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c 505 Workmen's Compensation Act

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CHAPTER 505

The Workmen's Compensation Act

1.-(1) In this Act,

(a) “accident” includes,

(i) a wilful and intentional act, not being the act of the workman,

(ii) a chance event occasioned by a physical or natural cause, and

(iii) disablement arising out of and in the course of employment; 1962-63, c. 145, s. 1 (1).

(b) “accident fund” means the fund provided for the payment of compensation, outlays and expenses under this Act in respect of Schedule 1, the salaries of the Commissioners and all expenses arising out of the establishment, maintenance and operation of mine rescue stations as provided by The Mining Act;

(c) “Board” means the Workmen’s Compensation Board; R.S.O. 1960, c. 437, s. 1 (1), cls. (b, c).

(d) “common-law wife” means a woman who, although not legally married to a man, cohabits with him and is recognized as his wife in the community in which they live; 1964, c. 124, s. 1 (1), part.

(e) “construction” includes reconstruction, repair, alteration and demolition;

(f) “dependants” means such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who but for the incapacity due to the accident would have been so dependent; R.S.O. 1960, c. 437, s. 1 (1), cls. (d, e).

(g) “dependent widow” means the woman who was the legal wife and a dependant of a workman immediately before his death; 1964, c. 124, s. 1 (1), part.

(h) “earnings” and “wages” include any remuneration capable of being estimated in terms of money;

(i) “employer” includes every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry and includes the Crown in right of Ontario and any permanent board of commission appointed by the Crown in right of Ontario and includes...
a person who authorizes or permits a learner to be in or about an industry for the purpose mentioned in clause 1, and, where the services of a workman are temporarily lent or hired to another person by the person with whom the workman has entered into such a contract, the latter is deemed to continue to be the employer of the workman while he is working for that other person;

(j) "employment" includes employment in an industry or any part, branch or department of an industry; R.S.O. 1960, c. 437, s. 1 (1), cl. (f-h).

(k) "independent operator" means a person who carries on an industry set out in Schedule 1 and who does not employ any workmen for that purpose; 1965, c. 142, s. 1 (1).

(l) "industrial disease" means any of the diseases mentioned in Schedule 3 and any other disease peculiar to or characteristic of a particular industrial process, trade or occupation;

(m) "industry" includes establishment, undertaking, trade and business;

(n) "invalid" means physically or mentally incapable of earning;

(o) "learner" means a person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry within the scope of Part I for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment; R.S.O. 1960, c. 437, s. 1 (1), cl. (i-l).

(p) "manufacturing" includes making, preparing, altering, repairing, ornamenting, printing, finishing, packing, packaging, inspecting, testing, assembling the parts of and adapting for use or sale any article or commodity or raw material; R.S.O. 1960, c. 437, s. 1 (1), cl. (m); 1964, c. 124, s. 1 (2).

(q) "medical referee" means a medical referee appointed by the Board; R.S.O. 1960, c. 437, s. 1 (1), cl. (n).

(r) "member of the family" means a wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother and half-sister, and a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related, and, where the workman is the parent or grandparent of an illegitimate child, includes such child and, where the workman is an illegitimate child, in-
includes his parents and grandparents, and includes a common-law wife; R.S.O. 1960, c. 437, s. 1 (1), cl. (o); 1964, c. 124, s. 1 (3).

(b) "member of a municipal volunteer fire brigade" means a person whose membership has been approved either by the chief of the fire department of a corporation, commission or board mentioned in subsection 2 or by a duly authorized official thereof;

(l) "outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials;

(u) "regulations" means the regulations made under this Act;

(v) "silicosis" means a fibrotic condition of the lungs sufficient to produce a lessened capacity for work, caused by the inhalation of silica dust;

(w) "superannuation fund" means The Workmen's Compensation Board Superannuation Fund; R.S.O. 1960, c. 437, s. 1 (1), cls. (p-t).

(x) "workman" includes a person who has entered into or is employed under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes a learner and a member of a municipal volunteer fire brigade, and includes an independent operator admitted by the Board under section 91, and includes a person who is called out under The Fires Extinguishment Act or who is summoned to assist in controlling and extinguishing a fire under The Forest Fires Prevention Act, but where used in Part I does not include an outworker or an executive officer of a corporation or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business. 1968, c. 143, s. 1 (1).

(2) For the purposes of this Act, every person, persons who assist in fire fighting

(a) who turns out and assists in extinguishing or stopping the progress of a fire under The Fires Extinguishment Act shall, while so engaged, be deemed to be an employee of the township that called him out; or

(b) who is summoned and assists in controlling and extinguishing a fire under The Forest Fires Prevention Act shall, while so engaged, be deemed to be an employee of the Crown in right of Ontario,
and his earnings for compensation purposes shall be the rate of earnings established at his regular employment under section 44. 1968, c. 143, s. 1 (2).

(3) The exercise and performance of the powers and duties of,

(a) a municipal corporation;

(b) a public utilities commission or any other commission or any board having the management and conduct of any work or service owned by or operated for a municipal corporation except a hospital board;

(c) a public library board;

(d) the board of trustees of a police village; and

(e) a school board,

shall for the purposes of Part I be deemed the trade or business of the corporation, commission, board, board of trustees or school board. R.S.O. 1960, c. 437, s. 1 (2); 1962-63, c. 145, s. 1 (2).

(4) For the purposes of this Act, a municipal corporation, commission or board mentioned in subsection 3 shall be deemed to be the employer of a member of a municipal volunteer fire brigade, and such employment shall be deemed to be included in the exercise and performance of the powers and duties of the corporation, commission or board and it shall yearly, on or before such date as the Board may prescribe or at such other times as the Board may prescribe, notify the Board, specifying the number of volunteers engaged and shall select such amount of coverage for such volunteers, which in no case shall be less than $2,500 or more than the maximum rate of annual earnings established by subsection 1 of section 44. 1968, c. 143, s. 1 (3).

2. A reference in this Act to Schedule 1, 2, or 3 is a reference to Schedule 1, 2, or 3, as the case may be, in the regulations. R.S.O. 1960, c. 437, s. 2.

PART I

COMPENSATION

3.—(1) Where in any employment, to which this Part applies, personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer is liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned, except where the injury,

(a) does not disable the workman beyond the day of accident from earning full wages at the work at which he was employed; or

(b) is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or
(2) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment and, where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment. R.S.O. 1960, c. 437, s. 3 (2).

(3) Compensation for disability shall be computed and payable from and including the day following the day of the accident or from the date of the disability, whichever is the later. 1968, c. 143, s. 2 (2).

4. Employers in the industries for the time being included in Schedule 1 are liable to contribute to the accident fund as hereinafter provided, but are not liable individually to pay compensation. R.S.O. 1960, c. 437, s. 4.

5. Employers in the industries for the time being included in Schedule 2 are liable individually to pay compensation and medical aid. R.S.O. 1960, c. 437, s. 5.

6.—(1) Where the place of business or chief place of business of the employer is situate in Ontario and the residence and usual place of employment of the workman are in Ontario and an accident happens while the workman is employed out of Ontario and his employment out of Ontario has lasted less than six months, the workman is or his dependants are entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened in Ontario.

(2) Where the place of business or chief place of business of the employer is situate in Ontario and the residence and usual place of employment of the workman are in Ontario and the employment of the workman out of Ontario lasts or is likely to last six or more months, the employer may apply to the Board to be assessed on the earnings of such workman and, if the application is accepted by the Board and if the workman is injured by accident happening out of Ontario, the workman is or his dependants are entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened in Ontario.

(3) Where the place of business or chief place of business of the employer is situate in Ontario and the residence of the workman is out of Ontario but his usual and principal place of employment is in Ontario and an accident happens while the workman is out of Ontario merely for some temporary purpose connected with his employment, the workman is or his dependants are entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened in Ontario.
(4) Where an accident happens out of Ontario and the employer's place of business or chief place of business is situate out of Ontario and the workman is entitled to compensation under the law of the place where the accident happens, compensation is not payable to the workman or his dependants whether his residence is in or out of Ontario unless his place of employment is in Ontario and he is at the time of the accident out of Ontario merely for some casual or incidental purpose connected with his employment.

(5) Where an accident happens out of Ontario on a steamboat, ship or vessel, or on a railway or on an aircraft, or on a truck, bus or other vehicle used in the transportation of passengers or any goods or substance, and the residence of the workman is in Ontario and the work or service rendered by him is required to be performed both in and out of Ontario, the workman is or his dependants are entitled to compensation under this Part as if the accident had happened in Ontario.

(6) Where an accident happens out of Ontario on a steamboat, ship or vessel and the residence of the workman is in Ontario, and whether he had been employed previously in Ontario or not, and regardless of the duration of his employment out of Ontario, the workman is or his dependants are entitled to compensation under this Part if the steamboat, ship or vessel is registered in Canada or if the owner or charterer of the steamboat, ship or vessel has his chief place of business in Ontario.

(7) Except as provided in this section, no compensation is payable under this Part where the accident to the workman happens while he is employed elsewhere than in Ontario.

(8) With a view to avoiding duplication of assessments to which an employer may be liable on the earnings of workmen who are employed part of the time in Ontario and part of the time in another province or territory of Canada, the Board may make an agreement with the workmen's compensation authority of that province or territory for such adjustment of assessments as is equitable and may reimburse such other authority for any payment of compensation, rehabilitation or medical aid made by it under such agreement, and may, in order to give effect to any such agreement, relieve any such employer from assessment or reduce the amount thereof. R.S.O. 1960, c. 437, s. 6.

7.—(1) Where by the law of the country or place in which the accident happens the workman is or his dependants are entitled to compensation in respect of it, they shall be bound to elect whether they will claim compensation under the law of such country or place or under this Part and to give notice of such election, and, if such election is not made and notice given, it shall be presumed that they have elected not to claim compensation under this Part.
(2) Notice of the election, where the compensation under this Part is payable by the employer individually, shall be given to the employer and, where the compensation is payable out of the accident fund, to the Board, and shall be given in both cases within three months after the happening of the accident or, in case it results in death, within three months after the death or within such longer period as either before or after the expiration of such three months the Board may allow. R.S.O. 1960, c. 437, s. 7.

8.—(1) Where an accident arising out of and in the course of his employment happens to a workman under such circumstances as entitle him or his dependants to an action against some person other than his employer, the workman or his dependants, if entitled to benefits under this Part, may claim such benefits or may bring such action. R.S.O. 1960, c. 437, s. 9 (1); 1968, c. 143, s. 4 (1).

(2) If less is recovered and collected by a judgment in the action or by settlement than the amount of benefits to which the workman or his dependants are entitled under this Part, the difference between the amount recovered and collected and the amount of such benefits is payable to the workman or his dependants.

(3) Subsection 2 applies to a settlement only if the approval of the Board to such settlement has been given before the settlement is made. 1968, c. 143, s. 4 (2).

(4) If the workman or his dependants elect to claim benefits under this Act, the employer, if he is individually liable to pay it and the Board, if the compensation is payable out of the accident fund, are subrogated to all rights of the workman or his dependants in respect of the injury to the workman and may maintain an action in the name of the workman, or of the Board if the employer is in Schedule 1, or of the employer if he is in Schedule 2, against the person against whom the action lies and any amount recovered over and above all amounts expended by the Board or the employer in respect of such claim and action shall be paid to the workman or his dependants and any such surplus paid to the workman or his dependants shall be deducted from the amount of any future compensation or other benefits to which he or they may become entitled in respect of the accident that gave rise to the injury.

(5) The employer in Schedule 2 or the Board may, in the action under subsection 4, also recover any amounts expended on behalf of the workman or his dependants by way of compensation or other benefits and has the exclusive right to determine whether such action shall be maintained, abandoned or compromised. 1968, c. 143, s. 4 (3).
How election to be made

(6) The election shall be made and notice of it shall be given within the time and in the manner provided by section 7. R.S.O. 1960, c. 437, s. 9 (4).

Where workman or dependant is an infant

(7) If a workman or a dependant is under the age of twenty-one years, the election under subsection 1 may be made on his behalf by a parent or guardian or by the Official Guardian.

Where workman incapable of making election

(8) If a workman is mentally incapable of making the election under subsection 1 or is unconscious as a result of his injury and no committee has been appointed, his dependant spouse may make such election, but if no election is made within sixty days after the day of the injury, the Public Trustee shall elect on behalf of the injured workman. 1968, c. 143, s. 4 (4).

Right of action against employer in Schedule 1

(9) No employer in Schedule 1 and no workman of an employer in Schedule 1 or dependant of such workman has a right of action for damages against any employer in Schedule 1 or any workman of such employer, for an injury for which benefits are payable under this Act, where the workmen of both employers were in the course of their employment at the time of the happening of the injury, but, in any case where the Board is satisfied that the accident giving rise to the injury was caused by the negligence of some other employer or employers in Schedule 1 of their workmen, the Board may direct that the benefits awarded in any such case or a proportion of them shall be charged against the class or group to which such other employer or employers belong and to the accident cost record of such individual employer or employers. 1968, c. 143, s. 4 (5).

Exception

(10) Subsection 9 does not apply where the employer has supplied a motor vehicle, machinery or equipment on a purchase or rental basis without also supplying workmen to operate such motor vehicle, machinery or equipment. 1965, c. 142, s. 2.

Damages

(11) In any action brought by a workman of an employer in Schedule 1 or dependant of such workman in any case within subsection 1 or maintained by the Board under subsection 4 and one or more of the persons found to be at fault or negligent is the employer of the workman in Schedule 1, or any other employer in Schedule 1, or any workman of any employer in Schedule 1, no damages, contribution or indemnity are recoverable for the portion of the loss or damage caused by the fault or negligence of such employer of the workman in Schedule 1, or of any other employer in Schedule 1, or of any workman of any employer in Schedule 1, and the portion of the loss or damage so caused by the fault or negligence of such employer of the workman in Schedule 1, or of any other employer in Schedule 1, or of the workman or any employer in Schedule 1, shall be determined although such employer or workman is not a party to the action.

Idem

(12) In any action brought by a workman of an employer in Schedule 2 or dependant of such workman in any case within
subsection 1 or maintained by the employer of the workman under subsection 4 and one or more of the persons found to be at fault or negligent is the employer of the workman in Schedule 2, no damages, contribution or indemnity are recoverable for the portion of the loss or damage caused by the fault or negligence of such employer and the portion of the loss or damage so caused by the fault or negligence of such employer shall be determined although such employer is not a party to the action. R.S.O. 1960, c. 437, s. 9 (7, 8).

9.—(1) The workmen of a contractor or subcontractor executing any work in or for the purposes of an industry under this Part, carried on by another person, in this subsection and in subsection 2 referred to as the principal, shall be deemed to be the workmen of the principal unless such contractor or subcontractor is, in respect of such work, assessed, or added and assessed, as the case may be, as an employer in Schedule 1, or, in cases where such contractor or subcontractor is, in respect of such work, individually liable for payment of compensation, unless the Board finds and declares that the responsibility of such contractor or subcontractor is sufficient protection to his workmen for the benefits provided for by this Act.

(2) Where a principal has made payment of assessment or compensation or furnished medical aid that, but for subsection 1, he would not have been liable to pay or furnish, he is entitled to reimbursement from the contractor or subcontractor to such extent as the Board finds such contractor or subcontractor would have been liable.

(3) Where a person, whether carrying on an industry included in Schedule 1 or not, in this subsection and in subsection 4 referred to as the principal, contracts with any other person, in this section referred to as the contractor, for the execution by or under the contractor of the whole or any part of any work for the principal, it is the duty of the principal to see that any sum that the contractor or any subcontractor is liable to contribute to the accident fund is paid, and, if any such principal fails to do so, he is personally liable to pay it to the Board, and the Board has the like powers and is entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

(4) Where the principal is liable to make payment to the Board under subsection 3, he is entitled to be indemnified by any person who should have made such payment and is entitled to withhold out of any indebtedness due to such person a sufficient amount to answer the same, and all questions as to the right to and the amount of any such indemnity shall be determined by the Board.

(5) Nothing in this section prevents a workman claiming compensation or the Board collecting contribution to the accident
10.—(1) Where a licence is granted under The Crown Timber Act and timber is cut by a person other than the licensee, it is the duty of the licensee to see that any sum that the person engaged in the cutting of such timber is liable to contribute to the accident fund is paid and, if the licensee fails to do so, he is personally liable to pay such sum to the Board, and the Board has the like powers and is entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment.

(2) Where the licensee is liable to make payment to the Board under subsection 1, he is entitled to be indemnified by any person who should have made such payment and is entitled to withhold out of any indebtedness due to such person a sufficient amount to answer the same and all questions as to the right to and the amount of any such indemnity shall be determined by the Board. R.S.O. 1960, c. 437, s. 11.

11. Where compensation is payable out of the accident fund and an employer carries himself on his payroll or an executive officer of a corporation is carried on the payroll of the corporation at a salary or wage that the Board deems reasonable, but at a rate of not less than $2,500 per annum or more than the maximum rate of annual earnings established by subsection 1 of section 44, and it is stated in the payroll statement furnished to the Board under section 93 that it is desired that such employer or executive officer be included as a workman, and the amount of his salary or wages is shown in such statement and included in the estimate for the year, such employer or executive officer shall be deemed to be a workman within the meaning of this Act and he is or his dependants are entitled to compensation accordingly, but, for the purpose of determining the compensation, his earnings shall not be taken to be more than the amount of his salary or wages as shown by such statement. 1968, c. 143, s. 5.

12. No action lies for the recovery of compensation whether it is payable by the employer individually or out of the accident fund, but all claims for compensation shall be heard and determined by the Board. R.S.O. 1960, c. 437, s. 13.

13. If a workman receiving a weekly or other periodical payment ceases to reside in Ontario, he is not thereafter entitled to receive any such payment unless a medical referee certifies that the disability resulting from the injury is likely to be of a permanent nature, and, if a medical referee so certifies and the Board so directs, the workman is entitled quarterly to the amount of the weekly or other periodical payments accruing due if he proves in such manner as may be prescribed by the regulations his
identity and the continuance of the disability in respect of which the same is payable. R.S.O. 1960, c. 437, s. 14.

14. The provisions of this Part are in lieu of all rights and rights of action, statutory or otherwise, to which a workman or the members of his family are or may be entitled against the employer of such workman for or by reason of any accident happening to him or any industrial disease contracted by him on or after the 1st day of January, 1915, while in the employment of such employer, and no action lies in respect thereof. R.S.O. 1960, c. 437, s. 15.

15. Any party to an action may apply to the Board for adjudication and determination of the question of the plaintiff's right to compensation under this Part, or as to whether the action is one the right to bring which is taken away by this Part, and such adjudication and determination is final and conclusive. R.S.O. 1960, c. 437, s. 16.

16. It is not competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependants are or may become entitled under this Part and every agreement to that end is void. R.S.O. 1960, c. 437, s. 17.

17.—(1) Where the compensation is payable by an employer individually, no agreement between a workman or dependant and the employer for fixing the amount of the compensation or by which the workman or dependant accepts or agrees to accept a stipulated sum in lieu or in satisfaction of it is binding on the workman or dependant unless it is approved by the Board.

(2) Subsection 1 does not apply to compensation for temporary disability lasting for less than four weeks, but in such cases the Board may, on the application of the workman or dependant, or of its own motion, set aside the agreement on such terms as may be deemed just.

(3) Nothing in this section shall be deemed to authorize the making of any such agreement except with respect to an accident that has happened and the compensation to which the workman or dependant has become entitled because of it. R.S.O. 1960, c. 437, s. 18.

18.—(1) It is not lawful for an employer, either directly or indirectly, to deduct from the wages of any of his workmen any part of any sum that the employer is or may become liable to pay to the workman as compensation under this Part or to require or to permit any of his workmen to contribute in any manner towards indemnifying the employer against any liability that he has incurred or may incur under this Part.
(2) Every person who contravenes any of the provisions of subsection 1 is guilty of an offence and for every such contravention is on summary conviction liable to a fine of not more than $50 and is also liable to repay to the workman any sum that has been so deducted from his wages or that he has been required or permitted to pay in contravention of subsection 1. R.S.O. 1960, c. 437, s. 19.

19. Unless with the approval of the Board, no sum payable as compensation or by way of commutation of any weekly or other periodical payment in respect of it is capable of being assigned, charged or attached, nor does it pass by operation of law except to a personal representative nor shall any claim be set off against it. R.S.O. 1960, c. 437, s. 19.

20.—(1) Subject to subsection 5, compensation or medical aid is not payable unless notice of the accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured and unless the claim for compensation or medical aid is made within six months from the happening of the accident or, in case of death, within six months from the time of death.

(2) The notice shall give the name and address of the workman and is sufficient if it states in ordinary language the cause of the injury and where the accident happened.

(3) The notice may be served by delivering it at or sending it by registered mail addressed to the place of business or the residence of the employer or, where the employer is a body of persons, corporate or unincorporate, by delivering it at or sending it by registered mail addressed to the employer at the office or, if there are more offices than one, at any of the offices of such body of persons.

(4) The notice shall also be given to the Board by delivering it to or at the office of the secretary or by sending it to him by registered mail addressed to his office.

(5) Failure to give the prescribed notice or to make such claim or any defect or inaccuracy in a notice does not bar the right to compensation if in the opinion of the Board the employer was not prejudiced thereby or, where the compensation is payable out of the accident fund, if the Board is of opinion that the claim for compensation is a just one and ought to be allowed. R.S.O. 1960, c. 437, s. 21.

21.—(1) A workman who claims compensation or to whom compensation is payable under this Part shall, if so required by his employer, submit himself for examination by a legally qualified medical practitioner provided and paid for by the employer and
shall, if so required by the Board, submit himself for examination by a medical referee.

(2) A workman shall not be required at the request of his employer to submit himself for examination otherwise than in accordance with the regulations. R.S.O. 1960, c. 437, s. 22.

22.—(1) Where a workman has upon the request of his employer submitted himself for examination, or has been examined by a legally qualified medical practitioner selected by himself, and a copy of the report of the medical practitioner as to the workman’s condition has been furnished in the former case by the employer to the workman and in the latter case by the workman to the employer, the Board may, on the application of either of them or of its own motion, refer the matter to a medical referee.

(2) The medical referee to whom a reference is made under subsection 1, or who has examined the workman by the direction of the Board under subsection 1 of section 21, shall certify to the Board as to the condition of the workman and his fitness for employment, specifying where necessary the kind of employment and, if unfit, the cause of such unfitness, and his certificate unless the Board otherwise directs is conclusive as to the matters certified.

(3) If a workman does not submit himself for examination when required to do so as provided by subsection 1 of section 21, or on being required to do so does not submit himself for examination to a medical referee under that subsection or under subsection 1 of this section, or in any way obstructs any examination, his right to compensation or, if he is in receipt of a weekly or other periodical payment, his right to it is suspended until such examination has taken place. R.S.O. 1960, c. 437, s. 23.

23. Where in any case, in the opinion of the Board, it is in the interest of the accident fund to provide a special surgical operation or special medical treatment for a workman, and the furnishing of the same by the Board is, in the opinion of the Board, the only means of avoiding heavy payment for permanent disability, the expense of such operation or treatment may be paid out of the accident fund. R.S.O. 1960, c. 437, s. 24.

24. Any weekly or other periodical payment to a workman may be reviewed at the request of the employer or the workman or of the Board’s own motion and on such review the Board may put an end to or diminish or increase such payment to a sum not beyond the maximum hereinafter prescribed. 1968, c. 143, s. 6.

25. Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six
months after the accident, the amount of a weekly payment may be increased to the sum to which he would have been entitled if his average earnings had at the date of the accident been equal to what, if he had not been injured, he would probably have been earning at the date of the review. R.S.O. 1960, c. 437, s. 26.

26.—(1) Where the compensation is payable by an employer individually or out of the accident fund, the Board may commute the weekly or other periodical payments payable to a workman or dependant for a lump sum, and may charge the same to the employer or to the accident fund, as the case may be. 1964, c. 124, s. 3.

(2) Where the lump sum is payable by the employer individually, it shall be paid to the Board.

(3) The lump sum may be,

(a) applied in such manner as the workman or dependant may direct;

(b) paid to the workman or dependant;

(c) invested by the Board and applied from time to time as the Board may deem most for the advantage of the workman or dependant;

(d) paid to trustees to be used and employed upon and subject to such trusts and for the benefit of such persons as, in case it is payable by the employer individually, the workman or dependant directs and the Board approves, or, if payable out of the accident fund, as may be desired by the workman or dependant and approved by the Board;

(e) applied partly in one and partly in another or others of the modes mentioned in clauses a, b, c and d, as the Board may determine.

(4) In any case where the compensation is payable out of the accident fund and where the Board is of opinion that the interest or pressing need of the workman or dependant warrants it, the Board may advance or pay to or for the workman or dependant such lump sum as the circumstances warrant. R.S.O. 1960, c. 437, s. 27 (2-4).

27.—(1) Where a weekly or other periodical payment is payable by the employer individually and has been continued for not less than six months, the Board may on the application of the employer allow the liability therefor to be commuted by the payment of a lump sum of such an amount as, if the disability is permanent, would purchase an immediate annuity from a life insurance company approved by the Board, equal either to 75 per cent of the annual value or the full annual value of the weekly or
other periodical payments and, in other cases, of such an amount as the Board considers reasonable.

(2) The sum for which a payment is commuted under subsection 1 shall be paid to the Board and shall be dealt with in the manner provided by section 26. R.S.O. 1960, c. 437, s. 28.

28.—(1) Where an employer insured by a contract of insurance of an insurance company or any other underwriter is individually liable to make a weekly or other periodical payment to a workman or his dependants and the payment has continued for more than six months, the liability shall, if the Board so directs before the expiration of twelve months from the commencement of the disability of the workman or his death, if the accident resulted in death, be commuted by the payment of a lump sum in accordance with section 27, and the company or underwriter shall pay the lump sum to the Board, and it shall be dealt with in the manner provided by section 26.

(2) This section does not apply to a contract of insurance entered into before the 1st day of May, 1914. R.S.O. 1960, c. 437, s. 29.

29. The Board may require an employer, who is individually liable to pay the compensation, to pay to the Board a sum sufficient to commute, in accordance with section 27, any weekly or other periodical payments that are payable by the employer, and such sum shall be applied by the Board in the payment of such weekly or other periodical payments as they from time to time become payable, but, if the sum paid to the Board is insufficient to meet the whole of such weekly or other periodical payments, the employer is nevertheless liable to make such of them as fall due after the sum paid to the Board is exhausted and, if the sum paid is more than sufficient for that purpose, the excess shall be returned to the employer when the right to compensation comes to an end, unless otherwise ordered by the Board. R.S.O. 1960, c. 437, s. 30.

30. The Board may require an employer, who is individually liable, to pay the compensation to insure his workmen and keep them insured against accidents in respect of which he may become liable to pay compensation in a company approved by the Board for such amount as the Board may direct and, in default of his doing so, the Board may cause them to be so insured and may recover the expense incurred in so doing from the employer in the same way as payment of assessments may be enforced. R.S.O. 1960, c. 437, s. 31.

31.—(1) Where an employer, who is individually liable to pay the compensation, is insured against his liability to pay compensation, the Board may require the insurance company or other
underwriter to pay the sum that under the contract of insurance such company or underwriter would be liable to pay to the employer in respect of an accident to a workman who becomes or whose dependants become entitled to compensation under this Part, directly to the Board in discharge or in discharge pro tanto of the compensation to which such workman or his dependants are found to be entitled.

(2) Where a claim for compensation is made in any case to which subsection 1 applies, notice of the claim shall be given to the insurance company or other underwriter and to the employer, and the Board shall determine not only the question of the right of the workman or dependant to compensation but also the question whether the whole or any part of it should be paid directly by the insurance company or other underwriter as provided by subsection 1.

(3) Section 26 applies to the compensation payable to the Board under subsection 1. R.S.O. 1960, c. 437, s. 32.

32.—(1) Where the accident causes total or partial permanent disability or the death of the workman and the compensation is payable by the employer individually, the Board may require the employer to pay to the Board such sum as in its opinion will be sufficient, with the interest thereon, to meet the future payments to be made to the workman or his dependants, and such sum when paid to the Board shall be invested by it and shall form a fund to meet such future payments.

(2) Instead of requiring the employer to make the payment provided for by subsection 1, the Board may require him to give such security as it considers sufficient for the future payments. R.S.O. 1960, c. 437, s. 33

33. Where the Board considers it requisite for the prompt payment of claims, it may require any employer in Schedule 2 to make deposits of money with it from time to time, out of which it may pay compensation and medical aid for accidents to workmen of such employer as they occur. R.S.O. 1960, c. 437, s. 34.

34.—(1) The additional moneys necessary to provide for increases of compensation in respect of accidents previously happening may be levied and collected by the Board from the employers either now, previously or hereafter carrying on industries under this Part in such manner and at such time or times as the Board considers most equitable and most in accordance with the general principles of this Act, and, in the case of Schedule 1 employers, the levy and collection may be by way of addition to the usual assessment or by levy of special or additional assessment or assessmentss, and, in the case of Schedule 2 employers, by way of additional deposit or capitalized amount as may be necessary to provide for such increases.
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(2) Where by reason of limit of legal liability or for other cause the Board considers it inequitable or inexpedient to apply subsection 1 to any pension award, the Board has power to exempt the same accordingly. R.S.O. 1960, c. 437, s. 35.

35. Where a right to compensation is suspended under this Act, no compensation is payable in respect of the period of suspension. R.S.O. 1960, c. 437, s. 36.

SCALE OF COMPENSATION

36.—(1) Where death results from an injury, the amount of the compensation shall be,

(a) the necessary expenses of the burial or cremation of the workman, not exceeding $400;

(b) where owing to the circumstances of the case the body of the workman is transported for a considerable distance for burial or cremation, a further sum for necessary extra expenses of the burial or cremation thus entailed;

(c) where the widow or an invalid husband is the sole dependant, a monthly payment of $125;

(d) where the dependants are a widow or an invalid husband and one or more children, a monthly payment of $125, with an additional monthly payment of $50 to be increased upon the death of the widow or invalid husband to $60 for each child under the age of sixteen years;

(e) where the dependants are children, a monthly payment of $60 to each child under the age of sixteen years;

(f) where the dependants are persons other than those mentioned in clauses c, d and e, a sum reasonable and proportionate to the pecuniary loss to such dependants occasioned by the death, to be determined by the Board, but not exceeding in the whole $150 per month. 1968, c. 143, s. 7 (1).

(2) Where a workman has had for the entire period of six years immediately preceding his death a common-law wife or where a workman has had during the entire period of two years immediately preceding his death a common-law wife by whom he has had one or more children, and leaves no dependent widow, the compensation to which a dependent widow would have been entitled under this Part may, in the discretion of the Board, be paid to the common-law wife until such time as she marries.

(3) A dependent common-law wife receiving compensation under this section may not be paid compensation for acting or claiming to act as a foster-mother to the children of the deceased workman. 1964, c. 124, s. 4 (1).
(4) Where in the opinion of the Board the furnishing of further or better education to a child appears advisable, the Board in its discretion may on application extend the period to which compensation shall be paid in respect of the child for such additional period as is spent by the child in the furthering or bettering of its education. R.S.O. 1960, c. 437, s. 37 (2); 1964, c. 124, s. 4 (2).

(5) Exclusive of the expenses of the burial or cremation of the workman and the lump sum of $500, the monthly compensation payable under subsection 1 shall not in any case exceed the average monthly earnings of the workman and, if the monthly compensation so payable exceeds such earnings, it shall be reduced accordingly and, where several persons are entitled to monthly payments, the payments shall be reduced proportionately, provided that the minimum monthly compensation shall be,

(a) where the widow or an invalid husband is the sole dependant, $125;

(b) where the dependants are a widow or an invalid husband and one or more children, $125 for the widow or invalid husband with a further payment of $50, to be increased on the death of the widow or invalid husband to $60, for each child, not exceeding in the whole $275; or

(c) where the dependants are children, $60 to each child, not exceeding in the whole $275. 1968, c. 143, s. 7 (2).

(6) Where the workman leaves no widow or the widow subsequently dies, or where there is a mother of a dependant illegitimate child, and it seems desirable to continue the existing household and an aunt, sister or mother of an illegitimate child, or other suitable person, acts as foster-mother in keeping up such household and maintaining and taking care of the children entitled to compensation in a manner that the Board deems satisfactory, such foster-mother while so doing is entitled to receive the same monthly payments of compensation for herself and the children as if she were the widow of the deceased, and in such case the children's part of such payments shall be in lieu of the monthly payments that they would otherwise have been entitled to receive. R.S.O. 1960, c. 437, s. 37 (4).

(7) In addition to any other compensation provided for, the widow or, where the workman leaves no widow, the fostermother, as in subsection 6 described, is entitled to a lump sum of $500. 1968, c. 143, s. 7 (3).

(8) In the case provided for by clause f of subsection 1, the payments shall continue only so long as in the opinion of the Board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependants and, in any case under that clause, compensation may be made wholly or partly in a lump sum or by such form of payment as the Board in the circumstances considers most suitable.
(9) A dependant to whom the workman stood *in loco parentis* or a dependant who stood *in loco parentis* to the workman is entitled, as the Board may determine, to share in or receive compensation under clause d, e or f of subsection 1.

(10) Compensation is payable to an invalid child without regard to the age of the child and shall continue until the child ceases to be an invalid or dies.

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

(12) Where the Board is of opinion that for any reason it is necessary or desirable that a payment in respect of a child should not be made directly to its parent, the Board may direct that the payment be made to such person or be applied in such manner as the Board considers most advantageous for the child. R.S.O. 1960, c. 437, s. 37 (6-10).

37.—(1) If a dependant widow marries, the monthly payments to her shall cease, but she is entitled in lieu of them to a lump sum equal to the monthly payments for two years, and the lump sum is payable within one month after the day of her marriage.

(2) Subsection 1 does not apply to payments to a widow in respect of a child. R.S.O. 1960, c. 437, s. 38.

38. Subject to subsections 4 and 10 of section 36, a monthly payment in respect of a child shall cease when the child attains the age of sixteen years or dies. R.S.O. 1960, c. 437, s. 39.

39. Where temporary total disability results from the injury, the compensation shall be a weekly payment of 75 per cent of the workman’s average weekly earnings, and is payable so long as the disability lasts. 1968, c. 143, s. 8.

40. Where a workman, who has become entitled to benefits under this Act and has returned to employment, becomes entitled to payment for temporary disability by reason of any matter arising out of the original accident, the compensation payable for such temporary disability shall be paid on either the average weekly earnings at the date of the accident or the average weekly earnings at the date of recurrence of the disability, calculated in the manner set out in section 39, whichever is the greater. 1964, c. 124, s. 5; 1968, c. 143, s. 9.

41. Where temporary partial disability results from the injury, the compensation shall be a weekly payment of 75 per cent of the difference between the average weekly earnings of the workman before the accident and the average amount that he is
earning or is physically capable of earning, as determined by the Board, in some suitable employment or business after the accident, and is payable so long as the disability lasts, and subsection 4 of section 42 applies. R.S.O. 1960, c. 437, s. 41; 1962-63, c. 145, s. 5.

42.—(1) Where permanent disability results from the injury, the impairment of earning capacity of the workman shall be estimated from the nature and degree of the injury, and the compensation shall be a weekly or other periodical payment during the lifetime of the workman, or such other period as the Board may fix, of a sum proportionate to such impairment not exceeding in any case the like proportion of 75 per cent of his average weekly earnings during the previous twelve months or such lesser period as he has been employed.

(2) Compensation for permanent disability is payable whether or not an award is made for temporary disability. 1968, c. 143, s. 10 (1).

(3) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent disability cases.

(4) Where the impairment of the earning capacity of the workman does not exceed 10 per cent of his earning capacity, instead of such weekly or other periodical payment, the Board shall, unless in the opinion of the Board it would not be to the advantage of the workman to do so, direct that such lump sum as may be considered to be the equivalent of it shall be paid to the workman.

(5) Where the Board considers it more equitable, the Board may award compensation for permanent disability having regard to the difference between the average weekly earnings of the workman before the accident and the average amount that he is earning or is able to earn in some suitable occupation after the accident, and the compensation may be a weekly or other periodical payment of 75 per cent of such difference, and regard shall be had to the workman's fitness to continue in the employment in which he was injured or to adapt himself to some other suitable occupation. R.S.O. 1960, c. 437, s. 42 (2-4).

(6) Notwithstanding subsection 1, where the workman is seriously and permanently disfigured about the face or head, the Board may allow a lump sum in compensation therefor. 1968, c. 143, s. 10 (2).

43. Notwithstanding anything to the contrary in this Part, the amount of compensation to which an injured workman is entitled shall not be less than,
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(a) for temporary total disability,
   (i) where his average earnings are not less than $40 a week, $40 a week, and
   (ii) where his average earnings are less than $40 a week,
   the amount of such earnings,

and for temporary partial disability, a proportionate amount in accordance with the impairment of earning capacity; and

(b) for permanent disability, the pension computed in accordance with sections 42 and 44 but the amount of such pension shall not be less than,
   (i) for permanent total disability, $175 a month, and
   (ii) for permanent partial disability, an amount proportionate to that referred to in subclause (i) in accordance with the impairment of earning capacity. 1968-69, c. 140, s. 1 (1).

44.—(1) Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the workman was remunerated but not so as in any case to exceed the rate of $7,000 per annum. R.S.O. 1960, c. 437, s. 44 (1); 1968, c. 143, s. 11.

(2) Where, owing to the shortness of the time during which the workman was in the employment of his employer or the casual nature of his employment or the terms of his employment, it is impracticable to compute the rate of remuneration as of the date of the accident, regard may be had to the average weekly or monthly amount that during the twelve months prior to the accident was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, then by a person in the same grade employed in the same class of employment and in the same locality.

(3) Where the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one of them and at another time for another of them, his average earnings shall be computed on the basis of what he probably would have been earning if he had been employed solely in the employment of the employer for whom he was working at the time of the accident.

(4) Employment by the same employer means employment by the same employer in the grade in which the workman was employed at the time of the accident uninterrupted by absence from work due to illness or any other unavoidable cause.

(5) Where the employer was accustomed to pay the workman a sum to cover any special expenses entailed on him by the nature of
his employment, that sum shall not be reckoned as part of his earnings.

(6) Where in any case it seems more equitable, the Board may award compensation having regard to the earnings of the workman at the time of the accident.

(7) Where a workman is an apprentice or in the course of learning a trade, occupation, profession or calling and his remuneration is of a nominal nature, the Board may for the purposes of this Act determine his average earnings at an amount that it considers fair and equitable having regard to the average earnings of a fully qualified person engaged in the same trade, occupation, profession or calling, and the employer of the workman is liable to pay assessment to the Board on the earnings so determined. R.S.O. 1960, c. 437, s. 44 (2-7).

45.—(1) In fixing the amount of compensation to be paid to a workman or his dependants regard shall be had to any payment, allowance or benefit paid to them by the workman’s employer in respect of the workman’s accident, including any gratuity or other allowance provided wholly at the expense of the employer.

(2) Where the compensation is payable out of the accident fund, any sum deducted from the compensation under subsection 1 may be paid to the employer out of the accident fund. R.S.O. 1960, c. 437, s. 45.

46. Where it is considered advisable, the Board may provide that the payments of compensation shall be fortnightly or monthly instead of weekly or, where the workman or dependant is not a resident of Ontario or ceases to reside therein, may fix the periods of payment otherwise or commute the compensation as the Board considers proper. R.S.O. 1960, c. 437, s. 46.

47. The Board, for the purpose of enabling the workman to obtain an artificial member, or in any other case where it considers it proper, may, at any time or times, make or direct partial commutation or lump sum payment of his compensation, or otherwise alter the form of payment, as in the circumstances seems most for his advantage. R.S.O. 1960, c. 437, s. 47.

48. Where it is found that the widow or common-law wife to whom compensation has been awarded is a common prostitute or is openly living with any man in the relation of man and wife without being married to him, the Board may discontinue or suspend compensation to such widow or common-law wife or divert such compensation in whole or in part to or for the benefit of any other dependant or dependants of the deceased workman. R.S.O. 1960, c. 437, s. 48; 1964, c. 124, s. 7.
49. Where a workman is entitled to compensation and it is made to appear to the Board, that the workman is no longer residing in Ontario but that his wife or child or children under sixteen years of age are still residing therein without adequate means of support and are, or are apt to become, a charge upon the municipality where they reside, or upon private charity; or that the workman although still residing in Ontario is not supporting his wife and children as aforesaid and an order has been made against the workman by a court of competent jurisdiction for the support or maintenance of his wife or family, or for alimony, the Board may divert such compensation in whole or in part from the workman for the benefit of his wife or children.

50. If a workman or a dependant is under the age of twenty-one years or is of unsound mind or in the opinion of the Board is incapable of managing his own affairs, any benefits to which he is entitled may be paid on his behalf to his parent, spouse or committee or to the Public Trustee or may be paid to such other person or applied in such manner as the Board considers in the best interest of such workman or dependant, and when paid to the Public Trustee, it is the duty of the Public Trustee to receive and administer any such money for the benefit of the workman or dependant.

MEDICAL AID

51.—(1) Every workman who is entitled to compensation under this Part or who would have been so entitled had he been disabled beyond the day of the accident is entitled, to such medical aid as may be necessary as a result of the injury; to make the initial choice of doctor or other qualified practitioner for the purposes of this section; where, in the opinion of the Board, he is rendered helpless through permanent total disability, to such other treatment, services or attendance as may be necessary as a result of the injury.

(2) In this Act, “medical aid” means medical, surgical, optometrical and dental aid, the aid of drugless practitioners under The Drugless Practitioners Act, the aid of chiropodists under The Chiropody Act, hospital and skilled nursing services, such artificial members and such appliances or apparatus as may be necessary as a result of the injury.
Payment for repair of artificial member or apparatus, etc.

(3) The Board may pay and, where the employer is individually liable, the Board may order the employer to pay,

(a) for the replacement or repair of an artificial member or apparatus of a workman that is damaged as a result of an accident in the employment; and

(b) on application, an allowance not exceeding $104 per annum for the replacement or repair of clothing worn or damaged by reason of the wearing of a lower limb prosthesis supplied by the Board, and not exceeding $52 per annum in respect of an upper limb prosthesis supplied by the Board,

and where the workman is unable to work because of the damage referred to in clause a, he is entitled to compensation as though the inability to work had been caused by a personal injury within the meaning of subsection 1 of section 3. 1968, c. 143, s. 13 (2), part.

Payment for medical aid

(4) Medical aid shall be furnished or arranged for by the Board or as it may direct or approve and,

(a) in the industries in Schedule 1, shall be paid out of the accident fund and the necessary amount shall be included in the assessments levied upon the employers; and

(b) in the industries in Schedule 2, the amount shall be paid by the employer of the injured workman to the Board for payment.

Accidents on or after Jan. 1st, 1915

(5) A workman is entitled to such medical aid as may be necessary on or after the 1st day of January, 1947, for an accident happening on or after the 1st day of January, 1915.

Questions to be determined by Board

(6) All questions as to the necessity, character and sufficiency of any medical aid furnished or to be furnished and as to payment for medical aid shall be determined by the Board.

Amount of charges for medical aid

(7) The fees or charges for medical aid shall not be more than would be properly and reasonably charged to the workman if he was paying them himself, and the amount thereof shall be determined by the Board, and no action for any amount larger than that determined by the Board under this subsection lies against the Board and no action in respect of such fees and charges lies against the injured workman, his employer or any other person.

Rendering of accounts for medical aid

(8) Where accounts for payment of medical aid are not received by the Board within such time as the Board may prescribe, the Board may impose such penalty by way of a percentage reduction in the amount of the account as it may prescribe.
9. It is not lawful for any employer, directly or indirectly, to collect or receive or retain from any workman any contribution toward the expense of medical aid, and every person contravening this provision is guilty of an offence and for every such contravention is liable on summary conviction to a fine of not more than $50 and is also liable, upon the order of the Board, to reimburse the workman treble the amount of any sum so collected, received or retained.

10. Nothing in this Act affects any obligation upon the employer under The Public Health Act or any regulation made thereunder, but notwithstanding anything therein contained the employer shall not be entitled, directly or indirectly, to collect, receive or retain from any workman any contribution toward the expense of medical aid.

11. Employers in industries in which it is considered proper First-aid may be required by the Board to maintain as may be directed by the Board such first-aid appliances and service as the Board may direct, and the Board may make such order respecting the expense thereof as may be considered just. R.S.O. 1960, c. 437, s. 51 (4-11).

12. Every employer shall at his own expense furnish to any workman injured in his employment, who is in need of it, immediate conveyance and transportation to a hospital or a physician, located within the area or within a reasonable distance of the place of injury, or to the workman's home, and any employer failing so to do is liable, by order of the Board, to pay for such conveyance and transportation as may be procured by the workman or by anyone for him, or as may be provided by the Board. 1968, c. 143, s. 13 (2), part.

13. Where, in conjunction with or apart from the medical aid to which workmen are entitled free of charge, further or other service or benefit is, or is proposed to be, given or arranged for, any question arising as to whether or to what extent any contribution from workmen is or would be one prohibited by this Act shall be determined by the Board. R.S.O. 1960, c. 437, s. 51 (13).

MEDICAL REPORTS

52. Every physician, surgeon, hospital official or other person attending, consulted respecting, or having the care of, any workman shall furnish to the Board from time to time, without additional charge, such reports as may be required by the Board in respect of such workman. R.S.O. 1960, c. 437, s. 52.

REHABILITATION

53. To aid in getting injured workmen back to work and to assist in lessening or removing any handicap resulting from their
injuries, the Board may take such measures and make such expenditures as it may deem necessary or expedient, and the expense thereof shall be borne, in Schedule 1 cases, out of the accident fund and, in Schedule 2 cases, by the employer individually, and may be collected in the same manner as compensation or expenses of administration. 1968, c. 143, s. 14.

WORKMEN’S COMPENSATION BOARD

54. The Workmen’s Compensation Board is continued as a body corporate of three members appointed by the Lieutenant Governor in Council. R.S.O. 1960, c. 437, s. 54.

Chairman and vice-chairman

55. One of the members shall be appointed by the Lieutenant Governor in Council to be the chairman of the Board and he shall hold that office while he remains a member of the Board and another of the other members shall be appointed by the Lieutenant Governor in Council to be the vice-chairman of the Board. R.S.O. 1960, c. 437, s. 55.

When vice-chairman may act

56. In the absence of the chairman or in case of his inability to act or if there is a vacancy in the office, the vice-chairman may act as and has all the powers of the chairman. R.S.O. 1960, c. 437, s. 56.

Appointment of member pro tempore

57. (1) In the case of the death, illness or absence of a member or of his inability to act from any cause, the Lieutenant Governor in Council may appoint some person to act pro tempore in his stead and the person so appointed has all the powers and shall perform all the duties of a member. R.S.O. 1960, c. 437, s. 57 (1); 1968, c. 143, s. 15.

Application of sub s 1

58. Where the vice-chairman appears to have acted for or instead of the chairman, it shall be presumed conclusively that he so acted for one of the reasons mentioned in section 56. R.S.O. 1960, c. 437, s. 58.

Presumption where vice-chairman has acted

59. Subject to sections 60 and 66, each member shall hold office during the pleasure of the Lieutenant Governor in Council. R.S.O. 1960, c. 437, s. 59.

Tenure of office of members

60. Unless otherwise directed by the Lieutenant Governor in Council, a member shall cease to hold office when he attains the age of seventy-five years. R.S.O. 1960, c. 437, s. 60.
61. Each of the members shall devote the whole of his time to the performance of his duties under this Part. 

62. The salaries of the members shall be fixed by the Lieutenant Governor in Council and are payable out of the accident fund as part of the administration expenses of the Board.

63. The presence of two members is necessary to constitute a quorum of the Board.

64. A vacancy in the Board does not, if there remain two members of it, impair the authority of such two members to act.

65. The Board has the like powers as the Supreme Court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents and things.

66.—(1) A member of the Board shall not directly or indirectly,

(a) have, purchase, take or become interested in any industry to which this Part applies or any bond, debenture or other security of the person owning or carrying it on;

(b) be the holder of shares, bonds, debentures or other securities of any company that carries on the business of employers' liability or accident insurance;

(c) have any interest in any device, machine, appliance, patented process or article that may be required or used for the prevention of accidents.

(2) If any such industry, or interest therein, or any such share, bond, debenture, security or thing comes to or becomes vested in a member of the Board by will or by operation of law and he does not within three months thereafter sell and absolutely dispose of it, he ceases to hold office.

67. The offices of the Board shall be situated in the City of Toronto and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and, in that case, sittings may be held in any part of Ontario.

68. The Board shall sit at such times and conduct its proceedings in such manner as it may deem most convenient for the proper discharge and speedy dispatch of business.
69. Subject to the approval of the Lieutenant Governor in Council, the Board may purchase or otherwise acquire such real property as it may deem necessary for its purposes, and may, with the like approval, sell or otherwise dispose of any such property. R.S.O. 1960, c. 437, s. 69.

70.—(1) The Board shall appoint a secretary and a chief medical officer and may appoint such auditors, actuaries, accountants, inspectors, medical referees, other officers, clerks and servants as the Board may deem necessary for carrying out this Part and may prescribe their duties and, subject to the approval of the Lieutenant Governor in Council, may fix their salaries.

(2) Every person so appointed shall hold office during the pleasure of the Board. R.S.O. 1960, c. 437, s. 70.

71.—(1) The fund known as The Workmen’s Compensation Board Superannuation Fund, for the payment of superannuation allowances or allowances upon the death or disability of an employee or member of the Board, is continued. R.S.O. 1960, c. 437, s. 71 (1).

(2) Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations,

(a) providing for contributions to the superannuation fund by the Board and by its members and employees;

(b) providing for the terms and conditions upon which any superannuation or other allowance shall be payable out of the superannuation fund and the persons to whom the superannuation or other allowance may be paid;

(c) providing for the terms and conditions upon which funds will be received and transferred under subsections 6, 7 and 8;

(d) providing for the terms and conditions under which agreements may be entered into under subsection 8. R.S.O. 1960, c. 437, s. 71 (2); 1968, c. 143, s. 16 (1).

(3) The employees of designated associations for accident prevention formed under subsection 1 of section 119 and the employees of designated corporations for accident prevention, the members of which are employers within the meaning of section 119, shall for the purposes of this section be deemed to be employees of the Board, and every employee in the service of any such association or corporation on the 10th day of April, 1952, shall, for the purposes of this section, be deemed to have entered the service of the Board on the date he last entered the service of his association or corporation.

(4) The Board may designate associations and corporations for the purposes of subsection 3.
(5) The cost of maintaining and administering the superannuation fund shall be deemed part of the cost of the administration of this Act and is chargeable to the accident fund. 

R.S.O. 1960, c. 437, s. 71 (3-5).

(6) Where an employee or a member of the Board becomes a member of the public service of Canada or the civil service of any province of Canada or of the civic service of any municipality or of the staff of any board, commission or public institution established under any Act of the Legislature of any province or of the Parliament of Canada, a sum of money equal to his contributions and credits in the superannuation fund or such portion thereof as the Board, subject to the approval of the Lieutenant Governor in Council, determines, shall be paid out of the superannuation fund into any like fund maintained to provide superannuation benefits for the members of such public, civil or civic service or staff, as the case may be.

(7) Where a member of the public service of Canada or the civil service of any province of Canada or of the civic service of any municipality or of the staff of any board, commission or public institution established under any Act of the Legislature of any province or of the Parliament of Canada becomes a contributor to the superannuation fund and a sum of money is paid into the superannuation fund in respect of the period during which he made contributions as a public, civil or civic servant, or an employee of any such board, commission or public institution, the Board, subject to the approval of the Lieutenant Governor in Council, may allow him such credit in the superannuation fund in respect of the sum and the period of service represented thereby as is determined.

(8) Notwithstanding subsection 1 and the regulations made under subsection 2, the Board, subject to the approval of the Lieutenant Governor in Council, may enter into an agreement with any government, municipality, board, commission or public institution mentioned in subsection 6 or 7 to provide reciprocal arrangements for the transfer of contributions and credits and where such an agreement exists such transfer shall be in accordance with the agreement. 1968, c. 143, s. 16 (2).

72. — (1) The Board has exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Board, and the action or decision of the Board thereon is final and conclusive and is not open to question or review in any court and no proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court.
(2) Without limiting the generality of subsection 1, such exclusive jurisdiction extends to determining,

(a) whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 1, and, if so, which of them;

(b) whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 2, and, if so, which of them;

(c) whether any part of any such industry constitutes a part, branch or department of an industry within the meaning of this Part.

(3) Nothing in subsection 1 prevents the Board from reconsidering any matter that has been dealt with by it or from rescinding, altering or amending any decision or order previously made, all of which the Board has authority to do.

(4) The decisions of the Board shall be upon the real merits and justice of the case, and it is not bound to follow strict legal precedent. R.S.O. 1960, c. 437, s. 72.

73. Every copy of or extract from an entry in any book or record of the Board or of or from any document filed with the Board, certified by the secretary of the Board or by such other officer of the Board as may be appointed for that purpose by the Board to be a true copy or extract, shall be received in any court as prima facie evidence of the matter so certified without proof of the secretary's or other officer's appointment, authority or signature. R.S.O. 1960, c. 437, s. 73.

74.—(1) The costs of and incidental to any proceeding before the Board are in its discretion and may be fixed in any case at a sum certain or may be taxed.

(2) The Board may order by whom and to whom any costs are to be paid and by whom they are to be taxed and allowed.

(3) The Board may prescribe a scale under which such costs shall be taxed.

(4) In this section, the costs may include the costs of the Board, regard being had to the time and expense of the Board. 1962-63, c. 145, s. 8.

75.—(1) The Board may act upon the report of any of its officers and any inquiry that it considers necessary to make may be made by any member or officer of the Board or by some other person appointed to make the inquiry, and the Board may act upon his report as to the result of the inquiry.
(2) The person appointed to make the inquiry has for the purposes of the inquiry all the powers conferred upon the Board by section 65. R.S.O. 1960, c. 437, s. 75.

76.-(1) An order of the Board for the payment of compensation or medical aid by an employer who is individually liable to pay the compensation of medical aid or any other order of the Board for the payment of money made under the authority of this Part, or a copy of any such order certified by the secretary to be a true copy, may be filed with the clerk of any county or district court and, when so filed, becomes an order of that court and may be enforced as a judgment of the court.

(2) For the duties performed by him in connection with the filing of an order or certificate of the Board pursuant to this section or section 112, such clerk is entitled to a fee of $1, and, notwithstanding any other provision or rule, any proceeding provided for by either of such sections may be carried on by the Board by post without the necessity of personal attendance at any office. R.S.O. 1960, c. 437, s. 76.

77.-(1) Subject to the approval of the Lieutenant Governor in Council, the Board may make such regulations as may be considered expedient for carrying out the provisions of this Part and to meet cases not specifically provided for by this Part.

(2) Every person who contravenes any such regulation after it has become effective or any rule of an association formed as provided by section 119 that has been approved and ratified as provided by that section is guilty of an offence and for every contravention is on summary conviction liable to a fine of not more than $50, but no prosecution for any such contravention shall be taken without leave of the Board. R.S.O. 1960, c. 437, s. 77.

78. The accounts of the Board shall be audited by the Provincial Auditor or by an auditor appointed by the Lieutenant Governor in Council for that purpose, and the salary or remuneration of the last-mentioned auditor shall be paid by the Board. R.S.O. 1960, c. 437, s. 78.

79.-(1) The Board shall after the close of each year file with the Minister of Labour an annual report upon the affairs of the Board.

(2) The Minister of Labour shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1968, c. 143, s. 17.
80. The Superintendent of Insurance or one of his officers named by him for that purpose shall whenever required by the Lieutenant Governor in Council examine into the affairs and business of the Board for the purpose of determining as to the sufficiency of the accident fund and shall report thereon to the Lieutenant Governor in Council. R.S.O. 1960, c. 437, s. 80, amended.

81. To assist in defraying the expenses incurred in the administration of this Part, there shall be paid to the Board out of the Consolidated Revenue Fund such annual sum not exceeding $100,000 as the Lieutenant Governor in Council may direct. R.S.O. 1960, c. 437, s. 81.

ACCIDENT FUND

82.—(1) An accident fund shall be provided by contributions to be made by the employers in the classes or groups of industries for the time being included in Schedule 1, and compensation payable in respect of accidents that happen in any industry included in any of such classes or groups shall be paid out of the accident fund.

(2) Notwithstanding the generality of the description of the classes for the time being included in Schedule 1, none of the industries included in Schedule 2 shall form part of or be deemed to be included in any of such classes, unless it is added to Schedule 1 by the Board under this Part. R.S.O. 1960, c. 437, s. 82.

83. If at any time there is not money available for payment of the compensation that has become due without resorting to the reserves, the Board may pay such compensation out of the reserves and shall make good the amount withdrawn from the reserves by making a special assessment upon the employers liable to provide the compensation or by including it in a subsequent annual assessment, but, if for any reason it is considered inexpedient to withdraw the amount required from the reserves, the Lieutenant Governor in Council may direct that the same be advanced out of the Consolidated Revenue Fund and in that case the amount advanced shall be collected by a special assessment and when collected shall be paid over to the Treasurer of Ontario. R.S.O. 1960, c. 437, s. 83.

84. It is the duty of the Board at all times to maintain the accident fund so that with the reserves, exclusive of the special reserve, it will be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments that are to be made in those years in respect of accidents that have happened previously. R.S.O. 1960, c. 437, s. 84.
85.—(1) Subject to section 108, it is not obligatory upon the Board to provide and maintain a reserve fund at all times equal to the capitalized value of the payments of compensation that will become due in future years unless the Board is of opinion that it is necessary to do so in order to comply with section 84.

(2) It is not necessary for the reserve fund to be uniform as to all classes but, subject to sections 84 and 108, it is discretionary with the Board to provide for a larger reserve fund in one or more of the classes than in another or others of them. R.S.O. 1960, c. 437, s. 85.

86.—(1) Subject to the approval of the Lieutenant Governor in Council, the Board may by regulation,

(a) rearrange any of the classes for the time being included in Schedule 1, and withdraw from any class any industry included in it and transfer it wholly or partly to any other class or form it into a separate class, or exclude it from the operation of this Part;

(b) establish other classes including any of the industries that are for the time being included in Schedule 2, or are not included in any of the classes in Schedule 1;

(c) add to any of the classes for the time being included in Schedule 1 any industry that is not included in any of such classes;

(d) exclude any trade, employment, occupation, calling, avocation or service from any industry for the time being included under this Part or at any time brought under this Part.

(2) Where in the opinion of the Board the hazard to workmen in any of the industries embraced in a class is less than that in another or others of such industries, or where for any other reason it is deemed proper to do so, the Board may subdivide the class into subclasses or groups and, if that is done, the Board may fix the percentages or proportions of the contributions to the accident fund that are to be payable by the employers in each subclass or group.

(3) Separate accounts shall be kept of the amounts collected and expended in respect of every class, subclass or group, but for the purpose of paying compensation the accident fund shall, nevertheless, be deemed one and indivisible.

(4) Where in the opinion of the Board sufficient precautions have not been taken for the prevention of accidents to workmen in the employment of an employer or where the working conditions are not safe for workmen or where the employer has not complied with the regulations respecting first aid, the Board may add to the amount of any contribution to the accident fund for which the
employer is liable such a percentage thereof as the Board considers just and may assess and levy the same upon the employer.

(5) Any additional percentage levied and collected under subsection 4 shall be added to the accident fund or applied in reduction of the assessment upon the other employers in the class or subclass to which the employer from whom it is collected belongs as the Board may determine.

(6) Where, in the opinion of the Board, the ways, works, machinery and appliances in any industry conform to modern standards in such manner as to reduce the hazard of accidents to a minimum and the Board is convinced that all proper precautions are being taken by the employer for the prevention of accidents, and where the accident record of the employer has in fact been consistently good, the Board may reduce the amount of any contribution to the accident fund for which such employer is liable. R.S.O. 1960, c. 437, s. 86 (1-6).

(7) Where the work injury frequency and the accident cost of the employer are consistently higher than that of the average in the industry in which he is engaged, the Board, as provided by the regulations, may increase the assessment for that employer by such a percentage thereof as the Board considers just, and may assess and levy the same upon the employer, and may require the employer to establish one or more safety committees at plant level. 1964, c. 124, s. 9; 1968, c. 143, s. 18.

(8) The Board, if satisfied that the default was excusable, may in any case relieve the employer in whole or in part from liability under subsection 4. R.S.O. 1960, c. 437, s. 86 (7).

87. Where the Board finds that an employer has employed a minor in contravention of the law and a claim for injury to the minor is made, such unlawful employment does not affect or prejudice the right of the claimant, but the Board may exclude the industry from the class in which it is included and, if it is so excluded, the employer is individually liable to pay the compensation to which the minor or any dependant of the minor is entitled. R.S.O. 1960, c. 437, s. 87.

88.—(1) The Board may in the exercise of the powers conferred by section 86 withdraw or exclude from a class industries in which not more than a stated number of workmen are usually employed and may afterwards add them to the class or classes from which they have been withdrawn, and any industry so withdrawn or excluded shall not thereafter be deemed to be included in Schedule 1, but no withdrawal or exclusion under the authority of this subsection has the effect of excluding any industry from Schedule 2.
(2) Where industries are withdrawn or excluded from a class under the authority of subsection 1, an employer in any of them may, nevertheless, elect to become a member of the class to which but for the withdrawal or exclusion he would have belonged, and, if he so elects, he shall be a member of that class and as such liable to contribute to the accident fund, and his industry shall be deemed to be embraced in Schedule 1.

(3) Notice of the election shall be given to the secretary of the Board and the election shall be deemed to have been made when the notice is received by him.

(4) A workman in any industry excluded under the authority of subsection 1 may notify the secretary of the Board that he desires such industry to be included in Schedule 1, and such notice upon receipt thereof by the Secretary has the same effect as a notice of election from the employer. R.S.O. 1960, c. 437, s. 88.

89. The powers conferred by sections 86 to 88 may be exercised from time to time and as often as in the opinion of the Board occasion may require. R.S.O. 1960, c. 437, s. 89.

90. The Board may, upon the application of an employer, add to Schedule 1, for such time and upon such terms and conditions as the Board may determine, any industry or part of an industry, or department of work or service, of such employer. R.S.O. 1960, c. 437, s. 90.

91.—(1) Any independent operator, not being an employer or a workman but performing work of a nature that, if he were a workman, would be within this Part, may be admitted by the Board as being entitled for himself and his dependants to the same compensation as if he were a workman within the scope of this Part. An application under this section shall be made in such form and under such conditions as may be prescribed by the regulations. 1965, c. 142, s. 5.

92. The Board may, upon the application of an employer, add to Schedule 2, for such time and upon such terms and conditions as the Board may determine, any industry or part of an industry, or department of work or service, of such employer not in Schedule 1. R.S.O. 1960, c. 437, s. 91.

STATEMENTS TO BE FURNISHED BY EMPLOYERS

93.—(1) Subject to the regulations, every employer shall yearly on or before such date as shall be prescribed by the Board, and at such other time or times as it may by order or regulation of the Board be required, prepare and transmit to the Board a
statement of the amount of the wages earned by all his employees during the year then last past or any part thereof specified by the Board and of the amount that he estimates he will expend for wages during the then current year or any part thereof specified by the Board, and such additional information as the Board may require, both certified to be accurate by the employer or manager of the business or, where the employer is a corporation, by an officer of the corporation having a personal knowledge of the matters to which the statements relate.

(2) Where an industry coming within any of the classes for the time being included in Schedule 1 is established or commenced on or after the 1st day of January in the then current year, the employer shall forthwith notify the Board of the fact and prepare and transmit to the Board a statement of the amount that he estimates he will expend for wages for the remainder of the year and such other information as the Board may require, certified to be accurate in the manner prescribed by subsection 1.

(3) Every employer shall keep in such form and with such detail as may be required for the purposes of this Act a careful and accurate account of all wages paid to his employees and such account shall be kept within Ontario and shall be produced to the Board and its officers when so required.

(4) Where the business of the employer embraces more than one branch of business or class of industry, the Board may require separate statements to be made as to each branch or class of industry, and such statements shall be made, verified and transmitted as provided by subsection 1.

(5) If any employer does not make and transmit to the Board the prescribed statement within the prescribed time, the Board may base any assessment or supplementary assessment thereafter made upon him on such sum as in its opinion is the probable amount of the payroll of the employer and the employer is bound thereby, but, if it is afterwards ascertained that such amount is less than the actual amount of the payroll, the employer is liable to pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed on the basis of his payroll.

(6) If an employer does not comply with subsection 1, subsection 2, subsection 3 or subsection 4, or if any statement made thereunder is not a true and accurate statement of any of the matters required to be set forth in it, the employer for every such non-compliance and for every such statement is guilty of an offence and on summary conviction is liable to a fine of not more than $500, and default or delay in furnishing any such statement or insufficiency of estimate of expenditure for wages also renders the employer liable to pay an additional percentage of assessment.
or to pay interest, as fixed by the Board. R.S.O. 1960, c. 437, s. 92.

94.—(1) Every assessor of a township, town or village shall yearly on or before the last day for completing his assessment roll make a return to the Board upon forms provided by the Board for the purpose showing the names, addresses, nature of business, and usual number of employees, of all employers of labour carrying on in the municipality any industry or business other than farming or mercantile business.

(2) The Board may make remuneration for such return out of the accident fund. R.S.O. 1960, c. 437, s. 93.

95.—(1) The Board and any member of it and any officer or person authorized by it for that purpose have the right to examine the books and accounts of the employer and to make such other inquiry as the Board considers necessary for the purpose of ascertaining whether any statement furnished to the Board under section 93 is an accurate statement of the matters that are required to be stated therein or of ascertaining the amount of the payroll of any employer or of ascertaining whether any industry or person is under the operation of this Part and whether in Schedule 1 or Schedule 2, and for the purpose of any such examination and inquiry the Board and the person so appointed have all the powers that may be conferred on a commissioner under The Public Inquiries Act.

(2) The Board may, for the purpose of the examination mentioned in subsection 1, apply ex parte to a judge of the county or district court of the county or district in which the books and accounts are located for an order authorizing an officer of the Board, together with such members of the Ontario Provincial Police Force or other police officers as he calls on to assist him, to enter and search, if necessary by force, any building, receptacle or place for books and accounts of the employer and to seize and take away any such books and accounts for the purpose of the examination and retain them in his possession until such examination is completed.

(3) Every employer and every other person who obstructs or hinders the making of the examination and inquiry mentioned in subsection 1 or refuses to permit it to be made is guilty of an offence and on summary conviction is liable to a fine of not more than $500.

(4) Every member of the Board and every officer or person authorized by it to make examination or inquiry under this section have power and authority to require and take affidavits, affirmations or declarations as to any matter of such examination or inquiry and for all purposes of this Act to administer oaths,
affirmations and declarations and certify to the same having been made. R.S.O. 1960, c. 437, s. 94.

96.—(1) If a statement is found to be inaccurate, the assessment shall be made on the true amount of the payroll as ascertained by such examination and inquiry, or, if an assessment has been made against the employer on the basis of his payroll being as shown by the statement, the employer shall pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed if the amount of the payroll had been truly stated, and in addition a sum equal to such difference.

(2) The Board, if satisfied that the inaccuracy of the statement was not intentional and that the employer honestly desired to furnish an accurate statement, may relieve him from the payment of the additional sum provided for by subsection 1 or any part of it. R.S.O. 1960, c. 437, s. 95.

97.—(1) The Board and any member of it and any officer or person authorized by it for that purpose have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund and the premises connected with it and every part of them for the purpose of ascertaining whether the ways, works, machinery or appliances therein are safe, adequate and sufficient and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose that the Board considers necessary for the purpose of determining the proportion in which such employer should contribute to the accident fund.

(2) Every employer and every other person who obstructs or hinders the making of any inspection under subsection 1, or refuses to permit it to be made, is guilty of an offence and on summary conviction is liable to a fine of not more than $500. R.S.O. 1960, c. 437, s. 96.

PRIVILEGED INFORMATION

98.—(1) No officer of the Board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the Board, any information obtained by him or that has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

(2) Every person who contravenes any of the provisions of subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than $50. R.S.O. 1960, c. 437, s. 97.
Every report made under section 52 and every other report made or submitted to the Board by a physician, surgeon, hospital, nurse, dentist, drugless practitioner, chiropodist or optometrist is for the use and purposes of the Board only, is deemed to be a privileged communication of the person making or submitting the same, and unless it is proved that it was made maliciously, is not admissible as evidence or subject to production in any court in an action or proceeding against such person. 1968-69, c. 140, s. 2.

ASSESSMENTS

The Board shall in every year assess and levy upon the employers in each of the classes such percentage of payroll or such other rate or such specific sum as, allowing for any surplus or deficit in the class, it deems sufficient to pay the compensation during the current year in respect of injuries to workmen in the industries within the class, and to provide and pay the expenses of the Board in the administration of this Part for that year or so much thereof as may not be otherwise provided for, and also to maintain a reserve fund to pay the compensation payable in future years in respect of claims in that class for accidents happening in that year, of such an amount as the Board considers necessary to prevent the employers in future years from being unduly or unfairly burdened with payments that are to be made in those years in respect of accidents that have previously happened.

Such assessments, if the Board sees fit, may be levied provisionally upon the estimate of payroll given by the employer or upon an estimate fixed by the Board and, after the actual payroll has been ascertained, may be adjusted to the correct amount, and the payment of assessments, if the Board sees fit, may be divided into instalments. R.S.O. 1960, c. 437, s. 98.

Where the assessment is based on the payroll of the employer and there is included in it the wages or salary of a workman who has been paid more than the maximum rate of annual earnings established by subsection 1 of section 44, the excess shall be deducted from the amount of the payroll and the assessment shall be based on the amount of it as so reduced. 1968, c. 143, s. 19.

It is not necessary for the assessments upon the employers in a class, subclass or group to be uniform, but they may vary for each individual industry or plant in relation to the hazard of such industry or plant, and the Board may levy a differential rate of assessment on each employer in the class, subclass or group accordingly.

A system of merit rating may, if considered proper, be adopted. R.S.O. 1960, c. 437, s. 99 (2, 3).
102.—(1) The Board shall determine and fix the percentage, rate or sum for which each employer is assessed under section 100 or 101, or the provisional amount thereof, and each employer shall pay to the Board the amount or provisional amount of his assessment within one month or such other time as the Board may fix after notice of the assessment and of the amount has been given to him, or, where payment is to be made by instalments, he shall pay the first instalment within such time and the remaining instalment or instalments at the time or times specified in the notice.

(2) The notice may be sent by post to the employer and shall be deemed to have been given to him on the day on which the notice was posted.

(3) When it appears at any time that a statement or estimate of payroll upon which an assessment or provisional amount of assessment is based is too low, the employer shall upon demand pay to the Board such sum, to be fixed by the Board, as is sufficient to bring the payment of assessment up to the proper amount, and payment of any such sum may be enforced in the same manner as the payment of any assessment may be enforced. R.S.O. 1960, c. 437, s. 100.

103. If the amount realized from any assessment is insufficient for the purpose for which the assessment was made, the Board may make supplementary assessments to make up the deficiency and section 102 applies to such assessments, but the Board may defer assessing for such deficiency until the next annual assessment is made and then include it in such assessment. R.S.O. 1960, c. 437, s. 101.

104.—(1) Where any deficiency in the amount realized from any assessment in any class is caused by the failure of some of the employers in that class to pay their share of the assessment or by any disaster or other circumstance that in the opinion of the Board would unfairly burden the employers in that class, the deficiency or loss shall be made up by supplementary assessments upon the employers in all the classes and section 102 applies to such assessments, but the Board may defer assessing for such deficiency or loss until the next annual assessment is made and then include it in such assessment.

(2) The Board, where it considers proper, may add to the assessment for any class or classes or for all the classes in Schedule 1 a percentage or sum for the purpose of raising a special fund to be laid aside and used to meet the loss arising from any disaster or other circumstance that, in the opinion of the Board, would unfairly burden the employers in any class. R.S.O. 1960, c. 437, s. 102.
If and so far as any deficiency mentioned in sections 103 and 104 is afterwards made good wholly or partly by the defaulting employer, the amount that has been made good shall be apportioned between the other employers in the proportions in which the deficiency was made up by them by the payment of supplementary assessments upon them and shall be credited to them in making the next assessment. R.S.O. 1960, c. 437, s. 103.

(1) If for any reason an employer liable to assessment is not assessed in any year, he is nevertheless liable to pay to the Board the amount for which he should have been assessed, and payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.

(2) Any sum collected from an employer under subsection 1 shall be taken into account by the Board in making an assessment in a subsequent year on the employers in the class or subclass to which such employer belonged. R.S.O. 1960, c. 437, s. 104.

Notwithstanding that the deficiency arising from a default in the payment of the whole or part of any assessment has been made up by a special assessment, a defaulting employer continues liable to pay to the Board the amount of every assessment made upon him or so much of it as remains unpaid. R.S.O. 1960, c. 437, s. 105.

Whenever the Lieutenant Governor in Council is of opinion that the condition of the accident fund is such that with the reserves, exclusive of the special reserve, it is not sufficient to meet all the payments to be made in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments that are to be made in those years in respect of accidents that have happened in previous years, he may require the Board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund, and, when such a requirement is made, the Board shall make such supplementary assessment forthwith and it shall be made in like manner as is hereinafter provided as to other special assessments and all the provisions of this Part as to special assessments apply to it. R.S.O. 1960, c. 437, s. 106.

In order to maintain the accident fund as provided by section 84, the Board may from time to time and as often as may be considered necessary include in any sum to be assessed upon the employers and may collect from them such sums as are considered necessary for that purpose, and the sums so collected shall form a reserve fund and shall be invested in any of such securities as a trustee may invest in under *The Trustee Act*. 1968, c. 143, s. 20.
110. If an assessment or a special assessment is not paid when it becomes payable, the defaulting employer is liable to pay and shall pay for his default such a percentage upon the amount unpaid as may be prescribed by the regulations or as may be determined by the Board. R.S.O. 1960, c. 437, s. 108.

111.—(1) Any employer who refuses or neglects to make or transmit any payroll, return or other statement required to be furnished by him under section 93, or who refuses or neglects to pay any assessment or special or supplementary assessment or the provisional amount of any assessment, or any instalment or part thereof, shall, in addition to any penalty or other liability to which he may be subject, pay to the Board the full amount or capitalized value, as determined by the Board, of the compensation and medical aid payable in respect of any accident to a workman in his employ that happens during the period of such default, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

(2) The Board, if satisfied that such default was excusable, may in any case relieve such employer in whole or in part from liability under this section. R.S.O. 1960, c. 437, s. 109.

112. Where default is made in the payment of any assessment or special assessment, or any part of it, the Board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it and the person by whom it was payable, and such certificate or a copy of it certified by the secretary to be a true copy may be filled with the clerk of any county or district court or, where the amount remaining unpaid does not exceed $400, with the clerk of any small claims court and, when so filed, becomes an order of that court and may be enforced as a judgment of the court against such person for the amount mentioned in the certificate. R.S.O. 1960, c. 437, s. 110; 1962-63, c. 145, s. 10.

113.—(1) If an assessment or a special assessment, or any part of it, remains unpaid for thirty days after it has become payable, the Board, in lieu of or in addition to proceeding as provided by section 112, may issue its certificate stating the name and residence of the defaulting employer, the amount unpaid on the assessment and the establishment in respect of which it is payable, and, upon the delivery of the certificate to the clerk of the municipality in which the establishment is situate, he shall cause the amount so remaining unpaid as stated in the certificate to be entered upon the collector's roll as if it were taxes due by the defaulting employer in respect of such establishment, and it shall be collected in like manner as taxes are levied and collected and the amount, when collected, shall be paid over by the collector to the Board.
(2) The collector is entitled to add 5 per cent thereof to the amount to be collected and to retain such percentage for his services in making the collection. R.S.O. 1960, c. 437, s. 111.

114.—(1) Where an employer engages in any of the industries for the time being included in Schedule 1 and has not been assessed in respect of it, the Board, if it is of opinion that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the Board of a sum sufficient to pay the assessment for which the employer would have been liable if the industry had been in existence when the next preceding assessment was made.

(2) The Board has the like powers and it entitled to the like remedies for enforcing payment of any such sum as it possesses or is entitled to in respect of assessments.

(3) Every employer who makes default in complying with subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than $200 and an additional fine of not more than $20 per day for every day on which the default continues. R.S.O. 1960, c. 437, s. 112.

115. In the case of a work or service performed by an employer in any of the industries for the time being included in Schedule 1 for which the employer would be entitled to a lien under The Mechanics’ Lien Act, it is the duty of the owner as defined by that Act to see that any sum that the employer is liable to contribute to the accident fund is paid and, if any such owner fails to do so, he is personally liable to pay it to the Board, and the Board has the like powers and is entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment. R.S.O. 1960, c. 437, s. 113.

116.—(1) There shall be included among the debts that, under The Assignments and Preferences Act, The Trustee Act, and The Corporations Act, are, in the distribution of the property, in the case of an assignment or death or in the distribution of the assets of a company being wound up, under the said Acts respectively, to be paid in priority to all other debts, the amount of any assessment or compensation the liability wherefor accrued before the date of the assignment or death or before the date of the commencement of the winding up, and the said Acts have effect accordingly.

(2) When the compensation is a periodical payment, the liability in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum, to be determined by the Board, for which the periodical payments may be commuted. R.S.O. 1960, c. 437, s. 114 (1, 2).
Lien

(3) The amount set forth in a certificate of the Board filed pursuant to section 112 is a first lien upon all the property, real or personal, of the employer used in or in connection with the industry with respect to which the employer is assessed, subject only to municipal taxes, and the amount levied under execution upon any such judgment to the extent of the amount due upon such execution shall forthwith be paid to the Board. 1962-63, c. 145, s. 11.

Notice of lien

R.S.O. 1970, c. 234

(4) The lien mentioned in subsection 3 is effective only where notice of the lien has been filed by way of writ of fieri facias in the office of the sheriff of the county or district in which the property against which the lien applied is situated and, where land affected is registered under The Land Titles Act, a copy of such writ has been transmitted by registered mail or delivered by the sheriff to the proper master of titles. 1965, c. 142, s. 6.

RETURNS OF ACCIDENTS

Employers to give notice of accidents

117.—(1) Every employer, within three days after he learns of the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages or that necessitates medical aid, shall notify the Board in writing of,

(a) the happening of the accident and the nature of it;
(b) the time of its occurrence;
(c) the name and address of the workman;
(d) the place where the accident happened;
(e) the name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury,

and shall in any case furnish such further details and particulars respecting any accident or claim to compensation as the Board may require. R.S.O. 1960, c. 437, s. 115 (1); 1968, c. 143, s. 21 (1).

Offence

(2) For every contravention of subsection 1, the employer is guilty of an offence and on summary conviction is liable to a fine of not more than $200. R.S.O. 1960, c. 437, s. 115 (2); 1968, c. 143, s. 21 (2).

Default in reporting accident or claim

(3) Every employer who makes default in reporting or furnishing particulars of any accident or claim shall, in addition to any other penalty or liability, pay to the Board, if so ordered by the Board, the amount of compensation and medical aid awarded in respect of such accident or claim in accordance with the evidence or information otherwise obtained by the Board. R.S.O. 1960, c. 437, s. 115 (3).
INDUSTRIAL DISEASES

118.—(1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed or his death is caused by an industrial disease and the disease is due to the nature of any employment in which he was engaged, whether under one or more employments, the workman is or his dependants are entitled to compensation as if the disease was a personal injury by accident and the disablement was the happening of the accident, subject to the modifications hereinafter mentioned or contained in the regulations, unless at the time of entering into the employment he had wilfully and falsely represented himself in writing as not having previously suffered from the disease.

(2) Where the compensation is payable by an employer individually, it is payable by the employer who last employed the workman in the employment to the nature of which the disease was due.

(3) The workman or his dependants, if so required, shall furnish the employer mentioned in subsection 2 with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due as such workman or his dependants may possess, and, if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in subsection 4, that employer upon proving that the disease was not contracted while the workman was in his employment is not liable to pay compensation.

(4) If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer, he may bring such employer before the Board and, if the allegation is proved, that other employer is the employer by whom the compensation shall be paid.

(5) If the disease is of such a nature as to be contracted by a gradual process, any other employers who employed the workman in the employment to the nature of which the disease was due are liable to make to the employer by whom the compensation is payable such contributions as the Board may determine to be just.

(6) The amount of the compensation shall be fixed with reference to the earnings of the workman under the employer by whom the compensation is payable, and the notice provided for by section 20 shall be given to the employer who last employed the workman in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the workman has voluntarily left the employment.
(7) Where the compensation is payable out of the accident fund, the Board shall make such investigation as it considers necessary to ascertain the class or classes against which the compensation should be charged and shall charge or apportion the compensation accordingly.

(8) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of Schedule 3 and the disease contracted is the disease in the first column of the Schedule set opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved, but, except where the Board is satisfied that the disease is not due to any other cause than his employment in Ontario, no compensation is payable under this section unless the workman has been a resident of Ontario for the three years next preceding his first disablement.

(9) The Board may appoint such medical officers as may be required to carry out The Mining Act with regard to the examination of employees or applicants for employment, and the remuneration and expenses of such officers shall be paid out of the rates imposed for payment of silicosis claims.

(10) Nothing in this Act entitles a workman or his dependants to compensation, medical aid or payment of burial expenses for disability or death from silicosis unless the workman has been actually exposed to silica dust in his employment in Ontario for periods amounting in all to at least two years preceding his disablement. R.S.O. 1960, c. 437, s. 116 (1-10).

(11) Notwithstanding any other provision in this Act, the Board may enter into an agreement with the appropriate authority in any other province or territory of Canada to provide for the sharing of the costs of silicosis claims in proportion to the exposure or estimated amount of exposure to silica dust encountered by the workman in the provinces or territories concerned. 1968, c. 143, s. 22.

(12) Nothing in this section affects the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is the result of an injury in respect of which he is entitled to compensation under this Part.

(13) The provisions of this section relating to silicosis apply mutatis mutandis to pneumoconiosis and stone worker's or grinder's phthisis.

(14) The Board, subject to the approval of the Lieutenant Governor in Council, may declare any disease to be an industrial disease and may amend Schedule 3 accordingly. R.S.O. 1960, c. 437, s. 116 (11-13).
FORMATION OF ASSOCIATIONS AND COMMITTEES

119.—(1) The employers in any of the classes for the time being included in Schedule 1 may, with the approval and under the control of the Board, form themselves into an association for the purpose of education in accident prevention. 1964, c. 124, s. 10 (1).

(2) If the Board is of opinion that an association so formed sufficiently represents the employers in the industries included in the class, the Board may approve rules of operation and, when approved by the Board and by the Lieutenant Governor in Council, they are binding on all the employers in industries included in the class. R.S.O. 1960, c. 437, s. 117 (2); 1964, c. 124, s. 10 (2).

(3) Where an association under the authority of its rules of operation appoints an inspector or an expert for the purpose of education in accident prevention, the Board may pay the whole or any part of the salary or remuneration of such inspector or expert out of the accident fund or out of that part of it that is at the credit of any one or more of the classes as the Board considers just. R.S.O. 1960, c. 437, s. 117 (3); 1964, c. 124, s. 10 (3).

(4) The Board may, in any case that it considers proper, make a grant towards the expenses of any such association.

(5) Any moneys paid by the Board under this section shall be charged against the class represented by such association and levied as part of the assessment against such class.

(6) The word “class” in this section includes subclass or such part of a class or such number of classes or parts of classes in Schedule 1 as may be approved by the Board. R.S.O. 1960, c. 437, s. 117 (4-6).

120.—(1) The employers in any of the classes for the time being included in Schedule 1 may appoint a committee of themselves, consisting of not more than five employers, to watch over their interests in matters to which this Part relates.

(2) Where a claim is for compensation for an injury for which the employers in any such class would be liable, if the Board is of opinion that the committee sufficiently represents such employers and the committee certifies to the Board that it is satisfied that the claim should be allowed, the Board may act on the certificate and may also act upon the certificate of the committee as to the proper sum to be awarded for compensation if the workman or dependant is satisfied with the sum named in the certificate.

(3) The committee may be the medium of communication on the part of the class with the Board. R.S.O. 1960, c. 437, s. 118.
CONTRIBUTION BY EMPLOYERS IN SCHEDULE 2

121. Employers in industries for the time being included in Schedule 2 shall pay to the Board such proportion of the expenses of the Board in the administration of this Part as the Board considers just and determines and the sum payable by them shall be apportioned between such employers and be assessed and levied in like manner as in the case of assessments for contributions to the accident fund, and the provisions of this Part as to making such assessments apply mutatis mutandis to assessments made under the authority of this section. R.S.O. 1960, c. 437, s. 119.

122. The fines recovered for an offence against this Part shall be paid over to the Board and shall form part of the accident fund. R.S.O. 1960, c. 437, s. 120.

123. This Part applies only to the industries mentioned in Schedule 1 and 2 and to such industries as are added to them under the authority of this Part and to employments therein, and applies to any employment by or under the Crown in right of Ontario, including any employment by any permanent board or commission appointed by the Crown in right of Ontario. R.S.O. 1960, c. 437, s. 121.

PART II

124. Subject to section 127, sections 125 and 126 apply only to the industries to which Part I does not apply and to the workmen employed in such industries, but outworkers and persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, who are employed in industries under Part I but who are excluded from the benefit of Part I, are not by this section excluded from the benefit of sections 125 and 126. R.S.O. 1960, c. 437, s. 123.

125.—(1) Where personal injury is caused to a workman by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of his employer or by reason of the negligence of his employer or of any person in the service of his employer acting within the scope of his employment, the workman or, if the injury results in death, the legal personal representatives of the workman and any person entitled in case of death have an action against the employer, and, if the action is brought by the workman, he is entitled to recover from the employer the damages sustained by the workman by or in consequence of the injury, and, if the action is brought by the legal personal representatives of the workman or by or on behalf of persons entitled to damages under The Fatal Accidents Act, they are
entitled to recover such damages as they are entitled to under that Act.

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

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

(4) A workman shall not, by reason only of his continuing in the employment of the employer with knowledge of the defect or negligence that caused his injury, be deemed to have voluntarily incurred the risk of the injury. R.S.O. 1960, c. 437, s. 124.

126.—(1) A workman shall be deemed not to have undertaken the risks due to the negligence of his fellow workmen and contributory negligence on the part of a workman is not a bar to recovery by him or by any person entitled to damages under The Fatal Accidents Act in an action for the recovery of damages for an injury sustained by or causing the death of the workman while in the service of his employer for which the employer would otherwise have been liable.

(2) Contributory negligence on the part of the workman shall nevertheless be taken into account in assessing the damages in any such action. R.S.O. 1960, c. 437, s. 125.

127. This Act does not apply to domestic or menial servants or their employers. 1965, c. 142, s. 8.