals Tribunal shall hear appeals from the Review Committee and applications under section 63 on whether a person is immune from action pursuant to this Act.

Powers

(2) The Appeals Tribunal may

- (a) confirm, vary or reverse any decision of the Review Committee;
- (b) make rules respecting its procedure and the conduct of its business;
- (c) exercise the powers of a board appointed under the *Public Inquiries Act*; and
- (d) cause depositions of witnesses residing in or outside Nunavut to be taken before any person appointed by the Appeals Tribunal in a manner similar to that of a court of superior jurisdiction.

Chairperson and vice-chairperson

120. (1) The Minister shall designate a chairperson and vice-chairperson of the Appeals Tribunal from among its members.

Agreement with the Northwest Territories

(2) If an agreement with the Government of the Northwest Territories under section 168 is in effect, the chairperson and vice-chairperson of the Appeals Tribunal are the persons designated under the *Workers' Compensation Act* (Northwest Territories), if the Minister of the Government of the Northwest Territories responsible for that Act consults with the Minister of the Government of Nunavut responsible for this Act prior to designating the chairperson and vice-chairperson.

Role of vice-chairperson

(3) If the chairperson is absent or unable to act or if the position is vacant, the vice-chairperson shall act in the place of the chairperson.

Acting vice-chairperson

(4) The chairperson of the Appeals Tribunal may designate a member of the Appeals Tribunal to serve as acting vice-chairperson, and to exercise the powers of the vice-chairperson generally during the temporary absence of the vice-chairperson or in respect of a particular matter, if the vice-chairperson is unable to act in respect of that matter.

Term of office

121. (1) A member of the Appeals Tribunal holds office for a term, not exceeding three years, specified in the appointment.

Reappointment

(2) The Minister may reappoint a person as a member of the Appeals Tribunal.

Pending matters

(3) A member of the Appeals Tribunal whose term of office has expired may, at his or her discretion, continue in office and complete his or her duties in respect of a matter commenced, but not concluded, during his or her term in office.

Remuneration

122. Members of the Appeals Tribunal shall receive remuneration in accordance with the regulations.

Offices and staff

123. (1) The Minister may appoint such staff of the Appeals Tribunal as the Minister considers necessary to carry out its responsibilities.

Status of staff

(2) Each member of the staff of the Appeals Tribunal is an employee in the public service.

Contract professionals

(3) The Appeals Tribunal may contract for the services of health care providers, lawyers and other professionals that it requires to assist and advise it to carry out its responsibilities.

Budget

124. (1) Subject to subsection (2), the budget of the Appeals Tribunal must be paid out of the Workers' Protection Fund.

Agreement

(2) The Governance Council, on behalf of the Commission, may enter into an agreement with the Government of Nunavut respecting the budget and administration of the Appeals Tribunal.

Budget increases

(3) The budget of the Appeals Tribunal may not be increased in any year by an amount greater than the cost of living increase established in that year under section 53, unless otherwise provided in the agreement referred to in subsection (2).

Annual report

125. (1) The Appeals Tribunal shall, in accordance with the regulations, prepare an annual report on the functions and activities of the Appeals Tribunal for the Minister and the Governance Council.

Tabling of report

(2) The Minister shall table the report of the Appeals Tribunal in the Legislative Assembly during the first sitting following receipt of the report.

Appeals to the Appeals Tribunal

Jurisdiction of Appeals Tribunal

126. (1) The Appeals Tribunal has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions in respect of

- (a) an appeal of a decision of the Review Committee; and
- (b) whether a person is immune from action pursuant to this Act.

Finality

(2) Subject to sections 131 and 132, a decision of the Appeals Tribunal is final and conclusive.

No action against Appeals Tribunal

(3) No action may be maintained or brought against the Appeals Tribunal in respect of any act or decision done or made by it in the honest belief that it was within its jurisdiction.

Exclusion

(4) For greater certainty, no decision or policy of the Governance Council is subject to appeal.

Sittings

127. (1) The Appeals Tribunal shall sit at the times it considers necessary to perform its duties, and shall conduct its proceedings in a manner it considers appropriate.

Sole member to hear appeal

(2) The chairperson of the Appeals Tribunal shall designate one member of the Appeals Tribunal, including the chairperson, to hear an appeal.

Panel of three

(3) Despite subsection (2), the chairperson may convene a panel of three members to hear an appeal, if the chairperson considers a panel to be more appropriate.

Appeal

128. (1) A claimant or employer may, in writing, appeal any decision of the Review Committee to the Appeals Tribunal.

Limitation period

(2) No appeal may be taken to the Appeals Tribunal more than three years after the day of the Review Committee's decision, unless the Appeals Tribunal considers there is a justifiable reason for the delay and allows an extension.

Provision of documents

129. The Commission shall supply the Appeals Tribunal with any documents in the possession of the Commission that relate to a matter under appeal.

Conduct of appeal

130. (1) The Appeals Tribunal shall, in determining an appeal, give the appellant, the Commission and any other interested person an opportunity to be heard and to present evidence.

Applicable policy

(2) The Appeals Tribunal shall, when making its decision, apply any policy of the Governance Council that applies to the subject matter of the appeal.

Referrals to Commission

(3) If the Appeals Tribunal considers that it would assist in hearing the appeal or an application under section 63, it may, in relation to a matter in issue,

- (a) request the Commission to authorize, under subsection 104(2), an inspector to investigate, inquire into and report on the matter;
- (b) in the case of an appeal, refer the matter to the Commission for a decision;
- (c) request a representative of the Commission to appear before it to provide information or an explanation in relation to the matter; and
- (d) request the Governance Council to make an exemption from the application of a policy of the Governance Council or to reconsider the reasonableness of the policy.

Time for decision

(4) The Appeals Tribunal shall make its decision within 90 days after hearing all the evidence in the appeal.

Failure to follow policy or law

131. (1) Despite any other provision of this Act, the Governance Council may, in writing, direct the Appeals Tribunal to rehear all or part of an appeal or application and to apply a policy of the Governance Council or to comply with this Act or the regulations, if the Governance Council considers that the Appeals Tribunal has failed to

- (a) apply properly or reasonably a policy of the Governance Council that the Governance Council considers applicable to the subject matter of the appeal or application; or
- (b) comply with this Act or the regulations.

Request for direction

(2) Any person may request the Governance Council to give a direction to the Appeals Tribunal under subsection (1).

Limitation period

(3) No direction may be given to the Appeals Tribunal under this section more than six months after the day of the Appeals Tribunal's decision.

Stay

(4) The Governance Council may only make a direction under subsection (1) once in respect of a single appeal, and may stay the decision of the Appeals Tribunal until the Appeals Tribunal has reheard the matter.

Variation of decision

132. The Appeals Tribunal may vary a decision made by it and may, on its own initiative, rehear an appeal or application.

No Judicial Review

No judicial review

133. Except where there has been a denial of natural justice or an excess of jurisdiction, no act by or decision of the Commission, including the Governance Council and the Review Committee, or the Appeals Tribunal, may be questioned or reviewed in any court, and for greater certainty no act by, decision of or proceeding before the Commission or Appeals Tribunal may be restrained by injunction, prohibition or other process or proceedings in any court.

PART 6

ENFORCEMENT, PENALTIES AND OFFENCES

Inspections

Inspection

134. (1) For the purpose of ensuring compliance with any provision of this Act, the regulations or an order made under this Act, an inspector and any person assisting the inspector may, at any reasonable time,

- (a) inspect and audit any document or other thing used or obtained in connection with employment; and
- (b) enter and inspect any place that the inspector has reason to believe is used in connection with employment.

Dwelling place

(2) An inspector shall not enter or inspect the living quarters in a dwelling place for the purposes of subsection (1), unless

- (a) the occupant or person in charge of the dwelling place consents; or
- (b) the entry or inspection is authorized by a warrant under subsection 136(2).

Searches

Searches

135. (1) If an inspector believes, on reasonable grounds, that an offence under this Act has been committed, the inspector may enter any place and search any thing or place for the purpose of obtaining evidence in relation to that offence under this Act if

- (a) the owner or person in possession of the thing or the occupant or person in charge of the place, as the case may be, consents;
- (b) the entry and search is authorized by a warrant; or
- (c) a warrant is not required under section 137.

Seizures

(2) If, during the course of an inspection or search, an inspector believes, on reasonable grounds, that a thing is evidence in relation to an offence under this Act, the inspector may seize the thing if

- (a) the seizure is authorized by a warrant; or
- (b) a warrant is not required under section 137.

Warrant for entry, search or seizure

136. (1) A court may issue a warrant authorizing an inspector to enter a place, search any thing or place and to seize things as evidence, if the court is satisfied by information on oath that there are reasonable grounds to believe that

- (a) an offence under this Act has been committed;
- (b) the entry, search or seizure may provide evidence in relation to the offence; and
- (c) a warrant is justified because
 - (i) the owner or person in possession of the thing or the occupant or person in charge of the place, as the case may be, does not consent to the entry, search or seizure,
 - (ii) there are reasonable grounds for believing that consent will be refused, or
 - (iii) there are reasonable grounds for believing that evidence may be lost, if an attempt at obtaining consent is made.

Warrant for entry and inspection of living quarters

(2) A court may issue a warrant in respect of the living quarters in a dwelling place for the purposes of section 134, if the court is satisfied by information on oath that there are reasonable grounds to believe that

- (a) the entry and inspection is necessary for the purpose of ensuring compliance with any provision of this Act, the regulations or an order under this Act; and
- (b) the warrant is justified for the reasons referred to in paragraph (1)(c).

Assistance order

(3) A warrant may include an order that any person named or identified in the warrant provide any assistance reasonably considered to be required to give effect to the warrant.

Application without notice

(4) A warrant may be issued, with or without conditions, on an application made without notice.

Exigent circumstances

137. (1) A warrant is not required under section 135, if distance, urgency, the likelihood of the removal or destruction of the evidence or other relevant factors do not reasonably permit the obtaining of a warrant or consent.

No entry or search of living quarters

(2) Subsection (1) does not authorize the entry and search of the living quarters of a dwelling.

Powers in Respect of Inspection or Search

Inspection and search powers

138. (1) For the purposes of an inspection or search under this Act, an inspector may

- (a) open or cause to be opened any container whose contents may be relevant for the purpose of ensuring compliance;
- (b) inspect any thing and take samples free of charge;
- (c) require a person to produce all or part of a document for inspection or copying;
- (d) seize any thing during an inspection that may provide evidence for the purpose of ensuring compliance, and when authorized by a warrant, seize any thing as evidence of the commission of an offence;
- (e) use or cause to be used any computer system and examine any data contained in or available to the computer system;
- (f) reproduce or cause to be reproduced any record or data;
- (g) print or export any record or data for examination or copying; and
- (h) use or cause to be used any copying equipment at the place to make copies of the record or data.

Power to take evidence

(2) An inspector has the power and authority to take affidavits, affirmations or declarations as to any matter with which an inspection or search is concerned.

Show identification

(3) The inspector must show his or her official identification, on request, to the occupant or person in charge of any place the inspector is entering.

Assistance

(4) The owner or the person in charge of a thing or place being inspected under this Act, and any person found in the place, shall

- (a) give the inspector all reasonable assistance to enable the inspector to carry out his or her functions; and
- (b) provide the inspector with any information in relation to the administration of this Act that the inspector may reasonably require.

Protection for other persons

(5) The protections afforded to an inspector by this Act or any other law extend to other persons while and to the extent they are in the course of assisting the inspector under the inspector's direction.

Notice of production

139. (1) For the purposes of an inspection under this Act, the Commission or an inspector may give to an employer, the agent of an employer or any person the Commission considers might be an employer, written notice requiring that person to produce to the Commission or inspector all documents in the possession, custody or power of the employer, agent or other person relating to the inspection referred to in the notice.

Place and time

(2) The notice must specify the place and time for the production, which must be at least 10 days after the notice is given.

Production

(3) The person named in and served with the notice shall produce all documents required in accordance with the notice.

Security for Assessments

Security for assessments

140. (1) The Commission may, by written notice, require an employer to provide security in such amount and form as the Commission considers sufficient to provide for the payment of assessments payable by the employer in the current year or subsequent years.

Additional security

(2) The Commission may increase the security required from an employer, if the security no longer appears to be sufficient.

Providing security

(3) The employer shall, within 15 days after being notified, provide the security required by the Commission.

Realizing on security

(4) If an employer defaults on the payment of an assessment or otherwise breaches the terms of its security, the Commission may take any proceeding and do any act to realize on any security provided by the employer.

Prescribed Penalties**Employer penalties**

- 141.** (1) An employer shall pay a prescribed penalty to the Commission, if the Commission determines that the employer
- (a) did not send to the Commission a report, payroll statement, return or other information in accordance with this Act;
 - (b) entered into a contract of service with a worker before the employer provided the Commission with an initial payroll statement in accordance with section 73;
 - (c) failed to reply to the Commission's communications regarding the personal injury, disease or death of a person within the time required by the Commission;
 - (d) knowingly understated or underestimated the amount of its payroll;
 - or
 - (e) did not pay all or part of an assessment or other amount due to the Commission in accordance with this Act.

Health care provider penalty

(2) A health care provider shall pay a prescribed penalty to the Commission, if the Commission determines that the health care provider failed to provide information required under section 30.

Municipal penalty

(3) A municipal corporation shall pay a prescribed penalty to the Commission, if the Commission determines that the municipal corporation failed to give written notice to the Commission under section 160.

Penalty for unauthorized disclosure

(4) A person shall pay a prescribed penalty to the Commission, if the Commission determines that the person disclosed information contrary to section 161.

Recovery of Commission's costs

(5) The Commission may increase a prescribed penalty by all or part of the costs the Commission incurs as a result of the contravention giving rise to the penalty, including the Commission's costs of investigating the contravention.

Reduction or excuse

(6) The Commission shall, if it is satisfied that a person has a reasonable explanation for the contravention, reduce the amount of a penalty or excuse the person from paying a penalty.

No offence if penalty paid

(7) Despite any other provision of this Act, a person who pays a penalty under this section may not be charged with an offence respecting that contravention, unless the contravention continues after the penalty is paid.

Commission Remedies

General power

142. (1) The Commission has the same powers and is entitled to the same remedies to enforce payment of any sum that any employer, worker or other person is required to pay to the Commission under this Act as the Commission possesses or is entitled to in respect of assessments.

Sanctions for claimant

(2) The Commission may reduce, suspend or terminate compensation to a claimant whom it considers has wilfully failed to

- (a) attend a medical examination under section 24;
- (b) provide information under section 30;
- (c) comply with a treatment plan under section 33; or
- (d) comply with a notice respecting mitigation under subsection 35(2).

Excess compensation

(3) The Commission may recover, as a debt due to the Commission, the amount of any compensation paid to a person that exceeds the amount to which he or she is entitled.

Set-off

(4) In addition to any other remedies available, the Commission may set-off any amount due to it against any compensation or payment that may be or that may become payable to the person indebted to the Commission.

Priority

143. An amount due to the Commission by an employer under this Act has priority over all assignments, debts, liens, charges or encumbrances, other than wages due to workers and prior mortgages on land or personal property.

Charge on personal property and proceeds

144. (1) Despite any other enactment, any amount due to the Commission by an employer under this Act is a charge on the employer's personal property or proceeds, within the meaning of the *Personal Property Security Act*.

Clearance certificate

(2) The purchaser of a business or the bulk sale purchaser of stock or equipment used in connection with a business shall, before paying any part of the purchase price or giving the vendor any security for it, demand and obtain from the vendor a clearance certificate from the Commission stating that the Commission has no claim in respect of the business, stock or equipment.

Issuance of clearance certificate

(3) The Commission may issue to the vendor a clearance certificate stating that the Commission has no claim in respect of the business, stock or equipment, and the vendor must, on demand, provide the clearance certificate to the purchaser.

Liability of purchaser

(4) A purchaser who does not receive the clearance certificate is liable to the Commission for any assessment or other money due to the Commission by the vendor, not exceeding the fair market value of the business, stock or equipment referred to in subsection (2).

Collection certificates

145. (1) The Commission may issue a collection certificate that

- (a) states that a person has defaulted in the payment of all or any part of an assessment or other money due to the Commission;
- (b) sets out the amount remaining unpaid;
- (c) describes the payment on which default was made; and
- (d) directs the payment of the amount by that person.

Filing of collection certificate

(2) The collection certificate, or a copy of it certified by the Corporate Secretary under the seal of the Commission to be a true copy, may be filed with the Clerk of the Nunavut Court of Justice.

Effect

(3) A copy of the collection certificate filed with the court becomes an order of the Nunavut Court of Justice, and may be enforced as a judgment of that court.

Order for default

146. (1) The Commission may order an employer to discontinue and refrain from employing any worker if

- (a) the employer is in default of payment of any assessment or of any other money due by the employer to the Commission and the default continues; or

- (b) the employer fails to provide security as required by the Commission.

Service of order

- (2) The Commission shall serve written notice of the order on the employer.

Compliance with order

(3) After receiving the order, the employer shall comply with the order and shall not employ any worker until the employer pays the money or provides the security, as the case may be.

Application for restraining order

147. (1) The Commission may, by way of originating notice, apply to the Nunavut Court of Justice for a restraining order under this section.

Restraining order

(2) The Nunavut Court of Justice may, on application of the Commission, restrain a person from carrying on any work if

- (a) the person defaulted in the payment of an assessment;
- (b) execution was issued on a judgment, or a collection certificate was filed, with respect to the assessment;
- (c) a certificate is returned from a sheriff or his or her deputy stating that he or she was unable to wholly satisfy the execution; and
- (d) the person carries on work in which workers are employed.

Continuation of order

(3) The restraining order may continue until the amount due on the execution for all assessments made by the Commission, together with the costs of the application, are paid.

Offences and Punishment

Submitting false information

148. (1) No person who is required to provide information under this Act shall knowingly or negligently provide false information to the Commission.

False information to inspector

(2) No person shall knowingly make any false or misleading statement, either orally or in writing, to an inspector exercising powers or performing duties or functions under this Act.

Non-production

(3) No person named in and served with a notice under section 139 shall knowingly fail to produce all the documents required in accordance with the notice.

Prohibited agreements

149. No employer shall make an agreement with a worker to waive or to forego any compensation to which the worker or his or her spouse, child or dependants might become entitled.

Obstructing a claim

150. (1) No employer or person acting on behalf of an employer shall prevent, discourage or inhibit or attempt to prevent, discourage or inhibit, by interference, intimidation or otherwise, a person from making a claim for compensation.

Obstructing inquiry

(2) No person shall

- (a) obstruct or hinder the making of an inspection, examination or inquiry under this Act; or
- (b) neglect or refuse to produce any documents, writings, books, deeds or papers at the time and place required under this Act.

Failure to comply with order

151. No employer shall continue to employ workers after being served with an order under section 146 to discontinue and refrain from employing workers.

Unlawful deductions

152. No employer shall, either directly or indirectly,

- (a) deduct from the wages of its workers any part of any sum that the employer is or might become liable to pay to the Commission; or
- (b) require or permit any of its workers to contribute in any manner to the indemnification of the employer against any liability that the employer has incurred or may incur under this Act.

Attempts and accessories

153. (1) A person who attempts to commit an offence or is an accessory after the fact to the commission of an offence is guilty of an offence, whether or not it was possible under the circumstances to commit the offence.

Parties to offence

(2) Every person is a party to an offence who

- (a) actually commits the offence;
- (b) does or omits to do anything for the purpose of aiding any person to commit the offence;
- (c) abets any person in committing the offence; or
- (d) counsels another person to commit or be a party to offence.

Liability for employees or agents

154. (1) A person may be convicted of an offence, if the offence was committed by an employee or agent of the person during the course of his or her work, whether or not the employee or agent is identified or prosecuted for the offence.

Liability of corporate officers

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

Original liability

(3) Nothing in this section relieves the person who actually committed the offence from liability for the offence.

Due diligence

155. Unless otherwise provided in this Act, no person shall be convicted of an offence under this Act, if the person establishes that he or she exercised all due diligence to prevent the commission of the offence.

Offences

156. (1) Subject to this section, a person who contravenes any of the following provisions is guilty of an offence:

- (a) section 148;
- (b) section 149;
- (c) section 150;
- (d) section 151;
- (e) section 152;
- (f) section 161;
- (g) subsection 164(2).

Punishment

(2) A person who commits an offence under this Act is liable on summary conviction

- (a) in the case of a corporation, to a fine not exceeding \$500,000; or
- (b) in the case of an individual, to a fine not exceeding \$50,000, to imprisonment for a term of not more than six months, or to both a fine and imprisonment.

Subsequent offence

(3) Despite subsection (2), a person who is convicted of an offence a second or subsequent time is liable to a fine not exceeding double the amount set out in that subsection.

Continuing offence

(4) A person who commits or continues an offence on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

Payment of fines

157. Any fine imposed and collected under this Act shall be paid to the Commission for the credit of the Workers' Protection Fund.

Fines cumulative

158. (1) A fine imposed on an employer for an offence involving more than one worker may be calculated as a total of separate fines for each worker, as if the offence had been the subject of a separate information in respect of each worker.

Additional fine

(2) If a person is convicted of an offence and the court is satisfied that monetary benefits accrued or could have accrued to the person as a result of the commission of the offence,

- (a) the court may order the person to pay an additional fine in an amount equal to its estimation of the amount of the monetary benefits;
- (b) the additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act; and
- (c) the additional fine is to be added to any other fine or amount of money ordered to be paid under this Act.

Failure to pay fine

159. If a person fails to pay a fine imposed under this Act within the time required by law, the fine may be collected as if it were a debt due the Commission.

PART 7

GENERAL AND OTHER MATTERS

Notice of Building Permits

Duty to give notice

160. A municipal corporation shall, within three days after granting a building permit involving an expenditure of an amount in excess of the prescribed amount, give written notice of the permit to the Commission.

Confidentiality of Information

Confidentiality

161. No person shall disclose or use information acquired under this Act contrary to

- (a) this Act;
- (b) the policies of the Governance Council; or
- (c) the *Access to Information and Protection of Privacy Act*.

Provision of information

162. The provisions of this Act respecting the provision of information by or to the Commission prevail despite the *Access to Information and Protection of Privacy Act*.

Claim open to claimant

163. (1) Subject to subsection (2), a claimant, or his or her legal or personal representative, may examine and copy information generated in processing the claim, including medical reports.

Alternate disclosure

(2) The Commission may provide the information that would be available to a worker under subsection (1) to a legal or personal representative of the worker, instead of the worker, if it considers that

- (a) the worker is affected by a mental disorder; or
- (b) the information provided directly to the worker may not be understood by the worker or may hinder his or her recovery.

Information for employer

164. (1) In addition to providing a copy of the progress report under subsection 25(5), the Commission shall, on request, disclose to an employer the following information in the Commission's possession:

- (a) information related to the cause of a claim for compensation by one of the employer's workers, the disposition of the claim, the recovery of the worker and any vocational rehabilitation of the worker;
- (b) any other information related to an issue in a review or appeal to which the employer is a party, unless the Commission considers the information irrelevant.

Conditions for use

(2) No person shall use any personal or medical information obtained under paragraph (1)(b) that relates to a worker for any purpose other than for the review or appeal.

Provision of Information

Duty to post information

165. An employer shall keep posted in a conspicuous place on the premises where work is performed by its workers, such notices as the Commission may from time to time require.

Timeliness

166. (1) A person or employer who is required to send information to the Commission shall do so without delay.

Form and detail

(2) Any information required to be kept, sent to or made available to the Commission under this Act must be in the form and contain the detail required by the Commission.

Service and filing of documents

167. (1) The form and manner for the service or filing of documents with the Commission must accord with the policies of the Governance Council and any procedures established by the Commission.

Date of service

(2) A document served by registered mail is deemed to be served on the 14th day after mailing, unless there is evidence to the contrary.

Agreements with the Northwest Territories

Making agreement

168. (1) The Minister, on behalf of the Government of Nunavut, may enter into agreements with the Government of the Northwest Territories establishing the terms and conditions under which the Government of the Northwest Territories, the Commission, the Appeals Tribunal and the Office of the Workers' Advisor may provide services, exercise powers and perform duties and functions for Nunavut.

Amend, terminate or replace

(2) The parties to an agreement entered into under subsection (1) may amend, terminate or replace the agreement or any earlier agreement made for the same purpose.

Assets and liabilities

(3) An agreement entered into under subsection (1) must include the terms and conditions for determining, on the termination of the agreement,

- (a) the assets accrued and the liabilities incurred by the Commission in the administration of the enactments for which it is responsible in Nunavut and the Northwest Territories; and
- (b) the division of the assets and liabilities referred to in paragraph (a) between the Commission and any comparable entity that is established for Nunavut.

All assets and liabilities

(4) For greater certainty, the assets and liabilities referred to in subsection (3) are all of the assets and liabilities of the Commission that exist on the termination of the agreement, and not just those assets and liabilities that are accrued or incurred by the Commission while the agreement is in effect.

Division on termination

(5) On the termination of an agreement entered into under subsection (1), the assets and liabilities referred to in subsection (3) must be divided in accordance with the agreement, subject to any subsequent amendment.

Clarification

(6) For greater certainty, subsection (5) does not apply to an agreement terminated only because it is replaced by another agreement.

Single fund

(7) Despite any other enactment, the Commission may, in accordance with an agreement entered into under subsection (1) and the *Workers' Compensation Act* (Northwest Territories), administer the Workers' Protection Fund established under this Act and the Workers' Protection Fund established under the *Workers' Compensation Act* (Northwest Territories) as if the two Funds together constitute a single Workers' Protection Fund.

Administration

(8) For greater certainty, the Commission may, in the circumstances described in subsection (7),

- (a) make payments out of the single Workers' Protection Fund referred to in that subsection in respect of compensation and other costs under the enactments for which it is responsible, including the remuneration of the staff of the Commission;
- (b) make payments into the single Workers' Protection Fund in respect of the money paid to the Commission under any enactment; and
- (c) invest any money in the single Workers' Protection Fund in the name of the Commission under either this Act or the *Workers' Compensation Act* (Northwest Territories).

Regulations

Regulation power

169. The Commissioner, on the recommendation of the Minister, may make regulations respecting

- (a) forms for use under this Act or the regulations;
- (b) notices of an injury, disease or death;
- (c) the provision of and the payment for costs and expenses related to medical aid;
- (d) allowances payable under this Act;
- (e) the rendering of accounts to the Commission;
- (f) employers' payroll statements;
- (g) the prevention of injury, disease and death and the provision of safe working conditions, including proper sanitation, heating where practicable, and ventilation in places of employment;

- (h) qualifications for appointment to the Governance Council and the Appeals Tribunal;
- (i) the Year's Maximum Insurable Earnings;
- (j) the remuneration of directors of the Governance Council and members of the Appeals Tribunal;
- (k) annual reports required under this Act;
- (l) anything that in this Act is to be prescribed or established by regulation; and
- (m) any other matter necessary to carry out the provisions of this Act.

Application of *Statutory Instruments Act*

170. (1) For greater certainty, the following are not statutory instruments as defined in the *Statutory Instruments Act*:

- (a) a decision, determination, direction, order, policy, bylaw, resolution or other instrument made by the Commission;
- (b) a decision of the Appeals Tribunal.

Publication

(2) Any document the Commission is required to publish under this Act must be published in the *Nunavut Gazette*.

Incorporation by reference or adoption

(3) A regulation may incorporate by reference, with or without variation, a document created by another person or entity, as amended from time to time.

Publication of notice

(4) Where a document is incorporated by reference or adopted under this section, publication in the *Nunavut Gazette* of a notice identifying the document, stating where copies of the document can be obtained, the extent of its incorporation or adoption and setting out the variations to which it is subject is deemed, for the purposes of the *Statutory Instruments Act*, to be sufficient publication without publishing the text of the document in the *Nunavut Gazette*.

Legislative Evaluation

Appointment of panel

171. (1) The Minister may, after consulting with the Governance Council, appoint a panel to conduct an evaluation of all or part of this Act.

Composition of panel

- (2) The panel must be composed of
 - (a) one person whom the Minister considers as representing the interests of the general public, to serve as the chairperson;

- (b) one person whom the Minister considers as representing the interests of workers; and
- (c) one person whom the Minister considers as representing the interests of employers.

Terms of reference

(3) The panel shall conduct its evaluation in accordance with terms of reference established by the Minister.

Completion of review

(4) The panel must complete its evaluation and submit its report to the Minister within 12 months after its appointment.

Tabling of report

(5) The Minister shall table the report of the panel in the Legislative Assembly during the first sitting following receipt of the report.

Costs of panel

(6) The Minister may direct, on the recommendation of the Governance Council, that the costs of the panel be paid out of the Workers' Protection Fund.

PART 8

TRANSITIONAL, CONSEQUENTIAL AMENDMENTS, REPEAL AND COMMENCEMENT

Transitional and Savings Provisions

Prior injuries and diseases

172. (1) This section applies in respect of any injury, disease or death that occurred before this Act comes into force.

Applicable law

(2) Whether a person is entitled to compensation and the nature of the compensation, if any, must be determined in accordance with the law in effect at the time the injury, disease or death occurred, except to the extent that the compensation or related rights are modified or revoked by express words in any subsequent enactment respecting workers' safety or compensation.

Procedure

(3) The procedures for making a claim for compensation and reviewing or appealing that claim must follow the procedures set out in this Act.

Married person

(4) If a person married or remarried after April 16, 1985, and for that reason ceased to be entitled, under any predecessor to this Act, to compensation in respect of the death of a worker, the marriage or remarriage of that person is deemed not to have, and never to have had, any effect on the person's entitlement to compensation under this Act or any predecessor to this Act.

Special payments

(5) Any person entitled to a special payment under the predecessor to this Act continues to be entitled to that payment in accordance with the law as it existed immediately before this Act comes into force.

Continuation of decisions, bylaws and resolutions

173. (1) Any decision, determination, direction, order, policy, bylaw, resolution or other instrument made by the Workers' Compensation Board that existed immediately before this Act comes into force continues in effect as if it were made by the Commission or Governance Council, as the case may be, to the extent it is not inconsistent with this Act or the regulations, until it expires or is terminated or repealed.

Continuation of rights and obligations

(2) An agreement, memorandum of understanding, contract, licence, right or obligation of the Workers' Compensation Board that existed immediately before this Act comes into force continues in effect as if it were made by, entered into by or belonged to the Commission, to the extent it is not inconsistent with this Act or the regulations, until it expires or is terminated.

Construction

(3) Any agreement, memorandum of understanding, contract, licence, right or obligation to which subsection (2) applies and any instrument in which the Workers' Compensation Board is named, shall be construed and given effect as if the Commission had been named instead of the Workers' Compensation Board.

Definition of "former Act"

174. (1) In this section, "former Act" means the *Workers' Compensation Act*, R.S.N.W.T. 1988, c.W-6, as duplicated by section 29 of the *Nunavut Act* (Canada).

Continuation of matters under this Act

(2) Subject to subsection (4), any matter pending before the appeals tribunal immediately before this section comes into force continues before the Appeals Tribunal in accordance with this Act.

Termination of appointment

(3) Subject to subsection (4), the appointment of a member of the appeals tribunal under the former Act terminates on the coming into force of this section.

Continuation of appeal under former Act

(4) Where the appeals tribunal has commenced, but not concluded, the hearing of an appeal before this section comes into force,

- (a) the former Act continues to apply to the appeal; and
- (b) the members of the appeals tribunal hearing the appeal continue to hold office until the appeal is concluded.

Legal proceedings

175. (1) Any action, application or other legal proceeding or any remedy that was commenced, or could have been commenced, by or against the Workers' Compensation Board immediately before this Act comes into force may be continued or brought by or against the Commission, without the parties being required to amend the style of cause in that action, application or proceeding.

Board proceedings

(2) Any matter pending before the Workers' Compensation Board immediately before this Act comes into force continues before the Commission, and any matter pending before the review committee of the Board continues before the Review Committee.

Continuation of other agreements

176. Any agreement or memorandum of understanding made by the Government of Nunavut with or in respect of the Workers' Compensation Board, that is in effect immediately before this Act comes into force continues in effect to the extent it is not inconsistent with this Act or the regulations, until it expires or is terminated.

Note

**The following provisions have been deleted for the purposes of this consolidation:
s.177 (Consequential Amendments)**

Repeal**Repeal**

178. *The Workers' Compensation Act, R.S.N.W.T. 1988,c.W-6, as duplicated by section 29 of the Nunavut Act (Canada), is repealed.*

Commencement**Coming into force**

179. This Act comes into force on a day or days to be fixed by order of the Commissioner.

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